STATE OF MICHIGAN
IN THE COURT OF APPEALS

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

v Plaintiffs,

SECRETARY OF STATE and **MICHIGAN BOARD OF STATE CANVASSERS,**

Defendants / Cross-Defendants,

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

Court of Appeals
No. 343517

BRIEF OF INTERVENING DEFENDANTS / CROSS-PLAINTIFFS VOTERS NOT POLITICIANS, ET AL. IN OPPOSITION TO COMPLAINT FOR MANDAMUS AND IN SUPPORT OF CROSS-CLAIM

Peter H. Ellsworth (P23657)
Robert P. Young (P35486)
Ryan M. Shannon (P74535)
DICKINSON WRIGHT PLLC
Attorneys for Plaintiffs
215 S. Washington, Suite 200
Lansing, MI 48933
(517) 371-1730

Eric E. Doster (P41782)
DOSTER LAW OFFICES PLLC
Attorneys for Plaintiffs
2145 Commons Parkway
Okemos, MI 48864-3987
(517) 977-0147

Peter D. Houk (P15155)
Graham K. Crabtree (P31590)
Jonathan E. Raven (P25390)
FRASER TREBILCOCK DAVIS & DUNLAP. P.C.
Attorneys for the Intervening Defendants/Cross-Plaintiffs
124 W. Allegan, Suite 1000
Lansing, Michigan 48933
(517) 482-5800

James R. Lancaster (P38567)
Lancaster Associates PLC
Attorneys for the Intervening Defendants / Cross-Plaintiffs
P.O. Box 10006
Lansing, Michigan 48901
(517) 285-4737

B. Eric Restuccia (P49950)
Chief Legal Counsel
Heather S. Meingast (P55439)
Denise C. Barton (P41535)
Attorneys for Defendants
P. O. Box 30736
Lansing, MI 48909
(517) 373-6434

BRIEF OF INTERVENING DEFENDANTS / CROSS-PLAINTIFFS VOTERS NOT POLITICIANS, ET AL. IN OPPOSITION TO COMPLAINT FOR MANDAMUS AND IN SUPPORT OF CROSS-CLAIM

Submitted by:

Peter D. Houk (P15155)
Graham K. Crabtree (P31590)
Jonathan E. Raven (P25390)
FRASER TREBILCOCK DAVIS & DUNLAP. P.C.
Attorneys for the Intervening Defendants / Cross-Plaintiffs
124 W. Allegan, Suite 1000
Lansing, Michigan 48933
(517) 482-5800

James R. Lancaster (P38567)
Lancaster Associates PLC
Attorneys for the Intervening Defendants / Cross-Plaintiffs
P.O. Box 10006
Lansing, Michigan 48901
(517) 285-4737

TABLE OF CONTENTS

INDEX OF AUTHORITIES

Cases

Statutes

Constitution

Rules

Other Authorities

THE JURISDICTION OF THE COURT OF APPEALS

This Court has jurisdiction of Plaintiffs' Complaint for Mandamus pursuant to MCL 600.4401, MCR 7.203(C)(2) and MCR 7.206(B). The Court has jurisdiction of Intervening Defendants' Cross-Claim pursuant to those provisions and MCR 2.203(D) and (E) .

COUNTER-STATEMENT OF QUESTIONS INVOLVED

I. WAS THE BALLOT PROPOSAL AT ISSUE PROPERLY PRESENTED AS A VOTER-INITIATED PROPOSAL FOR AMENDMENT OF THE CONSTITUTION PURSUANT TO CONST 1963, ART 12, § 2?

The Plaintiffs contend the answer should be "No."

The Intervening Defendants / Cross-Plaintiffs contend the answer is "Yes."

II. IS THE STATUTORY REQUIREMENT OF MCL 168.482(3) THAT INITIATIVE PETITIONS FOR AMENDMENT OF THE CONSTITUTION LIST EXISTING PROVISIONS THAT WOULD BE ALTERED OR ABROGATED BY THE PROPOSED AMENDMENT UNCONSTITUTIONAL?

The Intervening Defendants / Cross-Plaintiffs contend the answer is "Yes."

III. WOULD THE PROPOSED CONSTITUTIONAL AMENDMENT ABROGATE EXISTING CONSTITUTIONAL PROVISIONS?

The Plaintiffs contend the answer should be "Yes."

The Intervening Defendants / Cross-Plaintiffs contend the answer is "No."

IV. SHOULD THE PROMPT PERFORMANCE OF DEFENDANTS' CLEAR LEGAL DUTIES BE ENFORCED BY THIS COURT WITHOUT FURTHER DELAY?

The Intervening Defendants / Cross-Plaintiffs contend the answer is "Yes."

COUNTER-STATEMENT OF FACTS

Over 428,000 Michigan voters have signed Intervenor Voters Not Politicians' petition to amend the Michigan Constitution, exercising a right reserved by the people and enshrined in our jurisprudence. Its proposal was initially submitted to the Board of State Canvassers on June 28, 2017 for approval. It was redrafted to address issues of abrogation, to satisfy the staff concerns. The Board ultimately approved the form of VNP's Petitions unanimously on August 17, 2017.

Plaintiffs' Complaint asks this Court to issue a writ of mandamus directing Defendants Secretary of State and Board of State Canvassers ("Board of Canvassers" or "the Board") to reject the ballot proposal sponsored by Intervenor Voters Not Politicians (the "VNP Proposal"), and to take no action to place it on the ballot. The Intervening Defendants / Cross-Plaintiffs ("Intervening Defendants") were granted leave to intervene in this matter, and their Answer and Cross-Claim were accepted for filing by the Court's Order of May 11, 2018.

Intervening Defendants Voters Not Politicians Ballot Committee and Count MI Vote (Collectively "Voters Not Politicians" or "VNP") are the sponsors of the ballot proposal at issue. Intervening Defendants Fahey, Bobier and Downey are duly registered electors and active supporters of that ballot proposal who have a strong interest in voting in favor of the proposal in the November General Election.[1]

The VNP Proposal is an initiative petition seeking to amend the 1963 Constitution pursuant to Const 1963, art 12, § 2.[2] The purpose of VNP's proposal is to create an Independent

[1] See Affidavits or Kathryn A. Fahey, William R. Bobier and Davia C. Downey, provided to the Court as Exhibits to Intervening Defendants' Motion for Intervention and Cross-Claim, cited herein as "Fahey Affidavit," "Bobier Affidavit" and "Downey Affidavit."

[2] Copies of the petition for VNP's ballot proposal have been provided to the Court as Exhibit 1of Plaintiffs' Complaint for Mandamus and Exhibit 1 of their supporting brief.

Citizens Redistricting Commission for state legislative and congressional districts (the "Commission") as a permanent Commission in the legislative branch. It would have exclusive authority to develop and establish redistricting plans for state House of Representatives and Senate districts and Michigan's congressional districts. This has been proposed by VNP's organizers and volunteers as a desired means to remedy the widely-perceived abuses associated with partisan "gerrymandering" by the establishing new constitutionally mandated procedures designed to ensure that the redistricting process can no longer be dominated by one political party. (Fahey Affidavit, ¶ 7)

VNP's proposal would amend Const 1963, art 4, § 1 to qualify that provision's grant of the legislative power to the state Senate and House of Representatives by new language providing that the legislative power would be vested in those bodies except to the extent that the power is limited or abrogated by the provisions of Const 1963, art 4, § 6 or Const 1963, art 5, § 2. The proposal would amend Sections 2 through 6 of Article 4 to replace the existing constitutional provisions regarding apportionment of the state Senate and House districts by a Legislative Commission on Apportionment with an Independent Citizens Redistricting Commission.[3]

[3] The existing constitutional provisions set forth in sections 4 through 6 of Article 4 called for apportionment of the state Senate and House of Representatives districts by a Commission on Legislative Apportionment consisting of eight electors, four of whom were to be selected by the state organization of each of the two major political parties, with representation allowed to each of four specified areas of the state. And if a third-party candidate for Governor received more than 25% of the vote in the last gubernatorial election, the state organization of that third party would be permitted to select four additional members representing the same specified areas. By these provisions, the Supreme Court was empowered, in the exercise of its original jurisdiction, to direct the Secretary of State or the Commission to perform their duties; to review any final plan submitted by the Commission; to remand a reviewed plan to the Commission for further action if it failed to comply with constitutional requirements; and to review alternative plans submitted by the Commission, and choose one of them for approval if necessary, in the event that the Commission would be unable to agree upon a plan. Const 1963, art 4, § 6.

VNP's proposed Article 4, § 6 (22) includes a provision designed to ensure the independence of the new Commission, stating that the powers granted to the Commission would be considered legislative functions, exclusively reserved to the Commission and not subject to the control or approval of the Legislature. The proposed changes to Article 4 would place a modest limitation on the scope of review by the Supreme Court. A new subsection 6 (19) addressing that issue would be similar to the existing provisions of Const 1963, art 4, § 6 and subsequently enacted legislation. The Supreme Court's role and authority with respect to the redistricting process would be the same as its current role and authority under the existing language of Const 1963, art 4, § 6, 1996 PA 463 and 1999 PA 222, except that it would not be allowed the authority to order the adoption of its own preferred redistricting plan, as currently provided in Const 1963, art 4, § 6, and presently allowed by MCL 3.74 and MCL 4.264.

VNP's proposal would effect minor amendments to three sections of the Executive Article to ensure the continuity and independence of the Commission. The changes would add new language to Const 1963, art 5, § 2, similar to the language included in the proposed Const 1963, art 4, § 6 (22), declaring that the powers granted to the Commission would be considered legislative functions, exclusively reserved to the Commission and not subject to the control or

---

The constitutionally prescribed Commission on Legislative Apportionment has not been utilized for apportionment of Michigan's Senate and House of Representatives districts since 1972, as the Michigan Supreme Court's decision in *In re Apportionment of State Legislature*, 413 Mich 96; 321 NW2d 565 (1982) held that use of the weighted land area/population formulae prescribed by the existing Const 1963, art 4, § 6 violated the Equal Protection Clause of the U.S. Constitution, and that the invalid provisions were not severable. More recently, the Legislature has had the responsibility for performing the periodic reapportionment of election districts for the Michigan Senate and House of Representatives, subject to review and independent action by the Supreme Court, pursuant to 1996 PA 436, MCL 4.261 *et seq.*, as amended. The reapportionment of Michigan's congressional election districts has been performed in similar fashion pursuant to the provisions of 1999 PA 221, MCL 3.61, *et seq.* and 1992 PA 222, MCL 3.71, *et seq.*

approval of the Governor. The proposal would also amend Const 1963, art 5, § 4, to recognize the proposed establishment of the Commission as a permanent Commission.

VNP's proposal would amend Const 1963, art 6, § 1 to qualify that provision's grant of the judicial power to Michigan's "one court of justice" by new language providing that the judicial power would be vested in the court of justice except to the extent that the power is limited or abrogated by the provisions of Const 1963, art 4, § 6 or Const 1963, art 5, § 2. The proposal would also amend Const 1963, art 6, § 4, to limit the Supreme Court's authority to adjudicate redistricting matters consistent with the limitations set forth in the proposed Const 1963, art 4, § 6 (19).

A draft of VNP's initiative petition was filed with the Secretary of State Bureau of Elections (the "Bureau") on June 28, 2017, seeking preliminary approval of the form of the petition by the Board of Canvassers. This draft proposed to republish five sections of the Constitution that VNP believed would be abrogated (art. 4, §1, art 5, §§1 and 4, and art. 6, §§1 and 4). Initially, the staff refused to recommend to the Board that the VNP petition form be approved, and requested that a written legal analysis be submitted justifying the need to republish these five sections.[4] VNP promptly submitted its analysis.[5] After discussions with Bureau staff, VNP revised the petition to alter the five sections.[6] With these changes, the Bureau recommended approval, and the Board granted approval of the form of VNP's petition at its

[4] See email from Melissa Malerman to VNP Counsel James Lancaster, dated July 28, 2017. (Appendix "A")
[5] See Memorandum from VNP Counsel James Lancaster to Elections Bureau Director Sally Williams and Melissa Malerman, dated July 31, 2017, (Appendix "B")
[6] See Memorandum from VNP Counsel James Lancaster to Elections Bureau Director Sally Williams and Melissa Malerman, dated August 9, 2017. (Appendix "C")

meeting held on August 17, 2017. (Fahey Affidavit, ¶ 8, and meeting minutes attached as Exhibit 1)[7]

Upon receiving the Board's approval of its petition, VNP began the process of collecting the required voter signatures. VNP was required to collect at least 315,654 valid signatures within 180 days. On December 18, 2017, VNP filed with the Bureau 74,857 petition sheets containing 428,940 signatures. This was accomplished in only 123 days, using only volunteer circulators. (Fahey Affidavit, ¶ 9, and Bureau of Elections' receipt for petitions attached as Exhibit 2)

On April 12, 2018, the Board of Canvassers made a sample of the petition signatures available for public inspection and issued a Notice establishing a deadline of April 26, 2018, for submission of challenges to the sufficiency of the petition signatures. (Fahey Affidavit, ¶ 10, and Notice attached thereto as Exhibit 3) Plaintiffs' Complaint in this case was filed on April 25, 2018. On April 26, 2018, Plaintiff Citizens Protecting Michigan's Constitution ("CPMC") filed a challenge with the Board of Canvassers which raised the same issues raised in its present Complaint for Mandamus while acknowledging that the subject matter of its challenge was within the jurisdiction of the courts, and not the Board. That challenge did not raise any challenge to the validity or sufficiency of the petition signatures or any issues regarding the form of VNP's petition beyond the issues raised in Plaintiffs' Complaint for Mandamus. (Fahey Affidavit, ¶ 12, and CPMC Challenge attached as Exhibit 4, pp. 2-3)

[7] The Minutes of the August 17, 2017 meeting reflect the Board's unanimous approval of VNP's petition, subject to four exceptions, which included its caveat that the Board's approval did not extend to: "Whether the petition properly characterizes those provisions of the Constitution that are altered or abrogated by the proposal if adopted."

On May 3, 2018, VNP's General Counsel James Lancaster delivered a letter to the Chairperson of the Board of Canvassers requesting that the Board convene a meeting and certify VNP's voter-initiated proposal for inclusion on the 2018 General Election ballot as soon as possible. (Appendix "D") In support, Mr. Lancaster cited the expiration of the April 26, 2018 deadline for filing of challenges with no other challenges having been filed, and the preliminary findings of the Bureau of Elections, consistent with the findings of VNP's independent political consultant, that analysis of the signature sample had revealed an abundantly sufficient number of valid signatures.[8] The Board did not respond to the request made in Mr. Lancaster's Letter. The Board subsequently scheduled a meeting for May 10, 2018, but consideration of VNP's ballot proposal was not on the agenda for that meeting. (Appendix "E")[9]

LEGAL ARGUMENTS

I. THE STANDARDS OF ADJUDICATION.

Plaintiffs seek a writ of mandamus from this Court pursuant to MCL 600.4401, MCR 7.203(C)(2) and MCR 7.206. Mandamus is recognized as the appropriate remedy for a party

[8] Consistent with its long-standing policy, the Bureau drew a sample of 505 signatures from VNP signatures, and determined that 446 are valid (92.7%). Based on this sample, the Bureau performs a statistical analysis to determine if there are more than the minimum number (in this case, 315,654) required by law. A description of this analysis is contained in a document entitled *Random Sample Signature Canvassing in Michigan – Michigan Department of State – 1990.* (Appendix "F") Bureau staff has not yet made public a calculation of the minimum number of signatures VNP's sample must contain in order to recommend to the Board that it certify the VNP Proposal. However, VNP has performed this calculation: VNP needs at least 388 valid signatures (76.8%) in the sample. See Letters to Norman D. Shinkle, Chairperson of the Board of State Canvassers dated May 3, 2018 (Appendix "D") and to Sally Williams, Director of the Bureau of Elections dated May 14, 2018 (Appendix "G") Thus, VNP's signature sample has 78 more signatures than necessary for the Board to certify the VNP Proposal. Therefore, the Board has a clear legal duty to certify the VNP Proposal.

[9] VNP has now been informed that its proposal has been put on the agenda for its meeting of May 24, 2018, and thus, there is a possibility that its Cross-claim may be rendered moot, in part, if the Board certifies VNP's proposal for the ballot at that meeting.

seeking to compel action by election officials with respect to certification of initiative petitions. *Leininger v Alger*, 316 Mich 644, 652; 26 NW2d 648 (1947).

Issuance of a writ mandamus is an extraordinary remedy, and is discretionary with the Court. *Lee v Macomb County Board of Commissioners,* 235 Mich App 323, 331; 597 NW2d 545 (1999), *reversed on other grounds,* 464 Mich 726 (2001). The plaintiff bears the burden of proving entitlement to this remedy, and to establish a legally sufficient basis for issuance of a writ of mandamus, the plaintiff must prove that: 1) the plaintiff has a clear legal right to the performance of the duty sought to be compelled; 2) the defendant has a clear legal duty to perform that duty; 3) the act to be compelled is ministerial in nature, involving no exercise of discretion or judgment; and 4) the plaintiff has no other adequate legal or equitable remedy. *Citizens for Protection of Marriage v Board of State Canvassers*, 263 Mich App 487, 492; 688 NW2d 538 (2004).

II. THE RULES OF CONSTITUTIONAL CONSTRUCTION.

It has become well settled that the primary objective in interpreting a constitutional provision is to determine "common understanding" of the people – "the text's original meaning to the ratifiers, the people, at the time of ratification." *Studier v Michigan Public School Employees' Retirement Board,* 472 Mich 642, 652; 698 NW2d 350 (2005); 1 Cooley, Constitutional Limitations (6th Ed) p. 81). Courts typically discern the common understanding of constitutional text by applying each term's plain meaning at the time of ratification, but if the constitution employs technical or legal terms of art, those terms are construed in their technical, legal sense. *Studier, supra,* 472 Mich at 652.

There is no necessity for construction of unambiguous constitutional language, but when constitutional language is ambiguous, courts may consider extrinsic evidence, including the circumstances surrounding the adoption of the constitutional provision in question and the

purpose sought to be accomplished, to determine the meaning that would have been commonly understood by the voters that adopted it. *Traverse City School District v Attorney General,*384 Mich 390, 405; 698 NW2d 350 (1971); *National Pride at Work, Inc. v Governor,* 274 Mich App 147, 157; 732 NW2d 139 (2007), *aff'd* 481 Mich 56; 748 NW2d 524 (2008); To determine the meaning of constitutional language, it is also appropriate to consult dictionary definitions. *Citizens Protecting Michigan's Constitution v Secretary of State,* 280 Mich App 273, 295; 761 NW2d 210 (2008), *affirmed as to result,* 482 Mich 960 (2008).

The decisions have recognized two additional rules of construction relevant to the questions presented in this matter – that judicial interpretations of prior constitutional provisions and the meaning of specific terms intended by the drafters are also relevant to interpretation of constitutional language. In *Boards of County Road Commissioners v Board of State Canvassers,* 391 Mich 666; 218 NW2d 144 (1974), the Supreme Court noted that:

> "Where a constitutional provision has received a settled judicial construction, and is afterwards incorporated into a new or revised constitution, or amendment, it will be presumed to have been retained with a knowledge of the previous construction, and courts will feel bound to adhere to it." 391 Mich at 675.

And in *Beach Grove Investment Company v Civil Rights Commission,* 380 Mich 405; 157 NW2d 213 (1968), the Court explained the difference between "prescribed by law" and "provided by law" as used in the 1963 Constitution by reference to the drafters' explanation:

> " . . . The Committee on Style and Drafting of the Constitutional Convention of 1961 made a distinction in the use of the words "prescribed by law" and the words "provided by law." Where "provided by law" is used, it is intended that the legislature shall do the entire job of implementation. Where only the details were left to the legislature and not the over-all planning, the Committee used the words "prescribed by law." See Official Record, Constitutional Convention of 1961, pp 2673, 2674." 380 Mich at 418-419.

III. VNP's PROPOSAL MUST BE PRESENTED TO THE VOTERS PURSUANT TO CONST 1963, ART 12, § 2.

Plaintiffs have asserted that VNP's proposal to amend the Constitution cannot be approved for submission to the voters because it impermissibly addresses multiple purposes, and have also argued that the proposed changes would constitute a general revision of the Constitution which can only be accomplished by means of a constitutional convention convened pursuant to prior approval of the voters under Const 1963, art 12, § 3. These claims are meritless.

A. THE CONSTITUTIONAL PROCEDURE TO AMEND THE CONSTITUTION BY VOTER INITIATIVE DOES NOT IMPOSE ANY RESTRICTION UPON THE COMPLEXITY, SUBJECT MATTER OR SCOPE OF A PROPOSED AMENDMENT.

The language of Const 1963, art 12, § 2 does not impose or suggest any limitation upon the permissible subject matter or scope of a proposed constitutional amendment presented by voter initiative petition pursuant to that section, nor is any such limitation imposed or suggested by the language of Const 1963, art 12, § 3, addressing the calling of a constitutional convention.[10] The only relevant limitations imposed by the Supreme Court are its pronouncements that an amendment may alter multiple sections as long as the changes are germane to a single overall purpose, and the practical limitation imposed by the constitutional requirement to summarize the proposed amendment in no more than 100 words.

VNP contends that it would be inappropriate for the Court to read limitations of subject matter or scope into either provision. The few reported decisions challenging the scope of voter-initiated constitutional amendments are consistent with the principle that limitations may not be read into the constitutional language. In *City of Jackson v Commissioner of Revenue,* 316

[10] Copies of Const 1963, art 12, §§ 2 and 3 are submitted herewith as Appendices "H" and "I."

Mich 694; 26 NW2d 569 (1947), decided under the similar provisions of the 1908 Constitution, the Supreme Court considered a claim that the constitutional amendment at issue was the product of an improper attempt to initiate legislation "under the guise of an amendment to the constitution." In rejecting that argument, the Court emphasized that the Constitution did not include any language limiting the scope of a proposed constitutional amendment with respect to matters which could also be addressed by legislation, and noted that any line of demarcation between legislation and constitutional amendment was "too indefinite to require that an arbitrary decision be made in advance of submitting the question to the voters." 316 Mich at 709-710.

In *Graham v Miller,* 348 Mich 684; 84 NW2d 46 (1957) , also governed by the similar provisions of 1908 Constitution, the Supreme Court rejected a challenge to a constitutional amendment which argued that the amendment was invalid because it covered more than one purpose, and was therefore improperly submitted to the electors as a single question on the ballot. In so ruling, the Court noted that one of the cases cited in support of the challenge was based upon provisions of the Home Rule Act, which specifically limited proposed amendments to one subject, but emphasized that there was "no comparable provision in the Michigan Constitution limiting the subject matter of a constitutional amendment or prohibiting the inclusion in one amendment of proposals for more than one purpose." 348 Mich at 691-692.

The decisions have also recognized the related principle that a proposed amendment may include alterations of multiple sections when the changes are germane to the accomplishment of a single overall purpose. Having found no constitutional basis for the challenge raised in *Graham*, the Court went on to conclude that the objection was without merit in any event, because the amendment in question was adopted in furtherance of a single purpose,

and its provisions were germane to the accomplishment of that overall purpose. 348 Mich at 692-693.

In *Kelly v Laing,* 259 Mich 212; 242 NW2d 891 (1932), the Supreme Court found that a multifarious collection of proposed amendments to the Bay City Charter proposing substantial changes in several unrelated aspects of the City government was not in a proper form for submission to the voters where the petition at issue proposed a separate vote on each of the 13 sections involved, but explained that a proposed "amendment" may modify multiple sections if all of the proposed changes are germane to the purpose of the amendment, and that all proposals pertaining to the same subject and directed to the same purpose should be treated as one amendment and voted on as such, although they contemplate changes to more than one section. 259 Mich at 215-216. *See also, People v Stimer,* 248 Mich 272, 287; 226 NW 899 (1929) ("The word "amendment" is clearly susceptible to a construction which would make it cover several propositions, all tending to effect and carry out one general object or purpose, and all connected with one subject.")

The holdings of these decisions continue to apply with equal force today because there has been no change in the substance of the pertinent constitutional language with respect to this issue. The governing language of Const 1963, art 12, § 2 does not impose or suggest any limitation upon the permissible subject matter or scope of a proposed constitutional amendment presented by voter initiative petition pursuant to that section, nor is any such limitation imposed by any other constitutional provision.[11] It would be improper to read any such limitations into the clear language of our Constitution by judicial interpretation.

[11] For comparison, VNP would direct the Court's attention to Article 2, § 8(d) of California's Constitution, which provides that, "[a]n initiative measure embracing more than one subject may not be submitted to the electors or have any effect."

B. ARTICLE 12, § 3 (GENERAL REVISION) DOES NOT LIMIT THE PERMISSIBLE SUBJECT MATTER OR SCOPE OF A CONSTITUTIONAL AMENDMENT PROPOSED UNDER ARTICLE 12, § 2.

There is also no basis in the constitutional language for the Plaintiffs' suggestion that the scope of constitutional amendments proposed under Const 1963, art 12, § 2 is limited by the provisions of Const 1963, art 12, § 3, addressing the calling of a constitutional convention for a general revision of the Constitution.

1. THE SIGNIFICANT DIFFERENCES IN PURPOSE AND TERMINOLOGY.

There are a number of points that the Court should consider when evaluating this issue. First, it is important to recognize the essential differences between the purpose and operation of the separate procedures for amendment of the Constitution provided under Const 1963, art 12, §§ 2 and 3. Const 1963, art 12, § 2 reserves the right of the people to amend the Constitution by voter initiative. Const 1963, art 12, § 3 provides the people with an alternative means for amendment of the Constitution by allowing them an opportunity to convene a constitutional convention for a "general revision" of the Constitution. There are significant differences between these alternatives. The right of the people to propose amendments of the Constitution *directly* by voter initiative under Const 1963, art 12, § 2 may be invoked at any time a need is perceived. Their opportunity to convene a *convention* to consider a general revision of the Constitution under Const 1963, art 12, § 3 comes once every 16 years.

To properly understand the differences, it is important to note and properly apply the different definitions of "amendment" and "revision." This requires an awareness that there is more than one commonly understood definition of "amendment" ***and*** "revision," and thus, there are commonly understood differences between the general concepts of "amendment" and "revision" which depend upon the context in which terms are used. Although "amendment"

can refer to a process of amending, its use in each of these constitutional provisions refers to a proposed or accomplished alteration or addition to the existing constitutional language.[12]

A reference to "revision" has two accepted meanings as well; depending upon the context, it may refer to a document which has been revised, or to a process of revision.[13] The language of Const 1963, art 12, § 3 embraces the second of those meanings – the process of revision. It establishes a mandatory procedure for securing a vote of the electorate as to whether a constitutional convention should be convened to implement the process of revision – a procedure which operates automatically by virtue of the constitutional mandate to present the question to the voters every 16 years. If the electorate votes in favor, a convention will be convened, with delegates subsequently chosen by election. It is then up to the convention, through the deliberation and votes of its elected delegates, to create a new Constitution or amend the old one.

The character of Const 1963, art 12, § 3 as an establishment of an alternative ***procedure*** is illustrated by the fact that, although a constitutional convention convened for "general revision" of the existing Constitution will usually draft a new one, it is not required to produce a new Constitution or even a substantial revision of the old one. The language of Const 1963, art 12, § 3, and explanations offered in the constitutional convention debates confirm the intent of the drafters, and thus the people, that a revision authorized pursuant to that provision could effect a wholesale rewrite producing an entirely new Constitution, or be limited to one or more

[12] The Merriam Webster's Collegiate Dictionary, Tenth Ed. (1996), defines "amendment" as "the process of amending by parliamentary or constitutional procedure" and "an alteration proposed or effected by this process."

[13] The Merriam Webster's Collegiate Dictionary, Tenth Ed. (1996), defines "revision" as "an act of revising" and "a result of revising."

amendments of the existing Constitution.[14] Thus, it may be seen that there is a stark contrast between the procedure for convening a constitutional convention outlined in Const 1963, art 12, § 3 and the much simpler and very different procedure for voter-initiated amendment of the Constitution set forth in Const 1963, art 12, § 2. The provisions of Const 1963, art 12, § 3 provide a means to initiate a ***process of general revision*** – a process which may produce any number of suggestions for changes which will then be subject to refinement, debate, deliberation, and ultimately, approval by the people. The proposal of an amendment under Const 1963, art 12, § 2 does not initiate a "***process of amending***" in any similar sense. It offers a specific alteration and/or addition to the Constitution proposed by a sponsoring individual or entity, set forth in the required petition and later on the ballot, which must be approved or disapproved by an up or down vote of the electorate.

The language of Const 1963, art 12, § 3 providing its alternative process for amendment contains no content suggesting an intent to limit the subject matter or scope of amendments proposed under Const 1963, art 12, § 2. The Court should note, by comparison, that substantive limitations ***have*** been placed upon the permissible scope of initiated laws proposed by voter initiative under Const 1963, art 2, § 9[15] by its language specifying that, "[t]he power of initiative extends only to laws which the legislature may enact under this constitution." By virtue of that limitation, the right of the people to propose laws by initiative is subject to all of the limitations of the legislative power set forth in Article 4. Those limitations include: 1) the limitation of

[14] During the discussion of the proposed Article 12, § 3 on the Order of Second Reading, Subcommittee Chair Habermehl explained that, once convened pursuant to the vote of the people, a convention would be free to change as much or as little as it chooses, and could therefore elect to propose only one, or a few amendments, while leaving the basic document unchanged. (Constitutional Convention Record, p. 3007, submitted herewith as Appendix "J")

[15] A copy of Const 1963, art 2, § 9 is submitted herewith as Appendix "K."

Const 1963, art 4, § 24, that, "[n]o law shall embrace more than one object, which shall be expressed in its title"; 2) the limitation of Const 1963, art 4, § 25, that, "[n]o law shall be revised, altered or amended by reference to its title only"; and 3) the limitation of Const 1963, art 4, § 36, that, "[n]o general revision of the law shall be made."

The last of those limitations makes it clear that the people's right to propose legislation under Const 1963, art 2, § 9 does not extend so far as to permit a general revision of the statutory law by voter initiative. No such limitation is found in the language of Const 1963, art 12, § 2. The drafters of the 1963 Constitution knew how to limit the scope of the reserved right of initiative, as evidenced by the limitation of that right built into Const 1963, art 2, § 9. The absence of any such limitation in Const 1963, art 12, § 2 should be seen as a clear indication that no such restriction was intended.

2. THIS COURT'S DECISION ON *CITIZENS PROTECTING MICHIGAN'S CONSTITUTION v SECRETARY OF STATE*, 280 MICH APP 273; 761 NW2D 210 (2008) SHOULD BE LIMITED TO THE HIGHLY UNUSUAL FACTS OF THAT CASE.

Plaintiffs' argument that the proposed changes would amount to a general revision of the Constitution has been based primarily upon this Court's decision in *Citizens Protecting Michigan's Constitution v Secretary of State,* 280 Mich App 273; 761 NW2d 210 (2008), *result affirmed,* 482 Mich 960; 755 NW2d 157 (2008), which held that the staggeringly diverse and voluminous Reform Michigan Government Now! ("RMGN") proposal could not be included on the ballot as a voter-initiated proposal because it would have amounted to a general revision of the Constitution.[16] In finding an impermissible attempt at revision in that case, the Court

[16] The RMGN proposal was much broader in scope than the proposal now at issue. Unlike VNP's proposal, which addresses the single subject and purpose of redistricting reform, the RMGN proposal addressed several distinct and unrelated subjects, proposing modification of 24 existing sections and the addition of 4 new sections in 4 different articles of the Constitution. To illustrate the extraordinary breadth of the proposal and the diversity of the RMGN proposal's

opined that, for purposes of Const 1963, art 12, §§ 2 and 3, there is a legally significant distinction between a revision and an amendment which depends upon both the quantitative and the qualitative nature of the proposed changes. The Court explained that, in evaluating those criteria, "the determination depends on, not only the number of proposed changes or whether a wholly new constitution is being offered, but on the scope of the proposed changes and the degree to which those changes would interfere with, or modify, the operation of government." 280 Mich App 304-305. The Court was careful to emphasize, however, that its decision was *not* intended "to prevent the citizens from voting on a proposal simply because that proposal is allegedly too complex or confusing." *Id.* at 276.[17]

For the reasons previously discussed, VNP contends that there is no proper basis for recognition of a legally significant distinction between an amendment and a revision of the Constitution in the application of Const 1963, art 12, § 2, and that use of the qualitative/quantitative standard employed by this Court in *Citizens Protecting Michigan's Constitution* to define the permissible scope of a proposed constitutional amendment – a standard borrowed primarily from decisions of other states and injected into our own constitutional provisions by interpretation – should therefore be limited to the facts of that highly unusual case. VNP respectfully suggests that this would be the sensible course, and

---

subject matter, the Court's Opinion in *Citizens Protecting Michigan's Constitution* included a non-exhaustive list of 29 proposed changes, too extensive for reproduction here. 280 Mich App at 279-281, 305.

