STATE OF MICHIGAN

IN THE COURT OF APPEALS

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

Plaintiffs,

Court of Appeals
No. 343517

v

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,**

Prospective Intervening Defendants

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Robert P. Young (P35486)
Ryan M. Shannon (P74535)
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MOTION FOR INTERVENTION

Now Come Prospective 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 Intervention pursuant to MCR 7.211, and in support of their motion, states the following:

1. In this original action, Plaintiffs have sought a writ of mandamus directing Defendants Secretary of State and Board of State Canvassers 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 the proposal at issue 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.

2. Prospective Intervening Defendant Voters Not Politicians Ballot Committee is a ballot question committee which was registered with the Michigan Secretary of State as such in accordance with the Michigan Campaign Finance Act, MCL 169.201, *et seq.*, on February 22, 2017. Prospective Intervening Defendant Count MI Vote is a Michigan non-profit corporation which was subsequently formed and incorporated for the purpose of operating the previously-organized Voters Not Politicians Ballot Committee under the assumed names "Voters Not Politicians" and "Voters Not Politicians Ballot Committee." (Affidavit of Kathryn A. Fahey – Exhibit A – ¶ 4) For ease of reference, these entities shall be referred to collectively herein as "Voters Not Politicians" or "VNP."

3. Voters Not Politicians is the sponsor of the voter-initiated ballot proposal at issue in this litigation.

4. The purpose of VNP's proposal is to create an Independent Citizens Redistricting Commission for State Legislative and Congressional Districts (the "Commission") as a permanent Commission in the legislative branch – a Commission which would have exclusive authority to develop and establish redistricting plans, with corresponding election district maps, for state Senate districts, state House of Representatives districts, and Michigan's congressional districts. This has been proposed and actively supported by VNP's organizers and volunteers as a desired means to remedy the widely-perceived abuses associated with partisan "gerrymandering" of state legislative and congressional election districts by the establishment of new constitutionally-mandated procedures designed to ensure that the redistricting process can no longer be dominated by one political party. (Fahey Affidavit – Exhibit A – ¶ 7)

5. Prospective Intervening Defendant Kathryn A. Fahey is a qualified elector of the State of Michigan, registered to vote in Gaines Township, within Kent County. She is the founder of the Voters Not Politicians Ballot Committee, was an incorporator of Count MI Vote and a signer of VNP's petition, and currently serves as the Ballot Committee's Treasurer. As an organizer and supporter of VNP's voter-initiated proposal for amendment of the Constitution, she has a strong interest in having an opportunity to vote in favor of that proposal and will be aggrieved if she is prevented from doing so without just and legally sufficient cause. (Fahey Affidavit – Exhibit A – ¶¶ 3, 5, 6, 8, 13)

6. Prospective Intervening Defendant William R. Bobier is a former member of the Michigan House of Representatives. He is a qualified elector of the State of Michigan,

registered to vote in Ferry Township, within Oceana County. Mr. Bobier signed VNP's petition and is a supporter of the Voters Not Politicians ballot proposal. As such, he has a strong interest in being able to vote in favor of that proposal, and will be aggrieved if he is prevented from doing so without just and legally sufficient cause. (Bobier Affidavit – Exhibit B – ¶¶ 3, 6-7)

7. Prospective Intervening Defendant Davia C. Downey is a qualified elector of the State of Michigan, registered to vote in the City of East Lansing, within Ingham County. Ms. Downey signed VNP's petition and is a supporter of the Voters Not Politicians ballot proposal. As such, she has a strong interest in being able to vote in favor of that proposal, and will be aggrieved if she is prevented from doing so without just and legally sufficient cause. (Downey Affidavit – Exhibit C – ¶¶ 3, 6-7)

8. The Prospective Intervening Defendants have a strong interest in opposing Plaintiffs' request for relief in this action.

9. By this motion, the Prospective Intervening Defendants request that they be allowed to intervene in this action as Intervening Defendants so that they may be afforded a reasonable opportunity to present their arguments in opposition to Plaintiffs' claims in order to protect their interests in this matter, and that they be added as Intervening Defendants pursuant to MCR 2.209 and 7.216(A)(2). To ensure that they will have a sufficient opportunity for meaningful and helpful participation, the Prospective Intervening Defendants also request that they be granted an opportunity to present oral arguments before the panel of Judges selected to hear and decide this matter.

10. This Court has authority to allow addition of parties pursuant to MCR 7.216(A)(2).

11. The Prospective Intervening Defendants have a right to intervene in this action pursuant to MCR 2.209(A), which provides as follows:

> "(A) Intervention of Right. On timely application a person has a right to intervene in an action:
>
> > "(1) when a Michigan statute or court rule confers an unconditional right to intervene;
> >
> > "(2) by stipulation of all the parties; or
> >
> > "(3) when the applicant claims an interest relating to the property or transaction which is the subject of the action and is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties."

12. The Plaintiffs have stipulated to the Intervention of the Prospective Intervening Defendants as Intervening Defendants in this action. A copy of the Stipulation for Intervention approved by Plaintiffs' counsel is submitted herewith as Exhibit D. The Intervening Defendants have been unable to obtain a stipulation for intervention from Defendants Secretary of State and Board of State Canvassers.

13. The Prospective Intervening Defendants have a right to intervene in this action pursuant to MCR 2.209(A)(3) because they have a strong interest in the subject matter of the action, are situated such that the disposition of this matter could impair or impede their ability to protect their interests, and have no knowledge or assurance that their interests will be adequately represented by the named Defendants.

14. The Prospective Intervening Defendants' have prepared a proposed Answer and Affirmative Defenses of Intervening Defendants to Plaintiffs' Complaint for Mandamus, which is submitted herewith as Exhibit E, as required by MCR 2.209(C)(2).

15. By this motion, the Prospective Intervening Defendants request that they be permitted to participate fully in this matter, with all of the rights of participation normally accorded to defendants named in the original Complaint.

16. To fully protect their important interests in this matter, the Prospective Intervening Defendants desire to pursue a Cross-Claim requesting the issuance of an Order granting a writ of mandamus against Defendants Secretary of State and Board of State Canvassers. That claim is set forth in the Cross-Claim of Intervening Defendants Against Defendants Secretary of State and Board of State Canvassers, which has also been submitted herewith pursuant to MCR 2.209(C)(2), as Exhibit F.

17. The Prospective Intervening Defendants desire to pursue their Cross-Claim against Defendants Secretary of State and Board of State Canvassers to ensure that the clear legal duties of those state officers discussed in their Cross-Claim will be promptly performed if this Court rejects Plaintiffs' legal challenges and denies their request for a writ of mandamus. The timely performance of those duties is critical 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. To serve that important purpose, the interests of justice would be best served by the issuance of an Order granting a writ of mandamus against Defendants Secretary of State and Board of State Canvassers requiring their performance of those clear legal duties without delay if this Court rejects Plaintiffs' legal challenges and denies their request for a writ of mandamus. Actions taken by the Secretary of

State and the Board of State Canvassers in compliance with that Order would, of course, be subject to modification by the Supreme Court.

18. Plaintiffs' Complaint for Mandamus was served upon the named Defendants on May 1, 2018. Thus, the answer of the named Defendants is due on May 22, 2018. The Prospective Intervening Defendants plan to file their Brief in opposition to Plaintiffs' Complaint for Mandamus and in support of their Cross-Claim on or before that date if the Court grants their request to intervene in this matter. The Prospective Intervening Defendants understand and acknowledge that the opposing parties must be afforded the opportunity that the court rule allows for response to their Cross-Claim.

19. For all of the foregoing reasons, the Prospective Intervening Defendants respectfully suggest that the interests of justice would be best served by granting their Motion for Intervention, adding them as Intervening Defendants in this action pursuant to MCR 2.209(A) and MCR 7.216(A)(3), accepting their proposed Answer and Affirmative Defenses to Plaintiffs' Complaint for Mandamus (Exhibit E) and their Cross-Claim (Exhibit F) for filing in this action, and allowing them the opportunity to present oral arguments addressing all of the issues presented in this matter before the panel of Judges selected to hear and decide this case.

