STATE OF MICHIGAN
IN THE SUPREME COURT

CITIZENS PROTECTING MICHIGAN'S CONSTITUTION, JOSEPH SPYKE, and JEANNE DAUNT,

Plaintiffs-Appellants,

v.

Supreme Court No. 157925

SECRETARY OF STATE and MICHIGAN BOARD OF STATE CANVASSERS,

Court of Appeals No. 343517

Defendants / Cross-Defendants-Appellees,

and

VOTERS NOT POLITICIANS BALLOT COMMITTEE, d/b/a VOTERS NOT POLITICIANS, COUNT MI VOTE, a Michigan Non-Profit Corporation, d/b/a VOTERS NOT POLITICIANS, KATHRYN A. FAHEY, WILLIAM R. BOBIER and DAVIA C. DOWNEY,

Intervening Defendants / Cross-Plaintiffs-Appellees.
_____/

BRIEF *AMICUS CURIAE* AMERICAN CIVIL LIBERTIES UNION OF MICHIGAN IN SUPPORT OF VOTERS NOT POLITICIANS

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INTEREST OF *AMICUS* ACLU

The American Civil Liberties Union of Michigan ("ACLU") is the Michigan affiliate of a nationwide, nonpartisan organization with over a million members dedicated to protecting the rights guaranteed by the United States Constitution. The ACLU has long been committed to protecting the right to vote, the freedom to petition, ballot access, and other rights vital to a healthy and robust democracy. The ACLU provides direct representation and files amicus curiae briefs in cases involving ballot access due to their importance to the democratic process. See, e.g., *Stand Up for Democracy v Sec'y of State*, 492 Mich 588; 822 NW2d 159 (2012); *Socialist Workers Party v Sec'y of State*, 412 Mich 571; 317 NW2d 1 (1982); *Moore v Johnson*, 2014 WL 4924409, unpublished opinion of the United States District Court for the Eastern District of Michigan, entered May 23, 2013 (Docket No. 14-11903). The ACLU believes that, given its expertise on constitutional issues and the nature of this case, this *amicus curiae* brief will be of assistance to the Court.

ARGUMENT

> [O]ur decision is consistent with a long line of cases in which the Michigan courts have actively protected and enhanced the initiative and referendum power. [citations omitted] In effect, we simply repeat today what we have said before: '[Constitutional] provisions by which the people reserve to themselves a direct legislative voice ought to be liberally construed' and their exercise should be facilitated rather than restricted.
>
> *Ferency v Secretary of State*, 409 Mich 569, 602; 297 NW2d 544 (1980)(quoting, *Kuhn v Department of Treasury*, 384 Mich 378, 385; NW2d 183 NW2d 796 (1971))

I. INTRODUCTION

A century ago, this Court expressly acknowledged that, as a general rule, "neither the legislature, the courts, nor the officers charged with any duty in the premises" should interfere with "the right of qualified voters of the State to propose amendments to the Constitution by petition." *Scott v Secretary of State*, 202 Mich 629, 643; 168 NW 709 (1918). More recently, the Court again remarked that the courts have "consistently protected the right of the people to amend their Constitution." *Protect Our Jobs v Bd of State Canvassers*, 492 Mich 763, 772; 822 NW 2d 534 (2012)

The people's reserved right to amend their Constitution by initiative is based not only on the explicit language of Const 1963, art 12, § 2, but also on the foundational constitutional precept that: "All political power is inherent in the people." Const 1963, art 1, §1. The right to amend the constitution by initiative, once granted by the Michigan Constitution, also is protected core political speech under the First Amendment to the U.S. Constitution. Given the constitutional primacy of this reserved right, the judiciary is charged with preserving and protecting the right rather than impeding its exercise through a "judicial veto."

Certainly, the courts have a role in enforcing constitutional and statutory requirements for the exercise of the reserved right to amend the Constitution by initiative and popular vote, such as by ensuring that technical constitutional and statutory requirements are satisfied. Here, however, we are not dealing with technical compliance matters such as the sufficiency of signatures or requirements as to petition form and format. The question before the Court is whether a nebulous and arbitrary standard for distinguishing a general revision from an amendment can be wielded by opponents to derail an amendatory proposal that has garnered more than the required number of petition signatures. Specifically, should the "qualitative/quantitative" test imported from another state's case law and applied by a Court of Appeals panel in *Citizens Protecting Michigan's Constitution v Sec'y of State*, 280 Mich App 273; 761 NW2d 210 (2008), *aff'd as to result only*, 482 Mich 960; 755 NW2d 157 (2008), be the guiding test. *Amicus* ACLU of Michigan urges the Court to reject the qualitative/quantitative approach. That test has no grounding in the words of the Constitution. And it is unworkable in practice. Citizens who wish to change their Constitution need a bright-line, objective standard that produces predictable results as a guide.

