

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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**COMPLAINT FOR IMMEDIATE MANDAMUS RELIEF AND *EX PARTE*
MOTION FOR ORDER TO SHOW CAUSE**

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

Plaintiffs Reproductive Freedom for All, Peter Bevier, and Jim Lederer, through their attorneys and for their complaint, state the following:

INTRODUCTION

This case presents a straightforward issue for this Court to decide—can the Board of State Canvassers (the “Board”) disenfranchise over 753,759 Michiganders by avoiding their clear legal duty to certify the Petition proposed by Reproductive Freedom for All (“RFFA”) when the Petition has collected well beyond the requisite signatures and meets all statutory form of petition requirements? This Court’s precedent says no.

Exercising its right under Const 1963, art 12, § 2, RFFA petitioned for an amendment to the Michigan Constitution. The Board approved the form of the RFFA petition on March 23, 2022. The Bureau of Elections (the “Bureau”) analyzed the signatures included on RFFA petitions using a random sampling method and estimated that RFFA submitted 596,379 valid signatures when only 425,059 were needed. And, yet, the Board deadlocked, along party lines, and rejected a motion to certify the RFFA petition as sufficient.¹

The Board’s duty with respect to the RFFA petition is ministerial. The authority of the Board extends only to the approval of the petition *form* and canvassing the number of valid *signatures* provided by a proposal. *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). The number and validity of the signatures submitted are not disputed. The Board

¹ 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>. As of the time of filing, the official SenateTV link to the archived video of proceedings is not available. The official transcript of the August 31, 2022 meeting of the Board of State Canvassers has been requested on an expedited basis and will be provided to the Court as soon as it is received by Plaintiffs.

has previously approved the form of the petition. As if in expectation that it would be overturned by the Court—the Board even adopted ballot language and a ballot number for the RFFA proposal despite its refusal to certify the petition. The Board abandoned its clear legal duty when it declined to qualify the measure to appear on the ballot when both legal requirements have been met.

The Board's refusal to qualify the RFFA petition as sufficient violates the Michigan Constitution of 1963 and the Michigan Election Law. RFFA therefore respectfully asks this Court order: (1) the Board to certify RFFA's petition as sufficient and (2) the secretary of state to include the ballot statement for the RFFA proposed drafted by the Director of Elections and approved by the Board when certifying to county clerks the contents of the general election ballot. Given the tight deadlines associated with this case, RFFA also simultaneously files a Motion for Immediate Consideration and a Motion to Expedite Proceedings and requests that this Court take action by September 7, 2022.

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff Reproductive Freedom For All is a ballot question committee organized under the Michigan Campaign Finance Act, MCL 169.201 *et seq.* The registered address of RFFA is 2966 Woodward Avenue, Detroit, Michigan, 48201.

2. Plaintiff Peter Bevier is a Michigan voter who signed the RFFA petition. Mr. Bevier has an interest in the RFFA ballot question appearing on the November general election ballot.

3. Plaintiff Jim Lederer also is a Michigan voter who signed the RFFA petition. Mr. Lederer has an interest in the RFFA ballot question appearing on the November general election ballot.

4. Defendant Board of State Canvassers is a public body created by Const 1963, art 2, § 7 consisting of two members nominated by the Democratic Party and two members nominated by the Republican Party.

5. The Board must, upon receiving timely filed petitions seeking to amend the Constitution, “canvass the petitions to ascertain if the petitions have been signed by the requisite number of qualified and registered electors.” MCL 168.476(1).

6. Defendant Jocelyn Benson, named in this action in her official capacity, is Michigan’s secretary of state (the “Secretary”), the elected head of Michigan’s Department of State. Const 1963, art 5, §§ 3, 21. The Secretary is responsible, among other things, for performing duties relating to elections, including promulgating rules establishing uniform standards for ballot question petition signatures and supervising the Director of Elections. MCL 168.31 and MCL 168.32. The Secretary also is responsible for certifying the statement of the purpose of a ballot question proposing a constitutional amendment for inclusion on statewide ballots and transmitting two copies of the text the amendment to Michigan’s county clerks. MCL 168.480.

7. Defendant Jonathan Brater, named in this action in his official capacity, is the Director of Elections (the “Director”). Director Brater’s duties include the supervision and administration of Michigan’s election laws, under the supervision of the Secretary, and he serves as a nonmember secretary of the Board. MCL 168.32(1). Director Brater is also responsible for proposing a statement of 100 words or less describing the purpose of any proposed constitutional amendment submitted to voters for approval. MCL 168.32(2).