WHEREFORE, Prospective Intervening Defendants Voters Not Politicians Ballot Committee d/b/a Voters Not Politicians, Count MI Vote d/b/a Voters Not Politicians, Kathryn A. Fahey, William R. Bobier and Davia C. Downey respectfully request that this Honorable Court grant their Motion for Intervention and enter its Order adding them as Intervening Defendants in this action pursuant to MCR 2.209(A) and MCR 7.216(A)(3), accepting their proposed Answer and Affirmative Defenses to Plaintiff's Complaint for Mandamus (Exhibit E) and their Cross-Claim (Exhibit F) for filing in this action, and allowing them the opportunity to

present oral arguments addressing all of the issues presented in this matter before the panel of Judges selected to hear and decide this case.

Respectfully submitted,

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

By: _____

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Dated: May 10, 2018

EXHIBIT A

STATE OF MICHIGAN
IN THE COURT OF APPEALS

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

Plaintiffs,

v

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

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,**

Prospective Intervening Defendants.

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AFFIDAVIT OF KATHRYN A. FAHEY

STATE OF MICHIGAN)
) SS
COUNTY OF INGHAM)

Kathryn A. Fahey, 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 a citizen of the United States and the State of Michigan.

3. I am a qualified elector of the State of Michigan, registered to vote in Gaines Township, within Kent County.

4. Prospective Intervening Defendant Voters Not Politicians Ballot Committee is a ballot question committee which was registered with the Michigan Secretary of State as such in accordance with the Michigan Campaign Finance Act, MCL 169.201, *et seq.*, on February 22, 2017. Prospective Intervening Defendant Count MI Vote is a Michigan non-profit corporation which was subsequently formed and incorporated for the purpose of operating the previously-organized Voters Not Politicians Ballot Committee under the assumed names "Voters Not Politicians" and "Voters Not Politicians Ballot Committee." For ease of reference, the aforementioned entities shall be referred to collectively herein as "Voters Not Politicians" or "VNP."

5. I am the founder of the Voters Not Politicians Ballot Committee and an incorporator of Count MI Vote, and I currently serve as the Ballot Committee's Treasurer.

6. As founder of the Voters Not Politicians Ballot Committee, I have been heavily involved in the development of the ballot proposal at issue in the above-entitled litigation, and have also been heavily involved in the organization of the large-scale volunteer effort to secure the approval of that proposal for inclusion on the 2018 General Election ballot.

7. The purpose of VNP's proposal is to create an Independent Citizens Redistricting Commission for State Legislative and Congressional Districts (the "Commission") as a permanent Commission in the legislative branch – a Commission which would have exclusive authority to develop and establish redistricting plans, with corresponding election district maps, for state Senate districts, state House of Representatives districts, and Michigan's congressional districts. This has been proposed and actively supported by VNP's organizers and volunteers as a desired means to remedy the widely-perceived abuses associated with partisan "gerrymandering" of state legislative and congressional election districts by the establishment of new constitutionally mandated procedures designed to ensure that the redistricting process can no longer be dominated by one political party.

8. VNP's initiative petition for the ballot proposal at issue was filed with the Secretary of State as required by MCL 168.471 on June 28, 2017, and VNP sought preliminary approval of the form of the petition by the Board of State Canvassers. After consultations with Bureau of Elections staff and revision of the proposal originally submitted, the Board of State Canvassers approved the form of VNP's petition during its meeting held on August 17, 2017. A copy of the minutes of that meeting is attached as Exhibit 1.

9. Upon receiving the Board of State Canvassers' preliminary approval of its petition, VNP immediately began the process of collecting the required voter signatures. Under the applicable constitutional and statutory provisions, VNP was required to collect a minimum of 315,654 valid signatures within 180 days. On December 18, 2017, VNP filed petitions containing more than 425,000 signatures, including my own, with the Secretary of State Bureau of Elections. A copy of the Secretary of State Bureau of Elections' receipt for the petitions filed on December 18, 2017 is attached as Exhibit 2.

10. On April 12, 2018, the Board of State Canvassers made a sample of the petition signatures available for public inspection and issued a notice establishing a deadline of April 26, 2018, for submission of challenges to the petition signatures. A copy of that notice is attached as Exhibit 3.

11. The Complaint for Mandamus in this case was filed on April 25, 2018.

12. On April 26, 2018, Plaintiff Citizens Protecting Michigan's Constitution ("CPMC") filed a Challenge with the Board of State Canvassers which raised the same issues raised in its Complaint for Mandamus while acknowledging that the subject matter of its challenge was within the jurisdiction of the courts. That challenge did not raise any challenge to the validity or sufficiency of the petition signatures or any issues regarding the form or content of VNP's petition beyond the issues raised in CPMC's Complaint for Mandamus. A copy of CPMC's Challenge filed with the Board of State Canvassers is attached as Exhibit 4.

13. As the founder of the Voters Not Politicians Ballot Committee and one who has worked tirelessly to support its effort to secure the placement of its ballot proposal on the 2018 General Election ballot, I have a strong interest in being able to vote in favor of that proposal, and will be aggrieved if I am prevented from doing so without just and legally sufficient cause.

Further, Deponent sayeth not.

Kathryn A. Fahey

Subscribed and sworn before me on the 9th day of May, 2018.

Notary Public, Ingham County
Acting in Ingham County
My Commission expires: 5-15-2019

DEBORAH L. COVEART
NOTARY PUBLIC - STATE OF MICHIGAN
COUNTY OF CLINTON
My Commission Expires May 15, 2019
Acting in the County of Ingham

EXHIBIT 1

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

Meeting
of the
Board of State Canvassers

August 17, 2017
Lansing Center, 333 East Michigan Avenue
Lansing, Michigan

Called to order: 10:06 a.m.

Members present: Norm Shinkle – Chairperson
Julie Matuzak – Vice Chairperson
Colleen Pero
Jeannette Bradshaw

Members absent: None.

Agenda item: Consideration of meeting minutes for approval.

Board action on agenda item: The Board approved the minutes of the June 21, 2017 meeting as submitted. Moved by Matuzak; supported by Pero. Ayes: Shinkle, Matuzak, Pero, Bradshaw. Nays: None. Motion carried.

Agenda item: Recording of the results of the August 8, 2017 special primary for the office of State Representative, 1st District.

Board action on agenda item: The Board recorded the results of the August 8, 2017 special primary for the office of State Representative, 1st District as certified by the Wayne County Board of Canvassers on August 16, 2017. Moved by Bradshaw; supported by Pero. Ayes: Shinkle, Matuzak, Pero, Bradshaw. Nays: None. Motion carried.

Agenda item: Canvass and certification of the August 8, 2017 special primary for the office of State Representative, 109th District.

Board action on agenda item: Based on an examination of the returns received by the Secretary of State for the August 8, 2017 special primary, the Board certified that the attached report is a true statement of votes cast for the office of State Representative, 109th District. The Board further

certified that the persons named in the attached List of Nominees are duly nominated for the office of State Representative, 109th District, and are qualified to appear as candidates for that office on the November 7, 2017 special election ballot. The Board also authorized staff of the Bureau of Elections to represent the Board in any recount of votes cast at the August 8, 2017 special primary. Moved by Matuzak; supported by Pero. Ayes: Shinkle, Matuzak, Pero, Bradshaw. Nays: None. Motion carried. Time of certification: 10:09 a.m.

Agenda item: Consideration of the form of an initiative petition submitted for approval by MI Time to Care, P.O. Box 1502, Royal Oak, Michigan 48068. (This proposal would enact the Earned Sick Time Act, requiring employers to provide sick leave for personal and family health needs subject to certain conditions.)

Board action on agenda item: The Board approved the form of the initiative petition sponsored by MI Time to Care with the understanding that the Board's approval does not extend to: (1) The substance of the proposal which appears on the petition; (2) The substance of the summary of the proposal which appears on the signature side of the petition; or (3) The manner in which the proposal language is affixed to the petition. Moved by Pero; supported by Matuzak. Ayes: Shinkle, Matuzak, Pero, Bradshaw. Nays: None. Motion carried.

Agenda item: Consideration of the form of an initiative petition to amend the State Constitution submitted for approval by Abrogate Prohibition Michigan, 3867 East Shaffer Road, Midland, Michigan 48642. (This proposal would amend the Michigan Constitution to legalize the use of marijuana for agricultural, personal, recreational, commercial or other purposes.)

