

**STATE OF MICHIGAN
IN THE SUPREME COURT**

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

Supreme Court
No. 157925

v

Court of Appeals
No. 343517

**SECRETARY OF STATE and MICHIGAN
BOARD OF STATE CANVASSERS,**
Defendants / Cross-Defendants –
Appellees,

**INTERVENING DEFENDANTS /
CROSS-PLAINTIFFS – APPELLEES'
ANSWER IN OPPOSITION TO
MOTION FOR STAY**

and

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

Intervening Defendants / Cross-Plaintiffs –
Appellees

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Now Come Intervening Defendants / Cross-Plaintiffs – Appellees (“Intervening Defendants”) Voters Not Politicians Ballot Committee d/b/a Voters Not Politicians and Count MI Vote d/b/a Voters Not Politicians (collectively “Voters Not Politicians” or “VNP”); Kathryn A. Fahey; William R. Bobier; and Davia C. Downey, by their undersigned legal counsel, opposing Plaintiffs’ Motion for Stay as follows:

1. Intervening Defendants admit the allegation set forth in Paragraph 1.
2. In response to Paragraph 2, the Intervening Defendants acknowledge that VNP’s proposal, which speaks for itself, seeks to amend the Constitution by voter initiative to create a new Independent Citizens Commission to perform redistricting of Michigan’s legislative and congressional districts. The Intervening Defendants acknowledge that the amendment proposes changes to the legislative article and corresponding changes to the executive and judicial articles, but deny that the proposed changes would “effect fundamental changes to the usual operation of state government.”
3. Intervening Defendants admit the allegations set forth in Paragraph 3.
4. In response to Paragraph 4, the Intervening Defendants acknowledge that Plaintiff CPMC filed a Complaint for Mandamus requesting the relief stated therein based upon the arguments described in Paragraphs 5 and 6.
5. In response to Paragraph 5, the Intervening Defendants acknowledge that Plaintiff CPMC raised the argument described therein in support of its Complaint for Mandamus.
6. In response to Paragraph 6, the Intervening Defendants acknowledge that Plaintiff CPMC raised the argument described therein in support of its Complaint for Mandamus.



7. Intervening Defendants admit the allegations set forth in Paragraph 7.
8. Intervening Defendants admit the allegation set forth in Paragraph 8.
9. Intervening Defendants admit the allegation set forth in Paragraph 9.
10. Intervening Defendants admit the allegation set forth in Paragraph 10.

11. In response to Paragraph 11, the Intervening Defendants acknowledge that Plaintiff CPMC seeks an immediate stay of the Court of Appeals' Order directing the Secretary and the Board to take the steps required to place VNP's proposal on the ballot. The Intervening Defendants request that Plaintiffs' motion be denied for the reasons discussed in greater detail *infra*.

12. In response to Paragraph 12, the Intervening Defendants acknowledge that Plaintiffs have made the arguments summarized therein in support of their Application for Leave to Appeal, but contend that those issues have been properly found to be without merit by the well-reasoned decision of the Court of Appeals. Intervening Defendants will provide a detailed response to each of Plaintiffs claims in their response to Plaintiffs' Application, which will be filed with the Court on or before June 22, 2018, unless the Court requests that it be filed at an earlier date.

13. In response to Paragraph 13, the Intervening Defendants acknowledge that the issues raised in Plaintiffs' Complaint for Mandamus are legal issues which are within the jurisdiction of the courts, and not the Board of Canvassers.

14. Intervening Defendants admit the allegation set forth in Paragraph 14.

15. In response to Paragraph 15, the Intervening Defendants agree that this Court should grant an expedited consideration of this matter to ensure that the necessary legal issues are finally decided in sufficient time to allow the proper and timely performance of the Secretary

of State's and the Board of State Canvassers' statutory duties required for submission of VNP's proposal on the ballot for the November general election, but contend that the prompt performance of those statutory duties required by the Court of Appeals' decision should not be delayed pending this Court's disposition of Plaintiffs' legal claims for the following reasons:

a. As the parties have correctly acknowledged, Plaintiffs' legal challenges to the validity of VNP's petition present issues which are within the jurisdiction of the courts, and not the Board.

b. VNP's Petition, supported by approximately 428,000 petition signatures, was filed with the Secretary of State on December 18, 2018.

c. The Board of Canvassers established a deadline of April 26, 2018 for filing of challenges to the petition signatures.

d. No challenges to the number or validity of the petition signatures have been filed with the Board of Canvassers.

e. No challenges to the form of VNP's petition have been filed with the Board of Canvassers other than a challenge filed by Plaintiff Citizens Protecting Michigan's Constitution ("CPMC"), which raised the same issues which had been raised in Plaintiffs' Complaint for Mandamus – legal issues which the parties have agreed are not within the Board's jurisdiction. The CPMC challenge filed with the Board of Canvassers did not challenge the validity or the sufficiency of the VNP petition signatures.

