

# EXHIBIT A

STATE OF MICHIGAN  
IN THE SUPREME COURT

LEAGUE OF WOMEN VOTERS OF  
MICHIGAN, PROGRESS MICHIGAN,  
COALITION TO CLOSE LANSING  
LOOPHOLES and MICHIGANDERS  
FOR FAIR AND TRANSPARENT  
ELECTIONS,

Supreme Court Case No. 163747

Court of Appeals Nos. 357984, 357986

Court of Claims No. 21-000020-MM

Plaintiffs-Appellees,

v.

SECRETARY OF STATE,

Defendant-Appellant,

DEPARTMENT OF ATTORNEY  
GENERAL,

Intervening Defendant-Appellant.

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

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AMICUS CURIAE BRIEF OF SECURE MI VOTE AND UNLOCK MICHIGAN IN  
PARTIAL SUPPORT OF AND PARTIAL OPPOSITION TO SECRETARY OF STATE  
JOCELYN BENSON'S APPLICATION FOR LEAVE TO APPEAL

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**TABLE OF CONTENTS**

	<b>Page</b>
TABLE OF AUTHORITIES .....	ii
STATEMENT OF BASIS OF JURISDICTION .....	iii
STATEMENT OF QUESTIONS PRESENTED.....	iv
STATEMENT OF INTEREST FOR AMICI CURIAE SECURE MI VOTE AND UNLOCK MICHIGAN .....	v
I. INTRODUCTION .....	1
II. STATEMENT OF FACTS & PROCEEDINGS .....	1
III. STANDARD OF REVIEW .....	10
IV. ANALYSIS.....	11
V. CONCLUSION.....	16

**TABLE OF AUTHORITIES**

**Cases**

*League of Women Voters of Mich v Secy of State*, unpublished per curiam opinion of the Court of Appeals, issued October 29, 2021 (Docket Nos. 357984 and 357986)..... 4

*League of Women Voters, et al v Benson*, Court of Claims Case No. 21-000020-MM (Opinion and Order dated July 12, 2021) ..... 3

**Statutes**

2018 PA 608 ..... passim

MCL 168.482(7) ..... 3

MCL 168.482c ..... 3

**Rules**

MCR 7.212(H)(3) ..... v

MCR 7.215(F)(1) ..... 14

MCR 7.215(F)(2) ..... 14

**Miscellaneous**

OAG 2019-2020, No. 7310 (May 22, 2019)..... 4

**STATEMENT OF BASIS OF JURISDICTION**

Amici Secure MI Vote and Unlock Michigan rely on the statement of jurisdiction set forth in Defendant-Appellant Secretary of State Jocelyn Benson’s Application for Leave to Appeal.

**STATEMENT OF QUESTIONS PRESENTED**

1. Should this Court hold that the Court of Appeals' decision and any final decision issued by this Court have complete prospective effect so that any such decision(s) would not apply to any petition that was approved as to form and commenced circulation before October 29, 2021, or before any final decision of this Court?

**Amici Secure MI Vote and Unlock Michigan's answer:** Yes.

**Amicus Board of State Canvassers' answer:** Yes.

**Defendant Secretary of State's answer:** Yes, with the exception that the checkbox requirement should apply from October 29, 2021 (the date of issuance of the Court of Appeals' decision) forward.

**Department of Attorney General Statute Defense Team's answer:** Acknowledged the question but declined to take a position.

**Plaintiffs' answer:** Did not answer.

**Trial Court's answer:** Did not answer.

**Court of Appeals' answer:** Did not answer.

**STATEMENT OF INTEREST FOR AMICI CURIAE SECURE MI VOTE AND UNLOCK MICHIGAN**<sup>1</sup>

Secure MI Vote and Unlock Michigan (collectively, the “Amici Petition Sponsors”) are each registered ballot question committees sponsoring initiative petitions subject to those provisions of Public Act 608 of 2018 (“PA 608”), the constitutionality of which is currently before this Court. Unlock Michigan sought and obtained pre-approval as to the form of its initiative petition, known as “Unlock II,” from the Board of State Canvassers (the “Board”), on July 13, 2021. Meanwhile, Secure MI Vote sought and obtained pre-approval from the Board as to the form of its initiative petition on September 27, 2021.

Of course, when the Board approved the form of those petitions, it did so without requiring the “checkbox” under PA 608 because the Court of Claims had previously held the checkbox requirement was unconstitutional. As a result, both petitions have been circulating for signature throughout the state in the form pre-approved by the Board: *without the checkbox*.

Then, on October 29, 2021, the Court of Appeals reversed that portion of the Court of Claims decision holding the checkbox unconstitutional, concluding instead that the checkbox was indeed constitutional. That sudden shift as to whether compliance with the checkbox provision might be required as to now-circulating petitions threw a wrench into the respective gears of Secure MI Vote and Unlock Michigan. After all, their respective petitions have been in the field for weeks and, in some cases, months. Each has obtained thousands of signatures on their pre-approved checkbox-less petitions. Each has hundreds of thousands of petitions printed and in the field in some respect. Each has a limited time to gather the requisite quantity of signatures necessary under Michigan law. And, making matters even more uncertain, this Court now has competing

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<sup>1</sup> This brief was authored by retained counsel on behalf of amici Secure MI Vote and Unlock Michigan. No monetary contributions intended to fund its preparation or submission were made by any parties or any individual or entity other than the amicus curiae. See MCR 7.212(H)(3).



applications for leave to appeal from Plaintiffs and the Attorney General's statute defense team seeking, yet again, to change the legal landscape as to requirements for ballot proposals under PA 608.

Setting aside the merits of the lower courts' decisions and the substantive arguments set forth in the parties' applications for leave to appeal and corresponding answers, the relief sought by the parties threatens to pull the rug out from under the petition circulation efforts of the Amici Petition Sponsors. Because their respective petitions currently in the field are based on the state of the law at the time each received pre-approval as to form by the Board, which was after the Court of Claims held the checkbox unconstitutional, but before the Court of Appeals held the checkbox was constitutional, the signatures they have gathered to date, and the signatures they continue gathering on those same forms, could be in jeopardy if this Court holds that the Court of Appeals decision – or a decision of its own – must be applied retroactively to those pre-existing petitions.

In that vein, the Board filed an amicus brief requesting that appellate decisions issued in this case have prospective relief only, such that an appellate decision here would not apply to petitions approved as to form and for which circulation began before October 29, 2021, or before a final decision of this Court. And while neither Plaintiffs nor the statute defense team have taken a position as to whether appellate decisions in this matter should apply retroactively, prospectively, or somewhere in between, the Secretary of State *has* taken a position; as the Secretary would have it, the Court of Appeals decision and any decision of this Court ought to apply prospectively, with the exception that the Secretary would apply the checkbox requirement to the Amici Petition Sponsors' petition from October 29, 2021 – the date of the Court of Appeals decision – forward.

The Secretary's position threatens to invalidate the Board's pre-approval of the form of Secure MI Vote's and Unlock Michigan's initiative petitions, as well as any signatures to those

petitions that occurred after the Court of Appeals issued its decision on October 29, 2021. Secure MI Vote and Unlock Michigan contend that the Court of Appeals decision and any decision from this Court ought to apply completely prospectively, and even then, only with sufficient notice and time for the Amici Petition Sponsors – as well as the sponsors of other ballot proposal petitions currently circulating throughout the state – to adjust their conduct such that any signatures they have gathered when that decision is issued will not fall victim to needless retroactive application of changed law, and also so they may adjust their future conduct accordingly to comply with whatever the legal requirements may be when this appeal is all said and done. Simply put, neither petition sponsors nor signatories to their petitions should be injured as a result of the shifting legal landscape caused by these appellate proceedings.

As the sponsors of initiative petitions currently circulating throughout Michigan, the Amici Petition Sponsors have a great interest in whether the appellate decisions in this matter will be applied retroactively, prospectively, or in some other way. The Amici Petition Sponsors are currently circulating petitions among Michigan electors with the intent of gathering the required number of signatures such that the laws proposed by their respective petitions may be submitted to the voters (that is, unless the Legislature enacts those proposed laws as authorized under the Michigan Constitution). If, however, the appellate decisions in this matter are applied retroactively in any fashion, thousands of signatures collected by circulators since October 29, 2021, will be jeopardized, and the effort and resources expended by petition sponsors and their supporters in reliance on the Board’s pre-approval process, which was consistent with the law at the time of those approvals, will be forever lost, and the sponsors’ exercise of their direct democracy rights imperiled. As a result, this appeal and the relief sought by the Secretary will have a direct and significant impact on the Amici Petition Sponsors.

## I. INTRODUCTION

Secure MI Vote and Unlock Michigan – two independent ballot question committees serving as sponsors of their own, separate initiative petitions seeking to amend different Michigan laws – submit this amici brief in partial support of, and in partial opposition to, the Defendant-Appellant Secretary of State’s Application for Leave to Appeal. To that end, the Amici Petition Sponsors support that aspect of the Secretary’s application advocating for this Court to opine as to whether the Court of Appeals decision or any decision from this Court will apply retroactively or prospectively, but oppose the Secretary’s position as to how any such decision should apply to those petitions currently circulating throughout the state. Specifically, while the Secretary has requested that the checkbox requirement under PA 608 be given prospective application to those petitions circulated after October 29, 2021, the Amici Petition Sponsors respectfully request that this Court determine that any appellate decision in this case have complete prospective effect only.

This is, of course, the same relief requested by the Board as an amicus in this case. It also better reflects the practical realities of navigating the ever-changing ballot proposal requirements under PA 608 while also implementing the resource-intensive and months-long process that is sponsoring a ballot initiative, all while running up against the impending deadline for submitting the requisite number of signatures such that your proposal appears on the ballot. Accordingly, the Amici Petition Sponsors respectfully request that this Court determine that the October 29, 2021 decision of the Court of Appeals, and any final decision issued by this Court, have complete prospective effect only such that those decisions would not apply to petitions approved as to form by the Board before any such appellate decision issued in this case.

## II. STATEMENT OF FACTS & PROCEEDINGS

Amicus curiæ Secure MI Vote is the sponsor of an initiative petition seeking to amend the Michigan Election Law to make it easier to vote and harder to cheat by, among other proposed

policy changes, requiring photo ID for in-person voters, providing state-funded IDs to those with financial hardship, expanding minimum times during which clerks must accept absentee ballots for in-person or dropbox delivery, and prohibiting the use of private funds to administer elections.<sup>2</sup>

Amicus curiæ Unlock Michigan is the sponsor of an initiative petition, known as “Unlock II,” which seeks to amend the Public Health Code to limit the duration of local and state public health orders issued by executive fiat. Specifically, the Unlock II initiative would require that any determination that an emergency order is necessary to protect the public health from an infectious disease outbreak must be made in writing, and any such order would expire after 28 days unless extended by the state legislature or local governing body.<sup>3</sup>

The Amici Petition Sponsors each sought pre-approval from the Board as to the form of their respective petitions (*i.e.*, those aspects of the petition such as font sizes, size of paper, specific wording, etc.). Indeed, the Board encourages petition sponsors to submit their petitions for review and “approval as to form” prior to circulating the petition for signatures:

Sponsors of petitions to initiate legislation, amend the constitution, or invoke the right of referendum are urged to submit a proof copy of the petition to the Board of State Canvassers for approval as to form prior to the circulation of the petition.

***Best Practice:* Although Michigan election law does not require the sponsor of a statewide proposal petition to seek pre-approval of the petition form, such approval greatly reduces the risk that signatures collected on the form will be ruled invalid due to formatting defects.**

Upon determining through the staff consultation process that an initiative or referendum petition is properly formatted, it is submitted to the Board of State Canvassers for approval as to form.<sup>4</sup>

<sup>2</sup> A copy of Secure MI Vote’s petition is available at [https://www.michigan.gov/documents/sos/Copy\\_of\\_Petition\\_Protect\\_the\\_Rigth\\_to\\_Vote\\_73624\\_7\\_7.pdf](https://www.michigan.gov/documents/sos/Copy_of_Petition_Protect_the_Rigth_to_Vote_73624_7_7.pdf) (michigan.gov)

<sup>3</sup> A copy of Unlock Michigan’s “Unlock II” petition is available at [https://www.michigan.gov/documents/sos/Unlock\\_Michigan\\_II\\_Petition\\_735878\\_7.pdf](https://www.michigan.gov/documents/sos/Unlock_Michigan_II_Petition_735878_7.pdf) (michigan.gov)

<sup>4</sup> Sponsoring a Statewide Initiative, Referendum or Constitutional Amendment Petition, September 2021, p 8, available at

The Amici Petition Sponsors heeded the Bureau of Elections' advice and submitted their petitions for pre-circulation approval as to form. Unlock Michigan submitted its draft Unlock II petition for pre-circulation approval as to form, and the Board approved the form of that petition at a public meeting on July 13, 2021.<sup>5</sup> Meanwhile, Secure MI Vote submitted a draft petition for pre-circulation approval as to form on September 24, 2021, and the Board approved that petition as to form at a public meeting on September 27, 2021.<sup>6</sup>

The various lower court decisions in this matter have resulted in petitions being subject to different requirements under PA 608, which is of course the subject of this appeal, depending on when they began circulation. Here, the Unlock II and Secure MI Vote petitions were approved as to form by the Board after the Court of Claims issued its decision holding that the checkbox requirement under MCL 168.482(7) and MCL 168.482c, and the various provisions regarding the 15% geographic requirement, were unconstitutional. *League of Women Voters, et al v Benson*, Court of Claims Case No. 21-000020-MM (Opinion and Order dated July 12, 2021). As a result, the form of the Amici Petition Sponsors' petitions as approved by the Board contain neither the checkbox nor the congressional district form language that, while provided for under PA 608, were held unconstitutional by the Court of Claims.

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[https://www.michigan.gov/documents/sos/Initiative\\_and\\_Referendum\\_Petition\\_Instructions\\_2019-20\\_061119\\_658168\\_7.pdf](https://www.michigan.gov/documents/sos/Initiative_and_Referendum_Petition_Instructions_2019-20_061119_658168_7.pdf) (michigan.gov)

<sup>5</sup> Meeting Minutes of the July 13, 2021, Meeting of the Board of State Canvassers, *available at* [https://www.michigan.gov/documents/sos/071321\\_draft\\_mtg\\_minutes\\_731377\\_7.pdf](https://www.michigan.gov/documents/sos/071321_draft_mtg_minutes_731377_7.pdf) (michigan.gov)

<sup>6</sup> Draft Meeting Minutes of the September 27, 2021, Meeting of the Board of State Canvassers, *available at* [https://www.michigan.gov/documents/sos/Sept\\_27\\_2021\\_BSC\\_draft\\_minutes\\_736783\\_7.pdf](https://www.michigan.gov/documents/sos/Sept_27_2021_BSC_draft_minutes_736783_7.pdf) (michigan.gov)

After the Board approved their respective petitions as to form, the Amici Petition Sponsors began circulating their petitions among Michigan electors to gather the requisite number of signatures such that the laws proposed by their petitions may be submitted to the voters at the next general election. Signatures for both petitions are being collected by circulators and volunteers alike, and both Amici Petition Sponsors launched websites to aid in their signature gathering efforts.<sup>7</sup> Simply put, the Amici Petition Sponsors hit the ground running; under Michigan law, each must collect and file at least 340,047 valid signatures by June 1, 2022, in order to qualify for the general election ballot. Time is of the essence.

Then, on October 29, 2021, the Court of Appeals issued its opinion reversing that portion of the Court of Claims decision holding the checkbox unconstitutional, and concluded instead that the checkbox was constitutional. *League of Women Voters of Mich v Secy of State*, unpublished per curiam opinion of the Court of Appeals, issued October 29, 2021 (Docket Nos. 357984 and 357986), pp 15-19. While some level of uncertainty surrounding petition drives has existed since the moment the Attorney General opined that various portions of PA 608 were unconstitutional,<sup>8</sup> the October 29, 2021 decision of the Court of Appeals caused that uncertainty to reach a new level, especially as it pertained to whether compliance with the checkbox provision is required for those petitions currently circulating in the field. For example, at that point, the Amici Petition Sponsors' respective petitions had been in the field for weeks (if not months, depending on the petition), and each had obtained thousands of signatures on their pre-approved checkbox-less petitions. And even then, given the ongoing nature of ballot petition signature drives—one needs hundreds of

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<sup>7</sup> See e.g., Secure MI Vote's "Sign a Petition" website, available at <https://securemivote.org/sign-today/>. See also Unlock Michigan's website, available at <https://unlockmichigan.com/> (and including subpages on Petition Information topics such as "Host a Petition Location," "Host a Petition Signing Event," and "Find a Petition Location.")

<sup>8</sup> OAG 2019-2020, No. 7310 (May 22, 2019).

thousands of signatures over a roughly 6 month period to qualify for placement on the ballot—each of the Amici Petition Sponsors had printed hundreds of thousands of petitions in furtherance of their efforts (and in reliance on the Board’s pre-circulation approval as to form of those checkbox-less petitions).

The Amici Petition Sponsors are not alone in experiencing this uncertainty. The Board, too, is directly affected by the ever-changing legal landscape caused by this litigation. In fact, during its first meeting after the Court of Appeals issued its decision holding that the checkbox was suddenly unconstitutional, the Board and its counsel discussed how it could best satisfy its duties as to ballot proposal petitions despite the uncertain state of the law. *See* Transcript of the November 15, 2021, Meeting of the Board of State Canvassers, *attached hereto as Exhibit A*, pp 37:3 – 54:4.

There, the Board’s counsel explained that while their advice from the outset had been to “enforce whichever requirements [under PA 608] courts [or] the Attorney General had said were constitutional and applicable at the time a petition came before the Board” – a policy that, until then, “ha[dn’t] been a problem because most of the petitions got through all the way before we sort of had a change midstream via court” – this time was different. *Id.* at 38:17 – 39:1. This time, the Court of Appeals’ decision created a “conundrum” because the Board has “two petitions currently out circulating in the field that were preapproved – you know, approved preliminarily by [the Board] . . . a couple months ago where the checkbox requirement was not applicable. And so that would be . . . Unlock [II] and then Secure MI Vote. So those are presently petitions in the field.” *Id.* at 40:25 – 41:6.

In light of this conundrum, the Board engaged in a meaningful discussion as to how it will treat those petitions for which a change in the law occurs *after* the Board has granted pre-

circulation approval as to form. *See id.* at 41:7 – 54:4. That discussion resulted in the Board unanimously passing a motion authorizing the filing of an amicus brief in this matter “asking that any determination by [this] court be prospective only and that this Board accept petition signatures for canvassing if the petition sheets comply with the instructions that were in effect at the time of circulation or at the time that the petitions were approved as to form by this Board.” *Id.* 52:24 – 54:4.

The next day, the Board filed an amicus brief in this matter requesting “that this Court determine that the decision issued by the Court of Appeals on October 29 2021, and any final decision issued by this Court, have complete prospective effect only—meaning that the decisions would not apply to any petition that was approved as to form and commenced circulation before October 29, 2021, or before any final decision of this Court.” (Board’s Amicus Br, pp 8-9.) (Emphasis added).

At that same meeting on November 15, however, and during the Board’s deliberation regarding which position it would take as to the effect of the Court of Appeals decision on those petitions that have been approved as to form without the checkbox yet remain in the field circulating for signatures, the Secretary of State’s Director of Elections explained the Bureau of Elections’ position, which differs from that taken by the Board. Indeed, after setting out the various ways in which the Director thought this Court might decide whether the checkbox requirement applies to those petitions in the field that lack the checkbox, the Director stated:

What we have been recommending is – for now is the safest course of action. When I say “we,” I mean the Bureau of Elections is – is, you know – after [October] 29th, you should put the [check]box on there. That’s the safest thing to do.

Exhibit A, 11/15/21 Board Meeting Transcript, at 50:21-25.



As it turns out, the Bureau of Elections' recommendation to add the checkbox was a harbinger of the position the Secretary would take later that day when she filed her Application for Leave to Appeal in this matter. Specifically, the Secretary seeks leave to appeal here not to challenge the substantive rulings of Court of Appeals, but to request that "(1) the check-box requirement be given prospective application to petitions circulated after October 29, 2021, and (2) that any other requirement that this Court may find constitutional be given full prospective application from the date of any substantive decision by this Court. (Secretary's Application, pp 1-2.) In other words, as the Secretary would have it, the checkbox requirement would apply to the petitions of Unlock II and Secure MI Vote from October 29, 2021, (the date of the Court of Appeals decision), onward, *despite* the fact that the Board had approved those petitions as to form without the checkbox months ago based on the law at that time, and *despite* the fact that those petitions have been circulating in the field without the checkbox since shortly after they were approved by the Board.

In light of the different positions taken by the Board and Secretary as to whether the checkbox requirement should apply to the petitions of Secure MI Vote and Unlock II from October 29, 2021 forward, the Amici Petition Sponsors attempted to take the "safest approach" as to the checkbox as articulated by the Director of Elections during the Board's November 15, 2021, meeting. To that end, and out of an abundance of caution, the Amici Petition Sponsors submitted to the Board for pre-circulation approval as to form new, updated petitions that were identical in form to their previous petitions, but included the checkbox consistent with the Court of Appeals' decision.

The Amici Petition Sponsors' request for pre-circulation approval as to form of the new, checkbox-included petitions was considered by the Board at a public meeting on November 29,

2021. There, the Board held a discussion as to whether it should approve the form of those petitions, a discussion that included remarks from Board's counsel and the Director of Elections, as well as testimony from the Amici Petition Sponsors' spokesperson and even from Plaintiffs' counsel in this case. On behalf of the Bureau of Elections, the Director of Elections recommended that the Board accept forms *with or without* the checkbox:

Consistent with the Board's intention, we would recommend, you know, pending further clarification from the courts, but **we would recommend accepting forms that either have the box or don't have the box.**

\* \* \*

So essentially, you know, this gives the circulators the option of using, you know, sort of making both of their forms preapproved by the Board. That doesn't guarantee the courts will hold it [up]. But what it does give them is kind of the courtesy and the notice that this process is really designed for, which is that the staff and the Board have looked at these forms and they've identified anything they could have identified at the outset before they come at the end and have some other formal reason it will be rejected. That said, you know, as I outlined at the last meeting, it is possible that a court would still say, you know, all of these had to have the box on them. It doesn't matter what the Board approved in the past. But I think, you know, sort of to give some additional options for the circulators, it'll allow them to comply with the law as their attorneys recommend. **That's why, you know, we think it's sensible to present the Board the ability to approve the form either with or without the box.**

Transcript of the November 29, 2021, Meeting of the Board of State Canvassers, *attached hereto as Exhibit B*, pp 26:17 – 27:19 (emphasis added).

Meanwhile, a representative of Secure MI Vote and Unlock II testified in support of approving the form of the petitions with the checkbox, explaining that the request for approval as to form was in furtherance of the Amici Petition Sponsors' good faith effort to comply with the ever-changing law that is PA 608:

**We're trying to comply with whatever the rules are as best we can . . . [a]nd we're not asking for any sort of special treatment here.** We're just trying to stay on top of these rules and they're confusing and conflicting because under the Court of Claims ruling we had to secure an affidavit from circulators but no checkbox. Under the Court of Appeals, it's the reverse. **So which set of rules are we applying for that?**

\* \* \*

We're here asking for approval of this to avoid lawsuits in the future, to say, "No, those petitions were all improper." We're just trying to do the best we can under a bad set of circumstances and we hope you'll give us approval of these forms. We wish we didn't have to print all new forms. It's not free, but we're just trying to stay on top of the rules as best we can.

*Id.* at 37:24 – 38:17 (testimony of Mr. Fred Wszolek, representative of Secure MI Vote and Unlock II) (emphasis added).

Amici's request for approval as to form, however, was met with opposition, most notably from Plaintiffs' counsel in this case. Specifically, Plaintiffs' counsel advocated for the Board to deny the request for approval as to form and to instead stick with the position that the Board has taken in the amicus brief it filed in this case—a position hinging on the Board's request that any determination by this Court be prospective only, and that the Board will accept petition signatures for canvassing if the petition sheets comply with the instructions that were in effect at the time of circulation or at the time the Board approved the petitions as to form. There, Plaintiffs' counsel "strongly recommend[ed]" that the Board "stand pat on where you were. You have a strong case in favor of your practice. You know, I am the lawyer that is attacking Public Act 608." *Id.* at 30:1 – 3) (testimony of Mr. Mark Brewer); *see also id.* at 28:16-18 (Mr. Brewer's testimony characterizing the Board's "practice," referenced in his remarks above, as "approv[ing] petitions as to form under the law that exists when they come in.").

The Board ultimately declined to approve the form of the Amici Petition Sponsors' petitions with the checkboxes. *See id.* 40:4 – 41:4 (motion to approve Secure MI Vote's petition with the checkbox as to form failing by a vote of 2-2); 41:5 – 43:5 (motion to approve Unlock II's petition with the checkbox as to form failing by a vote of 2-2). As a result, the Amici Petition Sponsors are, to this day, collecting signatures on petitions that, while lacking the checkbox that is a subject of this proceeding, have been approved as to form by the Board based on the law at the time the Board approved those respective petitions as to form.

The Board and the Secretary have taken two very different positions as to whether the checkbox requirement should apply to the petitions of Secure MI Vote and Unlock II. Making matters even more uncertain, this Court has been presented with competing applications for leave to appeal from Plaintiffs and from the Attorney General's statute defense team each seeking, yet again, to change the legal landscape as to requirements for ballot proposals under PA 608. For those reasons, and as further explained below, the Amici Petition Sponsors (a) support the Secretary's application for leave to appeal to the extent it seeks a determination as to whether any appellate decision in this matter should apply retroactively or prospectively, but they (b) oppose the Secretary's application to the extent it seeks to apply the checkbox requirement to the Secure MI Vote and Unlock II petitions from the October 29, 2021 date of the Court of Appeals decision onward. This Court should adopt the position set forth in the Board's amicus's brief, which requests that any appellate decision in this matter have complete prospective effect only.

### **III. STANDARD OF REVIEW**

The Amici Petition Sponsors rely on the Secretary's statement of the applicable standard for determining whether a court's ruling applies retroactively.

#### **IV. ANALYSIS**

The Amici Petition Sponsors agree with the Secretary and the Board that, as this Court has recognized, sometimes, an appellate decision changes legal expectations so much that prospective application of that decision is appropriate. That is precisely the case here.

As explained in its amicus brief, the Board reasonably relied on four previous opinions finding the checkbox provisions under PA 608 unconstitutional when it approved the form of the Unlock II and Secure MI Vote petitions. (Board's Amicus Br., p 5.) Indeed, there was simply no basis for the Board to require the checkbox on petitions until the Court of Appeals reversed the Court of Claims on that issue just over six weeks ago. *Id.* In fact, by virtue of those four previous opinions, the checkbox has been unconstitutional for the vast majority of time elapsed since PA 608 was enacted in late 2018.

Just as the Board relied on those lower court opinions when determining what was required as to the form of those petitions presented to the Board for approval over the last two years, the Amici Petition Sponsors also relied on the most recent of those lower court decisions holding the checkbox to be unconstitutional – the July 12, 2021 decision of the Court of Claims – when it sought and obtained the Board's pre-circulation approval as to the form of their petitions *without the checkbox*. The Amici Petition Sponsors also relied on the advice of the Bureau and the Board's pre-circulation approval as to the form of those checkbox-less petitions – advice and approvals that also relied upon those lower court decisions holding the checkbox requirement unconstitutional – when they began implementing their campaigns to gather the more than 300,000 signatures each needs to qualify for placement on the ballot.

The reality is that all interested parties – the Board, the Bureau, and the petition sponsors – appear to be making their best efforts to comply with a law, the constitutionality of which has been in question for nearly two years now. Yet, while the show went on (surely, Michigan's

citizens cannot be expected to check at the door their constitutional right to direct democracy for years on end while it is determined whether some of the supposed “rules” governing that right pass constitutional muster) the dust that is PA 608 continues to settle—dust that, by all accounts, appears to still have more settling to do.

For those reasons, as well as those set forth in the Board’s amicus brief and the Secretary’s application for leave to appeal, the Amici Petition Sponsors agree that this is precisely the sort of case in which any appellate decision should be applied completely prospectively. Yet, while the Amici Petition Sponsors fully support the relief requested by the Board as an amicus in this case, they depart from the Secretary’s position in one key respect: despite the Secretary’s request otherwise, neither the October 29, 2021 decision of the Court of Appeals holding the checkbox provision constitutional nor any final decision from this Court should be applied retroactively to any petitions.

The Secretary’s argument that the checkbox requirement should apply to the petitions of Unlock II and Secure MI Vote from October 29, 2021 onward, misses the mark for several reasons. First, the Secretary’s analysis ignores the fact that both petitions were approved by the Board in reliance on prior, lower court decisions, and that those petitions have been circulating for signature throughout the state for many weeks and, in some respects, months. To that end, the Secretary dismisses the hardship that retrospective application of the checkbox would thrust upon the Amici Petition Sponsors in a single line her brief, simply stating that “[t]he Secretary acknowledges that [retroactive application of the checkbox] will cause some hardship to the committees in that they will have to create and circulate new petition forms mid-process.” This superficial and conclusory “acknowledgment” of hardship makes no mention of pulling hundreds of thousands of petitions out of the field, the weeks it would take to obtain from the Board pre-circulation approval as to

form of the new petitions, printing and circulating hundreds of thousands of new petitions, and the logistical challenge of counting petitions on two separate forms – one with and one without the checkbox – to ensure the requisite number of valid signatures has been submitted for each. Nor does the Secretary’s one-line hardship analysis acknowledge that time is of the essence, and that those corrective actions would surely prejudice the Amici Petition Sponsors’ ability to collect and file at least 340,047 valid signatures – all collected within a consecutive 180-day period – by June 1, 2022.

The distinction between the Secretary’s support for the retroactive application of an appellate decision in this case and the Board’s support for a completely prospective application is problematic for yet another reason. While Amici Petition Sponsors actually tried to avail themselves of the Bureau of Elections’ advice to add the checkbox to their respective petitions in the wake of the Court of Appeals decision, as explained above, the Board refused to approve the form of the new petitions with the checkbox, electing instead to stand by the position in its amicus brief requesting that any determination by this Court be prospective only, and indicating that the Board intends to accept petition signatures for canvassing if the petition sheets comply with the instructions that were in effect at the time of circulation or at the time the Board approved the petitions as to form.

The Secretary’s request to retroactively apply the checkbox requirement to the Secure MI Vote and Unlock II petitions is also inconsistent with the Secretary’s position in this litigation, generally. Indeed, while the Secretary now claims that the “purpose of the statute will still be served by applying the Court [of Appeals’] ruling on the check-box requirement to petitions circulating *after* the date of that opinion,” (Secretary’s Application, p 14), the reality is the Secretary has refused to defend the constitutionality of the checkbox requirement under PA 608 in

these proceedings for many months now—a move that, among others, necessitated the Attorney General to appoint a special team of attorneys to defend the statute in the Secretary’s absence. With that in mind, the Secretary’s sudden inclination to enforce a statutory provision that she would not even defend in the lower court proceedings – or in this one – is questionable at best, especially when the Court of Appeals decision holding the checkbox constitutional is not even yet in effect as it pertains to the Secretary given that applications for leave to appeal are pending before this Court, *see* MCR 7.215(F)(1), and the Court of Appeals did not give its opinion immediate effect under MCR 7.215(F)(2).

Relatedly, this Court should also note the position taken by the Department of the Attorney General’s statute defense team as it pertains to the retroactive vs. prospective effect of the appellate decisions in this case. Importantly, the Department’s statute defense team, which again was appointed to defend the constitutionality of PA 608 in the absence of a defense from the Secretary, expressly declined to take any position as to whether the appellate decisions in this case should apply retroactively. (Dep’t of Attorney General’s Answer to the Secretary’s Application, pp 1, 11). It is ironic to think that the Secretary, who will not lift a finger to defend the constitutionality of the checkbox, is suddenly willing to enforce that provision to the detriment of ballot proposals openly supported by those politically opposite to the Secretary, while the attorneys assigned by the Attorney General to defend the constitutionality of the statute declined on the grounds that “[q]uestions of equity in application of law move beyond the Department’s charge to defend these laws.” *Id.* at 11.

Finally, the Secretary’s request that the checkbox be applied to the Secure MI Vote and Unlock II petitions from October 29, 2021 forward is directly inconsistent with the position taken by her own Director of Elections during a public meeting on November 29, 2021—two weeks after



the Secretary filed her Answer in this case. Indeed, as set forth above, the Director of Elections remarked during the November 29, 2021 meeting of the Board that it was the recommendation of the Bureau of Elections, which falls under the umbrella of the Secretary's Department, that the Board accept forms *with or without* the checkbox. *See* Exhibit B, at 26:17 – 27:20. (“Consistent with the Board’s intention, we would recommend, you know, pending further clarification from the courts, but we would recommend accepting forms that either have the box or don't have the box.”).

The position fleshed out in the Board’s amicus brief is the most equitable for all interested parties. It recognizes that the Board’s bipartisan pre-circulation approval process is meant to foster certainty and avoid unnecessary litigation – two laudable interests furthered by the Board’s position in this case but thwarted by the Secretary’s. (Board’s Amicus Br, pp 6-7.) Likewise, the Board’s position appropriately acknowledges that retroactive application of the checkbox, or any other changes to the legal landscape that result from this proceeding, “would seriously and unfairly prejudice petition proponents who requested—and relied upon—the Board[’s] determination that their petition complied with all necessary form requirements. *Id.* at 6.

Of course, it is not just the Amici Petition Sponsors that could be prejudiced by retroactive application of an appellate decision here. For example, the Board also issued pre-circulation approval as to form of the “Yes on National Popular Vote” petition; that petition was approved by the Board *after* the Court of Appeals issued its decision in this case, and therefore that petition includes the checkbox.<sup>9</sup> As a result, if this Court were to reverse the Court of Appeals and hold

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<sup>9</sup> A copy of Yes on National Popular Vote’s petition is available at [https://www.michigan.gov/documents/sos/National\\_Popular\\_Vote\\_740964\\_7.pdf](https://www.michigan.gov/documents/sos/National_Popular_Vote_740964_7.pdf) (michigan.gov). *See also* Draft Meeting Minutes of the November 15, 2021, Meeting of the Board of State Canvassers, *available at*

that the checkbox is indeed unconstitutional, then, absent prospective application of that decision, Yes on National Popular Vote would be prejudiced because it will have unwittingly gathered signatures on noncompliant petitions, despite the fact that the Board relied on the Court of Appeals decision when it approved that petition as to form on November 15, 2021. (Board’s Amicus Br, pp 6.) Although based on a recent announcement, Yes on National Popular Vote may or may not be circulating petitions at this time, there are still at least three more petition drives that appear likely to circulate initiative petitions at this time.

For those reasons, the Amici Petition Sponsors agree with the Board that “[c]omplete prospective application is appropriate in these circumstances.” *Id.* at 8. Given the various petitions currently in the field – some with the checkbox and some without – complete prospective application is the only way to ensure that petition sponsors are not needlessly prejudiced by the retroactive application of appellate decisions, especially where those petitions were approved by the Board in reliance on the law at the time those approvals were granted.

## V. CONCLUSION

For the reasons set forth above, Amici Secure MI Vote and Unlock Michigan respectfully request that this Court determine that any decision issued by an appellate court in this case have complete prospective effect only such that the decision not apply to any petition that was approved as to form and commenced circulation before the decision in question.

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[https://www.michigan.gov/documents/sos/Nov\\_15\\_2021\\_BSC\\_draft\\_minutes\\_741886\\_7.pdf](https://www.michigan.gov/documents/sos/Nov_15_2021_BSC_draft_minutes_741886_7.pdf).  
(michigan.gov)

Respectfully submitted,

Dated: December 20, 2021

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STATE OF MICHIGAN  
IN THE SUPREME COURT

LEAGUE OF WOMEN VOTERS OF  
MICHIGAN, PROGRESS MICHIGAN,  
COALITION TO CLOSE LANSING  
LOOPHOLES and MICHIGANDERS  
FOR FAIR AND TRANSPARENT  
ELECTIONS,

Supreme Court Case No. 163747

Court of Appeals Nos. 357984, 357986

Court of Claims No. 21-000020-MM

Plaintiffs-Appellants,

v.

SECRETARY OF STATE,

Defendants-Appellant,

DEPARTMENT OF ATTORNEY  
GENERAL,

Intervening Defendant-Appellant.

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

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**AMICUS CURIAE BRIEF OF SECURE MI VOTE MICHIGAN IN PARTIAL SUPPORT  
OF AND IN PARTIAL OPPOSITION TO SECRETARY OF STATE JOCELYN  
BENSON'S APPLICATION FOR LEAVE TO APPEAL**

**INDEX OF EXHIBITS**

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- Exhibit A      Transcript of the November 15, 2021, Meeting of the Board of State  
Canvassers
- Exhibit B      Transcript of the November 29, 2021, Meeting of the Board of State  
Canvassers

Respectfully submitted,

Dated: December 20, 2021

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# EXHIBIT A

# BOARD OF STATE CANVASSERS MEETING

November 15, 2021

Prepared by



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STATE OF MICHIGAN  
DEPARTMENT OF STATE

JOCELYN BENSON, SECRETARY OF STATE

BOARD OF STATE CANVASSERS MEETING

Video Conference via Microsoft Teams

Monday, November 15, 2021, 8:00 a.m.

BOARD:                   MR. NORMAN SHINKLE - Chair  
MS. JULIE MATUZAK - Vice Chair  
MR. ANTHONY DAUNT - Board Member  
MS. JEANNETTE BRADSHAW - Board Member  
MR. JONATHAN BRATER - Elections Staff  
MR. ADAM FRACASSI - Elections Staff

APPEARANCES:

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TABLE OF CONTENTS

PAGE

1. Consideration of the meeting minutes for approval (October 26, 2021). . . . . 4

2. Consideration of the 100-word summary of purpose of the initiative petition submitted by Michigan United. The summary of purpose as drafted by the Director of Elections is as follows:

Initiation of legislation to: repeal Truth in Sentencing law and eliminate mandatory minimum sentences extended by disciplinary time for misconduct; establish new types of earned credits that reduce prisoner sentences for earning a college degree or certification, being employed in prison, working in a training program, or earning special rehabilitation credits for prisoners with disabilities; allow prisoners sentenced as minors or military veterans to earn additional credits; establish board to review prisoner records and earned credits; require Department of Corrections to promulgate rules for disciplinary time and earned credits; apply law to everyone sentenced for a crime committed in Michigan.

