

**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

**INTERVENING DEFENDANTS /  
CROSS-PLAINTIFFS' MOTION FOR  
EXPEDITED CONSIDERATION OF  
CROSS-CLAIM AND TO REQUIRE  
CERTIFICATION OF PROPOSAL**

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**INTERVENING DEFENDANTS / CROSS-PLAINTIFFS' MOTION  
FOR EXPEDITED CONSIDERATION OF CROSS-CLAIM  
AND TO REQUIRE CERTIFICATION OF PROPOSAL**

Now Come Intervening Defendants / Cross-Plaintiffs (“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, bringing this Motion for Expedited Consideration of Cross-Claim and to Require Certification of Proposal pursuant to MCR 7.211, and in support of their motion, state the following:

1. In this original action, Plaintiffs have sought a writ of mandamus directing Defendants Secretary of State and Board of State Canvassers (“Board of Canvassers” or “Board”) to reject the ballot proposal at issue in this litigation, and to take no action to place that proposal on the ballot. Plaintiffs’ Complaint for Mandamus has presented claims alleging that VNP’s proposal cannot be submitted to the voters because it constitutes a “general revision” of the Constitution which can only be accomplished by a constitutional convention convened pursuant to Const 1963, art 12, § 3, and because the ballot proposal petition failed to list and republish existing sections of the Constitution that would be abrogated by the amendment if adopted by the voters. Neither the Plaintiffs, nor any other member of the public, have challenged the validity or the sufficiency of the number of signatures obtained for the VNP proposal.

2. All of the parties have agreed that the Plaintiffs’ legal challenges present issues which are within the jurisdiction of the courts, and not the Board. It is also clear that Defendant Board of Canvassers has only one remaining duty within its jurisdiction with respect to

certification of the VNP proposal: to determine whether it has at least 315,654 valid signatures, and if it does, certify the proposal for the 2018 General Election ballot.

3. The 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.

4. The Intervening Defendants have pursued their Cross-Claim against Defendants Secretary of State and Board of Canvassers to ensure that their clear legal duties to certify the VNP proposal and submit it to the voters are performed promptly. The timely performance of those duties is critical to assure that questions concerning the VNP proposal's eligibility for the ballot and its submission to the voters are not decided in a piecemeal fashion which might unfairly limit the opportunity to pursue enforcement action against Defendants to compel certification of the proposal or approval of the constitutionally-required 100-word summary. It is inappropriate to allow the Board to delay these actions until final adjudication of Plaintiffs' claims by the Supreme Court.

5. The Intervening Plaintiffs have brought this Motion for Expedited Consideration of Cross-Claim and to Require Certification of Proposal because events occurring after the entry of this Court's Order of May 11, 2018 and the filing of their original supporting brief on May 22, 2018 clearly suggest that the Chairman of the Board of Canvassers is unwilling to place VNP's proposal on the Board's agenda for certification despite the absence of any challenge within the Board's jurisdiction and the existence of new and undisputed evidence, presented by the Bureau of Elections Staff Report issued on May 22, 2018, that VNP's proposal has been supported by an abundantly sufficient number of petition signatures. It has become clear that the Chairman does not intend to allow the Board to consider VNP's proposal until after the

legal challenges raised in Plaintiffs' pending Complaint have been finally adjudicated by this Court and the Supreme Court. There is absolutely no justification for his position.

6. As the Intervening Defendants have noted in their previously-filed supporting brief, this Court has authority to grant the relief requested in their Cross-Claim by means of a writ of mandamus directed to Defendants Secretary of State and Board of State Canvassers.

7. This Court also has the authority to grant the relief requested in the Intervening Defendants' Cross-Claim pursuant to MCR 7.216(C)(7) and (9).

8. The Intervening Defendants contend that they are entitled to prompt performance of the Defendants' statutory obligations to certify VNP's proposal, to prepare and approve the constitutionally-required 100-word summary of purpose, and to prepare their proposal for submission on the General Election ballot, for the reasons discussed in the accompanying brief and their supporting brief previously filed on May 22, 2018.

9. The Intervening Defendants contend that there is no legitimate reason to delay the Board's ministerial certification of VNP's proposal or the preparation and approval of the 100-word summary pending resolution of Plaintiffs' legal challenges for the following reasons, explained in greater detail in the accompanying brief and the Affidavit of James R. Lancaster, attached as Exhibit A:

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. As evidenced by the Bureau of Elections Staff Report presented to the Board of Canvassers on May 22, 2018, VNP's proposal has been supported by an amply sufficient number of valid petition signatures. (Lancaster Affidavit, ¶7 and attached Exhibit E)

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 has raised the same issues which have been raised in Plaintiffs' present 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.

