STATE OF MICHIGAN
IN THE SUPREME COURT

REPRODUCTIVE FREEDOM FOR ALL, a Michigan ballot question committee, PETER BEVIER, and JIM LEDERER

Plaintiffs,

v

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

Defendants.
_____/

SC: 164760

Election matter – Plaintiffs have requested action by September 7, 2022

THIS MATTER INVOLVES A CLAIM THAT A PROPOSED STATE GOVERNMENTAL ACTION IS INVALID

THE MICHIGAN STATE CONFERENCE OF THE NAACP'S MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF

The Michigan State Conference of the NAACP ("MI NAACP") moves under MCR 7.312(H) and MCR 7.311(A) for leave to participate as amicus curiae in the above-captioned case. In support of its motion, MI NAACP states:

1. Founded in 1909, the National Association for the Advancement of Colored People ("NAACP") is a nonprofit membership corporation chartered by the State of New York. The NAACP is the nation's oldest and largest civil rights organization and throughout its 113-year existence, its mission has been to ensure the political, educational, social and economic equality of all persons, and to eliminate racial discrimination. Protecting the right to vote has been one of the NAACP's core missions.

2. The NAACP has more than 500,000 members and 2,200 branches and units across the United States and overseas. The MI NAACP is the comprised of all of the NAACP branches and units in the state of Michigan.

3. MI NAACP has an interest in this case because it raises important voting rights issues central to its mission.

4. MI NAACP's proposed amicus curiae brief is attached as **Exhibit A**.

For these reasons, MI NAACP request that the Court grant its Motion for Leave to File Amicus Curiae Brief and accept for filing its proposed brief attached as Exhibit A.

Dated: September 7, 2022

Respectfully submitted,

HONIGMAN LLP

By: /s/ Robert M. Riley

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EXHIBIT A

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HONIGMAN LLP

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TABLE OF CONTENTS

INDEX OF AUTHORITIES

Page(s)

CASES

STATUTES

OTHER AUTHORITIES

QUESTION PRESENTED FOR REVIEW

1. Did the Board of State Canvassers violate its legal duty to certify the Reproductive Freedom For All petition as sufficient, so that Plaintiffs are entitled to mandamus and injunctive relief, where: (1) the petition meets all statutory requirements of MCL 168.482 and (2) there are sufficient petition signatures to warrant certification?

RFFA answers:	Yes.
Defendants answer:	No.
Amicus Curiae MI NAACP answers:	Yes.
The Court should answer:	Yes.

INTEREST OF AMICUS CURIAE / COMPLIANCE WITH MCR 7.312(H)(4)

Founded in 1909, the National Association for the Advancement of Colored People ("NAACP") is a nonprofit membership corporation chartered by the State of New York. The NAACP is the nation's oldest and largest civil rights organization and throughout its 113-year existence, its mission has been to ensure the political, educational, social, and economic equality of all persons, and to eliminate racial discrimination. Protecting the right to vote has been one of the NAACP's core missions.

The NAACP has more than 500,000 members and 2,200 branches and units across the United States and overseas. The Michigan State Conference of the NAACP ("MI NAACP") comprises of all of the NAACP branches and units in the state of Michigan. The Michigan State Conference of the NAACP has an interest in this case because it raises important voting rights issues central to its mission.

MI NAACP affirms that no party to this case or their counsel authored this brief in whole or in part, and that no party or their counsel made any monetary contributions intended to fund the preparation or submission of this brief. See MCR 7.312(H)(4).

I. INTRODUCTION

Words matter. Especially statutory ones as applied to the Board of State Canvassers and its duty to certify a reproductive freedom ballot proposal supported by more than three-quarters of a million Michiganders. Yet two members of the Board, intent on subverting the people's will expressed in the proposal, ignored MCL 168.482 and refused to perform their ministerial certification duty and allow the proposal on the ballot based on contrived concerns over spaces between the petition's words. But word spacing (or the lack of it) is not among the enumerated statutory reasons the Board can deny certification to an otherwise valid petition. And there is no dispute that the proposal otherwise satisfies all statutory requirements. Those Board members' rogue decision undermines democratic ideals and violates the Michigan Constitution's express grant of political power to the people. Mich Const, 1963 art I, § I ("All political power is inherent in the people").