[17] Upon further review of the RMGN proposal, the Supreme Court affirmed the result reached by this Court without endorsing the legal rationale for its holding, based upon its own sensible determination that it would be impossible to summarize the purpose of the RMGN proposal in 100 words, as Const 1963, art 12, § 2 requires. *Citizens Protecting Michigan's Constitution v Secretary of State,* 482 Mich 960-964; 755 NW2d 157 (2008).

especially so, in light of the Supreme Court's avoidance of the legal rationale for this Court's decision.

C. VNP'S PROPOSED CONSTITUTIONAL AMENDMENT IS NOT A GENERAL REVISION OF THE CONSTITUTION AS DEFINED BY THIS COURT'S DECISION IN *CITIZENS PROTECTING MICHIGAN'S CONSTITUTION v SECRETARY OF STATE.*

Even if it were assumed, *arguendo,* that the distinction made in *Citizens Protecting Michigan's Constitution* could be considered appropriate, application of the standard applied in that case cannot justify exclusion of VNP's proposal from the November 2018 General Election ballot.

The proposal at issue in *Citizens Protecting Michigan's Constitution* was far more extensive and complex than VNP's proposed amendment, and it was a simple matter for this Court to conclude that the proposal was indeed multifarious, as it addressed a broad variety of unrelated issues. VNP's proposal is dramatically different because all of its provisions ***have*** been conceived and designed to accomplish a single overall purpose – to remedy the widely-perceived abuses associated with partisan "gerrymandering" of state legislative and congressional election districts by the establishment of a new politically-balanced Independent Citizens Commission having sole and exclusive authority to develop and establish redistricting plans. All of the proposed changes, which affect only three of the Constitution's twelve articles, are germane to the accomplishment of that single purpose.

The proposed amendments to the Legislative Article would establish the new Citizens Commission as a permanent Commission in the legislative branch, replacing the existing constitutional provisions regarding apportionment of the state Senate and House of

Representatives districts.[18] Those proposed additions would provide for the establishment and funding of the Commission and define and facilitate the performance of its duties. They would also provide for selection of the Commission's politically-diverse members by use of a methodology designed to ensure that the redistricting process could no longer be controlled by one political party; define the role of the Secretary of State in the selection of the Commission's members; prescribe the performance of the Commission's duties, including the criteria to be considered and applied in its development of the redistricting plans; and prescribe the procedures for the adoption and implementation of those plans.

As amended by VNP's proposal, Const 1963, art 4, § 6 would include provisions designed to ensure the independence of the new Commission, declaring that the powers granted to the Commission would be considered legislative functions, exclusively reserved to the Commission, but not subject to the control or approval of the Legislature. Thus, although VNP's proposal would shift the Legislature's present authority to perform the redistricting function to an independent Commission similar to the Commission prescribed by the existing language of Const 1963, art 4, § 6, and prohibit any legislative interference with the Commission's performance of that function, it would not suspend or erode any other part of the legislative power conferred under Article 4.

[18] It is important to note, in this regard, that the new provisions proposed by VNP's ballot proposal are similar to the existing provisions Article 4 insofar as they provide for apportionment of the state Senate and House of Representatives districts by a politically-balanced Commission. As previously discussed, the constitutionally prescribed Commission on Legislative Apportionment has not been utilized for apportionment of Michigan's Senate and House of Representatives districts since 1972, because the Supreme Court's decision in *In re Apportionment of State Legislature*, 413 Mich 96; 321 NW2d 565 (1982) held that the constitutionally prescribed use of weighted land area/population formulae violated the Equal Protection Clause of the U.S. Constitution, and that the invalid provisions were not severable.

As amended by VNP's proposal, Const 1963, art 4, § 6 would also allow limited review by the Supreme Court. The new subsection 6 (19) addressing that issue is also quite similar to the existing provisions of Const 1963, art 4, § 6 and the subsequently enacted legislation. The Supreme Court's role and authority with respect to the redistricting process would be the same as its current role and authority under the existing language of Const 1963, art 4, § 6, MCL 1996 PA 463 and 1999 PA 222, except that it would not be allowed the authority to order the adoption of its own preferred redistricting plan, as currently provided in Const 1963, art 4, § 6, and presently allowed by MCL 3.74 and MCL 4.264.

VNP's proposal would effect minor amendments to three sections of the Executive Article to ensure the continuity and independence of the Commission. The changes would add new language, similar to the language included in the proposed Const 1963, art 4, § 6, declaring that the powers granted to the Commission would be considered legislative functions, exclusively reserved to the Commission and not subject to the control or approval of the Governor. The proposal would also amend Const 1963, art 5, § 4, addressing the establishment of temporary commissions or agencies, to recognize the proposed establishment of the Independent Citizens Redistricting Commission as a permanent Commission. No other modification or erosion of the executive power has been proposed.

VNP's proposal would amend the Judicial Article to impose a narrow limitation of the Supreme Court's authority to exercise superintending control; to issue, hear and determine prerogative and remedial writs; and to exercise appellate jurisdiction by the addition of new language specifying that the Court may exercise that authority except to the extent that its authority is limited or abrogated by Const 1963, art 4, § 6 or Const 1963, art 5, § 2. Thus, the Supreme Court would be empowered to adjudicate redistricting disputes as it has in the past,

but would no longer be empowered to "promulgate and adopt a redistricting plan or plans for this state." No other limitation of the Supreme Court's jurisdiction or authority has been proposed.

VNP's proposal has been drafted and presented to serve a single narrow purpose – to remedy the abuses associated with partisan gerrymandering of state legislative and Congressional districts. It does not propose any broad-reaching fundamental change in the form or function of our state government, as Plaintiffs have suggested,[19] and there is no basis for a finding that the changes proposed for the accomplishment of VNP's single narrow purpose are so extensive or disruptive as to qualify as a "general revision" of the Constitution. All of the proposed changes are germane to the accomplishment of the proposal's single purpose, and thus, there is no basis for a finding that they cannot be properly proposed as an amendment of the Constitution pursuant to Const 1963, art 12, § 2.

It may be acknowledged that VNP's proposal would supersede the existing constitutional and statutory provisions governing redistricting of state legislative and congressional districts, but this does not provide any legitimate support for Plaintiffs' claim that the proposed changes can only be effected by a constitutional convention. Nor is there any legitimate basis for Plaintiffs' speculation that VNP's proposal cannot be summarized in 100-

[19] Plaintiffs have cited *In re Apportionment of State Legislature*, 413 Mich 96; 321 NW2d 565 (1982) out of context to suggest that any change in the means by which members of the Legislature are chosen is a "fundamental matter" which must therefore be regarded as a revision. The quotation from that case on page 20 of their brief does not support that conclusion. The quoted statement was made in reference to the Court's conclusion that the existing constitutional provisions for redistricting by the Commission on Legislative Apportionment could not be utilized in light of its holding that the constitutionally prescribed use of a weighted land area/population formulae violated the Equal Protection Clause of the U.S. Constitution, and that the invalid provisions were not severable because it could not be assumed that the people would have voted to approve use of the constitutional redistricting process without them.

words. The constitutionally-required 100-word summary is a summary of the purpose of the proposed amendment.[20] The decisions addressing that requirement have recognized that it does not require an itemization of detail in light of the 100-word limitation.[21] *See*, *Massey v Secretary of State,* 457 Mich 410, 414-415; 579 NW2d 862 (1998); *City of Jackson v Commissioner of Revenue,* 316 Mich 694, 709; 26 NW2d 569 (1947). Plaintiffs' speculation that VNP's proposal cannot be summarized in 100 words is premature, and is not ripe for judicial evaluation for two reasons. First, the Director of Elections has not yet prepared the 100-word summary for this proposal or expressed any inability to do so. Second, bearing in mind that it is a summary of the *purpose* of the proposed amendment that is required, and that this does not require a specification of detail, it does not appear, as it did with respect to the RMGN proposal, that there is likely to be any difficulty in crafting the 100-word summary of purpose.[22]

IV. THE REQUIREMENT OF MCL 168.482(3) THAT INITIATIVE PETITIONS FOR AMENDMENT OF THE CONSTITUTION LIST EXISTING PROVISIONS THAT WOULD BE ABROGATED IS UNCONSTITUTIONAL.

The language of MCL 168.482(3) that requires a petition to identify all provisions to be altered or abrogated – a purely statutory requirement – is unconstitutional because the

---

[20] Const 1963, art 12, § 2 requires that a ballot containing a proposal for amendment of the Constitution contain "shall contain a statement of the purpose of the proposed amendment, expressed in not more than 100 words" which "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." The same requirement expressed in the same language has been set forth in MCL 168.32(2), which provides that the 100-word summary shall be prepared by the Director of Elections with the approval of the Board of Canvassers.

[21] The requirement that the ballot include a 100-word summary of a proposed constitutional amendment was added to Const 1908, art 17, § 2 by the amendment adopted in 1940 (Appendix "M") and was subsequently incorporated into Const 1963, art 12, § 2. During the constitutional convention of 1962, Delegate Durst explained the purpose of the requirement, noting that a 100-word summary was necessary for use on voting machines, the use of which had become widespread. (Constitutional Convention Record, p. 2467, submitted herewith as Appendix "L")

[22] To illustrate the fact that the predicted impossibility is imagined, examples of 100-word summaries that could be used for this proposal are submitted herewith as Appendix "M."

enactment of that requirement was beyond the limited scope of the Legislature's authority to prescribe the form of petitions and regulate their signing and manner of circulation conferred by Const 1963, art 12, § 2.

MCL 168.482 and other provisions of the Michigan Election Law establish statutory requirements for voter petitions, including petitions proposing initiated laws and amendments of the state Constitution. For the most part, those provisions have served to provide necessary details concerning the form, signing and manner of circulating petitions which have been addressed by the Legislature in response to directives conveyed by the controlling constitutional language. When properly enacted for implementation of the self-executing constitutional provisions governing voter initiatives in accordance with the authority conferred by the Constitution, those statutory enactments are constitutional and may be applied in furtherance of that purpose ***if*** their application does not curtail or impose undue burdens upon the free exercise of the people's reserved right to propose laws and constitutional amendments by voter initiative. But a statutory regulation is unconstitutional and cannot be enforced if it imposes requirements beyond the scope of the authorization conferred by the constitutional language or its application curtails or unduly burdens the people's free exercise of the reserved right.

Plaintiffs have contended that VNP's proposal must be excluded from the ballot because VNP's petition failed to list all of the provisions of the current constitution that would be abrogated by the proposal if adopted, as required by MCL 168.482(3). For the reasons discussed in greater detail *infra*, VNP contends that this objection is without merit because there is no basis for the Court to conclude that any of the specified existing provisions would be abrogated by any of the changes effected by the proposed amendment when the standards established by the relevant decisions are applied. But there is another more basic reason to reject this challenge

to certification. The constitutionality of MCL 168.482(3) must be considered if a violation of that provision should be found.

Even if it were found that this regulation of substantive content could properly pass as a legitimate regulation of "form" falling within the scope of the Legislature's authority conferred under Const 1963, art 12, § 2, VNP contends that a strict enforcement of this requirement by exclusion of its proposal from the ballot would be unconstitutional as an undue and unreasonable burden upon VNP's and the people's constitutional right to propose amendment of the Constitution. The imposition of that extreme remedy – the only remedy sought by the Plaintiffs in this action – would be wholly unreasonable and unnecessary, and therefore unconstitutional, when any deficiency in the statutorily required listing identified by judicial decree in this matter can, and should, be remedied by the proper performance of the State's constitutionally imposed obligation to publish the proposed amendment with the existing provisions that would be altered or abrogated thereby, after certification of the proposal for the ballot.

A. THE GOVERNING PROVISIONS OF ARTICLE 12, § 2

Const 1963, art 12, § 2 includes three provisions relevant to the discussion of this issue. The first of these is the language which specifies the required substantive content of petitions proposing amendment of the constitution. That language specifies only one item of required substantive content – the requirement that, "***Every petition shall include the full text of the proposed amendment.***" The second confers authority upon the Legislature to prescribe statutory regulations regarding the form of petitions and the manner of their signing and circulation, and states that petitions shall be prepared, signed and circulated in compliance with those regulations: "***Any such petition shall be in the form, and shall be signed and circulated***

in such manner, as prescribed by law." The third provision relevant to this issue requires the state election officials to publish the proposed amendment and existing provisions of the constitution that would be altered or abrogated thereby, and to include a 100-word statement of the purpose of the proposed amendment on the ballot.

B. THE GUIDING PRINCIPLES

A primary underlying principle respected in Michigan has always been that our courts consistently protect the right of ***the people*** to amend the constitution by initiative petition while enforcing safeguards that ***the people*** have placed on the exercise of that right. Thus, although the people's right to initiate constitutional amendments must be exercised in accordance with restrictions imposed by the constitutional language, their right to do so cannot be interfered with by the Legislature, the courts, or officers charged with performance of related duties. These time-honored principles were recently reaffirmed by our Supreme Court in *Protect Our Jobs v Board of State Canvassers,* 492 Mich 763, 772; 822 NW2d 534 (2012), as follows:

> "Within our Constitution, the people have allocated certain portions of their inherent powers to the branches of government. But the people have also reserved certain powers to themselves. Among these powers is the right to amend the Constitution by petition and popular vote. This Court has consistently protected the right of the people to amend their Constitution in this way, while enforcing constitutional and statutory safeguards that the people placed on the exercise of that right. Nearly one century ago we recognized that
>
> > ***"[o]f the right of qualified voters of the State to propose amendments to the Constitution by petition it may be said, generally, that it can be interfered with neither by the legislature, the courts, nor the officers charged with any duty in the premises.*** But the right is to be exercised in a certain way and according to certain conditions, the limitations upon its exercise, like the reservation of the right itself, being found in the Constitution."
>
> 492 Mich at 772, quoting *Scott v Secretary of State,* 202 Mich 629, 643; 168 NW 709 (1918). (Emphasis added)

The expressions and reaffirmation of these principles have been consistent with other judicial pronouncements emphasizing that the constitutional provisions reserving the people's rights of initiative and referendum should be liberally construed to facilitate, rather than restrict, the free exercise of those rights, and that doubts concerning the meaning of implementing legislation should be resolved in favor of the people's exercise of the right. *Ferency v Secretary of State*, 409 Mich 569, 590-591; 297 NW2d 544 (1980). The *Ferency* Court emphasized that its decision was consistent, in this regard, with a long line of cases in which Michigan courts have actively protected and enhanced the initiative and referendum power, noting that, "(C)onstitutional 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." 409 Mich at 602.

The provisions of Const 1963, art 12, § 2 reserving the right of the people to propose amendments of the state Constitution were derived from Const 1908, art 17, § 2, and the decisions of our Supreme Court have recognized that each of those provisions was intended to be self-executing. In *Ferency, supra,* 409 Mich at 590-591, which addressed pre-election challenges to the proposed "Tisch tax cut amendment," the Supreme Court held that Const 1963, art 12, § 2 is self-executing, and thus, does not depend upon statutory implementation, citing its prior holding in *Hamilton v Secretary of State,* 227 Mich 111, 115, 124-125; 198 NW 843 (1924), that the prior provisions of Const 1908, art 17, § 2, were self-executing, and noting that the analogous provisions governing voter-initiated legislation in Const 1963, art 2, § 9 had also been found to be self-executing in *Wolverine Golf Club v Secretary of State,* 384 Mich 461; 185 NW2d 392 (1971), in spite of that provision's language directing that "the legislature shall implement the provisions of this section." *Id.,* 409 Mich at 591, fn 9.

The *Ferency* Court's holding that Const 1963, art 12, § 2 is self-executing is also consistent with comments found in the constitutional convention record explaining that, although some of the legislation-like detail contained in the 1908 Constitution was being eliminated, enough detail was retained to ensure that the right to propose amendments by initiative would be self-executing. These discussions explained that this was done in order to ensure that the right of the people to propose amendments by initiative petition could not be defeated by the Legislature's failure to enact legislation required for implementation of that right. *See,* Constitutional Convention Record, pp. 2459-2460 and 2468-2469, cited by the Supreme Court in *Ferency,* 409 Mich at 591, fn 9.[23]

Although the Legislature may enact supplementary legislation to facilitate the implementation of a self-executing constitutional right reserved to the people, it may not impose additional requirements that curtail or unduly burden the free exercise of the guaranteed right. Our Supreme Court emphasized this rule with respect to voter-initiated petitions for amendment of the constitution in *Ferency,* 409 Mich at 589-592, citing its prior consistent holdings in *Wolverine Golf Club v Secretary of State, supra,* and *Hamilton v Secretary of State, supra. See also, Soutar v St. Clair County Election Commission*, 334 Mich 258; 54 NW2d 425 (1952).

C. THE STATUTORY REQUIREMENT TO LIST EXISTING PROVISIONS OF THE CONSTITUTION TO BE ALTERED OR ABROGATED BY A PROPOSED CONSTITUTIONAL AMENDMENT.

In *Ferency,* the Supreme Court examined the requirement of MCL 168.482(3) that a petition proposing a constitutional amendment list existing constitutional provisions which would be altered or abrogated by the proposed amendment. The Court appropriately

[23] Copies of the pages of the Constitutional Convention Record cited in *Ferency* are submitted herewith as Appendix "N," with the pertinent discussion highlighted.

characterized that requirement as "a new requirement regarding substantive content," but assumed for the sake of its discussion that it was a "regulation of form." And consistent with the principles and authorities previously discussed, the Court cautioned that the burden imposed by that requirement upon the people's exercise of their constitutionally guaranteed right to seek amendment of the constitution by initiative petition cannot unduly restrict that right:

> "***Assuming arguendo that a new requirement regarding substantive content is a regulation of form***, and assuming that the legislature can impose minimal burdens to keep the process fair, open and informed, the burden imposed cannot unduly restrict the exercise of the right." 409 Mich at 593 (Emphasis added)

The *Ferency* Court recognized that the language of Const 1963, art 12, § 2 does not require that a petition specify the existing provisions that would be altered or abrogated by the proposed amendment beyond its direction that the petition "shall be in the form . . . as prescribed by law."[24] The Court also appropriately recognized that the constitutional language imposes that obligation upon the state alone, while that obligation is imposed upon petitioners indirectly by MCL 168.482. 409 Mich 592-593.

After stating these guiding principles and the others previously discussed, the *Ferency* Court expressed its conclusion that correctly interpreting the Constitution to identify all provisions affected by a proposed amendment is too onerous a burden to place upon the right of popular amendment, and cannot be justified as a means of educating persons signing petitions:

> "***Correctly interpreting the constitution to identify all provisions affected by a proposed amendment is too onerous a burden to place upon the right of***

[24] It is especially important to note, in this regard, that inclusion of this information in petitions proposing constitutional amendments was included as an element of required substantive content in the 1908 Constitution, as originally adopted, but this requirement was eliminated by an amendment of Const 1908, art 17, § 2, approved by the voters in 1912. Copies of Const 1908, art 17, § 2 as originally adopted, and as subsequently amended in 1912 and 1940, are submitted herewith as Appendices "O," "P" and "Q," respectively.

> ***popular amendment. Nor can it be justified as a means of educating persons signing petitions.*** A petitioner faced with the prospect of having his or her entire petition drive nullified by the failure to list a constitutional provision will, out of caution, err on the side of inclusion. Petitions will become a maze of constitutional provisions, if indeed petitioners will not simply attach copies of the entire constitution to their petitions. The provisions expressly being amended may be lost among those less directly affected. Few people will understand, without extensive explanation, how or how much a particular listed provision is being altered." 409 Mich at 595-596 (Emphasis added)

Having expressed these concerns, the *Ferency* Court held that it is only where the proposed amendment would directly "alter or abrogate" a specific provision or provisions of the existing Constitution that the provision or provisions must be noted on the petitions, and the Court explained, consistent with its prior decision in *School District of the City of Pontiac v City of Pontiac,* 262 Mich 338; 247 NW 474 (1933),[25] that an existing constitutional provision is deemed to be altered or abrogated if the proposed amendment would add to, delete from, or change the existing wording of the provision, or render it wholly inoperative. There is no abrogation if the existing provision will remain operative, even though there may be a need thereafter to construe that provision in conjunction with the amending provisions. 409 Mich at 596-597.

Thus, having proceeded based upon its briefly-stated assumption ***arguendo*** that the statutory requirement to list provisions that would be altered or abrogated by the proposed amendment addressed a matter of petition "form" subject to legislative regulation, the *Ferency*

[25] In *School District of the City of Pontiac,* which addressed a post-election challenge to the validity of a constitutional amendment adopted in 1932 under the provisions of the 1908 Constitution, as amended in 1912, the Court rejected the plaintiff's argument that the amendment should be invalidated because the Secretary of State had failed to properly discharge his constitutional obligation to publish all of the existing constitutional provisions that would be altered or abrogated by the proposed amendment if adopted. Under the 1908 Constitution, as amended, there was no constitutional requirement for the petition to identify those provisions, and the statutory provision requiring that petitions do so was not enacted until later.

Court appears to have also assumed that the requirement was constitutional to the extent of requiring the petitioner to list provisions that would be "altered or abrogated," as defined in the Court's Opinion. But in so ruling, the Court expressed its recognition that adoption of a more expansive definition of "alter or abrogate" for this purpose would effectively require a petitioner to secure a judicial determination in advance, and found that this was not intended by the Legislature. 409 Mich at 597-598

D. THE STATUTORY REQUIREMENT TO LIST EXISTING PROVISIONS OF THE CONSTITUTION TO BE ALTERED OR ABROGATED DOES NOT FALL WITHIN THE SCOPE OF THE LEGISLATURE'S CONSTITUTIONAL AUTHORITY TO PRESCRIBE THE FORM OF INITIATIVE PETITIONS FOR AMENDMENT OF THE CONSTITUTION.

Because the requirement to list constitutional provisions that would be altered or abrogated in an initiative petition is purely statutory, the challenge to VNP's proposal requires the Court to determine whether the enactment of that requirement was within the scope of the Legislature's authority to regulate the form of petitions conferred by the language of Const 1963, art 12, § 2, and if so, whether enforcement of that requirement by exclusion of VNP's proposal from the ballot would constitute an impermissible curtailment or burdening of its constitutional right to propose constitutional amendments by voter initiative.

As previously discussed, our Supreme Court's Opinion in *Ferency* assumed that this "new requirement regarding substantive content" was a regulation of "form," and therefore within the scope of the Legislature's constitutional authority to prescribe the form of initiative petitions. 409 Mich at 593. The Court's Opinion reported that assumption ***arguendo*** without

analysis or citation of supporting authority, and thus, it is evident that the validity of this important premise was merely assumed without being actually decided.[26]

VNP contends, with all due respect, that the *Ferency* Court's unexplained assumption that this requirement was a matter of mere "form" is not binding as authority in this matter under the doctrine of *stare decisis,* and that it may therefore be re-examined and corrected after proper analysis. It has often been noted that *stare decisis* does not require adherence to prior judicial pronouncements of principles assumed, but not squarely addressed or decided. *See e.g., Brecht v Abrahamson,* 507 US 619, 630-631; 113 S Ct 1710, 1718; 123 L Ed 2d 353 (1993); *Perry v Merit Systems Protection Board,* ___ US ___; 137 S Ct 1975, 1992-1993; 198 L Ed 2d 527 (2017) (Gorsuch J, dissenting); *Monroe v Pape,* 365 US 167, 216-221; 81 S Ct 473, 500-502; 5 L Ed 2d 492 (1961), *rev'd in part by Monell v Department of Social Services,* 436 US 658; 98 S Ct 2018; 56 L Ed 2d 611 (1978) (Frankfurter J, dissenting in part)

VNP contends that the Legislature's enactment of the statutory requirement to list provisions that would be altered or abrogated by a proposed constitutional amendment does not qualify as regulation of petition "form" authorized Const 1963, art 12, § 2. It was, instead, an attempt to establish a requirement of ***substantive content***, as appropriately characterized by the Court's decision in *Ferency.* This may be seen for a number of reasons. First, it is highly significant that this requirement, expressed in the same language, was included as a required

[26] The *Ferency* Court may have made this assumption without analysis due to a lack of sufficient time for proper consideration. The Court's Opinion reveals that the application for leave to appeal in that matter was not filed until September of 1980, in relation to the proposal at issue which had been properly filed for submission to the voters in the general election to be held in November of that year. The Supreme Court appears to have made the same assumption without further discussion or analysis in *Protect Our Jobs v Board of State Canvassers, supra,* also decided under strict time constraints imposed by the impending general election of 2012.

element of substantive content in the 1908 Constitution, as originally adopted.[27] That requirement was eliminated by the amendment of Const 1908, art 17, § 2, adopted in 1912. (Appendix "P") It was not included in the amendment of that provision adopted in 1940 (Appendix "Q"), or in Const 1963, art 12, § 2. The convention delegates who crafted the current provisions of Const 1963, art 12, § 2 were aware of the prior constitutional provisions, but did not choose to include this prior requirement of substantive content in the new Constitution, and this, in turn, is persuasive evidence that they, and thus the people, did not intend to do so.

Second, a listing of existing provisions that would be altered or abrogated cannot be considered a matter of mere "form," as that term has been commonly understood. The reported decisions have often recognized and addressed the qualitative distinction between matters of form and matters of substance. *See e.g., Ahrenberg Mechanical Contracting, Inc.* 451 Mich 74; 545 NW2d 4 (1996) (Addressing approval of a judgment "as to substance and form."); *Karr v Michigan Educational Employees Mutual Insurance Co.,* 228 Mich App 111; 576 NW2d 728 (1998) (Duty to defend determined by examination of substance, as opposed to mere form, of the complaint.); *Jacks v Schneider Securities, Inc.,* 217 F3d 525 (CA 7, 2000) (Form of statutorily required notice found sufficient, but content insufficient.) *Pinkston-Poling v Advia Credit Union,* 227 F Supp 3d 848 (WD Mich 2016) (Addressing form and substance of statutory notice.) *See also, Stand up for Democracy v Secretary of State,* 492 Mich 588, 601-602; 822 NW2d 159 (2012) (Discussing "form and content requirements" of MCL 168.482.)

The commonly understood difference between form and substance is correctly explained in Black's Law Dictionary (Fifth Ed, 1979), which defines "form" as:

---

[27] As originally adopted, Const 1908, art 17, § 2 (Appendix "O") provided, in pertinent part, that "All petitions shall contain the full text of any proposed amendment, together with any existing provisions of the constitution which would be altered or abrogated thereby."

> "A model or skeleton of an instrument to be used in a judicial proceeding or legal transaction, containing the principal necessary matters, the proper technical terms or phrases and whatever else is necessary to make it formally correct, arranged in proper order, and capable of being adapted to the circumstances of the specific case.
>
> "In contradistinction to "substance," "form" means the legal or technical manner or order to be observed in legal instruments or juridical proceedings, or in the construction of legal documents or processes. Antithesis of 'substance.' "

In *Pinkston-Poling, supra,* the court explained the difference, citing the *Black's* definition and another dictionary definition of "form" as "the shape and structure of something as distinguished from the material of which it is composed." 227 F Supp 3d at 852.

A listing of existing provisions that would be altered or amended by a proposed amendment is not a matter of mere shape, structure or format of an initiative petition. As the Supreme Court noted in *Ferency,* identification of those provisions is an exercise requiring legal analysis by those with sufficient expertise – an exercise which the Supreme Court has itself found difficult, and which, in *Ferency,* yielded widely differing conclusions. 409 Mich at 595-596. The list of provisions ultimately determined by that exercise of legal judgment is clearly a matter of substantive content, as opposed to mere form. Indeed, it appears that this important distinction has been properly recognized by the Board of Canvassers, as evidenced by its preliminary approval of VNP's petition subject to the caveat that its approval did not extend to the question of "[w]hether the petition properly characterizes those provisions of the Constitution that are altered or abrogated by the proposal if adopted." This has also been recognized by the Plaintiffs, as evidenced by their acknowledgement that the Board of State Canvassers is not "empowered to review substantive issues concerning the sufficiency of language included in a petition." (Complaint for Mandamus, ¶ 21)

This conclusion is also supported by the language of Const 1963, art 12, § 2, which provides that initiative petitions "shall be in the form, and shall be signed and circulated in such

manner, ***as prescribed by law."*** As previously discussed, this use of the phrase "prescribed by law" suggests that this reference to legislation prescribing the "form" of a petition contemplated a legislative establishment of required detail, not substantive content. *Beach Grove Investment Company v Civil Rights Commission, supra.* This conclusion is also supported by the nature of the legislation-type content of Const 1908, art 17, § 2 (Appendix "Q") addressing numerous details of petition formatting, signing and circulation that was eliminated in the drafting of Const 1963, art 12, § 2 in favor of the simpler statement of the Legislature's authority to ***prescribe*** those details by law.

E. EVEN IF FOUND TO BE WITHIN THE SCOPE OF THE LEGISLATURE'S AUTHORITY, A STRICT ENFORCEMENT OF THE STATUTORY REQUIREMENT TO LIST EXISTING PROVISIONS OF THE CONSTITUTION TO BE ALTERED OR ABROGATED BY THE PROPOSED AMENDMENT BY EXCLUSION OF VNP'S PROPOSAL FROM THE BALLOT WOULD IMPOSE AN UNCONSTITUTIONAL BURDEN UPON THE FREE EXERCISE OF VNP'S CONSTITUTIONAL RIGHT TO PROPOSE AMENDMENT OF THE CONSTITUTION BY VOTER INITIATIVE.

The Plaintiffs have asserted that VNP's proposal should be excluded from the general election ballot as the appropriate remedy for the alleged noncompliance with MCL 168.482(3). VNP contends that this remedy must be seen as an impermissibly extreme measure in light of the abundant case law previously discussed, which has consistently emphasized that the people's reserved right to propose constitutional amendments by initiative should be facilitated rather than restricted. *Ferency,* 409 Mich at 602. Imposition of that remedy would be wholly unwarranted and unreasonable, even if it should be determined that MCL 168.482(3) was properly enacted, because enforcement of the statutory requirement in this manner would be an unconstitutional curtailment or undue burdening of VNP's constitutional right to propose constitutional amendments by voter initiative.

In *Ferency, supra,* the Supreme Court ultimately concluded that the sponsor of the proposed amendment had not failed to list any existing constitutional provisions that would be altered or abrogated by the proposed amendment, and thus, the Court did not consider what the remedy would have been for the alleged error, if established. It should be noted, however, that the concurring Opinion of Justice Williams included an enlightening discussion of the difference between the obligation imposed upon a petition sponsor under MCL 168.482 and the publication requirement imposed upon the state election officials by the language of Const 1963, art 12, § 2. Justice Williams agreed that the petition sponsor had properly listed the existing constitutional provisions that would be altered or abrogated to the extent required by MCL 168.482(3), but felt that there were provisions, not identified in the petition, that the Secretary of State should have been required to publish for the electorate in fulfillment of ***his constitutional*** duty.

Justice Williams opined that, although the statute used the same terminology, referring to provisions "altered or abrogated," the constitutional publication requirement imposed a more stringent duty upon the state election officials with respect to the identification of those provisions for the required publication than the duty imposed by statute upon petition circulators, who in many cases are less sophisticated than the agents of the State and have fewer legal resources at their disposal for making that determination. And then, having noted that difference, he suggested that a deficiency in the petition could be cured by a proper fulfillment of the Secretary of State's duty of publication – a duty which could be aided by a pre-election judicial determination as to which, if any, provisions would be altered or abrogated by the proposed amendment. 409 Mich at 612-624.

By his sensible recognition of the difference between the duties imposed upon petition sponsors and the duty required of our state election officials, Justice Williams harmonized the constitutional and statutory provisions consistent with the previously discussed case law emphasizing that they should be liberally construed and applied to facilitate, rather than obstruct, the free exercise of the people's right to propose constitutional amendments by voter initiative. And consistent with that recognition, Justice Williams' concurrence provided a convincing argument that the Court may properly determine what the Secretary of State must include in the constitutionally-required publication in a case where the question of alteration or abrogation of other provisions has been raised and addressed by judicial decision before submission of the proposal to the voters, even though the Secretary of State has not yet determined which provisions are to be included in the required publication. 409 Mich at 637

Other decisions of our Supreme Court have suggested that a failure to identify provisions to be altered or abrogated may be remedied by corrective action directed by judicial decree before the election. *See, Massey v Secretary of State,* 457 Mich 410, 414-415; 579 NW2d 862 (1998) (recognizing the Court's authority to require corrective action by election officials when a challenge is brought before an election); *Carman v Secretary of State,* 384 Mich 443, 454; 185 NW2d 1 (1971) (noting that the purpose of MCL 168.482 was served by the Secretary of State's proper publication of the existing provision that would be abrogated). In *Carman,* the Court noted, as a matter of "constitutional substance rather than form," that the purpose served by the constitutional requirement is of greater importance than the purpose served by the statutory requirement. 384 Mich at 454-455.