Board action on agenda item: The Board approved the form of the initiative petition to amend the State Constitution as submitted by Abrogate Prohibition Michigan with the understanding that the Board's approval does not extend to: (1) The substance of the proposal which appears on the petition; (2) The substance of the summary of the proposal which appears on the signature side of the petition; or (3) The manner in which the proposal language is affixed to the petition. Moved by Bradshaw; supported by Matuzak. Ayes: Shinkle, Matuzak, Pero, Bradshaw. Nays: None. Motion carried.

Agenda item: Consideration of the form of an initiative petition to amend the State Constitution submitted for approval by Voters Not Politicians Ballot Committee, P.O. Box 8362, Grand Rapids, Michigan 49518. (This proposal would amend the Michigan Constitution to create the Independent Citizens Redistricting Commission and authorize the Commission to adopt reapportionment plans for Congressional, State Senate and State House of Representatives districts.)

Board action on agenda item: The Board approved the form of the initiative petition to amend the State Constitution as submitted by Voters Not Politicians with the understanding that the Board's approval does not

extend to: (1) The substance of the proposal which appears on the petition; or (2) The substance of the summary of the proposal which appears on the signature side of the petition; or (3) The manner in which the proposal language is affixed to the petition; or (4) Whether the petition properly characterizes those provisions of the Constitution that are altered or abrogated by the proposal if adopted. Moved by Pero; supported by Matuzak. Ayes: Shinkle, Matuzak, Pero, Bradshaw. Nays: None. Motion carried.

Agenda item: Such other and further business as may be properly presented to the Board.

Board action on agenda item: None.

Adjourned: 11:50 a.m.

Chairperson

Vice-Chairperson

Member

Member

September 19, 2017
Date

EXHIBIT 2

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

BUREAU OF ELECTIONS
2017 DEC 18 P 2:17
DEPT OF STATE

PETITION FILING RECEIPT

- **Date:** DECEMBER 18, 2017
- **Filer:** VOTERS NOT POLITICIANS BALLOT COMMITTEE
  P.O. BOX 8362
  Grand Rapids, MI 49518

- **This acknowledges the receipt of** 188 **boxes of constitutional amendment petitions.**
- **This acknowledges the receipt of** 74,721 **sheets of constitutional amendment petitions.**
- **Minimum number of valid signatures required:** **315,654**

Carol S. Viera
Bureau of Elections

I agree that the foregoing is a correct count of the number of petition sheets that I am filing with the Secretary of State. The estimated number of petition signatures being filed is

428,587

Media Contacts: DAVID MAYMIRE 517-290-3610
ELIZABETH BATTISTE
248-404-7846
ebattiste@martinmaymire.com
dmaymire@ " "

Kathryn A Fahey
Signature of person filing petition
KATHRYN A. FAHEY, TREASURER
Phone: (616) 227-0576 VNP Ballot Com
Email: katiefahey2@gmail.com

EXHIBIT 3

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

April 12, 2018

CHALLENGE DEADLINE ESTABLISHED FOR INITIATIVE PETITION TO AMEND THE MICHIGAN CONSTITUTION SPONSORED BY VOTERS NOT POLITICIANS

An initiative petition proposing an amendment to the Michigan Constitution to create the Independent Citizens Redistricting Commission and authorize the Commission to adopt reapportionment plans for Congressional, State Senate and State House of Representatives districts, was filed with the Secretary of State on December 18, 2017 by Voters Not Politicians.

The Board of State Canvassers has established a uniform deadline for challenging signatures sampled from an initiative, constitutional amendment or referendum petition to elapse at 5:00 p.m. on the 10th business day after copies of the sampled signatures are made available to the public. (See minutes of November 8, 2013 meeting of the Board of State Canvassers.)

Please be advised that copies of the signatures sampled from this constitutional amendment petition were made available for release to the public on April 12, 2018. **Therefore, the deadline to submit challenges to this petition will elapse at 5:00 p.m. on April 26, 2018.**

Please contact the Bureau of Elections at (517) 373-2540 if you wish to purchase a copy of the sampled signatures for the petition.

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

EXHIBIT 4

STATE OF MICHIGAN
DEPARTMENT OF STATE
BOARD OF STATE CANVASSERS

In re Initiative Petition to Revise the Michigan Constitution Sponsored by Voters Not Politicians

/

Peter H. Ellsworth (P23657)
Robert P. Young (P35486)
Ryan M. Shannon (P74535)
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/

CHALLENGE OF CITIZENS PROTECTING MICHIGAN'S CONSTITUTION REGARDING THE VNP PETITION'S FAILURE TO REPUBLISH ABROGATED SECTIONS OF THE EXISTING CONSTITUTION

This challenge is filed by Citizens Protecting Michigan's Constitution ("CPMC"), a duly formed ballot question committee. CPMC challenges the initiative petition to revise the Michigan Constitution as filed and supported by Voters Not Politicians ("VNP"). The content of the petition is hereafter referred to as the "VNP Proposal." The VNP Proposal has multiple purposes, but chief among them is the creation of a 13-member "independent" redistricting commission, the transfer of all lawmaking authority over redistricting of legislative and U.S. Congressional districts to the new commission, and the establishment of new redistricting criteria to be applied by the commission.

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 the 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. A copy of the Brief in Support of CPMC's complaint for mandamus is submitted with this challenge.

As set forth in the attached Brief in Support, the petition circulated in support of the VNP Proposal does not comply with the republication requirements set forth in section 482 of the Michigan Election Law. MCL 168.482(3). The VNP Proposal abrogates language in at least four existing sections of the Constitution, but the petition failed to republish these same sections as required:

a. The Proposal abrogates, and the petition failed to republish, article 6, § 13 of the existing Constitution, which section confers *exclusive* original jurisdiction in all matters on the Circuit Courts except as prohibited by law. The Proposal creates original jurisdiction over redistricting matters instead in the Supreme Court.

b. The Proposal abrogates, and the petition failed to republish, article 1, § 5 of the existing Constitution, which section guarantees freedom of speech on all subjects. The Proposal instead restricts the speech of redistricting commission members, staff, attorneys, and consultants on all redistricting matters.

c. The Proposal abrogates, and the petition failed to republish, article 9, § 17 of the existing Constitution, which section prohibits the payment of money out of the state treasury except in pursuance of appropriations made by law. The Proposal instead mandates indemnification of redistricting commissioners even if the legislature does not appropriate sufficient funds.

d. The Proposal abrogates and fails to republish article 11, § 1 of the existing Constitution, which section sets forth the exclusive oath that may be required of public officers and specifies that no other oath shall be required as a qualification for any public office or public trust. The Proposal instead mandates an oath to be given by applicants seeking to hold office as redistricting commissioners regarding the

applicants' political affiliations.[1]

The Board is not required, by law, to complete its canvass of signatures and certify the petition until two months before the election. MCL 168.476(2); MCL 168.477(1). Such certification is thus not required here until September 6, 2018. 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. In the event the Court of Appeals does not act prior to the date required for certification, CPMC request that the Board reject the petition.

Respectfully submitted,

DICKINSON WRIGHT PLLC

Dated: April 26, 2018

By: _____

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Robert P. Young (P35486)
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LANSING 37874-2 532634v2

[1] Because of the sweeping nature of the VNP Proposal, other examples could be found. For example, the Proposal abrogates and fails to republish article 11, § 5 of the existing Constitution, which section grants authority to regulate "all conditions of employment in the classified service" to the Civil Service Commission. The Proposal instead prohibits the Civil Service Commission, along with all other employers, from discharging or disciplining any employee (including, e.g., a classified employee selected as redistricting commission members) because of the employee's selection or involvement as a redistricting commission member.

STATE OF MICHIGAN
MICHIGAN COURT OF APPEALS

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

Plaintiffs,

v.

SECRETARY OF STATE, and MICHIGAN BOARD OF STATE CANVASSERS,

Defendants.

Case No. _____

_____/

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PLAINTIFFS' BRIEF IN SUPPORT OF THEIR COMPLAINT FOR MANDAMUS

ORAL ARGUMENT REQUESTED

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STATEMENT OF BASIS OF JURISDICTION

This Court has original jurisdiction to entertain an action for "mandamus against a state officer." MCR 7.203(C)(2) (citing MCL 600.4401). The Secretary of State and Board of State Canvassers are "state officers" for the purpose of mandamus. See *Citizens Protecting Michigan's Constitution v Sec'y of State*, 280 Mich App 273, 282; 761 NW2d 210, *aff'd in part, appeal denied in part by* 482 Mich 960 (2008).