MI NAACP thus submits this brief in support of Plaintiffs' (collectively "Reproductive Freedom For All" or "RFFA") Complaint for Immediate Mandamus Relief and *Ex Parte* Motion for Order to Show Cause.

II. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

MI NAACP adopts and incorporates here the RFFA's Statement of Facts in its Complaint and accompanying Brief in Support.

III. ARGUMENT

A. RFFA Is Entitled to Immediate Mandamus Relief

A plaintiff seeking mandamus relief must show that "(1) the plaintiff has a clear, legal right to performance of the specific duty sought, (2) the defendant has a clear legal duty to perform, (3) the act is ministerial, and (4) no other adequate legal or equitable remedy exists that might achieve the same result." *Taxpayers for Mich Const Gov't v State*, 508 Mich 48, 81–82;

972 NW2d 783 (2021). Although the decision to grant mandamus relief is typically discretionary, a court cannot "overlook a violation of a clear and unequivocal public duty[.]" *Muni Fin Comm v Bd of Ed of Marquette Twp Sch Dist, Marquette Co*, 337 Mich 639, 644; 60 NW2d 495 (1953). To be sure, the Court's lack of discretion in such cases is well settled. *See id*. ("But this court has said in no uncertain terms that it has no discretion when called upon to compel a public officer to perform a duty imposed on him by law." (cleaned up)).

Here, RFFA collected the requisite number of signatures in support of its petition. RFFA's petition also satisfies the other statutory requirements for certification. RFFA is thus entitled to an order from the Court directing the Board of State Canvassers to perform its ministerial certification duty—a duty imposed on it by law, and according to which no exercise of judgment or discretion is permitted.

1. RFFA has a clear legal right to the certification of its petition

Under the First Amendment to the U.S. Constitution, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances." US Const, Am I. Similarly, the Michigan Constitution recognizes that all people "have the right peaceably to assemble, to consult for the common good, to instruct their representatives and to petition the government for redress of grievances." Mich Const 1963, art 1, § 3. Crucially, to further these fundamental rights to self-government, the Michigan Constitution recognizes that the people of this state "reserve to themselves the power to propose laws and to enact and reject laws" and to propose amendments to the constitution by popular petition. *Id*. at art 2, § 9; art 12, § 2. Where a petition receives sufficient signatures and meets basic form requirements, the proposed amendment "shall be

submitted . . . to the electors at the next general election." *Id.* at art 12, § 2. "If the proposed amendment is approved by a majority of the electors voting on the question, it shall become part of the constitution[.]" *Id.*

The RFFA petition received overwhelming—indeed, ***unprecedented***—public support with more than 750,000 signatures. It also complied with every statutory form requirement. Yet its submission to the voters for an up or down vote was thwarted by the whim of two unelected members of the Board of State Canvassers—and for reasons untethered to any existing law or regulation. Neither the U.S. nor the Michigan Constitution—nor the very principles of self-government—countenance that anti-democratic result.

If this Court green-lights the use of subjective "form" requirements to prevent voters from deciding issues on the ballot, it will disturb basic principles on which our country and our state were founded.[1] See Mich Const 1835, Preamble ("[T]he time has arrived when our present political condition ought to cease, and the right of self-government be asserted[.]"). Here, two members of the Board of State Canvassers removed an important issue from consideration by the electors. There is no foreseeable end to voter disenfranchisement if the Court does not intervene:

> In my opinion, no registry law is valid which deprives an elector of his constitutional right to vote by any regulation with which it is impossible for him to comply. No elector can lose his right to vote, the highest exercise of the freeman's will, except by his own fault or negligence. If the legislature, under the pretext of regulation, can destroy this constitutional right by annexing an additional qualification as to the number of days such voter must reside within a precinct before he can vote therein, or any other requisite, in direct opposition to any of the constitutional requirements, then it can as well require of the elector, entirely new qualifications,

[1] "In despotic governments there are no laws; the judge himself is his own rule. . . . In republics, the very nature of the constitution requires the judge to follow the letter of the law; otherwise the law might be explained to the prejudice of every citizen, in cases where their honour, property, or life is concerned." Montesquieu, *The Spirit of the Laws* Book VI, Part 3 (1748).

