

**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' REPLY
BRIEF IN SUPPORT OF
CROSS-CLAIM**

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**INTERVENING DEFENDANTS / CROSS-PLAINTIFFS'
REPLY BRIEF IN SUPPORT OF CROSS-CLAIM**

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THE JURISDICTION OF THE COURT OF APPEALS

As previously discussed, 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).

In their Answer and Affirmative Defenses to Intervening Defendants' Cross-Claim, the Plaintiffs have denied that the Court has jurisdiction over their Cross-Claim because their Cross-Complaint was not accompanied by a supporting brief as MCR 7.206(C)(1) requires for commencement of an original action, and that the Intervening Defendants should have filed a separate action instead of a Cross-Claim. (Answer and Affirmative Defenses, Response to Paragraph 9) The Intervening Defendants acknowledge the content of MCR 7.206(D)(1), which speaks for itself, but note that the requirements of that subrule apply to the commencement of an original action, and do not appear to apply to the filing of a Cross-Claim in an action previously commenced. Nor does the rule contain any content suggesting that the requirement of an accompanying brief is jurisdictional, or that a separate Complaint must be filed in lieu of a Cross-Claim.

The Intervening Defendants note, in this regard, that MCR 2.001 specifically provides that, "The rules of this chapter govern procedure in all courts established by the constitution and laws of the State of Michigan, except where the limited jurisdiction of a court makes a rule inherently inapplicable or where a rule applicable to a specific court or a specific type of proceeding provides a different procedure." MCR 7.206(A) states that, "[e]xcept as otherwise provided in this rule, the general rules of pleading apply as nearly as practicable" and the remainder of the rule contains no content suggesting that the filing of a Cross-Claim should not

be permitted. In further response, the Intervening Defendants also note that they filed their Motion for Intervention promptly, with a request for immediate consideration of the same, in order to ensure that their status as intervenors could be established in time to file their supporting brief within the time allowed for the named Defendants to file their responses, as required by MCR 7.206(D)(2). In their Motion for Intervention, the Intervening Defendants proposed to file a supporting brief addressing their responses to Plaintiffs' Complaint for Mandamus and their Cross-Claim on or before May 22, 2018, the deadline for the Defendants to respond. The Plaintiffs did not object to Intervening Defendants' proposal to proceed in that manner, and their Cross-Claim was accepted for filing by the Court's Order of May 11, 2018.

STATEMENT OF QUESTIONS PRESENTED

Intervening Defendants / Cross-Plaintiffs continue to rely upon the statement of the issues set forth in their original supporting brief previously filed on May 22, 2018.

STATEMENT OF FACTS

Intervening Defendants / Cross-Plaintiffs continue to rely upon the discussion of the facts set forth in their original supporting brief previously filed on May 22, 2018, as supplemented by the following events that occurred after that brief was filed.

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. (Affidavit of James R. Lancaster, ¶ 3 and Staff Report attached as Exhibit A.)¹ On the same date, VNP's General Counsel James 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.

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)

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

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

Shinkle has not responded to that message. (Lancaster Affidavit, ¶ 6 and e-mail message attached as Exhibit D)

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)

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

LEGAL ARGUMENTS

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

Defendants Secretary of State and Board of Canvassers have taken no substantive positions on Plaintiffs' Complaint for Mandamus or Intervening Defendants' Cross-Claim. Rather, they have appropriately pledged to comply with this Court's orders. They have requested that this Court issue its decision in this matter promptly, so as to allow sufficient time for conclusion of any subsequent appeals to the Supreme Court before the middle of August.

However, Defendants' request overlooks the potential for delay in the further proceedings before the Board of Canvassers which could occur after completion of the Supreme Court's review – a delay which could unfairly deny the Intervening Defendants 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 deadline.² This is why it is critical that the Court grant Intervening Defendants' request to require the Board's prompt certification of VNP's proposal for the November 2018 General Election ballot, and prompt performance of Defendants' only remaining duties for its submission to the voters in order to avoid a piecemeal resolution of questions relating to the performance of those duties. These duties are: (1) for the Board to determine whether VNP has submitted a sufficient number of valid signatures, and if it has, certify the VNP proposal, and (2) for the Director of Elections to prepare, and the Board to approve, the 100-word statement.

