STATE OF MICHIGAN
IN THE SUPREME COURT

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

Plaintiffs-Appellants,

v

SECRETARY OF STATE AND MICHIGAN BOARD OF STATE CANVASSERS,

Defendants / Cross-Defendants-Appellees,

and

VOTERS NOT POLITICIANS BALLOT COMMITTEE, D/B/A VOTERS NOT POLITICIANS, COUNT MI VOTE, A MICHIGAN NON-PROFIT CORP., D/B/A VOTERS NOT POLITICIANS, KATHRYN A. FAHEY, WILLIAM R. BOBIER, AND DAVIA C. DOWNEY,

Intervening Defendants/Cross-Plaintiffs-Appellees.
/

Supreme Court No. 157925

Court of Appeals No. 343517

MOTION FOR LEAVE TO FILE
ATTORNEY GENERAL BILL SCHUETTE'S AMICUS CURIAE BRIEF

The Attorney General, by and through attorney Aaron D. Lindstrom, Solicitor General for the State of Michigan, pursuant to MCR 7.311, respectfully requests permission to file an amicus brief supporting the application in this case.

The Attorney General files this motion for leave to file an amicus brief at the application stage because of the importance of the issues to the State and the

People. As the Court knows, the Attorney General is a constitutional officer within the executive branch and serves as the chief law officer for the State. In this capacity, he is in charge of all litigation for the State, including defending state laws and the state constitution. In addition to his constitutional authority, the legislature has recognized that the Attorney General is authorized to participate in any action in any state court when, in his own judgment, he deems it necessary to participate to protect any right or interest of the State or of the People of the State. MCL 14.28; MCL 14.101. Because of this role, the Michigan Court Rules allow the Attorney General to file amicus briefs in this Court at the merits stage without needing to request leave to file. MCR 7.312(H)(2).

This case presents a fundamental question of Michigan law: is a change to the separation of powers and to the checks and balances that provide the framework of our constitutional structure a change that may be made by an amendment or one that may be made only through a constitutional convention? As the attached proposed amicus brief explains, the proposal of the Voters Not Politicians would create a new entity that would expressly be given legislative, executive, and judicial power in the area of districting, and yet would be free of the usual checks and balances (such as the requirement of passing both houses and option of a veto by the governor) that ordinarily work together to restrain governmental power.

Particularly in this separation-of-powers context, the Attorney General believes that it would benefit the Court to receive input from a constitutional officer

of the co-equal executive branch as to the importance of the issues presented to Michigan's law.

For the foregoing reasons, Attorney General Bill Schuette requests leave to file an amicus curiae brief in this matter at the application stage.

Respectfully submitted,

Bill Schuette
Attorney General

/s/ Aaron D. Lindstrom (P72916)
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Dated: June 22, 2018

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Supreme Court No. 157925

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BRIEF OF AMICUS ATTORNEY GENERAL IN SUPPORT OF APPLICATION FOR LEAVE TO APPEAL

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INTEREST AND STATEMENT OF POSITION OF AMICUS CURIAE

Separate from his role as legal counsel for State agencies, the Attorney General is a constitutionally established officer who has an independent obligation to protect the Michigan Constitution and to protect the interests of the People of the State of Michigan. E.g., MCL 14.28; MCL 14.101. In recognition of this duty, the Court Rules provide, for example, that the Attorney General may file a brief as amicus curiae in this Court at the merits stage without seeking permission. MCR 7.312(H)(2). As explained in the accompanying motion, the Attorney General requests leave to file this brief at the application stage to explain the importance of this case and to protect the interests of the People in preserving the Constitution's distinction between amendments and revisions.

The Michigan Constitution creates a process by which the Constitution may be amended (under article 12, § 2) or, for more profound changes, may be revised (under article 12, § 3). Because the proposal at issue here makes numerous changes that alter the fundamental division of powers within our government, it proposes a revision, not a mere amendment, and it therefore cannot be accomplished through the petition process. Accordingly, this Court should grant the plaintiffs' application for leave to appeal and should order the Secretary and the Board to reject the proposed initiative petition.