> independent of the constitution, before the right of suffrage can be exercised.

Attorney General v City of Detroit, 78 Mich 545, 563–64; 44 NW 388 (1889).

This issue is of particular concern to the MI NAACP, which knows all too well the historical practice of imposing informal and indirect conditions on voting rights, effectively usurping the express constitutional text prohibiting such efforts. The right to vote was granted to American citizens of color through the Fifteenth Amendment almost 82 years after the adoption of the U.S. Constitution (and was not finally granted to women citizens for another 50 years after that). Despite the Fifteenth Amendment and its prohibition against the denial or abridgment of the right to vote "on account of race, color, or previous condition of servitude," efforts to disenfranchise citizens of color through poll taxes, grandfather clauses, literacy and property tests, and racial gerrymandering, endured for another century.

Two Board members' refusal to certify RFFA's petition based on an unwritten "word spacing" regulation is voter disenfranchisement. Nothing more, nothing less. RFFA's right—and that of Michigan citizens more generally—to have a proposal ratified or rejected through the democratic process is clear. Having satisfied the express statutory requirements of MCL 168.841, see *infra* Section B.1.b, the wisdom of the proposal and whether it ought to be adopted is for the people. Not the Board of State Canvassers.

2. The Board of State Canvassers failed to fulfill its legal duty

The Board's authority is derivative, "having no inherent power" except what is "vested by the Legislature, in statutes, or by the Constitution." *Attorney Gen v Bd of State Canvassers*, 318 Mich App 242, 249; 896 NW2d 485 (2016). Under MCL 168.841, the Board is mainly tasked with canvassing the results of state and federal elections, including "the result of an election on a proposed amendment to the constitution or on any other ballot question that has

been submitted, pursuant to law, to the qualified and registered electors of this state at large for ratification or rejection." MCL 168.841(1). The Board is also authorized to certify state-wide ballot petitions regarding proposed constitutional amendments.

With respect to its authority to certify proposed constitutional amendments, the Board's duties are "limited to determining whether the ***form of the petition*** substantially complies with the statutory requirements and whether there are ***sufficient signatures*** to warrant certification of the proposal." *Citizens Protecting Mich Const v Secretary of State*, 280 Mich App 273, 285; 761 NW2d 210 (2008), aff'd in part, 482 Mich 960; 755 NW2d 157 (2008) (citation omitted) (emphasis added).

The Legislature delegated to the Board ***only*** the authority to:

1. review the signatures in support of the petition, MCL 168.476
2. review the mandatory "form" requirements, MCL 168.482
3. approve Director of the Bureau of Elections' summary of the purpose of the petition, MCL 168.482b
4. declare the sufficiency or insufficiency of a petition based on the number of valid signatures on the petition, MCL 168.477.

That is it. The Board as ***no authority*** to develop other standards or criteria with which to judge the sufficiency of a petition. See *Mich Civil Rights Initiative v Bd of State Canvassers*, 268 Mich App 506, 520; 708 NW2d 139 (2005) ("[A]n attempt by the Board to go beyond its authority clearly outlined in the constitution and statute clearly undermines the constitutional provision that reserves for the people of the State of Michigan the power to propose laws through ballot initiatives.").

Because RFFA's petition meets all signature and statutory form requirements, the Board had a clear legal duty to certify the petition. In cases such as this, when the Board refuses to certify a petition despite the petition meeting all requisites, the proper remedy is a writ of

mandamus ordering certification. See *Wojcinski v State Bd of Canvassers*, 347 Mich 573, 578; 81 NW2d 390 (1957).

Of course, nowhere in MCL 168.482 or any other statute is there authority for the Board to consider the substance of a petition. By permitting word-spacing "concerns"—a substantive issue the Legislature prohibited the Board from considering—to override its express authority under the statute and Michigan Constitution, the Board ignored its ministerial charge to certify the RFFA's petition.