f. In the absence of any issues concerning the number or validity of the petition signatures, and there being no challenges to the form of the petition within the Board's jurisdiction, the Board's duty to certify VNP's proposal for submission on the ballot is ministerial, requiring no exercise of discretion.

g. On May 3, 2018, having observed that no challenges within the Board's jurisdiction had been filed within the time allowed by the Board for filing of challenges, VNP's General Counsel, James Lancaster, made a written request to Board Chairman Norman Shinkle to put VNP's proposal on the Board's agenda for certification as soon as possible. The Board did not respond to that request.

h. The Board subsequently scheduled a meeting for May 10, 2018, but VNP's proposal was not put on the agenda for that meeting.

i. On May 22, 2018, the Bureau of Elections issued its Staff Report for VNP's proposal. That report stated that 315,654 valid signatures were required for certification, and estimated that VNP's petition was supported by 394,092 valid signatures, at a confidence level of 100%. The Staff Report also noted the agreement of the parties that the Plaintiffs' legal challenges regarding the form of VNP's petition were properly before the courts, and concluded with the recommendation that the Board of Canvassers certify the petition. *See*, Affidavit of James R. Lancaster, ¶ 3 and Staff Report attached as Exhibit A.)¹

j. On the same date, Mr. Lancaster received notification that VNP's proposal had been placed on the agenda for the Board's meeting of May 24, 2018. (Lancaster Affidavit, ¶ 4 and notification attached as Exhibit B.

k. On the afternoon of May 23, 2018, Mr. Lancaster received notification that the Board's meeting scheduled for May 24, 2018 had been cancelled. The notice of cancellation provided no explanation of the reason for the cancellation. (Lancaster Affidavit, ¶ 5 and notice of cancellation attached as Exhibit C)

¹ A copy of the Affidavit of James R. Lancaster is attached as Appendix "A."

1. On May 23, 2018, after learning that the Board's meeting had been cancelled, Mr. Lancaster sent an e-mail message to Board Chairman Norman D. Shinkle, requesting that he provide an explanation of the reason for the cancellation and inquiring as to whether VNP's proposal would be on the agenda for the Board's next meeting on June 1, 2018. Chairman Shinkle did not respond to that message. (Lancaster Affidavit, ¶ 6 and e-mail message attached as Exhibit D)

m. Explanations of Chairman Shinkle's reasons for cancelling the May 24, 2018 meeting have appeared in media reports. In *Gongwer News Service's* report for May 23, 2018, Secretary of State Spokesperson Fred Woodhams was quoted as saying that Chairman Shinkle had cancelled the meeting "because there were legal filings this week that make it clear the board was under no immediate deadline to take up the matter." In the *MIRS News* report for May 23, 2018, Mr. Woodhams was quoted as saying that Chairman Shinkle had opted to cancel the meeting because there were "legal filings this week that make it clear the board was under no immediate deadline to take up the matter" and further explained that Mr. Shinkle had stated that "the matter is before the courts" and he wanted resolution there before having the Board move forward. (Lancaster Affidavit, ¶ 7 and media reports attached as Exhibits E and F)

n. The Board of Canvassers subsequently issued its agenda for its meeting to be held on June 1, 2018. Consideration of VNP's proposal was not included among the items listed on that agenda. (Lancaster Affidavit, ¶ 8 and notice attached as Exhibit G)

o. In the Plaintiffs' Answer and Affirmative Defenses to Intervening Defendants' Cross-Claim filed with the Court of Appeals on May 22, 2018, Plaintiffs denied that there was any necessity for prompt consideration of VNP's proposal by the Board, and asserted that the Board is not required to act on VNP's proposal until September 6, 2018. (See Plaintiffs'

responses to Paragraphs 17, 20, 28 and 32 of the Cross-Claim on pages 11-12, 16 and 18, and Affirmative Defense No. 6 on page 19) The same claim has now been repeated in Plaintiffs' Application for Leave to Appeal to this Court.

p. Chairman Shinkle's abrupt cancellation of the May 24, 2018 meeting, his statements to the media, and the absence of VNP's proposal from the agenda for the June 1, 2018 meeting of the Board suggest that his actions have been influenced by the arguments and opinions expressed by the Plaintiffs' pleadings filed in this matter, and that he has been persuaded by those arguments and opinions to conclude that VNP's proposal for amendment of the Constitution need not be addressed by the Board before September 6, 2018.