II. THE COURT'S ROLE IS TO ENABLE AND FACILITATE EXERCISE OF THE PEOPLE'S RESERVED RIGHT TO PETITION TO AMEND THE CONSTITUTION. FOR THAT REASON, THE COURT SHOULD CONTINUE TO AVOID ADOPTING TESTS AND REQUIREMENTS THAT INTRODUCE UNCERTAINTY.

A. Michigan's Constitution Requires a Bright Line Rule for Determining Ballot Eligibility.

Michigan's governmental structure rests on the foundation of reserved powers vested in the people. "All political power is inherent in the people." Const 1963, art 1, § 1. In Const 1963, art 12, § 2, the citizens have reserved to themselves the power to change their organic law through ballot initiative. Through the years the judiciary has protected that reserved right without

regard to political expediency or the perceived wisdom or folly of the people's decisions. "The Court has a tradition of jealously guarding against *legislative* and *administrative* encroachment on the people's right to propose laws and constitutional amendments through the petition process." *Ferency v Secretary of State*, 409 Mich 569, 601; 297 NW2d 544 (1980) (*per curiam*)(emphasis in original). *Ferency* extended that protection to "*court* interference" as well. *Id*. Furthermore, "under a system of government based on grants of power from the people, constitutional provisions by which the people reserve to themselves a direct legislative voice ought to be liberally construed." *Kuhn v Department of Treasury*, 384 Mich 378, 385; 183 NW2d 796 (1971). *See also*, *Protect Our Jobs v Bd of State Canvassers*, 492 Mich at 772 (quoted above).

In furtherance of the objective of enabling the people's exercise of their right to amend the Constitution and laws, this Court has favored the application of unambiguous, bright line rules that do not demand special expertise and unnecessary judicial intervention. In *Jackson v Commissioner of Revenue*, 316 Mich 694; 26 NW2d 569 (1947), this Court refused to artificially distinguish between constitutional amendments and legislation, for the reason that, "the *line of demarcation* between legislation and constitutional provision is too indefinite to require that an arbitrary decision must be made in advance of submitting a proposal to the voters…." *Id.* at 710. In *Pontiac School District v Pontiac*, 262 Mich 338; 247 NW 474 (1933), this Court cautioned against subjecting the right to petition for amendment to free-ranging judgments as to "ballot eligibility," stating:

> The duty of submitting all proposed constitutional amendments initiated by the people is placed by the Constitution upon the Secretary of State, article 17, § 2. Any provision as to such duty should, if possible, be so construed as to make the requisite course of conduct entirely clear and plain. *Perplexities and uncertainties will be pitfalls for the officer charged with this duty regardless of a zealous and*

> *honest effort to fully comply with the law, and the officer's nonperformance might jeopardize and possibly nullify the effort of electors to amend the Constitution.*

Id. at 343 (emphasis added). In *Michigan United Conservation Club v Secretary of State*, 461 Mich 359; 630 NW2d 297 (2001), Justice Young offered the following in concurring with a majority of Justices that judge-made limitations should not be read into the appropriations exception in Const 1963, art 2, § 9 (while lengthy, this passage is particularly applicable here):

> I believe that the dissenter's approach is not only at odds with the constitution, but destroys the Legislature's direct accountability to the people for its acts by interposing the judiciary as an arbiter of essentially political questions that are fundamentally legislative in character. Consider Justice Cavanagh's tests of what he believes constitutes "appropriations" that do preclude referrals under art 2, § 9: (1) grants that "ensure the viability of [state] agencies"; or (2) grants that "support the agencies' 'core functions.'" . . . Exactly how large an "appropriation" constitutes one sufficient to ensure the 'viability' of a state agency or, for that matter, its 'core function'? What *is* a state agency's 'core' function, what constitutes its 'viability,' and who gets to decide these questions-the Board of Canvassers, the Secretary of State, the courts? The dissenters are eager to have the courts decide these questions. Perhaps there are members of the public who believe that the courts are competent to address these issues. I submit that these are Delphic questions that neither a judge nor the judicial system itself is best equipped to answer. More to the point, the tests the dissenters urge to assess whether an act making an appropriation is nonetheless amenable to referral *despite* the express constitutional limitation are simply ones made up from whole cloth and which have no basis in the text of our constitution. The judiciary is not authorized to create ways of evading the terms of our constitution; nor should the courts manufacture tests that amount to no more than providing a means of promoting sitting judges' personal preferences to accomplish such goals. Neither is a judicial function, and the public should never be confused on this issue. Our courts must refrain from engaging in such endeavors because they are beyond our constitutional authority and competence.