STATEMENT OF QUESTION INVOLVED

On December 18, 2017, a ballot question committee known as Voters Not Politicians ("VNP") submitted an initiative petition to Defendant Secretary of State ("Secretary"). In general, the petition seeks to place before the voters at the 2018 general election a proposal to amend the Michigan Constitution (the "VNP Proposal"). The VNP Proposal seeks to make fundamental changes in Michigan government by "amending" three articles of the Constitution and changing 4,834 words in the articles of the Michigan Constitution governing the legislative, executive, and judicial branches; language in 11 sections would be deleted or amended.

The VNP Proposal is actually a general revision of the Michigan Constitution that cannot be accomplished by an amendment. See Const 1963, art 12, § 3. Further, the VNP Proposal failed to republish all sections of the existing Constitution that are to be altered or abrogated by the VNP Proposal—a requirement under state law.

Plaintiffs seek a writ of mandamus: (a) directing the Secretary and Board of State Canvassers ("Board") to reject the petition; and (b) directing the Secretary and Board to take no further steps to place the VNP Proposal on the ballot for the 2018 general election.

Question: Should this Court issue a writ of mandamus directing the Secretary and Board to reject the initiative petition and to take no further steps to place the VNP Proposal on the 2018 general election ballot?

Plaintiffs answer "Yes.

I. INTRODUCTION

"Constitutional modification requires *strict* adherence to the methods and approaches included in the constitution itself." *Citizens Protecting Michigan's Constitution v Sec'y ("Citizens")*, 280 Mich App 273, 276; 761 NW2d 210, *aff'd in part, appeal denied in part by* 482 Mich 960 (2008) (emphasis added).

This is an original action for mandamus against Defendant Secretary of State Ruth Johnson ("Secretary") in her capacity as Michigan's chief election officer and Defendant Board of State Canvassers ("Board"). Plaintiff Citizens Protecting Michigan's Constitution ("CPMC") is a duly registered ballot question committee established pursuant to the Michigan Campaign Finance Act, MCL 169.201 *et seq.*

The petition at issue proposes to submit a ballot question at the 2018 general election; it is sponsored by a ballot question committee calling itself Voters Not Politicians ("VNP"). (The revisions included in the petition are hereinafter referred to as the "VNP Proposal.") CPMC seeks an order from this Court directing the Secretary and the Board to reject the petition. (See **Exhibit 1**, VNP Proposal.)

The VNP Proposal is set forth in 7 pages of single-spaced fine print in the petition. It would change approximately 4,834 words in the articles of Michigan's 1963 Constitution (the "Constitution") governing all three branches of government. The changes include amending, deleting, or inserting language across 11 different sections of the existing Constitution.

These revisions have multiple purposes, but chief among them is the creation of a 13 member "independent" redistricting commission in the legislative branch comprised of persons without recent political experience chosen by the secretary of state. The VNP Proposal would transfer the power to enact laws establishing congressional and state legislative districts from the Legislature to this new body which, though formed in the legislative branch, will act as a superagency, in reality, a new branch of government, exercising a powerful mixture of

legislative, executive, and judicial powers on the core issue of how the lawmakers of the state are to be elected. The new commission would be immune from any control by the legislature or the governor and its redistricting plans *would not even be subject to the People's reserved powers of initiative and referendum*. The revisions would, in tandem, alter the longstanding requirements underpinning the drawing of Michigan's voter districts, including the requirement—which has appeared in every version of the Constitution since 1835—that voting districts be drawn along county and municipal boundaries to the extent possible. Instead, under the VNP Proposal, consideration of the maintenance of county and municipal boundaries would be subordinated to a multitude of new, albeit nebulous, criteria, chief among them that the "districts shall reflect the state's diverse population and communities of interest" and shall reflect "accepted measures of political fairness." (Ex. 1, VNP Proposal, art 4, § 13(C)-(D).) (No "accepted measure" of political fairness has yet been recognized by the courts or even by political scientists.)

The multitude of changes the VNP Proposal works to the Constitution—including the transfer, limitation, or expansion of powers in all three branches of government—are too disruptive to the original constitutional structures and underpinnings of government to be accomplished by the amendment process. The scale and impact of the VNP Proposal is simply too great for its contents to be summarized for their presentation to voters in the voting booth or petitioner-signers passing a signature gatherer on a public sidewalk.

Mandamus should issue because the petition fails to comply with the requirements of Michigan law and the Constitution—requirements that must be satisfied for submission of ballot questions to the voters. First, the VNP Proposal's changes constitute a "general revision" of the Constitution, and not a mere amendment. Under longstanding, black-letter Michigan law, a revision can only be accomplished through a Constitutional Convention—it cannot be

accomplished by a ballot initiative. Second, the petition fails—as required by statute—to set forth all of the provisions of the existing Constitution that would be "altered" or "abrogated" by the VNP Proposal.

Collectively, these constitutional and statutory requirements serve to assure that voters understand the measures before them, and are not misled into supporting or voting for provisions with which they do not agree. The constitutional requirement that fundamental changes amounting to a general revision occur only through a constitutional convention is also designed to assure that appropriate study, debate, and analysis occur with respect to such changes by constitutional delegates before the voters are asked to approve them.

As discussed below, controlling case law exists for both issues. First, this Court has held that attempted revisions of the Constitution are not eligible for placement on the ballot and has also established the test for determining whether a proposal is an amendment which may be submitted directly to the electorate or a revision which may only be submitted after being proposed by a constitutional convention.[1] Second, the Supreme Court has held that a petition that fails to republish the provisions of the Constitution that will be altered or abrogated is not eligible for placement on the ballot and has also established the specific rules for determining whether an existing constitutional provision is being altered or abrogated.[2] The sponsors of the VNP Proposal failed to heed these cases. Under controlling case law, the VNP Proposal is not an amendment but, rather a revision, and it fails to identify and republish at least four existing constitutional provisions that would be altered or abrogated. These defects are fatal. Accordingly, the VNP Proposal is not eligible for placement on the 2018 ballot.

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[1] *Citizens*, 280 Mich App at 277, 305.

[2] *Protect Our Jobs v Bd of State Canvassers*, 492 Mich 763, 778, 781; 822 NW2d 534 (2012).

Mandamus is the appropriate remedy where, as a matter of law, the court determines that a ballot proposal is ineligible for submission to the electorate. Michigan courts have repeatedly ordered such relief over the years. This Court too should enter an order precluding submission of the VNP Proposal to the voters.

II. FACTS

A. Parties

1. Plaintiffs

Plaintiff CPMC is a duly registered ballot question committee organized for, among other things, the purpose of opposing the VNP Proposal.

Plaintiff Joseph Spyke is an Ingham County resident and voter who will be aggrieved if the VNP Proposal is adopted because the VNP Proposal, if approved, would abridge his rights of initiative and referendum with respect to redistricting plans adopted for the State of Michigan. He will further be aggrieved because he has, within the past 6 years, been a paid employee of a political candidate, and is thus ineligible to serve on the redistricting commission. See Ex. 1, VNP Proposal, art 4, § 6(1)(b)(iv).

Plaintiff Jeanne Daunt is a Genesee County resident and voter who will be aggrieved if the VNP Proposal is adopted because the VNP Proposal, if approved, would preclude her from serving on the redistricting commission merely because she is the parent of a person otherwise disqualified from serving on the commission. See Ex. 1, VNP Proposal, art 4, § 6(1)(c).

2. Defendants

Defendant Secretary is Michigan's chief election officer. MCL 168.21. She holds office under the Constitution, and is the single executive heading the Department of State. Const 1963, art 5, § 3. She has overall responsibility for the preparation of the ballot and the submission of

statewide ballot questions. MCL 168.31(1)(f). She is also the official with whom a petition calling for a constitutional amendment must be filed. MCL 168.471.

Defendant Board is a state board established pursuant to Const 1963, art 2, § 7. Among other things, the Board is responsible for determining the sufficiency of signatures submitted in support of a petition to amend the Constitution. MCL 168.476(1). Though Plaintiffs do not believe that the Board has jurisdiction to address the questions posed by this suit—and Plaintiffs further believe that the Secretary can provide adequate mandamus relief—the Board is included in this action as a cautionary measure in the event that this Court may disagree.[3]

B. Schedule for Administrative Review

1. Statutory Deadlines

On December 18, 2017, VNP filed the petition containing the VNP Proposal with the Secretary of State. Upon the receipt of a petition proposing a constitutional amendment, the Board is required to "canvass the petitions to ascertain if the petitions have been signed by the requisite number of qualified and registered electors." MCL 168.476(1). The canvass of signatures must be completed not later than two months before the election, and the Board is required to issue an official declaration as to the sufficiency of petitions at least two months before an election. MCL 168.476(2); MCL 168.477(1). Here, such certification must thus occur by no later than September 6, 2018.