STATEMENT OF QUESTION PRESENTED

1. Does the initiative petition submitted by Voters Not Politicians alter the fundamental separation of powers and checks and balances that form the structure of Michigan government, and so amount to a revision of Michigan's Constitution, rather than a mere amendment, in which case mandamus is warranted to order the Secretary of State and the Board of Canvassers to reject the petition?

   Plaintiffs' answer: Yes.

   Amicus's answer: Yes.

CONSTITUTIONAL PROVISIONS INVOLVED

Article 12, § 1 of Michigan's 1963 Constitution

> Amendments to this constitution may be proposed in the senate or house of representatives. Proposed amendments agreed to by two-thirds of the members elected to and serving in each house on a vote with the names and vote of those voting entered in the respective journals shall be submitted, not less than 60 days thereafter, to the electors at the next general election or special election as the legislature shall direct. If a majority of electors voting on a proposed amendment approve the same, it shall become part of the constitution and shall abrogate or amend existing provisions of the constitution at the end of 45 days after the date of the election at which it was approved.

Article 12, § 2 of Michigan's 1963 Constitution

> Amendments may be proposed to this constitution by petition of the registered electors of this state. Every petition shall include the full text of the proposed amendment, and 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. Such petitions shall be filed with the person authorized by law to receive the same at least 120 days before the election at which the proposed amendment is to be voted upon. Any such petition shall be in the form, and shall be signed and circulated in such manner, as prescribed by law. The person authorized by law to receive such petition shall upon its receipt determine, as provided by law, the validity and sufficiency of the signatures on the petition, and make an official announcement thereof at least 60 days prior to the election at which the proposed amendment is to be voted upon.
>
> **Submission of proposal; publication**
>
> Any amendment proposed by such petition shall be submitted, not less than 120 days after it was filed, to the electors at the next general election. Such proposed amendment, existing provisions of the constitution which would be altered or abrogated thereby, and the question as it shall appear on the ballot shall be published in full as provided by law. Copies of such publication shall be posted in each polling place and furnished to news media as provided by law.

Ballot, statement of purpose

The ballot to be used in such election shall contain a statement of the purpose of the proposed amendment, expressed in not more than 100 words, exclusive of caption. Such statement of purpose and caption shall be prepared by the person authorized by law, and shall consist of a true and impartial statement of the purpose of the amendment in such language as shall create no prejudice for or against the proposed amendment.

Approval of proposal, effective date; conflicting amendments

If the proposed amendment is approved by a majority of the electors voting on the question, it shall become part of the constitution, and shall abrogate or amend existing provisions of the constitution at the end of 45 days after the date of the election at which it was approved. If two or more amendments approved by the electors at the same election conflict, that amendment receiving the highest affirmative vote shall prevail.

Article 12, § 2 of Michigan's 1963 Constitution

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. If a majority of the electors voting on the question decide in favor of a convention for such purpose, at an election to be held not later than six months after the proposal was certified as approved, the electors of each representative district as then organized shall elect one delegate and the electors of each senatorial district as then organized shall elect one delegate at a partisan election. The delegates so elected shall convene at the seat of government on the first Tuesday in October next succeeding such election or at an earlier date if provided by law.

Convention officers, rules, membership, personnel, publications

The convention shall choose its own officers, determine the rules of its proceedings and judge the qualifications, elections and returns of its members. To fill a vacancy in the office of any delegate, the governor shall appoint a qualified resident of the same district who shall be a member of the same party as the delegate vacating the office. The convention shall have power to appoint such officers, employees and assistants as it deems necessary and to fix their compensation; to provide for the printing and distribution of its documents, journals and proceedings; to explain and disseminate information about the

proposed constitution and to complete the business of the convention in an orderly manner. Each delegate shall receive for his services compensation provided by law.