3. The Board of State Canvassers' duties are ministerial

For over a century, it has been settled law that the legal duties of the Board to determine the qualifications of a petition are ministerial, not discretionary. *McLeod v Kelly*, 304 Mich 120, 127; 7 NW2d 240 (1942); *Attorney Gen v Van Cleve*, 1 Mich 362, 366 (1850) ("the duties of the[board of canvassers] are simply ministerial[.]"). Permitting the Board to refuse to certify a lawful petition on grounds not set forth in any statute, rule, or other regulation would effectively subject the decision whether to place any constitutional proposal on the ballot to the discretion of a four-member panel of unelected government officials. Indeed, as happened here, a proposal could be thwarted merely by the capricious "Nay" of just two of its members.

Fortunately for Michigan voters, the Board has no such authority. Having satisfied the statutory form requirements and vastly exceeded the minimum signature threshold, the Board was not authorized to do anything but certify RFFA's petition.

4. No other legal remedy would achieve the same result

There is only one avenue for Michiganders to amend the Michigan Constitution. Mich Const 1963, art 12, § 2. And only this Court has the authority to compel the Board of State Canvassers to perform its legal obligations under MCL 168.479. There is no legal remedy other than mandamus that would remedy the Board's failure to certify RFFA's petition.

This is particularly so due to timing constraints. The Board must "make an official declaration of the sufficiency or insufficiency of a petition" to amend the constitution "at least two months before the election at which the proposal is to be submitted." MCL 168.477. Thus, the Board must declare RFFA's petition sufficient by September 9, 2022 for the proposal to be on the November 8, 2022 ballot. The deadline for the Board to certify ballot wording to the Secretary for constitutional amendments is also September 9, 2022. Mich Const 1963, art 12, § 1. If mandamus does not issue by September 9, 2022, RFFA's proposal will not reach Michigan voters.[2]

Mandamus is Plaintiffs' only available remedy, and time is of the essence. The Court should act immediately to ensure Michigan voters can make their voices heard on a proposed constitutional amendment that has already received overwhelming grassroots support.

B. RFFA is Entitled to Immediate Injunctive Relief

A party seeking an injunction must show that (1) it has a likelihood of success on the merits of the claim; (2) it will suffer irreparable injury if the injunction is not granted; (3) the harm it will suffer outweighs any harm that the opposing party will suffer if the injunction is entered; and (4) the injunction is in the public interest. See *Michigan State Employees Ass'n v Dep't of Mental Health*, 421 Mich 152, 157-58; 365 NW2d 93 (1984); *Davies v Department of Treas.*, 199 Mich App 437, 439; 502 NW2d 693 (1992).

1. RFFA is likely to succeed on the merits

The Board violated a clear legal duty to certify RFFA's petition, as explained in detail above. There is no serious dispute that RFFA's petition meets the requirements of MCL

[2] What's more, county clerks must deliver absentee voter ballots for the November election to local clerks no later than September 24, 2022. MCL 168.714. So the Elections Bureau has said that counties must start printing ballots on September 9, 2022.

168.482. There is no dispute that the petition garnered more than the requisite number of valid signatures for certification. As discussed above, the Board was therefore required by law to certify RFFA's petition. This Court routinely grants mandamus relief where, as here, a deadlocked Board of State Canvassers has prevented a lawful petition from being presented to the voters for approval. See, e.g., *Unlock Mich*, 507 Mich at 1015; *Protect Our Jobs v Bd of State Canvassers*, 492 Mich 763; 822 NW2d 534 (2012); *Mich Civil Rights Initiative v Bd of State Canvassers*, 268 Mich App 506; 708 NW2d 139 (2005), *denying leave to appeal*, 475 Mich 903; 716 NW2d 590 (2006). For these reasons and as set forth below, RFFA is likely to prevail.

a. RFFA's petition has sufficient signatures for certification

Article 12, section 2 of the Michigan Constitution requires that petitions proposing constitutional amendments must be "signed by registered electors of the state equal in number to at least 10 percent of the total vote cast for all candidates for governor at the last preceding general election at which a governor was elected." For a constitutional amendment proposed in 2022, this means that the petition must collect at least 425,059 valid signatures. RFFA's petition exceeded this number by hundreds of thousands of signatures—more than any previous petition ever. It is no wonder that in the face of such an unprecedented groundswell of support for the petition, no party sought to challenge the petitions under the signature requirement.