Id. at 390-391 (Young, J., conc)(emphasis in original).

In adopting California's qualitative/quantitative test, the Court of Appeals in *Citizens Protecting Michigan's Constitution* frankly conceded that, "it is not possible to 'define with nicety the line of demarcation' between an 'amendment' and a 'general revision.'" 280 Mich

App at 305. Presented with the opportunity to adopt and affirm the Court of Appeals' analysis, this Court declined to do so. 482 Mich 960 (2008). A majority of Justices affirmed only the result reached by the Court of Appeals in *Citizens Protecting Michigan's Constitution* but not the lower court's rationale. Justices Cavanagh, Weaver, and Markman rejected the subjective "ballot eligibility" test employed by the Court of Appeals. They concluded that based on the wording of art 12, § 2 and the "'common understanding' of the 'great mass of the people'" approving the 1963 Constitution, the operative limitation on the scope of a proposed amendment is that the purpose of the amendment must be capable of being expressed in no more than the 100 words allotted for the statement of purpose. *Id.* at 960-961. Justice Kelly agreed that the 100 word ballot summary is the only limitation on the breadth of a proposed amendment contained in the Constitution. She dissented on grounds that the Court should have been given the opportunity to judge for itself whether the proposed statement of purpose was sufficiently true and impartial to meet the requirements of art 12, § 2. (Justices Cavanagh, Weaver, and Markman agreed that the case should have been remanded to the Board of Canvassers for approval of a statement of purpose, but that under the exigent circumstances an urgent decision was required. *Id*. at 961 n 2. Justice Weaver wrote separately to criticize the lower court's importation of California case law to support application of the qualitative/quantitative test.[1] In a short concurrence, Justice

[1] Justice Weaver stated: "[T]he Court of Appeals reached out to rules created by the California Supreme Court and wrote into our Michigan Constitution words, phrases, and concepts such as: 'qualitative,' 'quantitative,' 'two-prong test,' 'threshold determination,' 'foundation powers,' all of which are not anywhere contained in Michigan's Constitution. * * * The Court of Appeals opinion is an example of judicial activism--of the unrestrained, mistaken use of the power of interpretation. Such California law interpreted directly into our Michigan Constitution, or circularly relied on for support, seems harmless in this case because it reaches the correct result, but it is harmful and dangerous for the future. It wrongly creates a 'judicial veto' over future voter-initiated proposed amendments by petition even if such a proposed amendment were a one (1)-issue, single purpose amendment whose 'not more than 100 words' purpose statement for printing on the ballot would easily be sufficient, understandable, impartial, and true." *Id.* at 159.

Corrigan, joined by Justices Taylor and Young, stated that given the limitation of time constraints, she did not find clear error in the lower court's analysis. *Id.* at 964.

In a prescient comment, Justice Kelly forecast the legal challenge to Voters Not Politicians and the over 394,000 electors determined by the Board of Canvassers to have signed petitions to place the proposal on the ballot:

> [B]y affirming only the result reached by the Court of Appeals, the majority leaves the law in this area sadly unsettled. Rather than articulate its own analysis of the issues, the majority elects simply to summarily keep the initiative off the ballot while rejecting the reasoning of the Court of Appeals. What guidance has this Court offered to individuals and organizations that wish to sponsor ballot initiatives in the future? How are they to know how many constitutional changes in one initiative are too many, or how sweeping is too sweeping?

Id. at 969.