Submission of proposed constitution or amendment

No proposed constitution or amendment adopted by such convention shall be submitted to the electors for approval as hereinafter provided unless by the assent of a majority of all the delegates elected to and serving in the convention, with the names and vote of those voting entered in the journal. Any proposed constitution or amendments adopted by such convention shall be submitted to the qualified electors in the manner and at the time provided by such convention not less than 90 days after final adjournment of the convention. Upon the approval of such constitution or amendments by a majority of the qualified electors voting thereon the constitution or amendments shall take effect as provided by the convention.

INTRODUCTION

One of the most fundamental innovations of American constitutions, at both the state and federal level, is that they divided power among three separate branches of government and established a system of checks and balances designed to restrain each branch's exercise of power. *The Federalist* No. 47 (discussing the separation of powers); *The Federalist* No. 51 (discussing checks and balances). Michigan's Constitution follows this structure, expressly dividing power among three branches, each of which has mechanisms to check and balance the others.

The amendments proposed by Voters Not Politicians depart from both of those principles. As to the separation of powers, the proposal alters *each* constitutional clause that vests particular powers in one of the three branches: it expressly alters the vesting clause for the legislature (article 4, § 1), the vesting clause for the executive branch (article 5, § 1), and the vesting clause for the judiciary (article 6, § 1). It thus creates a new commission (nominally housed in the legislative branch) that is authorized to possess the powers of *all three* branches of government. And rather than creating checks and balances on that new commission, the proposal provides that the commission's functions are "not subject to the control or approval of the legislature," VNP Proposal, art 4, § 22, are "not subject to the control or approval of the governor," *id.*, art 5, § 2, and are insulated from ordinary judicial review, art 4, § 19. These changes would alter the basic structure of Michigan's government and so are revisions, not amendments. Accordingly, they may be enacted only through a constitutional convention, not through a petition. This important issue warrants this Court's review.

STATEMENT OF FACTS AND PROCEEDINGS

This case involves an initiative petition submitted by the Voters Not Politicians ballot committee to place certain amendments to Michigan's Constitution on the November 2018 general election ballot. The proposal would amend each constitutional article addressing the powers of one of the branches of government—i.e., article 4 (the legislative branch), article 5 (the executive branch), and article 6 (the judicial branch). VNP Proposal (attached to the plaintiffs' Court of Appeals brief as Exhibit 1).

The Michigan Court of Appeals concluded that the measure qualified as an amendment, and not as a general revision to the Constitution. The Court of Appeals acknowledged that the proposal "creates an exception to the legislative power of the state senate and house of representatives by exempting the new independent citizens redistricting commission from legislative control." COA Op, p 9. It also acknowledged that "the commission's functions would not be subject to control by the Governor," *id*. at 19, and that the proposal "preclude[s] the Supreme Court from ordering the adoption of a plan other than that arrived at by the independent commission." COA Op, p 19. But though it noted that if a proposal were to "alter[ ] the core, fundamental underpinnings of the constitution," such a proposal would qualify as a revision, not as a mere amendment, *id*. at 17, it held that the VNP proposal was a mere amendment because it had "a singular focus: to create an independent citizen redistricting commission with exclusive authority to establish redistricting plans for legislative districts." *Id*.

STANDARD OF REVIEW

The Attorney General agrees with the standard of review set out in the plaintiffs' application.

ARGUMENT

The People are the ultimate source of political authority in this State. Const 1963, art 1, § 1. While the People have delegated the "legislative power" to the legislature, the People retain the power to propose and enact legislation outside of the legislative process by initiative, to reject or ratify acts of the legislature by referendum, Const 1963, art 2, § 9, to make specific changes to the Constitution by way of petition, Const 1963, art 12, § 2, and to revise the Constitution generally by authorizing a constitutional convention and by ratifying their work, Const 1963, art 12, § 3. Because this power comes from the People and is delegated to government through our Constitution, it must be interpreted in the manner "which reasonable minds, the great mass of the people themselves, would give it." *Traverse City School Dist v Attorney General*, 384 Mich 390, 405 (1971), quoting Cooley's Const. Lim. 81.