² The Plaintiffs are not concerned about the potential for such an injustice; indeed, it appears that they would welcome it, as their Answer has repeatedly asserted that the Board of Canvassers is not required to certify VNP's proposal for the ballot until September 6, 2018.

The Intervening Defendants contend that they are entitled to prompt performance of these statutory duties. This Court has the authority to grant that relief by means of a writ of mandamus directed to Defendants Secretary of State and Board of Canvassers. The Court also has broad authority to grant that relief pursuant to MCR 7.216(C)(7), which provides that this Court may, at any time, on terms it deems just, “enter any order or grant further or different relief as the case may require, and MCR 7.216(A)(9), which allows the Court to “direct the parties as to how to proceed in any case pending before it.” *See, Attorney General v Board of State Canvassers*, 318 Mich App 242, 248; 896 NW2d 485 (2016); *Citizens Protecting Michigan’s Constitution v Secretary of State*, 280 Mich App 801; 761 NW2d 210 (2008).

There is no dispute among the parties that the legal challenges to the validity of VNP’s petition present issues that are solely within the jurisdiction of the courts, and not the Board. It is also undisputed that: 1) the Board of Canvassers established a deadline of April 26, 2018 for filing of challenges to the petition signatures; 2) no challenges to the number or validity of the petition signatures have been filed with the Board of Canvassers; 3) 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 raised in Plaintiffs’ present Complaint for Mandamus; and 4) the challenge filed with the Board of Canvassers by Plaintiff CPMC did not raise any issues other than those which have been raised in this Court by Plaintiffs’ present Complaint for Mandamus.

The Board’s “sole duty” with regard to qualifying VNP’s petition is “to determine whether the signatures on the petition are valid, including that of the person who circulated the petition, whether they are the signatures of registered voters, and whether there are sufficient valid signature to certify the petition.” *Deleeuw v State Board of Canvassers*, 263 Mich App

496, 500-501; 693 NW2d 179 (2004); *Gillis v Board of State Canvassers*, 453 Mich 881; 554 NW2d 9 (1996). As this Court has held, in *Citizens for Protection of Marriage v Board of State Canvassers*, 263 Mich App 487, 542; 688 NW2d 538 (2004), the Board of Canvassers is obligated to certify a petition when it has approved the form of the petition, as it has in this case, and a sufficient number of signatures has been filed in support.

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 of purpose pending resolution of Plaintiffs' legal challenges. There *is*, however, a need for direction from this Court requiring the prompt certification of VNP's proposal and performance of the defendants' remaining statutory duties for a number of reasons. As previously discussed, 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, *more than 5 months ago*, but the Board of Canvassers has not addressed the sufficiency of the signatures or considered certification of VNP's proposal in any of its proceedings conducted to date. This continuing delay cannot be justified when there are no disputed issues for the Board to consider.

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, 2108. (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) If the Board's consideration of VNP's proposal is delayed in the manner that Plaintiffs have suggested, the delay would likely result in a piecemeal resolution of the issues related to the eligibility of VNP's proposal for the ballot and its submission to the

voters, thus denying the Intervening Defendants a reasonable opportunity to pursue further review, or enforcement of any decree made by this Court or the Supreme Court, in the event of an unjustified deadlock of the Board's members on the eve of the deadline. Although Plaintiffs might prefer that outcome, this litigation is not a game, and this Court should be loath to approve any strategy that would be implemented in the manner that a game would be played. If there is to be any unjustified refusal to certify VNP's proposal or approve the 100-word summary of purpose prepared by the Director of Elections, that action should be taken sooner rather than later, so that the Intervening Defendants may have a reasonable opportunity to present their legal challenges, and the courts will have sufficient time to consider them.

Not surprisingly, Michigan appellate decisions have manifested frustration with untimely and piecemeal challenges to ballot proposals. In *Massey v Secretary of State*, 457 Mich 410, 414-415; 579 NW2d 862 (1998), which addressed a post-election challenge to the adoption of Proposal C (term limits) in the 1992 general election based upon a claim that the Secretary of State had failed to publish all of the existing provisions that would be altered or abrogated by the proposed amendment, the Supreme Court recognized the potential for the courts to require corrective action when a challenge is more appropriately brought prior to the election, noting that, "[t]his Court has long expressed a preference that challenges such as the one brought in the present case be filed sufficiently before an election, in this case the election of 1992, for the courts to have time to resolve the dispute and, if necessary, to direct election officials to take corrective action or to enjoin submission of the proposal to the electorate." 457 Mich at 414-415, citing *Carman v Secretary of State*, 384 Mich 443, 449; 185 NW2d 1 (1971).