For all of these reasons, VNP contends that any deficiency in the statutorily-required listing of provisions to be altered or abrogated which may be identified by judicial decree in

this matter can, and should, be remedied by the proper performance of the State's constitutionally imposed obligation to publish the proposed amendment with the existing provisions that would be altered or abrogated thereby in accordance with that decree.

F. THE DOCTRINE OF SUBSTANTIAL COMPLIANCE SHOULD BE APPLIED IF A FAILURE TO COMPLY WITH STATUTORY REGULATION OF PETITION FORM IS FOUND IN THIS MATTER.

VNP anticipates that this suggestion of a reasonable alternative remedy may be met with a response that substantial compliance with MCL 168.482(3) cannot suffice, and thus, exclusion of the proposal from the ballot is the only appropriate remedy for any violation of its provisions in light of our Supreme Court's recent decision in *Stand up for Democracy v Secretary of State, supra*. In that case, the Court considered whether a referendum petition filed pursuant to the provisions of Const 1963, art 2, § 9, should be excluded from the ballot based upon a technical objection that the heading of the petition had not been printed in 14-point type, as MCL 168.482(2) requires. Although the Court ultimately concluded that the referendum should be certified for the ballot because compliance with the type-size requirement was established, a majority of the Justices also opined that substantial compliance with that requirement could not be considered sufficient in light of the statute's mandatory direction that 14-point type "shall" be used for the purpose specified. In support of that pronouncement, those Justices disavowed the doctrine of substantial compliance which had often been applied by prior appellate decisions in adjudicating challenges based upon alleged failure to comply with statutory petition requirements.

Reliance upon *Stand up for Democracy* as authority for a suggestion that strict compliance with MCL 168.482(3) must be required in this case involving a voter-initiated petition for amendment of the Constitution would be misplaced because the Court's decision in

that case did not consider whether substantial compliance with statutory requirements could be considered sufficient for certification in cases involving a voter-initiated petition for amendment of the Constitution under Const 1963, art 12, § 2, and thus, the majority's conclusion that strict compliance was required is not binding as authority in this case.[28] The decision in *Stand up for Democracy* addressed a referendum petition filed under Const 1963, art 2, § 9, and the majority concluded that "the doctrine of substantial compliance is inapplicable to referendum petitions submitted for certification." 492 Mich at 594, 608.

The distinction is important because the language of Const 1963 art 2, § 9 is substantially different. That provision specifically states that the power of referendum "***must be invoked in the manner prescribed by law***. . " Thus, the majority in *Stand up for Democracy* could have reasonably concluded that the applicable ***constitutional*** language mandated adherence to every aspect of the statutory requirements set forth in MCL 168.482 which, by its terms, mandated compliance with the type-size requirement stated therein. But a different evaluation is required here, where the constitutional language governing initiative petitions to amend the Constitution merely allows the Legislature to prescribe the "form" of petitions, and has not declared that the right to seek amendment of the Constitution by initiative petition "must be invoked in the manner prescribed by law."

Because *Stand up for Democracy* did not address the application of statutory requirements in relation to a voter-initiated petition to amend the Constitution, the Court's

[28] Indeed, the majority's conclusion that strict compliance was required should not be considered binding authority at all because, having found actual compliance with the statutory requirement, the discussion of whether substantial compliance could have sufficed was not necessary to the Court's holding that the requested writ of mandamus should be granted, as noted by the dissenting Justices. 492 Mich at 633-634. The majority's discussion of that issue was therefore *obiter dictum.*

Opinion did not consider whether the strict compliance rule endorsed in that case would impose an unconstitutional burden upon the free exercise of a petition sponsor's constitutionally guaranteed right to seek amendment of the Constitution by voter-initiated petition. The constitutional question is important, and must therefore be addressed in this case if any statutory violation is found. It will be essential to do so in that event because it is clear, in light of the authorities previously discussed, that blind adherence to a requirement of strict compliance would be inappropriate where, as here, the statute in question imposes requirements in addition to those required by a self-executing constitutional provision, and enforcement of those requirements would curtail or impose an undue burden upon the free exercise of the constitutionally guaranteed right. Even if the statutory requirement to list provisions to be altered or abrogated is considered a regulation of "form" authorized by Const 1963, art 12, § 2, strict enforcement of that requirement by exclusion of VNP's proposal from the ballot when another less intrusive remedy would suffice would be an unconstitutional curtailment or undue burdening of VNP's constitutional right to propose constitutional amendments by voter initiative.

V. THE PROPOSED CONSTITUTIONAL AMENDMENT WOULD NOT ABROGATE EXISTING CONSTITUTIONAL PROVISIONS.

In *Protect Our Jobs v Board of State Canvassers, supra,* the Supreme Court reaffirmed the previously discussed standards set forth in *City of Pontiac* and *Ferency,* and provided additional clarification of the meaning of the constitutional and statutory language concerning identification of existing constitutional provisions that would be altered or abrogated by a proposed amendment.[29] The Court prefaced its discussion of that issue by emphasizing that it

[29] The Court explained that: 1) The republication requirement is only triggered by a change that would essentially eviscerate an existing provision; 2) an existing provision of the Constitution is abrogated and, thus, must be republished if it is rendered "wholly inoperative";

wished to avoid any construction which would require a petition circulator to secure a judicial determination of which provisions of the existing Constitution the proposed amendment would alter or abrogate, and repeating its previously expressed observation that, "the ordinary elector, not being a constitutional lawyer, would be confused rather than helped by a publication of all the other constitutional provisions which were or might be directly or only remotely, and possibly only contingently, affected by the proposed amendment." 492 Mich at 781.

The unfairness of the requirement of MCL 168.482(3) cited in support of Plaintiffs' challenge is evidenced by what occurred in relation to the proposal at issue. When VNP submitted its petition for "as to form" approval to the Board, it proposed republishing five sections of the Constitution which it believed would be abrogated. The Elections Bureau staff refused to recommend approval because they believed that the VNP Proposal did not abrogate any existing section of the Constitution. It was not until VNP altered those five sections, adding the prefatory language "EXCEPT TO THE EXTENT LIMITED OR ABROGATED BY..." (thus altering them, and not republishing them as being abrogated) that the Bureau staff would agree to recommend approval of the form of VNP's petition. (Appendices "A," "B" and "C")

From this, it may be seen that the Elections Bureau, the state agency responsible for interpreting the Michigan Election Law, believed that the VNP petition did not abrogate any existing sections of the Constitution. VNP, the sponsor, believed it would abrogate five sections

---

3) An existing provision is rendered wholly inoperative if the proposed amendment would render it a nullity or if it would be impossible for the amendment to be harmonized with the existing provision; 4) an existing provision is not rendered wholly inoperative if it can be reasonably construed in a manner consistent with the new provision; 5) An existing provision that uses nonexclusive or nonabsolute language is less likely to be rendered inoperative simply because a proposed new provision introduces in some manner a change to the existing provision; and 6) there is no abrogation when the existing provision would likely continue to exist as it did, although it might be affected or supplemented in some fashion by the proposed amendment. 492 Mich at 782-783.

of the Constitution. Now, Plaintiffs allege that there are four additional sections of the Constitution that are abrogated. This kind of uncertainty as to whether an existing section of the Constitution would be abrogated by a proposed amendment is exactly the situation that our Supreme Court has said it wished to avoid in *Ferency* and *Protect Our Jobs*. It seems certain that if this legitimate concern is not heeded, every future sponsor of an initiative to amend the Constitution will, out of an abundance of caution, propose adding to any section of the Constitution that it might conceivably affect, a provision stating: "EXCEPT TO THE EXTENT LIMITED OR ABROGATED BY..." simply to avoid a potential abrogation challenge.

A. THE PROPOSED AMENDMENT WOULD NOT ABROGATE ANY PART OF CONST 1963, ART 6, § 13.

Plaintiffs have alleged that the language of the proposed Const 1963, art 4, § 6 (19) conferring original jurisdiction upon the Supreme Court for limited review of the Commission's actions would abrogate the language of Const 1963, art 6, § 13 conferring original jurisdiction upon the circuit courts in all matters not prohibited by law. This claim is without merit for the simple reason that Const 1963, art 6, § 13 does ***not*** purport to confer any ***exclusive*** jurisdiction upon the circuit courts as Plaintiffs have alleged, and although the proposed amendment would confer original jurisdiction upon the Supreme Court to address matters related to redistricting and the Commission's performance of its duties – jurisdiction similar to that which the Supreme already has and routinely exercises with respect to redistricting matters – the proposal contains no language purporting to make that jurisdiction exclusive. Accordingly, there is no basis for a finding that VNP's proposal would abrogate Const 1963, art 6, § 13 if approved by the voters.

B. THE PROPOSED AMENDMENT WOULD NOT ABROGATE ANY PART OF CONST 1963, ART 1, § 5.

Plaintiffs have alleged that the language of the proposed Const 1963, art 4, § 6 (11) restricting the ability of the Commission's members and its staff, attorneys and consultants to

discuss redistricting matters with members of the public outside of an open public meeting of the Commission would abrogate the language of Const 1963, art 1, § 5, providing that, "Every person may freely speak, write, express and publish his views on all subjects, being responsible for the abuse of that right." This claim is without merit because the plain language of Const 1963, art 1, § 5 clearly states that the right to speak, write and publish on all subjects guaranteed by that provision is not absolute, as its language specifically provides that every person is responsible for abuse of that right. Plaintiffs have acknowledged that speech of government employees is subject to regulation by their citation of this Court's decision in *Shirvell v Department of Attorney General,* 308 Mich 702; 866 NW2d 478 (2015), which noted that, "while an employee does not forfeit his or her free speech interests by virtue of holding government employment, 'the State has interests as an employer in regulating the speech of its employees that differ significantly from those it possesses in connection with regulation of the speech of the citizenry in general'" and that "[w]hen a citizen enters government service, the citizen by necessity must accept certain limitations on his or her freedom." 308 Mich App at 732-733, quoting *Pickering v Board of Education,* 391 US 563, 568; 88 S Ct 1731; 20 L Ed 2d 811 (1968) and *Garcetti v Ceballos,* 547 US 410, 418; 126 S Ct 1951; 164 L Ed 2d 689 (2006).

Const 1963, art 1, § 5 can easily be harmonized with the proposed amendment because the more specific provision of the proposed Const 1963, art 4, § 6 (11), imposes a very slight restriction upon the exercise of the ***limited*** right of free speech conferred under Const 1963, art 1, § 5 to facilitate the Commission's proper and effective performance of its duty to see that its proceedings are undertaken in the open in order to ensure that the development of its redistricting plans will not be controlled by partisan political interests. If a Commissioner, a member of its staff, or its counsel or consultant violates this specific ***constitutional directive***, it

may properly be said that he or she has abused the right conferred under Const 1963, art 1, § 5, which does not extend so far as to protect that abuse.

C. THE PROPOSED AMENDMENT WOULD NOT ABROGATE ANY PART OF CONST 1963, ART 9, § 17.

Plaintiffs have alleged that the language of the proposed Const 1963, art 4, § 6 (5) requiring compensation and indemnification of Commissioners would abrogate the directive of Const 1963, art 9, § 17, that, "No money shall be paid out of the state treasury except in pursuance of appropriations made by law." This claim is without merit, as the proposal does not produce an incompatibility rendering Const 1963, art 9, § 17 a "nullity," as Plaintiffs have erroneously asserted.

The proposed Const 1963, art 4, § 6 (5) would provide a mandatory constitutional directive that the Legislature appropriate funds sufficient to compensate the Commissioners and to enable the Commission to carry out its functions, operations and activities, and that the appropriation made for these purposes be not less than the amount specified – 25 percent of the General Fund/ General Purpose Budget for the Secretary of State for each fiscal year when the Commission is performing its duties.[30] Thus, if the Legislature complies with that constitutional obligation, as the Court should assume it will, there will be no need to have any payment of money out of the State Treasury without an appropriation.

If the unlikely event that the Legislature should disregard its constitutional obligation to provide the required funding at the specified level, the Commission would then have standing to enforce the Legislature's fulfillment of that obligation under the proposed Const 1963, art 4, § 6 (6) by means of a Complaint for Mandamus to enforce the performance of the Legislature's

[30] It is noteworthy that the proposed language imposing this obligation is very similar to the Legislature's obligation to appropriate funding for operation of the Civil Service Commission included in Const 1963, art 11, § 5.

clear constitutionally-based duty. The Legislature is not free to disregard its constitutionally prescribed duty to provide necessary funding for the required operations of a constitutionally established entity, and thus, the performance of that obligation may be enforced by judicial decree. *See, e.g., Adair v Michigan,* 497 Mich 89; 860 NW2d 93 (2014) (Addressing enforcement of the Legislature's obligation to appropriate sufficient funding to satisfy its obligation under the Headlee Amendment); *46th Circuit Trial Court v County of Crawford*, 476 Mich 131; 719 NW2d 553 (2006) (Addressing enforcement of funding unit's obligation to appropriate funds for trial court operations). But although the proposed Const 1963, art 4, § 6 (6) would provide a means for enforcing the Legislature's obligation to appropriate the required funding by judicial action, the proposed amendment does not include any language suggesting that a judicial decree to enforce that obligation could require a payment from the State Treasury to satisfy that obligation without an appropriation of the required funds.

Similarly, the proposed Const 1963, art 4, § 6 (5) would require the State of Michigan to indemnify the Commissioners for costs incurred if the Legislature does not appropriate sufficient funds to cover such costs in violation of its constitutionally prescribed duty to do so. This provision would create a constitutionally-based cause of action for indemnification in favor of the Commissioners which could also be asserted by means of a Complaint for Mandamus, but the proposed amendment does not include any language directing that a judgment in their favor would be paid out of the state Treasury without an appropriation.

Thus, a judgment in favor of the Commission or the individual Commissioners would stand on the same footing as any other judgment against the state, the satisfaction of which is dependent upon the availability of previously appropriated money for payment of judgments against the state or a special appropriation of money to pay it.

D. THE PROPOSED AMENDMENT WOULD NOT ABROGATE ANY PART OF CONST 1963, ART 11, § 1.

Plaintiffs have alleged that the language of the proposed Const 1963, art 4, § 6 (2)(a)(iii) requiring applicants for employment as Commissioners to attest under oath that they meet the specified qualifications for that employment abrogates the language of Const 1963, art 11, § 1, providing that, "No other oath, or any religious test shall be required as a qualification for any office or public trust." This also, is meritless for two reasons.

First, the affirmation that would be required by the proposed Const 1963, art 4, § 6 (2)(a)(iii) is not, itself, a "qualification" for employment as a Commissioner. Those constitutionally-prescribed qualifications are enumerated in the proposed Const 1963, art 4, § 6 (1). The affirmation required by the proposed Const 1963, art 4, § 6 (2)(a)(iii) is, instead, an affirmation that the applicant ***satisfies*** those enumerated qualifications, and nothing more. Thus, the required affirmation is not an oath required as "a ***qualification*** for any office or public trust" as contemplated by the language of Const 1963, art 11, § 1.

Second, the oath of office required for public officers under Const 1963, art 11, § 1 requires public officers to swear or affirm that they will support the Constitution of this state. The proposed amendment can easily be harmonized with Const 1963, art 11, § 1, because the affirmation required by the proposed Const 1963, art 4, § 6 (2)(iii) does not impose any requirement beyond the requirements imposed by the proposed Const 1963, art 4, § 6 (1), and thus, it cannot be construed as a pledge that is in any way inconsistent with, or beyond the scope of the officer's duty to uphold the state Constitution, as pledged by the oath of office required under Const 1963, art 11, § 1. This being the case, there is no basis for a finding that the proposed amendment will render any part of Const 1963, art 11, § 1 inoperable, or a "nullity," as Plaintiffs have suggested. It will remain operative, although it may become necessary to

construe it in conjunction with the amending provisions in the unlikely event that the need to do so should ever arise. [31]

Plaintiffs have failed to show that any existing provision would be abrogated by the proposed amendment if adopted. Their claim to the contrary should therefore be rejected.

VI. PERFORMANCE OF DEFENDANTS' CLEAR LEGAL DUTIES SHOULD BE ENFORCED BY THIS COURT WITHOUT DELAY.

In their Cross-claim against the Secretary of State and the Board of State Canvassers, the Intervening Defendants have asked this Court to issue a writ of mandamus directing them to promptly comply with all of their constitutional and statutory duties concerning certification, approval and placement of the ballot proposal at issue on the 2018 General Election ballot, including most notably, the Board's duty to certify VNP's proposal for inclusion on the ballot if a sufficient number of valid petition signatures is found to have been filed in support, and its duty to approve the required 100-word statement of purpose prepared by the Bureau of Elections. The Intervening Defendants have requested that the Court grant that relief, and that the Court give its Judgment granting that relief immediate effect pursuant to MCR 7.215(F)(2),

[31] In footnote 20 on page 33 of their brief, Plaintiffs have also suggested in passing that the proposed Const 1963, art 4, § 6 (21) would somehow abrogate the Civil Service Commission's "exclusive" authority to regulate "all conditions of employment" under Const 1963, art 11, § 5. This also, is meritless. The Intervening Defendants respectfully suggest that the Court should decline to consider this suggestion at all, for lack of any meaningful briefing. It is well settled, of course, that a party cannot simply state a conclusion and leave it to this Court to search for supporting arguments or authority. But it is also clear that this briefly-stated criticism is without merit in any event, because Const 1963, art 11, § 5 specifies that the state civil service does not include members of boards and commissions, and does not include any language stating that the Civil Service Commission's *duty* (as opposed to its authority) to "regulate all conditions of employment in the classified service" is exclusive. Thus, there is no basis for a finding that the proposed amendment will render any part of Const 1963, art 11, § 5 inoperable. Like Const 1963, art 11, § 1, it will remain operative, although it could conceivably become necessary to construe it in conjunction with the amending provisions in the unlikely event that the need to do so should ever arise. But as the controlling authorities have consistently held, this does not support a finding of abrogation.

to ensure that all legal challenges are finally adjudicated before the statutory deadline. The Intervening Defendants have requested that the Court grant the same relief pursuant to MCR 7.216(A)(7) and (9) in their Answer to Plaintiffs' Complaint for Mandamus.

The Secretary of State is Michigan's chief election officer. MCL 168.21. As such, the Secretary has overall responsibility for preparation of the ballot and the submission of ballot questions, including the responsibility to certify the form in which proposed constitutional amendments or other special questions shall be printed on the ballot. Const 1963, art 12, § 2; MCL 168.32(2); MCL 168.471; MCL 168.480. The Board of State Canvassers is a state Board, established under Const 1963, art 2, § 7, which has statutory responsibility for canvassing voter-initiated petitions for amendment of the Constitution to determine the sufficiency of the required technical form of the petitions proposing such amendments and the sufficiency of the signatures submitted in support. MCL 168.476; MCL 168.477. The Board also has responsibility for approving the constitutionally-required 100-word statement of purpose prepared for inclusion on the ballot by the Secretary of State's Bureau of Elections. MCL 168.32(2)

The Board of State Canvassers has a clear legal duty to certify a voter-initiated ballot proposal for inclusion on the ballot if: 1) The proposal has been supported by a sufficient number of valid petition signatures; 2) There has been no allegation, supported by sufficient proof, that the number of valid signatures submitted in support of the proposal is insufficient; and 3) There is no allegation, supported by sufficient proof, that the technical form of the ballot proposal petition or the manner of its circulation or signing did not satisfy the validly enacted statutory requirements governing the technical form or the manner of signing or circulation of petitions. In *Citizens for Protection of Marriage v Board of State Canvassers,* 263 Mich App

487, 492-493; 688 NW2d 538 (2004), this Court noted that the Board has a clear legal duty to certify a voter-initiated ballot proposal for inclusion on the ballot if it has provided its preliminary approval of the form of the ballot proposal petition, as it did in this case, and a sufficient number of valid signatures has been filed in support. The Board also has a clear legal duty to approve the constitutionally-required 100-word summary of purpose of a proposed constitutional amendment prepared by the Bureau of Elections pursuant to MCL 168.32(2) if the summary complies with the applicable constitutional and statutory requirements. The Secretary of State has a clear legal duty to satisfy its aforementioned constitutional and statutory responsibilities for preparation of the ballot and submission of ballot questions.

As previously discussed, VNP's initiative petition was filed with the Secretary of State on June 28, 2017, and VNP sought preliminary approval of the form of the petition by the Board of State Canvassers. After consultations with Bureau of Elections staff and revision of the proposal, the Board approved the form of VNP's petition during its meeting held on August 17, 2017. Upon receiving the Board's preliminary approval of its petition, VNP began the process of collecting the required voter signatures, being required to collect a minimum of 315,654 valid signatures within 180 days. On December 18, 2017, VNP filed petitions containing more than 425,000 signatures with the Secretary of State Bureau of Elections.

On April 12, 2018, the Board of State Canvassers made a sample of the petition signatures available for public inspection and issued a Notice establishing a deadline of April 26, 2018, for submission of challenges to the sufficiency of the petition signatures.

Plaintiffs' Complaint for Mandamus in this case, which appropriately acknowledged that the Board of Canvassers does not have jurisdiction to address the issues raised therein, was filed on April 25, 2018. On April 26, 2018, Plaintiff CPMC filed a Challenge with the Board

raising the same issues raised in its present Complaint, while acknowledging that the subject matter of its challenge was within the jurisdiction of the courts. That challenge did not raise any challenge to the validity or sufficiency of the petition signatures or any issues regarding the form of VNP's petition beyond the issues raised in Plaintiffs' Complaint for Mandamus.

On May 3, 2018, VNP's General Counsel James Lancaster delivered a letter to the Chairperson of the Board requesting that the Board convene a meeting and certify VNP's voter-initiated proposal for inclusion on the 2018 General Election ballot as soon as possible. (Appendix "D") In that letter, Mr. Lancaster cited the expiration of the Board's deadline for filing of challenges with no other challenges having been filed, and the preliminary findings of the Bureau of Elections, consistent with the findings of VNP's independent political consultant, that analysis of the signature sample had revealed an abundantly sufficient number of valid signatures. The Board did not respond to Mr. Lancaster's request. The Board subsequently scheduled a meeting for May 10, 2018, but consideration of matters concerning VNP's ballot proposal was not on the agenda for that meeting. (Appendix "E")[32]

Because no other objections to VNP's petition have been filed with the Board within the time allowed for filing of challenges, the Board will have a clear legal duty to certify VNP's proposal for the ballot if this Court rejects the claims advanced in Plaintiffs' Complaint for Mandamus and a sufficient number of valid petition signatures is found to have been filed in support. The Board will also have a duty to approve the required 100-word statement of purpose that the Director of Elections has a clear legal duty to prepare, if the statement complies with the applicable constitutional and statutory requirements.

[32] As previously discussed, VNP has now been informed that its proposal has been put on the agenda for its meeting of May 24, 2018, and thus, there is a possibility that its Cross-claim may be rendered moot, in part, if the Board certifies VNP's proposal for the ballot at that meeting.

These duties are ministerial, and thus, it would be appropriate for this Court to issue a writ of mandamus against the Defendants requiring their performance of those clear legal duties without further delay if this Court rejects Plaintiffs' legal challenges and denies their request for a writ of mandamus. The Court also has broad authority to grant that relief pursuant to MCR 7.216(A)(7) and (9). Actions taken by the Defendants in compliance with this Court's Order would, of course, be subject to modification by the Michigan Supreme Court.

The Intervening Defendants have requested this relief because they have no other legal or equitable remedy which can sufficiently assure the timely performance of Defendants' clear legal duties in light of the impending deadline for certification of VNP's proposal for the ballot which could eliminate or unfairly limit the opportunity to pursue enforcement action to require the performance of those duties if the certification of the proposal for the ballot or the preparation and approval of the required 100-word summary are delayed until final adjudication of Plaintiffs' claims by the Supreme Court has been completed.

RELIEF REQUESTED

WHEREFORE, the Intervening Defendants / Cross-Plaintiffs respectfully request that this Honorable Court:

A. Deny Plaintiffs' Complaint for Mandamus;

B. Enter its Order granting a writ of mandamus against Defendants Secretary of State and Board of State Canvassers, or an Order providing binding direction to those Defendants pursuant to MCR 7.216(A)(7) and (9), requiring them to comply with all of their aforementioned constitutional and statutory duties regarding certification, approval and placement of the ballot proposal at issue on the 2018 General Election ballot, without delay.

C. Require timely and complete reporting of actions taken for the required performance of the aforementioned duties pursuant to MCR 7.216(A)(7).

D. Grant immediate effect of the Court's Judgment pursuant to MCR 7.215(F)(2).

E. Retain jurisdiction of this matter to permit further proceedings to secure prompt enforcement of the Court's Judgment.

Respectfully submitted,

James R. Lancaster (P38567)
Lancaster Associates PLC
Attorneys for the Intervening
Defendants / Cross-Plaintiffs
P.O. Box 10006
Lansing, Michigan 48901
(517) 285-4737

Dated: May 22, 2018

FRASER TREBILCOCK DAVIS & DUNLAP. P.C.
Attorneys for the Intervening Defendants /
Cross-Plaintiffs

By: _____
Peter D. Houk (P15155)
Graham K. Crabtree (P31590)
Jonathan E. Raven (P25390)
124 W. Allegan, Suite 1000
Lansing, Michigan 48933
(517) 482-5800

EXHIBIT A

Malerman, Melissa (MDOS) <malermanm@michigan.gov> 7/28/2017 12:21 PM

RE: Voters Not Politicians

To James Lancaster <lancaster-law@comcast.net> Copy Katie Fahey <katiefahey2@gmail.com> • Williams, Sally (MDOS) <williamss1@michigan.gov> • Bourbonais, Lori (MDOS) <bourbonaisl@michigan.gov>

Jim,

We have questions regarding the reasons why the following provisions are listed as abrogated by the Voters Not Politicians proposal: Art. IV §1, Art. V §§1 and 4, Art. VI §§1 and 4. It is not clear to us, in view of the Supreme Court's decision in *Protect Our Jobs v Board of State Canvassers*, 492 Mich 763 (2012), how republishing these provisions squares with the Court's guidance that:

> "[W]hen the existing provision would likely continue to exist as it did preamendment, although it might be affected or supplemented in some fashion by the proposed amendment, no abrogation occurs. On the other hand, a proposed amendment more likely renders an existing provision inoperative if the existing provision creates a mandatory requirement or uses language providing an exclusive power or authority because any change to such a provision would tend to negate the specifically conferred constitutional requirement." Id. at 783.
>
> "4. When the existing language would not be altered or abrogated, but the proposed amendment would only have an effect on the existing language, and the new and existing provisions can be harmoniously construed, republication of the existing provision is not required. 5. When the existing language would not be altered or abrogated, but the proposed amendment would only have an effect on the existing language, thereby requiring that the new and existing provisions be interpreted together, republication of the existing provision is not required." Id. at 792.

We are asking you to provide a written legal analysis explaining how each of the 5 abrogated provisions identified on your petition would be abrogated by the proposal if adopted. (Note, we are **not** asking for an explanation of the altered provisions.) This will inform our decision-making as we decide whether or not to recommend that the Board approve your petition as to form. A copy of your written explanation will be provided to Board members so that they may have the benefit of understanding your position prior to the meeting.

-Melissa

EXHIBIT B

LANCASTER & ASSOCIATES

MEMORANDUM

TO: Bureau of Elections
Sally Williams, Director
Melissa Malerman, Elections Specialist

FROM: James R. Lancaster JRL
Legal Counsel, Voters Not Politicians Ballot Committee ("VNPBC")

RE: Legal Analysis Explaining How Provisions Republished In VNPBC Proposed Constitutional Amendment Would Be Abrogated.

DATE: July 31, 2017

Thank you for your email of July 28, 2017, and for giving us the opportunity to provide to you our legal analysis explaining how we believe each of the 5 provisions republished in our petition would be abrogated by the Proposal, if adopted.

As we have previously discussed, the Michigan Supreme Court's decision in the 2012 *Protect Our Jobs* case has created some uncertainty as to when abrogation occurs, thus triggering the republication requirement. We welcome this opportunity to explain how we have analyzed this case, and applied it is drafting the VNPBC Proposal (the "Proposal")

For your convenience, I have attached as Exhibit A the latest version of the Proposal which incorporates all of the changes you have previously suggested. It has been modified to an 8.5" x 11" format for ease of copying.

Introduction

Our analysis begins with the most fundamental, bedrock principle of the Michigan Constitution:

ARTICLE I

DECLARATION OF RIGHTS

§ 1 Political power.

Sec. 1. All political power is inherent in the people. Government is instituted for their equal benefit, security and protection.

Phone: (517) 285-4737 lancaster-law@comcast.net
P.O. Box 10006
Lansing, Michigan 48901

In the Michigan Constitution of 1963, the People reserved to themselves the power to amend the Constitution. In this regard, Article XII, §2 provides, in relevant part:

ARTICLE XII

AMENDMENT AND REVISION

.....

§ 2 Amendment by petition and vote of electors.

Sec. 2. 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....*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. (Emphasis added)

Analysis of the Michigan Supreme Court's Decision in *Protect Our Jobs*

The primary focus of our analysis is the Michigan Supreme Court's decision in *Protect Our Jobs v. Board of State Canvassers, et. al., 492 Mich. 763, 822 N.W.2d 534 (2012).* However, we begin that analysis by considering the position taken by Michigan Attorney

General Bill Schuette in the case *Citizens For More Michigan Jobs and Robert J Cannon v. Secretary of State, Board of State Canvassers, and Director of Elections, Supreme Court File Number 145754.* This case was, of course, one of the four cases that were ultimately consolidated and decided in *Protect Our Jobs.*

Citizens For More Michigan Jobs involved a proposed constitutional amendment to establish 8 new casinos in the State. It included a mandate that each of these casinos receive a liquor license. The Attorney General argued that this proposal should not be placed on the ballot because it failed to republish Article IV, §40, which provides, in relevant part:

> Except as prohibited by this section, (t)he legislature may by law establish a liquor control commission which, subject to statutory limitations, *shall exercise complete control of the alcoholic beverage traffic within this state*, including the retail sales thereof. (Emphasis added)

The Attorney General's brief, states, in relevant part:

> The proposal's **conflict** with existing article 4, §40 is **stark**. With respect to the 8 new casinos the proposal authorizes, §40 is simply a nullity. No Liquor Control Commission investigation, no Commission quotas, and no Commission approval. The CFMMJ proposal abrogates the "complete control" over alcoholic beverage traffic that the commission has exercised for many years.
>
> Such effect is the antithesis of article 12, §2's purpose, as this Court recognized in *Massey [Massy v Secretary of State, 409 Mich 569; 297 NW2d 538(2004)]*: **"to definitively advise the electors as to the purpose of the proposed amendment and what provision of the constitutional law *(sic)* it modified or supplanted."** 457 Mich at 417. **It is one thing to create a constitutional right to a liquor license. It is entirely different to do so without disclosing to the electorate that such a right is inconsistent with the way the Michigan Constitution has regulated the grant of a liquor licenses since its passage.** (Emphasis added. Attorney General Brief at p. 5. A copy of the Brief is attached as Exhibit B.)

As you know, the Michigan Supreme Court ultimately agreed with the Attorney General's position, denying the Plaintiff's request for a writ of mandamus, which resulted in the casino proposal not appearing on the ballot.

Prior to *Protect Our Jobs*, an existing constitutional provision was "abrogated" if it rendered an existing provision a "nullity;" it essentially had to make the existing constitutional provision completely inoperative and of no effect such that it could not be harmonized with the existing power or authority.

Justice Zahra's opinion introduces a new, somewhat different concept of "abrogation:" i.e., where an amendment interferes with an otherwise exclusive power or authority it renders the existing constitutional provision "inoperative." This appears to be the rule even if the two provisions can arguably be harmonized. In this regard, the opinion states:

> Determining whether the existing and new provisions can be harmonized requires careful consideration of the actual language used in both the existing provision and the proposed amendment. *An existing provision that uses nonexclusive or nonabsolute language is less likely to be rendered inoperative simply because a proposed new provision introduces in some manner a change to the existing provision.* Rather, when the existing provision would likely continue to exist as it did preamendment, although it might be affected or supplemented in some fashion by the proposed amendment, no abrogation occurs. *On the other hand, a proposed amendment more likely renders an existing provision inoperative if the existing provision creates a mandatory requirement or uses language providing an exclusive power or authority because any change to such a provision would tend to negate the specifically conferred constitutional requirement.* (Emphasis added) 492 Mich at 783.