b. RFFA's petition satisfies MCL 168.482

The form and content requirements of a petition proposing a constitutional amendment are set forth in MCL 168.482. For example, the petition itself must be printed on 8 1/2- by 14-inch paper, with headings set out in 14-point font. MCR 168.482(1)–(2). It must summarize the proposed amendment in not more than 100 words, followed by the full text of the proposed amendment printed in 8-point font. *Id*. at 168.482(3). The statute contains limited other form requirements, but the only provision governing the actual text of the proposed amendment is the

8-point font requirement identified above. It is manifest to anyone of good faith that the petition satisfies these criteria and, indeed, the Elections Bureau staff agreed, recommending that the petition be certified to the ballot.

Yet, on August 18, 2022, a challenge to the RFFA petition was filed by Citizens to Support MI Women and Children ("WAC"), a ballot question committee "organized, in part to oppose [RFFA's] proposal[.]" (WAC First Challenge, Pls' App'x C, at 12.) The challenge alleged that the RFFA petition "seeks to insert nonexistent words into the Michigan Constitution" and therefore the Board should reject the petition as misleading. The WAC Challenge did not challenge the validity of a single signature submitted by RFFA.

WAC—determined to prevent Michigan voters from having their say—sought to make a hash out of MCR 168.482's straightforward provisions. It dreamed up perhaps the most convoluted and frivolous challenge to a ballot petition that this Court has yet seen. WAC "reasoned" that the version of the petition that was circulated to the public lacked the "full text" of the proposed amendment because variations in word spacing rendered four lines of text "meaningless." This is also a problem, WAC argued without support, because the constitution must contain "actual words."

But the circulated petition ***did*** contain the full text. In compliance with MCL 168.483a, RFFA circulated the very same petition that it submitted to the Secretary of State—in both paper and electronic form. (See Revised Petition Filing, RFFA App'x D, at 170; Electronic Revised Petition Filing, RFFA App'x E, at 172.) And as the individual who created the RFFA petition attests, there are no missing spaces in either the circulated petition or in the identical files submitted to the department of State. So regardless of any variations in word spacing apparent in the printed petition, the petitions as circulated and as submitted to the Secretary of State both

contain spaces, are identical in every material respect, and represent the only relevant text of the petition. Thus, they must necessarily contain the "full text" of the proposed amendment.

Further, WAC's complaint that the proposed amendment would insert provisions into the constitution that are not "actual words" turns on a misunderstanding of basic word-processing. As counsel for RFFA explained at the August 31, 2022 hearing on WAC's challenge, the fact that the spacing between words as they appear in the printed petition may be sub-optimal does not mean that that is how they will ultimately appear in the text of the constitution if the proposal is adopted:

> Take the electronic version of the petition that was filed with the Director of Elections on March 30th. Copy and paste the text from that petition into any other software and the spaces are there. And so, is it accurate to say the spaces are there? Absolutely. . . . Every word is there. . . . I'll note, this is not—with any proposed constitutional amendment—the format in which you see a petition in which it's ultimately going to read in the constitution itself. Petitions typically are formatted in all capital letters because they indicate changes in the constitution. That doesn't mean they then become all capital provisions of our constitution.

(August 31, 2022 Hearing at 4:50:00.) WAC and the two Board members apparently chose to ignore the sworn testimony of the individual who created the file, and instead relied on their subjective view that there are no spaces and thus there would be no spaces in the constitutional provision if were adopted.[3]

[3] Still, even if the petition contained "nonsense" or "gibberish," neither WAC nor either of the two members of the Board who voted against the petition have ever explained why (or on what authority) the people of the state of Michigan cannot amend their constitution however they wish—even if that means inserting so-called "gibberish." As Michigan courts have repeatedly recognized, "a substantive challenge to the subject matter of a petition is not ripe for review until after the law is enacted." *Citizens for Protection of Marriage v Board of State Canvassers*, 263 Mich App 487, 493; 688 NW2d 538 (2004) (collecting cases).