q. If the Board's consideration of VNP's proposal is delayed in the manner that Plaintiffs and Chairman Shinkle have suggested, the adjudication of the VNP proposal's eligibility for the November 2018 General Election ballot and the necessary approval of the 100-word summary of purpose may be decided in a piecemeal fashion, causing the Intervening Defendants to be unfairly denied a reasonable opportunity to pursue further review, or enforcement of any decree made by this Court, if there should be an unjustified deadlock of the Board's members on the eve of the September 6, 2018 deadline.

r. There is no necessity for delaying the certification of VNP's proposal or the completion of the related duties required for submission of its proposal on the ballot until final adjudication of Plaintiffs' legal challenges by this Court, nor is there any legitimate reason for doing so. Any actions taken by the Secretary of State and the Board of Canvassers in compliance with the Court of Appeals' Order will, of course, be subject to modification by any subsequent Order of this Court. Thus, there would be no prejudice to any party if VNP's proposal is certified

and prepared for submission on the ballot pending final disposition of Plaintiffs' legal challenges.

16. In response to Paragraph 16, the Intervening Defendants deny that prompt compliance with the Court of Appeals' Order will present any danger of confusion among the voters, as it is expected that this Court will promptly address the legal issues presented in Plaintiffs' Application, and that its decision will determine whether VNP's proposal will be submitted to the voters well in advance of the election. The Intervening Defendants also deny that any confusion of the voters will result from the Board's assignment of the numerical designation for the proposal, as MCL 168.474a(2)(b) provides that the number designation must be assigned in chronological order based upon the date of filing of the petition with the Secretary of State – an event which occurred long ago, on December 18, 2017. The Court should also note, in this regard, that the number designation cannot be assigned until after the August primary. MCL 168.474a(1).

17. In response to Paragraph 17, the Intervening Defendants acknowledge that MCL 168.477(1) requires the Board to declare the sufficiency or insufficiency of a petition at least 2 months before an election, but contend that the Board should not be permitted to delay the performance of that duty for the reasons discussed in response to Paragraph 15.

18. Intervening Defendants admit the allegation set forth in Paragraph 18, and contend that this relief was properly granted by the Court of Appeals.

19. In response to Paragraph 19, the Intervening Defendants deny that further action by the Board and the Secretary should be delayed pending this Court's disposition of Plaintiff's claims, for the reasons previously discussed.

20. In response to Paragraph 20, the Intervening Defendants admit that the Board of Canvassers has not yet scheduled a meeting for consideration of VNP's proposal in accordance with the Order of the Court of Appeals. The Intervening Defendants can neither admit nor deny the truth of opposing counsel's claimed belief that a meeting may be scheduled as early as June 14, 2018, having insufficient personal knowledge to either admit or deny the same, but shall leave Plaintiffs to their proofs.

WHEREFORE, the Intervening Defendants / Cross-Plaintiffs – Appellees respectfully request that Plaintiffs – Appellants' Motion for Stay be denied.

Respectfully submitted,

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

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Dated: June 12, 2018



APPENDIX "A"

STATE OF MICHIGAN
IN THE COURT OF APPEALS

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

v Plaintiffs,

Court of Appeals
No. 343517

SECRETARY OF STATE and MICHIGAN
BOARD OF STATE CANVASSERS,

Defendants / Cross-Defendants,
and

**AFFIDAVIT OF JAMES
R. LANCASTER**

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,
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(517) 482-5800



AFFIDAVIT OF JAMES R. LANCASTER

STATE OF MICHIGAN)
) SS
COUNTY OF INGHAM)

James R. Lancaster, being first duly sworn, deposes and states the following:

1. I have personal knowledge of the matters discussed herein, and am competent to give testimony regarding those matters if called upon to do so.

2. I am the General Counsel for Intervening Defendant / Cross-Plaintiff Voters Not Politicians (“VNP”).

3. On May 22, 2018, the Bureau of Elections issued its Staff Report for VNP’s proposal. That report stated that 315,654 valid signatures were required for certification, and estimated that VNP’s petition was supported by 394,092 valid signatures, at a confidence level of 100%. The Staff Report also noted the agreement of the parties that the Plaintiffs’ legal challenges regarding the form of VNP’s petition were properly before the courts, and concluded with the recommendation that the Board certify the petition. A copy of the Bureau of Elections Staff Report is attached as Exhibit A.

4. On May 22, 2018, I received notification that VNP’s proposal had been placed on the agenda for the Board’s meeting of May 24, 2018. A copy of that notification is attached as Exhibit B.

5. On the afternoon of May 23, 2018, I received notification that the Board’s meeting scheduled for May 24, 2018 had been cancelled. A copy of the notice of cancellation, which provided no explanation of the reason for the cancellation, is attached as Exhibit C.

