

STATE OF MICHIGAN
IN THE SUPREME COURT

REPRODUCTIVE FREEDOM FOR ALL, a Michigan ballot question committee, Peter Bevier, an individual, and Jim Lederer, an individual,

Plaintiffs,

v.

BOARD OF STATE CANVASSERS, JOCELYN BENSON, in her official capacity as Secretary of State, and JONATHAN BRATER, in his capacity as Director of Elections,

Defendants.

Supreme Court Case No. _____

THIS MATTER INVOLVES A RULING THAT A PROVISION OF THE CONSTITUTION, A STATUTE, RULE OR REGULATION, OR OTHER STATE GOVERNMENTAL ACTION IS INVALID.

ORAL ARGUMENT REQUESTED

THIS IS AN ELECTION MATTER, ACTION IS REQUESTED BY SEPTEMBER 7, 2022

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BRIEF IN SUPPORT OF COMPLAINT FOR IMMEDIATE MANDAMUS RELIEF AND EX PARTE MOTION FOR ORDER TO SHOW CAUSE

***** EXPEDITED DECISION BY SEPTEMBER 7, 2022 REQUESTED*****

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STATEMENT OF JURISDICTION

This Court has original jurisdiction over this action pursuant to MCL 168.479 and MCR 7.303(B)(6). Under MCL 600.217(3), this Court has the “jurisdiction and power to issue, hear and determine writs of . . . mandamus.” Section 479 of the Michigan Election Law “provides the method of review for those persons aggrieved by any determination of the State Board of Canvassers.” *Beechnau v Austin*, 42 Mich App 328, 330; 201 NW2d 699 (1972). Section 479 says:

(1) Notwithstanding any other law to the contrary and subject to subsection (2), any person who feels aggrieved by any determination made by the board of state canvassers may have the determination reviewed by mandamus or other appropriate remedy in the supreme court.

(2) If a person feels aggrieved by any determination made by the board of state canvassers regarding the sufficiency or insufficiency of an initiative petition, the person must file a legal challenge to the board's determination in the supreme court within 7 business days after the date of the official declaration of the sufficiency or insufficiency of the initiative petition or not later than 60 days before the election at which the proposal is to be submitted, whichever occurs first. Any legal challenge to the official declaration of the sufficiency or insufficiency of an initiative petition has the highest priority and shall be advanced on the supreme court docket so as to provide for the earliest possible disposition.

MCL 168.479. On August 31, 2022, the Board of State Canvassers found that the Reproductive Freedom For All petition had the required number of signatures to appear on the ballot, but in a deadlock vote refused to qualify the petition. Reproductive Freedom For All timely challenges the Board of State Canvassers' refusal to qualify the ballot proposal to appear on the November 8, 2022 general election ballot.

STATEMENT OF QUESTION PRESENTED

1. Did the Defendants violate their clear legal duty to qualify and certify the Reproductive Freedom For All petition and ballot question to appear on the November 8, 2022 general election ballot when: (1) the form of the petition meets all the statutory requirements of MCL 168.482, and (2) the Reproductive Freedom For All petition collected more than the required number of valid signatures to propose a constitutional amendment to the electorate?

Plaintiffs answer: Yes

Defendant Michigan Secretary of State presumably answers: Yes

Defendant Bureau of Elections Director presumably answers: Yes

Defendant Michigan Board of State Canvassers deadlocked 2-2 on this question at its August 31, 2022 meeting and failed to declare the Reproductive Freedom For All petition qualified for the ballot.

Board Members Daunt and Houskamp presumably answer: No

Board Members Gurewitz and Bradshaw presumably answer: Yes

INTRODUCTION

Reproductive Freedom for All (“RFFA”) urgently petitions this Court to order the Board of State Canvassers (the “Board”) to certify that the RFFA petition to amend the Michigan Constitution of 1963 is sufficient in both form and number of signatures so that it may appear on the November 8, 2022 general election ballot. To briefly summarize, the Board’s obligation to certify the petition for the November 2022 general election ballot is triggered when the following occurs:

- **There are the requisite number of signatures**—here, there is no dispute that RFFA exceeded the threshold number. Bureau Staff estimated that the RFFA petition contained 596,379 valid signatures—over 170,000 more than needed to qualify.
- **The petition met all statutory form requirements.** There are 2 requirements under the Michigan Election Law that the Board may review the form for compliance. MCL 168.482. First, the proposed amendment be printed in 8-point type. There is no dispute that the proposed amendment is printed in 8-point type. Second, the full text of the amendment must follow the summary. The full text of the proposed amendment followed the summary.¹ There is no other requirement as to form.²

In this case, the RFFA petition form received approval from the Board on March 23, 2022 and complies with all of the mandatory form elements detailed in MCL 168.482. The RFFA petition submitted was submitted with an estimated 753,759 signatures—the Elections Bureau of the

¹ WAC attempts to cast its challenge as a challenge as to “form”, arguing in its supplemental challenge (which was filed too late in addition to being legally and factually inaccurate) that the “full text” of the proposal requirement is not satisfied because the proposal does not contain “actual words” because of their perceived spacing concerns. This argument fails on every level. To begin, there is no requirement in Michigan law that the “full text” be in any particular format or contain anything specific—and while the petition does contain “actual words” and spaces, even if it did not, there is no basis in the Michigan Election Law for the Board to reject the proposal on that basis. If someone wanted to propose a constitutional amendment that did contain actual non-words and obtained sufficient signatures and followed MCL 168.482, then the Board would still be required to certify the petition and the People could vote on the proposal (and the courts could litigate its meaning and/or application). As Bureau Staff correctly identified, WAC is trying to challenge the content or substance of the proposal, not its form. To hold otherwise would be to read additional requirements into the Michigan Election Law that do not exist, which would violate principles of statutory interpretation. *People v Pinkney*, 501 Mich 259, 272; 912 NW2d 535 (2018).

² Under MCL 168.483a, a petition cannot be circulated until it is filed with the Secretary of State. RFFA fully complied with this requirement; the same petition circulated was filed with the Secretary of State.

Secretary of State determined that this included 596,379 valid signatures based on its sampling process. The RFFA petition has met both prerequisites to appear on the November 2022 general election ballot. *Unlock Mich v Bd of State Canvassers*, 507 Mich 1015; 961 NW2d 211 (2021), citing *Stand Up for Democracy v Secretary of State*, 492 Mich 588, 618; 822 NW2d 159 (2012). By failing to certify the petition for the November ballot, the Board has failed to exercise its clear legal duty to qualify the RFFA petition and this Court should order relief by writ of mandamus.