I. The text of the 1963 Constitution establishes that there is a difference between an "amendment" and a "revision to the Constitution.

The primary objective when interpreting constitutional provisions is to determine the original meaning understood by the people at the time of ratification.

Wayne Co v Hathcock, 471 Mich 445, 468 (2004). In this endeavor, "it is not to be supposed that they have looked for any dark or abstruse meaning in the words employed, *but rather that they have accepted them in the sense most obvious to the common understanding*, and ratified the instrument in the belief that that was the sense designed to be conveyed.' " *Id.*, quoting *Traverse City*, 384 Mich at 405 (emphasis in *Traverse City*).

The plain and unambiguous text of article 12 of Michigan's 1963 Constitution demonstrates that an "amendment" and a "revision" are two separate types of changes that correspond to two different methods by which the People can make changes to the Constitution. Under article 12, § 2, the People may make limited changes to the Constitution by submitting a petition that proposes an "amendment." In contrast, under article 12, § 3, the People may authorize a constitutional convention to consider "a general revision of the constitution." Because those sections use different words—"amendment" versus "general revision"—and provided difference procedures for the different types of change, the People would have understood those words to mean different things. *People v Alger*, 323 Mich 523, 528 (1949) (interpreting article 17 of the 1908 Constitution and stating that "[t]he difference in the language used in prescribing the vote required for amendments and for revision undoubtedly was purposely made and cannot be ignored"); see also *United States Fid & Guar Co v Michigan Catastrophic Claims Assn*, 484 Mich 1, 14 (2009) ("When the Legislature uses different words, the words are generally intended to connote different meanings. Simply put, 'the use of

different terms within similar statutes generally implies that different meanings were intended.' ").

And the phrases "amendment" and "general revision" do have different meanings. Indeed, before the enactment of Michigan's 1963 Constitution, this Court examined the words "amendment" and "revision" and concluded that "there is an essential difference between them." *Kelly v Laing*, 259 Mich 212, 217 (1932). "Revision," this Court explained, "implies a re-examination of the whole law and a redraft without obligation to maintain the form, scheme, or structure of the old. As applied to fundamental law, such as a constitution or charter, it suggests a convention to examine the whole subject and to prepare and submit a new instrument, whether the desired changes from the old be few or many." *Id.* "Amendment," this Court continued, "implies continuance of the general plan and purport of the law, with corrections to better accomplish its purpose. Basically, revision suggests fundamental change, while amendment is a correction of detail." *Id.*; see also *Sch Dist of City of Pontiac v City of Pontiac*, 262 Mich 338, 345 (1933).

The differences in the Constitution's procedures for amendments compared to its procedures for revisions confirm that the terms have different scopes. The procedures for amendment by petition require persuading only 10% of registered voters to sign a petition to put it on the ballot and then a simple majority vote at the next general election to approve it. Const 1963, art 12, § 2. In contrast, a "general revision" of the Constitution means, in the context of § 3, a change of sufficient magnitude that it deserves more deliberation and so requires a constitutional

convention. This process is much more involved. First, the People must decide by majority vote to authorize a constitutional convention. Then, the People must elect delegates to that convention in state-wide, partisan elections. The delegates chosen by the People are then charged with the responsibility to draft, propose, and ultimately approve any changes to the constitution. Additionally, those changes submitted by the constitutional convention must be ratified by the People in a statewide election. In other words, the People are involved—either directly or through their elected representatives—four separate times before any revision to the constitution can be accomplished. These multiple layers of involvement enable the People's representatives in government to ascertain the will of the "great mass of the People," in a way that is not required for a simple amendment.

As the Court of Appeals explained in *Citizens Protecting Michigan's Constitution v Secretary of State*, 280 Mich App 273 (2008), "to allow the constitutional power of initiative to extend to a 'general revision' of the constitution would be to ignore the framers' intentional differentiation in terms and procedure." *Id*. at 294. Accordingly, courts should consider both the quantitative and the qualitative nature of the proposed modification, because "the greater the degree of interference with, or modification of, government, the more likely the proposal amounts to a 'general revision.' " *Id*. at 298. In addition to the quantitative differences described in the application (at 42–43), the qualitative nature of the VNP proposal creates such a fundamental modification of government that it must be considered a general revision of the Constitution.