In its decision on appeal in this case, the Court of Appeals panel applied the qualitative/quantitative test reluctantly, and rejected plaintiffs' contention that the Voters Not Politicians proposal is invalid because it calls for a "general revision" requiring a constitutional convention. (slip op at 17-20) In its *per curiam* opinion (slip op at 17) the panel stated:

> [W]e are bound by *Citizens Protecting Michigan's Constitution* [280 Mich App 273] as a published decision issued after 1990, MCR 7.215(J)(1). But even in following *Citizens Protecting Michigan's Constitution*, we keep in mind that Court's clarification at the outset that its decision was not 'to prevent the citizens from voting on a proposal simply because that proposal is allegedly too complex or confusing.' *Id.* at 276. [quoting *Citizens Protecting Michigan's Constitution v Sec'y of State*, 280 Mich App 273, 276; 761 NW2d 210 (2008)].

B. An Imprecise Test for Access to the Ballot is Contrary to the Free Speech Clauses of the U.S. and Michigan Constitutions.

The First Amendment to the United States Constitution provides that Congress "shall make no law…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." The Fourteenth Amendment makes that prohibition applicable to the states." *Meyer v Grant*, 486 US

414, 420; 108 S Ct 1886, 1891; 100 L Ed 2d 425 (1988). The First Amendment was fashioned to assure the unfettered interchange of ideas for bringing about social changes desired by the people. *Meyer*, 486 US at 421 (citing, *Roth v United States*, 354 US 476, 484; 77 S Ct 1304, 1308; 1 L Ed 2d 1498 (1957)). The "liberty of speech" guaranteed by the First Amendment is also secured by Const 1963, art 1, § 3. *Woodland v Mich Citizens Lobby*, 423 Mich 188, 207-208; 378 NW2d 337 (1985)(citing, *Book Town Garage, Inc v UAW Local 415*, 295 Mich 580, 587; 295 NW 320 (1940)).

While the federal Constitution does not guarantee the right to an initiative, where an initiative procedure exists, as it does under Const 1963, art 12, § 2, a state may not place restrictions on its exercise that unduly burden its exercise. *Taxpayers United for Assessment Cuts v Austin*, 994 F2d 291, 295 (CA 6, 1993)(citing *Meyer v Grant*, 486 US 414; 108 S Ct 1886; 100 L Ed 2d 425 (1988)). A state that has adopted an initiative process violates the federal Constitution if it unduly restricts the First Amendment rights of its citizens to support the initiative. *Id.*

"Because First Amendment freedoms need breathing space to survive, government may regulate in the area only with narrow specificity." *Natl Ass'n for Advancement of Colored People v Button*, 371 US 415, 433; 83 S Ct 328, 338; 9 L Ed 2d 405 (1963)(citing, *Cantwell v. Connecticut*, 310 US 296, 311; 60 S Ct 900, 906; 84 L Ed 1213 (1940)). "Precision of regulation must be the touchstone in an area so closely touching our most precious freedoms," and vague restrictions premised on "[b]road prophylactic rules in the area of free expression" constitute an undue burden on the exercise of the First Amendment rights. *Id.* at 438 (internal citations omitted). The U.S. Supreme Court recently struck down a Minnesota law banning certain political apparel in polling locations as unreasonable because the state could not articulate "some

sensible basis for distinguishing" between what is permitted and what is prohibited. *Minnesota Voters Alliance v Mansky*, 585 US ___; 138 S Ct 1876, 1888 (2018).

As more fully discussed below, the qualitative/quantitative analysis, proposed by the Court of Appeals in *Citizens Protecting Michigan's Constitution v Sec'y of State* and endorsed by the plaintiffs-appellants and the Attorney General here, utterly fails to provide any discernible "line of demarcation" between a valid and invalid petition filed under 1963 Const, art 12, §2. The two-prong qualitative/quantitative analysis would effectively leave each and every future initiative petition vulnerable to judicial intervention, leading to unreasonable interference with the exercise of free speech rights.

III. THE QUALITATIVE/QUANTITATIVE ANALYSIS IS NOT A SUITABLE BASIS FOR BARRING A PROPOSED AMENDMENT FROM THE BALLOT.

The qualitative/ quantitative test would require a court to apply a subjective and arbitrary – perhaps "Delphic" – sliding scale standard for ballot eligibility. Citizens need clear direction and a bright-line test. The qualitative/quantitative test espoused by Appellants and the Attorney General would frustrate rather than facilitate exercise of the right the people reserved to themselves under Const 1963, art 12, § 2. We suspect this is why the Court declined to adopt and apply the qualitative/quantitative test when presented with the opportunity to do so a decade ago in *Citizens Protecting Michigan's Constitution v Sec'y of State*.