No party disputes that the RFFA petition has gathered the required number of valid signatures to put a question to amend the constitution to the electorate. The only challenge to the RFFA petition alleges that there is insufficient space between certain words of the text of the proposed constitutional amendment on the circulated petitions. This is not grounds to challenge a petition. *Even if* this were a valid basis to challenge the RFFA proposal (it is not), its factual premise is incorrect. There are indeed spaces in between the words of the proposed amendment. This is demonstrated by the electronic version of the petition provided to the Secretary of State in compliance with MCL 168.483a and by the sworn statement of the graphic designer of the actual petition. A simple copy and paste of the petition text from the PDF provided electronically to the Bureau on March 30, 2022 into a Word document shows the same—there are spaces. Elections Bureau Staff also concluded that the Michigan Election Law, “does not provide requirements as to spacing or “kerning”—the term for adjusting the spaces between characters in proportional font.” (August 26, 2022 Amended Staff Report, App’x J, at 227-228.) The RFFA proposal includes the full text of the proposed constitutional amendment in 8-point typeface, just as MCL 168.482 requires. This Court should decline to disenfranchise an estimated 596,379 voted for a challenge that is *not based in any statutory requirement*.

Opponents of the RFFA petition have resorted to hyperbole, calling the small spaces between certain words in the petition “gibberish”, “incomprehensible argle-bargle”, and “Klingon”.³ But, opponents are unable to point to a single individual that signed the petition that did not understand its proposed language. “A necessary assumption of the petition process must be that the signer has undertaken to read and understand the petition. Otherwise, this process would be subject to perpetual collateral attack . . . which essentially concern matters of political dispute.”

³ To determine whether text is argle-bargle or gibberish requires consideration of the content and substance of the text, not the form, contrary to the opponents claim that it is challenging the form of RFFA’s petition.

Mich Civil Rights Initiative v Bd of State Canvassers, 475 Mich 903, 904; 716 NW2d 590 (2006) (MARKMAN, J., concurring). By the estimate of Elections Bureau staff, 596,379 Michigan voters had no problem understanding the proposed amendment so it is puzzling why opponents seem to struggle with it.⁴

This Court has consistently held that the Board must qualify for the ballot petitions with sufficient signatures and statutory compliant petition forms. See, e.g., *Stand Up for Democracy*, 492 Mich at 618. This Court has also consistently ordered the Board to place ballot questions on the ballot when the Board deadlocks for reasons outside of its statutory authority. Within the last two decades, this Court has done so on no less than three occasions. See, e.g., *Unlock Mich v Bd of State Canvassers*, 507 Mich 1015; 961 NW2d 211 (2021); *Protect Our Jobs v Bd of State Canvassers*, 492 Mich 763; 822 NW2d 534 (2012); *Mich Civil Rights Initiative*, 475 Mich 903; 716 NW2d 590 (2006). The law is clear regarding the duties of the Board, and the remedy requested by RFFA is within the scope of authority of this Court to provide. The inherent political power of the voters must be safeguarded. Const 1963, art 1, § 1.

The Board's refusal to certify the RFFA petition as sufficient violates the Michigan Constitution of 1963 and Michigan Election Law. RFFA therefore respectfully asks that this Court order (1) the Board to certify RFFA's petition as sufficient, and (2) the Secretary of State to include the RFFA proposal with the designation as Proposal 2022-3⁵ and with the ballot statement proposed by the Director of Elections and approved by the Board at its August 31, 2022 meeting when certifying to county clerks the contents of the general election ballot.

STATEMENT OF FACTS

A. The ballot question committee is formed and the form of petition is approved.

RFFA was formed on January 7, 2022 for the purpose of supporting a statewide ballot initiative seeking to amend the Michigan Constitution to expressly recognize a fundamental individual right to reproductive freedom. At the January 19, 2022 meeting of the Board, RFFA

⁴ Challenger's claims that the RFFA petition is gibberish are belied by the comments submitted by its own attorney. (See Ballot Language Notice, App'x L, at 235.) That comment not only demonstrated a clear ability to understand the proposal and summarize it, but it also even concedes that the petition summary previously approved by the Board for circulation and the petition that the Director will now summarize for the ballot *are for the same petition*.

⁵ If the Promote The Vote petition is not ordered on to the ballot for the November 8, 2022 general election, RFFA requests that its designation be Proposal 2022-2.

submitted its proposed summary of purpose of its constitutional amendment for approval and inclusion on its petition pursuant to MCL 168.482b. (Jan 19, 2022 Board Minutes, App'x A, at 3.) Under this *optional* process, the Board “may not consider a challenge to the sufficiency of a submitted petition on the basis of the summary being misleading or deceptive if that summary was approved before circulation of the petition. MCL 168.482b(1). After initially deadlocking and failing to approve the initial petition summary proposed by the Director, the Board approved a second petition summary proposed by the Director. (Jan 19, 2022 Board Minutes, App'x A, at 3.)

At the March 23, 2022 meeting of the Board, RFFA submitted its petition, including the petition summary approved by the Board for optional approval by the Board. (March 23, 2022 Board Minutes, App'x B, at 8.) Chairman Daunt made the following motion to approve the form of the petition:

I move that the Board of State Canvassers conditionally approve the form of the constitutional amendment submitted by Reproductive Freedom For All provided sponsors remove the definite article “the” prior to the word “constitution” in the “we, the undersigned” sentence prior to circulation *with the understanding that the Board's approval does not extend to, one, the substance of the proposal which appears on the petition* or, two, the manner in which the proposal language is affixed to the petition. (WAC Challenge, March 23, 2022 Meeting Tr. at 52-53 App'x C, at 68 (emphasis added).)

A revised petition resolving the condition was filed with the Secretary on March 30, 2022. (See Revised Petition Filing, App'x D, at 170; Electronic Revised Petition Filing, App'x E, at 172.)

B. RFFA launches historic petition drive.

In the following weeks and months, RFFA circulated its petition, seeking to collect at least 425,059 signatures of registered and qualified electors, as required for a constitutional amendment pursuant to Const 1963, art 12, § 2. On July 11, 2022, RFFA filed with the Secretary 222 boxes containing an estimated 152,449 initiative petitions sheets with an estimated 753,759 signatures of registered Michigan electors. (See July 11, 2022 Letter to Secretary, App'x F, at 182.)

The Bureau of Elections uses a random sampling methodology to ascertain the number of valid signatures submitted by ballot question committees. (See Sampling Procedure Memorandum, App'x G, at 186.) After completing what the Bureau refers to as a “face review of the petition”, the Bureau culled RFFA’s submission down to 147,994 sheets containing 735,439 signatures in the “universe” from which its sample is pulled. (August 4, 2022 Notice of the Secretary, App'x H, at 189.)