In applying this reasoning to the casino proposal, Justice Zahra wrote:

> It is undisputed that part of the Liquor Control Commission's "*complete* control of the alcoholic beverage traffic within this state, including the retail sales thereof" entails the granting of liquor licenses. Furthermore, §40 expressly states that the commission's control is "complete." ***Because complete control necessarily communicates the exclusivity of control, any infringement on that control abrogates that exclusivity; an amendment that contemplates anything less than complete control logically renders that power in § 40 inoperative.*** Because the proposed amendment would abrogate article 4, § 40, republication of that section on the petition was necessary to comply with the republication requirement of MCL 168.482(3). The failure to do so is fatal to the proposed amendment, and we must therefore deny mandamus. (Emphasis added) 492 Mich at 790-1.

It is also interesting, and instructive to note Justice Marilyn Jean Kelly's dissent which criticized this result:

> This reasoning is flawed. If § 40 is read in its entirety, it becomes apparent that the "complete control" of the Liquor Control Commission (LCC) is neither complete nor exclusive. Rather, it is subject to limits that the Legislature chooses to place on it.
>
> If the Legislature may subject the LCC's control to limitations, then so may the people of this state. The people have an inherent and superior right to amend the Constitution and to alter the authority of the legislatively created LCC. Should the voters pass the proposed constitutional amendment, it would be controlling by its nature, irrespective of whatever authority the Legislature has bestowed on the LCC. Moreover, because the

> LCC's " complete control" is subject to limitation both by statute and by the people, a constitutional amendment affecting that control cannot render the language of § 40 a nullity. Therefore, the proposed amendment cannot abrogate it
>
> Clearly, constitutional language limits the control of the LCC over alcoholic-beverage traffic in the state. Even if one were to pretend that it does not, the Court must give effect to the intent of the people in adopting constitutional provisions. *Therefore, should one conclude that the proposed amendment, if adopted, would collide with article 4, § 40, the Court is obliged to seek a construction that harmonizes the two. And in this case, harmonization is perfectly possible.* (Emphasis added) 492 Mich at 794-5.

So, it appears that in order to determine whether a proposed constitutional amendment "abrogates" an existing provision, we must look at whether the existing provision entails a power or authority that is "exclusive" (like that of the Liquor Control Commission) with respect to the subject matter it addresses. Arguments that the existing power or authority could be "harmonized" with the proposed amendment would appear to be irrelevant.

In explaining this decision to my client, and other laypersons, I have borrowed a metaphor commonly used by law school professors in introductory property law courses, They conceptualize the complexities of property ownership as a "bundle of sticks," with each stick constituting one of the many potential uses of real property, including subsurface uses, surface uses, and uses above the property. An owner of real property is generally conceptualized as owning all of these "sticks." The recurring question in American law with respect to property rights is: to what extent government can "take away" one or more of these sticks by law (e.g., zoning regulations) before it is adjudged to be improper, or a "taking." Generally, the government can do a great deal by way of the regulation of property rights before it is gone too far.

Using this same metaphor to analyze *Protect Our Jobs,* Justice Zahra's opinion appears to stand for the proposition that where a proposed amendment impinges upon an "exclusive" power of some constitutionally created entity (i.e., where that entity holds all of the "sticks"), *taking away any one of those "sticks"* constitutes an abrogation.

We are also mindful of the admonition in Attorney General Schuette's brief, which I will paraphrase: where a proposed amendment is a "stark" change to the Constitution, "supplanting" an existing provision, and which is inconsistent with the manner in which power has been traditionally allocated in the Constitution, Article XII, §2 requires republication so that the public is "definitively advised" of this change. We believe each of the 5 sections republished in the Proposal are of this nature.

The Source of the Government's Power Regarding Redistricting

Examining the Government's authority over the establishment of state legislative or congressional districts, it is apparent that it does not arise from a specific grant of authority within the Constitution. Rather, it arises from the inherent authority granted to the Legislature (in Article IV, §1) and the Governor (in Article V, §1) to enact a law by means of a bill approved by the Legislature and signed into law by the Governor.[1] When that process has failed, the Judiciary has exercised its inherent and plenary power (in article VI, §1) to impose state legislative and Congressional districts. *e.g., In Re Apportionment of State Legislature – 1982, 413 Mich 149, 321 NW2d 585 (1982)*

The Michigan Constitution of 1963 attempted to remove this power from the Legislature and the Governor by placing it in an independent commission. *See,* existing sections of Michigan Constitution of 1963, Article IV, §§ 2, 3 and 6. These provisions were determined to be unconstitutional because they violated the U.S. Constitution's population equality requirement, as articulated in *Reynolds v. Sims,* and subsequent decisions. It was ultimately adjudged that the "weighted land area requirements" in Article IV, §§2-6 were not severable; therefore the provisions in their entirety are invalid. *In Re Apportionment of State Legislature – 1982, 413 Mich 96, 115, 321 NW2d 565 (1982).*

Again, because there is no valid existing constitutional provision that addresses the power redistricting, that power arises from the inherent power to grant to the three branches of government.

How The Constitutional Provisions Republished In The VNPBC Proposal Would Be Abrogated

The principal purpose of the Proposal is to completely take the power of redistricting away from the Legislature and the Governor, and place that power with the newly created Independent Citizens Redistricting Commission. The Proposal would also limit the role and discretion of the judiciary in reviewing and invalidating decisions made by this new Commission, and impose and affirmative duty to mandate appropriations for funding its operations.

Assuming that the Board of State Canvassers approves the petition as to form, and sufficient signatures are obtained to place this proposal on the ballot, it is anticipated that this Proposal will be advertised to the public as completely taking away from "politicians" (the

[1] Or, where vetoed by the Governor, that veto is overridden.

Legislature and the Governor) the power of redistricting, and placing it in the hands of "the People." The name of our ballot committee is obviously consistent with this theme: "Voters Not Politicians."

Our analysis below is three pronged, derived from our understanding of the rule enunciated in *Protect Our Jobs,* as articulated above:

- Does the Proposal impinge on an existing constitutional power or authority that is "exclusive?"

- Using the "bundle of sticks" metaphor, does the Proposal take away one of the "sticks" of the "bundle" that constitutes the "exclusive" power or authority, and

- Is the change that would occur a "stark" departure from the manner in which that power or authority that has traditionally been allocated in the Constitution, necessitating republication to assure that the voters are "definitively advised" of this "stark" change.

Article IV, §1:

This section of the Constitution states:

> "The legislative power of the State of Michigan is vested in a senate and a house of representatives."

This power is all-encompassing and exclusive. As stated in *Taxpayers of Michigan Against Casinos v State, 471 Mich 306, 685 NW2d 221 (2004):*

> The legislative power, under the Constitution of the State, is as broad, comprehensive, absolute and unlimited as that of the parliament of England, subject only to the Constitution of the United States and the restraints and limitations imposed by the people upon such power by the Constitution of the State itself.

The power to enact legislation to create state legislative and congressional districts is an inherent power that arises from Article IV, §1.

Applying the *Protect Our Jobs* analysis, Article IV, §1 gives the Legislature *exclusive power or authority* over the enactment of legislation of any kind, and on any subject that is not prohibited by the Constitution.

The Proposal abrogates this broad and exclusive legislative authority in at least two ways. First, it completely deprives the Legislature of its role in enacting redistricting legislation. See, Proposal, Article IV, §6(22). Second, it impinges on the Legislature's discretion on appropriations, by mandating a minimum appropriation for the Commission's activities. See Proposal, Article IV, §6(5).

Using the "bundle of sticks" metaphor, Article IV, §1 vests with the Legislature all of the "sticks" that represent legislative power. The Proposal would take away at least two of these "sticks," (i.e., the power to enact legislation establishing legislative and congressional districts, and the traditional discretion with regard to appropriations) and therefore abrogates this power.

This Proposal, if adopted would represent a "stark" departure from the manner in which the power or authority of the Legislature has traditionally been allocated in the Constitution, "supplanting" the power of the Legislature regarding redistricting. Therefore, we believe republication is necessary to assure that the voters are "definitively advised" of this "stark" change.

Article V, §1

This section of the Constitution states: "The executive power is vested in the governor."

Inherent in this power is the Governor's role in signing or vetoing legislation. This is how redistricting has occurred after the past two federal decennial censuses: though bills enacted by the Legislature and signed by the Governor. The Proposal would take away the Governor's role in this process.[2] Also, "commissions" established by law or under the constitution that have any executive powers, are deemed to be part of the Executive Branch. *Straus v. Governor, 459 Mich. 526, 592 N.W.2d 53 (1999).* The Proposal will establish the Commission in the Legislative Branch. It would be the first and only body within the Legislative Branch that has independent authority, not subject to legislative or executive oversight or approval.[3] Further, it

[2] We considered whether it would be necessary to republish Article IV, §33, which sets forth the Governor's power to approve or veto bills. We believe this is not necessary because the Proposal does not actually abrogate this power. Instead, it removes redistricting as a subject that can be governed through the process of the Legislature passing a bill and the Governor signing or vetoing it. We felt it might be misleading to the voters to republish Article IV, §33, because it might be interpreted as suggesting that the Proposal makes a more drastic change to the Constitution than is actually occurring. Nevertheless, the Proposal clearly usurps the Governor's role in the legislative process. *Blank v Department of Corrections, 462 Mich 10, 611 NW2d 530 (2000)* (Invaliding amendments to the Administrative Procedures Act creating a "legislative veto" of administrative rules as unconstitutionally usurping the Governor's role in the legislative process)

[3] All existing legislative bodies or offices have only advisory powers, or powers that are subject to legislative oversight or approval.

- Article IV, §12 – State Officers Compensation Commission. The Legislature may amend or disapprove its determination of salaries and expense allowances.
- Article IV, § 15 – Legislative Council. It provides only bill drafting, research and other services. It has no formal independent powers.

would vest with the Commission both legislative (creating legislative and congressional districts) and executive (power to file lawsuits, approving enactments creating legislative and congressional district that would have the force of law) powers.[4] This is a departure from existing constitutional paradigms.

Article V, §1 gives the Governor, *exclusively,* the executive power of the State. This includes the inherent power to approve legislation and to administer "commissions" created under the Constitution

Using the *Protect Our Jobs* analysis, the Proposal abrogates this broad and exclusive executive authority in at least two ways. First, it deprives the Governor of the traditional role in approving or vetoing legislation regarding redistricting. See, Proposal, language added to Article V, §2. Second, it impinges on the Governor's traditional authority over entities that have some executive power, and that they must be part of or within the Executive Branch.

Using the "bundle of sticks" metaphor, Article IV, §1 vests with the Governor all of the "sticks" that represent executive power. The Proposal would take away at least two of these "sticks," and therefore abrogates this power.

This Proposal, if adopted would represent a "stark" departure from the manner in which the power or authority of the Governor has traditionally been allocated in the Constitution, "supplanting" the power of the Governor regarding redistricting. Therefore, we believe republication is necessary to assure that the voters are "definitively advised" of this "stark" change.

Article V, §4

This section of the Constitution states:

§ 4 Commissions or agencies for less than 2 years.

Sec. 4. Temporary commissions or agencies for special purposes with a life of no more than two years may be established by law and need not be allocated within a principal department.

- Article IV, § 53 – Auditor General. Appointed by the Legislature, and given the power to conduct audits. However, it has no authority, independent of the Legislature, to take action as a result of its audits.

[4] This vesting of a combination of both legislative and executive powers in the newly created Commission does not make the proposal constitutionally defective. The Michigan Supreme Court has previously ruled that, Article III, §2 (Separation of Powers), "has not been interpreted to mean that the branches must be kept wholly separate." In *Soap and Detergent Association v. Natural Resources Commission, 415Mich 728, 752; 330 NW2d 346 (1982)* the Court noted that the Governor's reorganization power is an example of a constitutionally appropriate limited delegation of legislative power to the executive.

The analysis of why this constitutional section must be republished differs from the prior two sections just discussed. This provision involves a combination of both legislative and executive power, and applies to a more limited subject manner. A temporary commission must be "established by law," which means it must be created through a legislative enactment.[5] *House Speaker v Governor, 443 Mich 560, 590, fn. 36; 506 NW2d 190 (1993)* (Temporary commissions under Article V, §4 require legislative implementation). Such commissions are treated as part of the executive, but do not need to be allocated to a principal department, as is otherwise required by Article V, §2.

While this power is not as broad and all-encompassing as the power granted to the Legislature in Article IV, §1 or to the Governor in Article V, §1, consistent with the rule stated in *Protect Our Jobs,* it is nevertheless a broad and *exclusive power or authority* granted jointly to the Legislature and the Governor to create temporary commissions that need not be assigned to a principal department, as otherwise required by Article V, §2. The power or authority extends to creating a commission *on any subject not specifically prohibited by the Constitution*.[6]

And this power is specifically abrogated by the Proposal. The Proposal would amend Article IV, §6 by adding a new part (22) which states:

> (22) NOTWITHSTANDING ANY OTHER PROVISION OF THIS CONSTITUTION, OR ANY PRIOR JUDICIAL DECISION, AS OF THE EFFECTIVE DATE OF THE CONSTITUTIONAL AMENDMENT ADDING THIS PROVISION, WHICH AMENDS ARTICLE IV, SECTIONS 2, 3 AND 6 AND ARTICLE V, SECTION 2, INCLUDING THIS PROVISION, FOR PURPOSES OF INTERPRETING THIS CONSTITUTIONAL AMENDMENT THE PEOPLE DECLARE THAT THE POWERS GRANTED TO THE COMMISSION ARE LEGISLATIVE FUNCTIONS NOT SUBJECT TO THE CONTROL OR APPROVAL OF THE LEGISLATURE, AND ARE EXCLUSIVELY RESERVED TO THE COMMISSION. THE COMMISSION, AND ALL OF ITS RESPONSIBILITIES, OPERATIONS, FUNCTIONS, CONTRACTORS, CONSULTANTS AND EMPLOYEES ARE NOT SUBJECT TO CHANGE, TRANSFER, REORGANIZATION, OR REASSIGNMENT, AND SHALL NOT BE ALTERED OR ABROGATED IN ANY MANNER WHATSOEVER, BY THE LEGISLATURE. **NO OTHER BODY SHALL BE ESTABLISHED BY LAW TO PERFORM FUNCTIONS THAT ARE THE SAME OR SIMILAR TO THOSE GRANTED TO THE COMMISSION IN THIS SECTION.** (Emphasis added)

Similarly, the Proposal would amend Article V, §2 to add the following:

> NOTWITHSTANDING ANY OTHER PROVISION OF THIS CONSTITUTION OR ANY PRIOR JUDICIAL DECISION, AS OF THE EFFECTIVE DATE OF THE

[5] In this manner, temporary commissions are like the Liquor Control Commission in that it must also be established by law.
[6] In this respect, the analysis of the abrogation that would occur of the Proposal is adopted differs from the analysis in *Protect Our Jobs.* It that case, the Court examined the abrogation

CONSTITUTIONAL AMENDMENT ADDING THIS PROVISION, WHICH AMENDS ARTICLE IV, SECTIONS 2, 3 AND 6 AND ARTICLE V, SECTION 2, INCLUDING THIS PROVISION, FOR PURPOSES OF INTERPRETING THIS CONSTITUTIONAL AMENDMENT **THE PEOPLE DECLARE THAT THE POWERS GRANTED TO INDEPENDENT CITIZENS REDISTRICTING COMMISSION FOR STATE AND CONGRESSIONAL DISTRICTS (HEREINAFTER, "COMMISSION") ARE LEGISLATIVE FUNCTIONS NOT SUBJECT TO THE CONTROL OR APPROVAL OF THE GOVERNOR, AND ARE EXCLUSIVELY RESERVED TO THE COMMISSION.** THE COMMISSION, AND ALL OF ITS RESPONSIBILITIES, OPERATIONS, FUNCTIONS, CONTRACTORS, CONSULTANTS AND EMPLOYEES ARE NOT SUBJECT TO CHANGE, TRANSFER, REORGANIZATION, OR REASSIGNMENT, AND SHALL NOT BE ALTERED OR ABROGATED IN ANY MANNER WHATSOEVER, BY THE GOVERNOR. **NO OTHER BODY SHALL BE ESTABLISHED BY LAW TO PERFORM FUNCTIONS THAT ARE THE SAME OR SIMILAR TO THOSE GRANTED TO THE COMMISSION IN ARTICLE IV, SECTION 6.** (Emphasis added)

The abrogation that would occur if the Proposal's amendments to Article IV, §6 and Article V, § 2 are adopted is arguably more drastic than the situation regarding the casino proposal addressed in *Protect Our Jobs*. In that case, the proposal merely took away some authority from a body that may be created by law under the Constitution. Once established, the Liquor Control Commission was constitutionally accorded "complete control" over liquor traffic in the State. But, it still resided within the discretion of the Legislature to create the MLCC. In contrast, the VNPBC Proposal would not allow the Legislature to create any commission with powers over redistricting. It would take away the exclusive authority granted by the Constitution to the Legislature to create a temporary commission, and take away the authority of the Governor to approve the legislation creating the commission, and further, deprive the Governor of any authority to control or approve of its actions.

Using the "bundle of sticks" metaphor, Article V, §4 vests jointly with the Legislature and the Governor all of the "sticks" that constitute the power to create temporary commissions that do not need to be assigned to a principal department (as otherwise required by Article V, §2) on any subject within their authority. The Governor and Legislature currently "hold" all of the "sticks" in this "bundle;" these "sticks" consist of every conceivable subject matter upon which the Legislature, with the concurrence of the Governor, could create a temporary commission. The Proposal would take away at least one of these "sticks," (i.e., the power to create a temporary commission with authority over redistricting), and, therefore abrogates this power.

This Proposal, if adopted would represent a "stark" departure from the manner in which the power or authority of the Legislature and the Governor has traditionally been allocated in the Constitution regarding temporary commissions, "supplanting" the power of the Legislature and

Governor to create a temporary commission regarding redistricting. Therefore, we believe republication is necessary to assure that the voters are "definitively advised" of this "stark" change to the Constitution.

Article VI, §1

This section of the Constitution provides:

> Sec. 1. The judicial power of the state is *vested exclusively* in one court of justice which shall be divided into one supreme court, one court of appeals, one trial court of general jurisdiction known as the circuit court, one probate court, and courts of limited jurisdiction that the legislature may establish by a two-thirds vote of the members elected to and serving in each house. (Emphasis added)

By its own terms, the judicial power resides *exclusively* with the judiciary. It is clearly a plenary power. As the Supreme Court stated in *Washington-Detroit Theater Co. v Moore, 249 Mich 673; 229 NW 618 (1930):*

> While the Legislature obtains legislative power and the *courts receive judicial power by grant in the state Constitution, the whole of such power reposing in the sovereignty is granted to those bodies except as it may be restricted in the same instrument.* There is no constitutional restriction on the power of the Legislature to recognize the complexity of modern affairs, and to provide for the settlement of controversies between citizens without the necessity of one committing an illegal act or wronging or threatening to wrong the other. *There is no constitutional expression of limitation upon the power of the court to decide such disputes.*[7]

The Proposal would abrogate this exclusive power in that it would grant to the Commission standing in certain actions; the Proposal, at Article IV, §6(6) states:

> (6) THE COMMISSION SHALL HAVE LEGAL STANDING TO PROSECUTE AN ACTION REGARDING THE ADEQUACY OF RESOURCES PROVIDED FOR THE OPERATION OF THE COMMISSION, AND TO DEFEND ANY ACTION REGARDING AN ADOPTED PLAN. THE COMMISSION SHALL INFORM THE LEGISLATURE IF THE COMMISSION DETERMINES THAT FUNDS OR OTHER RESOURCES PROVIDED FOR OPERATION OF THE COMMISSION ARE NOT ADEQUATE. THE LEGISLATURE SHALL PROVIDE ADEQUATE FUNDING TO ALLOW THE COMMISSION TO DEFEND ANY ACTION REGARDING AN ADOPTED PLAN.

[7] This case was cited more recently as still controlling authority as to the scope of power of the judiciary in *Lansing Schools Education Association v Lansing Board of Education, 487 Mich 349, 363; 792 NW2d 686 (2010).*

Standing is generally considered an issue that is within the inherent power of the judiciary.[8] Further, the judiciary has generally declined to order appropriations.[9] The Proposal would abrogate this exclusive authority of the judiciary.

Using the "bundle of sticks" metaphor, Article VI, §1 vests with the Judiciary all of the "sticks" that represent any conceivable aspect of judicial power including its prudential power to determine whether standing requirements have been met, and to decline to compel the Legislature to make an appropriation. The Proposal would take away at one or more of these "sticks," by depriving the judiciary of its discretion to determine whether the Commission has standing to prosecute an action and defend a plan adopted by the Commission and compel an appropriation for its operations. It would also require the judiciary to extend its "inherent power" to compel appropriations, by requiring it to adjudicate actions by the newly created Commission as to the adequacy of the resources provided to it by the Legislature. It therefore clearly abrogates the exclusive and plenary judicial power granted in Article VI, §1.

This Proposal, if adopted would represent a "stark" departure from the manner in which the power or authority of the Judiciary has traditionally been understood in the Constitution regarding the Court's discretion on standing, and on mandatory appropriations. It clearly "supplants" the traditional discretion granted to the judiciary. Therefore, we believe republication is necessary to assure that the voters are "definitively advised" of this "stark" change to the Constitution.

Article VI, §4.

This section of the Constitution provides:

§ 4 General superintending control over courts; writs; appellate jurisdiction.

Sec. 4. The supreme court shall have general superintending control over all courts; *power to issue, hear and determine prerogative and remedial writs*; and appellate jurisdiction as provided by rules of the supreme court. The supreme court shall not have the power to remove a judge. (Emphasis added)

[8] Standing has been long considered a "prudential limit" imposed by courts that arises from their inherent powers, and is a matter of "discretion and not of law." *Lansing Schools Education Association, supra, 487 Mich at 355.*

[9] Generally, the judiciary will decline to compel the Legislature to make and appropriation. However, in *46th Circuit Trial Court v County of Crawford, 476 Mich 131; 719 NW2d 553 (2006),* the Supreme Court held that "In order for the judicial branch to carry out its constitutional responsibilities...the judiciary cannot be totally beholden to legislative determination regarding its budgets. While the people of this state have the right to appropriations and taxing decision being made by their elected representative in the legislative branch, they also have the right to a judiciary that is funded sufficiently to carry out its constitutional responsibilities." 476 Mich at 143.

The traditional vehicle for challenging redistricting and apportionment schemes is with an application for a writ of mandamus. *LeRoux v Secretary of State, 465 Mich 594, 605; 640 NW2d 849 (2002).* Mandamus is properly categorized as a "prerogative writ". *O'Connell v Director of Elections, et. al., 316 Mich App 91, 100; 891 NW2d 240 (2016).* In the past, the Supreme Court has appointed and adopted a plan created by a special master, ordered the Secretary of State to publish the plan and hold legislative elections in accordance with its provisions. *In Re Apportionment of the State Legislature – 1992, Neff v Secretary of State, 439 Mich 251, 253; 483 NW2d 52(1992).*

The Proposal would limit the judiciary's power to issue prerogative and remedial writs, and the relief that could be accorded thereunder. Proposed Article IV, §6(19) states:

> (19) THE SUPREME COURT, IN THE EXERCISE OF ORIGINAL JURISDICTION, SHALL DIRECT THE SECRETARY OF STATE OR THECOMMISSION TO PERFORM THEIR RESPECTIVE DUTIES, MAY REVIEW A CHALLENGE TO ANY PLAN ADOPTED BY THE COMMISSION, AND SHALL REMAND A PLAN TO THE COMMISSION FOR FURTHER ACTION IF THE PLAN FAILS TO COMPLY WITH THE REQUIREMENTS OF THIS CONSTITUTION, THE CONSTITUTION OF THE UNITED STATES OR SUPERSEDING FEDERAL LAW. IN NO EVENT SHALL ANY BODY, EXCEPT THE INDEPENDENT CITIZENS REDISTRICTING COMMISSION ACTING PURSUANT TO THIS SECTION, PROMULGATE AND ADOPT A REDISTRICTING PLAN OR PLANS FOR THIS STATE.

Using the "bundle of sticks" metaphor, Article VI, §4 vests with the Judiciary all of the "sticks" that represent exercise of judicial discretion in the granting of prerogative and remedial writs. The Proposal would take away at least one of these "sticks," i.e., the power to issue a writ of mandamus granting the remedy of appointing and adopting the plan prepared by a special master. Proposed Article IV, §6(22) takes away that discretion, and limits the Supreme Court's review to whether the adopted plan complies with applicable law. If it does not, the Court's remedy is limited to remanding the plan back to the Commission. It therefore clearly abrogates the exclusive and plenary judicial power granted in Article VI, §4.

This Proposal, if adopted would represent a "stark" departure from the manner in which the power or authority of the Judiciary has traditionally been allocated in the Constitution regarding the Court's discretion on prerogative and remedial writs. It clearly "supplants" the traditional discretion granted to the judiciary. Therefore, we believe republication is necessary to assure that the voters are "definitively advised" of this "stark" change to the Constitution.

Conclusion

We hope that this memorandum addresses your questions and concerns regarding the VNPBC Proposal. If you have any questions, please do not hesitate to contact me.

Exhibit C

LANCASTER & ASSOCIATES

MEMORANDUM

TO: Bureau of Elections
Sally Williams, Director
Melissa Malerman, Elections Specialist

FROM: James R. Lancaster
Legal Counsel, Voters Not Politicians Ballot Committee ("VNPBC")

RE: Revisions to Proposal in Response to The Bureau's Comments at Our Meeting on Thursday August 3, 2017

DATE: August 9, 2017

Thank you for the time you spent with us last week to discuss our July 31, 2017 memorandum, and the issues that it addresses. I appreciated that we were able to have a frank and candid conversation about the issues raised by the VNPBC proposed constitutional amendment.

Based on that conversation, it is our understanding you view the *Protect Our Jobs* decision somewhat differently than we do.

One area disagreement was with respect to whether the sections we proposed to only republish (but not alter) truly constitute an "exclusive" power or authority. For example, it is our understanding that you believe that Article IV, §1, does not constitute in "exclusive" grant of "legislative" power or authority to the Legislature. You indicated that this was based on the fact that the Constitution currently allocates certain "legislative" powers to other branches (e.g., administrative rulemaking power). Though we did not discuss this at length, I assume that you would take the same position with respect to Article V, §1. Our concern with this analysis is that it seems similar to the argument made by Justice Kelly's in her dissent in *Protect Our Jobs.*

You also expressed the disagreement with the "bundle of sticks" metaphor that I used in describing Justice Zahra's majority opinion. In my July 31 memorandum, I asserted that we believe that with respect to an "exclusive" power or authority, a constitutional amendment that takes away any one of the "sticks" from the "bundle" that constitutes that power, causes it to be abrogated. As, you described at the meeting, you believe that the entire "bundle of sticks" must be "burned for abrogation to occur. We agree with this analysis with respect to existing constitutional provisions addressing a power or authority that is not "exclusive." However, again, we believe the sections republished in our last proposal constitute the kind of "exclusive" power or authority contemplated by the majority opinion in *Protect Our Jobs*.

Phone: (517) 285-4737 lancaster-law@comcast.net
P.O. Box 10006
Lansing, Michigan 48901

We also discussed the existing language in Article VI, §1, which grants "judicial power," "exclusively," to the judiciary. You suggested that because this section contains the word "exclusively," republication might be necessary. Our understanding of your position it that, possibly, a textual analysis is the correct manner to determine whether a power or authority is "exclusive." Our concern is that the language of the majority opinion in *Protect Our Jobs* does not lend itself to an analysis limited to a plain reading of the text.

Notwithstanding our discussion, and the differing opinions we exchanged, I believe we all agreed that the *Protect Our Jobs* decision creates uncertainty as to how to determine when an existing constitutional provision is abrogated by a proposed amendment. We gathered from your comments that this is why you indicated that if VNPBC chose to proceed with its previous proposal, the Bureau would present it to the Board with no recommendation. It is our further understanding that the Attorney General's office would not provide an opinion in writing; rather, it would only respond to questions posed by Board members at the meeting.

This obviously created a problem for us. The whole point of this "as to form" approval process is to provide certainty to both the proponents of a petition, and the voters who sign it, that the signatures gathered will not disregarded because of a technical flaw in the form of the petition. As the Bureau has stated in the past, it considers the abrogation issue to be part of the form of the petition. We appreciate and respect this position.

Taking into account your comments, we believe we have a solution that we hope will result in a recommendation by the Elections Bureau and the Office of the Attorney General that the Board approve our petition "as to form."

At the beginning of each of the existing constitutional provisions that we previously only republished (due our belief that they would be abrogated), we have added the following language:

> "EXCEPT TO THE EXTENT LIMITED OR ABROGATED BY ARTICLE IV, §6 OR ARTICLE V, §2….."

We believe that this language serves two purposes, both of which should allow both the Bureau and the Attorney General to recommend approval, without directly opining on the appropriate interpretation of *Protect Our Jobs*.

First, by expressly altering the language in the existing provisions we had previously proposed only republishing, an analysis of the abrogation issue, is unnecessary. The analysis in *Protect Our Jobs* supports this conclusion.

Second, the language satisfies the other concern expressed in our July 31 memorandum: to definitively advise voters that our proposal would involve a "stark" departure from the

manner in which the power or authority over redistricting has traditionally been allocated in the Constitution. Though it does not appear that the holding in *Protect Our Jobs* depended upon this issue, it is an issue that we nevertheless take very seriously.

We believe that the provisions found in our proposal at Article IV, §6(22) and the language added to Article V, §2, represent a significant change in the manner which political power is distributed within the Constitution. Creating a "commission" that is not subject to the oversight or authority of the executive branch is a new and significantly different concept not previously found within the 1963 Constitution. Further, though this commission would be housed within the legislative branch, its actions are not subject to approval or oversight by the Legislature. This is another new concept. We believe that republication of the five existing sections of the Constitution, which we previously only proposed to republish (but not alter), is necessary to adequately inform the voters of the significance of the change being proposed to the Constitution.

It is our hope that you find that the latest, and ***final***, version of our proposal, which expressly alters these provisions, will cause the Bureau and the Attorney General to recommend that the Board approve our petition "as to form."

Once again, we appreciate the time, attention, and assistance that you have given to Voters Not Politicians Ballot Committee. If you have any questions, please do not hesitate to contact me.

Exhibit D

LANCASTER
ASSOCIATES

May 3, 2018

Mr. Norman D. Shinkle, Chairperson
Michigan Board of State Canvassers
Michigan Department of State
430 W. Allegan St.
Lansing, Michigan 48909

Re: Voters Not Politicians Ballot Committee

Dear Chairperson Shinkle:

I am counsel to Voters Not Politicians Ballot Committee ("VNP"). I am writing to request that the Michigan Board of State Canvassers ("Board") convene a meeting as soon as possible, and certify the initiative petition sponsored by VNP (the "VNP Proposal") for the November 2018 General Election ballot.

On December 18, 2107, VNP filed with the Michigan Department of State 74,721 sheets of signed petitions containing 428,587 signatures.

On April 12, 2018, the Bureau of Elections ("Bureau") and the Board published a notice establishing April 26, 2018 at 5:00 p.m. as the deadline for members of the public to submit challenges to the signatures sampled from the petitions submitted by VNP (Exhibit A). No challenges to the signatures have been filed.

Our consultant, Practical Political Consultant has analyzed the sampled signatures, and determined that 466 of 505 sampled signatures are clearly valid (Exhibit B). The Bureau has provided to us its preliminary analysis of the signatures; that analysis also concluded that 466 of the 505 sampled signatures are valid (Exhibit C). The Bureau sampled the signatures for the petitions submitted by the Coalition To Regulate Marijuana Like Alcohol, and found that 366 of the 500 sampled signature were valid, and concluded that there was a sufficient number of signatures to justify certification of that proposal (Exhibit D). At its most recent meeting, the Board unanimously certified that petition.

The signature sample for **the VNP Proposal has 100 more valid signatures than the Marijuana proposal** on a similar sample size (500 vs. 505). Clearly, the VNP Proposal is entitled to certification by the Board.