II. Because the VNP proposal creates a new commission that would wield the legislative, executive, and judicial powers together, while at the same time expressly exempting it from the system of checks and balances, it qualifies as a general revision of our Constitution.

A. The new commission would fundamentally alter the separation of powers in the current Constitution.

The first structural principle set out in article 3, entitled "General Government," of Michigan's Constitution is the separation of powers. Article 3, § 2 provides that "[t]he powers of government are divided into three branches: legislative, executive and judicial." This is such an important principle that it is set out not only in article 3, but also in articles 4, 5 and 6; each article about those three branches begins with a clause vesting the three types of power—the legislative power, the executive power, and the judicial power—in one of those enumerated branches. As this Court has put it, "the constitutional principle of separation of powers . . . forms the fundamental framework of our system of government." *O'Donnell v State Farm Mut Auto Ins Co*, 404 Mich 524, 541–42 (1979). Indeed, "the separation of powers of government into a tripartite system" is "[p]erhaps the most fundamental doctrine in American political and constitutional thought." *Lansing Sch Ed Ass'n v Lansing Bd of Ed*, 487 Mich 349, 418 (2010).

The VNP proposal would change that. It would take a portion of the legislative power from the legislature and give it to the redistricting commission. VNP Proposal, art 4, § 1 ("*Except to the extent limited or abrogated by article IV, section 6 or article V, section 2*, the legislative power of the State of Michigan is vested in a senate and a house of representatives.") (proposed language in italics).

The task of "redistricting is a legislative function," *Arizona State Legislature v Arizona Indep Redistricting Comm'n*, 135 S Ct 2652, 2668 (2015); accord VNP Proposal, art 4, § 22 ("the powers granted to the commission are legislative functions"), and thus it currently belongs to the legislature, 1963 Const, art 2, § 4 ("The legislature shall enact laws to regulate the time, place and manner of all . . . elections . . . ."); *Ariz State Legislature*, 135 S Ct at 2658 (addressing the federal Elections Clause, which addresses the "times, places, and manner of holding elections," and recognizing that it includes the issue of redistricting). The VNP proposal, though, would take that power from the legislature and give that power to the redistricting commission: "the power granted to the commission are legislative functions . . . exclusively reserved to the commission." VNP Proposal, art 4, § 22.

To be sure, article 4, § 6 of the 1963 Constitution transferred this legislative power from the legislature to a "commission on legislative apportionment," but that transfer of legislative power was not accomplished by a mere amendment; it occurred through a constitutional convention. See 2 Official Record, Constitutional Convention 1961, pp 2014–30 (recording discussions and amendments concerning the apportionment commission). And that transfer has since reverted to the legislature: this Court concluded in 1982 that because the apportionment rules of article 4 were invalid under federal equal-protection caselaw, the apportionment commission could no longer lawfully function. *In re Apportionment of State Legislature—1982*, 413 Mich 96, 116, 138 (1982). As a result, authority over

districting returned to the legislature, *id*. at 116, 142–143, and has remained there for the past 36 years.

And the proposal would take another power from the legislature: the legislature's authority to control all appropriations of state money through appropriations statutes. Const 1963, art 9, § 17 ("No money shall be paid out of the state treasury except in pursuance of appropriations made by law."). The VNP proposal would require the legislature to appropriate funds, VNP Proposal, art 4, § 5, ("the legislature shall appropriate funds . . ."), and would require the treasury to "indemnify commissioners for costs incurred *if the legislature does not appropriate sufficient funds to cover such costs*." *Id*. (emphasis added). In other words, the commission would be authorized to set its own budget simply by incurring costs, and contrary to article 9, § 17, money *would* be paid out state treasury in the absence of an appropriations statute.