Based on the number of signatures submitted by RFFA, the Bureau established the following signature thresholds:

<u>Number of valid signatures</u>	<u>Formula result</u>
314 or more	Certify
280-313	Sample more signatures
279 or fewer	Deny certification

These signature thresholds represent the number of valid signatures to trigger certain actions from the Bureau. Out of the 513 signatures⁶ sampled, if 314 or more signatures were valid registered voters, the Bureau would recommend certification of the Petition as sufficient. If the sampling process yielded between 280 and 313 signatures of valid registered voters, the Bureau would draw a larger sample of 2000 signatures. If the sampling process produced 279 or fewer valid signatures of registered voters, the Bureau would recommend denial of certification due to insufficient signatures.

C. Challengers file frivolous plea to the Board to reject all of the RFFA petitions.

On August 18, 2022, a challenge to the RFFA petition was filed by Citizens to Support MI Women and Children (“WAC”), a ballot question committee “organized, in part to oppose [RFFA’s] proposal[.]” (WAC First Challenge, App’x C, at 12.) The challenge alleged that the RFFA petition “seeks to insert nonexistent words into the Michigan Constitution” and therefore the Board should reject the petition as misleading. The WAC Challenge did not challenge the validity of a single signature in the RFFA sample or in the universe of signatures sampled from.⁷

On August 23, 2022, RFFA filed its response to the WAC challenge. (RFFA First Challenge Response, App’x I, at 191.) In its response, RFFA explained—with the support of an affidavit of the printer—that the printer inadvertently minimized (but did not eliminate) the spaces between certain words in the proposed amendment on the revised petitions. (*Id.*, App’x I, at 220-222.) The spaces, however, are included in the text and in the PDF text file provided to the Secretary of State

⁶ According to the Staff Report, “[w]hen initially released, staff erroneously included one sheet in the sample where the sampled signature was crossed out. Staff later removed this line from the sample as the line contained no information and should not have been included in the sample. Accordingly, the sample was reduced by one.” (August 26, 2022 Amended Staff Report, App’x J, at 224.)

⁷ WAC also filed a second challenge, 11 days after the deadline to file challenges had passed. Because the filing was not timely, it should not be considered and has not been referenced herein. The second challenge did not raise any new issues of law or fact.

prior to circulation of the revised petition. (*Id.*, App’x I, at 213-216.) RFFA also emphasized that Board approval applies only to the *form* of a petition—not the *substantive text* of a proposed constitutional amendment. (*Id.*, App’x I, at 197-199.)

D. Elections Bureau Staff concludes the RFFA petition should appear on the November 8, 2022 general election ballot.

On August 25, 2022, the Director issued a staff report on the RFFA petition, found 416 valid signatures in the 513 signature sample to be valid and recommended that the Board certify the petition as sufficient. (See August 25, 2022 Staff Report, App’x K, at 232.) Based on the results of the random sample, Staff estimated that the RFFA petition contained 596,379 valid signatures. (*Id.*, App’x K, at 234.)

Staff considered the arguments of RFFA and WAC regarding the challenge to the spacing on the proposed constitutional amendment. Staff made:

. . . no recommendation as to the merits of these legal arguments as they pertain to the substance of the petition. Courts in Michigan have found that the board’s duty is limited to determining whether the form of the petition substantially complies with the statutory requirements and whether there are sufficient signatures to warrant certification of the proposal. *Citizens for Prot Marriage v Bd of State Canvassers*, 263 Mich App 487, 492 (2004), citing *Ferency v Secretary of State*, 409 Mich 569 (1980); *Council About Parochiaid v Secretary of State*, 403 Mich 396 (1978); *Leininger v Secretary of State*, 316 Mich 644 (1947). The Duties of the Board of State Canvassers are “purely ministerial and clerical.” *McLeod v State Bd of Canvassers*, 304 Mich 120 (1942).

Finding that RFFA submitted sufficient valid signatures and that the form of petition complied with the Michigan Election Law, Staff “recommend[ed] that the Board approve certification of this petition.” (*Id.*, App’x K, at 234.)

Also on August 25, 2022, the Director released his draft proposed ballot language pursuant to his responsibility under MCL 168.32 and Const 1963, art 2, § 12. (See August 25, 2022 Ballot Language Notice, App’x L, at 236.) The Director’s proposed ballot language is required to be under 100 words exclusive of heading and caption and also be an impartial statement of the proposed constitutional amendment. MCL 168.32. Prior to issuing his recommended language, the Director solicited public comments and suggested language. The Director recommended the following language appear on the November 8, 2022 general election ballot:

Proposal 22-3

A proposal to amend the state constitution to establish new individual right to reproductive freedom, including right to make all decisions about pregnancy; allow state to prohibit abortion in some cases; and forbid prosecution of individuals exercising established right

This proposed constitutional amendment would:

- Establish new individual right to reproductive freedom, including right to make and carry out all decisions about pregnancy, such as prenatal care, childbirth, postpartum care, contraception, sterilization, abortion, miscarriage management, and infertility;
- Allow state to prohibit abortion after fetal viability unless needed to protect a patient’s life or physical or mental health;
- Forbid state discrimination in enforcement of this right; prohibit prosecution of an individual, or a person helping a pregnant individual, for exercising rights established by this amendment; and invalidate all state laws that conflict with this amendment.

Should this proposal be adopted?

YES
 NO

WORD COUNT: 94

In his notice regarding the ballot language, the Director recommended to the Board “that Reproductive Freedom for All be designated as Proposal 2022-3 if both it and Promote the Vote 2022 proposals appear on the November 8, 2022 general election Ballot.” (*Id.*)

On August, 26, 2022, Elections Bureau staff amended the staff report issued the previous day. (August 26, 2022 Amended Staff Report, App’x J, at 224.) While the conclusion of the staff report did not change, Elections Bureau added a footnote regarding the legal precedent relied on by staff in reaching that conclusion. The amended report added:

When these cases were decided, under established precedent the Board’s authority was to “determine whether the form of the petition substantially complies with the statutory requirement.” Since 2012, strict compliance is the standard. *Stand Up for Democracy v Sec’y of State*, 492 Mich 588 (2012). At issue here is not whether the form of petition must strictly or substantially comply with the Election Law (it must strictly comply) but whether the Board may consider challenges to the substance of the petition. *Ferency’s* holding that the Board’s authority does not include challenges to the substance of the Petition’s language was not overruled by *Stand Up For Democracy*. (August 26, 2022 Amended Staff Report, App’x J, at 228, n 6.)