6. On May 23, 2018, after learning that the Board’s meeting had been cancelled, I sent an e-mail message to Board Chairman Norman D. Shinkle, requesting that he provide an




explanation of the reason for the cancellation and inquiring as to whether VNP's proposal would be on the agenda for the Board's next meeting on June 1, 2018. A copy of my e-mail message to Mr. Shinkle is attached as Exhibit D. Chairman Shinkle has not responded to that message.

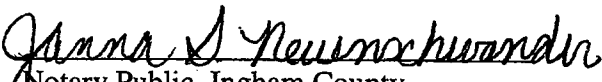
7. Explanations of Chairman Shinkle's reasons for cancelling the May 24, 2018 meeting have appeared in media reports. In *Gongwer News Service's* report for May 23, 2018, the pertinent excerpt of which is attached as Exhibit E, Secretary of State spokesperson Fred Woodhams was quoted as saying that Chairman Shinkle had cancelled the meeting "because there were legal filings this week that make it clear the board was under no immediate deadline to take up the matter." In the *MIRS News* report for May 23, 2018, the pertinent excerpt of which is attached as Exhibit F, Mr. Woodhams was quoted as saying that Chairman Shinkle had opted to cancel the meeting because there were "legal filings this week that make it clear the board was under no immediate deadline to take up the matter" and further explained that Mr. Shinkle had stated that "the matter is before the courts" and he wanted resolution there before having the Board move forward.

8. The Board of Canvassers has issued the agenda for its meeting to be held on June 1, 2018, a copy of which is attached as Exhibit G. Consideration of VNP's proposal is not included among the items listed on that agenda.

Further, Deponent sayeth not.


James R. Lancaster

Subscribed and sworn before me on the 31st day of May, 2018.


Notary Public, Ingham County
Acting in Ingham County
My Commission expires: 6/5/22

JANNA S. NEUNSCHWANDER
NOTARY PUBLIC - STATE OF MICHIGAN
COUNTY OF EATON
My Commission Expires June 5, 2022
Acting in the County of Ingham



EXHIBIT A



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

May 22, 2018

STAFF REPORT:
VOTERS NOT POLITICIANS
CONSTITUTIONAL AMENDMENT PETITION

SPONSOR: Voters Not Politicians (VNP), P.O. Box 8362, Grand Rapids, Michigan 49518.

DATE OF FILING: December 18, 2017.

NUMBER OF VALID SIGNATURES REQUIRED: 315,654 signatures.

TOTAL FILING: 74,295 sheets containing 427,075 signatures.

SIGNATURE SAMPLE

EXCLUDED FROM SAMPLE: 562 sheets containing 1,865 signatures.

	<u>Sheets</u>	<u>Signatures</u>
Torn, mutilated, or damaged sheets:	16	70
Circulator errors: (Omitted or incorrect date, etc.)	120	749
Signer errors: (Invalid jurisdiction, address or date entry by every signer on sheet)	320	1,046
Sheets with every entry crossed out prior to filing:	106	0
TOTAL:	562	1,865

INCLUDED IN SAMPLE: 73,733 sheets containing 425,210 signatures (the universe).

The two-stage sampling process was selected for the canvass of this petition. Using the Board's established procedures, staff draws a small sample (approximately 500 signatures) at the first stage, and the result of that sample determines whether there is a sufficient level of confidence in the result to immediately recommend certification or the denial of certification. If, instead, the result of the small sample indicates a "close call," a second random sample is taken to obtain a result with the maximum confidence level possible.

NUMBER OF SAMPLED SIGNATURES: 505 signatures.

SAMPLE RESULT: 466 valid signatures; 39 invalid signatures.

Valid signatures

Registered signers; signatures verified:	466
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Invalid signatures

Signatures determined invalid due to signer's registration status:	25
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Other jurisdiction or address errors (address given is located outside of the listed jurisdiction, missing or incomplete address):	6
--	---

Signature errors (missing or incomplete signatures, non-matching signatures):	6
---	---

Date errors (incorrect or omitted date, signature dated after circulator's signature):	2
--	---

Total	505
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A challenge was timely filed on April 26, 2018 by Citizens Protecting Michigan's Constitution (CPMC), which does not dispute the genuineness or validity of signatures within the sample. Instead, CPMC alleges that the form of the petition fails to comply with the republication requirement of MCL 168.482(3), as the petition allegedly omits at least four constitutional provisions identified by CPMC which would be abrogated by the proposal if adopted. As the challenge explains,¹

CPMC believes the subject matter of this challenge is within the jurisdiction of Michigan's courts. This challenge is filed as a precautionary measure in the event that a court determines otherwise. On April 25, 2018, CPMC, joined by two individual plaintiffs, filed a complaint for mandamus in the Michigan Court of Appeals, seeking an order requiring the Secretary of State and Board of State Canvassers to reject the initiative petition and take no further action to place the VNP Proposal on the 2018 general election ballot. ... CPMC thus requests that the Board take no further action on the VNP Proposal at this time, and await a determination from the Court of Appeals with respect to its complaint for mandamus.