In *Citizens for Protection of Marriage, supra*, this Court granted the requested writ of mandamus to require certification of the proposal for amendment of the Constitution at issue in

an Opinion and Order issued on September 3, 2004. But because it appeared likely that the Board of Canvassers would remain deadlocked, the Court declined to order a remand to the Board for approval of the 100-word summary proposed by the Director of Elections during the pendency of the Court's review, but instead directed the Secretary of State to take all necessary measures to place the proposal on the November ballot using the 100-word summary previously submitted. 263 Mich App at 493-495.

The harm threatened in this case is similar to the deadlock that threatened to defeat the will of the people in *Citizens for Protection of Marriage*, as it is obvious that consideration of VNP's proposal is being delayed without legitimate cause, and it seems probable that this unjustified delay will continue until after the issues raised in Plaintiffs' Complaint are finally adjudicated if this Court does not intervene to direct timely compliance. To prevent that harm, this Court should now take swift action, similar to its action in *Citizens for Protection of Marriage*, to assure that all issues related to the eligibility of VNP's proposal for the ballot and its proper submission to the voters are settled by judicial decree well in advance of the statutory deadline.

In this case, there is no justification or 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 the Supreme Court. This Court's decision on 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 the Supreme Court. Thus, there would be no prejudice of any kind, to any party, if VNP's proposal is certified and prepared for submission on the ballot pending disposition of Plaintiffs' legal challenges.

For all of these reasons, the Intervening Defendants contend that the interests of justice would be best served by requiring the prompt performance of the Defendants' clear legal duties regarding the ministerial certification of VNP's proposal, the preparation and approval of the constitutionally-required 100-word summary of purpose, and the preparation of their proposal for submission on the General Election ballot, without further delay. 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 promptly comply with all of their constitutional and statutory duties regarding certification, approval and placement of the ballot proposal at issue on the 2018 General Election ballot, without delay. Specifically,

the Intervening Defendants / Cross-Plaintiffs request that the Defendants be required to perform their clear legal duties as follows:

1. That the Board of State Canvassers be directed 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 Judgment, or another time deemed appropriate by the Court;
 2. That the Director of Elections be directed to prepare the constitutionally-required 100-word summary of purpose, and that the Board of State Canvassers be directed to consider and approve or vote upon the Director of Elections' proposed summary at a meeting convened within 30 days after entry of the Court's Judgment, or another time deemed appropriate by the Court; and
 3. That the Secretary of State be directed to promptly comply with all of its other constitutional and statutory duties regarding placement of VNP's proposal on the ballot.
- 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,

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Dated: May 31, 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
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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

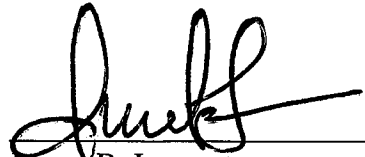


explanation of the reason for the cancellation and inquiring as to whether VNP's proposal would be on the agenda for the Board's next meeting on June 1, 2018. A copy of my e-mail message to Mr. Shinkle is attached as Exhibit D. Chairman Shinkle has not responded to that message.

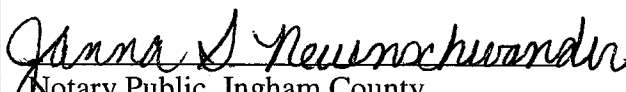
7. Explanations of Chairman Shinkle's reasons for cancelling the May 24, 2018 meeting have appeared in media reports. In *Gongwer News Service's* report for May 23, 2018, the pertinent excerpt of which is attached as Exhibit E, Secretary of State spokesperson Fred Woodhams was quoted as saying that Chairman 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. NEUENSCHWANDER
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

Invalid signatures

Signatures determined invalid due to signer’s registration status: 25

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

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.

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.

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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. Klint **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

◀ Wednesday, May 23, 2018 ▶

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

On This Day In Michigan History

House Action Report

Senate Action Report

Updated Calendar Events

MIRS Capitol Capsule Headlines

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 Zybuski, 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

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