The proposal would also take executive power from the executive branch and give it to the redistricting commission: "*Except to the extent limited or abrogated by article V, section 2, or article IV, section 6*, the executive power is vested in the governor." VNP Proposal, art 5, § 1 (proposed language in italics). For example, the executive power of signing appropriations law into effect would no longer rest with the governor, given the proposal's mandate that the State "indemnify commissioners for costs" even if there is no appropriation passed by the legislature and signed by the governor to cover the commission's costs. VNP Proposal, art 4, § 5. Instead, it would be the commission that sets its own budget.

And the proposal would transfer judicial power too: "*Except to the extent limited or abrogrogated by article IV, section 6, or article V, section 2*, the judicial power of this state is vested exclusively in one court of justice . . . ." VNP Proposal, art 6, § 1 (proposed language in italics). Under current law, this Court has exercised the judicial power to order the adoption of a specific districting plan. E.g., *In re Apportionment of State Legislature—1964*, 373 Mich 250, 254 (1964) (ordering the "Austin-Kleiner Plan" to be "placed into effect for the primary and general elections of 1964"); *In re Apportionment of Mich Legislature*, 387 Mich 442, 458 (1972) (ordering the "Hatcher-Kleiner plan" to be "placed in effect for the primary and general elections of 1972"); *In re Apportionment of State Legislature—1982*, 413 Mich 146, 147 (1982) (ordering that the Secretary of State "hold the legislative elections for this year in accordance with, the plans submitted to this Court by Bernard J. Apol"). Yet under the VNP Proposal, that judicial power would no longer belong to this Court; instead, this Court would be allowed only to "remand a plan to the commission for further action." VNP Proposal, art 4, § 19.

While the proposal does not fully delineate the executive powers and the judicial powers the redistricting commission would have, the "except" language it adds to each vesting clause plainly means that some portion of the executive power would be taken from the executive branch and given to the commission and that some portion of the judicial power would be taken from the courts and also given to the commission.

And it even appears to take away the power of the People themselves to nullify a redistricting plan—a power the People currently retain under article 9, § 9—by making the power over redistricting "exclusive" to the redistricting commission. VNP Proposal, art 4, § 22; *id*., art 5, § 2.

Creating one governmental entity expressly authorized to exercise all three types of governmental power makes a fundamental, qualitative change to the structure of our government. As explained by James Madison, " 'When the legislative and executive powers are united in the same person or body,' says [Montesquieu], 'there can be no liberty, because apprehensions may arise lest *the same* monarch or senate should *enact* tyrannical laws to *execute* them in a tyrannical manner.' " *The Federalist* No. 47. And " '[w]ere the power of judging joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control, for *the judge* would then be *the legislator*.' " *Id*. (quoting Montesquieu). Under the proposal, the redistricting commission would have all legislative and executive power over districting, VNP Proposal, art 4, § 22; *id*., art 5, § 2, and a part of the judicial power over districting, *id*., art 6, § 1; *id*. art 4, § 19 (allowing the Supreme Court to remand to the redistricting commission if a districting plan does not comply with the proposal's requirements). It would be in effect a fourth branch of government, exercising legislative, executive, and judicial powers, contrary to the fundamental separation-of-powers principles that usually govern our government's structure. See *Civil Serv Comm'n of Michigan v Auditor Gen*, 302 Mich 673, 684 (1942) ("To set up, even in effect, a fourth department of

government contravenes Art. IV, § 1 of the [1908] Constitution which states, 'The powers of government are divided into three departments: The legislative, executive and judicial.' To hold otherwise, would be in conflict with those sections of the Constitution defining the Legislative power."). These changes to the separation-of-powers framework on which the rest of the Constitution rests amount to a revision, not a mere amendment.

B. The proposal would create a new commission not subject to checks and balances from the other branches.

The proposal also works a major change to Michigan government by eliminating checks and balances on districting. Checks and balances exist to "maintain[ ] in practice the necessary partition of power among the several departments." *The Federalist* No. 51 ("[T]he great security against a gradual concentration of the several powers in the same department, consists in giving to those who administer each department the necessary constitutional means and personal motives to resist encroachments of the others.").