8. The Michigan Election Law provides a cause of action for review of a decision of the Board of State Canvassers. MCL 168.479. Any person feeling aggrieved by a determination of the Board “may have that determination reviewed by mandamus or other appropriate remedy in

the supreme court.” *Id.* Such an action must be filed within seven business days of the date of the Board’s determination regarding the sufficiency or insufficiency of the initiative petition *or* not later than 60 days before the election at which the ballot question is to be submitted, whichever occurs first. *Id.*

9. MCL 168.479 “provides that a person aggrieved by a decision of the Board may seek relief in the form of mandamus. Accordingly, mandamus is the proper remedy for a party seeking to compel election officials to carry out their duties.” *Citizens Protecting Mich Const v Secretary of State*, 324 Mich App 561, 584; 922 NW2d 404 (2018).

10. MCL 168.479 provides the procedure for seeking review of a decision of the Board and provides that the exclusive venue for such actions is in this Court. *Comm to Ban Fracking in Mich v Bd of State Canvassers*, 335 Mich App 384, 398; 966 NW2d 742 (2021) (noting that “MCL 168.479(2) is clear that any person challenging a determination made by [the Board] regarding the sufficiency or insufficiency of an initiative petition is required to file a timely legal challenge in the Michigan Supreme Court.”).

11. This Court also has the authority to “issue, hear and determine writs of . . . mandamus.” MCL 600.217; see also Const 1963, art 6, § 4 (giving the Court “power to issue, hear and determine prerogative and remedial writs,” such as mandamus and certiorari).

GENERAL ALLEGATIONS

Factual Background

12. 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.

13. At the January 19, 2022 meeting of the Board, RFFA submitted its proposed summary of purpose of its constitutional amendment for approval as to content and inclusion on its petition pursuant to MCL 168.482b. (Jan 19, 2022 Board Minutes, App’x A, at 3.) Under this 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).

14. After initially deadlocking and failing to approve the initial petition summary proposed by the Director, the Board approved the second petition summary proposed by the Director. (Jan 19, 2022 Board Minutes, App’x A, at 3.)

15. At the March 23, 2022 meeting of the Board, RFFA submitted its petition, including the petition summary approved by the Board for *optional* approval as to form and content by the Board. (March 23, 2022 Board Minutes, App’x B, at 8.) Member Daunt made the following motion to conditionally 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).)

16. 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.)

17. 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.

18. 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 172.)

19. 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.)

20. 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.)

21. 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 signatures² sampled, if 314 or more signatures were valid registered voters, the Bureau would recommend certification of the Petition as sufficient. If the sampling process yields between 280 and 313 signatures of valid registered voters, then the Bureau draws a larger sample of 2000 signatures. If the sampling process produces 279 or fewer valid signatures of registered voters, then the Bureau would recommend denial of certification due to insufficient signatures.

22. 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 submitted by RFFA.

23. 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 within the actual text, including in the text-based electronic PDF file provided to the Secretary before circulation of the revised petition. (*Id.*, App’x

² 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.)

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.)

24. On August 25, 2022, the Director issued a staff report on the RFFA petition, finding 416 valid signatures in the 513 signature sample to be valid and recommending 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.)

25. 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).

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

27. 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 12, § 2. (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

28. 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.*)

29. 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, the Elections Bureau added a footnote regarding the legal precedent relied on by staff in reaching that conclusion (see paragraph 24, above). 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.)

30. 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.³

31. 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.”⁴

32. 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.”⁵

33. 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.”⁶

34. 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

³ 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>.

⁴ See *id.* at 5:05:18.

⁵ See *id.* at 5:54:52.

⁶ See *id.* at 5:02:04.

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.⁷ 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;
- 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

Duties of the Board Regarding Canvassing the Petition

35. The duties and authority of the Board are limited. Primarily, the Board is tasked with canvassing the returns and determining the results of many of Michigan’s elections, including “the result of an election on a proposed amendment to the constitution.” MCL 168.841(1).

36. The Board also has duties related to canvassing of ballot question petitions. “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

⁷ See *id.* at 5:14:00.

registered electors.” MCL 168.476. The Board examines the signatures on the petitions and makes a determination regarding their genuineness and sufficiency. *Id.*

37. This Court has repeatedly recognized the limitation of the Board’s authority relating to determining the sufficiency of petitions. “The Board’s duty with respect to petitions is ‘limited to determining the sufficiency of a petition’s form and content and whether there are sufficient signatures to warrant certification.’” *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).