On May 3, 2018, VNP filed a response to the challenge stating:²

The ballot question committee sponsored by the Michigan Chamber of Commerce, [CPMC], has filed a challenge which raises only legal issues, which it has acknowledged are outside of the jurisdiction of the Board. CPMC has 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 [sic] certify the VNP Proposal.

¹ Challenge of Citizens Protecting Michigan's Constitution Regarding the VNP Petition's Failure to Republish Abrogated Sections of the Existing Constitution, April 26, 2018, pp. 1-2, 3.

² Letter of VNP Counsel to the Board of State Canvassers, May 3, 2018, pp. 1-2.

FINAL RESULT OF SIGNATURE SAMPLE

<u>Number of valid signatures</u>	<u>Formula Result</u>
389 or more	Certify
359 – 388	Sample more signatures
358 or fewer	Deny certification

ESTIMATED NUMBER OF VALID SIGNATURES CONTAINED ON PETITION: Based on the results of the random sample, it is estimated that the petition contains 394,092 valid signatures (at a confidence level of 100%).

STAFF RECOMMENDATION

When the Board unanimously approved the VNP petition as to form on August 17, 2017, it stated that “the Board’s approval does not extend to ... (4) whether the petition properly characterizes those provisions of the Constitution that have been altered or abrogated.”

In view of the Board’s motion and the parties’ apparent agreement that the legal issues regarding the form of the petition are properly before the courts, staff recommends that the Board **certify** the petition.

RECEIVED by MSC 6/12/2018 4:28:59 PM

Exhibit B

RECEIVED by MCOA 5/10/2018 3:04:43 PM

From: Michigan Secretary of State <MISOS@govsubscriptions.michigan.gov>
Reply-To: "MISOS@govsubscriptions.michigan.gov" <MISOS@govsubscriptions.michigan.gov>
Date: Tuesday, May 22, 2018 at 9:42 AM
To: Elizabeth Battiste <ebattiste@martinwaymire.com>
Subject: NEWS RELEASE: Board of State Canvassers to meet Thursday, May 24

Board of State Canvassers to meet Thursday, May 24

The Board of State Canvassers will meet at 10:00 A.M in Room 426 of the State Capitol in Lansing.

Included on the agenda will be:

- Consideration of meeting minutes for approval.
- Consideration of the constitutional amendment petition filed by Voters Not Politicians (VNP), P.O. Box 8362, Grand Rapids, Michigan 49518.
- Such other and further business as may be properly presented to the Board.

Attending and speaking at a Board of State Canvassers meeting

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.

Having trouble viewing this email?

Michigan Department of State
430 W. Allegan St., Lansing MI 48918
www.Michigan.gov/sos

EXHIBIT C



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

- - - CANCELLED - - -

-- NOTICE --

YOU ARE HEREBY NOTIFIED THAT THE BOARD OF STATE CANVASSERS WILL CONDUCT A HEARING ON MAY 24, 2018 AT 10:00 A.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 the constitutional amendment petition filed by Voters Not Politicians (VNP), P.O. Box 8362, Grand Rapids, Michigan 49518.
- 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.

EXHIBIT D

----- Original Message -----

From: James Lancaster <lancaster-law@comcast.net>

To: ShinkleN@michigan.gov

Date: May 23, 2018 at 5:38 PM

Subject: Cancellation of May 24 Board of State Canvassers meeting

Chairperson Shinkle: I have been informed that you exercised your discretion as Chair of the Board to cancel tomorrow's meeting.

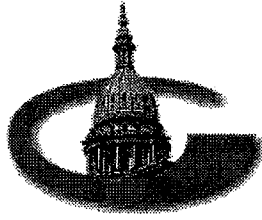
Could you explain to me why you chose to do that?

It is also my understanding that your next Board meeting will be June 1. Will the Voters Not Politicians proposal be on the agenda at that meeting?

I would appreciate your prompt attention and response.

James R. Lancaster
Lancaster Associates PLC
(517) 285-4737

EXHIBIT E



GONGWER Michigan
The Capitol Record Since 1906

Volume #57, Report #101 -- Wednesday, May 23, 2018

House Set To Act On Sexual Assault Bills

The House Law and Justice Committee sent to the full House a slew of bills seeking to prevent sexual assaults with some last minute additions Wednesday adding athletic trainers back to the list of mandatory reporters after removing them and further extending the criminal statute of limitations for minor victims.

The committee reported nearly 30 bills inspired by the Larry Nassar sex scandal at Michigan State University including legislation that came over from the Senate extending the statute of limitations for civil and criminal cases of sexual assault. Those bills were changed from the Senate version to reduce the statute of limitations from what was originally proposed but still extended from current law.