E. The Board deadlocks and fails to certify the RFFA petition to appear on the ballot.

On August 31, 2022, the Board met and received the recommendation of the Director. Despite the recommendation of the Director to qualify the RFFA petition, the Board deadlocked two-to-

two on whether RFFA petition is qualified to appear on the November 8, 2022 general election ballot—effectively keeping the RFFA proposal *off* the ballot. Board members Gurewitz and Bradshaw voted to qualify the petition and members Daunt and Houskamp voted against qualification.⁸

Member Houskamp did not provide legal support for his refusal to qualify the RFFA petition, saying “I disagree with you when you say that there are no typos. Missing spaces are typos.”⁹ Chairman Daunt also did not provide legal support for his refusal to qualify the RFFA petition, saying that the Board “did not approve what was circulated, we simply did not. . . . We have rejected language for these exact same reasons. And it is a form issue because it is how it looks, it is what is before the people, it is what is their understanding of it.”¹⁰ At the meeting, Director Brater reiterated that “the form issues are limited to the statutory elements, which are the things on the face of the petition and the 8 point typeface text in the substance of the petition.”¹¹

Apparently in expectation that its deadlock would be overturned, the Board moved to adopt both a ballot proposal number and ballot language. The Board conditionally adopted the ballot proposal number 2022-2 if the Promote The Vote petition does *not* make the ballot, and 2022-3 if both Promote The Vote and RFFA will appear on the ballot.¹² The Board also conditionally adopted the following ballot language proposed by the Director:

Proposal 22-3

A proposal to amend the state constitution to establish new individual right to reproductive freedom, including right to make all decisions about pregnancy and abortion; allow state to regulate abortion in some cases; and forbid prosecution of individuals exercising established right

This proposed constitutional amendment would:

- Establish new individual right to reproductive freedom, including right to make and carry out all decisions about pregnancy, such as prenatal care, childbirth, postpartum care, contraception, sterilization, abortion, miscarriage management, and infertility;

⁸ See 13 On Your Side, *Watch: Board of State Canvassers Considering Abortion Rights Ballot Initiative*, at 5:12:18 (last accessed August 31, 2022) <https://www.youtube.com/watch?v=XV5HqYjIPJs>.

⁹ See *id.* at 5:05:18.

¹⁰ See *id.* at 5:54:52.

¹¹ See *id.* at 5:02:04.

¹² See *id.* at 5:14:00.

- Allow state to regulate abortion after fetal viability, but not prohibit if medically needed to protect a patient’s life or physical or mental health;
- Forbid state discrimination in enforcement of this right; prohibit prosecution of an individual, or a person helping a pregnant individual, for exercising rights established by this amendment;
- Invalidate state laws that conflict with this amendment.

Should this proposal be adopted?

YES

NO

LEGAL STANDARD

Under the traditional standard for injunctive relief, the following factors are considered: (1) the likelihood that the party seeking the injunction will prevail on the merits; (2) the danger that the party seeking the injunction would suffer irreparable injury if the injunction is not issued; (3) the risk that the party seeking the injunction would be harmed more by the absence of an injunction than the opposing party would be by the granting of the relief; and (4) the harm to the public interest if the injunction is issued. *Freuhauf Trailer Corp v Hagelthorn*, 208 Mich App 447, 449; 528 NW2d 778 (1995).

“To support mandamus, plaintiffs must have a clear legal right to performance of the specific legal duty sought to be compelled; defendants must have a clear legal duty to perform such act; and it must be a ministerial act, one where the law prescribes and defines the duty to be performed with such precision and certainty as to leave nothing to the exercise of discretion or judgment.” *Berry v Dehnke*, 302 Mich 614, 621; 5 NW2d 505 (1942) (cleaned up). To obtain mandamus relief, plaintiff bears the burden of showing: “that (1) the plaintiff has a clear, legal right to performance of the specific duty sought, (2) the defendant has a clear legal duty to perform, (3) the act is ministerial, and (4) no other adequate legal or equitable remedy exists that might achieve the same result.” *Taxpayers for Mich Const Gov’t v State*, 508 Mich 48, 81-82; 972 NW2d 783 (2021). “While it is uniformly held that the issuance of a writ of mandamus is a matter of grace or discretion, it does not follow that the courts will overlook a violation of a clear and unequivocal public duty[.]” *Muni Fin Comm v Bd of Ed of Marquette Twp Sch Dist, Marquette Co*, 337 Mich 639, 644; 60 NW2d 495 (1953). “[M]andamus in a case where the duty of a public officer is absolute and specific is no more matter of discretion than any other remedy.” *Id.* A “plaintiff’s ability to show a clear legal right or a clear legal duty for purpose of mandamus does not depend

upon the difficulty of the legal question presented.” *Berdy v Buffa*, 504 Mich 876, 876; 928 NW2d 204 (2019).

ARGUMENT

A. RFFA is entitled to mandamus relief in this case.

In a claim for mandamus, “the plaintiff must show that: (1) the plaintiff has a clear legal right to the performance of the duty sought to be compelled, (2) the defendant has a clear legal duty to perform, (3) the act is ministerial in nature, and (4) the plaintiff has no other adequate legal or equitable remedy.” *Citizens for Protection of Marriage v Bd of State Canvassers*, 263 Mich App 487, 492; 688 NW2d 538 (2012).

1. The Board failed in its clear legal duty to determine that the RFFA petition is qualified to appear on the November 8, 2022 general election ballot.

The duties and authority of the Board of State Canvassers are limited. For a writ of mandamus, “a clear legal right is one clearly founded in, or granted by, law; a right which is inferable as a matter of law from uncontroverted facts regardless of the difficulty of the legal question to be decided.” *Rental Props Ass’n v Kent Co Treasurer*, 308 Mich App, 498 518-519; 866 NW2d 817 (2014) (citation omitted). “The duties and powers of the [Board] are defined and circumscribed by statute.” *McLeod v Kelly*, 304 Mich 120, 124; 7 NW2d 240 (1942). “The Board is an agency having no inherent power—any authority it may have is vested by the Legislature, in statutes, or by the Constitution.” *Attorney Gen v Bd of State Canvassers*, 318 Mich App 242, 249; 896 NW2d 485 (2016).