COUNT I – MANDAMUS

38. Plaintiffs incorporate the allegations of the foregoing paragraphs as if fully stated herein.

39. When the Board refuses to certify a petition despite the petition having sufficient signatures and a proper petition form, 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; *Mich Opportunity v Bd of State Canvassers*, unpublished order of the Court of Appeals, entered August 22, 2018 (Docket No. 344619), attached as App’x M, at 306.

40. The 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). A party seeking mandamus must show all four of the following elements: “(1) the party seeking the writ has a clear legal right to performance of the specific duty sought, (2) the defendant has the clear legal duty to perform the act requested, (3) the act is ministerial, and (4) no other remedy exists that might achieve the same result.” *Citizens Protecting Michigan’s Const v Sec’y of State*, 280 Mich App

273, 284; 761 NW2d 210 (2008) citing *Tuggle v Dep't of State Police*, 269 Mich App 657, 668; 712 NW2d 750 (2005).

41. There is no dispute that RFFA submitted sufficient signatures. Because the single challenger to the RFFA petition challenges the *content* of the constitutional amendment, it appears that there is also no dispute that the RFFA petition complies with the petition form requirements (as the Board confirmed at its March 23, 2022 meeting). Plaintiffs therefore have a clear legal right to have the Board qualify its petition for the ballot and to have the Secretary certify the ballot question to go before the voters. *Unlock Mich*, 507 Mich at 1015; *Attorney Gen v Bd of State Canvassers*, 318 Mich App 242, 249; 896 NW2d 485 (2016) (holding that the Board has a clear legal duty to perform its statutory duties and that individuals appearing before the Board have a right to the performance of such duties).

42. The Board members have a statutory duty to canvass the petitions of RFFA and to qualify its petition if it has enough valid signatures. MCL 168.476. No party disputes that the RFFA petition collected the required amount of valid signatures with the statutory elements required for the form of petition. Contrary to Chairman Daunt's statements, the form of a petition is not simply "how it looks" to a subjective pair of eyes—the mandatory elements for the form of petitions are detailed MCL 168.482. The Board preapproved the form of the petition, Elections Bureau staff concluded that the petition meets all the statutory form requirements, and affidavits from the actual printer of the petition demonstrate that this is the case. The Board has a clear legal duty to determine that the petition is qualified to appear on the November 8, 2022 general election ballot.

43. Qualifying the RFFA proposal to appear on the ballot is a ministerial act. The Board has failed in its clear legal duty to perform this ministerial act. A duty is ministerial where such act is "to be performed with such precision and certainty as to leave nothing to the exercise of

discretion or judgment.” *Berry v Garret*, 316 Mich App 37, 44-45; 890 NW2d 882 (2016). Although determining the validity of signatures “is a matter of the Board’s judgment that requires some expertise,” the Board and Bureau Staff have *already* determined that RFFA collected sufficient signatures. *C.f. Johnson v Bd of State Canvassers*, __ Mich __; 974 NW2d 235, 235 (2022) (MCCORMACK, C.J., concurring). Qualifying a petition requires certainty—it is a binary choice: are there enough valid signatures or are there not enough valid signatures? Does the form of the petition comply with the mandatory form elements included in the Election Law or does it not? *Unlock Mich*, 507 Mich at 1016.

44. Here, there is no dispute that the RFFA petitions contain enough valid signatures to qualify for the ballot. The form of the petition complies with section 482 of the Michigan Election Law. The Board has a ministerial duty and a statutory duty to qualify the RFFA proposal. Yet, the Board by its vote on August 31, 2022 has refused to certify the petition and Plaintiffs’ only remedy is to petition this Court for a writ of mandamus to enforce the Board’s clear legal duty.

45. Without immediate action by this Court, Plaintiffs will continue to suffer irreparable injury.

A. The Board’s failure to fulfill its clear legal duty violates Plaintiff’s First Amendment rights.

46. Plaintiffs incorporate the allegations of the foregoing paragraphs as if fully stated herein.

47. The First Amendment to the United States Constitution provides that: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.” US Const, Am I.