2. The harm to RFFA absent an injunction would be severe

As discussed above, if the Board of State Canvassers is not compelled to certify RFFA's petition for the November ballot, the harm to RFFA and the hundreds of thousands of Michigan voters who signed the petition would be severe. RFFA and the citizens of this state have a constitutional right to propose amendments to the constitution via petition and to make their voices heard at the ballot box. Indeed, RFFA has ***already*** suffered ***concrete*** irreparable harm as a result the Board's actions. As courts have long-recognized, "loss of First Amendment freedoms . . . unquestionably constitutes irreparable injury." *InterVarsity Christian Fellowship/USA v Bd of Governors of Wayne State Univ*, 534 F Supp 3d 785, 838 (ED Mich 2021) (quoting *Liberty Coins, LLC v Goodman*, 748 F3d 682, 690 (CA 6, 2014)).

What's more, permitting unelected state officials to condition the exercise of these constitutional rights based on their subjective imposition of fabricated, ad hoc criteria would send a signal to all Michigan citizens that future efforts to exercise their rights could meet a similar fate. The chill on First Amendment freedoms and the resulting damage to the democratic process would be devastating—a risk that this Court is, and ought to be, careful to avoid. *Ferency v Secretary of State*, 409 Mich 569, 600; 297 NW2d 544 (1980), *receded from on other grounds*, *Consumers Power Co v Attorney General*, 426 Mich 1; 392 NW2d 513 (1986) ("This Court has a tradition of jealously guarding against legislative and administrative encroachment on the people's right to propose . . . constitutional amendments through the petition process.")

Thus, in the absence of an injunction, the actual and imminent harm to RFFA—and to Michigan voters, generally—is severe and warrants RFFA's requested relief.

3. There is no conceivable harm to Defendants should an injunction issue

On the other hand, Defendants stand to lose ***nothing*** if the Court compels them to perform their prescribed duties. If anything, a ruling for RFFA would restore confidence in state institutions, including in the work of the Board of State Canvassers and its limited charge to assess the formal validity of ballot petitions. Were the Court ***not*** to issue an injunction, Defendants face the very real risk of losing the respect and trust of the Michigan electorate, who will see the Board as a partisan body bent on wresting political power away from the people to whom the Michigan Constitution granted it.

Of course, if any of Defendants oppose the ***substance*** of the proposed amendment—a concern that deserves no consideration in deciding whether to certify the petition—they are free, along with all Michigan voters, to voice their opposition in the public square and vote against the proposal this November. This factor also weighs heavily in favor of an injunction.

4. The public interest demands that Defendants be enjoined from blocking the petition

The public stands only to gain from an injunction. Michiganders' constitutional right to participate directly in proposing and approving the laws of this state is an unqualified good. The unlawful action of two members of the Board of State Canvassers threatens to prevent a deeply important issue from reaching voters, thereby weakening their political power in favor of the private political preferences of two unaccountable government officials. Like Plaintiffs, MI NAACP has a firmly rooted interest in ensuring the political process works and works fairly for ***all***—regardless of political party. That interest is at the heart of RFFA's Complaint and compels injunctive relief.

It bears emphasizing here that WAC, the ballot question committee spearheading the frivolous challenge to RFFA's proposal, is a partisan organization aligned with the same party

from which the two Board members who voted against certifying the petition were appointed. Its (unfortunately, successful) challenge was politically motivated from the start. WAC at first hoped to invalidate the petition based on the signature requirement, "relying on the Bureau of Elections to adequately check the submitted signatures for fraud and invalid signatures." A Radical Proposal, Support MI Women and Children.org (last accessed September 6, 2022), https://supportmiwomenandchildren.org/. When it became evident that the signature requirement would be easily met, WAC turned its attention to manufacturing a "problem" with the "form" of the petition, viz. that the proposed constitutional language "removed spaces that eliminated dozens of words previously set forth in the text and replaced them with a hodgepodge of nonsensical gibberish." (WAC First Challenge, RFFA App'x C, at 2.) Predictably, only WAC and two members of the Board of State Canvassers struggle so mightily to make sense of the petition.[4]

At least, that is, when it is expedient for them to do so. When addressing WAC's supporters on its website, WAC appears able to parse the words of the petition as it condemns the substance of the very provisions that elsewhere it asserts "carry no meaning" and "signify nothing." (WAC First Challenge, RFFA App'x C, at 8–9.) In its Challenge before the Board of State Canvassers, WAC listed several "[i]ncoherencies" like "ORALLEGEDPREGNANCYOUTCOMES," which purports to come from the sentence in the petition providing that "THE STATE SHALL NOT PENALIZE . . . AN INDIVIDUAL BASED