Primarily, the Board is tasked with canvassing the returns and determining the results of Michigan’s elections, including “the result of an election on a proposed amendment to the constitution.” MCL 168.841(1). The Board also has duties related to canvassing statewide ballot question petitions prior to those elections—which are the duties at issue in this case. “[T]he Board’s duties with regard to a proposed constitutional amendment are ‘limited to determining whether the *form of the petition* substantially complies with the statutory requirements and whether there are *sufficient signatures* to warrant certification of the proposal.’” *Citizens Protecting Mich Const v Secretary of State*, 280 Mich App 273, 285; 761 NW2d 210 (2008), *aff’d* in part 482 Mich 960; 755 NW2d 157 (2008) (citation omitted) (emphasis added). The Board examines the signatures on the petitions and makes a determination regarding their genuineness and sufficiency. MCL 168.476. “Upon receiving notification of the filing of the petitions, the board

of state canvassers shall canvass the petitions to ascertain if the petitions have been signed by the requisite number of qualified and registered electors.” *Id.*

The Board may only take those actions that are specifically authorized by statute. The Michigan Legislature is clear regarding what those actions are: review the signatures (MCL 168.476), review the form of the mandatory elements of the petition (MCL 168.482), approve the summary of the purpose of the petition (MCL 168.482b), and declare the sufficiency or insufficiency of a petition based upon the number of valid signatures on the petition (MCL 168.477). Michigan courts have declined to expand these limited duties unless otherwise *expressly* granted by the Legislature:

Because the Legislature failed to provide the Board with authority to investigate and determine whether fraudulent representations were made by the circulators of an initiative petition, we hold that the Board has no statutory authority to conduct such an investigation. Moreover, an attempt by the Board to go beyond its authority clearly outlined in the constitution and statute clearly undermines the constitutional provision that reserves for the people of the State of Michigan the power to propose laws through ballot initiatives.

Mich Civil Rights Initiative v Bd of State Canvassers, 268 Mich App 506, 520; 708 NW2d 139 (2005).

When the Board refuses to certify a petition despite the petition having sufficient signatures and meeting the requisite form elements, the proper remedy is a writ of mandamus ordering the Board to certify the petition. *Wojcinski v State Bd of Canvassers*, 347 Mich 573, 578; 81 NW2d 390 (1957); see also *Unlock Mich*, 507 Mich at 1015; *Michigan Opportunity v Bd of State Canvassers*, unpublished order of the Court of Appeals, entered August 22, 2018 (Docket No. 344619). “The Board has no authority to consider the lawfulness of a proposal.” *Id.* (citation omitted). The Board may not examine questions regarding the merits or substance of a proposal. *Leininger v Secretary of State*, 316 Mich 644, 655-656; 26 NW2d 348 (1947), questioned on other grounds in *Newsome v Riley*, 69 Mich App 725, 730; 245 NW2d 374, 376 (1976). See also *Gillis v Bd of State Canvassers*, 453 Mich 881; 554 NW2d 9 (1996); *Citizens for Protection of Marriage v Bd of State Canvassers*, 263 Mich App 487; 688 NW2d 538 (2004).

In this case, RFFA received approval of its form on March 23, 2022. (WAC Challenge, March 23, 2022 Meeting Tr. at 52-53 App’x C, at 68). As indicated by the Staff Report issued August 26, 2022, RFFA exceeded the minimum signature requirement by hundreds of thousands of valid signatures *and* met the statutory requirements for its petition form. (August 26, 2022

Amended Staff Report, App'x J, at 224.) The Board's duty to certify is a clear legal duty because any additional considerations fall outside the scope of the Board's statutory authority. The only issues here are political ones, and this Court should rebuff these efforts. This Court has affirmed that the Board's duty regarding qualification of ballot questions is a clear legal duty, and should do so again here.

2. Because the RFFA petition meets both the petition form and signature requirements, a determination regarding qualification for the ballot is ministerial.

The act of accepting or rejecting a petition that complies with the Michigan Election Law with respect to the form of the petition and has gathered the required number of signatures is ministerial. "An act is ministerial if it is prescribed and defined by law with such precision and certainty as to leave nothing to the exercise of discretion and judgment." *Citizens Protecting Mich Const*, 280 Mich App at 286. For over a century, it has been the law in Michigan that the legal duties of the Board to determine the qualification of a petition are ministerial. *McLeod*, 304 at 127; *Attorney Gen v Van Cleve*, 1 Mich 362, 366 (1850) ("the duties of these boards are simply ministerial[.]"); *Auto Club of Mich Comm for Lower Rates Now v Secretary of State*, 195 Mich App 613, 624; 491 NW2d 269 (1992) ("[T]he Board of State Canvassers possesses the authority to consider" only "questions of form" and "whether there are sufficient valid signatures.") The RFFA petition meets both requirements for qualification: the minimum signature threshold and the form of petition requirements. The Board has no discretion to refuse to qualify the RFFA petition for the November 8, 2022 general election ballot.

3. No party disputes that the RFFA petition collected the required number of signatures under the Michigan Election Law.

Article 12, section 2 of the Michigan Constitution requires that petitions proposing constitutional amendments must be "signed by registered electors of the state equal in number to at least 10 percent of the total vote cast for all candidates for governor at the last preceding general election at which a governor was elected." For a constitutional amendment proposed in 2022, this means that a petition drive needs to collect at least 425,059 valid signatures. RFFA handily exceeded this minimum threshold.

The RFFA petition drive is one of the most successful in Michigan's history. Through a combination of paid signature collectors and an groundswell of volunteers, RFFA collected over 753,759 signatures. (See July 11, 2022 Letter to Secretary, App'x F, at 182.) After its initial face review of the petitions, Elections Bureau staff culled this down to a universe of 735,439 potentially

valid signatures. The Elections Bureau then selected its sample of 513 signatures to examine, and produced the following results:

SIGNATURE SAMPLE:

Total number of sampled signatures	513
Total number of signatures determined to be invalid <i>Less:</i>	97
Signer not registered to vote	60
No address given	3
No city or township in county known by name given by signer	5
Street address given is outside city or township listed	4
More than one jurisdiction listed	1
No signature given	3
Incomplete signature	2
Signer dated after circulator date	3
Signer dated before first date authorized	2
Miscellaneous (signature did not match qualified voter file)	14
Total number of possibly valid signatures in sample before challenge was processed	416

Elections Bureau staff concluded that “[b]ased on the results of the random sample, it is estimated that the petition contains 596,379 valid signatures (at a confidence level of 100%), 146 signatures more than the minimum threshold for certification and 196,404 more than the point at which the petition would be denied certification.” (See August 26, 2022 Amended Staff Report, App’x J, at 228.)