[3] Within the protest period as established by the Board for challenges to the VNP Proposal petition, Plaintiffs plan to make a *pro forma* protest to the Board, setting forth the claims in Count II of their Complaint out of an abundance of caution as well. In *Citizens*, the court held that this Court is the proper forum to present a challenge that a ballot initiative proposal constitutes a revision—requiring a constitutional convention under Const 1963, art 2, § 3—rather than an amendment permitted by Const 1963, art 2, § 2. See 280 Mich App at 282-283, 289-291.

In the case of a proposed constitutional amendment such as the VNP Proposal, the Secretary of State must certify the question to county clerks not less than 60 days before the election, MCL 168.480, to enable the question to be included in ballots presented in each county. Here, such certification would be required by September 7, 2018.

On April 18, 2018, Plaintiff CPMC sent a letter to the Secretary advising her of the deficiencies in the petition used to circulate the VNP Proposal and of the VNP Proposal's ineligibility to appear on the ballot. The Secretary did not respond prior to the filing of CPMC's Complaint.

2. This case is ripe for judicial review.

This controversy is ripe for review because it involves a threshold determination of whether the VNP Proposal petition on its face meets the constitutional prerequisites for acceptance. *Mich United Conservation Clubs v Sec'y of State*, 463 Mich 1009, 1009; 625 NW2d 377 (2001) (citing *Scott v Sec'y of State*, 202 Mich 629, 644; 168 NW 709 (1918); *Leininger v Alger*, 316 Mich 644, 654-655; 26 NW2d 348 (1947)). All of the information necessary to resolve this controversy—*i.e.*, whether the VNP Proposal is a constitutional revision rather than an amendment, or fails to republish altered or abrogated provisions of the Constitution as required by law—is presently available.

The procedural situation in this case is analogous to the procedural situations presented in *Citizens* and *Michigan United Conservation Clubs*. In each of those matters, the issue was whether a proposed ballot initiative complied with requirements for submission to the voters. In both cases, the courts found that the threshold issue of ballot eligibility was ripe, and ultimately, the proposals were blocked from the ballot. See *Mich United Conservation Clubs*, 463 Mich at

1009; *Mich United Conservation Clubs v Sec'y of State*, 464 Mich 359, 365-366; 630 NW2d 297 (2001); *Citizens*, 280 Mich App at 282-283.

III. ARGUMENT

A. Standard of Review

There are numerous issues presented by the VNP Proposal. All or parts of this proposal may violate provisions of the United States Constitution, federal statutes, or the Michigan Constitution. The Michigan Supreme Court, however, has made it plain that substantive attacks on the validity of a ballot proposal are premature if made before the voters adopt the proposition in question. *Hamilton v Vaughan*, 212 Mich 31, 33-35; 179 NW 553 (1920).

The Michigan Supreme Court, however, has made a distinction between those types of substantive challenges and questions relating to whether a proposal satisfies requirements as to content to be *eligible* to be placed on the ballot. Where a proposition is not eligible to be placed before the voters, the Court has not hesitated to issue a writ of mandamus ordering election officials not to place the question on the ballot. See *Protect Our Jobs v Bd of State Canvassers*, 492 Mich 763, 791-792; 822 NW2d 534 (2012).

The applicable test in actions for mandamus has been stated as follows:

> Generally, mandamus lies only where there exists a clear legal duty incumbent upon the defendant and a clear legal right in the plaintiff to the discharge of such duty. The legal duty must usually be a specific act of a ministerial nature, although occasionally mandamus will lie though the act sought to be compelled is discretionary. [*Wayne Cnty v State Treasurer*, 105 Mich App 249, 251; 306 NW2d 468 (1981).]

The Secretary is the state official whose duty it is to implement the amendment provisions in the Constitution. See MCL 168.471 *et seq.* It is the duty of the Secretary to preclude a ballot

initiative from being placed on a ballot if, as here, the question is not eligible for the ballot in the first instance. See *Leininger*, 316 Mich at 654-656; *Scott*, 202 Mich at 643-646.

A writ of mandamus directing the Secretary not to place a question on the ballot is the appropriate relief where the courts determine the proposal ineligible as a matter of law. See *Mich United Conservation Clubs*, 464 Mich at 365-366. This Court has authority to determine the lawfulness of particular proposals to amend the constitution, and once determined, can direct the Secretary to carry out her clear legal duties of preventing submission of proposals to the voters. *Citizens*, 280 Mich App at 287, 291.

In sum, mandamus is well recognized as the appropriate remedy for a party seeking to compel action by election officials with respect to certification of initiative petitions.

B. The VNP Proposal is an attempted general revision of the Constitution and may not be accomplished without a constitutional convention.

1. Whether a proposal is an "amendment" or a "revision" depends on both the quantity and quality of the proposed changes.

The People have reserved to themselves the authority to modify the Constitution. Such modification, however, "requires *strict* adherence to the methods and approaches included in the constitution itself." *Citizens*, 280 Mich App at 276 (emphasis added).

The Constitution provides three different methods by which its words may be changed. First, Const 1963, art 12, § 1 provides that the legislature may propose an amendment and present it to the electors. Second, Const 1963, art 12, § 2 permits an "amendment" to be proposed by petition and approved by vote of the electors. Third, Const 1963, art 12, § 3 provides for a "revision" of the Constitution through a constitutional convention, with subsequent approval by the voters of a new constitution or changes referred by the convention.

An "amendment" under Const 1963. art 12, §§ 1 and 2 is not the same as a "revision" under Const 1963, art 12, § 3. *Citizens*, 280 Mich App at 277, 295. The difference is described in *Citizens*. There (in 2008), this Court found that a proposal submitted by a ballot question committee called Reform Michigan Government Now! (the "RMGN Proposal") constituted a general revision that could not be accomplished through a ballot proposal. *Id.* at 307.

In making its determination, the *Citizens* Court undertook a comprehensive review of jurisprudence concerning the difference between an "amendment" and a "revision." In first reviewing Michigan jurisprudence, it found that the Michigan Supreme Court long ago had explained that a "revision" "'suggests *fundamental* change,'" in contrast to an "amendment" which is a mere "'*correction* of detail.'" *Id.* at 296 (quoting *Kelly v Laing*, 259 Mich 212, 217; 242 NW 891 (1932)) (emphasis added). From *Laing* and another decision—*Pontiac School District v City of Pontiac*, 262 Mich 338; 247 NW 474 (1933)—the court developed the proper analysis: "the analysis should consider not only the *quantitative* nature of the proposed modification, but also the *qualitative* nature of the proposed modification." *Citizens*, 280 Mich App at 298. The analysis "must take into account the degree to which the proposal interferes with, or modifies, the operation of government. . . . [T]he greater the degree of interference with, or modification of, government, the more likely the proposal amounts to a 'general revision.'" *Id.*

The *Citizens* Court then turned to jurisprudence from *other* states to both confirm and elaborate the contours of this test. *Id.* at 299. Decisions from Delaware and Alaska applied a similar "quantitative/qualitative" approach to distinctions between an "amendment" (permissibly submitted to voters as a ballot proposal) and a "revision" (requiring a constitutional convention) under analogous constitutional provisions of those states. See *Citizens*, 280 Mich App at 303-

304 (discussing *Bess v Ulmer*, 985 P2d 979, 987 (Alaska 1999) (interpreting Alaska Const, art 13, §§ 1, 2) and *Opinion of the Justices*, 264 A2d 342, 346 (Del 1970) (interpreting Del Const, art 16, §§ 1, 2)). In *Bess v Ulmer*, the Supreme Court of Alaska explained that, in determining whether a particular question could be submitted to voters or required a convention, the "core determination is always the same: whether the changes are so significant as to create a need to consider the constitution as an organic whole." *Bess*, 985 P2d at 987.