A. The "Qualitative" Prong.

The Plaintiffs-Appellants argue that the efforts of Voters Not Politicians and the hundreds of thousands of voters who circulated and signed its petitions are for naught because, for purposes of applying the "qualitative" prong of the *Citizens Protecting Michigan's Constitution* test, "the key question is not whether a change is complex, but whether the change is *fundamental*." (Plaintiffs-Appellants' Brief at 31)(emphasis in original). The unwritten test

borrowed from *Citizens Protecting Michigan's Constitution* (itself borrowing from California case law) is whether a proposal "affects the 'foundation power' of government." 280 Mich App at 306. Also quoting the Court of Appeals in *Citizens Protecting Michigan's Constitution* [280 Mich App at 298], the Attorney General suggests the following test for whether a proposal is ballot-worthy: "the greater the degree of interference with, or modification of, government, the more likely the proposal amounts to a 'general revision.'" (Attorney General's *Amicus* Brief at 6). The words "fundamental," "foundation power," or "interference" are not found in sections 2 and 3 of article 12.

The linguistic exercise proffered by VNP's opponents demonstrates how arbitrary and subjective the qualitative test turns out to be in application. According to the Attorney General, the VNP proposal is a general revision because it would "take a portion of the legislative power from the legislature and give it to the redistricting commission" thereby fundamentally disrupting the separation of powers set forth in Const 1963, art 3, § 2." (Attorney General *Amicus* Brief at 7).

The flaws in this suggested application of the qualitative prong underscore the unworkability of the test for distinguishing between an amendment and a general revision. First, if the Attorney General is correct that taking away "a portion of the legislative power from the legislature" amounts to a "fundamental modification" that disqualifies an amendment and requires a constitutional convention, then the many proposed amendments brought before the voters in past years that limited or affected the legislature's authority should never have reached the ballot. Second, the Attorney General's argument for "fundamental modification" is grounded on the assertion that "[t]he task of 'redistricting is a legislative function' and thus it currently belongs to the [Michigan] legislature . . . ." (Attorney General *Amicus* Brief at 8, citing and

quoting, *Arizona State Legislature v Arizona Indep Redistricting Comm'n*, 135 S Ct 2652, 2668 (2015)). This citation illustrates a major pitfall of the "fundamental modification" analysis: it invites pigeon-holing and oversimplification. In rejecting the state legislature's Elections Clause challenge to a popular initiative transferring redistricting from the legislature to an independent commission, the Supreme Court took pains to explain that the term "legislature" as used in the Elections Clause does not mean performed exclusively by a legislature, but rather may encompass the executive branch or the people at large, *Id*. at 2666-2668, or as in that case, an independent redistricting commission established by popular initiative. The Court rejected the simplistic notion that redistricting is a legislative branch function *per se*.

Moreover, as the Attorney General cannot help but acknowledge (See, *Amicus* Brief at 8), drawing district lines is not inherently the province of the legislature under Michigan's Constitution, because it is assigned under Const 1963, art 4, §6, to a nonpartisan commission. The Attorney General's "fundamental modification of government" test is undermined by the inconvenient fact that the Constitution already provides for redistricting by a non-partisan commission. As recounted by the Court of Appeals below, it is only a matter of historical happenstance, not constitutional imperative, that for the past few decades redistricting has been performed by the Court or by the legislature and not by the commission. (slip op at 6-9). The VNP proposal seeks only to correct that flaw.

The sliding scale qualitative test is an exercise in subjective and arbitrary line drawing that can easily be manipulated to impose a "judicial veto."

B. The "Quantitative" Prong.

In applying the "quantitative" prong in *Citizens Protecting Michigan's Constitution*, the Court of Appeals' discussion was confined to the following:

> Looked at quantitatively, the proposal affects four articles of the Constitution, modifies 24 current sections of the Constitution, and adds four new sections to the Constitution. Clearly, the number of proposed changes and the proportion of current articles and sections affected by those proposed changes are very significant.

280 Mich App at 305-306. On the basis of this skeletal analysis, the Court of Appeals determined that the RMGN! proposal modified too many parts of the Constitution to qualify for placement on the ballot as an amendment. Plaintiffs-Appellants point out that VNP would repeal or alter 11 existing sections, and insert 22 new subsections in art 4, § 6. (Plaintiffs-Appellants' Brief at 41). They also complain that VNP would add more words than any previous amendment.[2] (*Id.* at 42-43). On this basis, they argue that "[t]he quantitative prong plainly establishes VNP's ineligibility for submission as an initiated amendment." (*Id.* at 43).