WORD COUNT: 100 . . . . . 4

Statement by Reverend Dale Milford . . . . . 8

3. Consideration of the form of the petition submitted by Yes on National Popular Vote. . . . . 14

4. Recording of the results of the November 2, 2021 special election for State Senator, District 8 for the partial term ending 1/1/2023 . . . . . 19

5. Recording of the results of the November 2, 2021 special election for State Senator, District 28 for the partial term ending 1/1/2023 . . . . . 21

1 6. Such other and further business as may be  
 properly presented to the Board. . . . . 23

2  
 3 Statement by Chris Trebilcock. . . . . 23

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1 Via Microsoft Teams Video Conference

2 Monday, November 15, 2021 - 8:00 a.m.

3 MR. SHINKLE: I call this meeting to order. This  
4 is the scheduled meeting of the Michigan State Board of  
5 Canvassers. And that was posted; is that correct, Jonathan,  
6 accordingly?

7 MR. BRATER: That is correct.

8 MR. SHINKLE: Very good. Thank you. And we're  
9 going to -- the first thing on the agenda is the  
10 consideration of the meeting minutes from October 26th.  
11 They're in the packet that has been mailed. Let's see --

12 MS. BRADSHAW: Motion to approve the minutes from  
13 October 26th, 2021.

14 MR. DAUNT: Second.

15 MR. SHINKLE: Jeanette moves and Tony supports the  
16 minutes of the October 26th be approved as delivered.  
17 Discussion on that motion? Seeing none, all those in favor  
18 of the motion signify by saying "aye."

19 ALL: Aye.

20 MR. SHINKLE: All those opposed? The motion is  
21 carried unanimously.

22 (Whereupon motion passed at 8:01 a.m.)

23 MR. SHINKLE: Move on to number two,  
24 "Consideration of the 100 word summary of propose of the  
25 initiative petition submitted by Michigan United."

1 Jonathan, take it away.

2 MR. BRATER: Thank you, Chair Shinkle. So this is  
3 an initiated -- a proposed initiated law that would change  
4 the sentencing laws in Michigan. The bill -- the proposed  
5 initiated law would repeal the Truth in Sentencing law,  
6 which was passed in the 1990's. The Truth in Sentencing law  
7 established a system whereby during sentences, there would  
8 be a minimum -- a hard minimum for a sentence that could  
9 not -- it could not go below that. And then that sentence  
10 could be extended by disciplinary time for prisoners based  
11 on misconduct while incarcerated. This petition would  
12 repeal that law. It would eliminate the section -- the main  
13 section of the law, the section 34 that contains those  
14 provisions and it would establish, and in some ways  
15 re-establish, a system that existed prior to the Truth in  
16 Sentencing law in which prisoners could earn credits for  
17 various things, including good behavior. It would also  
18 establish new types of credits that prisoners could earn  
19 for -- for earning a degree, prison employment as well as  
20 other types of credits. And it would also establish a board  
21 that would review both the credits and the disciplinary time  
22 and require the Department of Corrections to establish rules  
23 to govern all this. The other thing it would do is it would  
24 apply this law to everybody that was sentenced for a crime  
25 committed in Michigan. The Truth in Sentencing law had a --

1 had a time before which was it was not in effect. That was  
2 in the 1990's.

3           So we did not receive any comments either on the  
4 language prior to my drafting this or -- I don't believe we  
5 received comments afterwards, or did we?

6           MR. FRACASSI: We received general comments --  
7 position comments.

8           MR. BRATER: Okay.

9           MR. FRACASSI: Not language.

10           MR. BRATER: Okay. We didn't receive any comments  
11 on the language, so we haven't received any expert testimony  
12 or -- or otherwise commentary from criminal justice or  
13 sentencing experts. So this is our summary of it based on  
14 the proposed initiative law. We also did you send you I  
15 think on email -- although you don't have it printed out --  
16 the sections of the Truth in -- of the sentencing statutes  
17 that are amended or replaced as well as a summary of the  
18 Truth in Sentencing law from the Department of Corrections.  
19 So with that said, this is exactly 100 words. I will read  
20 it. It is -- what I propose is drafted as follows:

21           "Initiation of legislation to: repeal Truth in  
22 Sentencing law and eliminate mandatory minimum  
23 sentences extended by the disciplinary time for  
24 misconduct; establish new types of earned credits that  
25 reduce prisoner sentences for earning a college degree

1 or certification, being employed in prison, working in  
2 a training program, or earning special rehabilitation  
3 credits for prisoners with disabilities; allow  
4 prisoners sentenced as minors or military veterans to  
5 earn additional credits; establish board to review  
6 prisoner records and earned credits; require Department  
7 of Corrections to promulgate rules for disciplinary  
8 time and earned credits; apply law to everyone  
9 sentenced for a crime committed in Michigan."

10 MR. SHINKLE: Okay. And there's no witnesses that  
11 wish to speak on this. What's the Board's questions?

12 MS. MATUZAK: I just have a comment.

13 MR. BRATER: Oh, just a moment. Sorry.

14 MR. SHINKLE: Oh, our mini clerk is hoarding them.  
15 Okay. We have Dale Milford. Come on up, Dale, right behind  
16 that tall box over there. If you can, raise your right hand  
17 for me. Do you solemnly swear what you're going to say --  
18 can you raise your right hand for me? Thank you.

19 Do you solemnly swear what you're going to say  
20 today is the truth, the whole truth, and nothing but the  
21 truth, so help you God?

22 REV. DALE MILFORD: Amen.

23 MR. SHINKLE: Thank you very much.

24 MR. DAUNT: I think he's good.

25 MR. SHINKLE: "Amen," that's the same as "yes" for

1 the Board. And for the record would you state and spell  
2 your name, please?

3 REV. DALE MILFORD: I'm Reverend Dale Milford,  
4 that's D-a-l-e M-i-l-f-o-r-d.

5 MR. SHINKLE: And go ahead.

6 REV. DALE MILFORD: Very good.

7 MR. SHINKLE: You have a couple minutes to  
8 explain.

9 REVEREND DALE MILFORD

10 REV. DALE MILFORD: I'm a member of the  
11 Transformational Justice Team at Michigan United and I serve  
12 on the Board of Justice for the Michigan area of the United  
13 Methodist Church. I'm here to offer a pastoral perspective  
14 on Truth in Sentencing and Michigan's failure to uphold the  
15 principle of earned credits to reduce time served in --  
16 locked up in our state prisoners. A recent Pew research  
17 study declared that -- Michigan to be the worst state in the  
18 country for the average time spent locked up for equal  
19 crimes. Think about that. We are worse than Texas with no  
20 appreciable decrease in recidivism rates, rather a  
21 devastating impact on the economies of disadvantaged  
22 communities most affected completely counter to the  
23 principles of our forefathers in centuries past.

24 But as a pastor, I would like to take us even  
25 further back, 3700 years back. When Jacob conned his

1 brother and defrauded his father into wrongfully gaining an  
2 inheritance, and yet later his 12 sons created the 12 tribes  
3 of Israel. 200 years later, his descendant, quote, "Saw an  
4 Egyptian beating a Hebrew, one of his own people. Looking  
5 this way and that and seeing no one, he killed the Egyptian  
6 and hid him in the sand." We call that second degree  
7 murderer "Moses." Our Abrahamic faith heritage is filled  
8 with stories of heroes and their triumphs, but only after  
9 they redeem themselves from earlier criminal choices. So  
10 ultimately they were not defined by their youthful mistakes,  
11 but rather by their lifelong redemptive achievements.

12 Now, I'm not suggesting for a minute that we gift  
13 any of our residents of our prisons a get-out-of-jail free  
14 card, but rather the opportunity to develop good choice  
15 habits and redeem themselves and earn their way back into  
16 society and play a productive role in our communities. I've  
17 not only been serving suburban churches, but I've also been  
18 preaching inside state prisons on Saturdays since 2006. And  
19 I'm here to testify personally that I have seen so much  
20 wasted potential inside there; people aching for the  
21 opportunity to prove themselves, to redeem themselves. And  
22 every last one of them, remember, is a child of God and is  
23 loved by our maker just as much as he loves you and me.

24 Thanks for your time. And I would be glad to  
25 answer any questions you may have.



1 MR. SHINKLE: I've got one and it's about Moses.  
2 Are you saying he's guilty of second degree murder?

3 MR. DAUNT: Always -- always glad --

4 MR. SHINKLE: And the only witness was the victim  
5 of the assault and battery that he was there to protect? Is  
6 that what you're saying?

7 REV. DALE MILFORD: There was a fellow Hebrew  
8 being assaulted terribly, being beaten up by an Egyptian  
9 official and there was nobody else around. And he came to  
10 her aid and beat this Egyptian to death.

11 MR. SHINKLE: So she's the only witness, then?

12 REV. DALE MILFORD: She's the only witness.

13 MR. SHINKLE: Wow. So she must have told the  
14 story. Okay. Any questions for the witness? Thank you for  
15 coming in.

16 REV. DALE MILFORD: Thank you.

17 MR. SHINKLE: There are no other cards to speak on  
18 this that I have in front of me. So we're back to  
19 Jonathan's 100 words. What's the Board's pleasure?

20 MS. MATUZAK: I have a --

21 MR. SHINKLE: Oh, Julie, go ahead.

22 MS. MATUZAK: -- question, comment, something.

23 I'm not sure that "promulgate," which I'm not saying at this  
24 moment correctly, is a common English, like, speaking --  
25 like plain English, and -- and that we could just say,

1 "Require the Department of Corrections to create rules or  
2 write rules." I'm not sure "promulgate" is common usage, is  
3 my only comment on it.

4 MR. SHINKLE: Why did you use that lousy word?

5 MR. BRATER: It's -- it's -- I --

6 MS. MATUZAK: And I don't mean to be picky.

7 MR. BRATER: No, I --

8 MS. MATUZAK: Our charge is common --

9 MR. BRATER: Yeah.

10 MR. SHINKLE: To promulgate I think means more  
11 than create. It means have it -- create and adopt it.

12 MS. MATUZAK: Right.

13 MR. BRATER: Yeah, so --

14 MR. SHINKLE: The whole process.

15 MR. BRATER: It does specifically say that it  
16 needs to follow the Administrative Procedures Act process  
17 and promulgate rules. The concern -- I certainly agree  
18 there are more commonly used words than "promulgate." I  
19 think -- so, you know, "create" or "establish" I think would  
20 be accurate. I think that the concern with that would be  
21 that someone reading it may not understand that there is a  
22 specific process that they would need to follow that's  
23 legal. We've previously, you know, gone through this with  
24 other petitions where we tried to get -- decide whether it's  
25 more important to make it precise or understandable, I

1 think. I can see arguments either side. I don't have a  
2 strong feeling about "promulgate," but the reason I chose it  
3 is just because it specifically notes the APA process.

4 MR. SHINKLE: What's the most accurate word?  
5 Because it's not only propose rules, it's to make sure  
6 they're adopted. So, I mean, the Department of Corrections  
7 cannot establish rules. It's got to go through the process.  
8 And so I think "promulgate" -- unless you have a really -- a  
9 problem, it's probably the best --

10 MS. MATUZAK: Yeah, I -- I -- I don't feel, you  
11 know -- I'm not throwing myself on the road for this one. I  
12 just was pointing out that --

13 MR. SHINKLE: Okay. Yup. Okay. Anything else?  
14 Okay. On the 100 words, what's the Board's pleasure?

15 MS. BRADSHAW: All right. I'll -- I'll move that  
16 the Board of State Canvassers approve the summary of the  
17 purpose of the initiation -- initiative petition sponsored  
18 by Michigan United as drafted by the Director of Elections  
19 and presented by the director on November 15th, 2021.

20 MR. DAUNT: Support.

21 MR. SHINKLE: Moved and supported. Discussion on  
22 the motion? And we have in our packets here -- this is a  
23 proposed petition to go with this 100 words.

24 MS. BRADSHAW: No --

25 MR. SHINKLE: But the 100 words is not in there

1 yet.

2 MS. BRADSHAW: I don't think we have to form. Do  
3 we have to form?

4 MR. BRATER: Oh. I'm sorry.

5 MS. BRADSHAW: Yeah.

6 MR. BRATER: The next petition is the Yes on  
7 Popular --

8 MS. MATUZAK: Okay. We don't have to form.

9 MR. BRATER: Oh, sorry; sorry.

10 MS. MATUZAK: They haven't asked us to approve it.

11 MR. BRATER: I'm sorry. Yeah.

12 MS. BRADSHAW: Yeah.

13 MR. BRATER: We don't have that ready yet, so  
14 they -- they don't have something for us to approve yet for  
15 form.

16 MR. SHINKLE: Well, this is talking about time off  
17 their sentences for good behavior.

18 MR. DAUNT: You are correct.

19 MR. BRATER: Right.

20 MR. DAUNT: That is this.

21 MR. BRATER: Yeah.

22 MR. DAUNT: But we don't have before us the --

23 MR. SHINKLE: The form.

24 MR. DAUNT: -- form.

25 MS. BRADSHAW: Right.

1 MR. BRATER: Right.

2 MR. SHINKLE: I'm just curious, you know, the box  
3 that trial court said is unconstitutional, the Court of  
4 Appeals said it's constitutional. Is that the box we're  
5 looking at right there?

6 MR. BRATER: That's correct. It does have the  
7 page signature -- I can't say that this is a proper form  
8 because we haven't approved the form of this one at the  
9 staff level. But the box you're looking at at the top there  
10 is what the Court of Appeals approved, yes.

11 MR. SHINKLE: Okay. That's the question. Okay.  
12 That's what's being litigated. Very good. There's a motion  
13 on the floor to approve the 100 words. Any further  
14 discussion? Seeing none, all those in favor of the motion  
15 signify by saying "aye."

16 ALL: Aye.

17 MR. SHINKLE: All those opposed? The motion  
18 carries with no dissent.

19 (Whereupon motion passed at 8:13 a.m.)

20 MR. SHINKLE: Next item on the agenda is,  
21 "Consideration of the form of the petition submitted by Yes  
22 on National Popular Vote."

23 MR. BRATER: So this was the petition language  
24 that was approved by the Board at the last meeting. At that  
25 time, the petition sponsor was not prepared yet to do

1 approval of the form or conditional approval of the form.  
2 This one does have the language that the Board approved and  
3 it -- and staff has reviewed it and verified that it is --  
4 meets the formal requirements. As discussed on the last  
5 one, this does have the -- the top line which says, "The  
6 circulator of this petition is (mark one)," and then a box  
7 for paid signature gatherer or volunteer signature gatherer.  
8 So we are recommending approval with that box on there in  
9 light of the Court of Appeals opinion. I think a bit later  
10 on we're going to have during other business some discussion  
11 about how that will apply to some petitions that are  
12 currently already out in the field and were approved without  
13 that box. But it's not really a point of confusion for this  
14 petition because this one's being approved after that court  
15 decision. So --

16 MR. SHINKLE: Unless the Supreme Court decides  
17 that that shouldn't be on there?

18 MR. BRATER: Yes, that's --

19 MR. SHINKLE: That would be a problem for this  
20 petition.

21 MR. BRATER: Well, I think if it included an  
22 element that was not -- that's an interesting legal  
23 question. I'm not actually sure what the answer is.

24 MR. SHINKLE: Well -- but the point is, it depends  
25 on when the people sign the petition. If they sign it next

1 week before the Supreme Court might act -- that's one of the  
2 dilemmas that we have today. But right now this is the box  
3 that you've approved that basically only out of state  
4 regulators -- circulators would need to sign that box.

5 MR. BRATER: Well, anyone who's paid would need to  
6 sign if they're paid or --

7 MR. SHINKLE: Oh, anyone that's paid?

8 MR. BRATER: -- or a -- a volunteer, yeah.

9 MS. MATUZAK: It's the top box.

10 MS. BRADSHAW: It's the top box.

11 MR. BRATER: Yeah.

12 MR. DAUNT: Right there (indicating).

13 MS. MATUZAK: That's the one that's in question.

14 MR. SHINKLE: Gotcha.

15 MR. DAUNT: Then we --

16 MS. BRADSHAW: The other box is if they're out of  
17 state.

18 MR. DAUNT: Regardless, you have to check a box.

19 MR. SHINKLE: Is it -- do we define the word  
20 "paid"? If they get offered free cider and doughnuts to  
21 circulate a petition --

22 MS. MEINGAST: It's defined in the statute. Paid  
23 circulator is a defined term.

24 MR. SHINKLE: It's defined in the statute? Okay.  
25 We'll have to check on that. Very good. Okay.

1 MS. MATUZAK: Do you have Mr. Brewer?

2 MR. SHINKLE: Mr. Brewer?

3 MR. MARK BREWER: I didn't have a card. I was  
4 just going answer some questions.

5 MR. SHINKLE: I see a card for you. Go ahead.  
6 You're --

7 MR. MARK BREWER: Yeah, thank you, Mr. Chairman.

8 MR. SHINKLE: We know you're licensed, so go  
9 ahead. What do you got for us?

10 MARK BREWER

11 MR. MARK BREWER: No, it's just I'm prepared to  
12 answer questions. We simply track the statutory language.  
13 That's what that line --

14 MR. SHINKLE: You know what the definition of paid  
15 is?

16 MR. MARK BREWER: I believe there's a definition  
17 of paid in the statute. I don't have it in front of me.

18 MR. SHINKLE: I mean, if somebody checks that box  
19 saying that they were paid and they weren't paid any money,  
20 I mean, is the petition challengeable?

21 MR. MARK BREWER: All I can say, Mr. Chairman, is  
22 I think we'll cross that bridge if we get to it. I will  
23 indicate for the Board that I represent the group that is  
24 challenging Public Act 608 and we have appealed that ruling  
25 to the Michigan Supreme Court. And we await a decision



1 whether they'll take our case. We'll cross those bridges  
2 when we get to them, Mr. Chairman.

3 MR. SHINKLE: Very good. Any questions for Mr.  
4 Brewer? What's the Board's pleasure?

5 MR. DAUNT: Was Jonathan done going through -- we  
6 kind of got --

7 MR. BRATER: Yeah.

8 MR. DAUNT: -- into some questions there.

9 MS. MEINGAST: Yeah.

10 MR. DAUNT: I just want to make sure you were  
11 done.

12 MR. BRATER: Yes. Otherwise, we did verify at the  
13 staff level that this is the proper form.

14 MR. SHINKLE: Okay.

15 MR. DAUNT: I move that the Board approve the form  
16 of the initiative petition submitted by Yes on National  
17 Popular Vote with the understanding that the Board's  
18 approval does not extend to the substance of the proposal,  
19 which appears on the petition or the manner in which the  
20 proposal language is affixed to the petition.

21 MS. MATUZAK: Support.

22 MR. SHINKLE: Moved and supported. We approve the  
23 form of the petition. Any further discussion? Seeing none,  
24 all of those in favor of the motion signify by saying "aye."

25 ALL: Aye.

1 MR. SHINKLE: All those opposed? It carries; no  
2 "no" votes.

3 (Whereupon motion passed at 8:18 a.m.)

4 MR. SHINKLE: Yes, Mr. Brewer?

5 MR. MARK BREWER: Thank you, Mr. Chair. I simply  
6 want to thank the Board and the staff for their cooperation  
7 throughout this entire process. Thank you very much.

8 MR. SHINKLE: Okay. On behalf of staff -- number  
9 four on the agenda, "Recording of the results of the  
10 November 2nd special election, senate district 8."  
11 Jonathan?

12 MR. BRATER: So this was a special election held  
13 in the 8th district for state senate in Macomb County. I  
14 will just say generally statewide we had a variety of  
15 elections across the state and things went very well. We  
16 had few issues reported and I think our canvasses are mostly  
17 wrapped up. But the only -- the only canvasses that are  
18 relevant for this body are the ones in Macomb and Kent  
19 because of the special elections. So this was the state  
20 senate 8th district election. There were a total of 49,393  
21 votes cast for office and Douglas Wozniak was the winner  
22 with 30,555 votes.

23 MR. SHINKLE: Okay. Any questions? What is the  
24 Board's pleasure?

25 MS. BRADSHAW: I move --

1 MS. MATUZAK: I move --

2 MS. BRADSHAW: Oh, I'm sorry, Julie.

3 MS. MATUZAK: I thought we were taking turns here.

4 I move that the Board record the results of the  
5 November 2nd, 2021 special election for the office of state  
6 senator 8th district, as certified by the Macomb County  
7 Board of Canvassers on November 4th, 2021.

8 MR. DAUNT: Support.

9 MR. SHINKLE: Moved and supported that we approve  
10 the election on the 8th -- special.

11 MS. MATUZAK: I would just point out that in our  
12 documentation, there was only one ballot that was -- that  
13 had difficulty. Everything else balanced perfectly. It's a  
14 good sign.

15 MR. BRATER: Yeah, in general we've had few issues  
16 reported statewide with balancing. We'll see when we get  
17 all the canvass reports in, but it appears to have been  
18 handled very well statewide, including both of these  
19 counties.

20 MR. SHINKLE: Okay. Any further discussion?  
21 Seeing none, all those in favor of the motion signify by  
22 saying "aye."

23 ALL: Aye.

24 MR. SHINKLE: All those opposed? The motion  
25 carries, no "no" votes.

1 (Whereupon motion passed at 8:20 a.m.)

2 MR. SHINKLE: And we go on to agenda item number  
3 five, which is recording of the results of the November 2nd  
4 special election for senate district 28. Jonathan?

5 MR. BRATER: So in the special election for senate  
6 in the 28th district of Kent County, there were a total of  
7 42,487 votes cast and Mark Huizenga was the winner with  
8 25,735 votes.

9 MR. SHINKLE: Okay.

10 MS. MATUZAK: All right. Whose turn is it now?

11 MS. BRADSHAW: I'll do it.

12 MR. SHINKLE: Jeanette; the Chair recognizes  
13 Jeanette.

14 MS. BRADSHAW: I move that the Board of State  
15 Canvassers authorizes --

16 MS. MATUZAK: Nope, nope, nope, nope.

17 MR. BRATER: There's one --

18 MS. BRADSHAW: Are we talking --

19 MR. BRATER: -- before that. We want that one,  
20 please.

21 MS. BRADSHAW: Oh, I'm sorry. I move that the  
22 Board -- that the Board record -- see you guys got me all --  
23 I move that the Board record the results of the November  
24 2nd, 2021 special election for the office of state senator  
25 8th district, as certified by Kent County Board of

1 Canvassers on November 5th, 2021. Sorry about that.

2 MR. BRATER: Oh. Sorry, can I just -- we had a  
3 draft in here. I apologize. Could we just reread that with  
4 28th?

5 MR. SHINKLE: Yeah.

6 MR. BRATER: Is that an 8? That should say 28th.

7 MR. SHINKLE: Because I -- I said we were  
8 considering senate district 28.

9 MS. BRADSHAW: 28.

10 MR. BRATER: That's -- that's our fault. Sorry.

11 MS. BRADSHAW: That's okay. I can do it again.  
12 This way I'll -- I won't mess it up.

13 MR. BRATER: Yeah.

14 MR. SHINKLE: Yeah, go ahead.

15 MS. BRADSHAW: I move that the Board record the  
16 results of the November 2nd, 2021 special election for the  
17 office of state senator 28th district, as certified by the  
18 Kent County Board of Canvassers on November 5th, 2021.

19 MR. DAUNT: Support.

20 MR. SHINKLE: Moved and supported. We approve  
21 28th senate election. Any further discussion? Seeing none,  
22 all those in favor of the motion signify by saying "aye."

23 ALL: Aye.

24 MR. SHINKLE: All those opposed? It carries 4-0.

25 (Whereupon motion passed at 8:21 a.m.)

1 MS. MATUZAK: Okay. The next -- the next  
2 motion -- this is always a two-parter. I move that the  
3 Board of State Canvassers authorize the staff of the Bureau  
4 of Elections to represent the Board in any recount of votes  
5 cast in the November 2nd, 2021 special election.

6 MR. DAUNT: Support.

7 MR. SHINKLE: Moved and supported, the staff  
8 represents the Board for recounts. Any discussion on that  
9 motion? Seeing none, all those in favor of the motion  
10 signify by saying "aye."

11 ALL: Aye.

12 MR. SHINKLE: Motion carries.

13 (Whereupon motion passed at 8:22 a.m.)

14 MR. SHINKLE: So are we done with motions?

15 MS. MATUZAK: No.

16 MR. SHINKLE: Pre-printed motions, I should say.  
17 So is now -- well, let's -- I have two people that would  
18 like to chat here. Let me start with Chris Trebilcock.  
19 This is under number six, other business.

20 Chris, come on up. I know you're an attorney.  
21 You have not specified an issue, so you don't need to be  
22 sworn in if you weren't. What's up?

23 CHRIS TREBILCOCK

24 MR. CHRIS TREBILCOCK: Thank you. Good morning;  
25 good morning. Friday the Michigan Supreme Court issued an

1 order denying application for leave on six recall petitions  
2 filed against the governor. I believe the seventh one had  
3 been filed against Lieutenant Governor Gilchrist and  
4 approved by the Board. I apologize for the late  
5 communication. We submitted a communication last night, a  
6 letter to the Board through Mr. Fracassi. Mr. Brater, I'm  
7 not sure if you had an opportunity to review it. But  
8 there's -- there's -- the good news is, is that although we  
9 disagree with the Supreme Court that there weren't issues  
10 that they should have taken a look at, the good news is that  
11 we're closer to closing out this two-year period of recall  
12 activity against elected -- statewide elected officials here  
13 in Michigan. And hopefully this will be one of the last  
14 times you guys see -- see me on any of these issues, you  
15 know. There were over 30 recalls over the last 18 months  
16 against the governor, three committees formed to support --  
17 raise dollars to collect signatures. Two of those remain  
18 active today. One of them were sending out emails as late  
19 as last week soliciting contributions and seeking support to  
20 go and collect signatures in their words for a third and  
21 final attempt over the next two months. So -- but we're  
22 nearing the end.

23           The interesting legal issue that the Board is  
24 presented with is that the Court of Appeals in the May 27th,  
25 2021 decision remanded one of the six petitions approved

1 against the governor, the one submitted by Brenda LaChapelle  
2 that the Board had approved that contained an error on the  
3 date of the conduct that was alleged to be the support for  
4 the basis for recall. And the Court of Appeals remanded it  
5 to this Board for the opportunity to Ms. LaChapelle to  
6 correct, a Scrivener's error, as the Court of Appeals  
7 approved it. I'm not aware of that ever occurring in --  
8 before, you know, the statute was amended in 2012. And I  
9 don't think certainly since 2012 that has happened. So  
10 there is this sort of last outstanding issue out there that  
11 we're seeking clarification and confirmation on from this  
12 Board that will allow the Whitmer campaign to start wrapping  
13 up its recall election activity, close out its books,  
14 determine and do the math to figure out what leftover funds  
15 are and then disburse those funds in accordance with the  
16 Michigan Campaign Finance Act.

17 And so what we're asking the Board to do is to  
18 confirm that, first, no request to correct the petition by  
19 Ms. LaChapelle has been submitted as of this date, confirm  
20 that as of November 17th, 2021 there will be no active  
21 recall petitions because the November 17th date is 180 days  
22 from the Court of Appeals decision on -- on May 27th that  
23 she has to come and asked to correct the Scrivener's error.  
24 And presumably that -- that may restart the circulation  
25 period. So we wanted confirmation on that. And then just



1 confirmation I think publicly confirming is important that  
2 under MCL 168.951(a), no recall petitions -- filed after  
3 11:59 a.m. on January 1, 2022 will be accepted or considered  
4 by this Board such that a recall election could be called.

5           These conclusions are consistent with the -- the  
6 rationale -- with the law and the rationale. And the  
7 Secretary of State's position has been articulated in the  
8 Weiser v Benson lawsuit. Again, the confirmation that these  
9 steps have occurred will allow the Whitmer committee to end  
10 and begin its process of closing out the books and  
11 disbursing the funds in accordance with the Act. And -- and  
12 we're getting close to year-end when all of this comes to an  
13 end, all these recall contributions, expenditures, how the  
14 leftover funds are distributed will occur, be reported out  
15 on the next campaign finance statement, which is January.  
16 So that's the whole purpose.

17           Apologize for the late notice, but it came out on  
18 Friday; you guys had a meeting scheduled today. We didn't  
19 want to have to try to get you back to squeeze in another  
20 meeting and hold Chair Shinkle from his deer blind.

21           MR. SHINKLE: What -- what came out on Friday?

22           MR. CHRIS TREBILCOCK: The Court of Appeals issued  
23 a decision that's been pending for six, seven months,  
24 denying our application for leave to appeal.

25           MR. SHINKLE: They denied your application?

1 MR. CHRIS TREBILCOCK: Correct.

2 MR. SHINKLE: But six months ago, they said that  
3 this petition's got a problem.

4 MR. CHRIS TREBILCOCK: Court of Appeals did that.

5 MR. SHINKLE: Oh.

6 MR. DAUNT: So that -- that put -- that then put  
7 the onus on the sponsor to come to us seeking --

8 MR. CHRIS TREBILCOCK: Correct.

9 MR. DAUNT: Okay.

10 MR. CHRIS TREBILCOCK: Correct. And that -- and  
11 that hasn't happened. That could have happened, but that  
12 hasn't happened today.

13 MR. SHINKLE: Are you suggesting we need to do  
14 something right now?

15 MR. CHRIS TREBILCOCK: I think a confirmation, I  
16 think a resolution, could be appropriate to confirm those  
17 things or at least a statement and confirmation that those  
18 things haven't occurred.

19 MS. MATUZAK: Have we received the petition to be  
20 fixed, as it were?

21 MR. BRATER: We -- following the Court of Appeals  
22 decision back over the summer, we reached out to the sponsor  
23 providing them the opportunity to come and correct it. We  
24 never heard back. And that was the last contact we had.

25 MR. SHINKLE: And we reached out? Okay.

1 MR. CHRIS TREBILCOCK: And when did that occur?  
2 Because that's new news that hasn't been provided to the  
3 Whitmer campaign, that she was contacted and advised.

4 MR. BRATER: Have we not been --

5 MR. FRACASSI: I -- I -- Melissa Malerman reached  
6 out to -- so I -- I just don't know the exact date of the  
7 email yet. But we -- Melissa did reach out to Ms. --

8 MR. BRATER: What was the -- do you know what the  
9 approximate date of that was? Month?

10 MR. FRACASSI: I -- approximately -- I would be  
11 guessing probably within a week I would say of the Court of  
12 Appeals.

13 MR. DAUNT: Which, Chris, you said it was May  
14 27th?

15 MR. CHRIS TREBILCOCK: May 27th, yeah.

16 MR. FRACASSI: I believe somewhere the summer  
17 after the Court of Appeals. I can have somebody --

18 MR. CHRIS TREBILCOCK: Yeah, like I said, this is  
19 new information that's never been shared with the Whitmer  
20 campaign.

21 MR. SHINKLE: Okay.

22 MS. MATUZAK: And we've discussed before that the  
23 window for recall closes on the 31st of this year for the  
24 governor -- or statewide.

25 MR. SHINKLE: I think we just heard it --

1 MR. BRATER: Correct.

2 MR. SHINKLE: -- was January 1st.

3 MR. CHRIS TREBILCOCK: It's 11:59 a.m. on January

4 1 --

5 MS. MATUZAK: All right. Whatever.

6 MR. CHRIS TREBILCOCK: -- 2020- -- 2022.

7 MS. MATUZAK: The end of the year.

8 MR. CHRIS TREBILCOCK: Effectively December --

9 MR. SHINKLE: 11:59 a.m.

10 MR. CHRIS TREBILCOCK: -- 31st, right.

11 MR. SHINKLE: On January 1?

12 MR. CHRIS TREBILCOCK: Yeah, because that's --

13 MR. SHINKLE: New Year's Day --

14 MR. DAUNT: That's probably --

15 MR. SHINKLE: -- noon.

16 MR. DAUNT: -- the exact amount of time to the

17 swearing in, would be my guess.

18 MR. CHRIS TREBILCOCK: Yeah.

19 MS. MATUZAK: Yeah.

20 MR. CHRIS TREBILCOCK: That's what it coincides

21 with, yeah.

22 MR. DAUNT: Yeah.

23 MR. SHINKLE: I see. The swearing in, right here.

24 Okay.

25 MS. MATUZAK: So the window -- just confirming,

1 the window does close on January 1? No more statewide  
2 elected recalls can be conducted at this time; true?

3 MR. BRATER: Correct.

4 MS. BRADSHAW: And there are no more active  
5 recalls at this point? Or are there?

6 MR. BRATER: Well, that's currently a question  
7 that's pending in litigation, so I would defer to the  
8 Attorney General on that one.

9 MS. BRADSHAW: Do we have an update?

10 MR. GRILL: Sure. There's -- this -- that's  
11 actually an issue and controversy, and the Weiser lawsuit  
12 that was discussed is exactly the import of the existence of  
13 any recall -- recurrent recall efforts. What I would note  
14 is that the -- if the -- if Mr. -- there was an opportunity  
15 and provision to allow for declaratory rulings by the  
16 Secretary of State in regards to matters of campaign  
17 finance. So if they have a question about how these  
18 verifications interplay with their obligations or their  
19 duties or, excuse me, make whatever filings they want to  
20 make.

21 In regards to the relief or the motion that's  
22 being proposed here, it's not clear what authority the Board  
23 would have to do any of those determinations. The statute's  
24 already providing for the time to circulate, the statute's  
25 provided for when elected officials can be subject to

1 recall. And as far as the second issue regarding the  
2 existence of whether or not there -- this determination as  
3 of November 17th that there is no recall effort, that is  
4 something that would wander into territory of litigation.

5 MR. DAUNT: Thank -- thank you for -- I was kind  
6 of --

7 MS. BRADSHAW: Yup; yup.

8 MR. DAUNT: -- sitting here thinking through in my  
9 head with respect to Mr. Trebilcock, I -- I don't want to  
10 get us in -- in the midst of --

11 MS. BRADSHAW: Right.

12 MR. DAUNT: -- active litigation on this -- this  
13 stuff. So I think it's -- it's best if we don't do anything  
14 related to what -- what Mr. Trebilcock's asking.

15 MR. CHRIS TREBILCOCK: My --

16 MR. DAUNT: As I understand it. And it's -- or  
17 you laid it out.

18 MR. CHRIS TREBILCOCK: Yeah, if I could say two --  
19 two things, one is I don't believe the LaChapelle petition  
20 is the subject of the Weiser lawsuit. The Weiser lawsuit  
21 seeks an injunction prohibiting the Secretary of State from  
22 enforcing and applying their existing rules as it relates  
23 to recall -- campaign finance rules. The dates of elections  
24 and petition circulations are matters of election law, not  
25 campaign finance. Matters of election law are appropriate

1 for this Board.

2 I would say second, Court of Appeals remanded the  
3 decision to the Board of Canvassers. And as I understand  
4 it, neither the Board of Canvassers nor the Whitmer  
5 campaign, anybody had any clue a Bureau of Elections took  
6 any action in response to that Court of Appeals decision  
7 or -- or took anything proactively. Certainly that Court of  
8 Appeals decision has meaning and has on operation of law.

9 I think now the appeal process of that has been  
10 completed, it's incumbent upon the Board to make some  
11 determination whether it's, "Look, it's over and dead,"  
12 Court of Appeals -- that's back to us now. For whatever  
13 reason that ends, that's -- that's -- that's my point is  
14 that certainly the Court of Appeals decision has a -- has a  
15 meaning -- something of law. Now that the Supreme Court has  
16 spoken, it's -- it's back to the -- back to this Board to  
17 make whatever determination you determine to --

18 MR. SHINKLE: Well, the Court of Appeals said this  
19 one petition has a bad date and has to be corrected if it's  
20 going forward. It never was corrected. End of story.

21 MR. CHRIS TREBILCOCK: Well, the -- the actual  
22 order, Chairman, says it's remanded to the Board of  
23 Canvassers.

24 MR. SHINKLE: If she comes back to us?

25 MR. CHRIS TREBILCOCK: To allow her the

1 opportunity.

2 MR. SHINKLE: Right.

3 MR. CHRIS TREBILCOCK: And there was no official  
4 announcement to anybody, nobody was notified that -- that  
5 she was given that option.

6 MR. SHINKLE: The Court of Appeals allowed her to  
7 come back to us.

8 MR. CHRIS TREBILCOCK: But it said the Board of  
9 Canvassers. And I don't even think she was -- she never  
10 intervened on her own and appeared. I'm not even sure she  
11 got service of that.

12 MR. SHINKLE: Well, we just heard that our staff  
13 contacted her, so I think we're all set. We're not -- we  
14 don't have it in front of us, let's put it that way.

15 MS. MATUZAK: Yeah. Could we maybe figure out the  
16 date that Ms. LaChapelle was contacted and sort of let  
17 people know that date, including Mr. Trebilcock?

18 MR. FRACASSI: Yes, I'm trying to.

19 MS. MATUZAK: Okay.

20 MR. FRACASSI: The problem is because Melissa is  
21 gone, her -- I -- it's just harder to get into her email,  
22 that's all. But, yes, I will try to do that.

23 MS. MATUZAK: Okay.

24 MR. SHINKLE: Okay.

25 MR. BRATER: I just note that the -- the case was



1 remanded to the Board for ministerial purpose of allowing  
2 her to correct the Scrivener's error. So in my view there  
3 was an ministerial act to have staff contact the petitioner  
4 and say that she could correct it. Of course if Mr.  
5 Trebilcock or anyone else had asked the Bureau of Elections,  
6 we would have informed of that. But I think it was fairly  
7 obvious that that was going to happen after the court  
8 decision.

9 MR. CHRIS TREBILCOCK: We had litigation update --  
10 with all due respect, we had litigation updates at various  
11 Board meetings on this appeal that was never raised in  
12 conversation with -- with Assistant Attorney Grill in  
13 September at a Board of Canvassers meeting asking what the  
14 procedure's going to be by this Board when it got remanded.  
15 And the response was, "We don't know yet." At no time we  
16 were informed that staff had reached out or that that was  
17 the process, you know. There's an issue about whether it  
18 was actually remanded -- what effect did our application for  
19 appeal of that decision have on the remand. There's one  
20 argument that that didn't get remanded until Friday. It's  
21 not remanded to this Board until today. So I think -- I  
22 think those are legal issues that are valid legal issues  
23 that the Board -- the Board needs to take the official  
24 action on terms of considering that or authorize your staff  
25 to take action on your behalf Because the Board apparently

1 wasn't informed of any of that conduct either.