The bills are expected to come up before the full House on Thursday.

Legislation expanding those who would be required to report suspected child abuse and neglect changed Wednesday after the committee on Tuesday moved to extend the reporting requirements to only physical therapists and their assistants. On Wednesday, the panel added athletic trainers back to the bill.

Rep. Clint Kesto (R-West Bloomfield), chair of the committee, said athletic trainers asked to be included in the bill and he and other members were working to see if it would be appropriate up until the amendment was adopted.

The panel also changed SB 871, which extends the statute of limitations in second- and third- degree criminal sexual assault cases. Instead of a minor victim having until age 21 to bring forward a charge, they would have until age 28.

On SB 872, dealing with the civil statute of limitations, Rep. Frank Liberati (D-Allen Park) offered an amendment Wednesday that would have taken language out of the bill extending the civil statute of limitations for criminal sexual conduct retroactively if the abuser had admitted to using their position of authority over the victim or they engaged in purported medical treatment that is unethical or unacceptable.

Mr. Liberati said that provision does not give all sexual assault victims access to the justice system retroactively. It appears it would apply only to those abused by Larry Nassar while he was a physician in Michigan.

Under the House version of the bill, minor victims of criminal sexual conduct between 1997 and 2016 would have 90 days after the bill takes effect to file civil suit against a person who allegedly committed the criminal sexual conduct if they were convicted of first-degree criminal sexual conduct against any person and admitted to the provision Mr. Liberati attempted to remove. The amendment was defeated.

Mr. Kesto said the amendment came at the last minute and the compromise was already in place.

Rep. Stephanie Chang (D-Detroit), who abstained from Mr. Liberati's amendment, said she is a believer in the process the committee used on the compromise for each of the bills.

The bills would be a "long-needed update" to HIV legislation, much of which was written before lawmakers and medical experts really understood the disease and how to manage it, said Dr. Eden Wells, the state's chief medical executive.

HB 6018, sponsored by committee chair Rep. Hank Vaupel (R-Handy Township), would reduce the requirements on health care providers to provide pre- and post-HIV test counseling. It would also only require documentation of a patient's refusal of an HIV test.

Rep. Abdullah Hammoud's (D-Dearborn) HB 6019 would remove the term "serious communicable disease" in relation to HIV, which prevents health care providers from disclosing any identifying information.

HB 6023, sponsored by Rep. Kevin Hertel (D-Saint Clair Shores), would remove a requirement that positive HIV tests be reported to the local health department within seven days. Electronic reporting has made it so that reporting can be done within 24 hours of diagnosis, Ms. Wells said.

Perhaps most controversial among Tuesday's committee attendees were Rep. Jon Hoadley's (D-Kalamazoo) bills, HB 6020 and 6021, to lessen the penalties for knowingly exposing uninfected persons to HIV.

Under HB 6020, someone infected with HIV who exposes an uninfected person to the disease could be convicted of a misdemeanor, not a felony as current law stipulates. HB 6021, to remove the felony described as "AIDS - sexual penetration with an uninformed partner," could not be enacted without HB 6020's passage.

The current law puts HIV-positive individuals at risk for major penalties for what often comes down to a "he-said, she-said" situation, Mr. Hoadley said in his testimony to the committee.

It also doesn't differentiate between someone with malicious intent and someone with less of a risk for transmission, he said.

HB 6020 would create "intent language," penalizing those who actively try to transmit HIV to unknowing sexual partners, Mr. Hoadley said. He added that simply being diagnosed could put individuals at risk for conviction under current law.

"The only way to ensure that you are never charged is to ensure that you're never tested," Mr. Hoadley said.

Rep. Edward Canfield (R-Sebewaing), sponsor of HB 6016 and HB 6017 to update the definition of HIV infection and remove a 90-day retention period on HIV records, testified in opposition to Mr. Hoadley's bills.

Mr. Canfield took issue with reducing the penalty for knowingly exposing others to the virus, saying that the offender could get off with little more than a \$1,000 fine while the victim would potentially face a lifetime with an incurable condition.

Rep. John Bizon (R-Battle Creek), sponsor of HB 6022 to mandate third-trimester HIV, syphilis and Hepatitis B testing, also said he wondered if reduction of penalties was appropriate. He did not voice explicit opposition to Mr. Hoadley's bills.

Alongside Ms. Wells, Dr. Betty Chu of the Michigan State Medical Society and Dr. Elizabeth Secord of the Wayne State University Children's Hospital testified in support of the full bill package. The Michigan Primary Care Association also spoke in support.

Canvassers Cancel Meeting To Consider Redistricting Petition

Thursday's scheduled meeting of the Board of State Canvassers has been canceled, baffling the backers of the ballot proposal to rework how the state redraws its legislative and congressional districts.