Under our current system, congressional and state legislative districts are enacted into law by the legislature. E.g., MCL 3.61 to 3.64; MCL 4.261 to 4.265; see also MCL 3.51 to 3.55; MCL 4.2001 to MCL 4.2006. This legislative function is thus controlled by the legislature, and so the legislative process itself, under which legislators are accountable to the People, is a check on what may be passed. But under the VNP proposal, the commission itself "shall adopt a redistricting plan," VNP Proposal, art 4, § 6(1), and the legislature would have no control: "the powers

granted to the commission are legislative functions not subject to the control or approval of the legislature." VNP Proposal, art 4, § 22. And because the commission members would be chosen through a random-selection process, VNP Proposal, art 4, § 6(2), they would not be accountable to the People.

Nor could the legislature exercise a check on the districting commission by changing its funding. Madison described the legislature's power over funding as a crucial check on governmental power: "This power over the purse may, in fact, be regarded as the most complete and effectual weapon with which any constitution can arm the immediate representatives of the people, for obtaining a redress of every grievance, and for carrying into effect every just and salutary measure." *The Federalist* No. 58. But the VNP proposal would insulate the unelected commission from that check by requiring the State to indemnify the commission's costs even if the legislature decides not to appropriate funds for those costs.

Under our current system, the legislature's redistricting is also subject to a check by the executive: the governor may veto the statutes enacting the redistricting plan. Const 1963, art 4, § 33. The VNP proposal would remove that check and balance. Under it, the commission's exercise of its powers would "not be subject to the control or approval of the governor." VNP Proposal, art 5, § 2.

Finally, the VNP proposal would also reduce the Michigan Supreme Court's jurisdiction with respect to redistricting. While the Supreme Court currently has, for example, jurisdiction to "issue, hear and determine prerogative and remedial writs," Const 1963, art 6, § 4, that power would apparently be reduced. VNP

Proposal 6, § 4 ("*Except to the extent limited or abrogated by article IV, section 6, or article V, section 2*, the supreme court shall have . . . power to issue, hear and determine prerogative and remedial writs . . . ."). And the proposal limits the types of remedies that the Supreme Court may order for violations of the proposed constitutional redistricting standards to a single option: "remand a plan to the commission for further action." VNP Proposal, art 4, § 19.

Despite all this, the Court of Appeals concluded that the proposal did not qualify as a revision because the proposal has "a singular focus." COA Op, p 17; see also *id.*, p 18 (describing the proposal as "intent on a specific change"), p 20 (describing it as "targeted to achieve a single, specific purpose"). But the fact that a proposal would change only one thing does not mean that the proposal would not fundamentally change our government. Suppose a proposal suggested changing the legislature from a bicameral institution to a unicameral one. See 2 Official Record, Constitutional Convention 1961, p 2015 (noting that the committee on legislative organization "gave serious consideration to the unicameral legislative system of Nebraska"). It seems likely that the average citizen would consider that a "fundamental change" to our government, and therefore to be a revision. See *Laing*, 259 Mich at 217. In short, the fact that a proposal has a singular focus intent on making a specific change does not mean that a particular change is any less of a modification of the fundamental structure of Michigan government. And creating a new body that exercises legislative, executive, and judicial power without being checked by the other branches is a fundamental change.

CONCLUSION AND RELIEF REQUESTED

Whatever one thinks of the wisdom of the VNP proposal, it is clear that the proposal would significantly alter the structure of our government by modifying the separation of powers and by eliminating current checks and balances on the redistricting process. Because it would work such a significant change that it amounts to a "general revision of the constitution," it may be made only through the procedures set out in article 12, § 3.

This issue, which has the potential to fundamentally change the structure of our government, is an issue of great public importance and warrants this Court's review. Accordingly, this Court should grant the application for leave to appeal and direct the Secretary of State and the Board of Canvassers to reject the petition and to refrain from placing the VNP Proposal on the ballot.

Respectfully submitted,

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