The *Citizens* Court also found particularly instructive several decisions from California. See *Citizens*, 280 Mich App at 299, 303 (discussing *McFadden v Jordan*, 32 Cal 2d 330; 196 P2d 787 (Cal 1948) and *Raven v Deukmejian*, 52 Cal 3d 336; 801 P2d 1077 (Cal 1990)). In *McFadden*, the California Supreme Court held that a proposed initiative entitled the "California Bill of Rights," which would have repealed or altered 15 of the 25 articles in the California Constitution, added five new topics, and impacted the functions of the legislative and judicial branches, constituted a "revision" rather than an "amendment." *McFadden*, 32 Cal 2d at 345, 349-350. The *McFadden* Court pointed out that while the amendment procedure was "relatively simple," the constitution entrusted general revision to "the formidable bulwark of a constitutional convention as a protection against improvident or hasty (or any other) revision." *Id.* at 347.

Subsequent decisions of the California Supreme Court found that a "revision" can result from a change to only a *small* portion of the constitution if the change is fundamental. See *Raven*, 52 Cal 3d at 342-343, 350-51. In *Raven*, the California Supreme Court found that an initiative proposal affecting only a *single article* would have caused a fundamental change to the Constitution by limiting the interpretive powers of the California judiciary. *Id.* at 354-355. The proposal in *Raven* would have prevented California courts from interpreting the rights of criminal defendants more broadly than interpretations applied to the federal Constitution. *Id.* at

352. The court held that the initiative "substantially alter[ed] the substance and integrity of the state Constitution" and thus was not a proper subject matter for a ballot proposal. *Id.* at 352, 355.[4] It further held that a quantitatively large change could constitute a revision even if not qualitatively fundamental—"[s]ubstantial changes [to the constitution] *in either respect* could amount to a revision." *Raven*, 52 Cal 3d at 350 (emphasis added).

The *Citizens* Court concluded by stating "[w]e agree with the reasoning of these decisions and find them to be consistent with Michigan law. . . ." *Citizens*, 280 Mich App at 304. The Court summarized the Michigan test as follows:

> [T]o determine whether a proposal effects a "general revision" of the constitution, and is therefore not subject to the initiative process established for amending the constitution, the Court must consider both the quantitative nature and the qualitative nature of the proposed changes. More specifically, the determination depends on, not only the number of proposed changes or whether a wholly new constitution is being offered, but on the scope of the proposed changes and the degree to which those changes would interfere with, or modify, the operation of government. [*Id.* at 305.]

Turning finally to the RMGN Proposal before it, the *Citizens* Court had little trouble concluding that the proposal constituted a revision rather than an amendment. *Id.* Quantitatively, the proposal affected four articles, 24 existing sections, and added four new sections. *Id.* Qualitatively, the proposal was multifarious and made fundamental changes to the structure of government by altering legislative, judicial, and executive branch powers as well as the election process itself. *Id.* at 306. The court held that "the proposal does not even approach the field of application for the amendment procedure." *Id.* at 305 (quotations omitted). The court issued a writ of mandamus, finding "[t]he substantial entirety of the petition alters the core, fundamental

[4] See also *Amador Valley Joint Union High Sch Dist v State Bd of Equalization*, 22 Cal 3d 208. 223; 583 P2d 1281 (Cal 1978) ("[E]ven a relatively simple enactment may accomplish such far reaching changes in the nature of our basic governmental plan as to amount to a revision. . . .").

underpinnings of the constitution," and thus the "power of initiative established by Const 1963, art 12, § 2, for amending the constitution does not extend to the RMGN initiative petition." *Id.* at 307.

The Michigan Supreme Court affirmed this Court's decision in *Citizens Protecting Michigan's Constitution v Sec'y of State*, 482 Mich 960; 755 NW2d 157, 157 (2008). A majority of the justices, however, did not agree on the reasoning. Accordingly, as to the principles of law discussed, the decision of this Court in *Citizens* is binding precedent. *Tebo v Havlik*, 418 Mich 350, 362; 343 NW2d 181 (1984).

As discussed in the following section, like the RMGN Proposal, the VNP Proposal also alters the legislative, judicial, and executive branch powers specified in the constitution, and makes sweeping changes to the election process as well. These are fundamental changes and they would disrupt the basic structure of government. The same conclusion and result as followed with the RMGN Proposal should follow here as well.

2. The VNP Proposal is a general revision of the Constitution and thus not eligible for submission to the voters through the initiative process.

a. The VNP Proposal is a revision under the quantitative prong.

Application of the quantitative prong weighs conclusively in favor of a determination that the VNP Proposal is a revision rather than an amendment. The VNP Proposal would impact all three branches of Michigan government, changing the articles governing the legislative, judicial, and executive branches, repealing or altering 11 sections. While the VNP proposal does not add new sections, it inserts fully 22 new *subsections* in Const 1963, art 4, § 6.

In any framing, the VNP Proposal is massive. It would change approximately 4,834 words[5] in the Constitution—adding approximately 3,375 words and striking an additional 1,459 words. *The 4,834 words changed in the VNP Proposal would comprise more than 25% of the Michigan Constitution of 1963 as originally ratified.*[6] The exceptional size of the VNP Proposal can be seen by comparing it to other amendments: Between 1963 and 2010, 31 amendments to the Michigan Constitution have been adopted.[7] On average, each added a mere 559 words.[8] The VNP Proposal, in contrast, adds more than *six times* this average, to say nothing of the 1,459 words it deletes. Indeed, absent action by this Court preventing its placement on the 2018 general election ballot, the VNP Proposal would be the *largest ever* proposal submitted to voters outside of the work of a constitutional convention.[9]

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[5] For comparison, the entire United States Constitution as originally ratified (*i.e.*, without counting subsequent amendments) was only 4,543 words.

[6] As originally enacted, the 1963 Constitution was 19,203 words. See Citizens Research Council of Michigan, Amending the Michigan Constitution: Trends and Issues, Special Report, at 2, (No. 360-03, March 2010) available at http://www.crcmich.org/PUBLICAT/2010s/2010/rpt36003.pdf (last visited April 16, 2018).

[7] *Id.* at 1-2.

[8] *Id.*

[9] For discussion of prior initiatives submitted to voters and the number of articles and sections impacted, see Secretary of State, Initiatives and Referendums Under the Constitution of the State of Michigan of 1963 (2008), available at https://www.michigan.gov/documents/sos/Const_Amend_189834_7.pdf (last visited April 16, 2018).

The voters of Michigan cannot constitutionally be asked to vote on such a measure. Certainly, they should not be asked to do so without the benefit of the recommendation of a constitutional convention as required by Const 1963, art 12, § 3.[10]

Under the Constitution, amendments are meant to be mere "correction[s] of detail," *Citizens*, 280 Mich App at 296 (quotations omitted). They are not meant to be sprawling compilations of changes, with multiple purposes that voters must decide to adopt or reject all at once. As the California Supreme Court explained in *McFadden*, such proposals are unacceptable for submission to the voters without a convention:

> The proposal is offered as *a single amendment* but it obviously is multifarious. It does not give the people an opportunity to express approval or disapproval severally as to each major change suggested; rather does it, apparently, have the purpose of aggregating for the measure the favorable votes from electors of many suasions who, wanting strongly enough any one or more propositions offered, might grasp at that which they want, tacitly accepting the remainder. Minorities favoring each proposition severally might, thus aggregated, adopt all. Such an appeal might well be proper in voting on a revised constitution, proposed under the safeguards provided for such a procedure, but it goes beyond the legitimate scope of a single amendatory article. [*McFadden*, 32 Cal 2d at 346 (emphasis added).]

[10] In addition to deciding on whether to recommend wholesale constitutional revision for submission to the voters, constitutional conventions are empowered to "explain and disseminate information about the proposed constitution" to the public. Const 1963, art 12, § 3. For the 1907-08 Convention, this included an "Address to the People" issued as part of the 1908 Report of the Committee on Submission; this Address described major changes and explained the Convention's the reasons behind submitting them. For the 1961-62 Constitutional Convention, this included a lengthy (109-page) pamphlet entitled "What the New State Constitution Means to You: A Report to the People of Michigan by their Elected Delegates to the Constitutional Convention of 1961-62," again explaining the process, purpose, and specific recommendations of the Convention. Voters do not have the benefit of similar official explanatory materials when considering whether to ratify an amendment.

The language of Michigan's Constitution supports this interpretation of the word "amendment" as meaning a short correction to the existing constitution with a narrow purpose. Const 1963, art 12, § 2 uses the word "amendment" in the singular ten times; it requires that each "ballot . . . contain a statement of the *purpose* of the proposed amendment"—not the *purposes*. Const 1963, art 12, § 2 (emphasis added). The VNP Proposal has multiple purposes and makes multiple amendments.