The ballot question committee sponsored by the Michigan Chamber of Commerce, Citizens Protecting Michigan's Constitution ("CPMC"), has filed a challenge which raises only legal issues, which it has acknowledged are outside of the jurisdiction of the Board. CPMC has

Phone: (517) 285-4737 P.O. Box 10006 Lansing, Michigan 48901 lancaster-law@comcast.net

also filed a lawsuit with the Michigan Court of Appeals raising the same issues. However, these actions are irrelevant to the Board's clear legal duty of certify the VNP Proposal.

We would appreciate your prompt consideration of our request. Please let us know your decision as soon as possible. In order to expedite our receipt of your response, I would appreciate a copy of your response via email at lancaster-law@comcast.net

Respectfully,

James R. Lancaster

cc: Colleen Pero
Jeanette Bradshaw
Julie Matuzak
Sally Williams
Melissa Malerman
Nancy Wang
Katie Fahey
Hon. Peter D. Houk

Exhibit E

STATE OF MICHIGAN
RUTH JOHNSON, SECRETARY OF STATE
DEPARTMENT OF STATE
LANSING

-- NOTICE --

YOU ARE HEREBY NOTIFIED THAT THE BOARD OF STATE CANVASSERS WILL CONDUCT A MEETING ON MAY 10, 2018 AT 2:00 P.M. IN ROOM 426 OF THE STATE CAPITOL BUILDING, LANSING, MICHIGAN.

Included on the Agenda will be:

- Consideration of meeting minutes for approval.
- Consideration of multiple proposed modifications to the Verity voting system submitted by Hart InterCivic. (The proposed changes would: (1) Enable the use of longer ballots, up to 20 inches in length; (2) For purposes of the Presidential Primary only, place the "Uncommitted" position at the end of the list of candidates; and (3) Improve touch screen device calibration procedures.)
- Consideration of a proposed *de minimis* modification to the election management system software and firmware firewall submitted by ES&S. (The proposed change would upgrade the security features of the firewall.)
- Consideration of the form of the initiative petition submitted by Clean Energy, Healthy Michigan, P.O. Box 71746, Madison Heights, Michigan 48071.
- Such other and further business as may be properly presented to the Board.

Sally Williams, Secretary
Board of State Canvassers

A person may address the Board on any agenda item at the end of the meeting. A person who wishes to address the Board on an agenda item at the time the item is being discussed must submit a written request to the Chairperson of the Board prior to the opening of the meeting. Persons addressing the Board are allotted three minutes.

People with disabilities needing accommodations for effective participation in this meeting should email elections@michigan.gov or contact Lydia Valles at (517) 241-4662.

BUREAU OF ELECTIONS
RICHARD H. AUSTIN BUILDING • 1ST FLOOR • 430 W. ALLEGAN • LANSING, MICHIGAN 48918
www.Michigan.gov/sos • (517) 373-2540

Exhibit F

RANDOM SAMPLE SIGNATURE CANVASSING IN MICHIGAN

Michigan Department of State

1990

ACKNOWLEDGEMENTS

This report is based on a technical report Decision Rules for Canvassing Boards by Drs. Dennis C. Gilliland and James Stapleton, Department of Statistics and Probability, Michigan State University, 1977.

This revised version represents an update to the original Department of State Report Random Sample Signature Canvassing in Michigan, authored by Paul Eavy in 1979. Dr. James Stapleton is responsible for rewriting this updated version with assistance from the Research and Evaluation Division.

Individuals having questions on this report or the petition sampling process should refer them to the Michigan Department of State, Bureau of Elections.

CONTENTS

RANDOM SAMPLE SIGNATURE CANVASSING IN MICHIGAN

One of the responsibilities of the Michigan Board of State Canvassers is the validation of petitions submitted by candidates seeking elective offices, new political parties seeking ballot status and the proponents of ballot proposals. Under the validation procedures, the petitions must be canvassed to determine whether there are sufficient valid signatures for the person, party, or issue to be placed on the ballot.

All petitions for the 148 seats in the Michigan Legislature[1] and most petitions for the state's 18 U.S. Representative seats require fewer than 1000 valid signatures. Petitions for statewide offices, such as Governor or U.S. Senator, require approximately 7000 to 16,000 signatures. New political party petitions require an average of 20,000 signatures. While these relatively small petitions constitute the majority of the petitions submitted to the Board of State Canvassers, the bulk of the signatures arrive on a small number of petitions for ballot proposals--petitions for constitutional amendment, legislative initiative, and legislative referendum.[2]

The Board of State Canvassers must decide whether or not a sufficient number of valid signatures has been obtained. Because careful checks on all signatures are expensive and time-consuming, the sampling of signatures from the petitions for ballot proposals allows us to obtain reliable estimates of the number of valid signatures. There are well-established, formal sampling procedures which can be used to provide timely and accurate recommendations for the Board's decision. This discussion presents the

---

[1]Petitions for the 110 seats in the Michigan House of Representatives generally require fewer than 200 valid signatures, while most of the 38 Michigan Senate seats require fewer than 500.

[2]In Michigan, signature requirements for constitutional amendments, legislative initiatives, and legislative referenda are equal to 10%, 8%, and 5% respectively, of the total number of votes cast in the most recent gubernatorial election.

sampling theory behind these procedures and describes the use of these procedures for checking signatures from petitions for constitutional amendments, legislative initiatives, and legislative referenda.

THE PETITION CERTIFICATION PROCESS

The State of Michigan has approximately 6.6 million people of voting age. Its 83 counties contain over 1500 separate localities, each of which maintains voter registration records for its own residents. The four-member, bipartisan Michigan Board of State Canvassers is given the responsibility for determining whether a petition for a statewide ballot proposal does or does not have sufficient valid signatures to have the question involved placed on the ballot.[3] The Board is assisted in this task by the Elections Bureau of the Michigan Department of State.

People interested in placing an issue on the ballot must circulate a petition making sure they follow certain technical requirements determined by the Board. After securing the signatures, they file them with the Secretary of State. The Elections Bureau, working as staff for the Board of State Canvassers, counts the number of signatures received and checks the "petition sheets" (the physical sheets of paper on which the signatures are written) to see if they are filled out correctly. Petition sheets filled out incorrectly are disqualified. The Board of State Canvassers must determine if the remaining number of signatures belonging to registered voters in the indicated localities is high enough for the issue to be placed on the ballot.

---

[3]If a petition in support of a legislative initiative is deemed sufficient, the proposed legislation is presented to the state legislature. The legislature then has 40 session days to enact the proposed legislation, reject the proposed legislation, or take no action on the proposed legislation. Only in those instances where the legislature rejects or takes no action on the proposed legislation does the proposed legislation appear on the ballot in the form of a ballot question.

It would be highly unlikely that the State of Michigan would be willing to finance the verification of every signature (for example, there have been up to two million in past years) with the rolls of the local clerks. Such an undertaking would require thousands of labor hours to make photocopies, log, disperse, collect, and tabulate results; moreover, it would require hundreds of additional hours of labor by local clerks to do the actual checking of signatures.

The Board of State Canvassers has never had the resources to check every submitted signature with local clerks; instead, the Board has developed a series of technical checks to apply to signatures and assumes that signatures passing the technical checks are valid. While they do not give the precision of direct checks with the records, these technical checks have generally served as an acceptable basis for deciding if enough valid signatures have been submitted. Even these technical checks, however, require very large amounts of clerical effort for the constitutional amendment, legislative initiative, and legislative referendum petitions.

Checking every signature is unnecessary when the job can be done with very little loss in accuracy by using a randomly selected sample of signatures. The results achieved from a randomly-selected sample of signatures will correspond very closely (although not exactly) to results obtained if every signature were checked. Moreover, the margin of error for estimates obtained from a random sample of any given size is easily determined.

SAMPLING TO CERTIFY PETITIONS

To illustrate the use of sampling in this environment, suppose that the organizers of a petition drive submit X signatures of which N pass through checks for technical accuracy. Of these N signatures, let V denote the number of those signatures which belong to voters who are registered in the localities indicated. Let R denote the number of signatures of registered voters required for certification and placement on the ballot. The task of the Board of State Canvassers is to determine if V, the number of valid signatures submitted, is greater than R, the number of valid signatures required.

Let "$P=V/N$" be the proportion of signatures submitted which are valid and let "$P_R=R/N$" be the proportion of signatures submitted which are required to be valid. Then the Board must decide whether or not P is greater than or equal to P_R.

A "simple random sample of size n" is a sample taken from a finite population of size N in such a way that all possible subsets of size n are equally likely.[4] Thus, sampling is without replacement. For example, a population of 52 has $C_5^{52} = 2{,}598{,}960$ possible subsets of size 5. A simple random sample is therefore obtained only by a procedure which makes all of these subsets equally likely.

For a simple random sample of n signatures, let v be the number of valid signatures in the sample and let "$p=v/n$" be the proportion of valid signatures in the sample. If the signatures in the sample are randomly-selected, then p will be, on average, an unbiased estimator of P (which is the proportion valid of all signatures submitted). If the sample size is large, then the value of p will give a good indication of whether or

[4]It is traditional, in sample survey methodology, to use lowercase letters to symbolize quantities in a sample, and uppercase letters to symbolize corresponding quantities in the population from which the sample was drawn.

not P is at least as large as P_R. Ultimately this leads to a decision as to whether the petition should be certified. Table 1 defines the symbols which have been introduced.

TABLE 1. Symbols

A. Symbols used for the total population of signatures:

- N = the total number of signatures submitted which passed checks for technical accuracy.
- V = the number of the N signatures which are valid (belonging to voters registered in the locality indicated).
- P = V/N, the proportion of the N signatures which are valid.
- R = the number of valid signatures required for approval.
- P_R = R/N, the proportion of the N signatures required to be valid for approval.

B. Symbols used for samples of signatures:

- n = the number of signatures in the sample.
- v = the number of valid signatures in the sample.
- p = v/n, the proportion of the n-sampled signatures which are valid.

The objective is to see if P is at least as large as P_R. Since P is to be estimated by p, it would appear that the task is quite simple: just check the sampled signatures and then compare the resulting value of p to the value of P_R; if p is greater than or equal to P_R, then the petition is certified; otherwise, it is not.

An estimator p, determined from a sample, of a parameter P, determined from a population, is said to be precise if the probability is high that the sample obtained produces an estimate p close to P. The precision of an estimator p of a parameter P

is usually measured by its standard deviation (or standard error) or by the probability that p will be within a specified distance of P.

The precision of p as an estimator of P is a prime consideration, and a primary determinant of the precision of an estimator is the sample size. Estimates are almost never precisely correct; they are accurate within a range of values. As sample sizes become larger and larger, the estimates tend to vary less and less from the parameter being estimated. Samples of only nine or ten signatures would not offer enough precision for our decisions; whereas, samples of nine or ten thousand signatures would almost certainly provide enough precision. Sample size directly affects the precision of estimators.

WHAT LEVEL OF ACCURACY IS APPROPRIATE?

The question of precision is very important in this context because there is always a chance, however slight, that a petition which has sufficient valid signatures to be certified will have a sample drawn from it which indicates that there are insufficient valid signatures. There is also a chance that a petition having insufficient valid signatures will have a sample drawn from it indicating that there are sufficient valid signatures. The key to sampling lies in the selection of allowable limits of error which minimize the frequency of this kind of occurrence.

We have to determine the probability with which we will allow a petition to be certified, when the actual proportion of signatures valid on that petition is .01, or .02, or .03 below the proportion required. We must also decide on the probability with which we will allow denial of certification, when the proportion of signatures valid is .01, or .02, or .03 above the proportion required.

Sampling theory states that if a random sample of signatures is taken, there is close to 50% chance that the sample proportion, p, will be greater than or equal to the true proportion valid, P, and close to 50% chance that p will be less than P. Sampling theory also makes it possible to determine the probability that the distance of p from P will exceed any given distance. Decisions on petitions can be based upon the rule which certifies whenever the sampled value of p is greater than or equal to P_R, and denies certification whenever p is less than P_R. Let $G(P)$ be the probability that this rule will result in certification. Thus, for example, $G(.90)=.98$ means that for $P=.90$, this rule will certify for 98% of all possible samples of the given size. Then for $P < P_R$, $G(P)$ is the proportion of all samples which will falsely certify and for $P \geq P_R$, $1-G(P)$ is the proportion of all samples which will falsely deny certification.

Table 2 lists, and Figure 1 demonstrates graphically, the probabilities of making the types of mistakes discussed here for samples of size 500, 1000, and 2500. The figure illustrates a case in which 80% of the submitted signatures must be valid ($P_R=.80$), and the decision rule is:

Certify if $p \geq .80$ Deny Certification if $p < .80$

The vertical axis indicates the probability of certification, when P assumes the values indicated on the horizontal axis.

Figure 1 and Table 2 both show that as P gets further and further away from P_R, the probability of making the wrong decision approaches zero. This is true for all three sample sizes.

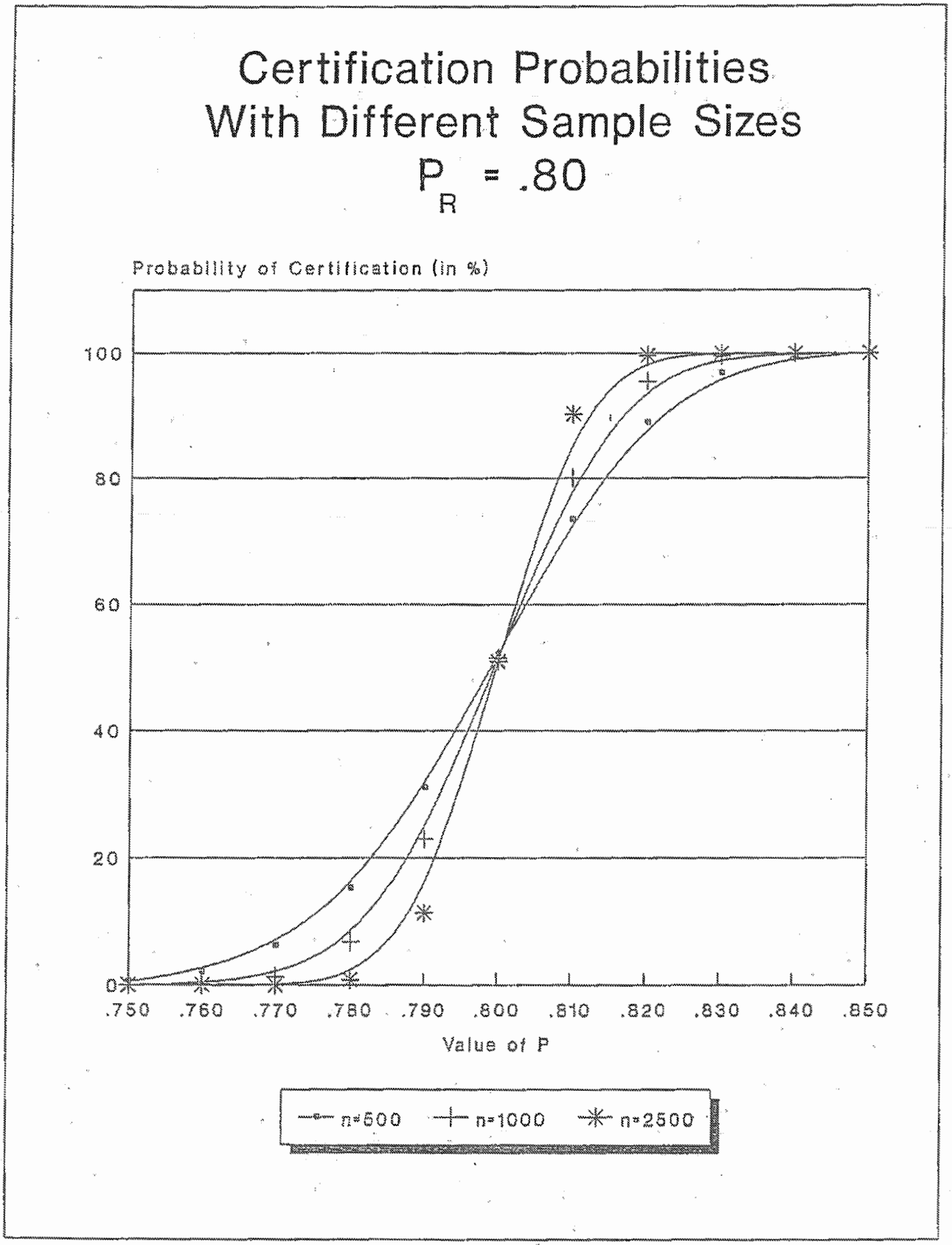
Figure 1 and Table 2 also indicate that as the sample size increases, the probability of making the wrong decision decreases for any given value of P. For example, for

P=.82 and P_R=.80, samples of size 500, 1000, and 2500 have a 11.1%, 4.6%, and 0.4% probability, respectively, of yielding the wrong result--a result indicating that certification should be denied. This means, for example, that if there were one hundred petitions submitted on which P=.82 and P_R=.80, and if each petition were checked with 500-signature samples, then 11 of the samples would be expected to have a sampled value of p which is less than .80 (incorrectly recommending denial of certification); 89 of the samples would be expected to have a sampled value of p which is greater than or equal to .80 (correctly recommending certification). Using one hundred samples of the 1000-signature samples, the sample would be expected to lead to the wrong decision about 5 times and the correct decision about 95 times. With one hundred 2500-signature samples, the sample would be expected to lead to the wrong decision once and the correct decision 99 times.

TABLE 2. Certification Probabilities With Different Sample Sizes When P_R=.80

Value of P	Probability of Certification (in %)		
	n=500	n=1000	n=2500
.750	0.6	.01	<0.1
.760	2.1	0.2	<0.1
.770	6.2	1.3	<0.1
.780	15.3	6.8	0.8
.785	22.3	13.2	3.5
.790	31.1	23.0	11.4
.795	41.2	36.2	27.6
.798	47.8	45.3	41.1
.799	50.0	48.4	46.0
.800	52.2	51.6	51.0
.801	54.5	54.7	56.0
.802	56.7	57.9	60.9
.805	63.3	67.0	74.4
.810	73.5	80.1	90.3
.815	82.2	89.7	97.5
.820	88.9	95.4	99.6
.830	96.8	99.5	>99.9
.840	99.4	>99.9	>99.9
.850	>99.9	>99.9	>99.9

Figure 1



Notice that in the case in which P is exactly equal to P_R all three sample sizes shown have a probability of certification slightly above 50%.[5]

The idea of setting up a checking system which allows any amount of error is totally unacceptable to some people. Their argument is that if a petition has the exact number of valid signatures required, it must be certified; and if the petition has one less than the number of valid signatures required, certification must be denied. People taking this view would likewise be totally against sampling, for while a sample may be very good at telling whether a petition is within 5% of its goal, or perhaps even if it is within 0.5% of its goal, it cannot tell whether a petition is within one signature of its goal.

Perfect accuracy, while unassailable from a theoretical standpoint, has remained unattainable from a practical or administrative standpoint. Perfect accuracy would require meticulous checking of all signatures submitted. With over 1500 localities to which to take the signatures and over 58,000 square miles of area to cover, checking hundreds of thousands of signatures would be a tremendously expensive task.

One practical point to consider here is that the actual proportion valid on petitions submitted may turn out to be much higher or much lower than the proportion required; how much accuracy is needed, therefore, and consequently, how large the sample needs to be, depends entirely on how close petition organizers usually are to meeting their goals. Logically, if the actual proportion valid on petitions is never closer than .05 to the proportion needed, then the sample only needs to be accurate to within .05 of

---

[5]To demonstrate, suppose that a petition requires 286,721 valid signatures for approval. Suppose further, that petition organizers submit 358,401 signatures, of which 286,721, the exact number required, are valid. With P equal to .80000 Figure 1 shows that the petition would have a slightly more than a 50% chance of approval, for any of the three sample sizes. If only 286,720 signatures, one less than the number required, had been valid, then P would equal .79999, but there would still be a slightly more than 50% chance of approval.

the actual value in order to give a correct decision. If P_R equals .80, for example, and the proportion valid is never closer than .05 to the proportion required (i.e., P is either less than .75 or greater than .85), a sample of 500 randomly-selected signatures would provide at least 99.5% chance of making the correct decision. (See Table 2 or Figure 1.) If P_R equals .80 and the proportion valid is never closer than .03 to the proportion required (i.e., P is either less than .77 or greater than .83), checking a sample of size 2500 would be nearly as accurate as checking every signature, for it would provide more than 99.9% certainty in the correctness of the result.

SPECIFICATION OF ACCURACY REQUIREMENTS

The Board of State Canvassers has used sampling to verify petitions since 1978. In order to avoid errors yet control the costs of administering a sampling plan, the Board applies the following principle:

> Accuracy Requirement: Draw samples of sufficient size to ensure that there is less than a 10% chance of making the wrong decision when P differs from P_R by .01 or more.

If, for example, P_R=.90 and P=.91 then the sample size must be large enough so that there is only a 10% chance of denying certification. This same sample size must be such that for P_R=.90, P=.89, the chance of certifying is at most 10%. We will refer to this accuracy requirement as the "(.01, 10%) rule".

SAMPLING PLANS

A number of ways of sampling meet the specified accuracy requirements. The two considered for use in this process are one- and two-stage sampling.

Plan A. One-Stage Simple Random Sample

Suppose one sample of size n is to be taken. For any value of P_R, the necessary sample size in order to satisfy the (.01, 10%) rule is given by the formula:

$$\text{Sample Size} = n = 1.282^2 \, (P_R - .01) \, (1-(P_R - .01))/.01^2$$

For $P_R > .95$, the Poisson approximation was used. The quantity $(P_R - .01)(1-(P_R - .01))$ gets larger as P_R gets closer to .51. This condition is reflected in required sample sizes shown in Table 3, which vary from a low of 333 signatures for $P_R = .99$ to a high of 4109 for $P_R = .51$. Using Plan A, the sampled signatures could be checked, p determined, and the decision made using the following criterion:

1. Certify if $p \geq P_R$.
2. Deny certification if $p < P_R$.

TABLE 3. Sample Size Requirements for Plan A (One-Stage Sampling)

P_R	SAMPLE SIZE	P_R	SAMPLE SIZE	P_R	SAMPLE SIZE
.51	4109	.68	3634	.85	2209
.52	4107	.69	3576	.86	2095
.53	4102	.70	3515	.87	1979
.54	4094	.71	3451	.88	1859
.55	4082	.72	3384	.89	1736
.56	4067	.73	3313	.90	1609
.57	4050	.74	3239	.91	1479
.58	4028	.75	3162	.92	1346
.59	4004	.76	3082	.93	1210
.60	3976	.77	2998	.94	1070
.61	3944	.78	2911	.95	900
.62	3910	.79	2820	.96	700
.63	3872	.80	2727	.97	590
.64	3831	.81	2630	.98	400
.65	3787	.82	2529	.99	333
.66	3739	.83	2426		
.67	3688	.84	2319		

PLAN B. Two-Stage Sampling

One-stage sampling requires that a fixed number n of signatures be sampled, whose value depends on P_R. Large values of P_R lead to smaller sample sizes. Since past experience has indicated that P usually ranges between .75 and .95, for $P_R < .75$ it might be possible to reduce the average sample size by using a two-stage plan. Then, if the first step of the two-stage plan provides sufficient evidence, the decision may be made immediately. If, on the other hand, the first step indicates a "close call," a second step can be taken in order to provide a more precise estimator of P.

More precisely, the two-stage plan may be described as follows:

Step 1: Take an initial sample of $n_1 = 500$ signatures and check them with the local clerks. Let X_1 = number of valid signatures among these n_1, and let c_1 (lower bound) and c_2 (upper bound) be two integers such that:

1. If X_1 is greater than or equal to c_2, then certify.
2. If X_1 is less than or equal to c_1, deny certification.
3. If neither 1 nor 2 occur, then go on to Step 2.

Step 2: Take a second sample of n_2, whose value depends on P_R. (See Table 4.) Let X_2 = number of valid signatures, among these n_2. Determine $\hat{p} = (X_1+X_2) / (n_1+n_2)$, the proportion of valid signatures in the combined samples.

Then:

1. Certify if $\hat{p} \geq P_R$.
2. Deny certification if $\hat{p} < P_R$.

Table 4 presents the sample sizes necessary for the second step of sampling for varying values of P_R. A comparison of Table 4 to Table 3 indicates that if a second step of sampling is required, the total number of signatures sampled under Plan B will be greater than the total sampled under Plan A. When P_R=.86, for example, the initial sample of 500, to which must be added a second-step sample of 1906 (Table 4), yields a total of 2406 signatures sampled for Plan B. For the same value of P_R, Plan A will require only 2095 signatures.

TABLE 4. Sample Size Requirements for Step 2 of Plan B[1]
(Two-Stage Sampling)

P_R	SECOND SAMPLE SIZE	P_R	SECOND SAMPLE SIZE	P_R	SECOND SAMPLE SIZE
.51	4382	.67	3810	.83	2320
.52	4380	.68	3722	.84	2315
.53	4371	.69	3845	.85	2087
.54	4357	.70	3736	.86	1906
.55	4338	.71	3624	.87	1826
.56	4313	.72	3471	.88	1634
.57	4282	.73	3352	.89	1535
.58	4247	.74	3438	.90	1336
.59	4165	.75	3299	.91	1215
.60	4120	.76	3122	.92	979
.61	4299	.77	2986	.93	828
.62	4237	.78	3033	.94	722
.63	4169	.79	2874	.95	556
.64	4096	.80	2680		
.65	4019	.81	2525		
.66	3936	.82	2489		

[1]Step 1 sample size is 500 signatures.

In general, n_2 (the second sample size) decreases as P_R increases from .50. Increases at P_R=.61, .69, .74, and .78 are due to the fact that the first-step probabilities of error for $P = P_R - .01$ vary slightly from the nominal .025.

n_2 may be computed in approximation by:

$$n_2 = -19707.6\, P_R^2 + 19921\, P_R - 614.2$$

Appendix C lists values of c_1, c_2, and n_2 for varying values of P_R (for P_R=.500, .501, ..., .959).

COMPARISON OF PLANS A & B

Since Plan A and Plan B both conform to the (.01, 10%) rule, a primary basis for comparison of the two plans is the administrative expense they incur. If the cost of administration is roughly proportional to the number of signatures checked, the main criterion for comparison of the two plans may be taken to be the expected sample size required for each.

Under Plan B with $P_R = .81$ and $n_1 = 500$, the second sample must have $n_2 = 2525$ signatures so that a total of 3025 signatures is required. (See Appendix C.) This contrasts to 2630 signatures required under Plan A. However, for $P = .78$, the probability that a second sample is necessary is .392, so that the expected sample size is 500 + (.392)(2525) = 1490. (See Appendix Table B-1.) For $P_R = .81$, $P = .81$ the probability that a second sample is necessary rises to .846 and the expected sample size becomes 2636, slightly more than the sample size 2630 needed for Plan A.

P_3, the probability that a second sample is necessary, is maximized for $P = P_R$. It follows that the expected sample size is largest for $P = P_R$. As Table 5 illustrates, this maximum expected sample size is slightly larger for smaller $P = P_R$ and slightly smaller for larger $P = P_R$, than the single sample size needed under Plan A.

TABLE 5. Values of n_2, P_3, and EN for Plan B for Selected Values of $P = P_R$.

$P = P_R$	n_2	P_3	EN	Sample Size for Plan A
.50	4382	.871	4317	4107
.55	4338	.873	4289	4082
.60	4120	.868	4079	3976
.65	4019	.866	3979	3787
.70	3736	.856	3700	3515
.75	3299	.851	3309	3162
.80	2680	.838	2742	2727
.85	2087	.812	2193	2209
.90	1336	.795	1563	1609
.95	556	.634	858	900

Thus, in terms of expected sample size, Plan B is approximately the same as Plan A for P values near P_R; and whenever P is even moderately different than P_R, Plan B produces a much smaller expected sample size. Table B-1 shows, for example, that for $P_R = .81$, expected sample sizes for $P = .77, .79, .81, .83, \& .85$ are, respectively, 1036, 2018, 2636, 2049, & 931. These compare to the sample size $n = 2630$ for $P_R = .81$ for Plan A.

Timeliness

Even though Plan B appears to save sampling cost over Plan A, there may be occasions where timeliness is more critical than cost. Since the sampling of Plan B is performed sequentially--that is, the second step is not sampled and checked until results of the first step are in--Plan B would potentially require more time to implement than Plan A. Situations may arise where there is insufficient time to carry out Plan B

through the second step of sampling, but sufficient time to sample the number called for by Plan A. For example, a petition may require that 92% of the submitted signatures be valid for certification (P_R=.92). The time required to check this petition using Plan A would be the amount of time needed to draw, check, and tabulate results on one sample of 1346 signatures (Table 3). The time required to check this petition using Plan B could be either greater or less than Plan A.

Case 1. The first sample of 500 is all that is needed to make a decision. In this event, the time required is the amount of time needed to draw, check, and tabulate results on a sample of 500 signatures. This process would, of course, take less time than checking the 1346 signatures.

Case 2. If the first sample is inconclusive, then a second step of sampling is required. In this event, the time required is the amount of time needed to draw, check, and tabulate results on a sample of 500 signatures, plus the time needed to draw, check, and tabulate results on an additional sample of 979 signatures. This process would obviously take more time than checking a single sample of 1346 signatures.

Due to the uncertainty involved, it is impossible to know which of the two plans will save more time in a given situation. We could argue that Plan B will have shorter execution times on average, since it has smaller sample sizes on the average. Knowing that it is more timely on average, does not address what will happen in any specific instance. If it is absolutely imperative that the sampling be performed on-time, in a given situation, not just performed on-time on average, then Plan A would be the safer option.

In summary, Plan B is preferable to Plan A for the general case of sampling for petition certification. The lower average sample sizes and corresponding lower sampling costs of Plan B make it the logical choice for most situations. In situations where time

permits taking no more than one sample, Plan A (the one-stage sample) will be required.

Since Plan A and Plan B are interchangeable in terms of the level of accuracy afforded by each, it makes no difference, from the standpoint of accuracy, which one is used. While Plan B will be more likely to save money and time on average, there will be specific cases where Plan A is more convenient to administer. In the event that time requirements will make it difficult or impossible to complete the two stages of Plan B, Plan A should be used.

CHECKING SIGNATURES WITH LOCAL CLERKS

Once the decision is made to sample signatures, the method of checking the sampled signatures becomes very important. Any check which does not rely on a direct check of the registration records carries the risk of discarding signatures of registered voters on technicalities, and accepting signatures of fictitious voters merely because petitions appear to be filled out correctly.

The manner in which the check of signatures is made is important. Previously, three different ways of checking signatures were tried--by mail, by phone, and in-person. The mail was found to be too slow and unreliable for needs, and telephone checks were found to yield inconsistent results. In-person checks, for which agents hand-delivered the sampled signatures to local clerks for direct checking with the records, yielded the most accurate results and are now required for any sampling for petition certification.

There may be cases where signatures cannot be verified due to illegibility or the Department's inability to contact the appropriate city or township clerk. To remedy this problem, it has been the Board of Canvassers' practice to drop such signatures from

the sample. In anticipation of such occurrences, a sample of 500 will include 10 to 15 extra signatures that can randomly replace any dropped signatures; thereby, preserving the original sample size.

EXTENSION OF SAMPLING TO OTHER TYPES OF PETITIONS

The sampling plans developed so far have been designed for use only with large petitions--constitutional amendments, legislative initiatives, and legislative referenda. While extension of the use of sampling to smaller petitions, say those for Governor or U.S. Senator, is theoretically possible, some factors make this extension impractical.

The first consideration is that petitions for Governor or U.S. Senator have a much smaller number of signatures, so checking them with the existing system of technical checks is feasible. Petitions for the Office of Governor, for example, require only a fraction of the signatures required on petitions for constitutional amendments. Given smaller petition size, even if 15 candidates file for the offices of Governor and U.S. Senator, it is still easier to check all 15 using the system of technical checks, than it would be to check just one petition for a constitutional amendment the same way. It may be easier administratively to perform surface checks on 15 petitions than to process 15 separate samples of signatures. It should be noted here that random sampling had been attempted on several of the smaller 1978 petitions, and it proved to be both an unwieldy task to manage and a burden on local clerks.

The second consideration centers around the differential time constraints involved. For constitutional amendments, petitions must be filed with the Elections Bureau 120 days before the general election and a decision on certification of the petition must be reached 60 days before the general election. For elected offices, petitions must be filed 84 days before, and a decision on certification must be reached 63 days before

the date of the primary election. The Elections Bureau then has 60 days to check the large petitions, but only 21 days to check the petitions for statewide office. It would not be physically possible to check 15 petitions, via random samples, in 21 days.