48. The Michigan Constitution provides a similar protection: “The people have the right peaceably to assemble, to consult for the common good, to instruct their representatives and to petition the government for redress of grievances.” Const 1963, art 1, § 3. Additionally: “Every person may freely speak, write, express and publish his views on all subjects, being responsible for the abuse of such right; and no law shall be enacted to restrain or abridge the liberty of speech or of the press.” Const 1963, art 1, § 5. The Michigan Constitution also reserves the power of the People to petition for the initiation of laws and constitutional amendments. Const 1963, art 7, § 1; Const 1963, art 2, § 9.

49. The First Amendment of the US Constitution also protects people against impairment by the states—not just the federal government. *Thornhill v State of Alabama*, 310 US 88, 95; 60 S Ct 736 (1940).

50. Circulating and signing a petition to amend the Michigan Constitution implicates the rights of RFFA and its signers to freedom of speech and freedom of assembly. *League of Women Voters of Mich*, 508 Mich at 553 (holding that “[p]etition circulation is protected by the First Amendment because it is ‘core political speech’ that ‘involves both the expression of a desire for political change and a discussion of the merits of the proposed change.’”)

51. The Board’s actions have deprived Plaintiffs (and *all* of RFFA’s petition signers) of their fundamental rights to Petition the government and amend the Michigan Constitution. The Board’s attempt to silence RFFA must be remedied by this Court. With each day that passes, RFFA loses valuable time and resources needed to educate the electors on its proposal and provide certainty to those electors that the RFFA proposal will be on the November ballot.

B. By considering the text of the proposed constitutional amendment, the Board exceeded its authority.

52. Plaintiffs incorporate the allegations of the foregoing paragraphs as if fully stated herein.

53. Plaintiffs are also likely to prevail on the merits of a legal challenge the Board's deadlock vote regarding qualification of the RFFA petition. The Board exceeded its authority by going beyond the form of the petition and the number of valid signatures provided by RFFA. *See Unlock Mich*, 507 Mich at 1015. "The Board's duty with respect to petitions is 'limited to determining the sufficiency of a petition's form and content and whether there are sufficient signatures to warrant certification.'" *Id.*, citing *Stand Up for Democracy v Secretary of State*, 492 Mich 588, 618; 822 NW2d 159 (2012).

54. The law is well established; the challenge to the RFFA petition must fail. The Board has "no authority to consider the lawfulness of a proposal" and "it is also well established that a substantive challenge to the subject matter of a petition is not ripe for review until after the law is enacted." *Citizens for Protection of Marriage v Bd of State Canvassers*, 263 Mich App 487, 493; 688 NW2d 538 (2004), citing *Ferency v Secretary of State*, 409 Mich 569, 600; 297 NW2d 544 (1980).

55. Challengers are wrong in this case about both the law and the facts. There are spaces present in the petition, which is evident from a simple copy and paste of the electronic version of the petition and the printer's affidavit. The full text of the proposal appears on the petition. If signers were in fact unable to understand the meaning of the proposal, they had an immediate remedy—they could simply not sign the petition. Hundreds of thousands of Michiganders had no problem reading and understanding the proposal, which is affirmed by their signatures on the petitions submitted by RFFA. But more importantly, the *only* requirement for the proposed

constitutional amendment found in MCL 168.482 is that the language be printed in 8 point typeface and that the full text of the amendment must be included. RFFA satisfies both requirements.

56. Chairman Daunt and member Houskamp provide no legal foundation for their denial of the RFFA petition. They simply declare the small spaces as “typos” and concoct a new requirement, not enacted by the Legislature, that a petition cannot have typos. This is not the law. The Board and challengers seek to expand the strict compliance standard adopted in *Stand Up for Democracy* to new “petition form” requirement, not mandated by the Legislature, to include a test that is solely within the eyes of the beholder. 492 Mich at 603-604. As Chairman Daunt put it, the Board and challengers believe that a form issue is “how it looks, it is what is before the people, it is what is their understanding of it.”⁸ There is no limit to what is a “form” issue under this standard (or lack thereof). The Michigan Election Law defines what the form requirements are, and these members of the Board exceeded their authority when they considered additional requirements that have no basis in law.

57. The actual language of the proposed constitutional amendment is outside the scope of the Board’s authority to review. The RFFA petition was preapproved as to form and exceeded the required number of valid signatures. The Elections Bureau staff report comes to the same conclusion. The Board has a clear legal duty to determine that the Petition qualifies for the November 2022 ballot and this Court should order it to find in favor of RFFA.