[4] This claim is particularly puzzling given that over 750,000 individuals read and signed the petition, including the proposed language of the amendment, and ***not one of them*** suggested that they had any trouble reading or understanding the text. (August 31, 2022 Hearing at 4:47:45.) Member Houskamp was so unwilling to concede that, despite variations in word spacing, the petition was legible to those who considered it, he was forced to conclude that there must be something wrong with the over 750,000 individuals who signed it: "So a significant population in Michigan doesn't even recognize that there's missing spaces?" *Id.*

ON THEIR ACTUAL, POTENTIAL, PERCEIVED, OR ALLEGED PREGNANCY OUTCOMES . . . ." (Revised Petition Filing, RFFA App'x D, at 170.) And yet on its website, WAC urges its members that the organization "cannot allow for phrases like 'perceived pregnancy outcome' to be added" to the Michigan Constitution and "written into our state forever." A Radical Proposal, Support MI Women and Children.org (last accessed September 6, 2022), https://supportmiwomenandchildren.org/; see also Analysis of the Abortion Amendment, Support MI Women and Children.org (last accessed September 6, 2022), https://supportmiwomenandchildren.org/analysis-of-the-abortion-amendment/ (describing the provision of the proposal providing that "[t]he state shall not penalize, prosecute, or otherwise take adverse action against an individual based on their actual, potential, perceived, or alleged pregnancy outcomes, including but not limited to miscarriage, stillbirth, or abortion"). One wonders how WAC could be so worried about the phrase "pregnancy outcomes" if, as they claim, "PREGNANCYOUTCOMES" is a no more than a "nonsensical collection[] of letters." The obvious fact is that—just like the three-quarter of a million individuals who signed the RFFA petition—neither WAC, nor the Board of Canvassers, has any trouble reading and understanding the text of the petition. Indeed, the substance and meaning of the petition is the very thing that WAC so openly opposes. (WAC First Challenge, RFFA App'x C, at 1 ("The Challenger . . . is a duly formed ballot question committee which was organized, in part, to oppose the Proposal's attempt to revise the Michigan Constitution.").)

What is particularly troubling about WAC's challenge—and the willingness of certain Board members to go along with it—is that the complaints about "nonsense" words and "gibberish" are ***entirely irrelevant*** to the limited range of issues that the Board is authorized to

consider. As counsel for RFFA explained at the hearing on WAC's challenge, alleged "typos" or "missing spaces" in the text of the proposed amendment are not for the Board to regulate:

> The full text on the website represents the text of the proposal at it would appear in the constitution if this proposal were approved by voters. As submitted to you, the text includes spaces between the letters. . . . The full text of the proposal is there. In four lines there are differences in word spacing. But the Board doesn't regulate word spacing. The Legislature has not delegated any authority to this Executive branch Board. Nor does the Board have any authority to adopt standards on its own.

(August 31, 2022 Hearing at 4:42:20.)

That WAC could present such a disingenuous "legal challenge"—and, worse, that such a challenge could persuade two members of the Board of State Canvassers to disenfranchise over 750,000 petitioners—reveals the danger of permitting an unelected Board to define the "form" of a petition however it pleases, divorced from the text of MCL 168.482. Such unchecked political power in the hands of two election officials is not only incompatible with the governing statutes, it sidesteps the Michigan and United States constitutions. It is squarely within the public's interest to check that power and set precedent that returns power to the people.

IV. CONCLUSION

For these reasons and those outlined in RFFA's Brief in Support of Complaint and Motion for Immediate Mandamus Relief and *Ex Parte* Motion to Show Cause, the Court should compel Defendants to perform their statutory and constitutional duties: certify the petition and ensure RFFA's proposal is on the ballot for the voters' consideration this November.

Dated: September 7, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 7, 2022, I electronically filed the foregoing using the TrueFiling/MiFile System, which will send notification of this filing to all registered counsel of record.

Date: September 7, 2022

Respectfully submitted,

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