On the agenda for tomorrow's meeting was consideration of a petition filed by Voters Not Politicians to place the creation of an Independent Citizens Redistricting Commission on the November statewide ballot.

Board chair Norm Shinkle canceled the meeting "because there were legal filings this week that make it clear the board was under no immediate deadline to take up the matter," said Secretary of State spokesperson Fred Woodhams.

Katie Fahey, executive director of Voters Not Politicians, said the group was "very disappointed" that Shinkle decided to cancel when the only item on the agenda was certification of the initiative.

Since the Secretary of State determined on Tuesday that the group collected enough signatures required to bring the anti-gerrymandering initiative to a vote, the board has a clear legal duty to certify it, Fahey said.

In a fundraising appeal to supporters Wednesday night, Ms. Fahey called the cancellation of the meeting gamesmanship.

"To be perfectly honest, I had hoped that seeing thousands of voters uniting regardless of party from across the state would have inspired the board to act in a fair and transparent way, but I'm not surprised that we're seeing politics interfere - I'm just disappointed," she said.

DEQ Sues To Enforce Consent Decree With Ex-Defense Plant

A former U.S. Department of Defense manufacturing plant in Muskegon, where hazardous waste was produced and released for more than 50 years, is subject of a consent decree with the Michigan Department of Environmental Quality that will be subject to enforcement by a federal judge.

The DEQ filed suit Wednesday at the U.S. District Court in Grand Rapids against the U.S. Department of Defense; TDY Industries LLC, a former owner/operator of the site; and L3, Incorporated, which has owned the site since 2004. The Department of Defense owned and controlled a testing and manufacturing plant at the site for military aircraft and tank engines from the 1920s until 1972. TDY owned and operated the site from 1972-96, after which the DEQ said new contamination issues ceased.

According to the DEQ's complaint, from the early 1940s until 1996, hazardous waste was produced and released at the site. In 1980, it began operating as a hazardous waste storage facility.

"While monitoring and remediation have been performed at the site, the corrective measures taken have been insufficient to satisfy applicable cleanup criteria and screening values," the complaint says. "Additional investigation, monitoring and cleanup are still required in order to remove a variety of hazardous contaminants from environmental media at, and around the site, in order to mitigate environmental and human health risks at and around the site."

As part of the consent decree, the state is seeking recovery of the costs already incurred and to be incurred in responding to releases or the threat of releases of hazardous substances at or from the site.

As part of the consent decree, the defendants agree to correct various contamination issues.

The list of hazardous substances found at levels above cleanup criteria requirements is long and includes everything from cyanide to PCBs to mercury to lead to arsenic to trichloroethylene to chromium to benzene to selenium.

The plant is located about a quarter-mile south of the Muskegon River and a quarter-mile north of a creek that feeds into the Muskegon River, which feeds into Muskegon Lake, which feeds into Lake Michigan. It also is less than a half-mile from residential areas.

EXHIBIT F



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QUOTE OF THE DAY

"It seems like somebody is scratching and clawing to find relevance. Obviously, his own caucus didn't find relevance in his work. That's why they replaced him."

- Rep. Clint **KESTO** (R-Commerce Twp.) after former Minority Leader Tim **GREIMEL** (D-Auburn Hills) said Kesto "caved to reported pressure from the Michigan Catholic Conference" on what Greimel called the "Kesto's Pedophile Priest Loophole" or the Larry **NASSAR** response legislation.

Inside Today's MIRS

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Chatfield Taking Lead In House On Pot Legalization Question

Greimel Takes A Shot At Kesto As House Passes 28 Sex Assault Reform Bills

\$18M Health Insurance Tax Cut Shoots Through Panel, Full Senate By Lunch

Senate Approps Moves Marshall Plan, Changes To Follow

New Local Licensing Requirements On The Chopping Block

Plastic Water Pipe Bill Debate Switches To House

Goodbye Arrow; Welcome Back Ballot Box

Folks Can't Skirt Medicaid Costs With Spouse's Money

Reps Want To Ease Penalties For Failure To Disclose Being HIV Positive

Senate's 5-Foot Passing Bicyclist Distance To Shrink To 3

Former Detroit Police Department Commander, Officer Charged In Assault

GOP Canvasser Chair Cancels Meeting To Consider Redistricting Proposal

Defendants Must Be Present For Victim Statements Under New Law

State Leaders Press Pruitt, Feds On PFAS Study Suggesting Increased Risk

Should Molding Machine Manufacturer Have Foreseen Accident?

Bits And Tidbits

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employment.

Person faces up to five years in prison if convicted as charged.

Both defendants are expected to be arraigned 10:30 a.m. Thursday in 36th District Court.