⁸ See 13 On Your Side, *Watch: Board of State Canvassers Considering Abortion Rights Ballot Initiative*, at 5:54:52 (last accessed August 31, 2022) <https://www.youtube.com/watch?v=XV5HqYjIPJs>.

COUNT II – INJUNCTIVE RELIEF

58. Plaintiffs incorporate the allegations of the foregoing paragraphs as if fully stated herein.

59. 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).

60. 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.

61. 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).

62. When a public body has failed to comply with its statutory mandate, mandamus is an appropriate form of relief. This Court should order mandamus relief compelling the Board to determine that the RFFA petition is qualified to appear on the ballot and order the Secretary to certify the RFFA proposal to appear on the ballot with the language proposed by the Director at the August 31, 2022 meeting of the Board.

**MOTION FOR ORDER TO SHOW CAUSE
AND FOR IMMEDIATE CONSIDERATION**

63. Rule 3.305(C) of the Michigan Court Rules provides that “[o]n ex parte motion and a showing of the necessity for immediate action, the court may issue an order to show cause.” This “motion may be made in the complaint.” *Id.*

64. This case requires urgent adjudication. The Board is required to “make an official declaration of the sufficiency or insufficiency of a petition” to amend the constitution “at least two months before the election at which the proposal is to be submitted.” MCL 168.477. RFFA seeks to be submitted to the electorate at the November 8, 2022 general election. Thus, the Board must make its declaration by at least September 9, 2022. The next meeting of the Board is scheduled for September 9, 2022. The deadline for the Board to certify ballot wording to the Secretary for constitutional amendments is also September 9, 2022. Const 1963, art 12, § 1. Furthermore, county clerks must deliver absent voter ballots for the November 8, 2022 general election to local clerks by September 24, 2022. MCL 168.714. Therefore, as the Elections Bureau has indicated in

correspondence, counties will start the printing process on September 9, 2022. (See August 29, 2022 Email Correspondence, App'x N, at 309.)

65. The Court should immediately adjudicate this case on an expedited basis because any delay may result in the RFFA ballot question being left off the ballot. Three quarters of a million Michiganders signed the RFFA petition—the most in Michigan's history. The voters should be afforded the opportunity to make their voices heard at the polls. Urgent adjudication is necessary to prevent political pretense from interfering with the constitutional rights of the voters, petition advocates, and RFFA.

66. With the imminent approach of the November 8, 2022 general election, RFFA seeks to educate Michiganders about the content of its proposal. This education campaign requires significant time and resources. Any delay occasioned by this litigation prolongs the uncertainty around whether the RFFA proposal will appear on the ballot. This uncertainty impacts the ability of RFFA to educate voters and reduces the amount of time that voters have to consider how they want to cast their vote.

67. This Court has recognized the importance of considering election-related cases on an expedited basis. *Scott v Dir of Elections*, 490 Mich 888, 889; 804 NW2d 119 (2011).

68. The statute that authorizes this action also provides that “[a]ny 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(2). Additionally, MCR 7.213(C)(4) requires election-related cases to be expedited and given priority on the Court of Appeals calendar. As a higher appellate court, the Court should also do so here.

69. Thus, pursuant to MCR 3.305(C), RFFA respectfully requests that this Court order Defendants to show cause why Plaintiff's requested relief should not be granted, that responding briefs be filed within four days or less, and order any hearing to be held within seven days or less.

REQUEST FOR RELIEF

WHEREFORE, Reproductive Freedom For All, Peter Bevier, and Jim Lederer, respectfully request that this Court:

- A. Grant Plaintiffs' Motion for an Order to Show Cause and for Immediate Consideration;
- B. Issue a writ of mandamus directing Defendants to take all actions necessary to certify the petition to appear on the November 8, 2022 general election ballot pursuant to Const 1963, art 12, § 2.
- C. Remand this matter to the Board with an order to:
 1. Officially declare that Reproductive Freedom For All's petition submitted a sufficient number of signatures to be qualified for ballot at the general election to be held on November 8, 2022 (the "2022 General Election"); and
 2. Immediately certify the petition as sufficient and eligible for placement on the ballot at 2022 General Election;
- D. Remand this matter to the Secretary and the Director with an order that the Secretary to include the RFFA proposal with the ballot statement proposed by the Director and approved by the Board at its August 31, 2022 meeting when the Secretary certifies to county clerks the contents of the ballot for the November 8, 2022 general election.

E. Grant all other relief that is equitable and just.

Dated: September 1, 2022

Respectfully submitted,

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