State law confirms that an "amendment" is to be limited in scope. Unlike revisions enacted through constitutional conventions, the purpose of a constitutional *amendment*, under state law, must be susceptible to summarization in 100 words. See Const 1963, art 12, § 2; MCL 168.32(2). The VNP Proposal is too massive and too varied in its purposes to possibly be summarized in 100 words in a way that will apprise the voters of its effects on their Constitution in the manner contemplated by law. See Const 1963, art 12, § 2; MCL 168.32(2). The sheer scale of the VNP Proposal similarly means that it could not have been reasonably summarized to apprise persons signing a circulated petition of those same effects.[11]

With these considerations in mind, there can be little doubt that the VNP Proposal works a revision to the Michigan Constitution under the quantitative prong. Further, as is set forth below, the qualitative prong *also* supports the VNP Proposal's lack of ballot eligibility.

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[11] In *Citizens Protecting Michigan's Constitution*, three justices of the Michigan Supreme Court would have held that the RMGN Proposal's size and multiple purposes made summarizing its purpose in 100 words an impossibility, and that this provided an independent basis for withholding the RMGN Proposal from the 2008 general election ballot. See 482 Mich at 960 (Cavanagh, Weaver, and Markman, JJ., concurring). These justices noted that the 100 word requirement in article 12, § 2 "establishes a clear limitation on the scope of constitutional amendments under § 2." *Id.* Because of the VNP Proposal is expansive and multifarious, it is similarly unsusceptible to summary in 100 words in any manner that would meaningfully apprise voters of its purposes.

b. The VNP Proposal is a revision under the qualitative prong.

i. The VNP Proposal creates a "superagency," in effect an additional branch of government that combines powers of all three branches, but is shielded from the checks and balances built into the Constitution.

Like the RMGN Proposal at issue in *Citizens*, the VNP Proposal has many purposes. The VNP Proposal seeks to enact, among other things, the following major changes to the Constitution:

Impact on Legislative Powers and Oversight

1. The VNP Proposal creates a 13 member "independent" redistricting commission in the legislative branch and transfers to it *all lawmaking powers over redistricting* of the Legislature and the Michigan congressional delegation. (Ex. 1, VNP Proposal, art 4, § 6(1).)

2. Even though established in the legislative branch, the commission is vested with "exclusive" control over redistricting and is not subject to the control of the Legislature. (Ex. 1, VNP Proposal, art 4, § 6(22).)

3. The Legislature is stripped of control over commission appropriations and budgeting measures; the proposal mandates that the commission shall receive a minimum of an amount equal to 25% of the Department of State's annual budget—more if the commission alone determines it needs more. Further, the State is required to *indemnify* commission members for costs incurred even if the Legislature does not approve funds to do so, which is directly contrary to Const 1963, art 7, § 17. (Ex. 1, VNP Proposal, art 4, § 6(5).)

4. The VNP Proposal precludes legislative oversight, and the powers of the secretary of state are vastly expanded by placing that official in charge of the redistricting commission and the selection of redistricting commission members. (And because commission members are required to have no recent political experience, they will be susceptible to the influence of the partisan-elected secretary of state). (Ex. 1, VNP Proposal, art 4, § 6(2).)

Limitations on Executive Branch Oversight

5. Commission members are accountable to no one but themselves and cannot be removed by the governor under Const 1963, art 5, § 10, or disciplined by the Civil Service Commission. (Ex. 1, VNP Proposal, art 5, § 2.)

6. The governor is stripped of all budgeting control over the commission; the governor has no power to order expenditure reductions under Const 1963, art 5, § 20 as he or she can for other agencies. (*Id.*)

7. The commission is vested with exclusive control over procuring, contracting, and hiring staff, consultants, and lawyers. (Ex. 1, VNP Proposal, art 4, § 6(4).)

8. Commission members are guaranteed a salary equal to 25% of the governor's salary, and that amount may not be changed by any other body including the Legislature or the Civil Service Commission. (Ex. 1, VNP Proposal, art 4, § 6(5).)

Limitations on Judicial Powers

9. The VNP Proposal vests original jurisdiction in the Michigan Supreme Court to review redistricting plans for compliance with state and federal constitutional requirements but strips the Supreme Court and the judiciary of the power to fashion a remedy if a plan is found defective; the only allowable action is to return the plan to the commission. (Ex. 1, VNP Proposal, art 4, § 6(19).)

Changes to the Constitutional Criteria Governing Legislative and Congressional Districts

10. The VNP Proposal dispenses with the current requirement that districts be drawn along county and municipal boundaries to the extent possible, a requirement that has been in every Michigan constitution since 1835. (Ex. 1, VNP Proposal, art 4, § 6(13).)

11. The VNP Proposal also dispenses with the current mandatory requirement that districts be compact. (*Id.*)

12. Existing *mandatory* redistricting criteria (*i.e.*, the requirement that districts follow county and municipal boundaries) are scrapped and replaced with a laundry list (in descending order of priority) of *non-mandatory* criteria beginning with "Districts shall reflect the state's diverse population and communities of interest" which is no standard at all. "Reasonable" compactness is last on the list and "consideration of county, city, and township boundaries" is second to the last. (*Id.*)

13. The VNP Proposal's other new criteria may be impossible or nearly impossible to implement: "Districts shall not provide a disproportionate advantage to any political party" as determined by undefined "accepted measures of political fairness" of which there are none that have been recognized by the courts. Similarly, the VNP Proposal directs that districts shall not "favor or disfavor" incumbents without providing a clue

as to what that actually means. (*Id.*)[12]

Elimination of Direct Democracy Powers as to Redistricting

14. The VNP Proposal eliminates the right of the people to nullify a redistricting plan by referendum or to repeal or modify a plan by citizens' initiative.[13]

Any one of these changes will present a serious modification to and interference with the existing structures of the Constitution; taken as a whole, these changes unquestionably upend key constitutional foundations and reorganize the operation of the entirety of state government. No branch is spared—even the judiciary's powers over redistricting (both as to review and remedy) have been curtailed and displaced. The new commission is a "superagency"—a chimera,[14] helmed by a partisan-elected official in the executive branch (the secretary of state), but placed in the legislative branch (albeit with no legislative control or oversight), and moreover, immune from most types of remedial orders now available to the judicial branch. In this superagency, the

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[12] Another requirement that will be impossible to comply with is the mandate in the VNP Proposal that the Secretary select each of the thirteen commissioners in a manner that "as closely as possible, mirror[s] the … demographic makeup of the state." See Ex. 1, VNP Proposal, art. VI, § 6(2)(D)(ii). There are literally hundreds if not thousands of demographic characteristics the Secretary can choose from, such as race, age, gender, income, military service, primary language, disability, education level, occupation, marital status, sexual preference, union membership, religious preference, or any other number of factors. The Secretary will be able to choose in each cycle whatever factors best suit the Secretary's political preference, but with only 13 commission members, it will never be possible to "mirror" the "demographic makeup of the state."

[13] In Const 1963, art 9, § 9, the Constitution provides that "[t]he people reserve to themselves the power to propose laws and to enact and reject laws, called the initiative, and the power to approve or reject laws enacted by the legislature," which power "extends only to laws which the legislature may enact under this constitution." Because "exclusive" power over redistricting would be reposed in the new commission, the VNP Proposal would also eliminate the People's direct power—a fundamental change.

[14] Any mythical animal with parts taken from various animals. Chimera Definition, OxfordDictionaries.com, https://en.oxforddictionaries.com/definition/chimera (last visited April 16, 2018).

powers of all three branches are to be reposed, and many of the checks and balances otherwise imposed on the three branches are rendered inoperative.