10. There is a need for direction from this Court requiring the prompt certification of VNP's proposal and performance of the defendants' remaining statutory duties for the following reasons, explained in greater detail in the accompanying brief and the Affidavit of James R. Lancaster, attached as Exhibit A:

a. VNP's voter-initiated petition, supported by an amply sufficient number of valid signatures, was filed with the Bureau of Elections on December 18, 2017.

b. 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. (Lancaster Affidavit, ¶3) As of the date and time this motion was filed, Mr. Lancaster has not received a response from Mr. Shinkle to his e-mail.

c. VNP's proposal was not put on the agenda for the May 10, 2018 meeting, but Mr. Lancaster attended the meeting on that date and spoke to the Board, renewing his request for prompt scheduling and certification of VNP's proposal. (Lancaster Affidavit, ¶¶ 4-5, and attached Exhibit C)

d. On May 22, 2018, the Bureau of Elections issued its Staff Report which reported its conclusion that VNP's petition had been supported by an abundantly sufficient number of valid signatures and recommended that the Board certify the petition. On the same date, VNP's proposal was listed for consideration on the agenda for the Board's meeting to be held on May 24, 2018. (Lancaster Affidavit, ¶¶ 7-8 and attached Exhibit F) Other than the approval of the minutes from the previous meeting, consideration of the VNP proposal was the only issue on the agenda.

e. On the afternoon of May 23, 2018, Board Chairman Shinkle abruptly cancelled the Board's meeting scheduled for May 24, 2018, without providing any explanation of the reason for the cancellation. Attorney Lancaster has asked Mr. Shinkle to explain the reason for the cancellation and to indicate whether VNP's proposal would be scheduled for the next meeting of the Board. Mr. Shinkle has not responded to this request. (Lancaster Affidavit, ¶¶ 7-8 and attached Exhibits G and H)

f. Media accounts published on May 23, 2018 have reported comments attributed to Mr. Shinkle stating that he cancelled the meeting of May 24, 2018 because filings made in this matter had made it clear that "the board was under no immediate deadline to take up the

matter” and, because “the matter is in the courts” he wanted resolution there before having the Board move forward. (Lancaster Affidavit, ¶¶ 7-8 and attached Exhibits I and J)

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

h. In the Plaintiffs’ Answer and Affirmative Defenses to Intervening Defendants’ Cross-Claim filed with this Court on May 22, 2018, Plaintiffs have denied that there is 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)

i. 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.

j. 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 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 or the Supreme Court, if there should be an unjustified deadlock of the Board's members on the eve of the September 6, 2018 deadline.

11. 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 or the Supreme Court, nor is there any legitimate reason for doing so. This Court's decision on this motion and Intervening Defendants' Cross-Claim and all actions taken by the Secretary of State and the Board of Canvassers in compliance with this Court's Orders would, of course, be subject to modification by any subsequent Order of this Court or the Supreme Court. Thus, there would be no prejudice to any party if VNP's proposal is certified and prepared for submission on the ballot pending disposition of Plaintiffs' legal challenges.

12. This Court has authority to grant expedited consideration of Intervening Defendants' Cross-Claim and require immediate certification of VNP's proposal pursuant to MCR 7.216(A)(7), which grants the Court the broad authority to "enter any judgment or order or grant further or different relief as the case may require" and MCR 7.216(A)(9), which authorizes the Court to "direct the parties as to how to proceed in any case pending before it."

13. For all of these reasons, the Intervening Defendants contend that the interests of justice would be best served by granting an expedited consideration of Intervening Defendants' Cross-Claim and requiring the Board of Canvassers to promptly perform its ministerial duty to certify VNP's proposal for inclusion on the General Election ballot without further delay.

WHEREFORE, the Intervening Defendants / Cross-Plaintiffs respectfully request that this Honorable Court grant their Motion for Expedited Consideration of Cross-Claim and to Require Certification of Proposal, and that the Court promptly enter its Order:



1) Directing the Board of State Canvassers to perform its ministerial duty of certifying VNP's ballot proposal for inclusion on the 2018 General Election ballot, or alternatively, to consider and vote upon certification of VNP's ballot proposal at a meeting convened within 14 days after entry of the Court's Order, or another time deemed appropriate by the Court;

2) Directing the Director of Elections to prepare the constitutionally-required 100-word summary of purpose, and requiring the Board of State Canvassers to consider and approve or vote upon the Director of Elections' proposed summary within 30 days after entry of the Court's Order, or another time deemed appropriate by the Court;

3) Directing the Secretary of State to promptly comply with all of its other constitutional and statutory duties regarding placement of VNP's proposal on the ballot.

Respectfully submitted,

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