2 MR. SHINKLE: Okay. Well, if we need to do  
3 something, AG, please let us know. Okay? That's what he's  
4 suggesting. We might have to do something. And you let us  
5 know if you think we do. Okay, Chris? Is that good?

6 MR. CHRIS TREBILCOCK: Yup; yup. Thank you.

7 MR. SHINKLE: Very good. Steven Liedel, are you  
8 out there? Come on up.

9 MR. STEVEN LIEDEL: Thanks, Mr. Chairman. I'll  
10 pass. I have nothing to add --

11 MR. SHINKLE: Oh. Okay.

12 MR. STEVEN LIEDEL: -- to what Mr. Trebilcock  
13 said.

14 MR. SHINKLE: Very good.

15 MS. MATUZAK: Mr. Chair, while we're in the sort  
16 of legal arena, can you let me ask my usual question? Who's  
17 suing me now?

18 MR. STEVEN LIEDEL: Fewer people at the court.

19 MS. MEINGAST: Yeah, I think with the -- with the  
20 court's order on Friday, and I updated you during the week  
21 on two cases, Fair and Equal and Protect My Vote both came  
22 out from the Supreme Court in the last week and a half. So  
23 we do not have any current cases against the Board other  
24 than there remains one application at the Supreme Court  
25 regarding one recall petition. And that's --

1 MR. CHRIS TREBILCOCK: Yeah, I was just -- I was  
2 just going to say -- and I don't know if you saw her email  
3 last night where we requested based on the Supreme Court's  
4 decision on Friday, the legal issues in that other appeal,  
5 it was the first Baase one -- it was sort of the first one.  
6 The legal issues were the same. And so we're seeking  
7 concurrence. We're going to withdraw that application for  
8 leave rather than just, you know, prolong, that for the  
9 Supreme Court. I'm actually kind of surprised they just  
10 didn't resolve them both at the same time, same legal  
11 issues.

12 MS. MEINGAST: I think Eric, though, just reminded  
13 me of one other case.

14 MR. GRILL: I believe the Plaintiff's name is  
15 Graziano. It's a -- it's another round of litigation  
16 relating to the tracking petition seeking to challenge --  
17 this time when she had the signature signees rather than the  
18 signature proponents.

19 MS. MATUZAK: Which petition?

20 MS. BRADSHAW: The fracking petition.

21 MR. GRILL: The Committee to Ban Fracking in  
22 Michigan.

23 MS. MATUZAK: Oh, the fracking.

24 MR. GRILL: We prevailed at the Court of Claims  
25 level and we received notice of their Claim of Appeal. We

1 haven't seen the brief yet. The Court of Appeals is having  
2 a wire jam.

3 MR. SHINKLE: Well, anyway, the topic of petitions  
4 that do or do not have the checkoff box that's currently in  
5 courts right now, the suggestion was that any petition we  
6 approve, the date we approved it, the box was supposed to be  
7 on there -- wasn't supposed to be on there. And one is we  
8 approved one of those two time periods that will accept  
9 those petitions and the signatures on them under any  
10 circumstance unless -- or until the whole thing's exhausted  
11 through the Supreme Court. But in the meantime we'll  
12 have several -- several petitions that are already out  
13 there, some coming, that the Supreme Court might take the  
14 box back off again. So to clear it, then the idea would be  
15 to ask our attorney, see if we'll file an amicus brief  
16 suggesting to the court that they rule that way.  
17 Anything -- this is going to be approved without or without  
18 the box be okay to circulate. That's the idea. And Heather  
19 suggested it be brought up at this meeting discussion.

20 MS. MEINGAST: Well, let me -- let me just give  
21 the Board an update as to what's going on with this. So  
22 what Mr. Shinkle is talking about is we also gave you notice  
23 that the decision in the League of Women Voters case in the  
24 Court of Appeals came out on October 29th. So that case --  
25 you're not a party to that. The party to that case is

1 Secretary Benson. And that case involved challenges to  
2 various sections of the election world that were amended in  
3 2018. So that case involved the 15 percent signature  
4 distribution requirement use of a congressional district  
5 form, an affidavit requirement for paid circulators, and  
6 then this checkbox requirement for the form of the petition.  
7 You have a checkbox that you saw on the example in front of  
8 you, whether you were a paid circulator or a volunteer  
9 circulator. And so there's a long saga with these  
10 requirements in this -- in these cases.

11 But what the Court of Appeals did on the 29th,  
12 which was different from, like, the AG's meeting, before the  
13 Court of Claims decision, before -- and the prior Court of  
14 Appeals opinion which was to conclude that the checkbox  
15 requirement was constitutional. So I think as you recall  
16 during this full course of these -- actually this is the  
17 second litigation; right? We've had two rounds of  
18 litigation on this, that the Board -- the advice had been --  
19 what the Board has been doing is to enforce whichever  
20 requirements courts had said or the Attorney General had  
21 said were constitutional and applicable at the time a  
22 petition came before the Board. So that's -- that's really  
23 what you've been doing this whole last, you know, year and a  
24 half while we litigate these issues. And that hasn't been a  
25 problem because most of the petitions got through all the

1 way before we sort of had a change midstream via court.

2           So -- you know, so Fair and Equal went all the way  
3 through, Unlock Michigan, you know, went all the way through  
4 without having sort of a change in the law that was  
5 applicable at the time they were all circulating or turning  
6 it in, or you guys determined deficiency.

7           So that being said, the Supreme Court said that  
8 any -- any appeals, you know, in the Court of Appeals  
9 decision are due today. So Mr. Brewer has filed an  
10 application for leave to appeal challenge (inaudible)  
11 requirement. I am aware that the Department of Attorney  
12 General, which intervened in this case to defend the  
13 statutes, is also filing an application for leave today.  
14 And they will be defending the check -- excuse me -- the  
15 signature distribution requirement and the affidavit  
16 requirement.

17           So the Supreme Court is going to have appeals in  
18 front of it again on all three of -- of the requirements,  
19 including the checkbox requirement that the Court of Appeals  
20 found constitutional. But the wrinkle here is the fact the  
21 Court of Appeals decision is a published decision, so that  
22 means it has precedent, you know, going forward from the  
23 date of that decision. So now there is -- so while the  
24 application for leaves that are all being filed in the Court  
25 of Appeals -- when somebody takes an application, in easy

1 terms, it sort of stays the judgment of the opinion of  
2 the -- of the court below. But that's only true with  
3 respect to the parties to that litigation. It controls the  
4 relationship of the parties to the litigation. So secretary  
5 Benson is the Defendant and, you know, intervening DHC  
6 (inaudible) on voters and several other ballot proposal  
7 committees. So going to the Supreme Court stays its  
8 application as between Secretary Benson as defendant and the  
9 plaintiffs, but it doesn't stay the precedential effect of  
10 the Court of Appeals decision looking outwards to new  
11 parties, new petitions, and new claims. So we have this  
12 sort of wrinkle right now that the Court of Appeals decision  
13 is precedent and binding right now going forward as to, you  
14 know, new --

15 MR. DAUNT: Everything but the one that's --

16 MS. MEINGAST: Everything but, like -- if there  
17 was something between -- if Mr. -- one of Mr. Brewer's  
18 clients was actually circulating a petition, that would be  
19 controlled by the -- that would be stayed by the  
20 application. But everybody outside of that you have what  
21 essentially is now sort of like -- the current law of the  
22 land so to speak is that the checkbox requirement is  
23 constitutional and of course all the ones are not  
24 constitutional. So that does create a little bit of a  
25 conundrum. You have two petitions currently out circulating

1 in the field that were preapproved -- you know, approved  
2 preliminarily by you guys, you know, whatever, a couple  
3 weeks, a couple of months ago where the checkbox requirement  
4 was not applicable. And so that would be I think Unlock 2  
5 and then Secure My Vote. So those are presently the  
6 petitions in the field.

7 MR. DAUNT: And is there anything -- sorry, Norm.

8 MR. SHINKLE: No problem.

9 MR. DAUNT: Is there anything that stops us  
10 from -- from taking the position or looking at things as --  
11 continuing that -- the -- the practice of however you were  
12 approved, whatever the status was, the law, legal precedent,  
13 et cetera, was when you were approved, that's how you will  
14 be dealt with moving all the way forward through the  
15 process, or do we -- do those groups have to go back and  
16 change things? Or let's say Mr. Brewer is successful and  
17 that box is no longer necessary and they say it's not  
18 constitutional, then do -- does MPV have to go take -- you  
19 know, take their stuff off, or can that -- those be  
20 challenged? Like, my mind is, it should be however it is  
21 when we approve you is the process moving forward because  
22 I -- I think that would be kind of ridiculous to make these  
23 other groups, regardless of content, go out and --

24 MR. SHINKLE: That could be all of our minds here  
25 in this room, but there's a court out there that might not



1 agree with us.

2 MS. BRADSHAW: Yup.

3 MR. SHINKLE: And that's I think what the issue  
4 is.

5 MS. MEINGAST: Well, I think that the Board could  
6 take the position that it wants -- as it has the whole time.  
7 Like, we've approved it. We will accept petitions that  
8 we've approved regardless, you know, whether they lack the  
9 checkbox. What we've talked about -- the slight problem  
10 with that -- so here's the -- I'm not speaking very --  
11 there's like -- the best legal advice is not always what  
12 seems fair or just. So in one sense -- so when the -- the  
13 safest course for petitions circulating right now would be  
14 to switch gears to come back in with the petitions with the  
15 checkbox on it, because we can't predict what a court will  
16 decide whether the checkbox requirement should apply  
17 retroactively or it should apply prospectively. In other  
18 words, the court could decide that -- and that's actually  
19 the subject of a (inaudible) -- so the Secretary of State is  
20 going to file an application for leave to appeal as well  
21 today. And our application -- her application is simply  
22 going to ask the court to decide whether any of these --  
23 because the problem we have is this checkbox requirement --  
24 it's also theoretically possible that the Supreme Court  
25 decides the 15 percent requirement is constitutional or that

1 the affidavit requirement is again constitutional. So  
2 there's a number of unknowns. And so our application for  
3 her is going to ask the court to resolve whether any of  
4 these amendments would be -- apply retroactively, which is  
5 the general. See the problem is generally judicial  
6 decisions do apply retroactively, so that means the Court of  
7 Appeals' decision, if it's upheld, would have retroactive  
8 effect unless the Supreme Court decides that it doesn't,  
9 that it should apply prospectively going forward.

10           And then even in that there's some -- there's a  
11 little bit of a problem there because where would the  
12 prospectivity be? Would it be that the court would declare  
13 that it doesn't apply to all -- to any petitions that got  
14 preapproved as to form and were out circulating during this  
15 time or -- which would be consistent with -- essentially  
16 what the Board has said, like we've approved it, that's the  
17 law at the time, we'll take in -- we'll take in back,  
18 even -- need to declare them insufficient because of that --  
19 because of that reason, because they lack the checkbox,  
20 because we preapproved it already without the checkbox under  
21 law at the time.

22           MR. SHINKLE: Is that argument going to be in the  
23 leave that's going to be filed today?

24           MS. MEINGAST: We haven't -- so I'm still in the  
25 drafting mode with -- I haven't been able to run everything

1 by the Secretary of State, but -- so the -- the cleanest  
2 legal advice is -- or legal position is that it would have  
3 prospective effect going -- I mean, that they should -- that  
4 the petitions in the field should switch gears and have  
5 approved forms. There could be an alternate -- alternative  
6 argument that there should be complete prospective  
7 application. In other words, they should just be allowed to  
8 come in and file the petitions that were circulating without  
9 the checkbox and continue to circulate with the -- and not  
10 change course. So there are two -- two ways you could argue  
11 it and it's unclear what the court would do.

12 MR. SHINKLE: We would like the courts to approve  
13 the way we want to do it.

14 MR. DAUNT: Yeah.

15 MS. MEINGAST: Well, that could certainly be --

16 MR. DAUNT: And we -- we've approved the Popular  
17 Vote --

18 MS. MEINGAST: Right.

19 MR. DAUNT: So they're -- they're good to go right  
20 now. They want to go -- Mr. Brewer has 15 people on a bus  
21 outside that he's going to give petitions to and they're  
22 going to go circulate them. They've, you know -- let's say  
23 this takes a month or two months for this process to play  
24 out. Everything they've done is now perhaps wasted or -- or  
25 there's the time in coming back to us and the delay of

1 getting the meeting set. And so I -- in my mind -- and I  
2 strongly disagree with the content of that proposal. But I  
3 don't think it's fair for us to give them the go-ahead and  
4 then have to pull that back down the road. And so how --  
5 how do we -- how do we state our position on that?

6 MS. MEINGAST: Well, I think that's a little bit  
7 of a different question. I'm not prepared to answer that  
8 today. Mr. Brewer's petition right now has the checkbox on  
9 it so he's good; right? They're good to go. The question  
10 we would -- this Board -- or would a court somehow punish a  
11 ballot proposal committee for having more information on the  
12 petition for complying with the law at the time if the  
13 checkbox is simply bad again? It's not clear to me that the  
14 fact that they had it on there and then they didn't need to  
15 have it on there would be grounds, you know, for a future  
16 determination that it's insufficient by this Board, that a  
17 court would even think that that would be a basis for, you  
18 know, invalidating a petition because it actually had the  
19 information on it that it was supposed to at the time. So  
20 that's -- to me that's a little bit of a different question.  
21 And I -- you know, we haven't really looked at that as far  
22 as having -- you know, having complied with the law. The  
23 problem right now is because we have the Court of Appeals  
24 decision and because it's precedent outside to the world and  
25 to all the other cases, you know, is the going forward part.

1 MR. DAUNT: And maybe I'm not being as -- as clear  
2 as I can. But regardless of whether it's too much  
3 information or not enough information, it's approved based  
4 on the law at the time.

5 MS. MEINGAST: Yes.

6 MR. DAUNT: And that's what we are here for. And  
7 so it doesn't matter if they, you know, say down the road it  
8 needs to be printed on red paper. Well, that wasn't the  
9 case when we approved it.

10 MS. MEINGAST: Right.

11 MR. DAUNT: And so -- and that shouldn't punish  
12 the people who are out in the field now.

13 MR. SHINKLE: And we want the court to agree with  
14 that. That's all. We need to -- we need it --

15 MS. MEINGAST: Oh, I'm not really -- I'm not --

16 MR. SHINKLE: We need that, though, in some  
17 document that they're looking at. Okay?

18 MS. MEINGAST: Well, I think -- you know, I  
19 obviously would have to go back to our department and make  
20 sure that they're, you know -- everybody's okay that we do  
21 the amicus. But if the Board moved -- wants to file an  
22 amicus brief, you guys approve it with a vote and you  
23 approve, you know, what it is that you want to say. We  
24 can -- we can't 100 percent fully commit because we have to  
25 talk with our department yet, but presumably it would be

1 permissible for us to -- probably Eric to file an amicus  
2 brief in support of the -- you know, in support of the  
3 applications expressing the position of the Board, that it  
4 wants essentially a completely prospective application, the  
5 checkbox, or any other requirement that the Board would sort  
6 of, you know, reaffirm or pop back up in the future so that  
7 it wouldn't. So what we're going to be saying in your  
8 amicus brief would be, no application to petitions that  
9 have -- were previously approved as to form and that began  
10 circulating and now had changed; that those would be  
11 protected and that those --

12 MR. DAUNT: Why didn't you just tell me to shut up  
13 and let this paper address what I was talking about?

14 MS. MEINGAST: Well, I wanted to make sure that  
15 the Board understood that -- that -- that nobody can tell --  
16 it would be hard to predict what the Supreme Court, you  
17 know, rules for --

18 MS. BRADSHAW: I have a different question, and  
19 it's not about -- it's not about to the form, but more --  
20 you know, we have these two additional items that could come  
21 before us. And I just have a -- a clarification question is  
22 if affidavits were required, there is nothing on this --  
23 there's -- there was -- is there a role for this Board on  
24 those affidavits? I'm just --

25 MS. MEINGAST: (Inaudible) detect that it -- but,

1 you know, having looked at the affidavit -- I believe when  
2 we discussed it before, the affidavit -- the filing  
3 requirement is with the Secretary of State. And she  
4 collects those and saves those. And there really isn't a  
5 Board aspect with respect to that requirement. So it  
6 doesn't -- that's how I see it. Jonathan might disagree.

7 MR. BRATER: No, I -- if I could just --

8 MS. BRADSHAW: Just --

9 MR. BRATER: Oh, sorry. Go ahead.

10 MS. BRADSHAW: Go ahead.

11 MR. BRATER: No, you go.

12 MS. BRADSHAW: I mean, I just -- I'm looking at --  
13 you know, obviously, you know, we've got this -- I'm just  
14 trying to even go back to when we added the nonresident of  
15 Michigan and how -- I couldn't remember if we had some  
16 petitions out there when we added that -- that language on  
17 the end. Norm and Julie?

18 MR. SHINKLE: I don't remember.

19 MS. BRADSHAW: Because I feel --

20 MR. SHINKLE: But that policy has been -- we -- we  
21 accept them if --

22 MS. BRADSHAW: Right, that is --

23 MR. SHINKLE: -- according to the law at the time  
24 we approved the that.

25 MS. BRADSHAW: Yeah. I just -- it's -- it's more

1 of -- I'm not -- I'm not against this. I just -- I want to  
2 just ask a, you know, clarification on that, because I don't  
3 think -- and obviously regardless of how I feel about a  
4 petition or not, it is not fair to a petition member that  
5 followed the rules, they -- they did everything they're  
6 supposed to be doing, they're out in the field, they're  
7 collecting signatures. Because those signatures as I've  
8 said before a legal document and everyone has the right for  
9 their voice to be heard, just that kind of technicality of,  
10 like, "I've been out in the field. I did all of these. Now  
11 I need affidavits. Now I need a percentage." I just --

12 MS. MATUZAK: It's not fair.

13 MS. BRADSHAW: It is not fair. And I think that  
14 we -- we should have something out there that says how the  
15 Board feels.

16 MR. SHINKLE: Well, this language that you gave us  
17 would do that; right? That the form would be -- the legal  
18 form the day we approved it?

19 MS. MEINGAST: This -- this is your form.

20 MS. MATUZAK: No, it's --

21 MR. SHINKLE: This proposal will do that; right?  
22 Do you have a problem with the proposal?

23 MR. BRATER: Can I just jump in?

24 MR. SHINKLE: Yeah, go for it.

25 MR. BRATER: So I just want to -- the way I see,



1 there's sort of three -- with a court decision, there are  
2 sort of three possible ways it could go in terms of current  
3 petitions that are out there. So Secure my Vote, the Board  
4 approved the form on September 27th and the Court of Appeals  
5 decision -- and without the box. The Court of Appeals  
6 decision came down on October 29th upholding the box. So if  
7 they come in later on, they're sort of -- and that  
8 ultimately goes to the court, there's three different ways  
9 it can come down. The court could just say, "Look, I don't  
10 care if the Board approved your form on September 27th  
11 with -- without the box. The box is legally required. So  
12 anything that you collected even, if it was between  
13 September 27th and October 29th, it doesn't have the box,  
14 it's no good." They could do that. The other thing they  
15 could do is say, "The signatures you collected between  
16 September 27th and October 29th without the box are okay,  
17 but because our petition -- our decision came down the 29th,  
18 any petitions that you circulate after the 29th have to have  
19 the box. Or they could say, "Because the Board approved  
20 your form without the box, all the petitions are good even  
21 if they're after the 29th." What we have been recommending  
22 is -- for now is the safest course of action. When I say  
23 "we," I mean the Bureau of Elections is -- is, you know --  
24 after the 29th, you should put the box on there. That's the  
25 safest thing to do. The really, really, really safest thing

1 to do would be just not submit anything with -- but -- but  
2 we're not advising that.

3           So anyway, there's sort of three ways to go and I  
4 just want to note that because even with this language, I  
5 think the way I would read it is if this language would say  
6 that the Board -- you know, what the Board wants to do is  
7 take things as they have first approved them --

8           MR. SHINKLE: Right.

9           MR. BRATER: -- and hope that the court would  
10 agree with that. But there's really different ways it could  
11 come down from from that.

12           MS. MEINGAST: That's right. Jonathan discussed  
13 that --

14           MR. SHINKLE: Well -- but the court's going to  
15 look at this and decide if they're going to agree with it or  
16 not. Then we know.

17           MR. FRACASSI: Yeah.

18           MS. BRADSHAW: So if the court decides that they  
19 have to have the box, are you saying that Secure Michigan  
20 and the Lock 2 would have to come back to us with a -- to  
21 approve another form -- another petition to form that had  
22 the box on it?

23           MR. BRATER: They wouldn't have to because the  
24 approval has to form -- the preapproval form's optional.  
25 But they could -- you know, they would need to have the box

1 on there to have their signatures counted under that  
2 scenario. So we would recommend they did that and they  
3 probably would.

4 MS. MATUZAK: I mean, I'm all about protecting the  
5 citizen's right to petition and upholding fairness in  
6 general. And there is a whole stable of election lawyers  
7 who are going to go to court no matter what decision is made  
8 or how we proceed. I think we should proceed with the sense  
9 of the Board which is very clearly that if we approved it to  
10 form on the day with whatever laws were in place that day,  
11 that that's the petition we should count going forward.

12 MR. DAUNT: Yes.

13 MS. MATUZAK: And everybody else can figure out  
14 the rest of it.

15 MR. SHINKLE: So that's our policy. Do you want  
16 us to put a motion in to have you file that as an amicus  
17 brief?

18 MS. MEINGAST: Yes. I believe that you should.

19 MR. SHINKLE: So a motion's in order to ask our  
20 attorney to file an amicus brief saying exactly what Julie  
21 had said, where our policies bid. The form as the day we  
22 approve it is the form that we're going to accept no matter  
23 what.

24 MS. MATUZAK: Well, I'll make a motion.

25 MS. BRADSHAW: All right.

1 MR. SHINKLE: Made by Julie. Is there support?

2 MS. MATUZAK: Oh, wait; wait. I've got to read  
3 it.

4 MR. DAUNT: She's got to read it first.

5 MR. SHINKLE: Go ahead.

6 MS. MATUZAK:

7 "The Michigan Board of State Canvassers authorizes  
8 an amicus brief with the Michigan Supreme Court in the  
9 PA 608 case asking that any determination by that court  
10 be prospective only and that this Board accept petition  
11 signatures for canvassing if the petition sheets comply  
12 with the instructions that were in effect at the time  
13 of circulation or at the time that the petitions were  
14 approved as to form by this Board."

15 MR. DAUNT: Support.

16 MR. SHINKLE: Okay. Heather, is that okay, then?  
17 That language?

18 MS. MEINGAST: I understand what the -- what --

19 MR. SHINKLE: That was the agreement of the  
20 amicus.

21 MS. MEINGAST: I understand what the Board wishes  
22 to say, so, yes.

23 MR. SHINKLE: Discussion on that motion? Seeing  
24 none, all those in favor of the motion, signify by saying  
25 "aye."

1 ALL: Aye.

2 MR. SHINKLE: All those opposed? Motion's  
3 carried.

4 (Whereupon motion passed at 8:59 a.m.)

5 MR. SHINKLE: We're still on number six, other and  
6 further business properly presented to the Board. Jonathan,  
7 anything from over there?

8 MR. BRATER: Nothing further from me.

9 MR. SHINKLE: Anybody else?

10 MS. BRADSHAW: I have a question. I know you said  
11 that election days ran smoothly. Is there any -- did you  
12 hear any issue on the local level for canvassing? I mean,  
13 obviously you said that there was some, but --

14 MR. BRATER: I have not heard of any significant  
15 problems with canvassing, though most of them would come  
16 in -- I believe that Wayne County, which usually comes in,  
17 they usually need the full two weeks. And the two weeks, it  
18 lapses on Tuesday. I've heard it's going well generally,  
19 but I don't really see everything that's going back and  
20 forth over there 'til they record it. So I can't say that  
21 for sure. But my understanding from what I'm hearing is  
22 that as of August, the issue -- you know, the issues with  
23 balance including at the absent voter counting boards are  
24 much reduced and so I'm expecting to see as we did in August  
25 a pretty low level of out of balances precincts and those

1 that are out of balance, I expect you to mostly explain.  
2 But I can't say that for sure until we see the canvass  
3 performed.

4 MR. DAUNT: I have one. Do you expect any  
5 recounts throughout the state for that motion we approved,  
6 or is that just kind of a prophylactic measure?

7 MS. BRADSHAW: It's just a --

8 MR. FRACASSI: It's a --

9 MR. BRATER: Well, this -- the one year recruit is  
10 just for the state senate elections and those were both wide  
11 margins. So I wouldn't expect us to do any, but there could  
12 be recounts of municipal elections. I know that many of  
13 those are closed. So I expect to see some but we don't  
14 handle those.

15 MR. SHINKLE: Okay. Are we ready to adjourn? We  
16 are adjourned.

17 (Proceedings concluded at 9:00 a.m.)

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25

<p><b>A</b></p> <p><b>a.m</b> 1:6 4:2,22 14:19 19:3 21:1 22:25 23:13 26:3 29:3,9 54:4 55:17</p> <p><b>able</b> 43:25</p> <p><b>Abrahamic</b> 9:7</p> <p><b>absent</b> 54:23</p> <p><b>accept</b> 37:8 42:7 48:21 52:22 53:10</p> <p><b>accepted</b> 26:3</p> <p><b>accurate</b> 11:20 12:4</p> <p><b>achievements</b> 9:11</p> <p><b>aching</b> 9:20</p> <p><b>act</b> 11:16 16:1 17:24 25:16 26:11 34:3</p> <p><b>action</b> 32:6 34:24,25 50:22</p> <p><b>active</b> 24:18 25:20 30:4 31:12</p> <p><b>activity</b> 24:12 25:13</p> <p><b>actual</b> 32:21</p> <p><b>ADAM</b> 1:11</p> <p><b>add</b> 35:10</p> <p><b>added</b> 48:14,16</p> <p><b>additional</b> 2:13 7:5 47:20</p> <p><b>address</b> 47:13</p> <p><b>adjourn</b> 55:15</p> <p><b>adjourned</b> 55:16</p> <p><b>Administrative</b> 11:16</p> <p><b>adopt</b> 11:11</p> <p><b>adopted</b> 12:6</p> <p><b>advice</b> 38:18 42:11 44:2</p> <p><b>advised</b> 28:3</p> <p><b>advising</b> 51:2</p> <p><b>affidavit</b> 38:5 39:15 43:1 48:1,2</p> <p><b>affidavits</b> 47:22,24 49:11</p> <p><b>affixed</b> 18:20</p> <p><b>AG</b> 35:3</p> <p><b>AG's</b> 38:12</p> <p><b>agenda</b> 4:9 14:20 19:9 21:2</p> <p><b>ago</b> 27:2 41:3</p> <p><b>agree</b> 11:17 42:1 46:13 51:10,15</p> <p><b>agreement</b> 53:19</p> <p><b>ahead</b> 8:5 10:21</p>	<p>17:5,9 22:14 48:9 48:10 53:5</p> <p><b>aid</b> 10:10</p> <p><b>alleged</b> 25:3</p> <p><b>allow</b> 2:12 7:3 25:12 26:9 30:15 32:25</p> <p><b>allowed</b> 33:6 44:7</p> <p><b>allowing</b> 34:1</p> <p><b>alternate</b> 44:5</p> <p><b>alternative</b> 44:5</p> <p><b>Amen</b> 7:22,25</p> <p><b>amended</b> 6:17 25:8 38:2</p> <p><b>amendments</b> 43:4</p> <p><b>amicus</b> 37:15 46:21 46:22 47:1,8 52:16,20 53:8,20</p> <p><b>amount</b> 29:16</p> <p><b>announcement</b> 33:4</p> <p><b>answer</b> 9:25 15:23 17:4,12 45:7</p> <p><b>ANTHONY</b> 1:9</p> <p><b>anybody</b> 32:5 33:4 54:9</p> <p><b>anyway</b> 37:3 51:3</p> <p><b>APA</b> 12:3</p> <p><b>apologize</b> 22:3 24:4 26:17</p> <p><b>apparently</b> 34:25</p> <p><b>appeal</b> 26:24 32:9 34:11,19 36:4,25 39:10 42:20</p> <p><b>appealed</b> 17:24</p> <p><b>appeals</b> 14:4,10 15:9 24:24 25:4,6 25:22 26:22 27:4 27:21 28:12,17 32:2,6,8,12,14,18 33:6 37:1,24 38:11,14 39:8,8 39:17,19,21,25 40:10,12 45:23 50:4,5</p> <p><b>Appeals'</b> 43:7</p> <p><b>APPEARANCES</b> 1:12</p> <p><b>appeared</b> 33:10</p> <p><b>appears</b> 18:19 20:17</p> <p><b>applicable</b> 38:21 39:5 41:4</p> <p><b>application</b> 24:1 26:24,25 34:18 35:24 36:7 39:10</p>	<p>39:13,24,25 40:8 40:20 42:20,21,21 43:2 44:7 47:4,8</p> <p><b>applications</b> 47:3</p> <p><b>apply</b> 2:15 5:24 7:8 15:11 42:16,17 43:4,6,9,13</p> <p><b>applying</b> 31:22</p> <p><b>appreciable</b> 8:20</p> <p><b>appropriate</b> 27:16 31:25</p> <p><b>approval</b> 2:3 15:1,1 15:8 18:18 51:24</p> <p><b>approve</b> 4:12 12:16 13:10,14 14:13 18:15,22 20:9 22:20 37:6 41:21 44:12 46:22,23 51:21 52:22</p> <p><b>approved</b> 4:16 14:8 14:10,24 15:2,12 15:14 16:3 24:4 24:25 25:2,7 37:6 37:8,17 41:1,12 41:13 42:7,8 43:16 44:5,16 46:3,9 47:9 48:24 49:18 50:4,10,19 51:7 52:9 53:14 55:5</p> <p><b>approximate</b> 28:9</p> <p><b>approximately</b> 28:10</p> <p><b>area</b> 8:12</p> <p><b>arena</b> 35:16</p> <p><b>argue</b> 44:10</p> <p><b>argument</b> 34:20 43:22 44:6</p> <p><b>arguments</b> 12:1</p> <p><b>articulated</b> 26:7</p> <p><b>asked</b> 13:10 25:23 34:5</p> <p><b>asking</b> 25:17 31:14 34:13 53:9</p> <p><b>aspect</b> 48:5</p> <p><b>assault</b> 10:5</p> <p><b>assaulted</b> 10:8</p> <p><b>Assistant</b> 1:14 34:12</p> <p><b>attempt</b> 24:21</p> <p><b>attorney</b> 23:20 30:8 34:12 37:15 38:20 39:11 52:20</p> <p><b>Attorneys</b> 1:14</p>	<p><b>August</b> 54:22,24</p> <p><b>authority</b> 30:22</p> <p><b>authorize</b> 23:3 34:24</p> <p><b>authorizes</b> 21:15 53:7</p> <p><b>average</b> 8:18</p> <p><b>await</b> 17:25</p> <p><b>aware</b> 25:7 39:11</p> <p><b>aye</b> 4:18,19 14:15 14:16 18:24,25 20:22,23 22:22,23 23:10,11 53:25 54:1</p> <hr/> <p style="text-align: center;"><b>B</b></p> <hr/> <p><b>Baase</b> 36:5</p> <p><b>back</b> 8:25,25 9:15 10:18 26:19 27:22 27:24 32:12,16,16 32:24 33:7 37:14 41:15 42:14 43:17 44:25 45:4 46:19 47:6 48:14 51:20 54:19</p> <p><b>bad</b> 32:19 45:13</p> <p><b>balance</b> 54:23 55:1</p> <p><b>balanced</b> 20:13</p> <p><b>balances</b> 54:25</p> <p><b>balancing</b> 20:16</p> <p><b>ballot</b> 20:12 40:6 45:11</p> <p><b>Ban</b> 36:21</p> <p><b>based</b> 5:10 6:13 36:3 46:3</p> <p><b>basically</b> 16:3</p> <p><b>basis</b> 25:4 45:17</p> <p><b>battery</b> 10:5</p> <p><b>beat</b> 10:10</p> <p><b>beaten</b> 10:8</p> <p><b>beating</b> 9:4</p> <p><b>began</b> 47:9</p> <p><b>behalf</b> 19:8 34:25</p> <p><b>behavior</b> 5:17 13:17</p> <p><b>believe</b> 6:4 17:16 24:2 28:16 31:19 36:14 48:1 52:18 54:16</p> <p><b>Benson</b> 1:3 26:8 38:1 40:5,8</p> <p><b>best</b> 12:9 31:13 42:11</p> <p><b>bid</b> 52:21</p>	<p><b>bill</b> 5:4</p> <p><b>binding</b> 40:13</p> <p><b>bit</b> 15:9 40:24 43:11 45:6,20</p> <p><b>blind</b> 26:20</p> <p><b>board</b> 1:4,8,9,10 2:13 3:1 4:4 5:20 7:5 8:1,12 12:16 14:24 15:2 17:23 18:15 19:6 20:4,7 21:14,22,22,23,25 22:15,18 23:3,4,8 24:4,6,23 25:2,5 25:12,17 26:4 30:22 32:1,3,4,10 32:16,22 33:8 34:1,11,13,14,21 34:23,23,25 35:23 37:21 38:18,19,22 42:5 43:16 45:10 45:16 46:21 47:3 47:5,15,23 48:5 49:15 50:3,10,19 51:6,6 52:9 53:7 53:10,14,21 54:6</p> <p><b>Board's</b> 7:11 10:19 12:14 18:4,17 19:24</p> <p><b>boards</b> 54:23</p> <p><b>body</b> 19:18</p> <p><b>books</b> 25:13 26:10</p> <p><b>box</b> 7:16 14:2,4,9 15:6,8,13 16:2,4,9 16:10,16,18 17:18 37:4,6,14,18 41:17 50:5,6,11 50:11,13,16,19,20 50:24 51:19,22,25</p> <p><b>BRADSHAW</b> 1:10 4:12 12:15,24 13:2,5,12,25 16:10,16 19:25 20:2 21:11,14,18 21:21 22:9,11,15 30:4,9 31:7,11 36:20 42:2 47:18 48:8,10,12,19,22 48:25 49:13 51:18 52:25 54:10 55:7</p> <p><b>Brater</b> 1:10 4:7 5:2 6:8,10 7:13 11:5,7 11:9,13,15 13:4,6 13:9,11,13,19,21</p>
--	---	---	---	--

14:1,6,23 15:18 15:21 16:5,8,11 18:7,12 19:12 20:15 21:5,17,19 22:2,6,10,13 24:6 27:21 28:4,8 29:1 30:3,6 33:25 48:7 48:9,11 49:23,25 51:9,23 54:8,14 55:9 <b>Brenda</b> 25:1 <b>Brewer</b> 17:1,2,3,7 17:10,11,16,21 18:4 19:4,5 39:9 41:16 44:20 <b>Brewer's</b> 40:17 45:8 <b>bridge</b> 17:22 <b>bridges</b> 18:1 <b>brief</b> 37:1,15 46:22 47:2,8 52:17,20 53:8 <b>brother</b> 9:1 <b>brought</b> 37:19 <b>Bureau</b> 23:3 32:5 34:5 50:23 <b>bus</b> 44:20 <b>business</b> 3:1 15:10 23:19 54:6	38:1,3 39:12 46:9 53:9 <b>cases</b> 35:21,23 38:10 45:25 <b>cast</b> 19:21 21:7 23:5 <b>centuries</b> 8:23 <b>CER</b> 1:18 <b>certainly</b> 11:17 25:9 32:7,14 44:15 <b>certification</b> 2:10 7:1 <b>certified</b> 1:19 20:6 21:25 22:17 <b>cetera</b> 41:13 <b>Chair</b> 1:8,9 5:2 19:5 21:12 26:20 35:15 <b>Chairman</b> 17:7,21 18:2 32:22 35:9 <b>challenge</b> 36:16 39:10 <b>challengeable</b> 17:20 <b>challenged</b> 41:20 <b>challenges</b> 38:1 <b>challenging</b> 17:24 <b>change</b> 5:3 39:1,4 41:16 44:10 <b>changed</b> 47:10 <b>charge</b> 11:8 <b>chat</b> 23:18 <b>check</b> 16:18,25 39:14 <b>checkbox</b> 38:6,7,14 39:19 40:22 41:3 42:9,15,16,23 43:19,20 44:9 45:8,13 47:5 <b>checkoff</b> 37:4 <b>checks</b> 17:18 <b>child</b> 9:22 <b>choice</b> 9:14 <b>choices</b> 9:9 <b>chose</b> 12:2 <b>Chris</b> 3:2 23:18,20 23:23,24 26:22 27:1,4,8,10,15 28:1,13,15,18 29:3,6,8,10,12,18 29:20 31:15,18 32:21,25 33:3,8 34:9 35:5,6 36:1 <b>Church</b> 8:13 <b>churches</b> 9:17 <b>cider</b> 16:20	<b>circulate</b> 16:21 30:24 37:18 44:9 44:22 50:18 <b>circulating</b> 39:5 40:18,25 42:13 43:14 44:8 47:10 <b>circulation</b> 25:24 53:13 <b>circulations</b> 31:24 <b>circulator</b> 15:6 16:23 38:8,9 <b>circulators</b> 16:4 38:5 <b>circumstance</b> 37:10 <b>citizen's</b> 52:5 <b>Claim</b> 36:25 <b>claims</b> 36:24 38:13 40:11 <b>clarification</b> 25:11 47:21 49:2 <b>cleanest</b> 44:1 <b>clear</b> 30:22 37:14 45:13 46:1 <b>clearly</b> 52:9 <b>clerk</b> 7:14 <b>clients</b> 40:18 <b>close</b> 25:13 26:12 30:1 <b>closed</b> 55:13 <b>closer</b> 24:11 <b>closes</b> 28:23 <b>closing</b> 24:11 26:10 <b>clue</b> 32:5 <b>coincides</b> 29:20 <b>collect</b> 24:17,20 <b>collected</b> 50:12,15 <b>collecting</b> 49:7 <b>collects</b> 48:4 <b>college</b> 2:10 6:25 <b>come</b> 7:15 23:20 25:23 27:7,23 33:7 35:8 42:14 44:8 47:20 50:7,9 51:11,20 54:15 <b>comes</b> 26:12 32:24 54:16 <b>coming</b> 10:15 37:13 44:25 <b>comment</b> 7:12 10:22 11:3 <b>commentary</b> 6:12 <b>comments</b> 6:3,5,6,7 6:10	<b>commit</b> 46:24 <b>committed</b> 2:16 5:25 7:9 <b>committee</b> 26:9 36:21 45:11 <b>committees</b> 24:16 40:7 <b>common</b> 10:24 11:2 11:8 <b>commonly</b> 11:18 <b>communication</b> 24:5,5 <b>communities</b> 8:22 9:16 <b>complete</b> 44:6 <b>completed</b> 32:10 <b>completely</b> 8:22 47:4 <b>complied</b> 45:22 <b>comply</b> 53:11 <b>complying</b> 45:12 <b>concern</b> 11:17,20 <b>conclude</b> 38:14 <b>concluded</b> 55:17 <b>conclusions</b> 26:5 <b>concurrence</b> 36:7 <b>conditional</b> 15:1 <b>conduct</b> 25:3 35:1 <b>conducted</b> 30:2 <b>Conference</b> 1:5 4:1 <b>confirm</b> 25:18,19 27:16 <b>confirmation</b> 25:11 25:25 26:1,8 27:15,17 <b>confirming</b> 26:1 29:25 <b>confusion</b> 15:13 <b>congressional</b> 38:4 <b>conned</b> 8:25 <b>consideration</b> 2:3,5 2:19 4:10,24 14:21 <b>considered</b> 26:3 <b>considering</b> 22:8 34:24 <b>consistent</b> 26:5 43:15 <b>constitutional</b> 14:4 38:15,21 39:20 40:23,24 41:18 42:25 43:1 <b>contact</b> 27:24 34:3	<b>contacted</b> 28:3 33:13,16 <b>contained</b> 25:2 <b>contains</b> 5:13 <b>content</b> 41:23 45:2 <b>CONTENTS</b> 2:1 <b>continue</b> 44:9 <b>continuing</b> 41:11 <b>contributions</b> 24:19 26:13 <b>controlled</b> 40:19 <b>controls</b> 40:3 <b>controversy</b> 30:11 <b>conundrum</b> 40:25 <b>conversation</b> 34:12 <b>cooperation</b> 19:6 <b>Corporation</b> 1:19 <b>correct</b> 4:5,7 13:18 14:6 25:6,18,23 27:1,8,10,23 29:1 30:3 34:2,4 <b>corrected</b> 32:19,20 <b>Corrections</b> 2:14 5:22 6:18 7:7 11:1 12:6 <b>correctly</b> 10:24 <b>count</b> 2:17 52:11 <b>counted</b> 52:1 <b>counter</b> 8:22 <b>counties</b> 20:19 <b>counting</b> 54:23 <b>country</b> 8:18 <b>County</b> 19:13 20:6 21:6,25 22:18 54:16 <b>couple</b> 8:7 41:2,3 <b>course</b> 34:4 38:16 40:23 42:13 44:10 50:22 <b>court</b> 14:3,3,10 15:9 15:14,16 16:1 17:25 23:25 24:9 24:24 25:4,6,22 26:22 27:4,21 28:11,17 32:2,6,7 32:12,14,15,18 33:6 34:7 35:18 35:22,24 36:9,24 37:1,11,13,16,24 38:11,13,13 39:1 39:7,8,17,19,21 39:24 40:2,7,10 40:12 41:25 42:15
---	--	--	--	--