Elections Bureau staff also notes that the petition challengers “did not call individual signatures into question but instead challenged the entirety of the drive.” (*Id.*, App’x J, at 226.) Indeed, WAC did not challenge *a single signature*, apparently conceding that RFFA collected the required number of valid signatures. RFFA’s satisfaction of the signature requirement is unchallenged and incontrovertible.

i. The RFFA petition complies with all mandatory statutory form of petition requirements.

“An initiative petition must comply with the mandatory statutory provisions that set forth the requirements regarding a petition’s form. *Citizens Protecting Mich Const*, 324 Mich App at 600 (citation omitted). The mandatory elements of a petition form for a petition to amend the Michigan Constitution are provided by statute in MCL 168.482:

- (1) Each petition under this section must be 8-1/2 inches by 14 inches in size.
- (2) If the measure to be submitted proposes a constitutional amendment, initiation of legislation, or referendum of legislation, the heading of each part of the

petition must be prepared in the following form and printed in capital letters in 14-point boldfaced type:

INITIATIVE PETITION
AMENDMENT TO THE CONSTITUTION
OR
INITIATION OF LEGISLATION
OR
REFERENDUM OF LEGISLATION
PROPOSED BY INITIATIVE PETITION

(3) A summary in not more than 100 words of the purpose of the proposed amendment or question proposed must follow and be printed in 12-point type. ***The full text of the amendment so proposed must follow the summary and be printed in 8-point type.*** If the proposal would alter or abrogate an existing provision of the constitution, the petition must so state and the provisions to be altered or abrogated must be inserted, preceded by the words: "Provisions of existing constitution altered or abrogated by the proposal if adopted."

(4) The following statement must appear beneath the petition heading: "We, the undersigned qualified and registered electors, residents in the _____ congressional district in the state of Michigan, respectively petition for (amendment to constitution) (initiation of legislation) (referendum of legislation) (other appropriate description)."

(5) The following warning must be printed in 12-point type immediately above the place for signatures, on each part of the petition:

WARNING

A person who knowingly signs this petition more than once, signs a name other than his or her own, signs when not a qualified and registered elector, or sets opposite his or her signature on a petition, a date other than the actual date the signature was affixed, is violating the provisions of the Michigan election law.

(6) Subject to subsections (7) and (8), the remainder of the petition form must be as provided following the warning to electors signing the petition in section 544c(1). In addition, the petition must comply with the requirements of section 544c(2).

(7) Each petition under this section must provide at the top of the page check boxes and statements printed in 12-point type to clearly indicate whether the circulator of the petition is a paid signature gatherer or a volunteer signature gatherer.

(8) Each petition under this section must clearly indicate below the statement required under subsection (7) and be printed in 12-point type that if the petition circulator does not comply with all of the requirements of this act for petition circulators, any signature obtained by that petition circulator on that petition is invalid and will not be counted.

The only statutory provision that applies to the text of the proposed constitutional amendment is the requirement that it be printed in 8-point typeface (see the bolded, italicized language, above). The petition clearly meets both of these requirements. And the Elections Bureau staff agreed, concluding that the full text of the petition was printed in 8-pt font. (See August 26, 2022 Amended

Staff Report, App’x J, at 227-228.) The affidavit of the printer also supports this fact. (*Id.*, App’x I, at 220-222.) To be clear, WAC has never challenged that the text of the proposal was printed in 8-point typeface. Elections Bureau staff ultimately concluded that the WAC challenge pertains “to the substance of the petition” and not the actual form that the Board can review. (See August 26, 2022 Amended Staff Report, App’x J, at 227-228.) There is no authority for the Board to consider any issue relating to the substance or the text of the proposed amendment. The form of this petition was preapproved by the Board on March 23, 2022, and that approval still stands. The only thing that has changed is the political concerns of certain members of the Board, which are not appropriate to consider.

ii. The WAC challenge is frivolous and unsupported by law and fact.

The eleventh hour challenge filed by WAC, *after* it has already unsuccessfully attempted to challenge the RFFA petition twice, is utterly meritless. There is no statutory or constitutional authority that permits the Board to consider the substantive text of a proposed constitutional amendment, which is precisely what WAC’s challenge attempts to do. *Ferency*, 198 Mich App at 274 (“A substantive . . . challenge to a law proposed by initiative may not be brought before the law’s enactment.”). But, for purposes of argument, *even if* the issue is considered, in addition to meeting all form requirements, the text of the proposed amendment is clear and complies with any requirements improperly sought to be imposed by WAC and given consideration by the Board.

In compliance with MCL 168.483a, RFFA plainly submitted the *exact* text (including the full text of the proposal) that it circulated in its petition drive to the Secretary of State on March 30, 2022—in both paper and electronic form. (See Revised Petition Filing, App’x D, at 170; Electronic Revised Petition Filing, App’x E, at 172.) As the affidavit from the graphic designer¹³ of the RFFA petition attests (RFFA First Challenge Response, App’x I, at 220-222), there are in fact spaces in between the words that WAC presents without spaces and that WAC claims are “nonsense, gibberish.” (WAC First Challenge, App’x C, at 26.) The affidavits provided by WAC appear to not actually show the text of the petition, but rather re-typed versions of the petition with spaces eliminated and in a different font (a serif font with feet). (See Walcott and Marnon

¹³ This is the *actual producer* of the petition that has reviewed both the hard copy and the electronic version. Please note that this is the same individual that signed the printers affidavit that accompanied RFFA’s March 30, 2022 submission to the Board. Affiant is a professional graphic designer employed by a printing firm with extensive experience in typeface and typography.

Affidavits, App'x C, at 70-74.) Finally, for any member of the public that was legitimately confused—WAC does not identify a single signer of the petition that was—the full text of the proposed amendment is available online for review on both the Board of Canvassers' website and the RFFA website.¹⁴

The entire basis of WAC's argument is that RFFA failed to comply with the following provision: “[t]he full text of the amendment so proposed must follow the summary and be printed in 8-point type[,]” and so therefore the signatures of 596,379 voters must be rejected. However, there is no allegation that the placement of the proposal does not follow the summary or that it is not printed in 8-point type. Therefore, the issue is whether the full text of the proposal is printed and included in the petition. But WAC does not allege that the text is not *fully* included in the petition, rather, the crux of WAC's challenge is its *perceived* elimination of spaces between some words in the proposal. That is not a basis for rejection of the petition, as the staff of the Elections Bureau recognized. The entire proposal, in 8-point typeface, is included in the petition. For this Court to accept WAC's challenge would be to add requirements to the Michigan Election Law that are not there and allow challengers to attack petitions based on perception, not reality.