"It is disappointing that we have to level charges against one of the Detroit Police Department's top brass and yet another officer," Wayne County Prosecutor Kym **WORTHY** said. "These alleged actions do not represent the hard-working men and women who work each day to protect Detroit."

Authorities allege Leach, who was off-duty at the time, was working as a security guard around 3:40 a.m. March 11 at a restaurant in the 1400 block of Michigan Avenue when he "forcibly pushed" Karpovich, who fell to the ground and suffered a "significant head injury" that caused him to lose consciousness, as he tried to eject the man from the restaurant.

Medics at the scene transported Karpovich to a local hospital for treatment. He has since been released from the hospital, but continues to recuperate from his injuries, the prosecutor's office said.

GOP Canvasser Chair Cancels Meeting To Consider Redistricting Proposal

The Republican chair of the Board of State Canvassers (BSC) today canceled the board's Thursday meeting, which had consideration of the Voters Not Politicians (VNP) redistricting ballot proposal on the agenda.

Fred **WOODHAMS**, spokesperson for the Secretary of State (SOS), said BSC Chair Norm **SHINKLE** opted to cancel the meeting because there were "legal filings this week that make it clear the board was under no immediate deadline to take up the matter."

Shinkle is one of two Republicans on the BSC, with the other two members nominated by Democrats. Woodhams explained that Shinkle said, "the matter is before the courts" and he wanted resolution there before having the board move forward.

It was also noted that the filing deadline for constitutional amendments is in July and the BSC doesn't need to vote on them until September to make the November ballot.

VNP has been pushing for speedy certification by the BSC, and the SOS reported this week the initiative has enough signatures to be certified (See "SOS: Redistricting Proposal Has Enough Sigs For November Ballot," 5/22/18). The meeting with the VNP proposal on the agenda was announced Tuesday.

But opposing group Citizens Protecting Michigan's Constitution (CPMC) has lodged a legal challenge against the petition in the state Court of Appeals (COA) (See "Redistricting Reform Opponents Find 4 Constitutional Problems With VNP," 5/7/18).

So far, the CPMC's requests for oral arguments and more time to file briefs have been shut down by the COA (See "Appeals Court Denies CPMC Request For Delay In Redistricting Fight," 5/18/18).

CPMC has until 1 p.m. May 31 to file a response to a brief filed by VNP at the COA, said David **DOYLE**, spokesperson for CPMC.

VNP spokesperson Elizabeth **BATTISTE** said on Twitter in response today that the "Board of State Canvassers has one job: To make sure @NotPoliticians has enough valid signatures to make the ballot. We turned in 100,000 more than we needed. #LetThePeopleVote."

EXHIBIT G



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

-- AMENDED NOTICE --

**YOU ARE HEREBY NOTIFIED THAT THE BOARD OF STATE CANVASSERS
WILL CONDUCT A HEARING ON JUNE 1, 2018 AT 9:00 A.M.
IN ROOM 426 OF THE STATE CAPITOL BUILDING, LANSING, MICHIGAN**

Included on the Agenda will be:

- Consideration of meeting minutes for approval.
- **NEW AGENDA ITEM:** Consideration of the initiative petition filed by Protecting Michigan Taxpayers, 2145 Commons Parkway, Okemos, MI 48864.
- Report on review of nominating petitions filed with the Secretary of State for the August 7, 2018 primary.
- Staff report on insufficient petitions submitted by candidates for the August 7, 2018 primary:
 - Matthew Morgan, candidate for U.S. Representative in Congress, 1st District.
 - Eponine Garrod, candidate for U.S. Representative in Congress, 6th District.
 - Kristine Bonds, candidate for U.S. Representative in Congress, 11th District.
- Consideration of challenges filed against nominating petitions submitted by candidates for the August 7, 2018 primary:
 - Shri Thanedar, candidate for Governor.
 - Nick Schiller, candidate for U.S. Representative in Congress, 2nd District.
 - Joe Farrington, candidate for U.S. Representative in Congress, 3rd District.
 - Paul Clements, candidate for U.S. Representative in Congress, 6th District.
 - Dan Haberman, candidate for U.S. Representative in Congress, 11th District.
 - Tracy Green, candidate for Judge of the 3rd Circuit Court, Regular Term/Non-Incumbent Position.
 - Tory Rocca, candidate for Judge of the 16th Circuit Court, New Judgeship.
 - Maria Zagorski, candidate for Judge of the 1st District Court, Regular Term/Non-Incumbent Position.
 - Paul Zyburski, candidate for Judge of the 39th District Court, Regular Term/Non-Incumbent Position.
 - James Osak, candidate for Judge of the 43rd District Court, Regular Term/Incumbent Position.
 - Kameshia Gant, candidate for Judge of the 46th District Court, Regular Term/Incumbent Position.
- 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.