One objection to the use of technical checks is that a system of technical checks carries with it the presumption that those signatures passing the check do belong to registered voters. Because no such presumption of validity is made with the direct checks utilized by sampling, it would appear that a system of technical checks is less accurate than one using random sampling. This objection is partially met by already-existing provisions for challenging signatures which are presumed valid (by checking the signatures in question directly with local clerks).

In sum, while it is theoretically possible to extend sampling to the smaller petitions, the size of the smaller petitions does not necessitate sampling. The time requirements are such that sampling would be impossible to complete, and provisions for monitoring the accuracy of technical checks have been made.

CONCLUSIONS AND RECOMMENDATIONS

Random sampling is feasible for canvassing ballot question petitions in Michigan and has the four following points in its favor:

1. A random sample produces an unbiased estimate of the proportion of valid signatures. The sampling system is not biased either for or against the petition being examined.

2. Sampling, in the ways specified, provides an acceptable level of accuracy.

3. The actual cost of checking appears to be within current financial limits.

4. The administrative tasks (securing large amounts of labor for a short period of time, enlisting the support of local clerks, and overseeing the whole operation) and the time constraints are manageable.

Random sample canvassing offers a reliable and workable basis for certification decisions regarding petitions for constitutional amendments, legislative initiatives, and legislative referenda. To summarize, the specific assumptions, decisions, and requirements that accompany the acceptance of this sampling scheme follow:

Random Sampling:

1. Accuracy Requirement. Draw samples of sufficient size to ensure that there is less than a 10% chance of making the wrong decision when P differs from P_R by .01 or more.

2. Decisions must be unbiased. It is just as undesirable to certify a petition which has insufficient valid signatures as it is to deny certification to a petition which has sufficient valid signatures.

3. Sampling options. Plan A and Plan B could be used interchangeably. Administrative constraints will determine which is more appropriate to use in a particular situation.

4. Checking Requirement. Checks of signatures must be made directly and in-person with local clerks. This process is done to maximize accuracy in checking.

5. Extent of sampling. Sampling is only to be used on the very large petitions: constitutional amendments, legislative initiatives, and legislative referenda.

APPENDIX A

MATHEMATICAL DESCRIPTION OF
SAMPLING PLAN B (TWO-STAGE SAMPLING)

Let n_1 be the first step sample size. As described here Plan B always has $n_1 = 500$. Let X_1 be the number of valid signatures among these n_1. Let n_2 be the second step sample size, and let X_2 be the number of valid signatures among these n_2.

Plan B chooses two integers c_1 and c_2, with $c_1 < c_2$, as follows:

$$c_1 = [n_1(P_R+.01) + 0.5 - 1.96\ \{(P_R+.01)(1-P_R-.01)n_1\}^{1/2}]$$

$$c_2 = [n_1(P_R-.01) + 0.5 + 1.96\ \{(P_R-.01)(1-P_R+.01)n_1\}^{1/2}]$$

For $X_1 \leq c_1$, certification is denied.

For $X_1 \geq c_2$, certification is approved.

For $c_1 < X_1 < c_2$, a second step sample is taken.

c_1 and c_2 have been chosen so that:

$P(X_1 \leq c_1) = P(\text{denial of certification}) = .025$ for $P=P_R + .01$

$P(X_1 \geq c_2) = P(\text{certification}) = .025$ for $P=P_R - .01$

After the second step sample, the certification is approved if:
$\hat{p} = (X_1 + X_2) / (n_1 + n_2) \geq P_R$.

Let $P_1 = P(X_1 \geq c_2)$ and $P_2 = P(c_1 < X_1 < c_2, \hat{p} \geq P_R)$. Then

$P_c = P(\text{certification}) = P_1 + P_2$.

n_2 is chosen so that:

$P_c = P(\text{certification})$ $= .10$ for $P = P_R - .01$
$= .90$ for $P = P_R + .01$

P_1 and P_2 may be found from normal approximations as follows. For P the true proportion valid, define

$$z_1 = (c_1 + 1/2 - n_1P)/(n_1P(1 - P))^{1/2}$$
$$z_2 = (c_2 - 1/2 - n_1P)/(n_1P(1 - P))^{1/2}$$
$$z_3 = [(n_1 + n_2)^{1/2}(P_R - P) - 1/2]/(P(1 - P))^{1/2}$$

Let $\Phi(z)$ be the area under the standard normal density $-\infty$ to z. For (Z, Z') having a standard bivariate normal distribution with correlation ρ, let $L(t, s, \rho) = P(Z > t, Z' > s)$. Then

$$P_1 = 1 - \Phi(z_2)$$
$$P_2 = L(z_1, z_3, \rho) - L(z_2, z_3, \rho),$$

where $\rho = (n_1/(n_1 + n_2))^{1/2}$.

The probability that a second sample is necessary is $P_3 = \Phi(z_2) - \Phi(z_1)$, so that the expected sample size is

$$EN = n_1 + n_2P_3$$

A computer program for the computation of c_1, c_2, P_1, P_2, and EN for given P_R, n_1, n_2, and another to compute n_2 so that $P_c = .10$ for $P = P_R - .01$ has been written in the computer language APL. It is now available on the AT&T 7300 and may be used on an IBM microcomputer if Scientific Time Sharing Corporation's APL is available. The program was written by J. Stapleton.

APPENDIX B

THE SAMPLING PLAN FOR $P_R = .81$

As an example consider the sample plan for $P_R = .81$. That is, the required number of valid signatures is 81% of the total number of face-valid signatures submitted. Formulas in Appendix A may be used to determine integers $c_1 = 393$ and $c_2 = 418$. These integers will vary with P_R. Let X_1 = number of valid signatures in the first step sample.

For: $X_1 \geq 418$, certify.

$X_1 \leq 393$, deny certification.

$393 < X_1 < 418$, take a second sample.

The technical supplement can be used to determine the value of n_2. (See Table 4.) For $P_R = .81$, $n_2 = 2525$. After the second step sampling, the petition is certified if the proportion of valid signatures in the combined samples is at least .81, that is:

$$\hat{p} = (X_1 + X_2)/(n_1 + n_2) \geq .81.$$

Otherwise, certification is denied.

The performance of sampling Plan B may be described in terms of four probabilities:

P_1 = probability of certification at Step 1

P_2 = probability that Step 2 is necessary and the decision is to certify

$P_C = P_1 + P_2$ = probability of certification

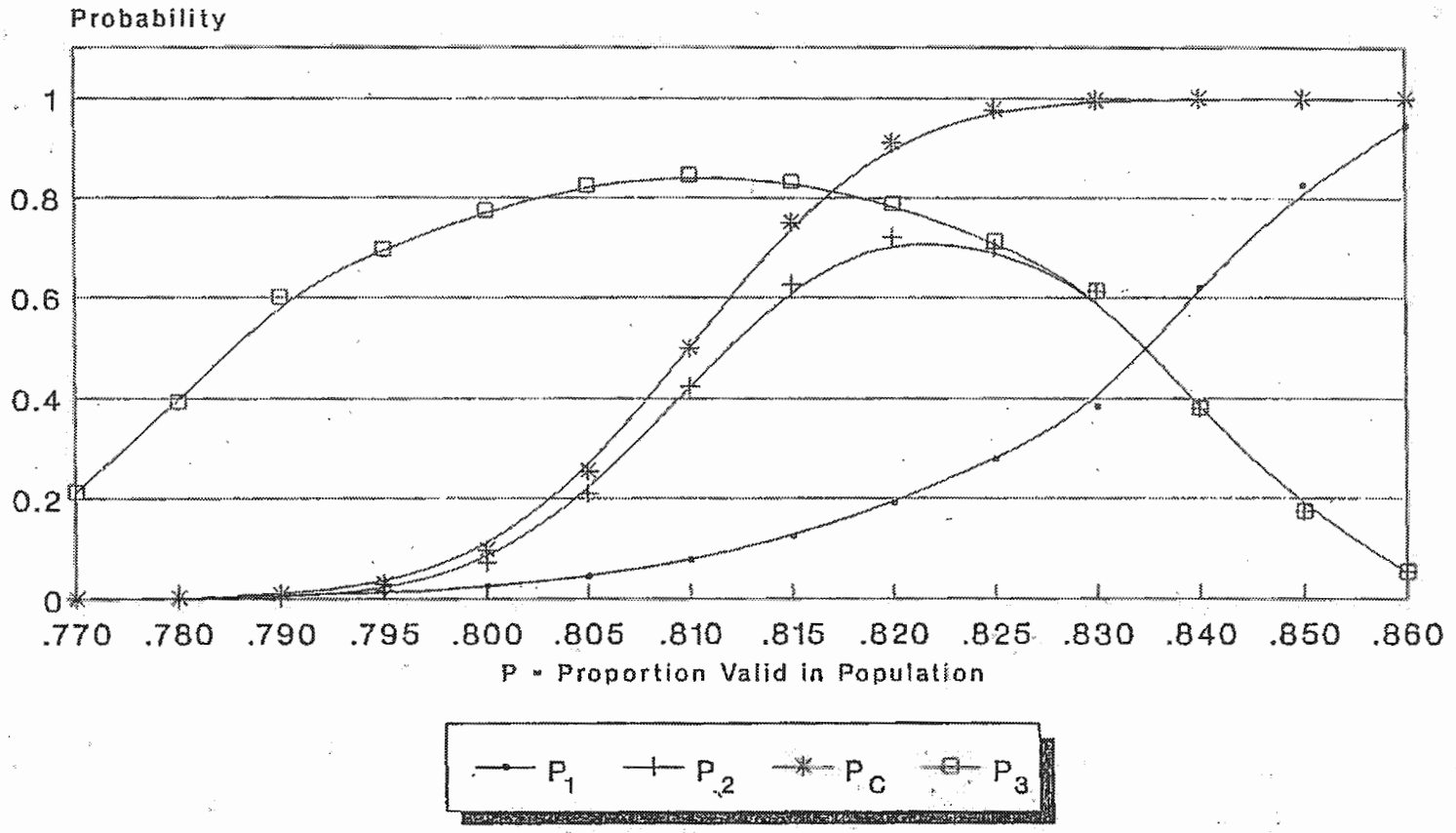
P_3 = probability that Step 2 is necessary

Also of interest is the expected sample size EN, the average long-run number of signatures checked for this P_R. Of course, these probabilities P_1, P_2, P_3, P_C, and EN all depend on P, the proportion of valid signatures in the population. They do not depend on the population size, as long as the sample sizes are considerably less than the population size (less than 10%, as is certainly the case here). These probabilities for $P_R = .81$, $c_1 = 393$, and $c_2 = 418$ are given to three decimal places in Table B-1.

Table B-1. Performance Probabilities and Expected Sample Sizes for Specified Values of P for P_R = .81, n_2 = 2525, for Plan B

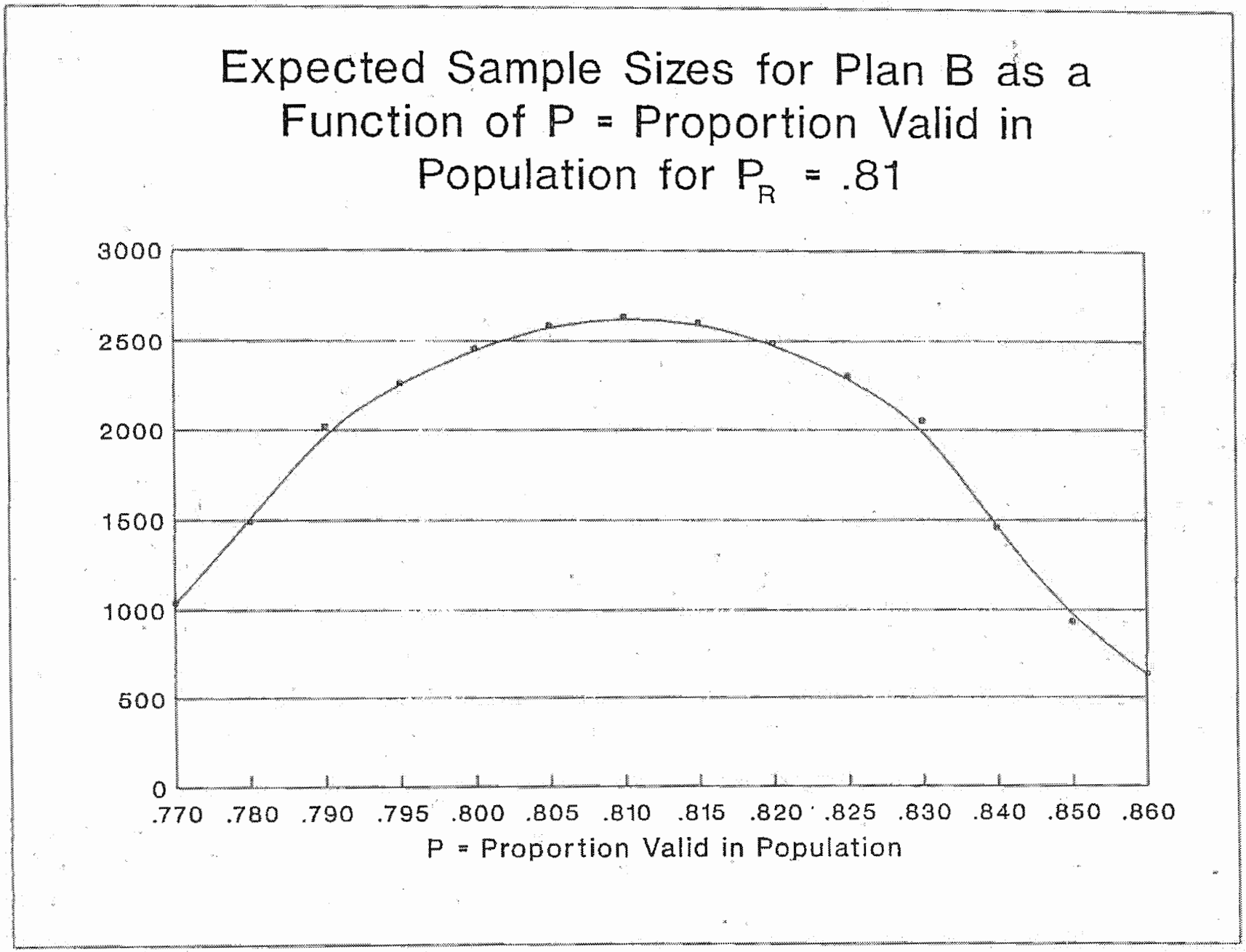
P	P_1	P_2	P_C	P_3	EN
.770	.000	.000	.000	.212	1036
.780	.001	.000	.002	.392	1490
.790	.007	.003	.010	.601	2018
.795	.013	.018	.031	.697	2260
.800	.025	.073	.098	.774	2454
.805	.045	.209	.254	.825	2584
.810	.077	.423	.500	.846	2636
.815	.125	.626	.751	.833	2604
.820	.191	.722	.912	.788	2489
.825	.278	.699	.978	.713	2299
.830	.383	.612	.995	.613	2049
.840	.620	.380	1.000	.380	1459
.850	.826	.174	1.000	.174	931
.860	.946	.054	1.000	.054	635

Performance Probabilities as a Function of P = Proportion Valid in Population for P_R = .81



P_1 = Probability of Certification at Step 1
P_C = P_1 + P_2 = Probability of Certification

P_2 = Probability of Certification at Step 2
P_3 = Probability that Step 2 is necessary



APPENDIX C

PLAN B PARAMETER VALUES

The table below gives values of c_1, c_2, and n_2 for each value of P_R, for $P_R = .500, .501, \ldots, .959$. If the number of valid signatures in the first sample of 500 is less than or equal to c_1, the certification is denied. If the number is greater than or equal to c_2, the petition is certified. If the number is greater than c_1, but less than c_2, a second sample of n_2 is taken.

P_R	c_1	c_2	n_2	P_R	c_1	c_2	n_2
.500	233	267	4382	.538	252	286	4360
.501	234	267	4484	.539	253	286	4461
.502	234	268	4381	.540	253	287	4357
.503	235	268	4485	.541	254	287	4458
.504	235	269	4381	.542	254	288	4354
.505	236	269	4486	.543	255	288	4454
.506	236	270	4382	.544	255	289	4350
.507	237	270	4486	.545	256	289	4450
.508	237	271	4382	.546	256	290	4346
.509	238	271	4486	.547	257	290	4446
.510	238	272	4382	.548	257	291	4342
.511	239	272	4486	.549	258	291	4441
.512	239	273	4382	.550	258	292	4338
.513	240	273	4486	.551	259	292	4437
.514	240	274	4382	.552	259	293	4333
.515	241	274	4486	.553	260	293	4432
.516	241	275	4381	.554	260	294	4328
.517	242	275	4485	.555	261	294	4427
.518	242	276	4381	.556	261	295	4323
.519	243	276	4484	.557	262	295	4421
.520	243	277	4380	.558	262	296	4318
.521	244	277	4483	.559	263	296	4416
.522	244	278	4378	.560	263	297	4313
.523	245	278	4481	.561	264	297	4410
.524	245	279	4377	.562	264	298	4307
.525	246	279	4480	.563	265	298	4404
.526	246	280	4375	.564	265	299	4301
.527	247	280	4478	.565	266	299	4397
.528	247	281	4373	.566	266	300	4295
.529	248	281	4476	.567	267	300	4391
.530	248	282	4371	.568	267	301	4289
.531	249	282	4473	.569	268	301	4384
.532	249	283	4369	.570	268	302	4282
.533	250	283	4471	.571	269	302	4377
.534	250	284	4366	.572	269	303	4276
.535	251	284	4468	.573	270	303	4370
.536	251	285	4363	.574	270	304	4269

P_R	c_1	c_2	n_2	P_R	c_1	c_2	n_2
.576	271	305	4262	.624	296	328	4211
.577	272	305	4355	.625	296	329	4105
.578	272	306	4254	.626	297	329	4197
.579	273	306	4347	.627	297	330	4093
.580	273	307	4247	.628	298	330	4183
.581	274	307	4339	.629	298	331	4080
.582	274	308	4239	.630	299	331	4169
.583	275	308	4331	.631	299	332	4066
.584	275	309	4231	.632	300	332	4155
.585	276	309	4322	.633	301	333	4012
.586	276	310	4223	.634	301	333	4140
.587	277	310	4313	.635	302	334	3999
.588	278	311	4174	.636	302	334	4126
.589	278	311	4303	.637	303	335	3985
.590	279	312	4165	.638	303	335	4111
.591	279	312	4294	.639	304	336	3971
.592	280	313	4157	.640	304	336	4096
.593	280	313	4285	.641	305	337	3957
.594	281	314	4148	.642	305	337	4081
.595	281	314	4275	.643	306	338	3943
.596	282	315	4139	.644	306	338	4066
.597	282	315	4265	.645	307	339	3929
.598	283	316	4130	.646	307	339	4051
.599	283	316	4255	.647	308	340	3915
.600	284	317	4120	.648	308	340	4035
.601	284	317	4245	.649	309	341	3900
.602	285	318	4110	.650	309	341	4019
.603	285	318	4235	.651	310	342	3885
.604	286	319	4101	.652	310	342	4003
.605	286	319	4224	.653	311	342	4096
.606	287	320	4090	.654	311	343	3986
.607	287	320	4213	.655	312	343	4079
.608	288	320	4311	.656	312	344	3970
.609	288	321	4201	.657	313	344	4061
.610	289	321	4299	.658	313	345	3953
.611	289	322	4190	.659	314	345	4044
.612	290	322	4287	.660	314	346	3936
.613	290	323	4178	.661	315	346	4026
.614	291	323	4275	.662	315	347	3920
.615	291	324	4167	.663	316	347	4008
.616	292	324	4262	.664	316	348	3903
.617	292	325	4155	.665	317	348	3990
.618	293	325	4250	.666	317	349	3886
.619	293	326	4143	.667	318	349	3972
.620	294	326	4237	.668	319	350	3832
.621	294	327	4131	.669	319	350	3952
.622	295	327	4224	.670	320	351	3810
.623	295	328	4118	.671	320	351	3934

P_R	c_1	c_2	n_2	P_R	c_1	c_2	n_2
.672	321	352	3793	.720	346	375	3471
.673	321	352	3915	.721	346	375	3586
.674	322	353	3775	.722	347	376	3448
.675	322	353	3896	.723	347	376	3562
.676	323	354	3758	.724	348	377	3425
.677	323	354	3877	.725	348	377	3537
.678	324	355	3740	.726	349	378	3402
.679	324	355	3858	.727	349	378	3512
.680	325	356	3722	.728	350	379	3375
.681	325	356	3839	.729	350	379	3486
.682	326	357	3704	.730	351	380	3352
.683	326	357	3819	.731	351	380	3461
.684	327	358	3686	.732	352	381	3328
.685	327	358	3799	.733	352	381	3436
.686	328	359	3667	.734	353	382	3305
.687	328	359	3780	.735	353	382	3411
.688	329	359	3867	.736	354	383	3281
.689	329	360	3758	.737	354	383	3385
.690	330	360	3845	.738	355	384	3258
.691	330	361	3738	.739	355	384	3360
.692	331	361	3824	.740	356	384	3438
.693	331	362	3718	.741	357	385	3296
.694	332	362	3802	.742	357	385	3409
.695	333	363	3661	.743	358	386	3271
.696	333	363	3780	.744	358	386	3382
.697	334	364	3640	.745	359	387	3246
.698	334	364	3758	.746	359	387	3354
.699	335	365	3620	.747	360	388	3220
.700	335	365	3736	.748	360	388	3327
.701	336	366	3595	.749	361	389	3195
.702	336	366	3713	.750	361	389	3299
.703	337	367	3575	.751	362	390	3165
.704	337	367	3691	.752	362	390	3271
.705	338	368	3554	.753	363	391	3140
.706	338	368	3669	.754	363	391	3244
.707	339	369	3533	.755	364	392	3114
.708	339	369	3646	.756	364	392	3216
.709	340	370	3512	.757	365	393	3089
.710	340	370	3624	.758	366	393	3150
.711	341	371	3491	.759	366	394	3065
.712	341	371	3601	.760	367	394	3122
.713	342	372	3470	.761	367	394	3233
.714	342	372	3578	.762	368	395	3095
.715	343	372	3661	.763	368	395	3203
.716	343	373	3554	.764	369	396	3068
.717	344	373	3637	.765	369	396	3174
.718	344	374	3531	.766	370	397	3041

P_R	c_1	c_2	n_2	P_R	c_1	c_2	n_2
.768	371	398	3013	.816	396	420	2599
.769	371	398	3114	.817	397	421	2474
.770	372	399	2986	.818	397	421	2564
.771	372	399	3084	.819	398	422	2442
.772	373	400	2958	.820	399	422	2489
.773	373	400	3054	.821	399	423	2408
.774	374	401	2931	.822	400	423	2455
.775	374	401	3025	.823	400	424	2376
.776	375	402	2899	.824	401	424	2421
.777	376	402	2956	.825	401	425	2344
.778	376	402	3065	.826	402	425	2387
.779	377	403	2928	.827	402	425	2481
.780	377	403	3033	.828	403	426	2354
.781	378	404	2898	.829	403	426	2444
.782	378	404	3001	.830	404	427	2320
.783	379	405	2869	.831	404	427	2407
.784	379	405	2970	.832	405	428	2286
.785	380	406	2840	.833	406	428	2331
.786	380	406	2938	.834	406	429	2251
.787	381	407	2811	.835	407	429	2295
.788	381	407	2906	.836	407	430	2218
.789	382	408	2781	.837	408	430	2259
.790	382	408	2874	.838	408	431	2185
.791	383	409	2752	.839	409	431	2224
.792	384	409	2804	.840	409	431	2315
.793	384	410	2721	.841	410	432	2189
.794	385	410	2773	.842	410	432	2276
.795	385	411	2692	.843	411	433	2154
.796	386	411	2742	.844	412	433	2198
.797	386	411	2844	.845	412	434	2118
.798	387	412	2711	.846	413	434	2161
.799	387	412	2810	.847	413	435	2083
.800	388	413	2680	.848	414	435	2124
.801	388	413	2776	.849	414	436	2049
.802	389	414	2649	.850	415	436	2087
.803	389	414	2743	.851	415	437	2015
.804	390	415	2618	.852	416	437	2050
.805	390	415	2709	.853	416	437	2136
.806	391	416	2588	.854	417	438	2015
.807	392	416	2637	.855	418	438	2056
.808	392	417	2555	.856	418	439	1977
.809	393	417	2604	.857	419	439	2017
.810	393	418	2525	.858	419	440	1941
.811	394	418	2571	.859	420	440	1979
.812	394	418	2670	.860	420	441	1906
.813	395	419	2539	.861	421	441	1941
.814	395	419	2635	.862	421	442	1871
.815	396	420	2507	.863	422	442	1904

P_R	c_1	c_2	n_2	P_R	c_1	c_2	n_2
.864	422	442	1987	.912	449	464	1174
.865	423	443	1867	.913	450	464	1197
.866	424	443	1905	.914	450	465	1135
.867	424	444	1828	.915	451	465	1153
.868	425	444	1865	.916	452	466	1052
.869	425	445	1791	.917	452	466	1111
.870	426	445	1826	.918	453	467	1015
.871	426	446	1755	.919	453	467	1067
.872	427	446	1787	.920	454	468	979
.873	427	447	1719	.921	454	468	1027
.874	428	447	1749	.922	455	468	1044
.875	429	447	1787	.923	456	469	941
.876	429	448	1709	.924	456	469	1000
.877	430	448	1745	.925	457	470	904
.878	430	449	1671	.926	457	470	958
.879	431	449	1705	.927	458	471	868
.880	431	450	1634	.928	458	471	915
.881	432	450	1664	.929	459	471	927
.882	432	451	1597	.930	460	472	828
.883	433	451	1625	.931	460	472	883
.884	434	452	1521	.932	461	473	791
.885	434	452	1584	.933	461	473	841
.886	435	452	1619	.934	462	474	755
.887	435	453	1545	.935	463	474	750
.888	436	453	1577	.936	463	474	808
.889	436	454	1507	.937	464	475	712
.890	437	454	1535	.938	464	475	764
.891	437	455	1469	.939	465	476	676
.892	438	455	1495	.940	465	476	722
.893	439	456	1393	.941	466	477	641
.894	439	456	1453	.942	467	477	631
.895	440	456	1485	.943	467	477	684
.896	440	457	1415	.944	468	478	594
.897	441	457	1442	.945	468	478	641
.898	441	458	1375	.946	469	479	559
.899	442	458	1400	.947	470	479	546
.900	442	459	1336	.948	470	480	525
.901	443	459	1359	.949	471	480	510
.902	444	460	1259	.950	471	480	556
.903	444	460	1317	.951	472	481	475
.904	445	460	1344	.952	473	481	458
.905	445	461	1278	.953	473	482	442
.906	446	461	1301	.954	474	482	422
.907	446	462	1239	.955	474	482	469
.908	447	462	1258	.956	475	483	389
.909	448	463	1157	.957	476	483	367
.910	448	463	1215	.958	476	484	357

Exhibit G

LANCASTER
ASSOCIATES

May 14, 2018

VIA HAND DELIVERY

Sally Williams, Director
Bureau of Elections
Michigan Department of State
430 W. Allegan St.
Lansing, Michigan 48909

Re: Voters Not Politicians Ballot Committee

Dear Ms. Williams:

Following up on our discussion at the last Board of State Canvassers meeting, I want to provide you additional information that I hope will expedite your office's preparation of its staff report and recommendation regarding whether Voters Not Politicians Ballot Committee ("VNP") has sufficient signatures to be certified for the November 2018 General Election Ballot.

As you will recall, we briefly discussed the issue of the minimum number of signatures necessary to recommend certification in the signature sample the Bureau has drawn from the VNP petitions. The signature sample is 505. I had suggested, using by analogy, the report that the Bureau prepared for the Marijuana proposal, that VNP has submitted a sufficient number of signatures. I had asserted that since VNP has 100 more valid signatures than were required for the Marijuana petition (365), the VNP Proposal is clearly entitled to certification. You stated that this was not an apt analogy. I have since reviewed the guidance document that I understand the Bureau uses for determining the number of signatures necessary in a sample to justify certification of the proposal: Random Sample Signature Canvassing in Michigan (1990) (the "Guidance Document"). This document was provided to us several weeks ago by Bureau staff.

I acknowledge that your statement at the meeting was correct; it was not appropriate to use the Marijuana petition numbers by analogy.[1] So, I have completed my own calculation based on the details of our petition and the algorithm in the Guidance Document. Attached is a copy of Appendix A to the Guidance Document, along with my calculations based on the algorithms in Appendix A.

[1] The sponsors of the Coalition submitted 362,102 signatures that were included their sample. They were required to submit 252,523 valid signatures, thus requiring that 69.7% of their signatures be valid. VNP submitted 427,075 signatures that were included in the sample, and is required to submit 315,654 valid signatures, thus requiring 73.9% of its signatures to be valid.

Phone: (517) 285-4737 P.O. Box 10006 lancaster-law@comcast.net
Lansing, Michigan 48901

My calculations are handwritten; I hope they are sufficiently legible. My calculations are based upon the following inputs to the algorithm:

- Minimum number of signatures necessary: 315,654
- Number of signatures included in the sample: 427,075
- The proportion of signatures submitted which are required to be valid (Variable "Pr"; 315,654 divided by 427,075)
- Sample size of 505 (Variable "n")

Based on my calculations, if they are correct, in order to recommend certification of the VNP Proposal, it is necessary for there to be 388 valid signatures in the sample. VNP has 466 valid signatures in its sample; 78 more than necessary for certification.

I have a fairly high degree of confidence in these calculations because I was able to replicate the calculation that the Bureau made for the minimum number of signatures necessary to recommend certification of the Marijuana petition. I have also attached my handwritten calculations with respect to the Marijuana petition, and the staff report for the Marijuana petition, for your convenience.

If you feel my calculations are in error, I would welcome an opportunity to discuss this further. However, assuming my calculations are correct, I respectfully request that:

- The Bureau, as soon as possible, prepare a staff report regarding the Voters Not Politicians Ballot Committee proposal.
- The Bureau recommend to the Board of State Canvassers that the VNP Proposal be certified for the November 2018 General Election Ballot, and
- The Bureau place this matter on the agenda for the May 24, 2018 Board of State Canvassers meeting.

Respectfully,

James R. Lancaster

cc: Norman D. Shinkle
Colleen Pero
Jeanette Bradshaw
Julie Matuzak
Melissa Malerman

APPENDIX A

MATHEMATICAL DESCRIPTION OF
SAMPLING PLAN B (TWO-STAGE SAMPLING)

Let n_1 be the first step sample size. As described here Plan B always has $n_1 = 500$. Let X_1 be the number of valid signatures among these n_1. Let n_2 be the second step sample size, and let X_2 be the number of valid signatures among these n_2.

Plan B chooses two integers c_1 and c_2, with $c_1 < c_2$, as follows:

$$c_1 = [n_1(P_R+.01) + 0.5 - 1.96 \{(P_R+.01)(1-P_R-.01)n_1\}^{1/2}]$$

$$c_2 = [n_1(P_R-.01) + 0.5 + 1.96 \{(P_R-.01)(1-P_R+.01)n_1\}^{1/2}]$$

For $X_1 \leq c_1$, certification is denied.

For $X_1 \geq c_2$, certification is approved.

For $c_1 < X_1 < c_2$, a second step sample is taken.

c_1 and c_2 have been chosen so that:

$P(X_1 \leq c_1) = P(\text{denial of certification}) = .025$ for $P = P_R + .01$

$P(X_1 \geq c_2) = P(\text{certification}) = .025$ for $P = P_R - .01$

After the second step sample, the certification is approved if:
$\hat{p} = (X_1 + X_2) / (n_1 + n_2) \geq P_R$.