Even beyond the fact that WAC's purported challenge of the petition has no basis in law, it also is simply wrong at a factual and common sense level. *First*, the petition language *does* contain spaces. The affidavit of the printer of the petitions clearly states that spaces *are* included in the full text of the proposed constitutional amendment included in the petition. (Affidavit of Amanda Ketchum, App'x I, at 220.) “While spaces are included in both the Electronic Proof and the Printed Proof between each of the words . . . on the Printed Proof the spacing between those words. . . appear closer together as a result of word spacing settings applied [in] Adobe InDesign when preparing the electronic proof.” (*Id.*)

Second, the text of the proposed constitutional amendments can be read and understood by readers. Scientific studies have repeatedly found that humans can read and comprehend text in which inter-word spacing has been completely removed.¹⁵ When doing so, readers use bottom-up

¹⁴ Reproductive Freedom For All, *Learn More: Frequently Asked Questions: What does the proposed amendment say?* (last accessed August 22, 2022), available at <https://mireproductivefreedom.org/learn-more/>.

¹⁵ Mirault, Snell, and Grainger, *Reading without spaces: The role of precise letter order*, 81 *Attention, Perception, & Psychophysics* 846 (January 9, 2019)

word identification. *Id.* at 855. Reading text with transposed letters is harder than reading text with word spacing removed. *Id.* People can read and understand the proposed amendment notwithstanding any reduced word spacing of certain words.

Third, people have read and understood the proposed constitutional amendment. More than 750,000 people signed petitions circulated by RFFA. Each had the opportunity to read the proposed amendment in full and understand it. Hundreds of thousands of Michiganders did so and then signed the RFFA petition. If someone did not understand the proposed constitutional amendment, they had a clear legal remedy—decline to sign the petition. “A necessary assumption of the petition process must be that the signer has undertaken to read and understand the petition. Otherwise, this process would be subject to perpetual collateral attack . . . which essentially concern matters of political dispute.” *Mich Civil Rights*, 475 Mich at 904 (MARKMAN, J., concurring). Asking the Board to intervene without legal authority is not an appropriate remedy.

WAC’s attempt to impose new requirements on petitions that do not exist in law would lead the Board down a dangerous road, one of subjectivity that the Legislature does not provide for in the Michigan Election Law. WAC and the Board go far beyond the strict compliance standard of *Stand Up for Democracy* and use a form standard that is entirely within the eye of the beholder. 492 Mich at 601-602. Chairman Duant refused to certify the RFFA petition not because of any actual law, but because of “how it looks, it is what is before the people, it is what is their understanding of it.” This sort of “I know it when I see it” approach is undemocratic and not part of any statutory requirement in the Michigan Election Law. WAC seeks to expand the role of government and unilaterally assign the role of word spacing police to the Board, asking it to interfere with the exercise of a self-executing constitutional right by citizens signing the RFFA petition. When the Board failed to qualify the RFFA petition for having limited word spacing in a petition that ***completely complies with MCL 168.482***, it fell for an undemocratic attempt to disenfranchise voters. There is no shortage of new requirements that the Board or a potential challenger could fabricate. Should a petition contain two spaces after every sentence? Must proposed amendments use the Oxford Comma? What about the space in between the lines of text? Should proposed new language be indicated with capital letters or some other formatting? The Board cannot expand the plain text of MCL 168.482 and this Court should reject any efforts to do

<<https://link.springer.com/content/pdf/10.3758/s13414-018-01648-6.pdf>> (accessed August 23, 2022).

so. As this Court is well aware, doing so violates the well-established rule of statutory construction that a court cannot read into a statute what is not there. *AFSCME v Detroit*, 468 Mich 388, 412; 662 NW2d 695 (2003).¹⁶

iii. In cases where the Board deadlocks, this Court consistently orders the Board to place those measures on the ballot.

This Court has also consistently overturned deadlock votes of the Board when its members have failed to perform their clear legal duty, including multiple recent examples:

- ***Unlock Michigan:*** The Board deadlocked 2-2 to certify the Unlock Michigan petition based on allegations of fraudulent activity of certain petition circulators. Unlock Michigan, however, had not submitted any signatures gathered by the individuals in question. This Court determined that “the Board approved the form and content of the petition in July 2020” and that Unlock Michigan “submitted at least 460,000 valid signatures when it only needed about 340,000.” *Unlock Mich*, 507 Mich at 1015. This Court found that “the Board has a clear legal duty to certify the petition” and “direct[ed] the [Board] to certify the Unlock Michigan petition as sufficient.” *Id.*

- ***Protect Our Jobs:*** The Board deadlocked 2-2 to certify the Protect Our Jobs petition based on a question of whether the petition contained all existing provisions of the Constitution that would be altered or abrogated by the proposed constitutional amendment. *Protect Our Jobs*, 492 Mich at 763. This Court determined that the proposal has “obtained the required number of valid signatures for placement on the ballot.” *Id.* at 774. Because the Protect Our Jobs proposed constitutional amendment would not alter or amend the sections of the Michigan Constitution that it cross-referenced, there was no violation of the republication requirement in Const 1963, Art 12, § 2. *Id.* at 785. This Court granted mandamus relief and “direct[ed] the Board of State Canvassers, the Secretary of State, and the Director of Elections to proceed as necessary to place the proposed constitutional amendments on the November 2012 election ballot.” *Id.* at 792.

- ***Michigan Civil Rights Initiative:*** The Board deadlocked regarding certification of the petition because of “allegations that the signatures were procured fraudulently.” *Mich Civil Rights Initiative v Bd of State Canvassers*, 268 Mich App 506; 708 NW2d 139 (2005), lv den 475 Mich 903; 716 NW2d 590 (2006). Challengers argued that the petition circulators were misrepresenting

¹⁶ Courts “may read *nothing* into an unambiguous statute that is not within the manifest intent of the Legislature as derived from the words of the statute itself.” *Snead v John Carlo, Inc*, 294 Mich App 343, 355; 813 NW2d 294 (2011) (emphasis added).

the purpose of the petition and that signers had not truly read the text of the proposal. “Because there [was] no dispute that the form of the petition is proper or that there are sufficient signatures” the Court of Appeals concluded that “the Board [was] obligated to certify the petition, and thus, breached its clear legal duty to certify the petition.” *Id.* at 520. The court ordered the Board approve the petition for placement on the ballot. *Id.*

This case is no different. The Board refused to place the RFFA proposal on the ballot for reasons beyond the scope of their authority. The duty of the Board certify this petition to appear on the ballot leaves no room for discretion or partisan politics. This Court should follow its own precedent and order the Board to place the RFFA proposal on the November 8, 2022 general election ballot.