**C**

**call** 4:3 9:6  
**called** 26:4  
**campaign** 25:12,16  
26:15 28:3,20  
30:16 31:23,25  
32:5  
**canvass** 20:17 55:2  
**Canvassers** 1:4 4:5  
12:16 20:7 21:15  
22:1,18 23:3 32:3  
32:4,23 33:9  
34:13 53:7  
**canvasses** 19:16,17  
**canvassing** 53:11  
54:12,15  
**card** 9:14 17:3,5  
**cards** 10:17  
**care** 50:10  
**carried** 4:21 54:3  
**carries** 14:18 19:1  
20:25 22:24 23:12  
**case** 18:1 33:25  
36:13 37:23,24,25



42:18,22,24 43:3 43:6,8,12 44:11 45:10,17,23 46:13 47:16 50:1,4,5,8,9 51:9,18 52:7 53:8 53:9 <b>court's</b> 35:20 36:3 51:14 <b>courts</b> 37:5 38:20 44:12 <b>create</b> 11:1,11,11,19 40:24 <b>created</b> 9:2 <b>credits</b> 2:9,12,13,14 2:15 5:16,18,20 5:21 6:24 7:3,5,6 7:8 8:15 <b>crime</b> 2:16 5:24 7:9 <b>crimes</b> 8:19 <b>criminal</b> 6:12 9:9 <b>cross</b> 17:22 18:1 <b>curious</b> 14:2 <b>current</b> 35:23 40:21 50:2 <b>currently</b> 15:12 30:6 37:4 40:25	<b>dealt</b> 41:14 <b>death</b> 10:10 <b>December</b> 29:8 <b>decide</b> 11:24 42:16 42:18,22 51:15 <b>decides</b> 15:16 42:25 43:8 51:18 <b>decision</b> 15:15 17:25 24:25 25:22 26:23 27:22 32:3,6,8,14 34:8,19 36:4 37:23 38:13 39:9 39:21,21,23 40:10 40:12 43:7 45:24 50:1,5,6,17 52:7 <b>decisions</b> 43:6 <b>declaratory</b> 30:15 <b>declare</b> 43:12,18 <b>declared</b> 8:17 <b>decrease</b> 8:20 <b>deer</b> 26:20 <b>defend</b> 39:12 <b>defendant</b> 40:5,8 <b>defending</b> 39:14 <b>defer</b> 30:7 <b>deficiency</b> 39:6 <b>define</b> 16:19 <b>defined</b> 9:10 16:22 16:23,24 <b>definition</b> 17:14,16 <b>defrauded</b> 9:1 <b>degree</b> 2:10 5:19 6:25 9:6 10:2 <b>delay</b> 44:25 <b>delivered</b> 4:16 <b>denied</b> 26:25 <b>denying</b> 24:1 26:24 <b>department</b> 1:2 2:14 5:22 6:18 7:6 11:1 12:6 39:11 46:19,25 <b>depends</b> 15:24 <b>descendant</b> 9:3 <b>detect</b> 47:25 <b>determination</b> 31:2 32:11,17 45:16 53:9 <b>determinations</b> 30:23 <b>determine</b> 25:14 32:17 <b>determined</b> 39:6 <b>devastating</b> 8:21	<b>develop</b> 9:14 <b>DHC</b> 40:5 <b>different</b> 38:12 45:7 45:20 47:18 50:8 51:10 <b>difficulty</b> 20:13 <b>dilemmas</b> 16:2 <b>director</b> 2:6 12:18 12:19 <b>disabilities</b> 2:12 7:3 <b>disadvantaged</b> 8:21 <b>disagree</b> 24:9 45:2 48:6 <b>disburse</b> 25:15 <b>disbursing</b> 26:11 <b>disciplinary</b> 2:9,15 5:10,21 6:23 7:7 <b>discussed</b> 15:4 28:22 30:12 48:2 51:12 <b>discussion</b> 4:17 12:21 14:14 15:10 18:23 20:20 22:21 23:8 37:19 53:23 <b>dissent</b> 14:18 <b>distributed</b> 26:14 <b>distribution</b> 38:4 39:15 <b>district</b> 2:21,23 19:10,13,20 20:6 21:4,6,25 22:8,17 38:4 <b>document</b> 46:17 49:8 <b>documentation</b> 20:12 <b>doing</b> 38:19,23 49:6 <b>dollars</b> 24:17 <b>doughnuts</b> 16:20 <b>Douglas</b> 19:21 <b>draft</b> 22:3 <b>drafted</b> 2:6 6:20 12:18 <b>drafting</b> 6:4 43:25 <b>due</b> 34:10 39:9 <b>duties</b> 30:19	<b>earning</b> 2:10,11 5:19 6:25 7:2 <b>easy</b> 39:25 <b>economies</b> 8:21 <b>effect</b> 6:1 34:18 40:9 43:8 44:3 53:12 <b>Effectively</b> 29:8 <b>effort</b> 31:3 <b>efforts</b> 30:13 <b>Egyptian</b> 9:4,5 10:8 10:10 <b>either</b> 6:3 12:1 35:1 <b>elected</b> 24:12,12 30:2,25 <b>election</b> 2:21,23 19:10,12,20 20:5 20:10 21:4,5,24 22:16,21 23:5 25:13 26:4 31:24 31:25 38:2 52:6 54:11 <b>elections</b> 1:10,11 2:6 12:18 19:15,19 23:4 31:23 32:5 34:5 50:23 55:10 55:12 <b>Electronic</b> 1:19 <b>element</b> 15:22 <b>eliminate</b> 2:8 5:12 6:22 <b>email</b> 6:15 28:7 33:21 36:2 <b>emails</b> 24:18 <b>Emilee</b> 1:18 <b>employed</b> 2:11 7:1 <b>employment</b> 5:19 <b>ends</b> 32:13 <b>enforce</b> 38:19 <b>enforcing</b> 31:22 <b>English</b> 10:24,25 <b>entire</b> 19:7 <b>equal</b> 8:18 35:21 39:2 <b>Eric</b> 36:12 47:1 <b>ERIK</b> 1:14 <b>error</b> 25:2,6,23 34:2 <b>essentially</b> 40:21 43:15 47:4 <b>establish</b> 2:9,13 5:14,18,20,22 6:24 7:5 11:19 12:7 <b>established</b> 5:7	<b>et</b> 41:13 <b>everybody</b> 5:24 40:20 52:13 <b>everybody's</b> 46:20 <b>exact</b> 28:6 29:16 <b>exactly</b> 6:19 30:12 52:20 <b>example</b> 38:7 <b>excuse</b> 30:19 39:14 <b>exhausted</b> 37:10 <b>existed</b> 5:15 <b>existence</b> 30:12 31:2 <b>existing</b> 31:22 <b>expect</b> 55:1,4,11,13 <b>expecting</b> 54:24 <b>expenditures</b> 26:13 <b>expert</b> 6:11 <b>experts</b> 6:13 <b>explain</b> 8:8 55:1 <b>expressing</b> 47:3 <b>extend</b> 18:18 <b>extended</b> 2:8 5:10 6:23
<b>D</b>				
<b>D-a-l-e</b> 8:4 <b>Dale</b> 2:18 7:15,15 7:22 8:3,3,6,9,10 10:7,12,16 <b>date</b> 25:3,19,21 28:6 28:9 32:19 33:16 33:17 37:6 39:23 <b>dates</b> 31:23 <b>DAUNT</b> 1:9 4:14 7:24 10:3 12:20 13:18,20,22,24 16:12,15,18 18:5 18:8,10,15 20:8 22:19 23:6 27:6,9 28:13 29:14,16,22 31:5,8,12,16 40:15 41:7,9 44:14,16,19 46:1 46:6,11 47:12 52:12 53:4,15 55:4 <b>day</b> 29:13 49:18 52:10,10,21 <b>days</b> 25:21 54:11 <b>dead</b> 32:11				
<b>E</b>				
<b>earlier</b> 9:9 <b>earn</b> 2:13 5:16,18 7:5 9:15 <b>earned</b> 2:9,14,15 6:24 7:6,8 8:15				
<b>F</b>				
<b>fact</b> 39:20 45:14 <b>failure</b> 8:14 <b>fair</b> 35:21 39:2 42:12 45:3 49:4 49:12,13 <b>fairly</b> 34:6 <b>fairness</b> 52:5 <b>faith</b> 9:7 <b>far</b> 31:1 45:21 <b>father</b> 9:1 <b>fault</b> 22:10 <b>favor</b> 4:17 14:14 18:24 20:21 22:22 23:9 53:24 <b>feel</b> 12:10 48:19 49:3 <b>feeling</b> 12:2 <b>feels</b> 49:15 <b>fellow</b> 10:7 <b>Fewer</b> 35:18 <b>field</b> 15:12 41:1,6 44:4 46:12 49:6 49:10 <b>figure</b> 25:14 33:15 52:13 <b>file</b> 37:15 42:20 44:8 46:21 47:1 52:16 52:20				

<p><b>filed</b> 24:2,3 26:2 39:9,24 43:23 <b>filing</b> 39:13 48:2 <b>filings</b> 30:19 <b>filled</b> 9:7 <b>final</b> 24:21 <b>finance</b> 25:16 26:15 30:17 31:23,25 <b>Firm</b> 1:20 <b>first</b> 4:9 25:18 36:5 36:5 51:7 53:4 <b>five</b> 21:3 <b>fixed</b> 27:20 <b>floor</b> 14:13 <b>follow</b> 11:16,22 <b>followed</b> 49:5 <b>following</b> 27:21 <b>follows</b> 2:6 6:20 <b>forefathers</b> 8:23 <b>form</b> 2:19 13:2,3,8 13:15,23,24 14:7 14:8,21 15:1,1 18:13,15,23 38:5 38:6 43:14 47:9 47:19 49:17,18,19 50:4,10,20 51:21 51:21,24 52:10,21 52:22 53:14 <b>form's</b> 51:24 <b>formal</b> 15:4 <b>formed</b> 24:16 <b>forms</b> 44:5 <b>forth</b> 54:20 <b>forward</b> 32:20 39:22 40:13 41:14 41:21 43:9 45:25 52:11 <b>found</b> 39:20 <b>four</b> 19:9 <b>Fracassi</b> 1:11 6:6,9 24:6 28:5,10,16 33:18,20 51:17 55:8 <b>fracking</b> 36:20,21 36:23 <b>free</b> 9:13 16:20 <b>Friday</b> 23:25 26:18 26:21 34:20 35:20 36:4 <b>front</b> 10:18 17:17 33:14 38:7 39:18 <b>full</b> 38:16 54:17 <b>fully</b> 46:24</p>	<p><b>funds</b> 25:14,15 26:11,14 <b>further</b> 3:1 8:25 14:13 18:23 20:20 22:21 54:6,8 <b>future</b> 45:15 47:6</p> <hr/> <p style="text-align: center;"><b>G</b></p> <hr/> <p><b>gaining</b> 9:1 <b>gatherer</b> 15:7,7 <b>gears</b> 42:14 44:4 <b>general</b> 1:14 6:6 20:15 30:8 38:20 39:12 43:5 52:6 <b>generally</b> 19:14 43:5 54:18 <b>get-out-of-jail</b> 9:13 <b>getting</b> 26:12 45:1 <b>gift</b> 9:12 <b>Gilchrist</b> 24:3 <b>give</b> 37:20 44:21 45:3 <b>given</b> 33:5 <b>glad</b> 9:24 10:3 <b>go</b> 5:9 8:5 10:21 12:7,23 17:5,8 21:2 22:14 24:20 41:15,18,23 44:19 44:20,22 45:9 46:19 48:9,10,11 48:14 49:24 50:2 51:3 52:7 53:5 <b>go-ahead</b> 45:3 <b>God</b> 7:21 9:22 <b>goes</b> 50:8 <b>going</b> 4:9 7:17,19 15:10 17:4 18:5 32:20 34:7,14 36:2,7 37:17,21 39:17,22 40:7,13 42:20,22 43:3,9 43:22,23 44:3,21 44:22 45:25 47:7 51:14,15 52:7,11 52:22 54:18,19 <b>good</b> 4:8 5:17 7:24 8:6 9:14 13:17 14:12 16:25 18:3 20:14 23:24,25 24:8,10 35:5,7,14 44:19 45:9,9 50:14,20 <b>Gotcha</b> 16:14</p>	<p><b>govern</b> 5:23 <b>governor</b> 24:2,3,16 25:1 28:24 <b>Graziano</b> 36:15 <b>Grill</b> 1:14 30:10 34:12 36:14,21,24 <b>grounds</b> 45:15 <b>group</b> 17:23 <b>groups</b> 41:15,23 <b>guess</b> 29:17 <b>guessing</b> 28:11 <b>guilty</b> 10:2 <b>guys</b> 21:22 24:14 26:18 39:6 41:2 46:22</p> <hr/> <p style="text-align: center;"><b>H</b></p> <hr/> <p><b>habits</b> 9:15 <b>half</b> 35:22 38:24 <b>hand</b> 7:16,18 <b>handle</b> 55:14 <b>handled</b> 20:18 <b>happen</b> 34:7 <b>happened</b> 25:9 27:11,11,12 <b>hard</b> 5:8 47:16 <b>harder</b> 33:21 <b>head</b> 31:9 <b>hear</b> 54:12 <b>heard</b> 27:24 28:25 33:12 49:9 54:14 54:18 <b>hearing</b> 54:21 <b>Heather</b> 1:13 37:18 53:16 <b>Hebrew</b> 9:4 10:7 <b>held</b> 19:12 <b>help</b> 7:21 <b>heritage</b> 9:7 <b>heroes</b> 9:8 <b>hid</b> 9:6 <b>hoarding</b> 7:14 <b>hold</b> 26:20 <b>hope</b> 51:9 <b>hopefully</b> 24:13 <b>Huizenga</b> 21:7</p> <hr/> <p style="text-align: center;"><b>I</b></p> <hr/> <p><b>idea</b> 37:14,18 <b>impact</b> 8:21 <b>import</b> 30:12 <b>important</b> 11:25 26:1</p>	<p><b>inaudible</b> 39:10 40:6 42:19 47:25 <b>incarcerated</b> 5:11 <b>included</b> 15:21 <b>including</b> 5:17 20:18 33:17 39:19 54:23 <b>incumbent</b> 32:10 <b>indicate</b> 17:23 <b>indicating</b> 16:12 <b>information</b> 28:19 45:11,19 46:3,3 <b>informed</b> 34:6,16 35:1 <b>inheritance</b> 9:2 <b>initiated</b> 5:3,3,5 <b>initiation</b> 2:7 6:21 12:17 <b>initiative</b> 2:5 4:25 6:14 12:17 18:16 <b>injunction</b> 31:21 <b>inside</b> 9:18,20 <b>instructions</b> 53:12 <b>insufficient</b> 43:18 45:16 <b>interesting</b> 15:22 24:23 <b>interplay</b> 30:18 <b>intervened</b> 33:10 39:12 <b>intervening</b> 40:5 <b>invalidating</b> 45:18 <b>involved</b> 38:1,3 <b>Israel</b> 9:3 <b>issue</b> 23:21 24:23 25:10 30:11 31:1 34:17 42:3 54:12 54:22 <b>issued</b> 23:25 26:22 <b>issues</b> 19:16 20:15 24:9,14 34:22,22 36:4,6,11 38:24 54:22 <b>item</b> 14:20 21:2 <b>items</b> 47:20</p> <hr/> <p style="text-align: center;"><b>J</b></p> <hr/> <p><b>Jacob</b> 8:25 <b>jam</b> 37:2 <b>January</b> 26:3,15 29:2,3,11 30:1 <b>Jeanette</b> 4:15 21:12 21:13</p>	<p><b>JEANNETTE</b> 1:10 <b>JOCELYN</b> 1:3 <b>Jonathan</b> 1:10 4:5 5:1 18:5 19:11 21:4 48:6 51:12 54:6 <b>Jonathan's</b> 10:19 <b>judgment</b> 40:1 <b>judicial</b> 43:5 <b>Julie</b> 1:9 10:21 20:2 48:17 52:20 53:1 <b>jump</b> 49:23 <b>justice</b> 6:12 8:11,12</p> <hr/> <p style="text-align: center;"><b>K</b></p> <hr/> <p><b>Kent</b> 19:18 21:6,25 22:18 <b>killed</b> 9:5 <b>kind</b> 18:6 31:5 36:9 41:22 49:9 55:6 <b>know</b> 11:19,23 12:11 14:2 17:8 17:14 23:20 24:15 25:8 28:6,8 33:17 34:15,17 35:3,5 36:2,8 38:23 39:2 39:3,8,22 40:5,14 41:1,2,19 42:8 44:22 45:15,18,21 45:22,25 46:7,18 46:20,23 47:2,6 47:17,20 48:1,13 48:13 49:2 50:23 51:6,16,25 54:10 54:22 55:12</p> <hr/> <p style="text-align: center;"><b>L</b></p> <hr/> <p><b>LaChapelle</b> 25:1,5 25:19 31:19 33:16 <b>lack</b> 42:8 43:19 <b>laid</b> 31:17 <b>land</b> 40:22 <b>language</b> 6:4,9,11 14:23 15:2 17:12 18:20 48:16 49:16 51:4,5 53:17 <b>Lansing</b> 1:15 <b>lapses</b> 54:18 <b>late</b> 24:4,18 26:17 <b>law</b> 2:8,15 5:3,5,6 5:12,13,16,24,25 6:14,18,22 7:8 26:6 31:24,25</p>
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32:8,15 39:4 40:21 41:12 43:17 43:21 45:12,22 46:4 48:23 <b>laws</b> 5:4 52:10 <b>lawsuit</b> 26:8 30:11 31:20,20 <b>lawyers</b> 52:6 <b>League</b> 37:23 <b>leave</b> 24:1 26:24 36:8 39:10,13 42:20 43:23 <b>leaves</b> 39:24 <b>leftover</b> 25:14 26:14 <b>legal</b> 11:23 15:22 24:23 34:22,22 35:16 36:4,6,10 41:12 42:11 44:2 44:2 49:8,17 <b>legally</b> 50:11 <b>legislation</b> 2:7 6:21 <b>let's</b> 4:11 23:17 33:14 41:16 44:22 <b>letter</b> 24:6 <b>level</b> 14:9 18:13 36:25 54:12,25 <b>licensed</b> 17:8 <b>Liedel</b> 35:7,9,12,18 <b>Lieutenant</b> 24:3 <b>lifelong</b> 9:11 <b>light</b> 15:9 <b>line</b> 15:5 17:13 <b>litigate</b> 38:24 <b>litigated</b> 14:12 <b>litigation</b> 30:7 31:4 31:12 34:9,10 36:15 38:17,18 40:3,4 <b>little</b> 40:24 43:11 45:6,20 <b>local</b> 54:12 <b>Lock</b> 51:20 <b>locked</b> 8:16,18 <b>long</b> 38:9 <b>longer</b> 41:17 <b>look</b> 24:10 32:11 50:9 51:15 <b>looked</b> 45:21 48:1 <b>looking</b> 9:4 14:5,9 40:10 41:10 46:17 48:12 <b>lousy</b> 11:4 <b>loved</b> 9:23	<b>loves</b> 9:23 <b>low</b> 54:25 <hr/> <b>M</b> <b>M-i-l-f-o-r-d</b> 8:4 <b>Macomb</b> 19:13,18 20:6 <b>mailed</b> 4:11 <b>main</b> 5:12 <b>maker</b> 9:23 <b>Malerman</b> 28:5 <b>mandatory</b> 2:8 6:22 <b>manner</b> 18:19 <b>margins</b> 55:11 <b>mark</b> 15:6 17:3,7,10 17:11,16,21 19:5 21:7 <b>math</b> 25:14 <b>matter</b> 46:7 52:7,22 <b>matters</b> 30:16 31:24 31:25 <b>MATUZAK</b> 1:9 7:12 10:20,22 11:6,8,12 12:10 13:8,10 16:9,13 17:1 18:21 20:1,3 20:11 21:10,16 23:1,15 27:19 28:22 29:5,7,19 29:25 33:15,19,23 35:15 36:19,23 49:12,20 52:4,13 52:24 53:2,6 <b>MCL</b> 26:2 <b>mean</b> 11:6 12:6 17:18,20 44:3 48:12 50:23 52:4 54:12 <b>meaning</b> 32:8,15 <b>means</b> 11:10,11 39:22 43:6 <b>measure</b> 55:6 <b>meeting</b> 1:4 2:3 4:3 4:4,10 14:24 26:18,20 34:13 37:19 38:12 45:1 <b>meetings</b> 34:11 <b>meets</b> 15:4 <b>MEINGAST</b> 1:13 16:22 18:9 35:19 36:12 37:20 40:16 42:5 43:24 44:15 44:18 45:6 46:5	46:10,15,18 47:14 47:25 49:19 51:12 52:18 53:18,21 <b>Melissa</b> 28:5,7 33:20 <b>member</b> 1:9,10 8:10 49:4 <b>mess</b> 22:12 <b>Methodist</b> 8:13 <b>Michigan</b> 1:1,15 2:5 2:16 4:4,25 5:4,25 7:9 8:11,12,17 12:18 17:25 23:25 24:13 25:16 36:22 39:3 48:15 51:19 53:7,8 <b>Michigan's</b> 8:14 <b>Microsoft</b> 1:5 4:1 <b>midst</b> 31:10 <b>midstream</b> 39:1 <b>Milford</b> 2:18 7:15 7:22 8:3,3,6,9,10 10:7,12,16 <b>military</b> 2:13 7:4 <b>mind</b> 41:20 45:1 <b>minds</b> 41:24 <b>mini</b> 7:14 <b>minimum</b> 2:8 5:8,8 6:22 <b>ministerial</b> 34:1,3 <b>minors</b> 2:12 7:4 <b>minute</b> 9:12 <b>minutes</b> 2:3 4:10,12 4:16 8:7 <b>misconduct</b> 2:9 5:11 6:24 <b>mistakes</b> 9:10 <b>mode</b> 43:25 <b>moment</b> 7:13 10:24 <b>Monday</b> 1:6 4:2 <b>money</b> 17:19 <b>month</b> 28:9 44:23 <b>months</b> 24:15,21 26:23 27:2 41:3 44:23 <b>morning</b> 23:24,25 <b>Moses</b> 9:7 10:1 <b>motion</b> 4:12,17,18 4:20,22 12:22 14:12,14,17,19 18:24 19:3 20:21 20:24 21:1 22:22 22:25 23:2,9,12	23:13 30:21 52:16 52:24 53:23,24 54:4 55:5 <b>motion's</b> 52:19 54:2 <b>motions</b> 23:14,16 <b>move</b> 4:23 12:15 18:15 19:25 20:1 20:4 21:14,21,23 22:15 23:2 <b>moved</b> 12:21 18:22 20:9 22:20 23:7 46:21 <b>moves</b> 4:15 <b>moving</b> 41:14,21 <b>MPV</b> 41:18 <b>municipal</b> 55:12 <b>murder</b> 10:2 <b>murderer</b> 9:7 <hr/> <b>N</b> <b>name</b> 8:2 36:14 <b>National</b> 2:20 14:22 18:16 <b>nearing</b> 24:22 <b>necessary</b> 41:17 <b>need</b> 11:22 16:4,5 23:21 27:13 35:2 43:18 45:14 46:14 46:14,16 49:11,11 51:25 54:17 <b>needs</b> 11:16 34:23 46:8 <b>neither</b> 32:4 <b>Network</b> 1:19 <b>never</b> 27:24 28:19 32:20 33:9 34:11 <b>new</b> 2:9 5:18 6:24 28:2,19 29:13 40:10,11,11,14 <b>news</b> 24:8,10 28:2 <b>night</b> 24:5 36:3 <b>nonresident</b> 48:14 <b>noon</b> 29:15 <b>nope</b> 21:16,16,16,16 <b>Norm</b> 41:7 48:17 <b>NORMAN</b> 1:8 <b>note</b> 30:13 33:25 51:4 <b>notes</b> 12:3 <b>notice</b> 26:17 36:25 37:22 <b>notified</b> 33:4 <b>November</b> 1:6 2:21	2:23 4:2 12:19 19:10 20:5,7 21:3 21:23 22:1,16,18 23:5 25:20,21 31:3 <b>number</b> 1:20 4:23 19:8 21:2 23:19 43:2 54:5 <hr/> <b>O</b> <b>obligations</b> 30:18 <b>obvious</b> 34:7 <b>obviously</b> 46:19 48:13 49:3 54:13 <b>occur</b> 26:14 28:1 <b>occurred</b> 26:9 27:18 <b>occurring</b> 25:7 <b>October</b> 2:4 4:10,13 4:16 37:24 50:6 50:13,16 <b>offer</b> 8:13 <b>offered</b> 16:20 <b>office</b> 19:21 20:5 21:24 22:17 <b>official</b> 10:9 33:3 34:23 <b>officials</b> 24:12 30:25 <b>Oh</b> 7:13,14 10:21 13:4,9 16:7 20:2 21:21 22:2 27:5 35:11 36:23 46:15 48:9 53:2 <b>okay</b> 6:8,10 7:10,15 10:14 12:13,13,14 13:8 14:11,11 16:24,25 18:14 19:8,23 20:20 21:9 22:11 23:1 27:9,25 28:21 29:24 33:19,23,24 35:2,3,5,11 37:18 46:17,20 50:16 53:16,16 55:15 <b>one's</b> 15:14 <b>ones</b> 19:18 40:23 <b>onus</b> 27:7 <b>operation</b> 32:8 <b>opinion</b> 15:9 38:14 40:1 <b>opportunity</b> 9:14,21 24:7 25:5 27:23 30:14 33:1 <b>opposed</b> 4:20 14:17
--	---	---	---	---

19:1 20:24 22:24 54:2 <b>option</b> 33:5 <b>optional</b> 51:24 <b>order</b> 4:3 24:1 32:22 35:20 52:19 <b>Ottawa</b> 1:15 <b>outside</b> 40:20 44:21 45:24 <b>outstanding</b> 25:10 <b>outwards</b> 40:10 <b>Owens</b> 1:18	18:19,20,23 25:18 27:19 31:19,24 32:19 35:25 36:16 36:19,20 37:5 38:6,22 40:18 45:8,12,18 49:4,4 50:17 51:21 52:5 52:11 53:10,11 <b>petition's</b> 27:3 <b>petitioner</b> 34:3 <b>petitions</b> 11:24 15:11 24:1,25 25:21 26:2 37:3,9 37:12 38:25 40:11 40:25 41:6 42:7 42:13,14 43:13 44:4,8,21 47:8 48:16 50:3,18,20 53:13 <b>Pew</b> 8:16 <b>picky</b> 11:6 <b>place</b> 52:10 <b>plain</b> 10:25 <b>Plaintiff's</b> 36:14 <b>plaintiffs</b> 40:9 <b>play</b> 9:16 44:23 <b>please</b> 8:2 21:20 35:3 <b>pleasure</b> 10:19 12:14 18:4 19:24 <b>point</b> 15:13,24 20:11 30:5 32:13 <b>pointing</b> 12:12 <b>policies</b> 52:21 <b>policy</b> 48:20 52:15 <b>pop</b> 47:6 <b>Popular</b> 2:20 13:7 14:22 18:17 44:16 <b>position</b> 6:7 26:7 41:10 42:6 44:2 45:5 47:3 <b>possible</b> 42:24 50:2 <b>posted</b> 4:5 <b>potential</b> 9:20 <b>practice</b> 41:11 <b>Pre-printed</b> 23:16 <b>preaching</b> 9:18 <b>preapproval</b> 51:24 <b>preapproved</b> 41:1 43:14,20 <b>precedent</b> 39:22 40:13 41:12 45:24 <b>precedential</b> 40:9	<b>precincts</b> 54:25 <b>precise</b> 11:25 <b>predict</b> 42:15 47:16 <b>preliminarily</b> 41:2 <b>prepared</b> 14:25 17:11 45:7 <b>presented</b> 3:1 12:19 24:24 54:6 <b>presently</b> 41:5 <b>presumably</b> 25:24 46:25 <b>pretty</b> 54:25 <b>prevailed</b> 36:24 <b>previously</b> 11:23 47:9 <b>principle</b> 8:15 <b>principles</b> 8:23 <b>printed</b> 6:15 46:8 <b>prior</b> 5:15 6:4 38:13 <b>prison</b> 2:11 5:19 7:1 <b>prisoner</b> 2:10,14 6:25 7:6 <b>prisoners</b> 2:12,12 5:10,16,18 7:3,4 8:16 <b>prisons</b> 9:13,18 <b>proactively</b> 32:7 <b>probably</b> 12:9 28:11 29:14 47:1 52:3 <b>problem</b> 12:9 15:19 27:3 33:20 38:25 41:8 42:9,23 43:5 43:11 45:23 49:22 <b>problems</b> 54:15 <b>procedure's</b> 34:14 <b>Procedures</b> 11:16 <b>proceed</b> 52:8,8 <b>Proceedings</b> 55:17 <b>process</b> 11:14,16,22 12:3,7 19:7 26:10 32:9 34:17 41:15 41:21 44:23 <b>productive</b> 9:16 <b>program</b> 2:11 7:2 <b>prohibiting</b> 31:21 <b>prolong</b> 36:8 <b>promulgate</b> 2:15 7:7 10:23 11:2,10,17 11:18 12:2,8 <b>proper</b> 14:7 18:13 <b>properly</b> 3:1 54:6 <b>prophylactic</b> 55:6 <b>proponents</b> 36:18	<b>proposal</b> 18:18,20 40:6 45:2,11 49:21,22 <b>propose</b> 4:24 6:20 12:5 <b>proposed</b> 5:3,4 6:14 12:23 30:22 <b>prospective</b> 44:3,6 47:4 53:10 <b>prospectively</b> 42:17 43:9 <b>prospectivity</b> 43:12 <b>protect</b> 10:5 35:21 <b>protected</b> 47:11 <b>protecting</b> 52:4 <b>prove</b> 9:21 <b>provided</b> 28:2 30:25 <b>providing</b> 27:23 30:24 <b>provision</b> 30:15 <b>provisions</b> 5:14 <b>Public</b> 17:24 <b>publicly</b> 26:1 <b>published</b> 39:21 <b>pull</b> 45:4 <b>punish</b> 45:10 46:11 <b>purpose</b> 2:5,6 12:17 26:16 34:1 <b>put</b> 27:6,6 33:14 50:24 52:16	53:4 <b>reading</b> 11:21 <b>ready</b> 13:13 55:15 <b>reaffirm</b> 47:6 <b>really</b> 12:8 15:13 38:22 45:21 46:15 48:4 50:25,25,25 51:10 54:19 <b>reason</b> 12:2 32:13 43:19 <b>recall</b> 24:1,11 25:4 25:13,21 26:2,4 26:13 28:23 30:13 30:13 31:1,3,23 35:25 38:15 <b>recalls</b> 24:15 30:2,5 <b>receive</b> 6:3,10 <b>received</b> 6:5,6,11 27:19 36:25 <b>recidivism</b> 8:20 <b>recognizes</b> 21:12 <b>recommend</b> 52:2 <b>recommending</b> 15:8 50:21 <b>record</b> 8:1 20:4 21:22,23 22:15 54:20 <b>RECORDED</b> 1:18 <b>Recorder</b> 1:19 <b>recording</b> 2:21,23 19:9 21:3 <b>records</b> 2:14 7:6 <b>recount</b> 23:4 <b>recounts</b> 23:8 55:5 55:12 <b>recruit</b> 55:9 <b>recurrent</b> 30:13 <b>red</b> 46:8 <b>redeem</b> 9:9,15,21 <b>redemptive</b> 9:11 <b>reduce</b> 2:10 6:25 8:15 <b>reduced</b> 54:24 <b>regarding</b> 31:1 35:25 <b>regardless</b> 16:18 41:23 42:8 46:2 49:3 <b>regards</b> 30:16,21 <b>Registration</b> 1:20 <b>regulators</b> 16:4 <b>rehabilitation</b> 2:11 7:2
<b>P</b>				
<b>P55439</b> 1:13 <b>P64713</b> 1:14 <b>PA</b> 53:9 <b>packet</b> 4:11 <b>packets</b> 12:22 <b>page</b> 2:2 14:7 <b>paid</b> 15:7 16:5,6,7 16:20,22 17:14,17 17:19,19 38:5,8 <b>paper</b> 46:8 47:13 <b>part</b> 45:25 <b>partial</b> 2:22,24 <b>parties</b> 40:3,4,11 <b>party</b> 37:25,25 <b>pass</b> 35:10 <b>passed</b> 4:22 5:6 14:19 19:3 21:1 22:25 23:13 54:4 <b>pastor</b> 8:24 <b>pastoral</b> 8:13 <b>pending</b> 26:23 30:7 <b>people</b> 9:4,20 15:25 23:17 33:17 35:18 44:20 46:12 <b>percent</b> 38:3 42:25 46:24 <b>percentage</b> 49:11 <b>perfectly</b> 20:13 <b>performed</b> 55:3 <b>period</b> 24:11 25:25 <b>periods</b> 37:8 <b>permissible</b> 47:1 <b>personally</b> 9:19 <b>perspective</b> 8:13 <b>petition</b> 2:5,19 4:25 5:11 12:17,23 13:6 14:21,23,25 15:6,14,20,25 16:21 17:20 18:16				
<b>Q</b>				
<b>question</b> 10:22 14:11 15:23 16:13 30:6,17 35:16 45:7,9,20 47:18 47:21 54:10 <b>questions</b> 7:11 9:25 10:14 17:4,12 18:3,8 19:23 <b>quote</b> 9:3				
<b>R</b>				
<b>raise</b> 7:16,18 24:17 <b>raised</b> 34:11 <b>ran</b> 54:11 <b>rates</b> 8:20 <b>rationale</b> 26:6,6 <b>re-establish</b> 5:15 <b>reach</b> 28:7 <b>reached</b> 27:22,25 28:5 34:16 <b>read</b> 6:19 51:5 53:2				