Let $P_1 = P(X_1 \geq c_2)$ and $P_2 = P(c_1 < X_1 < c_2, \hat{p} \geq P_R)$. Then

$P_c = P(\text{certification}) = P_1 + P_2$.

n_2 is chosen so that:

$P_c = P(\text{certification}) = .10$ for $P = P_R - .01$
$= .90$ for $P = P_R + .01$

Calculation of c_2 Based in Formula in Appendix A:
Mathematical Description of Sampling Plan B (Two-Stage Sampling)
For Voters Not Politicians Ballot Committee

$$c_2 = \frac{505\,(0.739 - 0.01) + 0.5 + 1.96\{(0.739-0.01)(1-0.739+0.01)\,505\}^{1/2}}{505\,(0.739) + 0.5 + 1.96\{(0.729)(0.271)\,505\}^{1/2}}$$

$$\frac{368.15 + 0.5 + 1.96\{99.73\}^{1/2}}{}$$

$$\frac{368.65 + 1.96\{9.9\}}{}$$

$$\frac{368.65 + 19.40}{}$$

388.05

Calculation of c_1 Based in Formula in Appendix A:
Mathematical Description of Sampling Plan B (Two-Stage Sampling)
For Voters Not Politicians Ballot Committee

$$c_1 = 505(0.739 + 0.01) + 0.5 - 1.96\{(0.739 + 0.01)(1.0 - 0.739 - 0.01)\,505\}^{1/2}$$

$$505\,(0.749) + 0.5 - 1.96\{(0.749)(0.25)\,505\}^{1/2}$$

$$378.25 + 0.5 - 1.96(94.99)^{1/2}$$

$$378.75 - 196(9.74)$$

$$378.75 - 19.09$$

$$359.66$$

Exhibit H

STATE CONSTITUTION (EXCERPT)
CONSTITUTION OF MICHIGAN OF 1963

§ 2 Amendment by petition and vote of electors.

Sec. 2.

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.

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.

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.

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.

History: Const. 1963, Art. XII, § 2, Eff. Jan. 1, 1964
Former Constitution: See Const. 1908, Art. XVII, §§ 2, 3.

Exhibit I

STATE CONSTITUTION (EXCERPT)
CONSTITUTION OF MICHIGAN OF 1963

§ 3 General revision of constitution; submission of question, convention delegates and meeting.

Sec. 3.

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.

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.

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.

History: Const. 1963, Art. XII, § 3, Eff. Jan. 1, 1964
Former Constitution: See Const. 1908, Art. XVII, § 4.

Exhibit J

that this convention or any convention has to finally adjourn before it may submit to the people anything. It seems to me as though one of our experiences has been the convention not being able to reconvene itself after the decision of the people. Suppose the people should turn down its work. Shouldn't the convention be able to stay in session, and if the people turn down the work, be able to reconvene and perhaps make some changes which would be acceptable rather than to waste the whole effort such as this provision of final adjournment entails? Did you give any thought to that?

PRESIDENT NISBET: Mr. Habermehl.

MR. HABERMEHL: Mr. President, Delegate Hutchinson, I am afraid the specific question of whether or not we ought to stay in session was not brought up in committee. We did provide that they must finally adjourn at least 90 days before the election is to be held. We have provided that in line 10 on page 2. And in answer to the question as to whether or not they ought to be able to stay in session and make changes in case the people don't accept the whole document, it was not discussed in committee and would be, of course, a major policy decision.

MR. HUTCHINSON: Thank you, Mr. Habermehl. I just wondered if maybe that was of such importance, really, to be given further consideration on the floor, though I have no amendment along those lines.

The next question I would like to ask of Mr. Habermehl is whether the committee gave any consideration to the fact that hereafter, the general election at which this question is to be submitted would always come in the fall, in November, and that by the machinery here set out, the convention actually will not be meeting until 11 months after the people have called for a convention. Wouldn't it be possible to set this convention meeting ahead of October after they call it in the previous November? All you require is 4 months for the election procedure.

PRESIDENT NISBET: Mr. Habermehl.

MR. HABERMEHL: Mr. President, Delegate Hutchinson, yes, that is correct. We did consider it in committee. We considered it in first reading here. There must be 4 months after the November election on the call of the convention, of course, to permit time for the election of delegates, so that after that time, or any time after March of the succeeding year, the convention could convene. The problem then came in trying to find a date at which all segments of our society would be happy. The farmers, of course, don't want it during their busy season. The resort people don't want it during their busy season, and about the best that we could come up with that seemed to be acceptable to most people was a date in the late fall. It allows just about 13 months, less the 90 days that we provided between the convention's adjournment and the election, so it allows 10 months for the convention to do its work, which seemed to be ample time.

The real rationale for the October date in the old convention was due to the fact that the election was held in the spring at the biennial spring election, so actually the date that could be picked in this proposal could be any time from about April 1 to October, but there I suggest that we could get into a real hassle if we tried now to pick a different date. Different areas of the state would be opposed to different dates.

MR. HUTCHINSON: Thank you, Mr. Habermehl. Those 2 questions arose in my mind immediately, and they are simply indicative, at least in my mind, of the problem that we run into when we try, in the constitution, to write out all of this detail of machinery.

I propose to vote against this proposal because I believe that our best course of action would have been to have written into the new constitution a provision quite similar to the provisions in the 1850 constitution which would leave to the legislature in the future the task of writing out all of these details in a way that will fit the situation to the times. I think we are shortsighted here in writing into this constitution this detail of machinery, and I think that when another constitutional convention is called, it will probably be just as embarrassed by this machinery as we were by the machinery which bound us, simply because it is not possible for us here to look into the future 30 years or 40 years or 50 years and divine what the situation at that time will be. I, for that reason, propose to vote against this proposal.

PRESIDENT NISBET: Mr. Bentley.

MR. BENTLEY: Mr. President, I had a couple of questions that I was going to ask Mr. Habermehl. One of the questions has already been somewhat anticipated by Mr. Hutchinson. I agree that it is quite ridiculous to hold a general election in November for the purpose of deciding whether or not the constitution is to be revised, to have the election of delegates not later than the following March, and then to have the delegates wait nearly 7 months until they shall convene in convention. I appreciate the opposition that might be expected to arise from different parts of the state if the date of the convention were held earlier than October. But I think it is a very poor policy to have such a long time lapse between the election of delegates and the summoning of the convention itself.

I do have another question that I want to yield to Mr. Habermehl for an answer to, and that is the following: after the convention has adjourned, I understand the question of popular approval has to be held in not less than 90 days. Does that mean that there is to be a special election for the purpose of approving the new constitution?

PRESIDENT NISBET: Mr. Habermehl.

MR. HABERMEHL: Mr. President, Delegate Bentley, it isn't to be held, Delegate Bentley, 90 days after final adjournment, but simply not less than 90 days. The 90 day provision was put in there just to insure that there would be adequate time to disseminate information about the proposed constitution.

MR. BENTLEY: Do I understand then, Mr. President, that the convention itself can decide whether or not the proposed new document is to be approved in a general or in a special election? That is entirely a matter within the discretion of the convention?

MR. HABERMEHL: That is correct. They would make the decision as to when it would be submitted and whether it would be at a general or special election.

MR. BENTLEY: One more question, Mr. President: do I understand this convention also has the power to completely rewrite a new constitution or to provide a series of amendments to the existing document?

MR. HABERMEHL: The language used, Mr. President, Delegate Bentley, is precisely the same in that connection as the present constitution. The question voted upon by the electorate is whether or not a convention for the question of a general revision of the constitution shall be had, and I think it has been generally interpreted that the convention is free to amend the constitution, to submit an entirely new document—do as it pleases, in other words.

MR. BENTLEY: Mr. President, one final question along that line: although the voters have approved the idea of a general revision of the constitution, the convention, if it so saw fit, could make as few as a single amendment and then dismiss itself and go home?

MR. HABERMEHL: Mr. President, Delegate Bentley, yes, I believe so. I believe on page 2 we spell it out, line 4, "No proposed constitution or amendment adopted by such convention shall be submitted," and so forth. And on line 8, "Any proposed constitution or amendments adopted by such convention shall be submitted," and so forth.

MR. BENTLEY: The point I am making, Mr. President, is, although the voters would have expressed themselves as being in favor of a general revision of the constitution, the convention, if it so saw fit, could, for all intents and purposes, disregard the idea of a general revision and merely confine itself to a single amendment or a few amendments and leave the basic document unchanged, in spite of the previous expression on the part of the majority of electors; is that correct?

MR. HABERMEHL: Mr. President, Delegate Bentley, I believe that is within the power of any constitutional convention, and I believe it should remain in the power of any constitutional convention. They are sovereign, autonomous bodies.

MR. BENTLEY: Thank you.

EXHIBIT K

STATE CONSTITUTION (EXCERPT)
CONSTITUTION OF MICHIGAN OF 1963

§ 9 Initiative and referendum; limitations; appropriations; petitions.

Sec. 9.

The people reserve to themselves the power to propose laws and to enact and reject laws, called the initiative, and the power to approve or reject laws enacted by the legislature, called the referendum. The power of initiative extends only to laws which the legislature may enact under this constitution. The power of referendum does not extend to acts making appropriations for state institutions or to meet deficiencies in state funds and must be invoked in the manner prescribed by law within 90 days following the final adjournment of the legislative session at which the law was enacted. To invoke the initiative or referendum, petitions signed by a number of registered electors, not less than eight percent for initiative and five percent for referendum of the total vote cast for all candidates for governor at the last preceding general election at which a governor was elected shall be required.

No law as to which the power of referendum properly has been invoked shall be effective thereafter unless approved by a majority of the electors voting thereon at the next general election.

Any law proposed by initiative petition shall be either enacted or rejected by the legislature without change or amendment within 40 session days from the time such petition is received by the legislature. If any law proposed by such petition shall be enacted by the legislature it shall be subject to referendum, as hereinafter provided.

If the law so proposed is not enacted by the legislature within the 40 days, the state officer authorized by law shall submit such proposed law to the people for approval or rejection at the next general election. The legislature may reject any measure so proposed by initiative petition and propose a different measure upon the same subject by a yea and nay vote upon separate roll calls, and in such event both measures shall be submitted by such state officer to the electors for approval or rejection at the next general election.

Any law submitted to the people by either initiative or referendum petition and approved by a majority of the votes cast thereon at any election shall take effect 10 days after the date of the official declaration of the vote. No law initiated or adopted by the people shall be subject to the veto power of the governor, and no law adopted by the people at the polls under the initiative provisions of this section shall be amended or repealed, except by a vote of the electors unless otherwise provided in the initiative measure or by three-fourths of the members elected to and serving in each house of the legislature. Laws approved by the people under the referendum provision of this section may be amended by the legislature at any subsequent session thereof. If two or more measures approved by the electors at the same election conflict, that receiving the highest affirmative vote shall prevail.

The legislature shall implement the provisions of this section.

History: Const. 1963, Art. II, § 9, Eff. Jan. 1, 1964
Constitutionality: A law proposed by initiative petition which is enacted by the Legislature without change or amendment within forty days of its reception takes effect ninety days after the end of the session in which it was enacted unless two-thirds of the members of each house of the Legislature vote to give it immediate effect. Frey v Department of

Management and Budget, 429 Mich 315; 414 NW2d 873 (1987).
Former Constitution: See Const. 1908, Art. V, § 1.

EXHIBIT L

cided by a 51 per cent vote. While there may be some occasions for having more than a majority vote to take a particular action, it would seem to me when the people vote on this type of thing a simple 50 plus 1 percentage vote should be adequate. I therefore urge the defeat of the substitute and support of the majority.

CHAIRMAN YEAGER: On the Brown-Boothby substitute, the Chair will recognize Mr. Durst — for what purpose does the gentleman rise?

MR. G. E. BROWN: Mr. Downs yielded to me, Mr. Chairman.

CHAIRMAN YEAGER: All right. Proceed, Mr. Brown.

MR. G. E. BROWN: I would like to answer Mr. Downs. I trust that he is not suggesting that we would be writing a constitutional provision for only Wayne county but that this constitutional provision would apply to the whole state. I think that the suggestion he has made that because there are more people in Wayne county that, therefore, their votes should count more or that we should have a special rule for Wayne county, is completely without philosophical basis. The whole purpose of requiring that you get not more than 10 per cent coming from any one county is that this is a statewide provision, that it will have statewide effect, and that there should be more than a self starter in one county insofar as any provision is concerned that is going to become part of our basic and fundamental law.

I note that Mr. Downs did not criticize the fact that we required gubernatorial signatures to nominate a governor to come not only from Wayne county or that Wayne county should be able to have more than somebody else, but for some reason he decides that this is bad so far as a constitutional provision is concerned but it is not bad with respect to an elective officer that we elect every 2 years — in the past, at least.

CHAIRMAN YEAGER: Mr. Downs, you retain the floor.

MR. DOWNS: Thank you. I did not mean to get into a long winded debate with my good friend, Delegate Brown. I would suggest that for him to show that he is not picking on the good citizens from Wayne county, instead of 10 per cent he use the figure 3/100 of 1 per cent. That happens to be the population of the smallest county in the state of Michigan, and if we could say that no more than 3/100 of 1 per cent of the petitions could come from any one county, that would show that we were not simply confining ourselves to Wayne.

But, frankly, I feel that the delegates here are satisfied that on the matter of petition people should be allowed to circulate those in the areas where people are and get a total number of signatures. I have no desire to further discuss this. When the matter of gubernatorial signatures, which is largely statutory, and other matters come up I would be glad to debate them. As far as I am concerned, the subject is closed and I yield the floor.

CHAIRMAN YEAGER: The Chair will recognize Mr. Durst.

MR. DURST: Mr. Chairman and members of the committee, I would like first to point out that all of the material, new material, contained in Mr. Brown's and Mr. Boothby's substitute was considered and given serious consideration by the committee on miscellaneous provisions and schedule.

Now as to the first substantive change they make, the 10 per cent, I think the committee was generally in favor of the idea that perhaps it might be desirable to have some limitation in here that all petitions could not come from the same county. We discussed several different alternatives, one of which was to say that no county could provide more signatures than its per cent of the state's population or something of that sort. But on further reflection it was the committee's opinion that no serious attempt to amend the constitution would ever be made with all the signatures obtained or even the major fraction of them out of line with population obtained from one county. And I think upon serious reflection, it must be realized that any particular amendment in order to proceed must have some statewide support. I think it would be very difficult if just the citizens of Wayne county wanted some change and all the signatures came from Wayne county. They would find themselves some very serious opposition outstate. It would behoove the supporters of an amendment to go outstate and get as many signatures as they could in support of their proposition.

So, on reflection of the committee, it was felt that it was unnecessary to provide any such provision. Wayne county, having a major portion of the state's population, of course, would normally account for a major portion of the signatures on any amendment or in any petition drive. But it was felt that they would also be almost compelled to go outstate to get support there. So that is why that particular provision was not put into the proposal presented to the committee of the whole.

Now Mr. Brown has done some shortening here on our proposal. It is difficult to analyze in a short time whether or not his provision is better than ours. However, there were some things included in ours which the committee felt very strongly should be there. One was the provision that you could not submit the amendment to the voters in less than 120 days prior to the time the petitions were filed. The reason for this is because it was felt there should be some time for the people to become educated and to discuss and to think about the proposition they were voting on before it was tossed at them. And I think the committee was pretty unanimously in favor of at least including this 120 day provision which Mr. Brown's and Mr. Boothby's substitute eliminates.

We also include the requirement that the announcement of determination of the validity of the petitions had to be made 60 days prior to the time the amendment was to be voted upon. This was put in there mainly at the urging of Mr. Leppien, who has had some considerable experience, as a county clerk, in arranging the ballots and getting ready to submit these propositions to the people, and there was at least one instance when, I believe—if my memory serves me right—the thing was certified 13 days prior to the time of the election which presented an almost insurmountable obstacle for the election officials. This 60 days was to take care of that.

Now Mr. Brown completely eliminates those provisions and he eliminates almost all of what is contained on page 4 of the proposal, and here are some things which the committee also thought should be included for a good, self executing provision: one was that the state was required to publish the proposal along with setting forth the material that it was expected to delete or change and that this publication be listed in the polling places. There was considerable discussion that we should go further and require even the preparation of a pro and con pamphlet in order to educate the people. This was decided to be impractical and what is included here was thought to be a minimum that was necessary, that at least it should be set forth clearly and concisely and placed in the polling places and presented to the news media so there would be an opportunity for the people of this state to be thoroughly advised upon the amendment they are voting on.

Also contained in the language which Mr. Brown eliminates is the requirement that the proposed amendment be expressed in not more than 100 words and setting out some requirements for that 100 words. Since it is necessary on voting machines which are largely in use in this state today to use a 100 word caption, we felt that this was a very, very necessary part of the amendment and that there be some constitutional direction here.

Now as to the 3/5 provision, I do not know that this was seriously discussed in our committee. The committee was very much in favor—at least it voted in favor of retaining the majority provision which is in the present constitution. On the whole I would think that Mr. Brown's and Mr. Boothby's substitute is inadequate from the committee's point of view and should be rejected.

CHAIRMAN YEAGER: The Chair recognizes one of the proponents, Mr. Boothby.

MR. BOOTHBY: Mr. Chairman, ladies and gentlemen of the committee, I rise to support the Brown-Boothby substitute. The requirement as to the 10 per cent, not more than 10 per cent in one county, has been covered, I think, very well by Mr. Brown. I would add this: that a law generally affects not a complete state but, generally speaking, only a part of the state or a part of the whole. The constitution affects the whole and,

Exhibit M

A PROPOSAL TO AMEND THE MICHIGAN CONSTITUTION TO CREATE AN INDEPENDENT CITIZENS REDISTRICTING COMMISSION FOR ESTABLISHMENT AND ADOPTION OF REDISTRICTING PLANS FOR MICHIGAN'S CONGRESSIONAL AND STATE LEGISLATIVE ELECTION DISTRICTS

This proposal would:

- Transfer authority to draw Congressional and Legislative districts to an independent Citizens Commission.
- Require that the Commission be politically balanced, without current and former lobbyists, partisan elected officials or partisan candidates for elected office.
- Require all Commission meetings and records to be open and public.
- Require compact election districts of equal population that satisfy the Voting Rights Act and prevent unfair advantage to any political party, elected official or candidate.
- Require approval of election districts by a majority vote, supported by two commissioners affiliated with each of the major political parties and two unaffiliated members.

A PROPOSAL TO AMEND THE MICHIGAN CONSTITUTION TO CREATE AN INDEPENDENT CITIZENS REDISTRICTING COMMISSION FOR ESTABLISHMENT AND ADOPTION OF REDISTRICTING PLANS FOR MICHIGAN'S CONGRESSIONAL AND STATE LEGISLATIVE ELECTION DISTRICTS

This proposal would:

- Create a politically balanced Independent Citizens Redistricting Commission to draw Congressional and Legislative election districts in public meetings, replacing existing laws authorizing the Legislature to draw those election districts.

- Require random selection of Commission members from separate pools of applicants affiliated with the two major political parties and a third pool of applicants not affiliated with either of those parties.

- Exclude specified persons subject to potential for partisan political influence from membership on the Commission.

- Establish requirements for drawing election districts, including compliance with federal law and avoidance of any disproportionate advantage to any political party, elected official or candidate.

A PROPOSAL TO AMEND THE MICHIGAN CONSTITUTION TO CREATE AN INDEPENDENT CITIZENS REDISTRICTING COMMISSION FOR ESTABLISHMENT AND ADOPTION OF REDISTRICTING PLANS FOR MICHIGAN'S CONGRESSIONAL AND STATE LEGISLATIVE ELECTION DISTRICTS

This proposal would:

- Create a politically balanced Independent Citizens Redistricting Commission to draw Congressional and Legislative election districts, in public meetings and subject to limited review by the Supreme Court, replacing laws authorizing the Legislature to draw those districts.

- Require that the Commission's members be selected by a procedure designed to ensure that the Commission cannot be dominated by members of one political party.

- Exclude specified persons potentially subject to partisan political influence from membership on the Commission.

- Establish requirements for drawing election districts, including compliance with federal law and avoidance of any disproportionate advantage to any political party, elected official or candidate.

A PROPOSAL TO AMEND THE MICHIGAN CONSTITUTION TO CREATE AN INDEPENDENT CITIZENS REDISTRICTING COMMISSION FOR ESTABLISHMENT AND ADOPTION OF REDISTRICTING PLANS FOR MICHIGAN'S CONGRESSIONAL AND STATE LEGISLATIVE ELECTION DISTRICTS

This proposal would:

- Create an Independent Citizens Redistricting Commission to draw Congressional and Legislative districts.
- Require all commission meetings be held in public.
- Prohibit current and former partisan elected officials, lobbyists, party officers, and their employees from serving on the commission.
- Districts could not be drawn to favor any candidate or party, but would be required to comply with the federal Voting Rights Act, be compact, contiguous and of equal population and reflect county, city, and township boundaries.
- Repeal current laws authorizing the Legislature to draw Congressional and State Legislative district boundaries.

Exhibit N

secretary of state or such other person or persons as shall hereafter be authorized at least 2 months prior to such election. Any constitutional amendment initiated by the people as herein provided, shall take effect and become a part of the constitution if the same shall be approved by the number of qualified electors required in section 1 hereof for the approval of amendments proposed by the legislature, and not otherwise. Every amendment shall take effect 30 days after the election at which it is approved. The secretary of state or such other person or persons as may be hereafter authorized by law shall submit all proposed amendments to the constitution initiated by the people for adoption or rejection in compliance herewith. The petition shall consist of sheets in such form and having printed or written at the top thereof such heading as shall be designated or prescribed by the secretary of state, or such other person or persons hereafter authorized by law to receive, canvass and check the same. Such petition shall be signed by qualified and registered electors in person only with the residence address of such persons, showing street names and also residence numbers in cities and villages having street numbers, and the date of signing the same. To each of such petitions, which may consist of 1 or more sheets, shall be attached the affidavit of the qualified and registered elector circulating the same, who shall be required to identify himself by affixing his address below his signature, stating that each signature thereto was signed in the presence of such qualified and registered elector and is the genuine signature of the person signing the same, and that to the best knowledge and belief of the affiant each person signing the petition was at the time of signing a qualified and registered elector.] OR 300,000 SUCH REGISTERED ELECTORS, WHICHEVER SHALL BE LESS. SUCH PETITIONS SHALL BE FILED WITH SUCH PERSON AUTHORIZED BY LAW TO RECEIVE THE SAME, AT LEAST 120 DAYS BEFORE THE ELECTION AT WHICH SUCH PROPOSED AMENDMENT IS TO BE VOTED UPON. ANY SUCH PETITION SHALL BE IN SUCH FORM, AND SHALL BE SIGNED AND CIRCULATED IN SUCH MANNER AS SHALL BE PROVIDED BY LAW. UPON RECEIPT OF ANY SUCH PETITION, THE PERSON AUTHORIZED BY LAW TO RECEIVE SUCH PETITION, SHALL DETERMINE, AS PROVIDED BY LAW, THE VALIDITY AND SUFFICIENCY OF THE SIGNATURES ON SUCH PETITION, AND MAKE AN OFFICIAL ANNOUNCEMENT OF SUCH DETERMINATION AT LEAST 60 DAYS PRIOR TO THE ELECTION AT WHICH SAID PROPOSED AMENDMENT IS TO BE VOTED UPON.

Sec. b. [All proposed amendments to the constitution and other questions to be submitted to the electors shall be published in full, with any existing provisions of the constitution which would be altered or abrogated thereby, and a copy thereof shall be posted in each polling place. The purpose of any such proposed amendment or question shall be designated on the ballots for submission to the electors in not more than 100 words, exclusive of caption. Such designation and caption shall be prepared by the secretary of state or by such other authority as shall be hereafter designated by law within 10 days after the filing of any proposal and shall consist of a true and impartial statement of the purpose of the amendment or question in such language as shall create no prejudice for or against such proposal] ANY AMENDMENT PROPOSED BY SUCH PETITION SHALL BE SUBMITTED TO THE ELECTORS AT THE NEXT ELECTION AT WHICH ANY STATE OFFICER IS TO BE ELECTED, PROVIDING THAT SUCH ELECTION IS HELD MORE THAN 120 DAYS AFTER THE FILING OF SUCH PETITION. SUCH PROPOSED AMENDMENT SHALL BE PUBLISHED IN FULL, TOGETHER WITH ANY EXISTING PROVISIONS OF THE CONSTITUTION WHICH WOULD BE ALTERED OR ABROGATED THEREBY AND TOGETHER WITH THE QUESTION AS IT SHALL APPEAR ON THE BALLOT USED IN SUCH ELECTION, AND A COPY OF SUCH PUBLICATION SHALL BE POSTED IN EACH POLLING PLACE, AND SHALL BE FURNISHED TO NEWS MEDIA AS PROVIDED BY LAW. THE BALLOT TO BE USED IN SUCH ELECTION SHALL CONTAIN A STATEMENT OF THE PURPOSE OF SUCH 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 SO TO DO, 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 SUCH PROPOSED AMENDMENT. IF SUCH PROPOSED AMENDMENT APPEARING ON THE BALLOT SHALL BE APPROVED BY A MAJORITY OF THE ELECTORS VOTING ON THE QUESTION, THE PROPOSED AMENDMENT SHALL BECOME A PART OF THE CONSTITUTION, AND SHALL ABROGATE OR AMEND EXISTING PROVISIONS OF THE CONSTITUTION 45 DAYS AFTER THE DATE OF THE ELECTION AT WHICH SUCH AMENDMENT WAS APPROVED.

Mr. Erickson, chairman of the committee on miscellaneous provisions and schedule, submits the following reasons in support of Committee Proposal 65:

History: The 1908 convention provided for an indirect initiative, which was subject to veto by the legislature. This initiative required signatures of not less than 20 per cent of the electors voting for governor.

The present section 2 was added by an amendment proposed in the legislature in 1913 and approved by referendum in April, 1913. Further amendments were made, again by a proposal of the legislature, which were approved by referendum April 7, 1941.

Section 3 was added to the constitution by amendment proposed by the legislature in 1917 and approved by referendum in November, 1918. It was further amended by legislative proposal in 1941.

Committee recommendations: The committte has undertaken a rather extensive rewriting of these sections 2 and 3, with the aim of eliminating matters which we were convinced were statutory detail, and with the aim of rearranging these 2 sections into what we believed is a more logical sequence. In this new draft, we tried to include in the first section, section a, all provisions concerning the initiative petitions, and have tried to include in the next section, section b, all necessary provisions relating to the submission of such amendment to the electors.

It is admitted that these 2 proposed sections still include many provisions that ordinarily would be part of an election code or statute. The committee, however, felt that this method of constitutional revision should be spelled out in some detail because of the nature of these sections. Section 1 of this article provides a method of constitutional revision that the legislature can use, and, as a matter of fact, most constitutional revision amendments have been proposed by the legislature. These proposed sections, sections a and b, then, would ordinarily be used only where the legislature has failed or refused to act. For that reason, the committee felt that essential detail ought not be left to the legislature to enact.

The committee believes that these proposed sections do not substantially affect the ease or difficulty of proposing constitutional changes. A minimum of 300,000 signatures has been inserted, as an alternative to the requirement that initiatory petitions be signed by 10 per cent of the total vote for governor, which figure was approximately 360,000 in the 1960 election. This seemed desirable to the committee to provide for possible rapid increase or decrease in the population of the state. A great increase in population could result in a situation where the sheer bulk of

Explanation—Matter within [ ] is stricken, matter in capitals is new.

petitions signed by 10 per cent of the electors could pose serious problems. The committee felt that it was sufficiently difficult to get 300,000 signatures so that hasty revision of the constitution would not result.

The first section, section a, was adopted by the full committee by a vote of 9 to 1, and the second section, section b, was adopted by the committee by a vote of 10 to 2.

CHAIRMAN YEAGER: The Chair will recognize Mr. Erickson. The Chair would like to inquire, do you want to take section a by paragraphs, Mr. Erickson, or as a total?

MR. ERICKSON: Let's take it as a total, because this all ties together.

CHAIRMAN YEAGER: You are recognized, then.

MR. ERICKSON: The Constitutional convention of 1907 and '08 had 3 subjects that took up most of its time: they were wine, women and initiative, (laughter) and the constitutional convention did not do anything on any of those 3 subjects — (laughter) liquor was not included and the vote for women was let go by for a later date, and so was initiative.

Even today Michigan is only 1 of 14 states that permits the citizens to amend its constitution, and after the other constitution it was not until 1913, by joint resolution of the legislature, that people voted to have this in. Mr. Habermehl has asked that I yield the floor to Delegate Durst for the presentation of this interesting subject.

CHAIRMAN YEAGER: Mr. Durst is recognized.

MR. DURST: Thank you, Mr. Erickson. Mr. Chairman and members of the committee, after what happened to Mr. Habermehl I am a little apprehensive but I shall proceed nevertheless.

The proposal that has just been read by the secretary eliminates a great deal of material that was previously in the constitution. We have tried to include the bare skeleton of the provision in order to still keep it self executing without providing all the varied material as to how names are to be set forth and all of this type of thing which is presently provided for in the statutes of this state. It was the opinion of the committee that in the event the legislature refused to act to provide the things that are called for here by this constitution that in one way or another it would still be possible to get an amendment on the ballot with the amount of material which is still left, which is still greatly statutory in nature. But since this is a provision in derogation of the power of the legislature, so to speak, it seemed desirable that it be self executing in nature, and that is why there is still a great deal of material here but far less than there was before.

As far as I know, there is not too much conflict with elimination of this material. However, there is one very substantive change here which has occasioned some conflict of opinion and a split in opinion, and that is the provision that provides that the petitions either be signed by 10 per cent of the total vote cast of all candidates for governor in the last preceding general election in which a governor was elected or 300,000 such registered electors, whichever shall be less. Now the net effect of this provision is to place a ceiling on the number of signatures that are necessary to place a constitutional amendment on the ballot.

Now I think it is desirable here to review just a little history of this provision. As Mr. Erickson has pointed out, it was not included in the constitution of 1908 but was added by amendment and placed on the ballot by the legislature in the year 1913. Now it is significant to note that the 10 per cent figure at that time and for many years prior thereto had averaged around 40,000. In the year 1898, 421,000 people voted in this state, making a requirement of approximately 42,000 signatures. In 1902, it was 402,000 or 40,000 signatures. In 1906, 373,000, so there was a drop to 37,000 signatures required. In 1910, 383,000, the requirement, 38,000. So this was the history and these figures go back to about this level even prior to this time. This was the history which the legislature had before it when it proposed this amendment with the 10 per cent figure in it in 1912. Now what has happened since?

There has been a very, very slow rise in the requirement up till very recent years: in 1920, a presidential year, a little over 1 million people voted in this state, meaning that you would need 105,000 signatures to put an amendment on the ballot. In 1930, a nonpresidential year, only 850,000 people voted, so there was a drop of 250,000 and only 85,000 signatures were needed. In 1940, another presidential year, the vote count rose to 2,030,000, so 203,000 signatures were needed. And in 1950, a nonpresidential year, 1,819,000 people voted, so 187,000 signatures were needed. In 1958, just 4 years ago, 2,312,000 people voted for governor, so 231,000 signatures were needed. And in the 2 year span to 1960, the vote count increased in this state by almost 1 million, to 3,281,536 people, so that you now would need, to put a constitutional amendment on the ballot today — if you were to try it, you would have to collect 328,153 signatures on the petition in order to put the amendment on the ballot. As you can readily see this is quite an increase from the 40,000 which the legislature experienced for a great number of years prior to the time this amendment was adopted to what we have today.

Now it is the contention of the committee that as this figure rises — and it is conceivable that it will rise quite a bit more in the years to come as the percentage of people voting increases, as well as the population increases — what you do in effect is erode the very right that is created by this particular section. I say that because as the figure gets larger, you make it virtually impossible for anyone else to use this particular provision except a large, well organized organization. Now I don't think there is any doubt that no matter how high this figure gets — even if you have to get millions of signatures in the state of Michigan — that the UAW-CIO would be able to put an amendment on the ballot if they so desired. Sure, it may cost them a little more. It may take a little more time and a little more effort, but they can do it. By the same token, Mr. Powell's organization, the farm bureau, if it really wants to put an amendment on the ballot has got the membership and also, I presume, the money — that I am not so sure of — but at least they have the facilities to put an amendment on the ballot if they really want to. I suppose there are other organizations that are similarly well organized. Probably the school groups, if they had an amendment they were particularly interested in, would be able to organize the manpower and the funds to put that particular amendment on the ballot. But I submit that the great bulk of the rest of the people in this state, who belong to none of these well organized organizations, would not be able to significantly participate in a drive to put an amendment on the ballot when this figure gets so high that it becomes too costly. Now I am concerned about this because I do not belong to either one of the large organizations I mentioned — as a former member of the teamsters union they probably wouldn't let me in the UAW-CIO — and when they see the "young radical" badge that Mr. Brake gave me, they probably wouldn't let me in the the farm bureau back home either. (laughter)

Now I know a little bit — not a great deal — about the difficulty of putting an amendment on the ballot. I participated back in my home area in a drive to fluoridate the water supply, and I know how long it took to go out and get 30 signatures on a petition, because everybody wanted to know everything about it before they signed — and I don't blame them for that — but it was virtually impossible if you went out at 6:00 o'clock at night and got done at 10:00 to get more than 30 signatures, and most people hardly got more than 10 or 15. It is a time consuming, very difficult job. And as the issue gets more complex, of course, it gets more difficult. Now I think we only need to look at the drive that was put on to enable the calling of this convention to see how difficult this situation is. I participated in that drive as a member of the junior chamber of commerce and I know Mrs. Judd participated and perhaps some others did as members of other organizations. And I say this without consulting with members of the league of women voters here: that I am convinced that the league of women voters and

for that reason, it should reflect more of a general, all over policy rather than a policy of one particular area.