4. With the upcoming general election and important questions of public policy at stake, no other legal remedy exists that would achieve the same result.

The final element of mandamus is that “no other legal or equitable remedy exists that might achieve the same result.” *Barrow v Detroit Election Comm*, 305 Mich App 649, 661-662; 854 NW2d 489 (2014) (citation omitted). Where there exists an alternative legal theory that would provide the same relief, a plaintiff does not satisfy the “adequate legal remedy” requirement. *Southfield Educ Ass’n v Bd of Educ*, 320 Mich App 353, 379; 909 NW2d 1 (2017). Based on the Michigan Election Law, ballots must be finalized, printed, and made available for transmission to military and overseas voters seeking an absent voter ballot within the next 24 days. MCL 168.759a. There is simply no time to delay. Each day that the Board refuses to determine that the RFFA petition is qualified to appear on the ballot delays the certification process and leaves this important public policy question in limbo and election administrators waiting. There is only a single avenue for the People to directly amend the Michigan Constitution. Const 1963, art 12, § 2. Only this Court has the authority to compel the Board to perform its legally required duty. MCL 168.479. Michigan law recognizes the urgency of these types of actions by providing original jurisdiction in the State’s highest Court, that must be filed within 7 days of the Board’s action. *Comm to Ban Fracking in Mich v Bd of State Canvassers*, 335 Mich App 384; 966 NW2d 742 (2021) (“The stated purpose of MCL 168.479 is to have our Supreme Court decide any legal challenge to the sufficiency or insufficiency of an initiative petition as promptly as possible.”). If this Court fails to grant relief, millions of Michigan voters will fail to have the opportunity to weigh in on this question of paramount public importance.

B. RFFA has met the requirements for injunctive relief.

Under the traditional standard for preliminary injunctive relief, the following factors are considered: (1) the likelihood that the party seeking the injunction will prevail on the merits; (2) the danger that the party seeking the injunction would suffer irreparable injury if the injunction is not issued; (3) the risk that the party seeking the injunction would be harmed more by the absence of an injunction than the opposing party would be by the granting of the relief; and (4) the harm to the public interest if the injunction is issued. *Freuhauf Trailer Corp*, 208 Mich App 447, 449; 528 NW2d 778 (1995).

1. RFFA has complied with all requirements of the Michigan Election Law and is therefore likely to prevail on the merits of its request for mandamus relief.

RFFA is likely to prevail on the merits. “[T]he primary purpose of a writ of mandamus is to enforce duties required by law.” *Stand Up For Democracy v Secretary of State*, 492 Mich 588, 618; 822 NW2d 159 (2012). The Board has a clear legal duty to qualify the RFFA petition for the ballot—it has failed at that duty, and RFFA has a right to compel performance. Similarly, RFFA has collected hundreds-of-thousands of signatures and invested significant resources into its efforts—it will be irreparably harmed if the RFFA proposal does not appear on the ballot because there is no other adequate remedy at law for the People to amend the constitution. Further, RFFA and its hundreds of thousands of signers will be improperly deprived of their First Amendment right to petition to amend the Michigan constitution.

For all of the reasons explained above, the Board had a clear legal duty to certify the RFFA petition for the November 8, 2022 ballot and mandamus is appropriate. And for all of these same reasons, RFFA is likely to succeed on the merits with respect to its request for injunctive relief.

2. Injunctive relief is appropriate because the balance of harms weighs in favor of placing the RFFA proposal on the ballot.

The weight of the respective harms favors the Plaintiffs. The Board stands to lose nothing if a petition that has collected enough valid signatures and is on the correct form of petition goes to the voters—it puts this matter in the hands of the public. Conversely, RFFA has a legally protected free speech interest that would be violated if the proposal does not appear on the ballot. Furthermore, this Petition is one of individual rights—a matter of great significance to this state. *Ferency*, 409 Mich at 600 (“This Court has a tradition of jealously guarding against legislative and administrative encroachment on the people’s right to propose laws and constitutional amendments

through the petition process.”), questioned on other grounds in *Consumers Power Co v Attorney Gen*, 426 Mich 1, 6; 392 NW2d 513 (1986).

3. Injunctive relief is appropriate because of the grave public harm that will follow if the RFFA proposal is not put to the voters to decide.

Over 750,000 members of the public signed the RFFA petition to restore the reproductive rights jeopardized by the U.S. Supreme Court decision in *Dobbs v Jackson Women’s Health Org*, 597 US __ (2021), Docket No 19-1392. The Supreme Court put reproductive rights primarily in the jurisdiction of the states rather than the uniform federal standards that had prevailed for decades. This matter is one of great public significant to the Courts,¹⁷ healthcare providers, and the public, and the Court should permit the democratic process to take its course. Additionally, the right to petition to amend the constitution is a right reserved by the People and should only “rarely” be interfered with. *Coalition for a Safer Detroit v Detroit City Clerk*, 295 Mich App 362,372; 820 NW2d 208 (2012); *League of Women Voters of Mich v Secretary of State*, 508 Mich at 536 (“Direct democracy in Michigan is a series of powers that the people have reserved to themselves from the legislature.”). Persons signing the RFFA have exercised a fundamental right as citizens and those rights should be jealously guarded by the Court.

CONCLUSION

The voters have already demonstrated widespread grassroots support for the RFFA petition—no other initiative in Michigan’s history has ever collected more signatures. This Court should safeguard the right of the People to exercise their political power and protect it from strained interpretations of law that stand to disenfranchise hundreds of thousands of voters. *Sheffield v Detroit City Clerk*, 508 Mich 851, 865; 962 NW2d 157 (2021). The RFFA ballot question has collected enough valid signatures to appear on the ballot and has followed all of the requirements of the Michigan Election Law with respect to the form of its petition. The Board has a clear legal duty to certify the RFFA proposal to appear on the November 8, 2022 general election ballot and this Court should compel that certification in light of the Board’s violation of its clear legal duty.

¹⁷ *In re Jarzynka*, Michigan Supreme Ct Docket No. 164656 (filed May 20, 2022) is currently pending in this Court; the court in *Whitmer v Linderman et al*, Oakland Co Cir Ct Docket No 22-193498-CZ (filed Apr. 7, 2022) has also acknowledged the impact that a constitutional amendment would have on the disposition of that case.

Dated: September 1, 2022

Respectfully submitted,

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Certificate of Compliance

I certify that this brief complies with the type-volume limitation set forth in MCR 7.212(B). I am relying on the word count of the word-processing system used to produce this document. This brief uses a 12-point proportional font (Times New Roman), and the word count for this brief is 7,513.

Dated: September 1, 2022

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