<p><b>related</b> 31:14  <b>relates</b> 31:22  <b>relating</b> 36:16  <b>relationship</b> 40:4  <b>relevant</b> 19:18  <b>relief</b> 30:21  <b>remain</b> 24:17  <b>remains</b> 35:24  <b>remand</b> 34:19  <b>remanded</b> 24:25              25:4 32:2,22 34:1              34:14,18,20,21  <b>remember</b> 9:22              48:15,18  <b>reminded</b> 36:12  <b>repeal</b> 2:7 5:5,12              6:21  <b>replaced</b> 6:17  <b>reported</b> 19:16              20:16 26:14  <b>Reporting</b> 1:19  <b>reports</b> 20:17  <b>represent</b> 17:23              23:4  <b>represents</b> 23:8  <b>request</b> 25:18  <b>requested</b> 36:3  <b>require</b> 2:14 5:22              7:6 11:1  <b>required</b> 47:22              50:11  <b>requirement</b> 38:4,5              38:6,15 39:11,15              39:16,19 40:22              41:3 42:16,23,25              43:1 47:5 48:3,5  <b>requirements</b> 15:4              38:10,20 39:18  <b>reread</b> 22:3  <b>research</b> 8:16  <b>residents</b> 9:13  <b>resolution</b> 27:16  <b>resolve</b> 36:10 43:3  <b>respect</b> 31:9 34:10              40:3 48:5  <b>response</b> 32:6 34:15  <b>rest</b> 52:14  <b>restart</b> 25:24  <b>results</b> 2:21,23 19:9              20:4 21:3,23              22:16  <b>retroactive</b> 43:7  <b>retroactively</b> 42:17</p>	<p>43:4,6  <b>REV</b> 7:22 8:3,6,10              10:7,12,16  <b>Reverend</b> 2:18 8:3,9  <b>review</b> 2:13 5:21 7:5              24:7  <b>reviewed</b> 15:3  <b>ridiculous</b> 41:22  <b>right</b> 7:15,16,18              11:12 12:15 13:19              13:25 14:1,5 16:2              16:12 21:10 27:14              29:5,10,23 31:11              33:2 37:5 38:17              40:12,13 42:13              44:18,19 45:8,9              45:23 46:10 48:22              49:8,17,21 51:8              51:12 52:5,25  <b>road</b> 12:11 45:4              46:7  <b>role</b> 9:16 47:23  <b>room</b> 41:25  <b>round</b> 36:15  <b>rounds</b> 38:17  <b>rule</b> 37:16  <b>rules</b> 2:15 5:22 7:7              11:1,2,17 12:5,7              31:22,23 47:17              49:5  <b>ruling</b> 17:24  <b>rulings</b> 30:15  <b>run</b> 43:25</p> <hr/> <p style="text-align: center;"><b>S</b></p> <hr/> <p><b>S</b> 1:13  <b>safest</b> 42:13 50:22              50:25,25  <b>saga</b> 38:9  <b>sand</b> 9:6  <b>Saturdays</b> 9:18  <b>saves</b> 48:4  <b>saw</b> 9:3 36:2 38:7  <b>saying</b> 4:18 10:2,6              10:23 14:15 17:19              18:24 20:22 22:22              23:10 47:7 51:19              52:20 53:24  <b>says</b> 15:5 32:22              49:14  <b>scenario</b> 52:2  <b>scheduled</b> 4:4 26:18  <b>Scrivener's</b> 25:6,23</p>	<p>34:2  <b>second</b> 4:14 9:6 10:2              31:1 32:2 38:17  <b>secretary</b> 1:3 26:7              30:16 31:21 38:1              40:4,8 42:19 44:1              48:3  <b>section</b> 5:12,13,13  <b>sections</b> 6:16 38:2  <b>Secure</b> 41:5 50:3              51:19  <b>see</b> 4:11 12:1 17:5              20:16 21:22 24:14              24:14 29:23 37:15              43:5 48:6 49:25              54:19,24 55:2,13  <b>seeing</b> 4:17 9:5              14:14 18:23 20:21              22:21 23:9 53:23  <b>seeking</b> 24:19 25:11              27:7 36:6,16  <b>seeks</b> 31:21  <b>seen</b> 9:19 37:1  <b>senate</b> 19:10,13,20              21:4,5 22:8,21              55:10  <b>senator</b> 2:21,23 20:6              21:24 22:17  <b>send</b> 6:14  <b>sending</b> 24:18  <b>sense</b> 42:12 52:8  <b>sentence</b> 5:8,9  <b>sentenced</b> 2:12,16              5:24 7:4,9  <b>sentences</b> 2:8,10 5:7              6:23,25 13:17  <b>sentencing</b> 2:8 5:4,5              5:6,16,25 6:13,16              6:18,22 8:14  <b>September</b> 34:13              50:4,10,13,16  <b>serve</b> 8:11  <b>served</b> 8:15  <b>service</b> 33:11  <b>serving</b> 9:17  <b>set</b> 33:13 45:1  <b>seven</b> 26:23  <b>seventh</b> 24:2  <b>shared</b> 28:19  <b>sheets</b> 53:11  <b>Shinkle</b> 1:8 4:3,8,15              4:20,23 5:2 7:10              7:14,23,25 8:5,7</p>	<p>10:1,4,11,13,17              10:21 11:4,10,14              12:4,13,21,25              13:16,23 14:2,11              14:17,20 15:16,19              15:24 16:7,14,19              16:24 17:2,5,8,14              17:18 18:3,14,22              19:1,4,8,23 20:9              20:20,24 21:2,9              21:12 22:5,7,14              22:20,24 23:7,12              23:14,16 26:20,21              26:25 27:2,5,13              27:25 28:21,25              29:2,9,11,13,15              29:23 32:18,24              33:2,6,12,24 35:2              35:7,11,14 37:3              37:22 41:8,24              42:3 43:22 44:12              46:13,16 48:18,20              48:23 49:16,21,24              51:8,14 52:15,19              53:1,5,16,19,23              54:2,5,9 55:15  <b>shut</b> 47:12  <b>side</b> 12:1  <b>sign</b> 15:25,25 16:4,6              20:14  <b>signature</b> 14:7 15:7              15:7 36:17,18              38:3 39:15  <b>signatures</b> 24:17,20              37:9 49:7,7 50:15              52:1 53:11  <b>signees</b> 36:17  <b>significant</b> 54:14  <b>signify</b> 4:18 14:15              18:24 20:21 22:22              23:10 53:24  <b>simply</b> 17:12 19:5              42:21 45:13  <b>sitting</b> 31:8  <b>six</b> 23:19 24:1,25              26:23 27:2 54:5  <b>slight</b> 42:9  <b>smoothly</b> 54:11  <b>society</b> 9:16  <b>solemnly</b> 7:17,19  <b>soliciting</b> 24:19  <b>somebody</b> 17:18              28:17 39:25</p>	<p><b>sons</b> 9:2  <b>sorry</b> 7:13 13:4,9,9              13:11 20:2 21:21              22:1,2,10 41:7              48:9  <b>sort</b> 25:10 33:16              35:15 36:5 39:1,4              40:1,12,21 47:5              50:1,2,7 51:3  <b>speak</b> 7:11 10:17              40:22  <b>speaking</b> 10:24              42:10  <b>special</b> 2:11,21,23              7:2 19:10,12,19              20:5,10 21:4,5,24              22:16 23:5  <b>specific</b> 11:22  <b>specifically</b> 11:15              12:3  <b>specified</b> 23:21  <b>spell</b> 8:1  <b>spent</b> 8:18  <b>spoken</b> 32:16  <b>sponsor</b> 14:25 27:7              27:22  <b>sponsored</b> 12:17  <b>squeeze</b> 26:19  <b>stable</b> 52:6  <b>staff</b> 1:10,11 14:9              15:3 18:13 19:6,8              23:3,7 33:12 34:3              34:16,24  <b>start</b> 23:18 25:12  <b>state</b> 1:1,2,3,4,13              2:21,23 4:4 8:1,16              8:17 9:18 12:16              16:3,17 19:13,15              19:19 20:5 21:14              21:24 22:17 23:3              30:16 31:21 42:19              44:1 45:5 48:3              53:7 55:5,10  <b>State's</b> 26:7  <b>statement</b> 2:18 3:2              26:15 27:17  <b>statewide</b> 19:14              20:16,18 24:12              28:24 30:1  <b>status</b> 41:12  <b>statute</b> 16:22,24              17:17 25:8  <b>statute's</b> 30:23,24</p>
---	--	---	---	---

<p><b>statutes</b> 6:16 39:13  <b>statutory</b> 17:12  <b>stay</b> 40:9  <b>stayed</b> 40:19  <b>stays</b> 40:1,7  <b>steps</b> 26:9  <b>Steven</b> 35:7,9,12,18  <b>stops</b> 41:9  <b>stories</b> 9:8  <b>story</b> 10:14 32:20  <b>Street</b> 1:15  <b>strong</b> 12:2  <b>strongly</b> 45:2  <b>study</b> 8:17  <b>stuff</b> 31:13 41:19  <b>subject</b> 30:25 31:20 42:19  <b>submit</b> 51:1  <b>submitted</b> 2:5,20 4:25 14:21 18:16 24:5 25:1,19  <b>substance</b> 18:18  <b>suburban</b> 9:17  <b>successful</b> 41:16  <b>suggested</b> 37:19  <b>suggesting</b> 9:12 27:13 35:4 37:16  <b>suggestion</b> 37:5  <b>suing</b> 35:17  <b>summary</b> 2:5,6 4:24 6:13,17 12:16  <b>summer</b> 27:22 28:16  <b>support</b> 12:20 18:21 20:8 22:19 23:6 24:16,19 25:3 47:2,2 53:1,15  <b>supported</b> 12:21 18:22 20:9 22:20 23:7  <b>supports</b> 4:15  <b>supposed</b> 37:6,7 45:19 49:6  <b>Supreme</b> 15:16 16:1 17:25 23:25 24:9 32:15 35:22,24 36:3,9 37:11,13 39:7,17 40:7 42:24 43:8 47:16 53:8  <b>sure</b> 10:23 11:2 12:5 15:23 18:10 24:7 30:10 33:10 46:20</p>	<p>47:14 54:21 55:2  <b>surprised</b> 36:9  <b>swear</b> 7:17,19  <b>swearing</b> 29:17,23  <b>switch</b> 42:14 44:4  <b>sworn</b> 23:22  <b>system</b> 5:7,15</p> <hr/> <p style="text-align: center;"><b>T</b></p> <hr/> <p><b>TABLE</b> 2:1  <b>take</b> 5:1 8:24 18:1 34:23,25 37:13 41:18,19 42:6 43:17,17 51:7  <b>taken</b> 24:10  <b>takes</b> 39:25 44:23  <b>talk</b> 46:25  <b>talked</b> 42:9  <b>talking</b> 13:16 21:18 37:22 47:13  <b>tall</b> 7:16  <b>Team</b> 8:11  <b>Teams</b> 1:5 4:1  <b>technicality</b> 49:9  <b>tell</b> 47:12,15  <b>term</b> 2:22,24 16:23  <b>terms</b> 34:24 40:1 50:2  <b>terribly</b> 10:8  <b>territory</b> 31:4  <b>testify</b> 9:19  <b>testimony</b> 6:11  <b>Texas</b> 8:19  <b>thank</b> 4:8 5:2 7:18 7:23 10:14,16 17:7 19:5,6,7 23:24 31:5,5 35:6  <b>Thanks</b> 9:24 35:9  <b>theoretically</b> 42:24  <b>thing</b> 4:9 5:23 50:14 50:25,25  <b>thing's</b> 37:10  <b>things</b> 5:17 19:15 27:17,18 31:19 41:10,16 51:7  <b>think</b> 6:15 7:24 8:19 11:10,19,19,20 12:1,8 13:2 15:9 15:21 17:22 19:16 25:9 26:1 27:15 27:16 28:25 31:13 32:9 33:9,13 34:6 34:21,22 35:5,19</p>	<p>36:12 38:15 41:4 41:22 42:3,5 45:3 45:6,17 46:18 49:3,13 51:5 52:8  <b>thinking</b> 31:8  <b>third</b> 24:20  <b>thought</b> 20:3  <b>three</b> 24:16 39:18 50:1,2,8 51:3  <b>throwing</b> 12:11  <b>time</b> 2:9,15 5:10,21 6:1,23 7:8 8:15,18 9:24 13:16 14:25 29:16 30:2,24 34:15 36:10,17 37:8 38:21 39:5 42:6 43:15,17,21 44:25 45:12,19 46:4 48:23 53:12 53:13  <b>times</b> 24:14  <b>today</b> 7:20 16:2 24:18 26:18 27:12 34:21 39:9,13 42:21 43:23 45:8  <b>told</b> 10:13  <b>Tony</b> 4:15  <b>top</b> 14:9 15:5 16:9 16:10  <b>topic</b> 37:3  <b>total</b> 19:20 21:6  <b>track</b> 17:12  <b>tracking</b> 36:16  <b>training</b> 2:11 7:2  <b>Transformational</b> 8:11  <b>Trebilcock</b> 3:2 23:18,23,24 26:22 27:1,4,8,10,15 28:1,15,18 29:3,6 29:8,10,12,18,20 31:9,15,18 32:21 32:25 33:3,8,17 34:5,9 35:6,12 36:1  <b>Trebilcock's</b> 31:14  <b>trial</b> 14:3  <b>tribes</b> 9:2  <b>tried</b> 11:24  <b>triumphs</b> 9:8  <b>true</b> 30:2 40:2  <b>truth</b> 2:8 5:5,6,15 5:25 6:16,18,21</p>	<p>7:20,20,21 8:14  <b>try</b> 26:19 33:22  <b>trying</b> 33:18 48:14  <b>Tuesday</b> 54:18  <b>turn</b> 21:10  <b>turning</b> 39:5  <b>turns</b> 20:3  <b>two</b> 4:23 23:17 24:17,21 31:18,19 35:21 37:8 38:17 40:25 44:10,10,23 47:20 54:17,17  <b>two-parter</b> 23:2  <b>two-year</b> 24:11  <b>types</b> 2:9 5:18,20 6:24</p> <hr/> <p style="text-align: center;"><b>U</b></p> <hr/> <p><b>ultimately</b> 9:10 50:8  <b>unanimously</b> 4:21  <b>unclear</b> 44:11  <b>unconstitutional</b> 14:3  <b>understand</b> 11:21 31:16 32:3 53:18 53:21  <b>understandable</b> 11:25  <b>understanding</b> 18:17 54:21  <b>understood</b> 47:15  <b>United</b> 2:6 4:25 8:11 8:12 12:18  <b>unknowns</b> 43:2  <b>Unlock</b> 39:3 41:4  <b>update</b> 30:9 34:9 37:21  <b>updated</b> 35:20  <b>updates</b> 34:10  <b>upheld</b> 43:7  <b>uphold</b> 8:14  <b>upholding</b> 50:6 52:5  <b>usage</b> 11:2  <b>use</b> 11:4 38:4  <b>usual</b> 35:16  <b>usually</b> 54:16,17</p> <hr/> <p style="text-align: center;"><b>V</b></p> <hr/> <p><b>v</b> 26:8  <b>valid</b> 34:22  <b>variety</b> 19:14  <b>various</b> 5:17 34:10 38:2</p>	<p><b>verifications</b> 30:18  <b>verified</b> 15:3  <b>verify</b> 18:12  <b>veterans</b> 2:13 7:4  <b>Vice</b> 1:9  <b>victim</b> 10:4  <b>Video</b> 1:5 4:1  <b>view</b> 34:2  <b>voice</b> 49:9  <b>volunteer</b> 15:7 16:8 38:8  <b>vote</b> 2:20 14:22 18:17 35:21 41:5 44:17 46:22 50:3  <b>voter</b> 54:23  <b>voters</b> 37:23 40:6  <b>votes</b> 19:2,21,22 20:25 21:7,8 23:4</p> <hr/> <p style="text-align: center;"><b>W</b></p> <hr/> <p><b>wait</b> 53:2,2  <b>wander</b> 31:4  <b>want</b> 18:10 19:6 21:19 26:19 30:19 31:9 44:13,20 46:13,23 49:1,25 51:4 52:15  <b>wanted</b> 25:25 47:14  <b>wants</b> 42:6 46:21 47:4 51:6  <b>wasn't</b> 35:1 37:7 46:8  <b>wasted</b> 9:20 44:24  <b>way</b> 9:5,15 22:12 33:14 37:16 39:1 39:2,3 41:14 44:13 49:25 51:5  <b>Wayne</b> 54:16  <b>ways</b> 5:14 44:10 50:2,8 51:3,10  <b>we'll</b> 16:25 17:22 18:1 20:16 37:11 37:15 43:17,17  <b>we're</b> 4:8 10:18 14:4 15:10 24:11,21 25:11,17 26:12 33:13,13 35:15 36:6,7 47:7 51:2 52:22 54:5  <b>we've</b> 11:23 20:15 28:22 38:17 42:7 42:8,9 43:16 44:16 48:13</p>
---	---	---	--	---

<p><b>week</b> 16:1 24:19 28:11 35:20,22 <b>weeks</b> 41:3 54:17,17 <b>Weiser</b> 26:8 30:11 31:20,20 <b>went</b> 19:15 39:2,3 <b>weren't</b> 17:19 23:22 24:9 <b>West</b> 1:15 <b>whichever</b> 38:19 <b>Whitmer</b> 25:12 26:9 28:3,19 32:4 <b>wide</b> 55:10 <b>window</b> 28:23 29:25 30:1 <b>winner</b> 19:21 21:7 <b>wire</b> 37:2 <b>wish</b> 7:11 <b>wishes</b> 53:21 <b>withdraw</b> 36:7 <b>witness</b> 10:4,11,12 10:14 <b>witnesses</b> 7:10 <b>Women</b> 37:23 <b>word</b> 2:17 4:24 11:4 12:4 16:19 <b>words</b> 6:19 10:19 11:18 12:14,23,25 14:13 24:20 42:18 44:7 <b>working</b> 2:11 7:1 <b>world</b> 38:2 45:24 <b>worse</b> 8:19 <b>worst</b> 8:17 <b>wouldn't</b> 47:7 51:23 55:11 <b>Wow</b> 10:13 <b>Wozniak</b> 19:21 <b>wrapped</b> 19:17 <b>wrapping</b> 25:12 <b>wrinkle</b> 39:20 40:12 <b>write</b> 11:2 <b>wrongfully</b> 9:1</p> <hr/> <p style="text-align: center;"><b>X</b></p> <hr/> <p style="text-align: center;"><b>Y</b></p> <hr/> <p><b>yeah</b> 11:9,13 12:10 13:5,11,12,21 16:8,11 17:7 18:7 18:9 20:15 22:5 22:13,14 28:15,18 29:12,18,19,21,22</p>	<p>31:18 33:15 35:19 36:1 44:14 48:25 49:24 51:17 <b>year</b> 28:23 29:7 38:23 55:9 <b>Year's</b> 29:13 <b>year-end</b> 26:12 <b>years</b> 8:25 9:3 <b>youthful</b> 9:10 <b>yup</b> 12:13 31:7,7 35:6,6 42:2</p> <hr/> <p style="text-align: center;"><b>Z</b></p> <hr/> <p style="text-align: center;"><b>0</b></p> <hr/> <p><b>0-0-0-</b> 55:19</p> <hr/> <p style="text-align: center;"><b>1</b></p> <hr/> <p><b>1</b> 2:3 26:3 29:4,11 30:1 <b>1-800-632-2720</b> 1:20 <b>1/1/2023</b> 2:22,24 <b>100</b> 2:17 4:24 6:19 10:19 12:14,23,25 14:13 46:24 <b>100-word</b> 2:5 <b>11:59</b> 26:3 29:3,9 <b>12</b> 9:2,2 <b>14</b> 2:20 <b>15</b> 1:6 4:2 38:3 42:25 44:20 <b>15th</b> 12:19 <b>168.951(a)</b> 26:2 <b>17th</b> 25:20,21 31:3 <b>18</b> 24:15 <b>180</b> 25:21 <b>19</b> 2:22 <b>1990's</b> 5:6 6:2 <b>1st</b> 29:2</p> <hr/> <p style="text-align: center;"><b>2</b></p> <hr/> <p><b>2</b> 2:5,21,23 41:4 51:20 <b>200</b> 9:3 <b>2006</b> 9:18 <b>2012</b> 25:8,9 <b>2018</b> 38:3 <b>2020-</b> 29:6 <b>2021</b> 1:6 2:4,21,23 4:2,13 12:19 20:5 20:7 21:24 22:1 22:16,18 23:5</p>	<p>24:25 25:20 <b>2022</b> 26:3 29:6 <b>21</b> 2:24 <b>23</b> 3:1,2 <b>25,735</b> 21:8 <b>26</b> 2:4 <b>26th</b> 4:10,13,16 <b>27th</b> 24:24 25:22 28:14,15 50:4,10 50:13,16 <b>28</b> 2:23 21:4 22:8,9 <b>28th</b> 21:6 22:4,6,17 22:21 <b>29th</b> 37:24 38:11 50:6,13,16,17,18 50:21,24 <b>2nd</b> 19:10 20:5 21:3 21:24 22:16 23:5</p> <hr/> <p style="text-align: center;"><b>3</b></p> <hr/> <p><b>3</b> 2:19 <b>30</b> 24:15 <b>30,555</b> 19:22 <b>31st</b> 28:23 29:10 <b>34</b> 5:13 <b>3700</b> 8:25 <b>373-1110</b> 1:16</p> <hr/> <p style="text-align: center;"><b>4</b></p> <hr/> <p><b>4</b> 2:4,17,21 <b>4-0</b> 22:24 <b>42,487</b> 21:7 <b>48909</b> 1:15 <b>49,393</b> 19:20 <b>4th</b> 20:7</p> <hr/> <p style="text-align: center;"><b>5</b></p> <hr/> <p><b>5</b> 2:23 <b>517</b> 1:16 <b>525</b> 1:15 <b>5th</b> 22:1,18</p> <hr/> <p style="text-align: center;"><b>6</b></p> <hr/> <p><b>6</b> 3:1 <b>608</b> 17:24 53:9</p> <hr/> <p style="text-align: center;"><b>7</b></p> <hr/> <p style="text-align: center;"><b>8</b></p> <hr/> <p><b>8</b> 2:18,21 19:10 22:6 <b>8:00</b> 1:6 4:2 <b>8:01</b> 4:22 <b>8:13</b> 14:19</p>	<p><b>8:18</b> 19:3 <b>8:20</b> 21:1 <b>8:21</b> 22:25 <b>8:22</b> 23:13 <b>8:59</b> 54:4 <b>8151</b> 1:20 <b>8th</b> 19:13,20 20:6 20:10 21:25</p> <hr/> <p style="text-align: center;"><b>9</b></p> <hr/> <p><b>9:00</b> 55:17 <b>9361</b> 1:18</p>
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# EXHIBIT B



# BOARD OF STATE CANVASSERS MEETING

November 29, 2021

Prepared by



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STATE OF MICHIGAN  
DEPARTMENT OF STATE  
JOCELYN BENSON, SECRETARY OF STATE  
  
BOARD OF STATE CANVASSERS MEETING  
  
7710 West Saginaw Highway, Lansing, Michigan  
  
Monday, November 29, 2021, 2:00 p.m.

BOARD: MR. NORMAN SHINKLE - Chair  
MS. JULIE MATUZAK - Vice Chair  
MR. ANTHONY DAUNT - Board Member  
MS. JEANNETTE BRADSHAW - Board Member  
MR. JONATHAN BRATER - Elections Staff  
MR. ADAM FRACASSI - Elections Staff

APPEARANCES:

For the State: MR. ERIK A. GRILL (P64713)  
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Lansing, Michigan 48909  
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13  
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18  
19  
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21  
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23  
24  
25

TABLE OF CONTENTS

PAGE

1. Consideration of the meeting minutes for approval (November 15, 2021) . . . . . 4

2. Consideration of the 100-word summary of purpose of the initiative petition submitted by Let MI Kids Learn (A). The summary of purpose as drafted by the Director of Elections will be posted on the Board's web site . . . . . 4

    1. Mark Brewer. . . . . 9

    2. Eric Doster. . . . . 11

3. Consideration of the 100-word summary of purpose of the initiative petition submitted by Let MI Kids Learn (B). The summary of purpose as drafted by the Director of Elections will be posted on the Board's web site . . . . . 8

4. Consideration of the form of the petition submitted by Secure MI Vote. . . . . 19

    1. Fred Wszolek . . . . . 24, 37

    2. Mark Brewer. . . . . 28, 33

    3. Chris Trebilcock . . . . . 35

5. Consideration of the form of the petition submitted by Unlock Michigan (Unlock II) . . . . . 41

6. Consideration of the form of the petition submitted by Let MI Kids Learn (A) . . . . . 43

    1. Eric Doster. . . . . 44

7. Consideration of the conditional approval as to form for Let MI Kids Learn (A) . . . . . 47

8. Consideration of the form of the petition submitted by Let MI Kids Learn (B) . . . . . 48

    1. Eric Doster. . . . . 49

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
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- 9. Consideration of the conditional approval as to form for Let MI Kids Learn (B) . . . . .
- 10. Such other and further business as may be properly presented to the Board. . . . .

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1                   Lansing, Michigan

2                   Monday, November 29, 2021 - 2:01 p.m.

3                   MR. SHINKLE: I'd like to call this meeting to  
4 order. This is a regularly scheduled meeting of the State  
5 Board of Canvassers -- well, I don't know about regular, but  
6 we have scheduled it. Was the notice posted? I see it in  
7 here, Jonathan. Everything okay with that?

8                   MR. BRATER: Yes, the notice was posted.

9                   MR. SHINKLE: Let's go to the agenda. The first  
10 item on the agenda, consideration of the meeting minutes  
11 from November 15th that are in our packets. What's the  
12 Board's pleasure?

13                   MS. BRADSHAW: Motion to approve the minutes from  
14 November 15th, 2021.

15                   MR. DAUNT: Support.

16                   MR. SHINKLE: It's been moved and supported.  
17 Discussion on the motion? Seeing none, all those in favor  
18 signify by saying "aye."

19                   ALL: Aye.

20                   MR. SHINKLE: All those opposed? The motion's  
21 carried.

22                   (Whereupon motion passed at 2:01 p.m.)

23                   MR. SHINKLE: Next item on the agenda is the  
24 consideration of the 100-word summary of purpose of the  
25 initiative petition submitted by Let MI Kids Learn (A1) and

1 as follows. And there's two of them, Jonathan. Explain  
2 what's going on.

3 MR. BRATER: Thank you, Chair Shinkle and Board  
4 members. So, yes, we have two petitions for initiated laws  
5 that were submitted by Let MI Kids Learn. They are related,  
6 so it may make some sense to discuss them together, but they  
7 are separate proposed initiated laws, two petitions. The  
8 first one creates a student opportunity scholarship program  
9 which is administered by the Michigan Treasury Department at  
10 the Michigan Department of Treasury in which scholarship-  
11 granting organizations can make grants for students to  
12 attend public or non-public schools with various  
13 qualifications. The second amends the Michigan Income Tax  
14 Act to allow taxpayers to get a tax credit for donations  
15 that they make towards these student opportunity scholarship  
16 programs.

17 So, you know, as with the prior petition that was  
18 considered by the Board involving sentencing reform, this  
19 was a fairly complicated set of changes to statutes that the  
20 Michigan Bureau of Elections does not administer in terms of  
21 education laws and tax laws. So we did our best to analyze  
22 them. We also did provide you with some resources from the  
23 senate fiscal agency about school funding and looking at the  
24 legislation that was proposed with the same language that  
25 went to the legislature recently which I look to for some

1 guidance on the statutory requirements and also some of the  
2 language.

3 So with that, we only got one comment on this  
4 which was from Mark Brewer who I believe is here and wishing  
5 to speak. I will start with the 100-word summary that I  
6 drafted for the first petition which is the establishment of  
7 Student Opportunity Scholarship Act program. I'll just note  
8 that on this one it was a very complicated, complex set of  
9 changes. I focused primarily on how these grants would be  
10 established, the organizations that could grant them, and  
11 then most of the focus really was on who could get these  
12 grants, what they could be used for, and how much they were  
13 for. There's also a lot in there about grant organization  
14 requirements, about what happens if the funding isn't used  
15 up and various other things like that. But with the words  
16 available, I think the purpose was more focused on how these  
17 grants work.

18 So with that, here's the summary I drafted. It is  
19 exactly 100 words.

20 "Initiation of legislation to create the Student  
21 Opportunity Scholarship Act, to: establish Student  
22 Opportunity Scholarship program; require  
23 scholarship-granting organizations (SGOs) be nonprofits  
24 certified by the Michigan Treasury Department; require  
25 SGOs establish a uniform system for awarding, to

1 students meeting income, disability, or foster-care  
2 requirements, nontaxable scholarships of up to \$500 for  
3 public school students, \$1,100 for public school  
4 students with disabilities, and 90% of the annual  
5 public school per-pupil funding amount (currently  
6 \$8,700) for nonpublic school students; require  
7 scholarships be used only for qualifying education  
8 expenses; require SGOs spend no more than 10% of annual  
9 contributions on administrative expenses; provide  
10 funding to implement the proposal."

11 MR. SHINKLE: Okay. And you think we should do  
12 these one at a time?

13 MS. MATUZAK: Yeah, they're two separate  
14 petitions.

15 MR. BRATER: Yeah. I think that it may be  
16 beneficial to discuss both of them in trying to, you know,  
17 for consistency sake in terms of if there's going to be  
18 changes to either one, but it may make sense to have -- and  
19 I don't know if the public commenters want to talk about  
20 both at the same time, but I think we -- we definitely need  
21 separate motions on each one.

22 MR. SHINKLE: We need separate motions, but do you  
23 want to take up -- do you want to read in number -- item  
24 number three?

25 MR. BRATER: Sure. I'm happy to do that.



1 MR. SHINKLE: And then I'll take discussion on  
2 both at the same time? Why don't you go ahead.

3 MR. BRATER: Sure; sure. I'm happy to do that.  
4 So the second petition which creates a tax credit program.  
5 I'll say on this one that it does allow tax credits, also  
6 sets an annual cap, total annual cap of \$500 million on  
7 total tax credits that can be awarded for this per year.  
8 However, that can go up if in any year 90% of the available  
9 tax credits were claimed goes up by 20 percent. So, for  
10 example, after, you know, if 90% of those 500 million in tax  
11 credits were claimed, then the next year it would go up by  
12 another 100 million to be 600 million the following year and  
13 continue to increase.

14 So this one is,

15 "Initiation of legislation amending the Michigan  
16 Income Tax Act, 1967 PA 281, MCL 206.30 and MCL  
17 206.697, and adding MCL 206.279 and MCL 206.679 to:  
18 allow taxpayers to claim tax credits for contributions  
19 for education expenses under the Student Opportunity  
20 Scholarship program; set a maximum of \$500,000,000 in  
21 total tax credits that can be claimed per year; require  
22 the annual maximum to increase by 20% if in the prior  
23 year, at least 90% of available tax credits were  
24 claimed; provide funding to implement the proposal."

25 MR. SHINKLE: Okay. So we have both of them. I

1           guess we're calling them A and B. Does that make sense?  
2           That's the way you got them on the agenda here. So I'd like  
3           to start off with our first witness. Mark Brewer, would you  
4           like to come on up and tell us what you think about these  
5           guys?

6   MARK BREWER

7                       MR. MARK BREWER: Thank you, Mr. Chair. Mark  
8           Brewer of Goodman Acker on behalf of Protecting the Promise  
9           of Public Education.

10                       As to the summary item A2, we believe that this  
11           fairly and accurately summarizes the proposal and the Board  
12           should adopt it. This addresses the chief omissions that we  
13           saw in the -- I don't know what it was -- title of the  
14           legislation/proposed summary, whatever it was submitted, by  
15           fully disclosing the funding levels and other purposes of  
16           the proposal. If I may, Mr. Chair, I'll talk about number  
17           three as well, or do you want to wait on that?

18                       MR. SHINKLE: Sure. Yeah, go ahead. Do three  
19           while you're up there.

20                       MR. MARK BREWER: Number three, which is B before  
21           all of you, my client believes that this is accurate as far  
22           as it goes, however, it does not disclose -- and there are  
23           ample words to disclose -- that this proposal can be adopted  
24           by the legislature without a vote of the voters, and because  
25           of the funding, a referendum if adopted by the legislature

1 would be prohibited. So we would urge the Board to accept  
2 the good work here of Director Brater on B, but add the  
3 words to the effect -- and I have those words in my written  
4 comments -- that indicate that, again, the legislature has  
5 the option to adopt this and a referendum is barred. With  
6 that, I'd be glad to take any questions, Mr. Chairman.

7 MR. SHINKLE: Okay. So if a referendum is  
8 barred -- is it usually not barred? Is that what you're  
9 suggesting?

10 MR. MARK BREWER: No. For 20 years, under a  
11 ruling of the Michigan Supreme Court, when you add an  
12 appropriation to legislation, you can no longer obtain a  
13 referendum. That's been the law of Michigan since 2001, Mr.  
14 Chairman.

15 MR. SHINKLE: Okay. Oh, so you're just pointing  
16 out this has an appropriation then?

17 MR. MARK BREWER: That's correct.

18 MR. SHINKLE: Okay.

19 MR. MARK BREWER: It already mentions that. It  
20 says, "Provide funding to amend the proposal." The effect  
21 of providing funding is to bar a referendum. And, again, I  
22 think it's the voters of this state, the signers of this  
23 petition are entitled to know that, that their rights are  
24 being truncated if they sign this petition and it becomes  
25 law. Their right to have a referendum is gone under this

1 initiation.

2 MR. SHINKLE: Any other questions? Thank you, Mr.  
3 Brewer.

4 MR. MARK BREWER: Thank you, Mr. Chairman. If I  
5 may, I'll be glad to come back and answer other questions.  
6 I would like to be heard on items four through nine when you  
7 get to those. That's on my --

8 MR. SHINKLE: Four through nine, okay.

9 MR. MARK BREWER: -- that's on my sheet, Mr.  
10 Chairman. Thank you.

11 MR. SHINKLE: Yeah, I see you put that on your  
12 card, too. Okay. Thank you.

13 MR. MARK BREWER: Thank you, Mr. Chairman.

14 MR. SHINKLE: No, you didn't -- oh, you put two  
15 through nine on your card. Okay. Now, Eric Doster put a  
16 bunch of numbers on his card. Eric, come on up and give us  
17 your thoughts on these two petitions.

18 ERIC DOSTER

19 MR. ERIC DOSTER: Thank you, Mr. Chair, members of  
20 the Board. With respect to A, I thought that Director  
21 Brater did a fine job and we have no comments. And like Mr.  
22 Brewer, we think it's fairly and accurately thus takes care  
23 of the purpose of the proposal.

24 And we also would say that with respect to B,  
25 Director Brater, these are complex topics and we think that

1 Mr. Brater did a fine job with the summary language.

2 I do want to address the comments of Mr. Brewer  
3 with respect to adding this additional language about not  
4 before the legislature and that it's not subject to a  
5 referendum vote. And Mr. Brewer in his comments on behalf  
6 of his client references on page 5 that certain language has  
7 been required by the Board and let me be more specific what  
8 I mean by that. He says, "For decades the Board of  
9 Canvassers has approved the petitions with this sentence,"  
10 and I quote, "if not enacted by the Michigan Legislature in  
11 accordance with the Michigan Constitution of 1963, the  
12 proposed legislation is to be voted on at the general  
13 election" -- whatever date the next general election is.  
14 They have approved petitions with that language. But where  
15 Mr. Brewer then says that, "The Board has required such  
16 disclosures in the past and should do so here," that  
17 statement is categorically false. The Board has never  
18 required this language on any citizen's initiated petition.  
19 And while it is true that that language did appear on the  
20 Michigan Values Life petition which was my client, that was  
21 not part of the petition summary as prepared by the Director  
22 of Elections and approved by this Board. It's, you know, I  
23 have a copy of it here if you really care to see it, but  
24 that language appears in 8 point type on the petition, not  
25 in the required 12 point type if it were a petition summary.

1                   So, too, was the language from Unlock One, if you  
2                   can remember back there. It also had that unless language  
3                   in there and that, again, was an 8 point type and that  
4                   wasn't required, it was not part of the petition summary.  
5                   And then I guess the most recent one I'll point out is Mr.  
6                   Brewer's petition that he presented to this Board for  
7                   approval, it too was a citizen's initiated law and this  
8                   language does not have the "unless enacted by the Michigan  
9                   legislature." So if this was all required for -- by the  
10                  Board, then Mr. Brewer's petition that he got approved as to  
11                  petition summary and as to form by this Board this month  
12                  would not have been permissible.

13                  So it doesn't, again, the statutory charge for Mr.  
14                  Brater as director and this Board is you need a true and  
15                  impartial statement of the purpose of the proposed initiated  
16                  law. This doesn't go to the purpose. This is more of a  
17                  process question. You know, we didn't put in and no one's  
18                  ever put in a petition, "Yeah, it requires 340,047 valid  
19                  petition signatures." Again, that's part of the process.  
20                  It's got to be on 8-1/2 by 14 inch paper. Well, that's a  
21                  process question. So the required petition summary that Mr.  
22                  Brewer requests isn't part of the purpose of the -- of the  
23                  summary. Mr. Brater correctly omitted that and we urge the  
24                  Board to adopt it as Mr. Brater presented to this Board and  
25                  I'm here for any questions.

1 MS. BRADSHAW: I have a question.

2 MR. ERIC DOSTER: Of course, please.

3 MR. SHINKLE: Yeah, sure, go ahead, Jeannette.

4 MS. BRADSHAW: Is it okay?

5 MR. SHINKLE: Yeah.

6 MS. BRADSHAW: That sentence that is no longer --  
7 I don't -- I'm not even going to say it's required. I'm  
8 just -- how do you feel about that on the petitions, letting  
9 citizens know how that process works?

10 MR. ERIC DOSTER: I'm okay with it being on the  
11 petition, but that's a different question than -- but it's  
12 not part of the petition summary.

13 MS. BRADSHAW: No, I was just asking. I mean,  
14 you've been in front of us for a lot, as long as I've --

15 MR. ERIC DOSTER: Yeah, and I'm okay with it being  
16 on there.

17 MS. BRADSHAW: I just wanted to know, like, how  
18 you felt about that, the process being on. Do you feel that  
19 that should be part of the form itself to know what the  
20 proc- --

21 MR. ERIC DOSTER: But that's not --

22 MS. BRADSHAW: No, I'm not --

23 MR. ERIC DOSTER: Should -- do I think it should  
24 be on there? I've had petitions where I've put it on and  
25 some that I've taken it off. So, and if it is on, it's got

1 to be in 8 point type because it's not part of the petition  
2 summary. So all the petitions that I mentioned that had it  
3 on, it was all in 8 point type. It was not in the required  
4 12 point type as -- you know, as directed, you know, by Mr.  
5 Brater and approved by this Board.