Plaintiffs-Appellants' argument shows that application of the quantitative prong would be anything but plain. The quantitative test is a trap for the unwary and provides no guidance for citizens. As Justice Kelly aptly commented in *Citizens Protecting Michigan's Constitution*:

> The Reform Michigan Government Now! petition contains approximately 19,000 words and makes changes or additions to 28 different sections of the constitution. Some of my colleagues indicate, without support carrying precedential force, that this initiative is unconstitutional because it is too extensive. Would an initiative with 18,000 words pass constitutional muster? Would one making changes to 27 sections of the constitution be excessive?

482 Mich at 969. Plaintiffs-Appellants' argument that VNP should be barred from the ballot because it would add more words than the Headlee amendment demonstrates just how arbitrary the qualitative analysis is. Presumably when it was adopted in 1978, Proposal E added more

[2] Plaintiffs-Appellants note that Voters Not Politicians would add more content than the largest one-time amendment made to date, Proposal E in 1978 (the Headlee Amendment). (Plaintiffs-Appellants' Brief at 43). They do not discuss the word count of any amendatory proposals that were placed on the ballot but were not approved by the voters.

words than any amendment coming before it' yet no one would argue that Headlee should never have made it to the ballot for that reason.

The qualitative/quantitative test for a general revision by constitutional convention is arbitrary and imprecise, and should not be adopted by the Court as a basis for determining ballot eligibility.

IV. THE PLAIN MEANING OF THE WORDS USED IN CONST 1963 ARTICLE 12 PROVIDE A WORKABLE "BRIGHT-LINE" BASIS FOR DISTINGUISHING BETWEEN AN AMENDMENT AND A GENERAL REVISION.

There is no need for a court to engage in theorizing and speculation as to whether a proposed amendment makes a "fundamental" change, or "affects the 'foundation power' of government" or sufficiently interferes with or modifies government. Nor is there any reason for a court to speculate about whether a proposal's purpose can accurately be summarized in 100 words. Those nebulous tests do not serve the people's right to amend the Constitution. Instead, the Court should turn to the plain meaning of the words used in sections 2 and 3 of article 12.

The words of the Constitution are to be understood "by applying each term's plain meaning at the time of ratification." *National Pride at Work, Inc v Governor*, 481 Mich 56, 67-68; 748 NW2d 524 (2008). Const 1963. art 12, § 2 refers to "amendments." The text sets forth no restrictions or qualifications on the size, scope, breadth or content of a proposed amendment. Const 1963, art 12, § 3 states simply that, "At the general election to be held in the year 1978, and in each 16th year thereafter and at such times as may be provided by law, the question of a general revision of the constitution shall be submitted to the electors of the state." The text of this section does not suggest or permit a reading that classifies an amendatory proposal of a certain scope or breadth as a "general revision" to be accomplished by means of a constitutional convention.

Since the Constitution does not define the term "general revision," it is appropriate to look to the commonly understood meaning of those words to discern what the voters in 1963 would have understood it to mean. *Michigan United Conservation Clubs ("MUCC") v Secretary of State*, 461 Mich 359, 373-375; 630 NW2d 297 (2001) (Young, J., conc); *Kuhn v Department of Treasury*, *supra* at 384. The dictionary is a trusted hermeneutic resource.[3] The term "revision" denotes a process of deliberative examination, but not necessarily the scope of the examination or of any changes made.[4] A "general" revision connotes a global examination affecting the *entire* document.[5] A "general revision" would have been understood as a comprehensive, deliberative examination of the Constitution as a whole.

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[3] This Court routinely consults dictionaries to discern the commonly understood meaning of terms. E.g., *Renny v Michigan Dept of Transportation*, 478 Mich 490, 500-501; 734 NW2d 518 (2007) (citing American Heritage Dictionary); *South Haven v Van Buren County Comm'rs*, 478 Mich 518, 527-528; 734 NW2d 533 (2007) (citing Random House Webster's College Dictionary); *Cowles v Bank West*, 476 Mich 1; 719 NW2d 94 (2006) (resort to dictionary definitions "acceptable and useful in determining ordinary meaning"); *Rohde v Ann Arbor Public Schools*, 479 Mich 336, 344 n 6; 737 NW2d 158 (2007) (citing Black's Law Dictionary).