Now as to the 3/5 provision: this is the matter I wish to speak to at this point. I would like to remind the members of this committee that a constitution contains in it some items that are not contained in laws, and there are some very definite differences between a law and a constitution. First of all, a law imposes the will of the state upon the individual. It imposes the will of the majority upon each individual within the state. A constitution does not have the same function. It has a contrary function. It protects against the imposition of the will of the state upon the individual. In other words, a law imposes the will; a constitution protects against the imposition of the will.

Now it should be remembered that, for instance, article II of our constitution contains the declaration of rights, and this declaration of rights sets out in written form certain specific, named items which are protection for the individual against the imposition of the will of the state. In other words, the constitution is the boundary line from which the legislature may not stray in the imposing of the will of the majority or the will of the state upon the individual. And I would like to liken a constitution to a football field. The constitution is actually the boundary line of a football field and once you go outside those boundary lines, the constitution provides that the game must stop and the legislature must get back inside those boundary lines. Now what is actually proposed when you say that a majority may change the boundary lines is to say that one team when they go outside the bounds may change those boundary lines so that they will be within those boundary lines. And I submit that this is not fair, that this is not a proper way to handle those boundary lines.

You have here, actually, 2 different basic concepts: you have some people who believe, as was so expressed, that the general will should always control. Other people feel that the majority should be checked and that the state should not be able to impose its will upon any minority group. Those of you who are lawyers would not, I believe, allow any client of yours to enter into a corporation which would allow a majority to change the constitution of that particular corporation. You would want some added guarantee to your client who would become a member of that corporation, and one of those guarantees which is always in a constitution of a corporation or the bylaws of a corporation is to provide that the constitution may be changed by something more than a simple majority. It is usually a 3/4 or a 3/5 or some other type of a majority more than a simple majority.

I would like to make this one further comment in closing: it appears as though those people who favor a simple majority are favoring the concept that was once expressed back in old English times, that the king could do no wrong. What they are saying at the present time is that the majority can do no wrong. In other words, they are saying that we have a divine right of the multitude to control. I say, when we are dealing with something as fundamental as a constitution, which is a protection against the imposition of the will of the state, that we should be very careful in the allowance of those particular guarantees to be changed because the constitution is a compact with the people. It represents not only what the position of the people is for the present day but also for the future, for those yet unborn children. I feel that it is very necessary to make it more difficult to change and alter the basic law and constitution of the state. I would urge the adoption of this substitute.

CHAIRMAN YEAGER: The Chair will recognize Mr. Habermehl.

MR. HABERMEHL: Mr. Chairman, I believe the committee will have to oppose the substitute as offered. I find some of Mr. Brown's ideas rather interesting myself and had they been submitted in some other form than an entire substitute I think they might be given more serious consideration. I think Mr. Brown has overlooked, however, that this is, by its very nature, a self executing proposal. This assumes that the legislature has failed or—thanks to our action in the past proposal—has been unable to act in this field and some other method must be provided for amendment of the constitution. For that reason the detail that is contained in it is essential. We have tried to limit it. You will note from the proposal that we have been able to eliminate 2 full pages of detail from this section, leaving only such items there as would make the proposal self executing. It cannot be subject to the failure of the legislature to act, as the Brown-Boothby substitute would have it. If the legislature did not act in this field, initiative would be useless. The committee, therefore, must oppose the substitute.

CHAIRMAN YEAGER: The Chair will recognize Mr. Marshall.

MR. MARSHALL: Mr. Chairman and fellow delegates, I rise to oppose the Brown-Boothby substitute and I would point out just a few simple figures as to what this actually means.

I will take Mr. Boothby's own county of Berrien county with a population of slightly less than 150,000 or approximately 150,000. They could produce, could register 20 per cent of the total signatures out of this 150,000. There are 25 counties in the state with less than 30,000 people. They could produce up as high as, could get signatures of—take a county with 70 per cent—might register 70 per cent or 80 per cent of the total registered voters in that county. This would mean, also, that out of the total required, 4 counties, which have well over a majority or approximately 60 per cent of the total state population, would only be able to produce 120,000 signatures based upon the last gubernatorial election. The county of Wayne, based upon the Brown-Boothby substitute, would be restricted to 30,000, only contributing 30,000 signatures and this would be less, slightly less than 1 per cent. This is completely and totally—I had not intended to speak on it, frankly. I want to point these figures out, but I had not intended to speak because I thought it was so ridiculous that the delegates probably would not give much consideration to it anyway.

I think everyone is well aware of what the substitute means, what it is intended to do, that it would practically make it impossible for — you could conceivably have a minority, an extreme minority of the population in a large percentage of the thinly populated counties who would have complete and absolute control over whether or not there would be any constitutional amendments submitted to the people. I oppose the Brown-Boothby substitute.

CHAIRMAN YEAGER: The Chair recognizes Dr. Nord.

MR. NORD: Mr. Chairman, I believe also, along with Mr. Marshall, that this substitute is not entitled to a great deal of discussion, but I take the floor for one reason, and that is because there is one point which I believe is well taken and I would like to isolate that from the others if I can. There is one point the proponents of the substitute have made which I think is a good point, but I do not think it is good enough standing with the rest of the amendment to be able to support the amendment. Mr. Boothby made the point that I refer to and that is, as I understood him to say, that the constitution ought to protect the minority from the majority. Particularly that is so with respect to the bill of rights and, therefore, the majority ought not to be able to change the bill of rights; it ought to take more than a majority to change the bill of rights. I agree with that myself. I think that point is absolutely correct. I think it is dangerous for the majority to be able to change the bill of rights; that is to say, to change it in the sense of removing the rights of minorities or individuals. And on that point, if that were the only point here, I would certainly go along with the amendment. In fact, I personally think that 2/3 is the right amount of the people to change, to derogate from rights guaranteed in the bill of rights. But, unfortunately, that is not the amendment that is before us. It has a great many other features each of which, I believe, previous speakers have pointed out to be quite unsatisfactory.

For example, the one about the counties has been discussed. I think it is clear that that is wrong. As to the fact that they have reduced the amount of language, I think that is completely a fallacy. This is not a matter for the legislature or legislative detail; this is supposed to be self executing. Without laboring the point as to the rest of the substitute, I believe that too many things have been put together and although there may be one thing, as I see it, that is good, there are too many

things that are bad in it. If the sponsors of the substitute wish to submit at this time or later, possibly, each one of the ideas in a separate package they might be able to get some of them through, but as it stands now I agree with many of the previous speakers that the substitute just cannot be supported as is.

CHAIRMAN YEAGER: The question is still on the Brown-Boothby substitute. The Chair recognizes Mr. Garry Brown.

MR. G. E. BROWN: Mr. Chairman, members of the committee, at the outset I would like to point out—in derogation of what Mr. Habermehl has said that this is not a self executing provision—I want to direct your attention to the comparable language in the provision of the constitution relative to recall. If you can say that this is not self executing in providing the right of recall, then you are probably correct in saying that the present language, the language in the substitute, is not self implementing.

I would only remind the people that when you provide that an amendment may be initiated by the people, this is a constitutional directive upon the petitioning of a certain number. If the legislature fails to implement it, there is nothing to stop that number of people from circulating petitions, signing them, and filing them with the secretary of state, and I will challenge anyone to say that mandamus action will not apply. So it is self implementing. Further, I appreciate the support of Dr. Nord with respect to the final paragraph. I thought that probably he might support the idea of taking out the legislative language, since I think that he would agree as a matter of constitutional interpretation that the first paragraph does make it self executing and only implementation is provided in the second paragraph.

I would also like to point out that there is not—at least this proponent of this substitute does not hold a great brief for the 10 per cent provision. If that is too limitive, conceivably 20 per cent would be better. But I think the point is that we should make sure that these petitions to put an amendment on the ballot to amend the fundamental law of the state should not come from a single county. They could very well come from Kalamazoo county or maybe Kent county or some other county, but the point is that at least 3 or 4 counties, or 5 or 6 counties should have some knowledge of the matter before it is actually put on the ballot through the circulating of petitions. This is a good way to campaign. It gives the proponents of the measure a chance to get out and to circulate on behalf of their proposition and, at the same time, it informs the electorate where they are circulating the petitions.

With respect to the matter of the 3/5 vote, I would only remind the delegates here that in order to amend the federal constitution it takes a 3/4 ratification of the states, and I would further remind the delegates here that in many states there are certain issues which may not be subject to the initiative or the initiated amendment and that, therefore, when you are permitting all provisions of the constitution to be subject to initiating amendment that a 3/5 vote is not too difficult a provision.

CHAIRMAN YEAGER: The Chair will recognize the last speaker on his list, Mr. Hodges.

MR. HODGES: Mr. Chairman, we have seen various attempts through the legislative apportionment to gerrymander this state but now we seem to be getting some "garrybrowning" in terms of the question of petitions, and I think that gerrymandering or "garrybrowning" is all the same; that it is unjust and, therefore, we should defeat the substitute.

CHAIRMAN YEAGER: The question is on the Brown-Boothby substitute. As many as are in favor will say aye. As many opposed will say no.

The substitute is not adopted. The secretary will read the next amendment.

SECRETARY CHASE: Messrs. Rush, Hutchinson, J. B. Richards, Rood and Powell offer the following amendment:

1. Amend page 4, line 19, after "voting" by striking out "on the question" and inserting "in the election"; so the language will read:

If such proposed amendment appearing on the ballot shall be approved by a majority of the electors voting in the election, the proposed amendment shall become a part of the constitution. . . .

CHAIRMAN YEAGER: The Chair will recognize Mr. Rush on his amendment.

MR. RUSH: Mr. Chairman, fellow delegates, when I proposed a similar provision, it was pertaining to an amendment that would be instituted by the legislature, by a 2/3 vote of the legislature. Now we are talking about an amendment that might be proposed by initiatory methods. We do not have in this case the protection of the 2/3 vote of the legislature. I would point out to you that the constitution could be amended by a 51 per cent vote. This is indeed making it rather easy to amend our constitution, and I do not think that we should adopt a proposal or put in our constitution a provision that would make it so easy to amend the constitution. In this case it will make it much more difficult to amend the constitution and I think that this amendment should be given serious consideration.

CHAIRMAN YEAGER: The Chair will recognize Mr. Durst.

MR. DURST: Mr. Chairman, I will yield to Mr. Hutchinson, one of the proponents of the amendment, if he desires to speak.

MR. HUTCHINSON: Mr. Chairman, I am not—it doesn't make any difference to me. I will be very happy to wait my turn. However—

CHAIRMAN YEAGER: You may proceed, Mr. Hutchinson.

MR. HUTCHINSON: Mr. Chairman, I was happy to lend my name to the support of this amendment because of the fact that here, again, is a situation where—and I agree with Mr. Nord in this—I believe conscientiously that constitutions are for the protection of minorities and that simple majorities of people voting upon questions and so on and a very small percentage of the electorate initiating questions without the benefit of the debate of any forum is something that should be made difficult. Consequently, I think that in the case of an initiated constitutional amendment, one that is initiated by petition, that it would be wise to require a greater percentage of the electorate to approve such an amendment than would be required to approve a constitutional amendment submitted by the legislature, the legislature submitting a constitutional amendment to be adopted by a majority of the people voting on the question; but I think that if there is to be an initiated petition, then we should require a greater percentage of the vote to carry it.

While that was a feature of Mr. Brown's amendment, which you have just defeated, this puts the same problem to you but in a different form and one which I hope that you will adopt because we, after all, are interested in protecting minorities in constitutions and we do not want to make it possible for a simple majority to trample over the constitutional rights of the individual citizens of this state, namely, the minority.

CHAIRMAN YEAGER: Mr. Durst.

MR. DURST: Mr. Chairman and members of the committee, on behalf of the committee on miscellaneous provisions and schedule, I feel that I must oppose the amendment which is on the wall. We did not particularly discuss or vote on this issue, in regard to this provision, but we did, in Committee Proposal 66, discuss the same question. The committee almost unanimously disapproved an amendment of this type.

Mr. Hutchinson brings up the question of protecting minorities and certainly this is a laudable ambition and certainly should be considered. However, in this regard, I think we should keep one thing in mind; that is this: at least in the past—I am going to make a rash generalization—there has been a sizable group of the electorate in this state which votes no on anything. I know some of them in my district. They are naturally suspicious—perhaps with justification—but anyway, there is a general lethargy on the part of the people that must be overcome before any constitutional amendment is approved, and to point this up I think it is important to review just once again that of the 34 amendments proposed to this constitution, the one of 1908, by initiative, only 10 of them have obtained the approval of the people.

Mr. Brown was using the argument a few minutes ago that this was a good point for making the unusual majority,

Exhibit O

FULL TEXT OF THE GENERAL REVISION

OF THE

Constitution of the State of Michigan,

WITH THE EXPLANATIONS OF PROPOSED CHANGES AND THE REASONS THEREFOR.

PREAMBLE.

We, the people of the state of Michigan, grateful to Almighty God for the blessings of freedom, and earnestly desiring to secure these blessings undiminished to ourselves and our posterity, do ordain and establish this constitution.

The present constitution has the following preamble: "The People of the State of Michigan do ordain this constitution." The change was made to give recognition in the constitution to the Supreme Being. Similar recognition is found in the constitutions of forty-two of our sister states.

ARTICLE I.

BOUNDARIES AND SEAT OF GOVERNMENT.

Section 1. The state of Michigan consists of and has jurisdiction over the territory embraced within the following boundaries, to wit: Commencing at a point on the eastern boundary line of the state of Indiana, where a direct line drawn from the southern extremity of Lake Michigan to the most northerly cape of Maumee Bay shall intersect the same—said point being the northwest *point* of the state of Ohio, as established by act of Congress, entitled "An act to establish the northern boundary line of the state of Ohio, and to provide for the admission of the state of Michigan into the Union upon the conditions therein expressed," approved June fifteenth, eighteen hundred thirty-six; thence with the said boundary line of the state of Ohio, until it intersects the boundary line between the United States and Canada in Lake Erie; thence with the said boundary line between the United States and Canada through the Detroit River, Lake Huron and Lake Superior to a point where the said line last touches Lake Superior; thence in a

constitution, except for the purpose of changing the phraseology.

Section 9. Aliens, who are or who may hereafter become bona fide residents of this state, shall enjoy the same rights in respect to the possession, enjoyment and inheritance of property as native born citizens.

No change is made from Sec. 13, Art. XVIII of the present constitution.

Section 10. No lease or grant of agricultural land for agricultural purposes for a longer period than twelve years, reserving any rent or service of any kind, shall be valid.

No change is made from Sec. 12, Art. XVIII of the present constitution, except the addition of the words "for agricultural purposes" to make the section more clear and definite.

ARTICLE XVII.

AMENDMENT AND REVISION.

Section 1. Any amendment or amendments to this constitution may be proposed in the senate or house of representatives. If the same shall be agreed to by two-thirds of the members elected to each house, such amendment or amendments shall be entered on the journals, respectively, with the yeas and nays taken thereon; and the same shall be submitted to the electors at the next spring or autumn election thereafter, as the legislature shall direct; and, if a majority of electors qualified to vote for members of the legislature voting thereon shall ratify and approve such amendment or amendments, the same shall become part of the constitution.

No change from Sec. 1, Art. XX, of the present constitution.

Section 2. Amendments may also be proposed to this constitution by petition of the qualified electors of this state but no proposed amendment shall be submitted to the electors unless the number of petitioners therefor shall exceed twenty per cent of the total number of electors voting for secretary of state at the preceding election of such officer. All petitions shall contain the full text of any proposed amendment, together with any existing provisions of the constitution which would be altered or abrogated thereby. Such petitions shall be signed at the regular registration or election places at a regular registration or election under the supervision of the officials thereof, who shall verify the genuineness of the signatures and certify the fact that the signers are registered electors of the respective townships and cities in which they reside, and shall forthwith forward the petition to the secretary of state. All petitions for amendments filed with the secretary of state shall be certified by that officer to the legislature at the opening of its next regular session; and, when such petitions for any one proposed

amendment shall be signed by not less than the required number of petitioners, he shall also submit the proposed amendment to the electors at the first regular election thereafter, unless the legislature in joint convention shall disapprove of the proposed amendment by a majority vote of the members elected. The legislature may, by a like vote, submit an alternative or a substitute proposal on the same subject. The action of the legislature shall be entered on the journal of each house, with the yeas and nays taken thereon. But no amendment to this section may be proposed in the manner herein prescribed.

If a majority of the electors qualified to vote for members of the legislature voting thereon shall ratify and approve any such amendment or amendments, the same shall become a part of the constitution: Provided, That for any amendment proposed under this section, the affirmative vote shall be not less than one-third of the highest number of votes cast at the said election for any office. In case alternative proposed amendments on the same subject are submitted at the same election, the vote shall be for one of such alternatives or against such proposed amendments as a whole. If the affirmative vote for one proposed amendment is the required majority of all the votes cast for and against such proposed amendments, it shall become a part of the constitution. If the total affirmative vote for such alternative proposed amendments is the required majority of all the votes for and against them, but no one proposed amendment receives such majority, then the proposed amendment which receives the largest number of affirmative votes shall be submitted at the next regular election, and if it then receives the required majority of all the votes cast thereon it shall become a part of the constitution. The legislature shall enact appropriate laws to carry out the provisions of this section.

Section 3. All proposed amendments to the constitution submitted to the electors shall be published in full, with any existing provisions of the constitution which would be altered or abrogated thereby, and a copy thereof shall be posted at each registration and election place. Proposed amendments shall also be printed in full on a ballot or ballots separate from the ballot containing the names of nominees for public office.

These sections represent a compromise between those who desired no change in the manner of amending the constitution provided by Sec. 1, Art. XX of the existing constitution (Sec. 1 of this article), and those who favored the initiative method of amendment by the people without the proposed amendment being first submitted to the legislature. The resulting compromise, embodied in the foregoing sections, provides a new method of amending the constitution.. Whenever the required number of electors petition for an amendment to the constitution it becomes the duty of the secretary of state, upon filing of such petition in his office, to certify the same to the legislature at the opening of the next regular session. The secretary of state must, also, submit the amendment to the electors at the first regular election thereafter, unless the legislature in joint session shall disapprove of the proposed amendment by a majority vote of the members elected to each house. A method is thus provided whereby the language, scope and purpose of the

proposed amendment will be scrutinized and discussed by a deliberative body, and its terms made to harmonize with other provisions in the constitution. The convention realized the far-reaching effect that each amendment to the constitution may have beyond the immediate purpose intended by it, and it was deemed essential in so important a matter as changing the fundamental law of the state that the very greatest care should be required in both the form and substance of amendments to it. Such care is secured by requiring the amendments proposed to pass the scrutiny of the legislature. In this manner the purpose and terms, as well as the legal effect, of such amendments will become the subject of popular discussion; in other words, the utmost publicity is secured.

It is generally conceded that the effect of this provision will be the submission to a vote of the electors of practically all amendments petitioned for. The legislature may change the phraseology and harmonize the provisions of the amendment with those portions of the constitution not intended to be affected by it, before submitting it to the electors. No one doubts the response of the legislature, in normal times, to a petition containing twenty per cent of the electors specified. It is foreseen that in seasons of great stress, disturbance and excitement, a petition might be presented designed to serve a temporary or unjust purpose. In such an event the time required under this section for consideration of such petition by the legislature will afford opportunity for normal conditions to return, and if, after due deliberation by the legislature, a majority of that body deem it unwise or improper to submit the amendment to the electors, the power to do so is conferred. The consideration was potent with the convention that public opinion is subject to sudden fluctuations; that the cherished policies of one year may be discarded the next upon fuller information and maturer thought. Living as we are under "a government of laws and not of men" the wisdom of preserving the stability of our fundamental laws was most persuasive with the convention.

Section 4. At the general election to be held in the year nineteen hundred twenty-six, in each sixteenth year thereafter and at such other times as may be provided by law, the question of a general revision of the constitution shall be submitted to the electors qualified to vote for members of the legislature. In case a majority of such electors voting at such election shall decide in favor of a convention for such purpose, at the next biennial spring election the electors of each senatorial district of the state as then organized shall elect three delegates. The delegates so elected shall convene at the state capitol on the first Tuesday in September next succeeding such election, and shall continue their sessions until the business of the convention shall be completed. A majority of the delegates elected shall constitute a quorum for the transaction of business. The convention shall choose its own officers, determine the rules of its proceedings and judge of the qualifications, elections and returns of its members. In case of a vacancy by

EXHIBIT P

AMENDMENTS TO THE CONSTITUTION.

Amendment to the constitution relative to the amendment of the charters of cities and villages, proposed by the second extra session of the legislature of nineteen hundred twelve, and ratified by the people at the November election of nineteen hundred twelve.

ARTICLE EIGHT.

SEC. 21. Under such general laws, the electors of each city and village shall have power and authority to frame, adopt and amend its charter and to amend an existing charter of the city or village heretofore granted or passed by the legislature for the government of the city or village and, through its regularly constituted authority, to pass all laws and ordinances relating to its municipal concerns, subject to the constitution and general laws of this State.

Amendment to the constitution relative to the recall of elective officers, proposed by the legislature of nineteen hundred thirteen, and ratified by the people at the April election of nineteen hundred thirteen.

ARTICLE THREE.

SEC. 8. Laws shall be passed to preserve the purity of elections and guard against abuses of the elective franchise, and to provide for the recall of all elective officers, except judges of courts of record and courts of like jurisdiction upon petition of twenty-five per centum of the number of electors who voted at the preceding election for the office of Governor in their respective electoral districts.

Amendment to the constitution relative to the initiative and referendum upon legislative matters, proposed by the legislature of nineteen hundred thirteen, and ratified by the people at the April election of nineteen hundred thirteen.

ARTICLE FIVE.

SECTION 1. The legislative power of the State of Michigan is vested in a senate and house of representatives; but the people reserve to them-

Amendment to the constitution relative to the initiative and referendum on constitutional amendments, proposed by the legislature of nineteen hundred thirteen, and ratified by the people at the April election of nineteen hundred thirteen.

ARTICLE SEVENTEEN.

SEC. 2. Amendments may also be proposed to this constitution by petition of the qualified voters of this State. Every such petition shall include the full text of the amendment so proposed and be signed by not less than ten per cent of the legal voters of the State. Initiative petitions proposing an amendment to this constitution shall be filed with the Secretary of State at least four months before the election at which such proposed amendment is to be voted upon. Upon receipt of such petition by the Secretary of State, he shall canvass the same to ascertain if such petition has been signed by the requisite number of qualified electors, and if the same has been so signed, the proposed amendment shall be submitted to the electors at the next regular election at which any State officer is to be elected. Any constitutional amendment initiated by the people as herein provided, shall take effect and become a part of the constitution if the same shall be approved by a majority of the electors voting thereon and not otherwise. Every amendment shall take effect thirty days after the election at which it is approved. The total number of votes cast for Governor at the regular election last preceding the filing of any petition proposing an amendment to the constitution, shall be the basis upon which the number of legal voters necessary to sign such a petition shall be computed. The Secretary of State shall submit all proposed amendments to the constitution initiated by the people for adoption or rejection in compliance herewith. The petition shall consist of sheets in such form and having printed or written at the top thereof such heading as shall be designated or prescribed by the Secretary of State. Such petition shall be signed by qualified voters in person only, with the residence address of such persons and the date of signing the same. To each of such petitions, which may consist of one or more sheets, shall be attached the affidavit of the elector circulating the same, stating that each signature thereto is the genuine signature of the person signing the same, and that to the best knowledge and belief of the affiant each person signing the petition was at the time of signing a qualified elector. Such petition so verified shall be prima facie evidence that the signatures thereon are genuine, and that the persons signing the same are qualified electors. The text of all amendments to be submitted shall be published as constitutional amendments are now required to be published.

EXHIBIT Q

AMENDMENTS TO THE CONSTITUTION.

Proposal No. 2.

Amendment to the constitution "to establish a new system of civil service for state employment", proposed by initiative petition, and ratified by the people at the general election, November 5, 1940.

ARTICLE VI.

Sec. 22. The state civil service shall consist of all positions in the state service except those filled by popular election, heads of departments, members of boards and commissions, employees of courts of record, of the legislature, of the higher educational institutions recognized by the state constitution, all persons in the military and naval forces of the state, and not to exceed two other exempt positions for each elected administrative officer, and each department, board and commission.

There is hereby created a non-salaried civil service commission to consist of four persons, not more than two of whom shall be members of the same political party, appointed by the governor for eight-year, overlapping terms, the four original appointments to be for two, four, six and eight years respectively. This commission shall supersede all existing state personnel agencies and succeed to their appropriations, records, supplies, equipment, and other property.

The commission shall classify all positions in the state civil service according to their respective duties and responsibilities, fix rates of compensation for all classes of positions, approve or disapprove disbursements for all personal services, determine by competitive performance exclusively on the basis of merit, efficiency and fitness the qualifications of all candidates for positions in the state civil service, make rules and regulations covering all personnel transactions, and regulate all conditions of employment in the state civil service. No person shall be appointed to or promoted in the state civil service who has not been certified as so qualified for such appointment or promotion by the commission. No removals from or demotions in the state civil service shall be made for partisan, racial, or religious considerations.

The administration of the commission's powers shall be vested in a state personnel director who shall be a member of the state civil service and who shall be responsible to and selected by the commission after open competitive examination.

To enable the commission to execute these powers, the legislature shall appropriate for the six months' period ending June 30, 1941, a sum not less than one-half of one per cent, and for each and every subsequent fiscal year, a sum not less than one per cent, of the aggregate annual payroll of the state service for the preceding fiscal year as certified to by the commission.

After August 1, 1941, no payment for personal services shall be made or authorized until the provisions of this amendment have been complied with in every particular. Violation of any of the provisions hereof may be restrained or observance compelled by injunctive or mandamus proceedings brought by any citizen of the state.

This amendment shall take effect on the first day of January following the approval thereof.

Amendment to tl
amendment petitio
at the biennial spri

Sec. 2. Amendm
the qualified and r
include the full text
and registered elect
centum of the total
ceding general elect
and registered elect
filed with the secret
thorized by law to r
such proposed amen
penalties for causing
name to be affixed t
fictitious or forged
secretary of state or
canvass the same to
number of qualified
ity thereof, cause an
tion records by the
were circulated, for
If the secretary of st
to receive and canva
and has been signed
the proposed amendr
election at which an
the sufficiency or ins
state or such other p
months prior to such
people as herein pro
tion if the same shall
in section 1 hereof fo
and not otherwise.
tion at which it is a
persons as may be he
ments to the constitu
compliance herewith.
having printed or wri
or prescribed by the
after authorized by la
shall be signed by q
residence address of
numbers in cities and
the same. To each o
shall be attached the
the same, who shall be
his signature, stating
of such qualified and
person signing the san
each person signing
registered elector.

Proposal No. 1.

Amendment to the constitution relative to "circulating, etc., constitutional amendment petitions", proposed by joint resolution, and ratified by the people at the biennial spring election, April 7, 1941.

ARTICLE XVII.

Sec. 2. Amendments may also be proposed to this constitution by petition of the qualified and registered electors of this state. Every such petition shall include the full text of the amendment so proposed, and be signed by qualified and registered electors of the state equal in number to not less than 10 per centum of the total vote cast for all candidates for governor at the last preceding general election, at which a governor was elected. Petitions of qualified and registered electors proposing an amendment to this constitution shall be filed with the secretary of state or such other person or persons hereafter authorized by law to receive same at least 4 months before the election at which such proposed amendment is to be voted upon. The legislature may prescribe penalties for causing or aiding and abetting in causing any fictitious or forged name to be affixed to any petition, or for knowingly causing petitions bearing fictitious or forged names to be circulated. Upon receipt of said petition the secretary of state or other person or persons hereafter authorized by law shall canvass the same to ascertain if such petition has been signed by the requisite number of qualified and registered electors, and may, in determining the validity thereof, cause any doubtful signatures to be checked against the registration records by the clerk of any political subdivision in which said petitions were circulated, for properly determining the authenticity of such signatures. If the secretary of state or other person or persons hereafter authorized by law to receive and canvass same determines the petition is legal and in proper form and has been signed by the required number of qualified and registered electors, the proposed amendment shall be submitted to the electors at the next regular election at which any state officer is to be elected. An official declaration of the sufficiency or insufficiency of the petition shall be made by the secretary of state or such other person or persons as shall hereafter be authorized at least 2 months prior to such election. Any constitutional amendment initiated by the people as herein provided, shall take effect and become a part of the constitution if the same shall be approved by the number of qualified electors required in section 1 hereof for the approval of amendments proposed by the legislature, and not otherwise. Every amendment shall take effect 30 days after the election at which it is approved. The secretary of state or such other person or persons as may be hereafter authorized by law shall submit all proposed amendments to the constitution initiated by the people for adoption or rejection in compliance herewith. The petition shall consist of sheets in such form and having printed or written at the top thereof such heading as shall be designated or prescribed by the secretary of state, or such other person or persons hereafter authorized by law to receive, canvass and check the same. Such petition shall be signed by qualified and registered electors in person only with the residence address of such persons, showing street names and also residence numbers in cities and villages having street numbers, and the date of signing the same. To each of such petitions, which may consist of 1 or more sheets, shall be attached the affidavit of the qualified and registered elector circulating the same, who shall be required to identify himself by affixing his address below his signature, stating that each signature thereto was signed in the presence of such qualified and registered elector and is the genuine signature of the person signing the same, and that to the best knowledge and belief of the affiant each person signing the petition was at the time of signing a qualified and registered elector.

Sec. 3. All proposed amendments to the constitution and other questions to be submitted to the electors shall be published in full, with any existing provisions of the constitution which would be altered or abrogated thereby, and a copy thereof shall be posted in each polling place. The purpose of any such proposed amendment or question shall be designated on the ballots for submission to the electors in not more than 100 words, exclusive of caption. Such designation and caption shall be prepared by the secretary of state or by such other authority as shall be hereafter designated by law within 10 days after the filing of any proposal and shall consist of a true and impartial statement of the purpose of the amendment or question in such language as shall create no prejudice for or against such proposal.

Proposal No. 2.

Amendment to the constitution relative to "circulating initiative legislative and referendum petitions", proposed by joint resolution, and ratified by the people at the biennial spring election, April 7, 1941.

ARTICLE V.

Section 1. The legislative power of the state of Michigan is vested in a senate and house of representatives; but the people reserve to themselves the power to propose legislative measures, resolutions and laws; to enact or reject the same at the polls independently of the legislature; and to approve or reject at the polls any act passed by the legislature, except acts making appropriations for state institutions and to meet deficiencies in state funds. The first power reserved by the people is the initiative. Qualified and registered electors of the state equal in number to at least 8 per cent of the total vote cast for all candidates for governor, at the last preceding general election at which a governor was elected, shall be required to propose any measure by petition: Provided, That no law shall be enacted by the initiative that could not under this constitution be enacted by the legislature. Initiative petitions shall set forth in full the proposed measure, and shall be filed with the secretary of state or such other person or persons as may hereafter be authorized by law to receive same not less than 10 days before the commencement of any session of the legislature. Every petition shall be certified to as herein provided as having been signed by the required number of qualified and registered electors of the state. Upon receipt of any initiative petition, the secretary of state or such other person or persons hereafter authorized by law shall canvass the same to ascertain if such petition has been signed by the requisite number of qualified and registered electors, and may, in determining the validity thereof, cause any doubtful signatures to be checked against the registration records by the clerk of any political subdivision in which said petitions were circulated, for properly determining the authenticity of such signatures. If the same has been so signed, the secretary of state or other person or persons hereafter authorized by law to receive and canvass same, determines that the petition is legal and in proper form and has been signed by the required number of qualified and registered electors, such petition shall be transmitted to the legislature as soon as it convenes and organizes. The law proposed by such petition shall be either enacted or rejected by the legislature without change or amendment within 40 days from the time such petition is received by the legislature.

If any law proposed by such petition shall be enacted by the legislature it shall be subject to referendum, as hereinafter provided. If any law so petitioned for be rejected, or if no action is taken upon it by the legislature within said 40 days, the secretary of state or such other person or persons hereafter authorized by law shall submit such proposed law to the people for approval