6 MS. BRADSHAW: Right. I was just -- I just --

7 MR. ERIC DOSTER: Yeah, I'm okay with it on if  
8 that's your question.

9 MS. BRADSHAW: -- wanted to know how you were with  
10 that process. I mean, having been in front of us a number  
11 of times --

12 MR. ERIC DOSTER: Yeah, I'm okay with it being on,  
13 sure but it's not required.

14 MS. BRADSHAW: I didn't say it was. I just wanted  
15 to know what your opinion was on it.

16 MR. ERIC DOSTER: Sure.

17 MS. BRADSHAW: I appreciate that. Thank you.

18 MR. ERIC DOSTER: You're welcome.

19 MR. SHINKLE: Okay. Any other questions to Mr.  
20 Doster?

21 MR. ERIC DOSTER: Thank you very much.

22 MR. SHINKLE: Seeing none, thank you, Mr. Doster.  
23 This is number two on the agenda; right?

24 MS. MATUZAK: Correct.

25 MS. BRADSHAW: Yeah.



1 MR. SHINKLE: Okay. Peter Ruddell?

2 MR. PETER RUDELL: I can pass.

3 MR. SHINKLE: You want to pass? Okay. Peter  
4 Ruddell passes. And the other witness wants to talk about  
5 four potentially. So that's it for witnesses. What's the  
6 Board's -- Jonathan, any comments on the witnesses' remarks?

7 MR. BRATER: Well, I agree with Mr. Doster that  
8 the language regarding the, you know, "if not enacted by the  
9 legislature will appear on the ballot." The Board has  
10 approved them with and without that. It's not part of the  
11 100-word summary and it's not an element that we have said,  
12 you know, is required to be on there or cannot be on there.  
13 There was actually an instance where the Bureau of Elections  
14 didn't accept a filing from a previous (inaudible) a couple  
15 years back because the language on there said "this will be  
16 voted on in the election of" and it was actually referring  
17 to a past election because of the extended litigation  
18 period.

19 MS. MATUZAK: I remember that.

20 MR. BRATER: Sorry to bring everyone back to that  
21 one. But -- and the court told us that we shouldn't have  
22 rejected on that basis, the Bureau, not the Board. So the  
23 bureau, you know, would present them to the Board with or  
24 without that language.

25 Regarding the -- and so the issue about the

1 funding that's included in the proposal barring referendum  
2 is a separate question. But in my view it doesn't really go  
3 directly to the purpose of the legislation. It's a -- you  
4 know, I think it's a secondary effect so it was not included  
5 in either one.

6 MR. SHINKLE: Okey dokey. Any other questions?

7 MR. DAUNT: And these are the two that are not  
8 conditional with the removal of the box? These are the two  
9 as they are -- okay.

10 MS. BRADSHAW: This is just wording.

11 MS. MATUZAK: This is just the 100-word summary.  
12 We'll get to the box later.

13 MR. SHINKLE: No boxes we're talking about, yeah.

14 MS. BRADSHAW: We'll get to the boxes in a minute.

15 MS. MATUZAK: The box is separate.

16 MR. SHINKLE: Okay. What's the Board's pleasure  
17 on A; Let MI Kids Learn, A?

18 MS. MATUZAK: I'll make a motion. I move that the  
19 Board of State Canvassers approve the summary of the purpose  
20 of the initiative petition sponsored by Let MI Kids Learn  
21 related to the Student Opportunity Scholarship Act as  
22 drafted by the director of elections and presented by the  
23 director on November 29th, 2021.

24 MR. SHINKLE: Is there support?

25 MR. DAUNT: Support.

1 MR. SHINKLE: It's been moved and supported to  
2 approve the recommended, or the word, 100 words by our  
3 election director. Discussion on the motion? Seeing none,  
4 all those in favor of the motion signify by saying "aye."

5 ALL: Aye.

6 MR. SHINKLE: That motion is passed.

7 (Whereupon motion passed at 2:19 p.m.)

8 MR. SHINKLE: Now we're on to agenda item number  
9 three, it's Let MI Kids Learn, B.

10 MR. DAUNT: And I'm just trying to find the  
11 language here so that's --

12 MS. MATUZAK: It's right before the number 4.

13 MS. BRADSHAW: Yeah.

14 MR. SHINKLE: Yeah, it's got the purple tag on it.  
15 Mine does, anyway.

16 MS. MATUZAK: No, it's the page right before the  
17 number 4.

18 MR. DAUNT: Yup, this one right here.

19 MS. MATUZAK: Yeah.

20 MR. SHINKLE: Oh, yeah.

21 MR. DAUNT: I move that the Board of State  
22 Canvassers approve the summary of the purpose of the  
23 initiative petition sponsored by Let MI Kids Learn related  
24 to the Income Tax Act as drafted by the director of  
25 elections and presented by the director on November 29th,

1           2021.

2                   MR. SHINKLE: Is there support?

3                   MS. MATUZAK: Support.

4                   MR. SHINKLE: It's been moved and supported to

5           approve the 76 words -- 76? 74?

6                   MS. BRADSHAW: 76.

7                   MR. SHINKLE: 76 words recommended by the

8           elections director. Discussion on that motion?

9                   MS. BRADSHAW: I just have one. It's not really

10           related to this but more appreciate the conversation and why

11           Director Brater had omitted. But I really do wish that we

12           could find a way to put process back into these forms since

13           we have some of them that have it, some of them had it, so

14           it's just a comment more than anything else.

15                   MR. SHINKLE: Further discussion? Seeing none,

16           all those in favor of the motion signify by saying "aye."

17                   ALL: Aye.

18                   MR. SHINKLE: The motion passes unanimously.

19                   (Whereupon motion passed at 2:20 p.m.)

20                   MR. SHINKLE: We're moving on to item number four,

21           form of the petition considered by Secure MI Vote.

22           Jonathan, you want to get us started on this one?

23                   MR. BRATER: Sure. So this is the Secure MI Vote

24           petition. The Board had approved the form of the petition

25           previously, but that was prior to the court's decision that

1 upheld the circulator, paid circulator box that was  
2 discussed at the last Board meeting. So Secure MI Vote has  
3 come back seeking approval as to form with the version of  
4 the petition that has the box on there and, you know,  
5 understanding as we are all sort of waiting for further  
6 guidance from the courts for this to resolve itself, but  
7 this would be the petition that they would circulate  
8 assuming a box is required.

9 MR. SHINKLE: And just for our own edification,  
10 the box is at the very top of the petition?

11 MS. MATUZAK: Correct.

12 MR. BRATER: That's correct. The circulator is  
13 check one "paid" or "volunteer."

14 MR. SHINKLE: And before we go to this, Erik, for  
15 the Board's sake, I mean, our last meeting we asked to make  
16 this brief be filed on our behalf to ask the courts to let  
17 all the petitions count if the petition form was legal at  
18 the moment they started or any times throughout the process  
19 of collecting and you did file that?

20 MR. GRILL: Correct. Actually, it was the day  
21 after the last meeting. It was because the briefs were due  
22 the day of the Board meeting, we asked the Court of Appeals  
23 and we notified them that we'd be filing ours the next day  
24 and the court accepted it. We filed an argument that  
25 essentially asked the court very succinctly to -- if

1           whatever relief it grants, it should be prospective only and  
2           therefore whatever petitions were in the field would have  
3           been given the benefit of whatever they had at the time.

4           MR. SHINKLE: So isn't this something that if you  
5           were a Court of Appeals judge you'd say this is timely?  
6           Just look at what we're doing today. We're approving all  
7           these petitions a second time because of them. I mean,  
8           couldn't they have taken this up by now?

9           MR. GRILL: It's probably best I limit my comments  
10          on what the Court of Appeals should and shouldn't do.

11          MS. MATUZAK: Don't answer that.

12          MS. BRADSHAW: Don't answer.

13          MR. SHINKLE: Isn't it common sense, you know?

14          MR. DAUNT: Common sense and the law are different  
15          at times, Norm.

16          MR. SHINKLE: Anyway, it's crazy that we have to  
17          do this because a couple of guys in black robes don't want  
18          to look at what they're doing.

19          MS. MATUZAK: Well, Norm, I actually have a  
20          question about why we have to do this. We were really clear  
21          on our policy that the petition form that was approved when  
22          we approved it under whatever statutory or judicial ruling  
23          was in effect at that time --

24          MR. SHINKLE: Was in effect, yeah.

25          MS. MATUZAK: -- that those petitions were valid

1 going forward.

2 MR. SHINKLE: Yeah; yeah.

3 MS. MATUZAK: So now we have petitions coming back  
4 to us so we're in essence approving a duplicate petition,  
5 the only difference being a little checkbox at the top.

6 MR. SHINKLE: What the court did, yeah.

7 MS. MATUZAK: But number one, I think it  
8 undermines our case here that we're saying we accept the  
9 petitions as they were approved. But in addition, so now we  
10 got two sets of petitions out here and people are signing  
11 one and people are signing the other and I don't -- it  
12 doesn't make any sense to me and I think it screws up the  
13 process even more. Because now when petitions come back to  
14 be verified, we're going to have to run a date check, was  
15 this signed after this date, was this signed before this  
16 date. I don't even know how we handle that.

17 MR. SHINKLE: Julie, look it, if you were the  
18 petitioner where would you be sitting? I mean, if they had  
19 to go out and collect hundreds of thousands of signatures  
20 because the box is not on after the date the court said put  
21 it on, they're all thrown out. That could happen. So if  
22 you were them, you'd have to come back to us for approval of  
23 the second petition.

24 MS. BRADSHAW: But I have an additional question.  
25 And it's, okay, so we approve -- we approve this peti- --

1 and I remember at the last meeting it was kind of suggested  
2 that these two groups come back and have something approved  
3 with a box on it. My question is duplicate signatures. Is  
4 that you have -- you already have -- the petition's already  
5 out, they already have signatures and now we're approving  
6 this one. What happens to someone who now, you know, to a  
7 circulator or the petitioners who are out there thinking,  
8 "well, I probably should get those signatures again in case  
9 they throw these out." That's where I'm a little bit  
10 confused on that.

11 MR. SHINKLE: Well, everybody else is, too, yeah.  
12 There's no answer.

13 MR. DAUNT: Is there someone from the sponsor's  
14 side that could answer that question, kind of the intent of  
15 the circulation of these where have you -- have you pulled  
16 from the field the current iteration or are they still in --  
17 you're still circulating them until you get approval on  
18 this, then you would fully switch over?

19 MR. SHINKLE: Fred Wszolek is at the stand. Fred,  
20 are --

21 MR. FRED WSZOLEK: And I promise I'm not a lawyer.

22 MR. SHINKLE: -- you a licensed member of the  
23 Michigan Bar?

24 MR. FRED WSZOLEK: No, I promise.

25 MR. SHINKLE: Raise your right hand for me. Would



1           you solemnly swear today what you're about to say is the  
2           truth, the whole truth, and nothing but the truth so help  
3           you God?

4                       MR. FRED WSZOLEK:   Indeed.   Thank you.

5                       MR. SHINKLE:   Thank you.   For the record, spell  
6           your name out.

7                       MR. FRED WSZOLEK:   Fred, last name W-s-z-o-l-e-k.

8                                       FRED WSZOLEK

9                       MR. FRED WSZOLEK:   I represent both Unlock and  
10          Secure MI Vote.   Upon approval we'll produce the petitions,  
11          so there aren't any out there floating around today that  
12          could have been used prior to the approval by the Board  
13          because we're waiting for approval.   So the forms with the  
14          checkbox wouldn't be deployed until you guys give us the  
15          green light that it's okay.   And then we'll segregate out --

16                      MS. MATUZAK:   So are people circulating now?

17                      MR. FRED WSZOLEK:   Of course.

18                      MS. MATUZAK:   With the previous petition?

19                      MR. FRED WSZOLEK:   With the previous petitions.

20                      MS. BRADSHAW:   Right.

21                      MR. FRED WSZOLEK:   And I assume some will continue  
22          to come in as the days go on because they have them and we  
23          won't be able to take them away and replace them, you know,  
24          in total.   But we'll do our best to get all the old ones off  
25          the streets and substitute blank new forms with the

1 checkboxes as best we can.

2 MS. BRADSHAW: Okay. So that goes on the second  
3 question I have and it's not for you, but I appreciate it  
4 because you brought this up. What happens to the 180-day  
5 period? Are we extending the 180-day period for each of  
6 these petitions having approved this to form today?

7 MR. FRED WSZOLEK: Feel free.

8 MS. BRADSHAW: Well, I mean, you understand why  
9 I'm asking this question.

10 MR. FRED WSZOLEK: Sure.

11 MS. BRADSHAW: I mean, regardless of what petition  
12 came in front of us, if we are approving this to form  
13 today, --

14 MR. SHINKLE: Jeannette, that's a good question  
15 because if they take 180 days on what we approve today, what  
16 happens if they turn in at the same time some that we  
17 approved a couple months ago?

18 MS. MATUZAK: Right. This is -- we're in  
19 uncharted waters here.

20 MS. BRADSHAW: Yes. So I have a lot of questions.

21 MR. DAUNT: And I understand -- I totally  
22 understand the insurance you're seeking.

23 MS. MATUZAK: Right.

24 MR. DAUNT: And my intention in my head and I  
25 think of the four of us approving this wouldn't be an

1 extension of the 180 days. It wouldn't be -- and I'm not  
2 saying you're thinking that, but it wouldn't be an allowance  
3 to go out and get somebody's signature again, either. This  
4 is simply an insurance against court's action which is  
5 further complicated if we think through what if the Supreme  
6 Court says actually what you did with the box is wrong, so  
7 go back to the --

8 MS. BRADSHAW: I'm just -- I'm looking actually  
9 even on this (indicating) side to answer that question.

10 MR. BRATER: Well, I can tell you what I would  
11 recommend. I can't tell you what the courts will say is  
12 okay. So the 180 days runs from the, you know, the earliest  
13 submitted to the latest submitted. So they can choose any  
14 180 day period circulation they want and give them to you  
15 and we will count the ones 180 days back from the date of  
16 filing with us.

17 Consistent with the Board's intention, we would  
18 recommend, you know, pending further clarification from the  
19 courts, but we would recommend accepting forms that either  
20 have the box or don't have the box. And that would be --  
21 and even if the court were to -- you know, I'll defer to the  
22 attorney generals in terms of their legal advice, but, you  
23 know, assuming the court were to take the box back off, our  
24 view would be that including what they thought was a  
25 required element before it was deemed to be not required,

1        would not be something that we would recommend projecting on  
2        that basis. So essentially, you know, this gives the  
3        circulators the option of using, you know, sort of making  
4        both of their forms preapproved by the Board. That doesn't  
5        guarantee the courts will hold it. But what it does give  
6        them is kind of the courtesy and the notice that this  
7        process is really designed for, which is that the staff and  
8        the Board have looked at these forms and they've identified  
9        anything they could have identified at the outset before  
10       they come at the end and have some other formal reason it  
11       will be rejected. That said, you know, as I outlined at the  
12       last meeting, it is possible that a court would still say,  
13       you know, all of these had to have the box on them. It  
14       doesn't matter what the Board approved in the past. But I  
15       think, you know, sort of to give some additional options for  
16       the circulators, it'll allow them to comply with the law as  
17       their attorneys recommend. That's why, you know, we think  
18       it's sensible to present the Board the ability to approve  
19       the form either with or without the box.

20                    MR. SHINKLE: Okay. Back to Erik on procedure  
21        here. I remember at the tribunal we could get motions for  
22        immediate consideration and we'd look at them. Does the  
23        Court of Appeals accept a motion like that?

24                    MR. GRILL: They can, not usually from a -- it  
25        would have to be from one of the actual litigants in the

1 case I believe. Never seen that before. I really couldn't  
2 give you a certain answer. But I believe that their -- a  
3 motion for immediate consideration exists. There is such a  
4 thing. But I think it would have to --

5 MR. SHINKLE: But we don't do it since we filed an  
6 amicus brief?

7 MR. GRILL: Correct.

8 MR. SHINKLE: We would support that, for the  
9 record. Anyway, hey, Mr. Brewer, what you doing up there?  
10 Come on. Go ahead. Take it away.

11 MR. MARK BREWER: May I get around this, Mr.  
12 Chairman? Thank you.

13 MR. SHINKLE: Take it away. Take it away.

14 MARK BREWER

15 MR. MARK BREWER: And I'll address all of these  
16 items as one so as not to belabor it. Your practice for  
17 decades has been to approve petitions as to form under the  
18 law that exists when they come in. You don't give and  
19 you've never given conditional approval to a petition. I  
20 would also say that this is unfair to other petition drives.  
21 When I was here two weeks ago on behalf of National Popular  
22 Vote, I was not given the option to present to you a  
23 conditional petition. I was advised put the box on the  
24 petition and that's what you approved. I was not given the  
25 option of presenting a petition to you without the box.

1 MR. SHINKLE: Without the box, yeah.

2 MR. MARK BREWER: So this is -- this is unfair,  
3 it's unprecedented, and frankly it contradicts what you just  
4 told the Michigan Supreme Court you were doing. And so, you  
5 know, you're going to have to pull that brief back or your  
6 lawyer's going to have to file a new brief saying well, this  
7 is what we're going to do.

8 MR. SHINKLE: Well, hang on. Tell me how it's  
9 unfair. How is it unfair?

10 MR. MARK BREWER: It's unfair that these petitions  
11 are being treated differently than prior petitions. Again,  
12 I was here two weeks ago.

13 MR. SHINKLE: Well, you can always file a second  
14 petition.

15 MR. MARK BREWER: I was here two weeks ago and I  
16 wasn't give this option. Now, these petitions have this  
17 option? In addition to all the reasons that you've heard  
18 from your colleagues, this is going to create enormous  
19 confusion on 180-day rule. You don't have the authority to  
20 life the 180 day rule.

21 MR. SHINKLE: No, we're not.

22 MR. MARK BREWER: Well, I've heard that suggested  
23 here that somehow this may restart the clock. That's going  
24 to get litigated if you approve these conditional petitions.  
25 All of these questions are going to get fought out. What

1 I'd strongly recommend is that you stand pat on where you  
2 were. You have a strong case in favor of your practice.  
3 You know, I am the lawyer that is attacking Public Act 608.  
4 I wish I had the support of the Attorney General as I was  
5 urging the Michigan Supreme Court to expedite the case, but  
6 that's not been the case.

7 MR. SHINKLE: Would you support a motion for  
8 immediate consideration of our idea on our amicus brief?

9 MR. MARK BREWER: The case is before the Supreme  
10 Court, Mr. Chairman. It's not before the Court of Appeals.  
11 And at my request the Michigan Supreme Court has expedited  
12 it and we are awaiting a decision from them either on the  
13 merits or for further briefing or whatever it may be. I  
14 strongly urge you not to further complicate this and create  
15 additional legal issues by conditionally approving petitions  
16 when that is not the law that's in effect. You're just  
17 asking for more trouble and creating a real mess for us all  
18 to try to sort out after the fact.

19 MR. SHINKLE: Okay. So our motion was filed with  
20 the Supreme Court then?

21 MR. GRILL: The amicus brief?

22 MR. SHINKLE: Our amicus, not motion.

23 MR. GRILL: Yes.

24 MR. SHINKLE: Our amicus brief was filed with the  
25 Supreme Court, not the Court of Appeals?

1 MR. GRILL: Yes.

2 MR. MARK BREWER: And you told them what your  
3 practice was which you are now being asked to change. That  
4 is a bad idea and frankly it's not in good faith with the  
5 court that you just represented to that your current  
6 practice is what you want them to approve.

7 MS. MATUZAK: I have to say I really agree with  
8 this. You know, I said it before. I think if we change  
9 this practice and sort of hedge the bets, I think we're  
10 undermining what we said to the courts. I really -- I  
11 really agree. I mean, no matter what happens this is going  
12 to be litigated all over the place without a doubt. But I  
13 think our position, which I think is a very strong and  
14 defensible position, is that we approve petitions as to form  
15 given the current law of the land. If that law changes,  
16 we're still going to count those signatures.

17 MR. SHINKLE: And we're going to make the Supreme  
18 Court count them, too.

19 MS. MATUZAK: We don't care. If the Supreme Court  
20 tells me to do something, I'm going to do it. But I think  
21 we're undermining our position by approving a second version  
22 of the petition that's sort of we're covering all the bases.

23 MR. SHINKLE: This wasn't our idea. It's the  
24 petitioner's idea.

25 MS. MATUZAK: Well, I get that.



1 MR. SHINKLE: Yeah; yeah; yeah. Okay.

2 MS. MATUZAK: But I'm arguing against approving a  
3 second petition.

4 MR. DAUNT: And ultimately my -- while agreeing  
5 with much of that, the concern is these groups have all  
6 acted in good faith, petitions that some of us agree with  
7 and some of us disagree with. We've all acted in good  
8 faith, we've had good discussions about the summaries and  
9 approving these. And then through no fault of their own  
10 three months, six months, two weeks of their work is null  
11 and void because of a decision from the Michigan Supreme  
12 Court that frankly should have dealt with this a few years  
13 ago when they had the opportunity to. But, so how do we  
14 work around that because I don't think any of us want to be  
15 in the position. We can be very clear what our policy is,  
16 but if the Supreme Court says "too bad," kind of -- we're  
17 kind of bound.

18 MS. BRADSHAW: Doesn't it make sense for us to  
19 wait? I don't want to say that and I don't mean that  
20 like -- I understand where you're going for because  
21 doesn't -- I mean, honestly for me it doesn't matter what  
22 the petition is. It has to be fair to the petitioners and  
23 the citizens who have signed those petitions. But if it is  
24 not required right now, all of those petitions that are  
25 circulated right now are good and we as a Board hold our

1 petition which is we wrote a brief for, but if the Supreme  
2 Court says no, there has to be a box, then they should come  
3 in front of us to get the box. I don't have the problem --  
4 it's that I know you want to have everything now, but there  
5 is a part of me that there are some procedural questions  
6 approving a second petition -- I know it's the same  
7 petition, but approving a duplicate petition because --  
8 before that decision's even made. That's where I have a  
9 hesitation.

10 MR. DAUNT: And I know Mr. Brewer has a question,  
11 Mr. Chair, but just for the staff over there, we get a  
12 decision from the Supreme Court. What's the likelihood that  
13 the Supreme Court says this box is valid and should have  
14 been on everything you've approved so far so everything is  
15 rejected? That to me is the primary concern. That they  
16 will say, you know, what, we're making a final decision,  
17 this box should have been here, anything you guys circulated  
18 prior without is, sorry, you got to start over again.

19 MR. SHINKLE: Mr. Brewer, for a comment?

20 MR. MARK BREWER: Yes. Thank you, Mr. Chairman.

21 MARK BREWER

22 MR. MARK BREWER: I just want to respond. Mr.  
23 Daunt, I respect what you just said about people proceeding  
24 in reliance. This lawsuit has been no secret. This lawsuit  
25 was filed in February of this year and it's never been a

1           secret and people were proceeding at their own risk if they  
2           decided to start petition drives given the uncertainty in  
3           the law. So I respect that they proceeded in good faith,  
4           but they're also adults who knew what they were doing and  
5           took the chance anyway. I advised my clients not to  
6           circulate petitions until the Supreme Court issues a  
7           decision on PA 608. So, again, respectfully, good faith,  
8           yes, but they're adults, they knew what they were doing,  
9           they took a chance and they may have to pay the  
10          consequences. And it's unfair to change the rules in the  
11          middle of a game.

12                       MR. SHINKLE: Okay. Thank you, Mr. Brewer.

13                       MR. MARK BREWER: Thank you, Mr. Chairman. We're  
14          on number four.

15                       MR. DAUNT: I didn't -- I didn't get an answer to  
16          that question.

17                       MR. SHINKLE: Yeah.

18                       MR. CHRIS TREBILCOCK: Sorry. I wasn't planning  
19          on speaking.

20                       MR. SHINKLE: You weren't planning on it? You're  
21          out number four. Mr. Trebilcock, stay right there at the  
22          podium.

23                       MR. GRILL: I guess what was your question?

24                       MR. DAUNT: Kind of the likelihood or chance that  
25          the Supreme Court's ruling would negate anything to this

1 point?

2 MR. GRILL: It's a hard question to answer in the  
3 way that it's phrased because it's not really a matter of  
4 probability or chances. It's really what the justices  
5 themselves decide the law is. So it's not -- it's not quite  
6 the idea of, you know, nine times out of five -- nine times  
7 out of ten, or six times out of ten. It's not that kind of  
8 question. I really can't answer it that way. Is that  
9 something the Supreme Court could do? Yes. Is there  
10 something else the Supreme Court could do? Yes.

11 MS. BRADSHAW: You kind of answered that question,  
12 though --

13 MR. SHINKLE: Mr. Trebilcock; Chris Trebilcock for  
14 the record. He's been here before. He's a licensed  
15 attorney. What have you got to say?

16 CHRIS TREBILCOCK

17 MR. CHRIS TREBILCOCK: Thanks, Mr. Chairman.  
18 Hearing the comments -- I wasn't planning on speaking, but  
19 hearing the comments I just felt compelled to say just a  
20 couple of points. One is I echo much of what Mr. Brewer  
21 said. But I'd remind the Board of the obligation under the  
22 Supreme Court guidance of stand up for democracy. That  
23 strict compliance with election law is required and that's  
24 the election law that is in place at the time something  
25 comes to be presented to you. I'd also remind the Board

1 that respectfully this Board is not a rule making board.  
2 This Board doesn't issue rules pursuant to the  
3 Administrative Procedures Act. This Board does not create  
4 or establish policy. That comes through the Secretary of  
5 State and the Bureau of Elections. Your duty is to make  
6 sure that those rules that are in place are followed and  
7 adhered to to what's been presented to you. Now, that's why  
8 I think in terms of this conditional approval it's not  
9 appropriate and I think you could get litigation based on  
10 exceeding your own authority and things like that.

11 The other point I would make -- two final points I  
12 would make is one is there is time. Okay. If these things  
13 are truly to be presented on the next general election, the  
14 deadline is in July, folks. There is time to circulate  
15 signatures. You want to talk about a prime 180 days to  
16 circulate some signatures, it sure as heck isn't January and  
17 February in Michigan. Right? So there is time to do it.  
18 There is time for this litigation to get sorted out. And  
19 like Mr. Brewer said, the proponents of these statutory  
20 initiatives had a different agenda and different goals in  
21 mind and pushed this while we were waiting.

22 My final point would be is I find it ironic that  
23 the proponents of these petitions are pushing things that  
24 came from primarily the Republican legislature and were  
25 presented by the Republican legislature. The rules that are

1 being challenged by Mr. Brewer are the rules that were put  
2 into place by the Republican legislature. So the rules that  
3 they are now saying, well, it's going to cause us too much  
4 difficulty if we have to abide by the check the box or the  
5 15 percent, those were the rules that the Republican  
6 legislature put into place and if the Supreme Court declares  
7 them to be constitutional, then those are the rules that  
8 should have been followed and in place whenever you  
9 collected the signature.

10 Remember how this Board treated Fair and Equal  
11 Michigan and the Bureau tossed out 60,000 signatures of Fair  
12 and Equal Michigan based on them trying to adapt to a global  
13 pandemic and collect signatures using e-signatures and this  
14 Board said no. And yet the Board's trying to take a  
15 position that because the Supreme Court has issued different  
16 rules, we're going to apply, be a little more loose so that  
17 people can get their signature count. I'll remind the Board  
18 of that position and I think it differs from that. Thank  
19 you.

20 MR. SHINKLE: Okay, Chris. Mr. Wszolek, you're --

21 MR. FRED WSZOLEK: Brief response, please?

22 MR. SHINKLE: -- already sworn in. Take it away.

23 FRED WSZOLEK

24 MR. FRED WSZOLEK: We're trying to comply with  
25 whatever the rules are as best we can and this is a big pain

1 in the butt to us. And we're not asking for any sort of  
2 special treatment here. We're just trying to stay on top of  
3 these rules and they're confusing and conflicting because  
4 under the Court of Claims ruling we had to secure an  
5 affidavit from circulators but no checkbox. Under the Court  
6 of Appeals, it's the reverse. So which set of rules are we  
7 applying for that? Are we doing affidavits or not doing  
8 affidavits? And I can't help but comment on the fact that  
9 somebody's bringing up the threat of litigation is a problem  
10 when the threat of litigation is generally a problem from  
11 the person bringing it up. We're here asking for approval  
12 of this to avoid lawsuits in the future, to say, "No, those  
13 petitions were all improper." We're just trying to do the  
14 best we can under a bad set of circumstances and we hope  
15 you'll give us approval of these forms. We wish we didn't  
16 have to print all new forms. It's not free, but we're just  
17 trying to stay on top of the rules as best we can.

18 MR. SHINKLE: Thank you, Mr. Wszolek. Okay. Any  
19 discussion from the Board? We're on number four and this is  
20 Secure MI Vote for approving the form of the petition with  
21 the box on it.

22 MR. DAUNT: It's four?

23 MR. SHINKLE: That's agenda item number four.

24 MR. BRATER: Yeah, and if I could just clarify  
25 from the Bureau's perspective?

1 MR. SHINKLE: Go ahead, Jonathan.

2 MR. BRATER: The way we look at this right now on  
3 this date, on November 29th, is that Secure MI Vote,  
4 Unlock -- Secure MI Vote and Unlock are seeking approval as  
5 to form, not conditional, but consistent with the law as it  
6 is right now under the court's guidance. Let MI Kids Learn  
7 is also seeking approval as to form with the box with the  
8 current process, but they are also seeking conditional  
9 approval as to form or one that does not have the box in the  
10 event that the case is decided so they can circulate one  
11 without a box if that happens. If National Popular Vote  
12 petition wants to get conditional approval as to form  
13 without a box, you know, if they asked us to the way Let MI  
14 Kids Learn asked to, we would -- obviously wouldn't ask you  
15 under the same circumstances. But from our perspective, the  
16 only ones that are conditional right now the way we see it  
17 are the Let MI Kids Learn one that do not have -- ones that  
18 do not have the box.

19 MR. SHINKLE: Okay.

20 MR. DAUNT: Thank you for clarifying that because  
21 I was looking through this language on the motion and it  
22 frankly, based on that Court of Appeals ruling, the checkbox  
23 is the law as of right now. So they are seeking approval  
24 for a form in the petition as the law is now; correct? Or  
25 am I --



1 MR. SHINKLE: Right. And the next petitioner  
2 wants both approved, so one of them is not the way the law  
3 is right now.

4 MR. DAUNT: And I think -- I think some of the  
5 comments we've just heard are maybe more applicable to that  
6 situation than to this. So that is why -- that's, I guess,  
7 is why I will move that the Board approve the form of the  
8 initiative petition submitted by Secure MI Vote with the  
9 understanding that the Board's approval does not extend to  
10 the substance of the proposal which appears on the petition  
11 or the manner in which the proposal language is affixed to  
12 the petition.

13 MR. SHINKLE: Okay. Tony moves. Is there  
14 support? I'll support it. It's moved and supported that we  
15 approve this form with the box on it for Secure MI Vote.  
16 Any further discussion?

17 MS. MATUZAK: Again, I think -- I think doing this  
18 undermines our position.

19 MR. SHINKLE: Okay. Let's have a vote. All those  
20 in favor of the motion signify by saying "aye."

21 MR. DAUNT: Aye.

22 MR. SHINKLE: Aye. All those opposed to the  
23 motion signifying by saying "aye."

24 MS. MATUZAK: Aye.

25 MS. BRADSHAW: Aye.

1 MR. SHINKLE: That's two ayes and two ayes. I  
2 probably should have said "nay." Two ayes and two ayes.  
3 The vote's two to two, the motion fails.

4 (Whereupon motion failed at 2:45 p.m.)

5 MR. SHINKLE: And we're on to number five. And  
6 this is consideration of the form petition Unlock II.  
7 Jonathan, any further comments you want to make on this?

8 MR. BRATER: No. This is the exact same issue as  
9 Secure MI Vote in the sense that they have one approved that  
10 was approved without the box, and now they're trying to get  
11 one approved with the box.

12 MR. SHINKLE: Okay. What's the Board's pleasure?

13 MS. BRADSHAW: I have a question.

14 MR. SHINKLE: Sure.

15 MS. BRADSHAW: It's just a clarification question  
16 to Director Brater and the Bureau. When we have initiations  
17 of petition we have printer's affidavits. Is it required  
18 for a seal to be on there from a notary or it does not?

19 MR. BRATER: Adam, do you want to take it?

20 MR. FRACASSI: Sure. So what you have down --  
21 like there's not a requirement that a specific seal be  
22 there.

23 MS. BRADSHAW: That's the question. That's what I  
24 want to know.

25 MR. FRACASSI: What is on here just has to be

1           notarized, a proper notarization with all the required  
2           notary elements and that's a sufficient notarization.

3                   MS. BRADSHAW: That's the question I had. Because  
4           I had seen that a couple times even going through some of my  
5           old stuff. Some of them had the seal, some of them don't  
6           have. I just wanted a clarification.

7                   MR. SHINKLE: Okay. On item number five, what's  
8           the Board's pleasure?

9                   MR. DAUNT: So the same logic applied to the  
10          previous, I move that the Board approve the form of the  
11          initiative petition submitted by Unlock Michigan with the  
12          understanding that the Board's approval does not extend to  
13          the substance of the proposal which appears on the petition,  
14          or the manner in which the proposal language is affixed to  
15          the petition.

16                  MR. SHINKLE: Okay. A motion's been made. Is  
17          there support? I'll support it. It's moved and supported.  
18          Further discussion on the motion?

19                  MS. MATUZAK: Ditto.

20                  MR. SHINKLE: Ditto from Julie. Anything else?  
21          Let's have a vote. All those in favor of the motion signify  
22          by saying "aye."

23                  MR. DAUNT: Aye.

24                  MR. SHINKLE: Aye. All those opposed say "nay."

25                  MS. MATUZAK: Nay.

1 MS. BRADSHAW: Nay.

2 MR. SHINKLE: Nay. Okay. That's better. Two  
3 votes yes, two votes no. We don't need roll calls on those  
4 I don't think.

5 (Whereupon motion failed at 2:47 p.m.)

6 MR. SHINKLE: Go on to number six on the agenda,  
7 consideration of the form submitted by Let MI Kids Learn A.  
8 Jonathan?

9 MR. BRATER: So this would be the approval as to  
10 form as to the Let MI Kids Learn petition regarding the  
11 establishment of the Student Opportunity Scholarship Act, so  
12 Let MI Kids Learn A. It will include the 100-word summary  
13 that you just approved. So this would be approval as to  
14 form with a box on there.

15 MR. SHINKLE: Okay. A is approval as to the form  
16 that we just approved the 100 words for.

17 MR. DAUNT: With how it's presented in here;  
18 right? It's got the box --

19 MS. MATUZAK: Yeah; yeah.

20 MR. BRATER: Yeah, the first motion.

21 MS. MATUZAK: The first motion.

22 MR. SHINKLE: What is the Board's pleasure?

23 MS. BRADSHAW: I think Mr. Doster has a --

24 MS. MATUZAK: Mr. Doster?

25 MR. SHINKLE: Oh, Mr. Doster. What are you doing

1 out there? I didn't see you. Mr. Doster, you've already  
2 spoke once. Go ahead. You can do it again.

3 MR. ERIC DOSTER: Thank you.

4 MR. DAUNT: We need to put a bell on you guys.

5 ERIC DOSTER

6 MR. ERIC DOSTER: Sorry. With respect to number  
7 six, I just want to -- I -- make sure I understood what Mr.  
8 Brater just said. It would be with the petition summary as  
9 approved by the Board today?

10 MS. MATUZAK: Correct.

11 MR. SHINKLE: That box is on it, the one we're  
12 looking at here.

13 MR. ERIC DOSTER: With the box on it.

14 MS. MATUZAK: With the box.

15 MR. ERIC DOSTER: Thank you.

16 MS. BRADSHAW: I have a question. Is -- I mean,  
17 we have one to form with the box and one to form without the  
18 box. If we are going -- if the votes from the last two  
19 votes were what the law is right now, wouldn't it be the  
20 only ones that we'd be approving would be the ones with the  
21 box? I'm just --

22 MS. MATUZAK: We approved the two prior ones  
23 without the box because that was standard at which they were  
24 approved.

25 MS. BRADSHAW: But they have either -- they have

1           either/or, so that's why I'm asking. I mean --

2           MS. MATUZAK: On this one? I'm only voting to  
3           approve the one with the box.

4           MR. SHINKLE: Right. No, not yet. This motion's  
5           the one with the box.

6           MS. BRADSHAW: Okay.

7           MR. SHINKLE: The point is if the Supreme Court  
8           says no, this box is unconstitutional, no petition should  
9           have it, this petitioner would like their non-box petition  
10          approved for that possible future.

11          MS. BRADSHAW: Got it.

12          MR. SHINKLE: But anyway, the motion in front of  
13          us is to approve this petition with the box on it. Further  
14          discussion? Seeing none -- oh.

15          MR. DAUNT: No.

16          MR. SHINKLE: All those in favor of the motion --

17          MS. MATUZAK: No; no; wait. We got to have the  
18          motion.

19          MS. BRADSHAW: We got to have the motion.

20          MR. DAUNT: I was getting --

21          MR. SHINKLE: Oh, you're making the motion. I  
22          thought you already made it. Okay. Make your motion,  
23          please.

24          MR. DAUNT: I move that the Board conditionally  
25          approve the form of the initiative petition submitted by Let

1 MI Kids Learn enacting the Student Opportunity Scholarship  
2 Act with the understanding that the form of the petition is  
3 not approved unless --

4 MR. BRATER: That's the wrong one. I'm sorry.

5 MS. MATUZAK: Wrong motion.

6 MR. DAUNT: Wrong motion. I'm sorry.

7 MR. FRACASSI: Number six.

8 MR. BRATER: We're on number six.

9 MR. FRACASSI: Tab number six.

10 MR. SHINKLE: What's he reading?

11 MS. MATUZAK: Tab number six, first one.

12 MR. SHINKLE: I'm looking at that and that's not  
13 what he read.

14 MS. MATUZAK: No.

15 MS. BRADSHAW: Right.

16 MR. DAUNT: Yeah, I'm screwing it up over here.  
17 There's too many damn pages. I move that the Board -- I  
18 move that the Board approve the form of the initiative  
19 petition submitted by Let MI Kids Learn enacting the Student  
20 Opportunity Scholarship Act with the understanding that the  
21 Board's approval does not extend to the substance of the  
22 proposal which appears on the petition, or the manner in  
23 which the proposal language is affixed to the petitioner.