[4] "revision - a re-examination or careful reading over for correction or improvement." *Black's Law Dictionary* (5th ed 1979) at 1187; "revision - the act of revising; re-examination for correction; review; as, the revision of a book or writing, or of a proof sheet; a revision of statutes." *Webster's Revised Unabridged Dictionary* (1996). *Black's Law Dictionary* also provides the following commentary on the term "revision of statutes:" "Such is more than a restatement of the substance thereof in different language, but implies a reexamination of them, and may constitute a restatement of the law in a corrected or improved form, in which case the statement may be with or without material change, and is substituted for and displaces and repeals the former law as it stood relating to the subjects within its purview. [citation omitted]" *Black's Law Dictionary* at 1187.

[5] "general – involving, applicable to or affecting the whole." *Webster's Ninth New Collegiate Dictionary* (1987); "general – relating to, concerned with, or applicable to the whole or every member of a class or category." *American Heritage Dictionary Second College Edition* (1991); "general – of, for or from the whole or all; not particular or local." *Webster's New World Dictionary Third College Edition* (1988); "general - comprehending the whole or directed to the whole, as distinguished from anything applying to or designed for a portion only." *Black's Law Dictionary* (5th ed 1979).

The purpose of periodically offering the people the opportunity to vote to convene for a "general revision" was to "give each generation a chance to look at basic law." (Remarks of Delegate Erickson, II *Official Record: 1961 Constitutional Convention* at 3006) In *Kelley v Laing*, 259 Mich 212, 217; 242 NW 891 (1932), in discussing a municipal charter, the Court observed that as a general matter, "a revision implies a re-examination of the whole law and a redraft without obligation to maintain the form, scheme, or structure of the old."

The VNP proposal plainly does not entail a comprehensive reexamination or recodification of the entire Constitution. Any proposed change other than a "general revision" as commonly understood, is properly presented to the people as a proposed amendment, no matter how "fundamental" it is considered or how many words it adds or sections it might affect. Michigan's citizens are familiar with voting on amendments that embrace multiple parts of the Constitution and that make significant changes to government. The following examples are illustrative.

- 1978 Proposal E ("Headlee Amendment") – limited the authority of the legislature and local governments with respect to issues of taxation and unfunded mandates, and established standing and jurisdiction in the Court of Appeals for enforcement.

- 1978 Proposal J ("Tisch Amendment I") – would have capped the property rate for property tax rate, prohibited the legislature from requiring new or expanded local programs without state funding, and permitted a school income tax with voter approval, amending or adding 7 sections.

- 1980 Proposal D ("Tisch II") – would have amended or added 13 sections of article 9 to decrease property taxes and prohibit new types of homestead taxes, require 60% voter approval to raise state taxes or fees, required state reimbursement to local units for lost income, and limited the legislature's ability to change tax exemptions or credits or alter the per pupil formula. In *Ferency v Secretary of State*, *supra*, the Court considered the comprehensive and far-reaching scope of the proposal. Justice Williams noted the "revolutionary intent and purpose of the Tisch proposal" and quoted its proponent's declaration that it would, "present a *substantial change* in the Michigan Constitution, if adopted, and, in addition thereto, would have a *significant impact upon the operative affect [sic] of our form of government." Id* at 627-628 (emphasis in original). The voters rejected the proposal.

- 1992 Proposal B ("term limits") – added 4 sections to 4 articles to provide term limits for U.S. representatives and Senators, state legislators and state executive officers.

A much more objective approach to determining the ballot eligibility based on the plain meaning of the words used in the Constitution avoids the need for a subjective judicial determination of excessive size or breadth, or how "fundamental" a change is proposed.

CONCLUSION

The people need – and the Constitution demands – clear and intelligible guidelines for citizens wishing to exercise their right to propose an amendment. The qualitative/quantitative approach is too amorphous to provide any guidance and can easily be manipulated to reach any desired result. Basing ballot eligibility on a judicial prediction as to whether a proposal's purpose can be contained in 100 words is little better. *Amicus* ACLU respectfully urges the Court to reject these unworkable tests. What the Court said in *Pontiac School District v Pontiac*, *supra* at 343, quoted earlier in this brief, applies to Voters Not Politicians:

> Any provision as to such duty should, if possible, be so construed as to make the requisite course of conduct entirely clear and plain. Perplexities and uncertainties will be pitfalls for the officer charged with this duty regardless of a zealous and honest effort to fully comply with the law, and the officer's nonperformance might jeopardize and possibly nullify the effort of electors to amend the Constitution.

Respectfully submitted,

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