24 MR. SHINKLE: Is there support?

25 MS. MATUZAK: Support.

1 MR. SHINKLE: It's been moved and supported.  
2 Further discussion on the motion? Seeing none, all those in  
3 favor signify by saying "aye."

4 MR. DAUNT: Aye.

5 MR. SHINKLE: Aye.

6 MS. MATUZAK: Aye.

7 MR. SHINKLE: All those opposed?

8 MS. BRADSHAW: Nay.

9 MR. SHINKLE: Unanimous vote.

10 MS. MATUZAK: No, you have a "nay."

11 MR. SHINKLE: Oh, you got a "nay"?

12 MS. BRADSHAW: I am a "nay" and that is to stand  
13 with how I feel about these with the 100 words. It's not --  
14 it's not about the checkbox. It's actually the form that's  
15 in front of us does not have the words that we have approved  
16 before and that's what my stance is and that's why I'm a no  
17 vote.

18 MR. SHINKLE: Oh, I see. Okay. So there's a  
19 three yes and one no vote on that motion.

20 (Whereupon motion passed at 2:51 p.m.)

21 MR. SHINKLE: Number seven is consideration of the  
22 conditional approval Let MI Kids Learn A.

23 MS. MATUZAK: Without the box.

24 MR. SHINKLE: This is approval of the same thing  
25 we just approved, but now without the box. And I betcha I



1 know what Jeannette's going to do since she voted no on the  
2 first one. So, anyway, what's the Board's pleasure on item  
3 number seven here? Is this seven or eight?

4 MS. MATUZAK: Seven.

5 MR. DAUNT: It's seven.

6 MR. SHINKLE: Seven, yeah, Let MI Kids Learn --  
7 hold it. Petition to form.

8 MR. DAUNT: I'm reading this to make sure I've got  
9 the right one.

10 MR. SHINKLE: Let MI Kids Learn A.

11 MR. DAUNT: This is the conditional seeking  
12 approval should they need to change course because of --

13 MR. SHINKLE: Oh, then we have two for MI Kids  
14 Learn on B. Okay. I got it. So this is the conditional  
15 one on A. Got it. That's what's in front of us. What's  
16 the Board's pleasure? Seeing no motion to be made, we'll  
17 move on the agenda. Number eight, consideration of the form  
18 of the petition submitted by Let MI Kids Learn B. Jonathan,  
19 what one is that now?

20 MR. BRATER: So this would be the Let MI Kids  
21 Learn petition that amends the Income Tax Act. This would  
22 be with the box.

23 MR. SHINKLE: Okay. This is Income Tax Act  
24 amendment with the box. What's the Board's pleasure?

25 MR. DAUNT: I move that --

1 MR. SHINKLE: Oh.

2 MR. DAUNT: You want me to keep going or --

3 MR. SHINKLE: Mr. Doster, you're interrupting our  
4 vote. What do you need?

5 ERIC DOSTER

6 MR. ERIC DOSTER: Again -- I'm sorry. I just want  
7 to clarify that it would be approval with the petition  
8 summary as drafted by Mr. Brater and approved by the Board  
9 today.

10 MR. SHINKLE: It's what we've already approved,  
11 but this is the form with the box on it.

12 MR. ERIC DOSTER: Right. But the Board --

13 MS. MATUZAK: Yes. It is the 100 words.

14 MR. ERIC DOSTER: -- right. But the form before  
15 you that we submitted thus far doesn't have the new  
16 language, but it will be the new language.

17 MR. SHINKLE: Sure; sure.

18 MR. ERIC DOSTER: That's what I just want to  
19 clarify. Thank you so much.

20 MR. SHINKLE: Okay.

21 MR. DAUNT: I move that the Board approve the form  
22 of the initiative petition submitted by Let MI Kids Learn  
23 amending the Income Tax Act with the understanding that the  
24 Board's approval does not extend to the substance of the  
25 proposal which appears on the petition or the manner in

1           which the proposal language is affixed to the petition.  
2                   MR. SHINKLE: Is there support to the motion?  
3                   MS. MATUZAK: Support.  
4                   MR. SHINKLE: It's been moved and supported.  
5           Further discussion on the motion? Seeing none, all those in  
6           favor signify by saying "aye."  
7                   MR. DAUNT: Aye.  
8                   MR. SHINKLE: Aye.  
9                   MS. MATUZAK: Aye.  
10                  MR. SHINKLE: All those opposed?  
11                  MS. BRADSHAW: Nay.  
12                  MR. SHINKLE: Nay. Three to one, same as last  
13           vote.  
14                   (Whereupon motion passed at 2:54 p.m.)  
15                  MR. SHINKLE: And now we're moving on to nine,  
16           it's the same petition form but the conditional approval  
17           without the box. Does anybody want to make a motion on  
18           nine? Seeing no action on that, we'll move on to ten. And  
19           we have a ten in our packet. What's this doing here?  
20                  MS. MATUZAK: Meeting schedule.  
21                  MS. BRADSHAW: Other business.  
22                  MR. SHINKLE: Meeting schedule?  
23                  MS. BRADSHAW: A meeting schedule.  
24                  MR. SHINKLE: Well, is this place open for all  
25           these dates? Really?

1 MR. BRATER: We think so, yeah.

2 MR. SHINKLE: You have checked with the Delta  
3 Township Clerk or whoever's in charge of this building?  
4 Okay.

5 MR. BRATER: So on that I would just note that,  
6 you know, in the event that we do have a meeting that  
7 requires a larger space, we can amend the notice -- I hope  
8 this is true, Adam -- we can amend the notice for those  
9 meetings to change it like if we have to go to Lansing  
10 Center for an individual meeting. But otherwise what this  
11 would allow us to do is with the understanding that we will  
12 be busy next year to establish a regular monthly meeting  
13 date that I think it will be beneficial for the Board and  
14 the public so that we're meeting once a month. We may -- we  
15 probably still will need to have some additional meetings  
16 that are scheduled for the process that we have been  
17 following with the Open Meetings Act notice, but this would  
18 give us a regular monthly time to meet.

19 MR. SHINKLE: So we're not going to consider any  
20 recall petitions or can we consider countywide recall  
21 petitions for four-year terms that were elected in 2020?

22 MS. MATUZAK: Countywides.

23 MR. SHINKLE: So we could still consider some, but  
24 no state recall petitions will be in the first several  
25 months, well, until after the next election a year from now?

1 MS. MATUZAK: Correct.

2 MR. SHINKLE: And, I mean, there's often we don't  
3 meet more than half a dozen times a year. So if there's  
4 nothing to come up, we're going to just cancel the meeting;  
5 right?

6 MR. BRATER: Correct.

7 MR. SHINKLE: This is those we pencil this in just  
8 in case type of thing. And if one of us say -- if two of us  
9 say right now we can't make a certain date, we can amend  
10 this thing?

11 MR. BRATER: Go ahead.

12 MR. FRACASSI: So I put it before you just if you  
13 could just look between now and the next meeting --

14 MR. SHINKLE: Yeah. Okay. You want us to --

15 MR. FRACASSI: -- double check the dates.

16 MR. SHINKLE: -- get back to you with these dates.

17 MR. FRACASSI: We have to -- you have to vote for  
18 them specifically after the first of the year for to  
19 schedule all the meetings.

20 MR. SHINKLE: Okay.

21 MR. FRACASSI: So after that, then we'll notice it  
22 and everything. So this is just tentative, see if these  
23 work for you. If they don't work for you, let me know and  
24 I'll adjust accordingly.

25 MR. SHINKLE: So this might avoid us going back

1 and forth with Lydia four or five times in 23 minutes or  
2 something?

3 MR. FRACASSI: That is the goal.

4 MR. DAUNT: So would you like us just to take a  
5 look and then write back to you: yes, yes, yes, no, yes,  
6 yes?

7 MR. FRACASSI: Sure. Whatever works for you guys.

8 MR. SHINKLE: Well, yeah, and, you know, I know  
9 what I'm doing in August but I'm not quite sure I know what  
10 I'm doing in September so I'm not sure if I can guarantee it  
11 anyway.

12 MS. BRADSHAW: Well, I only see two --

13 MR. SHINKLE: We'll get back to you the best we  
14 can.

15 MS. BRADSHAW: -- I only see one in November. I'm  
16 not sure. We'll probably have more.

17 MR. SHINKLE: Okay. Anything else to be brought  
18 before the Board?

19 MS. BRADSHAW: Do we have any updates on any other  
20 litigation?

21 MR. GRILL: Nothing since the last meeting that we  
22 haven't already discussed.

23 MR. SHINKLE: Okay. Are we okay to adjourn  
24 everybody? Any complaints? Without objection, we're  
25 adjourned.

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(Proceedings concluded at 2:57 p.m.)

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<b>A</b>	<p><b>agency</b> 5:23  <b>agenda</b> 4:9,10,23                  9:2 15:23 18:8                  36:20 38:23 43:6                  48:17  <b>ago</b> 25:17 28:21                  29:12,15 32:13  <b>agree</b> 16:7 31:7,11                  32:6  <b>agreeing</b> 32:4  <b>ahead</b> 8:2 9:18 14:3                  28:10 39:1 44:2                  52:11  <b>allow</b> 5:14 8:5,18                  27:16 51:11  <b>allowance</b> 26:2  <b>amend</b> 10:20 51:7,8                  52:9  <b>amending</b> 8:15                  49:23  <b>amendment</b> 48:24  <b>amends</b> 5:13 48:21  <b>amicus</b> 28:6 30:8,21                  30:22,24  <b>amount</b> 7:5  <b>ample</b> 9:23  <b>analyze</b> 5:21  <b>annual</b> 7:4,8 8:6,6                  8:22  <b>answer</b> 11:5 21:11                  21:12 23:12,14                  26:9 28:2 34:15                  35:2,8  <b>answered</b> 35:11  <b>ANTHONY</b> 1:9  <b>anybody</b> 50:17  <b>anyway</b> 18:15 21:16                  28:9 34:5 45:12                  48:2 53:11  <b>Appeals</b> 20:22 21:5                  21:10 27:23 30:10                  30:25 38:6 39:22  <b>appear</b> 12:19 16:9  <b>APPEARANCES</b>                  1:12  <b>appears</b> 12:24 40:10                  42:13 46:22 49:25  <b>applicable</b> 40:5  <b>applied</b> 42:9  <b>apply</b> 37:16  <b>applying</b> 38:7  <b>appreciate</b> 15:17                  19:10 25:3</p>	<p><b>appropriate</b> 36:9  <b>appropriation</b>                  10:12,16  <b>approval</b> 2:4,21 3:1                  13:7 20:3 22:22                  23:17 24:10,12,13                  28:19 36:8 38:11                  38:15 39:4,7,9,12                  39:23 40:9 42:12                  43:9,13,15 46:21                  47:22,24 48:12                  49:7,24 50:16  <b>approve</b> 4:13 17:19                  18:2,22 19:5                  22:25,25 25:15                  27:18 28:17 29:24                  31:6,14 40:7,15                  42:10 45:3,13,25                  46:18 49:21  <b>approved</b> 12:9,14                  12:22 13:10 15:5                  16:10 19:24 21:21                  21:22 22:9 23:2                  25:6,17 27:14                  28:24 33:14 40:2                  41:9,10,11 43:13                  43:16 44:9,22,24                  45:10 46:3 47:15                  47:25 49:8,10  <b>approving</b> 21:6 22:4                  23:5 25:12,25                  30:15 31:21 32:2                  32:9 33:6,7 38:20                  44:20  <b>arguing</b> 32:2  <b>argument</b> 20:24  <b>asked</b> 20:15,22,25                  31:3 39:13,14  <b>asking</b> 14:13 25:9                  30:17 38:1,11                  45:1  <b>Assistant</b> 1:14  <b>assume</b> 24:21  <b>assuming</b> 20:8                  26:23  <b>attacking</b> 30:3  <b>attend</b> 5:12  <b>attorney</b> 26:22 30:4                  35:15  <b>attorneys</b> 1:14                  27:17  <b>August</b> 53:9  <b>authority</b> 29:19</p>	<p>36:10  <b>available</b> 6:16 8:8                  8:23  <b>avoid</b> 38:12 52:25  <b>awaiting</b> 30:12  <b>awarded</b> 8:7  <b>awarding</b> 6:25  <b>aye</b> 4:18,19 18:4,5                  19:16,17 40:20,21                  40:22,23,24,25                  42:22,23,24 47:3                  47:4,5,6 50:6,7,8                  50:9  <b>ayes</b> 41:1,1,2,2</p> <hr/> <p style="text-align: center;"><b>B</b></p> <p><b>B</b> 2:11,23 3:1 9:1,20                  10:2 11:24 18:9                  48:14,18  <b>back</b> 11:5 13:2                  16:15,20 19:12                  20:3 22:3,13,22                  23:2 26:7,15,23                  27:20 29:5 52:16                  52:25 53:5,13  <b>bad</b> 31:4 32:16                  38:14  <b>ballot</b> 16:9  <b>bar</b> 10:21 23:23  <b>barred</b> 10:5,8,8  <b>barring</b> 17:1  <b>based</b> 36:9 37:12                  39:22  <b>bases</b> 31:22  <b>basis</b> 16:22 27:2  <b>behalf</b> 9:8 12:5                  20:16 28:21  <b>belabor</b> 28:16  <b>believe</b> 6:4 9:10                  28:1,2  <b>believes</b> 9:21  <b>bell</b> 44:4  <b>beneficial</b> 7:16                  51:13  <b>benefit</b> 21:3  <b>BENSON</b> 1:3  <b>best</b> 5:21 21:9 24:24                  25:1 37:25 38:14                  38:17 53:13  <b>betcha</b> 47:25  <b>bets</b> 31:9  <b>better</b> 43:2  <b>big</b> 37:25</p>	<p><b>bit</b> 23:9  <b>black</b> 21:17  <b>blank</b> 24:25  <b>board</b> 1:4,8,9,10 3:3                  4:5 5:3,18 9:11                  10:1 11:20 12:7,8                  12:15,17,22 13:6                  13:10,11,14,24,24                  15:5 16:9,22,23                  17:19 18:21 19:24                  20:2,22 24:12                  27:4,8,14,18                  32:25 35:21,25                  36:1,1,2,3 37:10                  37:14,17 38:19                  40:7 42:10 44:9                  45:24 46:17,18                  49:8,12,21 51:13                  53:18  <b>Board's</b> 2:7,12 4:12                  16:6 17:16 20:15                  26:17 37:14 40:9                  41:12 42:8,12                  43:22 46:21 48:2                  48:16,24 49:24  <b>bound</b> 32:17  <b>box</b> 17:8,12,15 20:1                  20:4,8,10 22:20                  23:3 26:6,20,20                  26:23 27:13,19                  28:23,25 29:1                  33:2,3,13,17 37:4                  38:21 39:7,9,11                  39:13,18 40:15                  41:10,11 43:14,18                  44:11,13,14,17,18                  44:21,23 45:3,5,8                  45:13 47:23,25                  48:22,24 49:11                  50:17  <b>boxes</b> 17:13,14  <b>BRADSHAW</b> 1:10                  4:13 14:1,4,6,13                  14:17,22 15:6,9                  15:14,17,25 17:10                  17:14 18:13 19:6                  19:9 21:12 22:24                  24:20 25:2,8,11                  25:20 26:8 32:18                  35:11 40:25 41:13                  41:15,23 42:3                  43:1,23 44:16,25                  45:6,11,19 46:15</p>
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47:8,12 50:11,21 50:23 53:12,15,19 <b>Brater</b> 1:10 4:8 5:3 7:15,25 8:3 10:2 11:21,25 12:1 13:14,23,24 15:5 16:7,20 19:11,23 20:12 26:10 38:24 39:2 41:8,16,19 43:9,20 44:8 46:4 46:8 48:20 49:8 51:1,5 52:6,11 <b>Brewer</b> 2:8,15 6:4 9:3,6,7,8,20 10:10 10:17,19 11:3,4,9 11:13,22 12:2,5 12:15 13:22 28:9 28:11,14,15 29:2 29:10,15,22 30:9 31:2 33:10,19,20 33:21,22 34:12,13 35:20 36:19 37:1 <b>Brewer's</b> 13:6,10 <b>brief</b> 20:16 28:6 29:5,6 30:8,21,24 33:1 37:21 <b>briefing</b> 30:13 <b>briefs</b> 20:21 <b>bring</b> 16:20 <b>bringing</b> 38:9,11 <b>brought</b> 25:4 53:17 <b>building</b> 51:3 <b>bunch</b> 11:16 <b>bureau</b> 5:20 16:13 16:22,23 36:5 37:11 41:16 <b>Bureau's</b> 38:25 <b>business</b> 3:2 50:21 <b>busy</b> 51:12 <b>butt</b> 38:1	<b>case</b> 22:8 23:8 28:1 30:2,5,6,9 39:10 52:8 <b>categorically</b> 12:17 <b>cause</b> 37:3 <b>Center</b> 51:10 <b>CER</b> 1:18 <b>certain</b> 12:6 28:2 52:9 <b>certified</b> 1:18 6:24 <b>Chair</b> 1:8,9 5:3 9:7 9:16 11:19 33:11 <b>Chairman</b> 10:6,14 11:4,10,13 28:12 30:10 33:20 34:13 35:17 <b>challenged</b> 37:1 <b>chance</b> 34:5,9,24 <b>chances</b> 35:4 <b>change</b> 31:3,8 34:10 48:12 51:9 <b>changes</b> 5:19 6:9 7:18 31:15 <b>charge</b> 13:13 51:3 <b>check</b> 20:13 22:14 37:4 52:15 <b>checkbox</b> 22:5 24:14 38:5 39:22 47:14 <b>checkboxes</b> 25:1 <b>checked</b> 51:2 <b>chief</b> 9:12 <b>choose</b> 26:13 <b>Chris</b> 2:16 34:18 35:13,16,17 37:20 <b>circulate</b> 20:7 34:6 36:14,16 39:10 <b>circulated</b> 32:25 33:17 <b>circulating</b> 23:17 24:16 <b>circulation</b> 23:15 26:14 <b>circulator</b> 20:1,1,12 23:7 <b>circulators</b> 27:3,16 38:5 <b>circumstances</b> 38:14 39:15 <b>citizen's</b> 12:18 13:7 <b>citizens</b> 14:9 32:23 <b>claim</b> 8:18 <b>claimed</b> 8:9,11,21	8:24 <b>Claims</b> 38:4 <b>clarification</b> 26:18 41:15 42:6 <b>clarify</b> 38:24 49:7 49:19 <b>clarifying</b> 39:20 <b>clear</b> 21:20 32:15 <b>Clerk</b> 51:3 <b>client</b> 9:21 12:6,20 <b>clients</b> 34:5 <b>clock</b> 29:23 <b>colleagues</b> 29:18 <b>collect</b> 22:19 37:13 <b>collected</b> 37:9 <b>collecting</b> 20:19 <b>come</b> 9:4 11:5,16 20:3 22:13,22 23:2 24:22 27:10 28:10,18 33:2 52:4 <b>comes</b> 35:25 36:4 <b>coming</b> 22:3 <b>comment</b> 6:3 19:14 33:19 38:8 <b>commenters</b> 7:19 <b>comments</b> 10:4 11:21 12:2,5 16:6 21:9 35:18,19 40:5 41:7 <b>common</b> 21:13,14 <b>compelled</b> 35:19 <b>complaints</b> 53:24 <b>complex</b> 6:8 11:25 <b>compliance</b> 35:23 <b>complicate</b> 30:14 <b>complicated</b> 5:19 6:8 26:5 <b>comply</b> 27:16 37:24 <b>concern</b> 32:5 33:15 <b>concluded</b> 54:1 <b>conditional</b> 2:21 3:1 17:8 28:19,23 29:24 36:8 39:5,8 39:12,16 47:22 48:11,14 50:16 <b>conditionally</b> 30:15 45:24 <b>conflicting</b> 38:3 <b>confused</b> 23:10 <b>confusing</b> 38:3 <b>confusion</b> 29:19 <b>consequences</b> 34:10	<b>consider</b> 51:19,20 51:23 <b>consideration</b> 2:3,5 2:10,13,17,19,21 2:23 3:1 4:10,24 27:22 28:3 30:8 41:6 43:7 47:21 48:17 <b>considered</b> 5:18 19:21 <b>consistency</b> 7:17 <b>consistent</b> 26:17 39:5 <b>Constitution</b> 12:11 <b>constitutional</b> 37:7 <b>CONTENTS</b> 2:1 <b>continue</b> 8:13 24:21 <b>contradicts</b> 29:3 <b>contributions</b> 7:9 8:18 <b>conversation</b> 19:10 <b>copy</b> 12:23 <b>Corporation</b> 1:19 <b>correct</b> 10:17 15:24 20:11,12,20 28:7 39:24 44:10 52:1 52:6 <b>correctly</b> 13:23 <b>count</b> 20:17 26:15 31:16,18 37:17 <b>countywide</b> 51:20 <b>Countywides</b> 51:22 <b>couple</b> 16:14 21:17 25:17 35:20 42:4 <b>course</b> 14:2 24:17 48:12 <b>court</b> 10:11 16:21 20:22,24,25 21:5 21:10 22:6,20 26:6,21,23 27:12 27:23 29:4 30:5 30:10,10,11,20,25 30:25 31:5,18,19 32:12,16 33:2,12 33:13 34:6 35:9 35:10,22 37:6,15 38:4,5 39:22 45:7 <b>court's</b> 19:25 26:4 34:25 39:6 <b>courtesy</b> 27:6 <b>courts</b> 20:6,16 26:11 26:19 27:5 31:10 <b>covering</b> 31:22	<b>crazy</b> 21:16 <b>create</b> 6:20 29:18 30:14 36:3 <b>creates</b> 5:8 8:4 <b>creating</b> 30:17 <b>credit</b> 5:14 8:4 <b>credits</b> 8:5,7,9,11,18 8:21,23 <b>current</b> 23:16 31:5 31:15 39:8 <b>currently</b> 7:5
<b>D</b>				
<b>damn</b> 46:17 <b>date</b> 12:13 22:14,15 22:16,20 26:15 39:3 51:13 52:9 <b>dates</b> 50:25 52:15 52:16 <b>Daunt</b> 1:9 4:15 17:7 17:25 18:10,18,21 21:14 23:13 25:21 25:24 32:4 33:10 33:23 34:15,24 38:22 39:20 40:4 40:21 42:9,23 43:17 44:4 45:15 45:20,24 46:6,16 47:4 48:5,8,11,25 49:2,21 50:7 53:4 <b>day</b> 20:20,22,23 26:14 29:20 <b>days</b> 24:22 25:15 26:1,12,15 36:15 <b>deadline</b> 36:14 <b>dealt</b> 32:12 <b>decades</b> 12:8 28:17 <b>decide</b> 35:5 <b>decided</b> 34:2 39:10 <b>decision</b> 19:25 30:12 32:11 33:12,16 34:7 <b>decision's</b> 33:8 <b>declares</b> 37:6 <b>deemed</b> 26:25 <b>defensible</b> 31:14 <b>defer</b> 26:21 <b>definitely</b> 7:20 <b>Delta</b> 51:2 <b>democracy</b> 35:22 <b>Department</b> 1:2 5:9 5:10 6:24 <b>deployed</b> 24:14				

<p><b>designed</b> 27:7  <b>difference</b> 22:5  <b>different</b> 14:11                  21:14 36:20,20                  37:15  <b>differently</b> 29:11  <b>differs</b> 37:18  <b>difficulty</b> 37:4  <b>directed</b> 15:4  <b>directly</b> 17:3  <b>director</b> 2:6,11 10:2                  11:20,25 12:21                  13:14 17:22,23                  18:3,24,25 19:8                  19:11 41:16  <b>disabilities</b> 7:4  <b>disability</b> 7:1  <b>disagree</b> 32:7  <b>disclose</b> 9:22,23  <b>disclosing</b> 9:15  <b>disclosures</b> 12:16  <b>discuss</b> 5:6 7:16  <b>discussed</b> 20:2                  53:22  <b>discussion</b> 4:17 8:1                  18:3 19:8,15                  38:19 40:16 42:18                  45:14 47:2 50:5  <b>discussions</b> 32:8  <b>Ditto</b> 42:19,20  <b>doing</b> 21:6,18 28:9                  29:4 34:4,8 38:7,7                  40:17 43:25 50:19                  53:9,10  <b>dokey</b> 17:6  <b>donations</b> 5:14  <b>Doster</b> 2:9,20,24                  11:15,18,19 14:2                  14:10,15,21,23                  15:7,12,16,18,20                  15:21,22 16:7                  43:23,24,25 44:1                  44:3,5,6,13,15                  49:3,5,6,12,14,18  <b>double</b> 52:15  <b>doubt</b> 31:12  <b>dozen</b> 52:3  <b>drafted</b> 2:6,11 6:6                  6:18 17:22 18:24                  49:8  <b>drives</b> 28:20 34:2  <b>due</b> 20:21  <b>duplicate</b> 22:4 23:3</p>	<p>33:7  <b>duty</b> 36:5</p> <hr/> <p style="text-align: center;"><b>E</b></p> <hr/> <p><b>e-signatures</b> 37:13  <b>earliest</b> 26:12  <b>echo</b> 35:20  <b>edification</b> 20:9  <b>education</b> 5:21 7:7                  8:19 9:9  <b>effect</b> 10:3,20 17:4                  21:23,24 30:16  <b>eight</b> 48:3,17  <b>either</b> 7:18 17:5                  26:3,19 27:19                  30:12 44:25  <b>either/or</b> 45:1  <b>elected</b> 51:21  <b>election</b> 12:13,13                  16:16,17 18:3                  35:23,24 36:13                  51:25  <b>elections</b> 1:10,11 2:6                  2:11 5:20 12:22                  16:13 17:22 18:25                  19:8 36:5  <b>Electronic</b> 1:18  <b>element</b> 16:11 26:25  <b>elements</b> 42:2  <b>enacted</b> 12:10 13:8                  16:8  <b>enacting</b> 46:1,19  <b>enormous</b> 29:18  <b>entitled</b> 10:23  <b>Equal</b> 37:10,12  <b>Eric</b> 2:9,20,24 11:15                  11:16,18,19 14:2                  14:10,15,21,23                  15:7,12,16,18,21                  44:3,5,6,13,15                  49:5,6,12,14,18  <b>Erik</b> 1:13 20:14                  27:20  <b>essence</b> 22:4  <b>essentially</b> 20:25                  27:2  <b>establish</b> 6:21,25                  36:4 51:12  <b>established</b> 6:10  <b>establishment</b> 6:6                  43:11  <b>event</b> 39:10 51:6  <b>everybody</b> 23:11</p>	<p>53:24  <b>exact</b> 41:8  <b>exactly</b> 6:19  <b>example</b> 8:10  <b>exceeding</b> 36:10  <b>exists</b> 28:3,18  <b>expedite</b> 30:5  <b>expedited</b> 30:11  <b>expenses</b> 7:8,9 8:19  <b>Explain</b> 5:1  <b>extend</b> 40:9 42:12                  46:21 49:24  <b>extended</b> 16:17  <b>extending</b> 25:5  <b>extension</b> 26:1</p> <hr/> <p style="text-align: center;"><b>F</b></p> <hr/> <p><b>fact</b> 30:18 38:8  <b>failed</b> 41:4 43:5  <b>fails</b> 41:3  <b>fair</b> 32:22 37:10,11  <b>fairly</b> 5:19 9:11                  11:22  <b>faith</b> 31:4 32:6,8                  34:3,7  <b>false</b> 12:17  <b>far</b> 9:21 33:14 49:15  <b>fault</b> 32:9  <b>favor</b> 4:17 18:4                  19:16 30:2 40:20                  42:21 45:16 47:3                  50:6  <b>February</b> 33:25                  36:17  <b>feel</b> 14:8,18 25:7                  47:13  <b>felt</b> 14:18 35:19  <b>field</b> 21:2 23:16  <b>file</b> 20:19 29:6,13  <b>filed</b> 20:16,24 28:5                  30:19,24 33:25  <b>filing</b> 16:14 20:23                  26:16  <b>final</b> 33:16 36:11,22  <b>find</b> 18:10 19:12                  36:22  <b>fine</b> 11:21 12:1  <b>Firm</b> 1:19  <b>first</b> 4:9 5:8 6:6 9:3                  43:20,21 46:11                  48:2 51:24 52:18  <b>fiscal</b> 5:23  <b>five</b> 35:6 41:5 42:7</p>	<p>53:1  <b>floating</b> 24:11  <b>focus</b> 6:11  <b>focused</b> 6:9,16  <b>folks</b> 36:14  <b>followed</b> 36:6 37:8  <b>following</b> 8:12 51:17  <b>follows</b> 5:1  <b>form</b> 2:13,17,19,22                  2:23 3:1 13:11                  14:19 19:21,24                  20:3,17 21:21                  25:6,12 27:19                  28:17 31:14 38:20                  39:5,7,9,12,24                  40:7,15 41:6                  42:10 43:7,10,14                  43:15 44:17,17                  45:25 46:2,18                  47:14 48:7,17                  49:11,14,21 50:16  <b>formal</b> 27:10  <b>forms</b> 19:12 24:13                  24:25 26:19 27:4                  27:8 38:15,16  <b>forth</b> 53:1  <b>forward</b> 22:1  <b>foster-care</b> 7:1  <b>fought</b> 29:25  <b>four</b> 11:6,8 16:5                  19:20 25:25 34:14                  34:21 38:19,22,23                  53:1  <b>four-year</b> 51:21  <b>FRACASSI</b> 1:11                  41:20,25 46:7,9                  52:12,15,17,21                  53:3,7  <b>frankly</b> 29:3 31:4                  32:12 39:22  <b>Fred</b> 2:14 23:19,19                  23:21,24 24:4,7,7                  24:8,9,17,19,21                  25:7,10 37:21,23                  37:24  <b>free</b> 25:7 38:16  <b>front</b> 14:14 15:10                  25:12 33:3 45:12                  47:15 48:15  <b>fully</b> 9:15 23:18  <b>funding</b> 5:23 6:14                  7:5,10 8:24 9:15                  9:25 10:20,21</p>	<p>17:1  <b>further</b> 3:2 19:15                  20:5 26:5,18                  30:13,14 40:16                  41:7 42:18 45:13                  47:2 50:5  <b>future</b> 38:12 45:10</p> <hr/> <p style="text-align: center;"><b>G</b></p> <hr/> <p><b>game</b> 34:11  <b>general</b> 1:14 12:12                  12:13 30:4 36:13  <b>generally</b> 38:10  <b>generals</b> 26:22  <b>getting</b> 45:20  <b>give</b> 11:16 24:14                  26:14 27:5,15                  28:2,18 29:16                  38:15 51:18  <b>given</b> 21:3 28:19,22                  28:24 31:15 34:2  <b>gives</b> 27:2  <b>glad</b> 10:6 11:5  <b>global</b> 37:12  <b>go</b> 4:9 8:2,8,11 9:18                  13:16 14:3 17:2                  20:14 22:19 24:22                  26:3,7 28:10 39:1                  43:6 44:2 51:9                  52:11  <b>goal</b> 53:3  <b>goals</b> 36:20  <b>God</b> 24:3  <b>goes</b> 8:9 9:22 25:2  <b>going</b> 5:2 7:17 14:7                  22:1,14 29:5,6,7                  29:18,23,25 31:11                  31:16,17,20 32:20                  37:3,16 42:4                  44:18 48:1 49:2                  51:19 52:4,25  <b>good</b> 10:2 25:14                  31:4 32:6,7,8,25                  34:3,7  <b>Goodman</b> 9:8  <b>grant</b> 6:10,13  <b>granting</b> 5:11  <b>grants</b> 5:11 6:9,12                  6:17 21:1  <b>green</b> 24:15  <b>GRILL</b> 1:13 20:20                  21:9 27:24 28:7                  30:21,23 31:1</p>
--	---	---	--	---

34:23 35:2 53:21 <b>groups</b> 23:2 32:5 <b>guarantee</b> 27:5 53:10 <b>guess</b> 9:1 13:5 34:23 40:6 <b>guidance</b> 6:1 20:6 35:22 39:6 <b>guys</b> 9:5 21:17 24:14 33:17 44:4 53:7	<b>including</b> 26:24 <b>income</b> 5:13 7:1 8:16 18:24 48:21 48:23 49:23 <b>increase</b> 8:13,22 <b>indicate</b> 10:4 <b>indicating</b> 26:9 <b>individual</b> 51:10 <b>initiated</b> 5:4,7 12:18 13:7,15 <b>initiation</b> 6:20 8:15 11:1 <b>initiations</b> 41:16 <b>initiative</b> 2:5,10 4:25 17:20 18:23 40:8 42:11 45:25 46:18 49:22 <b>initiatives</b> 36:20 <b>instance</b> 16:13 <b>insurance</b> 25:22 26:4 <b>intent</b> 23:14 <b>intention</b> 25:24 26:17 <b>interrupting</b> 49:3 <b>involving</b> 5:18 <b>ironic</b> 36:22 <b>issue</b> 16:25 36:2 41:8 <b>issued</b> 37:15 <b>issues</b> 30:15 34:6 <b>it'll</b> 27:16 <b>item</b> 4:10,23 7:23 9:10 18:8 19:20 38:23 42:7 48:2 <b>items</b> 11:6 28:16 <b>iteration</b> 23:16	<b>July</b> 36:14 <b>justices</b> 35:4	<b>lawsuit</b> 33:24,24 <b>lawsuits</b> 38:12 <b>lawyer</b> 23:21 30:3 <b>lawyer's</b> 29:6 <b>Learn</b> 2:6,11,19,22 2:23 3:1 4:25 5:5 17:17,20 18:9,23 39:6,14,17 43:7 43:10,12 46:1,19 47:22 48:6,10,14 48:18,21 49:22 <b>legal</b> 20:17 26:22 30:15 <b>legislation</b> 5:24 6:20 8:15 10:12 12:12 17:3 <b>legislation/proposed</b> 9:14 <b>legislature</b> 5:25 9:24 9:25 10:4 12:4,10 13:9 16:9 36:24 36:25 37:2,6 <b>Let's</b> 4:9 40:19 42:21 <b>letting</b> 14:8 <b>levels</b> 9:15 <b>licensed</b> 23:22 35:14 <b>life</b> 12:20 29:20 <b>light</b> 24:15 <b>likelihood</b> 33:12 34:24 <b>limit</b> 21:9 <b>litigants</b> 27:25 <b>litigated</b> 29:24 31:12 <b>litigation</b> 16:17 36:9 36:18 38:9,10 53:20 <b>little</b> 22:5 23:9 37:16 <b>logic</b> 42:9 <b>long</b> 14:14 <b>longer</b> 10:12 14:6 <b>look</b> 5:25 21:6,18 22:17 27:22 39:2 52:13 53:5 <b>looked</b> 27:8 <b>looking</b> 5:23 26:8 39:21 44:12 46:12 <b>loose</b> 37:16 <b>lot</b> 6:13 14:14 25:20 <b>Lydia</b> 53:1	<b>M</b> <b>making</b> 27:3 33:16 36:1 45:21 <b>manner</b> 40:11 42:14 46:22 49:25 <b>Marcy</b> 1:18 <b>Mark</b> 2:8,15 6:4 9:3 9:6,7,7,20 10:10 10:17,19 11:4,9 11:13 28:11,14,15 29:2,10,15,22 30:9 31:2 33:20 33:21,22 34:13 <b>matter</b> 27:14 31:11 32:21 35:3 <b>MATUZAK</b> 1:9 7:13 15:24 16:19 17:11,15,18 18:12 18:16,19 19:3 20:11 21:11,19,25 22:3,7 24:16,18 25:18,23 31:7,19 31:25 32:2 40:17 40:24 42:19,25 43:19,21,24 44:10 44:14,22 45:2,17 46:5,11,14,25 47:6,10,23 48:4 49:13 50:3,9,20 51:22 52:1 <b>maximum</b> 8:20,22 <b>MCL</b> 8:16,16,17,17 <b>mean</b> 12:8 14:13 15:10 20:15 21:7 22:18 25:8,11 31:11 32:19,21 44:16 45:1 52:2 <b>meet</b> 51:18 52:3 <b>meeting</b> 1:4 2:3 4:3 4:4,10 7:1 20:2,15 20:21,22 23:1 27:12 50:20,22,23 51:6,10,12,14 52:4,13 53:21 <b>meetings</b> 51:9,15,17 52:19 <b>member</b> 1:9,10 23:22 <b>members</b> 5:4 11:19 <b>mentioned</b> 15:2 <b>mentions</b> 10:19 <b>merits</b> 30:13
<b>H</b> <b>half</b> 52:3 <b>hand</b> 23:25 <b>handle</b> 22:16 <b>hang</b> 29:8 <b>happen</b> 22:21 <b>happens</b> 6:14 23:6 25:4,16 31:11 39:11 <b>happy</b> 7:25 8:3 <b>hard</b> 35:2 <b>head</b> 25:24 <b>heard</b> 11:6 29:17,22 40:5 <b>hearing</b> 35:18,19 <b>heck</b> 36:16 <b>hedge</b> 31:9 <b>help</b> 24:2 38:8 <b>hesitation</b> 33:9 <b>hey</b> 28:9 <b>Highway</b> 1:5 <b>hold</b> 27:5 32:25 48:7 <b>honestly</b> 32:21 <b>hope</b> 38:14 51:7 <b>hundreds</b> 22:19	<b>I</b> <b>idea</b> 30:8 31:4,23,24 35:6 <b>identified</b> 27:8,9 <b>II</b> 2:18 41:6 <b>immediate</b> 27:22 28:3 30:8 <b>impartial</b> 13:15 <b>implement</b> 7:10 8:24 <b>improper</b> 38:13 <b>inaudible</b> 16:14 <b>inch</b> 13:20 <b>include</b> 43:12 <b>included</b> 17:1,4	<b>K</b> <b>keep</b> 49:2 <b>Kids</b> 2:6,11,19,22 2:23 3:1 4:25 5:5 17:17,20 18:9,23 39:6,14,17 43:7 43:10,12 46:1,19 47:22 48:6,10,13 48:18,20 49:22 <b>kind</b> 23:1,14 27:6 32:16,17 34:24 35:7,11 <b>Klingshirn</b> 1:18 <b>knew</b> 34:4,8 <b>know</b> 4:5 5:17 7:16 7:19 8:10 9:13 10:23 12:22 13:17 14:9,17,19 15:4,4 15:9,15 16:8,12 16:23 17:4 20:4 21:13 22:16 23:6 24:23 26:12,18,21 26:23 27:2,3,11 27:13,15,17 29:5 30:3 31:8 33:4,6 33:10,16 35:6 39:13 41:24 48:1 51:6 52:23 53:8,8 53:9	<b>L</b> <b>land</b> 31:15 <b>language</b> 5:24 6:2 12:1,3,6,14,18,19 12:24 13:1,2,8 16:8,15,24 18:11 39:21 40:11 42:14 46:23 49:16,16 50:1 <b>Lansing</b> 1:5,15 4:1 51:9 <b>larger</b> 51:7 <b>latest</b> 26:13 <b>law</b> 10:13,25 13:7 13:16 21:14 27:16 28:18 30:16 31:15 31:15 34:3 35:5 35:23,24 39:5,23 39:24 40:2 44:19 <b>laws</b> 5:4,7,21,21	
<b>J</b> <b>January</b> 36:16 <b>Jeannette</b> 1:10 14:3 25:14 <b>Jeannette's</b> 48:1 <b>job</b> 11:21 12:1 <b>JOCELYN</b> 1:3 <b>Jonathan</b> 1:10 4:7 5:1 16:6 19:22 39:1 41:7 43:8 48:18 <b>judge</b> 21:5 <b>judicial</b> 21:22 <b>Julie</b> 1:9 22:17 42:20				

<p><b>mess</b> 30:17  <b>MI</b> 2:5,10,13,19,22                  2:23 3:1 4:25 5:5                  17:17,20 18:9,23                  19:21,23 20:2                  24:10 38:20 39:3                  39:4,6,13,17 40:8                  40:15 41:9 43:7                  43:10,12 46:1,19                  47:22 48:6,10,13                  48:18,20 49:22  <b>Michigan</b> 1:1,5,15                  2:18 4:1 5:9,10,13                  5:20 6:24 8:15                  10:11,13 12:10,11                  12:20 13:8 23:23                  29:4 30:5,11                  32:11 36:17 37:11                  37:12 42:11  <b>middle</b> 34:11  <b>million</b> 8:6,10,12,12  <b>mind</b> 36:21  <b>Mine</b> 18:15  <b>minute</b> 17:14  <b>minutes</b> 2:3 4:10,13                  53:1  <b>moment</b> 20:18  <b>Monday</b> 1:6 4:2  <b>month</b> 13:11 51:14  <b>monthly</b> 51:12,18  <b>months</b> 25:17 32:10                  32:10 51:25  <b>motion</b> 4:13,17,22                  17:18 18:3,4,6,7                  19:8,16,18,19                  27:23 28:3 30:7                  30:19,22 39:21                  40:20,23 41:3,4                  42:18,21 43:5,20                  43:21 45:12,16,18                  45:19,21,22 46:5                  46:6 47:2,19,20                  48:16 50:2,5,14                  50:17  <b>motion's</b> 4:20 42:16                  45:4  <b>motions</b> 7:21,22                  27:21  <b>move</b> 17:18 18:21                  40:7 42:10 45:24                  46:17,18 48:17,25                  49:21 50:18  <b>moved</b> 4:16 18:1</p>	<p>19:4 40:14 42:17                  47:1 50:4  <b>moves</b> 40:13  <b>moving</b> 19:20 50:15</p> <hr/> <p style="text-align: center;"><b>N</b></p> <p><b>name</b> 24:6,7  <b>National</b> 28:21                  39:11  <b>nay</b> 41:2 42:24,25                  43:1,2 47:8,10,11                  47:12 50:11,12  <b>need</b> 7:20,22 13:14                  43:3 44:4 48:12                  49:4 51:15  <b>negate</b> 34:25  <b>Network</b> 1:19  <b>never</b> 12:17 28:1,19                  33:25  <b>new</b> 24:25 29:6                  38:16 49:15,16  <b>nine</b> 11:6,8,15 35:6                  35:6 50:15,18  <b>non-box</b> 45:9  <b>non-public</b> 5:12  <b>nonprofits</b> 6:23  <b>nonpublic</b> 7:6  <b>nontaxable</b> 7:2  <b>Norm</b> 21:15,19  <b>NORMAN</b> 1:8  <b>notarization</b> 42:1,2  <b>notarized</b> 42:1  <b>notary</b> 41:18 42:2  <b>note</b> 6:7 51:5  <b>notice</b> 4:6,8 27:6                  51:7,8,17 52:21  <b>notified</b> 20:23  <b>November</b> 1:6 2:4                  4:2,11,14 17:23                  18:25 39:3 53:15  <b>null</b> 32:10  <b>number</b> 1:19 7:23                  7:24 9:16,20                  15:10,23 18:8,12                  18:17 19:20 22:7                  34:14,21 38:19,23                  41:5 42:7 43:6                  44:6 46:7,8,9,11                  47:21 48:3,17  <b>numbers</b> 11:16</p> <hr/> <p style="text-align: center;"><b>O</b></p> <p><b>objection</b> 53:24</p>	<p><b>obligation</b> 35:21  <b>obtain</b> 10:12  <b>obviously</b> 39:14  <b>oh</b> 10:15 11:14                  18:20 43:25 45:14                  45:21 47:11,18                  48:13 49:1  <b>okay</b> 4:7 7:11 8:25                  10:7,15,18 11:8                  11:12,15 14:4,10                  14:15 15:7,12,19                  16:1,3 17:9,16                  22:25 24:15 25:2                  26:12 27:20 30:19                  32:1 34:12 36:12                  37:20 38:18 39:19                  40:13,19 41:12                  42:7,16 43:2,15                  45:6,22 47:18                  48:14,23 49:20                  51:4 52:14,20                  53:17,23,23  <b>Okey</b> 17:6  <b>old</b> 24:24 42:5  <b>omissions</b> 9:12  <b>omitted</b> 13:23 19:11  <b>once</b> 44:2 51:14  <b>one's</b> 13:17  <b>ones</b> 24:24 26:15                  39:16,17 44:20,20                  44:22  <b>open</b> 50:24 51:17  <b>opinion</b> 15:15  <b>opportunity</b> 5:8,15                  6:7,21,22 8:19                  17:21 32:13 43:11                  46:1,20  <b>opposed</b> 4:20 40:22                  42:24 47:7 50:10  <b>option</b> 10:5 27:3                  28:22,25 29:16,17  <b>options</b> 27:15  <b>order</b> 4:4  <b>organization</b> 6:13  <b>organizations</b> 5:11                  6:10,23  <b>Ottawa</b> 1:14  <b>outlined</b> 27:11  <b>outset</b> 27:9</p> <hr/> <p style="text-align: center;"><b>P</b></p> <p><b>p.m</b> 1:6 4:2,22 18:7                  19:19 41:4 43:5</p>	<p>47:20 50:14 54:1  <b>P64713</b> 1:13  <b>PA</b> 8:16 34:7  <b>packet</b> 50:19  <b>packets</b> 4:11  <b>page</b> 2:2 12:6 18:16  <b>pages</b> 46:17  <b>paid</b> 20:1,13  <b>pain</b> 37:25  <b>pandemic</b> 37:13  <b>paper</b> 13:20  <b>part</b> 12:21 13:4,19                  13:22 14:12,19                  15:1 16:10 33:5  <b>pass</b> 16:2,3  <b>passed</b> 4:22 18:6,7                  19:19 47:20 50:14  <b>passes</b> 16:4 19:18  <b>pat</b> 30:1  <b>pay</b> 34:9  <b>pencil</b> 52:7  <b>pending</b> 26:18  <b>people</b> 22:10,11                  24:16 33:23 34:1                  37:17  <b>per-pupil</b> 7:5  <b>percent</b> 8:9 37:5  <b>period</b> 16:18 25:5,5                  26:14  <b>permissible</b> 13:12  <b>person</b> 38:11  <b>perspective</b> 38:25                  39:15  <b>Peter</b> 16:1,2,3  <b>peti-</b> 22:25  <b>petition</b> 2:5,10,13                  2:17,19,23 4:25                  5:17 6:6 8:4 10:23                  10:24 12:18,20,21                  12:24,25 13:4,6                  13:10,11,18,19,21                  14:11,12 15:1                  17:20 18:23 19:21                  19:24,24 20:4,7                  20:10,17 21:21                  22:4,23 24:18                  25:11 28:19,20,23                  28:24,25 29:14                  31:22 32:3,22                  33:1,6,7,7 34:2                  38:20 39:12,24                  40:8,10,12 41:6                  41:17 42:11,13,15</p>	<p>43:10 44:8 45:8,9                  45:13,25 46:2,19                  46:22 48:7,18,21                  49:7,22,25 50:1                  50:16  <b>petition's</b> 23:4  <b>petitioner</b> 22:18                  40:1 45:9 46:23  <b>petitioner's</b> 31:24  <b>petitioners</b> 23:7                  32:22  <b>petitions</b> 5:4,7 7:14                  11:17 12:9,14                  14:8,24 15:2                  20:17 21:2,7,25                  22:3,9,10,13                  24:10,19 25:6                  28:17 29:10,11,16                  29:24 30:15 31:14                  32:6,23,24 34:6                  36:23 38:13 51:20                  51:21,24  <b>phrased</b> 35:3  <b>place</b> 31:12 35:24                  36:6 37:2,6,8                  50:24  <b>planning</b> 34:18,20                  35:18  <b>please</b> 14:2 37:21                  45:23  <b>pleasure</b> 4:12 17:16                  41:12 42:8 43:22                  48:2,16,24  <b>podium</b> 34:22  <b>point</b> 12:24,25 13:3                  13:5 15:1,3,4 35:1                  36:11,22 45:7  <b>pointing</b> 10:15  <b>points</b> 35:20 36:11  <b>policy</b> 21:21 32:15                  36:4  <b>Popular</b> 28:21                  39:11  <b>position</b> 31:13,14,21                  32:15 37:15,18                  40:18  <b>possible</b> 27:12 45:10  <b>posted</b> 2:7,12 4:6,8  <b>potentially</b> 16:5  <b>practice</b> 28:16 30:2                  31:3,6,9  <b>preapproved</b> 27:4  <b>prepared</b> 12:21</p>
---	---	---	---	--

<p><b>present</b> 16:23 27:18 28:22  <b>presented</b> 3:3 13:6 13:24 17:22 18:25 35:25 36:7,13,25 43:17  <b>presenting</b> 28:25  <b>previous</b> 16:14 24:18,19 42:10  <b>previously</b> 19:25  <b>primarily</b> 6:9 36:24  <b>primary</b> 33:15  <b>prime</b> 36:15  <b>print</b> 38:16  <b>printer's</b> 41:17  <b>prior</b> 5:17 8:22 19:25 24:12 29:11 33:18 44:22  <b>probability</b> 35:4  <b>probably</b> 21:9 23:8 41:2 51:15 53:16  <b>problem</b> 33:3 38:9 38:10  <b>proc-</b> 14:20  <b>procedural</b> 33:5  <b>procedure</b> 27:20  <b>Procedures</b> 36:3  <b>proceeded</b> 34:3  <b>proceeding</b> 33:23 34:1  <b>Proceedings</b> 54:1  <b>process</b> 13:17,19,21 14:9,18 15:10 19:12 20:18 22:13 27:7 39:8 51:16  <b>produce</b> 24:10  <b>program</b> 5:8 6:7,22 8:4,20  <b>programs</b> 5:16  <b>prohibited</b> 10:1  <b>projecting</b> 27:1  <b>promise</b> 9:8 23:21 23:24  <b>proper</b> 42:1  <b>properly</b> 3:3  <b>proponents</b> 36:19 36:23  <b>proposal</b> 7:10 8:24 9:11,16,23 10:20 11:23 17:1 40:10 40:11 42:13,14 46:22,23 49:25 50:1</p>	<p><b>proposed</b> 5:7,24 12:12 13:15  <b>prospective</b> 21:1  <b>Protecting</b> 9:8  <b>provide</b> 5:22 7:9 8:24 10:20  <b>providing</b> 10:21  <b>public</b> 5:12 7:3,3,5 7:19 9:9 30:3 51:14  <b>pull</b> 29:5  <b>pulled</b> 23:15  <b>purple</b> 18:14  <b>purpose</b> 2:5,6,10,11 4:24 6:16 11:23 13:15,16,22 17:3 17:19 18:22  <b>purposes</b> 9:15  <b>pursuant</b> 36:2  <b>pushed</b> 36:21  <b>pushing</b> 36:23  <b>put</b> 11:11,14,15 13:17,18 14:24 19:12 22:20 28:23 37:1,6 44:4 52:12</p> <hr/> <p style="text-align: center;"><b>Q</b></p> <p><b>qualifications</b> 5:13  <b>qualifying</b> 7:7  <b>question</b> 13:17,21 14:1,11 15:8 17:2 21:20 22:24 23:3 23:14 25:3,9,14 26:9 33:10 34:16 34:23 35:2,8,11 41:13,15,23 42:3 44:16  <b>questions</b> 10:6 11:2 11:5 13:25 15:19 17:6 25:20 29:25 33:5  <b>quite</b> 35:5 53:9  <b>quote</b> 12:10</p> <hr/> <p style="text-align: center;"><b>R</b></p> <p><b>Raise</b> 23:25  <b>read</b> 7:23 46:13  <b>reading</b> 46:10 48:8  <b>real</b> 30:17  <b>really</b> 6:11 12:23 17:2 19:9,11 21:20 27:7 28:1 31:7,10,11 35:3,4</p>	<p>35:8 50:25  <b>reason</b> 27:10  <b>reasons</b> 29:17  <b>recall</b> 51:20,20,24  <b>recommend</b> 26:11 26:18,19 27:1,17 30:1  <b>recommended</b> 18:2 19:7  <b>record</b> 24:5 28:9 35:14  <b>RECORDED</b> 1:18  <b>Recorder</b> 1:18  <b>references</b> 12:6  <b>referendum</b> 9:25 10:5,7,13,21,25 12:5 17:1  <b>referring</b> 16:16  <b>reform</b> 5:18  <b>regarding</b> 16:8,25 43:10  <b>regardless</b> 25:11  <b>Registration</b> 1:19  <b>regular</b> 4:5 51:12,18  <b>regularly</b> 4:4  <b>rejected</b> 16:22 27:11 33:15  <b>related</b> 5:5 17:21 18:23 19:10  <b>reliance</b> 33:24  <b>relief</b> 21:1  <b>remarks</b> 16:6  <b>remember</b> 13:2 16:19 23:1 27:21 37:10  <b>remind</b> 35:21,25 37:17  <b>removal</b> 17:8  <b>replace</b> 24:23  <b>Reporting</b> 1:19  <b>represent</b> 24:9  <b>represented</b> 31:5  <b>Republican</b> 36:24 36:25 37:2,5  <b>request</b> 30:11  <b>requests</b> 13:22  <b>require</b> 6:22,24 7:6 7:8 8:21  <b>required</b> 12:7,15,18 12:25 13:4,9,21 14:7 15:3,13 16:12 20:8 26:25 26:25 32:24 35:23</p>	<p>41:17 42:1  <b>requirement</b> 41:21  <b>requirements</b> 6:1,14 7:2  <b>requires</b> 13:18 51:7  <b>resolve</b> 20:6  <b>resources</b> 5:22  <b>respect</b> 11:20,24 12:3 33:23 34:3 44:6  <b>respectfully</b> 34:7 36:1  <b>respond</b> 33:22  <b>response</b> 37:21  <b>restart</b> 29:23  <b>reverse</b> 38:6  <b>right</b> 10:25 15:6,23 18:12,16,18 23:25 24:20 25:18,23 32:24,25 34:21 36:17 39:2,6,16 39:23 40:1,3 43:18 44:19 45:4 46:15 48:9 49:12 49:14 52:5,9  <b>rights</b> 10:23  <b>risk</b> 34:1  <b>robes</b> 21:17  <b>roll</b> 43:3  <b>Ruddell</b> 16:1,2,4  <b>rule</b> 29:19,20 36:1  <b>rules</b> 34:10 36:2,6 36:25 37:1,2,5,7 37:16,25 38:3,6 38:17  <b>ruling</b> 10:11 21:22 34:25 38:4 39:22  <b>run</b> 22:14  <b>runs</b> 26:12</p> <hr/> <p style="text-align: center;"><b>S</b></p> <p><b>Saginaw</b> 1:5  <b>sake</b> 7:17 20:15  <b>saw</b> 9:13  <b>saying</b> 4:18 18:4 19:16 22:8 26:2 29:6 37:3 40:20 40:23 42:22 47:3 50:6  <b>says</b> 10:20 12:8,15 26:6 32:16 33:2 33:13 45:8  <b>schedule</b> 50:20,22</p>	<p>50:23 52:19  <b>scheduled</b> 4:4,6 51:16  <b>scholarship</b> 5:8,15 6:7,21,22 8:20 17:21 43:11 46:1 46:20  <b>scholarship-</b> 5:10  <b>scholarship-grant...</b> 6:23  <b>scholarships</b> 7:2,7  <b>school</b> 5:23 7:3,3,5,6  <b>schools</b> 5:12  <b>screwing</b> 46:16  <b>screws</b> 22:12  <b>seal</b> 41:18,21 42:5  <b>second</b> 5:13 8:4 21:7 22:23 25:2 29:13 31:21 32:3 33:6  <b>secondary</b> 17:4  <b>secret</b> 33:24 34:1  <b>Secretary</b> 1:3 36:4  <b>secure</b> 2:13 19:21 19:23 20:2 24:10 38:4,20 39:3,4 40:8,15 41:9  <b>see</b> 4:6 11:11 12:23 39:16 44:1 47:18 52:22 53:12,15  <b>Seeing</b> 4:17 15:22 18:3 19:15 45:14 47:2 48:16 50:5 50:18  <b>seeking</b> 20:3 25:22 39:4,7,8,23 48:11  <b>seen</b> 28:1 42:4  <b>segregate</b> 24:15  <b>senate</b> 5:23  <b>sense</b> 5:6 7:18 9:1 21:13,14 22:12 32:18 41:9  <b>sensible</b> 27:18  <b>sentence</b> 12:9 14:6  <b>sentencing</b> 5:18  <b>separate</b> 5:7 7:13,21 7:22 17:2,15  <b>September</b> 53:10  <b>set</b> 5:19 6:8 8:20 38:6,14  <b>sets</b> 8:6 22:10  <b>seven</b> 47:21 48:3,3,4 48:5,6  <b>SGOs</b> 6:23,25 7:8</p>
--	--	--	--	---

<p><b>sheet</b> 11:9  <b>Shinkle</b> 1:8 4:3,9,16                  4:20,23 5:3 7:11                  7:22 8:1,25 9:18                  10:7,15,18 11:2,8                  11:11,14 14:3,5                  15:19,22 16:1,3                  17:6,13,16,24                  18:1,6,8,14,20                  19:2,4,7,15,18,20                  20:9,14 21:4,13                  21:16,24 22:2,6                  22:17 23:11,19,22                  23:25 24:5 25:14                  27:20 28:5,8,13                  29:1,8,13,21 30:7                  30:19,22,24 31:17                  31:23 32:1 33:19                  34:12,17,20 35:13                  37:20,22 38:18,23                  39:1,19 40:1,13                  40:19,22 41:1,5                  41:12,14 42:7,16                  42:20,24 43:2,6                  43:15,22,25 44:11                  45:4,7,12,16,21                  46:10,12,24 47:1                  47:5,7,9,11,18,21                  47:24 48:6,10,13                  48:23 49:1,3,10                  49:17,20 50:2,4,8                  50:10,12,15,22,24                  51:2,19,23 52:2,7                  52:14,16,20,25                  53:8,13,17,23  <b>side</b> 23:14 26:9  <b>sign</b> 10:24  <b>signature</b> 26:3 37:9                  37:17  <b>signatures</b> 13:19                  22:19 23:3,5,8                  31:16 36:15,16                  37:11,13  <b>signed</b> 22:15,15                  32:23  <b>signers</b> 10:22  <b>signify</b> 4:18 18:4                  19:16 40:20 42:21                  47:3 50:6  <b>signifying</b> 40:23  <b>signing</b> 22:10,11  <b>simply</b> 26:4  <b>site</b> 2:7,12</p>	<p><b>sitting</b> 22:18  <b>situation</b> 40:6  <b>six</b> 32:10 35:7 43:6                  44:7 46:7,8,9,11  <b>solemnly</b> 24:1  <b>somebody's</b> 26:3                  38:9  <b>sorry</b> 16:20 33:18                  34:18 44:6 46:4,6                  49:6  <b>sort</b> 20:5 27:3,15                  30:18 31:9,22                  38:1  <b>sorted</b> 36:18  <b>space</b> 51:7  <b>speak</b> 6:5  <b>speaking</b> 34:19                  35:18  <b>special</b> 38:2  <b>specific</b> 12:7 41:21  <b>specifically</b> 52:18  <b>spell</b> 24:5  <b>spend</b> 7:8  <b>spoke</b> 44:2  <b>sponsor's</b> 23:13  <b>sponsored</b> 17:20                  18:23  <b>staff</b> 1:10,11 27:7                  33:11  <b>stance</b> 47:16  <b>stand</b> 23:19 30:1                  35:22 47:12  <b>standard</b> 44:23  <b>start</b> 6:5 9:3 33:18                  34:2  <b>started</b> 19:22 20:18  <b>state</b> 1:1,2,3,4,13                  4:4 10:22 17:19                  18:21 36:5 51:24  <b>statement</b> 12:17                  13:15  <b>statutes</b> 5:19  <b>statutory</b> 6:1 13:13                  21:22 36:19  <b>stay</b> 34:21 38:2,17  <b>Street</b> 1:14  <b>streets</b> 24:25  <b>strict</b> 35:23  <b>strong</b> 30:2 31:13  <b>strongly</b> 30:1,14  <b>student</b> 5:8,15 6:7                  6:20,21 8:19                  17:21 43:11 46:1</p>	<p>46:19  <b>students</b> 5:11 7:1,3                  7:4,6  <b>stuff</b> 42:5  <b>subject</b> 12:4  <b>submitted</b> 2:5,10,13                  2:18,19,23 4:25                  5:5 9:14 26:13,13                  40:8 42:11 43:7                  45:25 46:19 48:18                  49:15,22  <b>substance</b> 40:10                  42:13 46:21 49:24  <b>substitute</b> 24:25  <b>succinctly</b> 20:25  <b>sufficient</b> 42:2  <b>suggested</b> 23:1                  29:22  <b>suggesting</b> 10:9  <b>summaries</b> 32:8  <b>summarizes</b> 9:11  <b>summary</b> 2:5,6,10                  2:11 4:24 6:5,18                  9:10,14 12:1,21                  12:25 13:4,11,21                  13:23 14:12 15:2                  16:11 17:11,19                  18:22 43:12 44:8                  49:8  <b>support</b> 4:15 17:24                  17:25 19:2,3 28:8                  30:4,7 40:14,14                  42:17,17 46:24,25                  50:2,3  <b>supported</b> 4:16 18:1                  19:4 40:14 42:17                  47:1 50:4  <b>Supreme</b> 10:11 26:5                  29:4 30:5,9,11,20                  30:25 31:17,19                  32:11,16 33:1,12                  33:13 34:6,25                  35:9,10,22 37:6                  37:15 45:7  <b>sure</b> 7:25 8:3,3 9:18                  14:3 15:13,16                  19:23 25:10 36:6                  36:16 41:14,20                  44:7 48:8 49:17                  49:17 53:7,9,10                  53:16  <b>swear</b> 24:1  <b>switch</b> 23:18</p>	<p><b>sworn</b> 37:22  <b>system</b> 6:25</p> <hr/> <p style="text-align: center;"><b>T</b></p> <hr/> <p><b>Tab</b> 46:9,11  <b>TABLE</b> 2:1  <b>tag</b> 18:14  <b>take</b> 7:23 8:1 10:6                  24:23 25:15 26:23                  28:10,13,13 37:14                  37:22 41:19 53:4  <b>taken</b> 14:25 21:8  <b>takes</b> 11:22  <b>talk</b> 7:19 9:16 16:4                  36:15  <b>talking</b> 17:13  <b>tax</b> 5:13,14,21 8:4,5                  8:7,9,10,16,18,21                  8:23 18:24 48:21                  48:23 49:23  <b>taxpayers</b> 5:14 8:18  <b>tell</b> 9:4 26:10,11                  29:8  <b>tells</b> 31:20  <b>ten</b> 35:7,7 50:18,19  <b>tentative</b> 52:22  <b>terms</b> 5:20 7:17                  26:22 36:8 51:21  <b>thank</b> 5:3 9:7 11:2,4                  11:10,12,13,19                  15:17,21,22 24:4                  24:5 28:12 33:20                  34:12,13 37:18                  38:18 39:20 44:3                  44:15 49:19  <b>Thanks</b> 35:17  <b>thing</b> 28:4 47:24                  52:8,10  <b>things</b> 6:15 36:10,12                  36:23  <b>think</b> 6:16 7:11,15                  7:20 9:4 10:22                  11:22,25 14:23                  17:4 22:7,12                  25:25 26:5 27:15                  27:17 28:4 31:8,9                  31:13,13,20 32:14                  36:8,9 37:18 40:4                  40:4,17,17 43:4                  43:23 51:1,13  <b>thinking</b> 23:7 26:2  <b>thought</b> 11:20 26:24                  45:22</p>	<p><b>thoughts</b> 11:17  <b>thousands</b> 22:19  <b>threat</b> 38:9,10  <b>three</b> 7:24 9:17,18                  9:20 18:9 32:10                  47:19 50:12  <b>throw</b> 23:9  <b>thrown</b> 22:21  <b>time</b> 7:12,20 8:2                  21:3,7,23 25:16                  35:24 36:12,14,17                  36:18 51:18  <b>timely</b> 21:5  <b>times</b> 15:11 20:18                  21:15 35:6,6,7                  42:4 52:3 53:1  <b>title</b> 9:13  <b>today</b> 21:6 24:1,11                  25:6,13,15 44:9                  49:9  <b>told</b> 16:21 29:4 31:2  <b>Tony</b> 40:13  <b>top</b> 20:10 22:5 38:2                  38:17  <b>topics</b> 11:25  <b>tossed</b> 37:11  <b>total</b> 8:6,7,21 24:24  <b>totally</b> 25:21  <b>Township</b> 51:3  <b>Treasury</b> 5:9,10                  6:24  <b>treated</b> 29:11 37:10  <b>treatment</b> 38:2  <b>Trebilcock</b> 2:16                  34:18,21 35:13,13                  35:16,17  <b>tribunal</b> 27:21  <b>trouble</b> 30:17  <b>true</b> 12:19 13:14                  51:8  <b>truly</b> 36:13  <b>truncated</b> 10:24  <b>truth</b> 24:2,2,2  <b>try</b> 30:18  <b>trying</b> 7:16 18:10                  37:12,14,24 38:2                  38:13,17 41:10  <b>turn</b> 25:16  <b>two</b> 5:1,4,7 7:13                  11:14,17 15:23                  17:7,8 22:10 23:2                  28:21 29:12,15                  32:10 36:11 41:1</p>
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41:1,2,2,3,3 43:2 43:3 44:18,22 48:13 52:8 53:12 <b>type</b> 12:24,25 13:3 15:1,3,4 52:8	40:19 41:9 42:21 47:9,17,19 49:4 50:13 52:17 <b>vote's</b> 41:3 <b>voted</b> 12:12 16:16 48:1 <b>voters</b> 9:24 10:22 <b>votes</b> 43:3,3 44:18 44:19 <b>voting</b> 45:2	<b>web</b> 2:7,12 <b>weeks</b> 28:21 29:12 29:15 32:10 <b>welcome</b> 15:18 <b>went</b> 5:25 <b>weren't</b> 34:20 <b>West</b> 1:5,14 <b>whoever's</b> 51:3 <b>wish</b> 19:11 30:4 38:15 <b>wishing</b> 6:4 <b>witness</b> 9:3 16:4 <b>witnesses</b> 16:5 <b>witnesses'</b> 16:6 <b>word</b> 18:2 <b>wording</b> 17:10 <b>words</b> 6:15,19 9:23 10:3,3 18:2 19:5,7 43:16 47:13,15 49:13 <b>work</b> 6:17 10:2 32:10,14 52:23,23 <b>works</b> 14:9 53:7 <b>wouldn't</b> 24:14 25:25 26:1,2 39:14 44:19 <b>write</b> 53:5 <b>written</b> 10:3 <b>wrong</b> 26:6 46:4,5,6 <b>wrote</b> 33:1 <b>Wszolek</b> 2:14 23:19 23:21,24 24:4,7,8 24:9,17,19,21 25:7,10 37:20,21 37:23,24 38:18	<b>years</b> 10:10 16:15 32:12 <b>Yup</b> 18:18 <hr/> <b>Z</b> <hr/> <b>0</b> <hr/> <b>0-0-0-</b> 54:3 <hr/> <b>1</b> <hr/> <b>1</b> 2:3,8,14,20,24 <b>1-800-632-2720</b> 1:20 <b>1,100</b> 7:3 <b>10</b> 3:2 <b>10%</b> 7:8 <b>100</b> 6:19 8:12 18:2 43:16 47:13 49:13 <b>100-word</b> 2:5,10 4:24 6:5 16:11 17:11 43:12 <b>11</b> 2:9 <b>12</b> 12:25 15:4 <b>14</b> 13:20 <b>15</b> 2:4 37:5 <b>15th</b> 4:11,14 <b>180</b> 25:15 26:1,12 26:14,15 29:20 36:15 <b>180-day</b> 25:4,5 29:19 <b>19</b> 2:13 <b>1963</b> 12:11 <b>1967</b> 8:16 <hr/> <b>2</b> <hr/> <b>2</b> 2:5,9,15 <b>2:00</b> 1:6 <b>2:01</b> 4:2,22 <b>2:19</b> 18:7 <b>2:20</b> 19:19 <b>2:45</b> 41:4 <b>2:47</b> 43:5 <b>2:51</b> 47:20 <b>2:54</b> 50:14 <b>2:57</b> 54:1 <b>20</b> 8:9 10:10 <b>20%</b> 8:22 <b>2001</b> 10:13 <b>2020</b> 51:21 <b>2021</b> 1:6 2:4 4:2,14 17:23 19:1 <b>206.279</b> 8:17	<b>206.30</b> 8:16 <b>206.679</b> 8:17 <b>206.697</b> 8:17 <b>23</b> 53:1 <b>24</b> 2:14 <b>28</b> 2:15 <b>281</b> 8:16 <b>29</b> 1:6 4:2 <b>29th</b> 17:23 18:25 39:3 <hr/> <b>3</b> <hr/> <b>3</b> 2:10,16 <b>33</b> 2:15 <b>340,047</b> 13:18 <b>35</b> 2:16 <b>37</b> 2:14 <b>373-1110</b> 1:15 <hr/> <b>4</b> <hr/> <b>4</b> 2:4,7,13 18:12,17 <b>41</b> 2:18 <b>43</b> 2:19 <b>44</b> 2:20 <b>47</b> 2:22 <b>48</b> 2:23 <b>48909</b> 1:15 <b>49</b> 2:24 <hr/> <b>5</b> <hr/> <b>5</b> 2:17 12:6 <b>50</b> 3:1,3 <b>500</b> 7:2 8:6,10 <b>500,000,000</b> 8:20 <b>517</b> 1:15 <b>525</b> 1:14 <hr/> <b>6</b> <hr/> <b>6</b> 2:19 <b>60,000</b> 37:11 <b>600</b> 8:12 <b>608</b> 30:3 34:7 <b>6924</b> 1:18 <hr/> <b>7</b> <hr/> <b>7</b> 2:21 <b>74</b> 19:5 <b>76</b> 19:5,5,6,7 <b>7710</b> 1:5 <hr/> <b>8</b> <hr/> <b>8</b> 2:12,23 12:24 13:3 15:1,3
<b>U</b> <b>ultimately</b> 32:4 <b>Unanimous</b> 47:9 <b>unanimously</b> 19:18 <b>uncertainty</b> 34:2 <b>uncharted</b> 25:19 <b>unconstitutional</b> 45:8 <b>undermines</b> 22:8 40:18 <b>undermining</b> 31:10 31:21 <b>understand</b> 25:8,21 25:22 32:20 <b>understanding</b> 20:5 40:9 42:12 46:2 46:20 49:23 51:11 <b>understood</b> 44:7 <b>unfair</b> 28:20 29:2,9 29:9,10 34:10 <b>uniform</b> 6:25 <b>Unlock</b> 2:18,18 13:1 24:9 39:4,4 41:6 42:11 <b>unprecedented</b> 29:3 <b>updates</b> 53:19 <b>upheld</b> 20:1 <b>urge</b> 10:1 13:23 30:14 <b>urging</b> 30:5 <b>usually</b> 10:8 27:24	<b>W</b> <b>W-s-z-o-l-e-k</b> 24:7 <b>wait</b> 9:17 32:19 45:17 <b>waiting</b> 20:5 24:13 36:21 <b>want</b> 7:19,23,23 9:17 12:2 16:3 19:22 21:17 26:14 31:6 32:14,19 33:4,22 36:15 41:7,19,24 44:7 49:2,6,18 50:17 52:14 <b>wanted</b> 14:17 15:9 15:14 42:6 <b>wants</b> 16:4 39:12 40:2 <b>wasn't</b> 13:4 29:16 31:23 34:18 35:18 <b>waters</b> 25:19 <b>way</b> 9:2 19:12 35:3 35:8 39:2,13,16 40:2 <b>we'll</b> 17:12,14 24:10 24:15,24 48:16 50:18 52:21 53:13 53:16 <b>we're</b> 9:1 17:13 18:8 19:20 21:6,6 22:4 22:8,14 23:5 24:13 25:18 29:7 29:21 31:9,16,17 31:21,22 32:16 33:16 34:13 37:16 37:24 38:1,2,11 38:13,16,19 41:5 44:11 46:8 50:15 51:14,19 52:4 53:24 <b>we've</b> 32:7,8 40:5 49:10	<b>X</b> <b>Y</b> <b>yeah</b> 7:13,15 9:18 11:11 13:18 14:3 14:5,15 15:7,12 15:25 17:13 18:13 18:14,19,20 21:24 22:2,2,6 23:11 29:1 32:1,1,1 34:17 38:24 43:19 43:19,20 46:16 48:6 51:1 52:14 53:8 <b>year</b> 8:7,8,11,12,21 8:23 33:25 51:12 51:25 52:3,18	<b>years</b> 10:10 16:15 32:12 <b>Yup</b> 18:18 <hr/> <b>Z</b> <hr/> <b>0</b> <hr/> <b>0-0-0-</b> 54:3 <hr/> <b>1</b> <hr/> <b>1</b> 2:3,8,14,20,24 <b>1-800-632-2720</b> 1:20 <b>1,100</b> 7:3 <b>10</b> 3:2 <b>10%</b> 7:8 <b>100</b> 6:19 8:12 18:2 43:16 47:13 49:13 <b>100-word</b> 2:5,10 4:24 6:5 16:11 17:11 43:12 <b>11</b> 2:9 <b>12</b> 12:25 15:4 <b>14</b> 13:20 <b>15</b> 2:4 37:5 <b>15th</b> 4:11,14 <b>180</b> 25:15 26:1,12 26:14,15 29:20 36:15 <b>180-day</b> 25:4,5 29:19 <b>19</b> 2:13 <b>1963</b> 12:11 <b>1967</b> 8:16 <hr/> <b>2</b> <hr/> <b>2</b> 2:5,9,15 <b>2:00</b> 1:6 <b>2:01</b> 4:2,22 <b>2:19</b> 18:7 <b>2:20</b> 19:19 <b>2:45</b> 41:4 <b>2:47</b> 43:5 <b>2:51</b> 47:20 <b>2:54</b> 50:14 <b>2:57</b> 54:1 <b>20</b> 8:9 10:10 <b>20%</b> 8:22 <b>2001</b> 10:13 <b>2020</b> 51:21 <b>2021</b> 1:6 2:4 4:2,14 17:23 19:1 <b>206.279</b> 8:17	<b>206.30</b> 8:16 <b>206.679</b> 8:17 <b>206.697</b> 8:17 <b>23</b> 53:1 <b>24</b> 2:14 <b>28</b> 2:15 <b>281</b> 8:16 <b>29</b> 1:6 4:2 <b>29th</b> 17:23 18:25 39:3 <hr/> <b>3</b> <hr/> <b>3</b> 2:10,16 <b>33</b> 2:15 <b>340,047</b> 13:18 <b>35</b> 2:16 <b>37</b> 2:14 <b>373-1110</b> 1:15 <hr/> <b>4</b> <hr/> <b>4</b> 2:4,7,13 18:12,17 <b>41</b> 2:18 <b>43</b> 2:19 <b>44</b> 2:20 <b>47</b> 2:22 <b>48</b> 2:23 <b>48909</b> 1:15 <b>49</b> 2:24 <hr/> <b>5</b> <hr/> <b>5</b> 2:17 12:6 <b>50</b> 3:1,3 <b>500</b> 7:2 8:6,10 <b>500,000,000</b> 8:20 <b>517</b> 1:15 <b>525</b> 1:14 <hr/> <b>6</b> <hr/> <b>6</b> 2:19 <b>60,000</b> 37:11 <b>600</b> 8:12 <b>608</b> 30:3 34:7 <b>6924</b> 1:18 <hr/> <b>7</b> <hr/> <b>7</b> 2:21 <b>74</b> 19:5 <b>76</b> 19:5,5,6,7 <b>7710</b> 1:5 <hr/> <b>8</b> <hr/> <b>8</b> 2:12,23 12:24 13:3 15:1,3
<b>V</b> <b>valid</b> 13:18 21:25 33:13 <b>Values</b> 12:20 <b>various</b> 5:12 6:15 <b>verified</b> 22:14 <b>version</b> 20:3 31:21 <b>Vice</b> 1:9 <b>view</b> 17:2 26:24 <b>void</b> 32:11 <b>volunteer</b> 20:13 <b>vote</b> 2:13 9:24 12:5 19:21,23 20:2 24:10 28:22 38:20 39:3,4,11 40:8,15				

<p>8-1/2 13:20 8,700 7:6 8151 1:19</p> <hr/> <p style="text-align: center;"><b>9</b></p> <hr/> <p>9 2:8 3:1 90% 7:4 8:8,10,23</p>				
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