The creation of a new, independent agency—standing fully outside of the control of the governor or the legislature—is contrary to one of the primary policies of the 1961-62 Constitutional Convention. By the late 1950s, the number of government agencies and questions over the location of executive control had grown unwieldy, and there was little central control over many of them. The executive branch contained some 120 agencies, many of which exercised unsupervised control over affairs within their respective realms. Following a 1959 cash crisis and payless payday, the delegates to the Convention proposed new measures for the streamlining of government by reducing such agencies to no more than 20 and for assuring centralized oversight and management of agencies by a single executive.[15] The VNP Proposal

[15] As explained by the Michigan Supreme Court in *House Speaker v Governor*, 443 Mich 560, 562; 506 NW2d 190 (1993) with respect to the purposes of the 1961 and 1962 constitutional convention: "Perhaps the biggest need for restructuring was in the executive branch, which, before the new constitution, was composed of so many boards, commissions, and departments that the executive branch lacked any kind of effective coordination or supervision." The Court explained further:

> To give the Governor, at its head, some real control over the executive branch, the convention delegates agreed that the executive branch had to be given some logical structure. To provide such structure, the constitution included a provision mandating that all entities within the executive branch be allocated among and within not more than twenty principal departments. [*Id.* at 562-563 (footnotes omitted).]

[Footnote continues....]

reverses these fundamental policy reforms made in the 1963 Constitution. The new commission creates a new fiefdom with no ability of the voters to reign in its powers by ordinary political means (except perhaps through yet another constitutional amendment).

ii. The VNP Proposal abandons core redistricting criteria that have existed since the State's founding.

But perhaps most disruptive is the VNP Proposal's impact on the election process itself. Legislative districts are the building blocks of a representative government. The VNP Proposal disrupts the very means by which the People's representatives are chosen. Nothing is more fundamental to the entire legislative process.[16] For this reason, the Michigan Supreme Court long ago recognized that "[*a*]*ny* change in the means by which the members of the Legislature are chosen is a fundamental matter." *In re Apportionment of State Legislature—1982*, 413 Mich 96, 136-137; 321 NW2d 565 (1982) (emphasis added). In *Citizens*, this Court referred to authority over and the means of redistricting as affecting the "'foundation power' of government." *Citizens*, 280 Mich App at 306.

The Court cited to the convention record for support. See *id.* at 562 n 1 and n 2 ("As one convention delegate stated: 'Reorganization is a must if the governor is to have a structure of government such that he can maintain contact with the heads of his principal departments in such a way as to not only know what is going on but to be able to give some supervision and direction to the functioning of state government."); see also *id.* at 582 n 28, 583 n 29 (citing further convention statements). The 1963 Constitution similarly added a provision establishing a bi-partisan legislative council to centralize and oversee bill drafting, research, and other services for members of the Legislature. See Const 1963, art 4, § 15; see also 2 Official Record, Constitutional Convention 1961, p. 2389 ("We felt, however, that there was a reason for adding this provision in the constitution, in that it gave additional strength to the one single thing which the legislature can do to make itself the strongest possible kind of a legislature, to go along with the strong governor here in Michigan.").

[16] The "Guarantee Clause" of the United States Constitution requires that every state have a "Republican Form of Government." US Const, art IV, § 4.

The VNP Proposal *both* transfers the historical legislative power over redistricting to a new commission, but also adopts nebulous and alien standards for the drawing of districts. These new standards abandon the longstanding core redistricting criteria that district boundaries follow existing county and municipal lines—criteria that have been imposed by every Michigan Constitution *since at least 1835*.

As the Michigan Supreme Court explained:

> We see in the constitutional history of this state dominant commitments to contiguous, single-member districts drawn along the boundary lines of local units of government which, within those limitations, are as compact as feasible. [*In re Apportionment of State Legislature—1982*, 413 Mich at 140.]

As further observed by Justices Levin and Fitzgerald:

> [O]ne cannot deny that throughout its history Michigan has remained firmly committed to avoiding the fragmentation of county lines and, more recently, . . . avoiding the fragmentation of city and township lines. . . . [C]ounty lines have remained inviolate. The reason for following county lines was not the "political unit" theory of representation but rather that each Michigan Constitution has required preservation of the electoral autonomy of the counties. [*In re Apportionment of State Legislature—1982*, 413 Mich 149, 186-187; 321 NW2d 585 (1982) (Levin and Fitzgerald, JJ., concurring).]

Indeed, "Michigan's adherence to the principle that county and township lines should be preserved in the creation of election districts *dates back to the formation of the Northwest Territory on July 13, 1787*, and has been voiced in every Michigan constitution adopted since that date." *In re Apportionment of State Legislature—1982*, 413 Mich at 129-130 n 18 (citing, *inter alia*, Northwest Ordinance 1787, § 9; Const 1835, art 4, § 4; Const 1835, art 4, § 6; Const 1850, art 4, § 2; Const 1850, art 4, § 3; Const 1908, art 5, § 2; Const 1908, art 5, § 3) (emphasis added).

The framers of the current 1963 Constitution also emphasized the primary importance of county lines. *Id.* at 131 n 19. As explained by the Supreme Court in *In re Apportionment of State Legislature—1982:*

> The overarching priority that the delegates to the constitutional convention attached to the preservation of county units, while discernible upon an examination of the final product of their deliberations, is underscored by statements made on the floor of the convention. . . . In speaking about the Senate plan, the majority report [of the Committee on Legislative Organization] said " . . . *the county unit become*[*s*] *the major building block in creating senate districts.*" 2 Official Record, Constitutional Convention 1961, p 2036.
>
> Insofar as the House plan was concerned, the majority report said: "All house districts will follow county boundary lines. This is recommended in order to assure citizens clearly identifiable and traditionally recognized voting districts, and to conform to the long established county organization patterns of many groups, including the political parties. Many states follow county lines in districting, and the weight of testimony heard by the committee overwhelmingly favored continuing this practice in Michigan." 2 Official Record, p 2036. [*Id.*]

The Supreme Court went on to quote Delegate Dehnke:

> The paramount importance of the county line principle was also discussed at length by Delegate Dehnke, himself a member of the Committee on Legislative Organization, when he took the floor to defend the majority report[:] "Now it has been recognized—it became clear early in our proceedings before the committee—that the delegates from both sides were agreed that it would not be advisable to permit the cutting of counties in forming legislative districts in either house. Practical considerations convinced both groups that this would not be advisable and should not be done if it could possibly be avoided. Counties, of course, are not sovereign entities. I don't know of anyone who claimed that they were. But, historically, our counties have been formed for the convenience of the state, to facilitate the administration of government. They may be said to be the agents of the state, as a convenient unit for the administration of state laws and the maintenance of law and order; for judicial administration, for welfare administration, for keeping records of deeds, probates and so on." 2 Official Record, p 2099. [*Id.*]

The Supreme Court also pointed out that preserving county lines was more important to the framers than other redistricting criteria including compactness, uniformity, and squareness:

> When comments such as these are taken into account, there can be little room to doubt that the integrity of county lines was a *principle of prime importance* to the framers of the 1963 Constitution. The primacy under the 1963 Constitution of the county-line requirement is such that it takes precedence over the other criteria of preserving city and township lines (in those few instances where they cross county lines), compactness, uniformity and squareness. [*Id.*]

The Supreme Court—in adopting the integrity of county and municipal lines as the Court's *own* primary goal for drafting the 1982 apportionment plan—went on to explain, quoting delegate W. F. Hanna, the benefits of following county and municipal lines, including minimizing the potential for gerrymandering:

> The provisions of the 1963 Constitution requiring that election districts be organized along county, city and township lines to the extent possible (i) enable voters living in a particular community to combine their votes more effectively to elect a representative from that area, (ii) facilitate the conduct of the election by reducing the number of precincts and special ballots, (iii) tend to preserve existing political party organizations, and (iv) *limit the potential for gerrymandering*. [*Id.* at 133 n 20 (emphasis added).]

Ten years later, the Supreme Court reiterated the importance of honoring jurisdictional lines "in order to foster effective representative government." *In re Apportionment of the State Legislature—1992*, 439 Mich 251, 252; 483 NW2d 52 (1992).[17]

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[17] In 1981-82, the Michigan Supreme Court was called upon to draft redistricting plans for the state legislature because the legislature and the governor were unable to agree on plans. The court established detailed redistricting criteria and rules premised on the constitutional preference for drawing district lines along county and municipal boundaries. These criteria came to be known as the "Apol Standards," named after the special master retained by the court in 1982. The Apol Standards were utilized by the court in 1982 and again in 1992 after both political parties endorsed their use. See *In re Apportionment of State Legislature—1982*, 413 Mich at 140-141; *In re Apportionment of State Legislature—1992*, 439 Mich 715, 720-722; 486 NW2d 639 (1992). [Footnote continues...]

The VNP Proposal, as detailed above, does much more than just depart from the principle of following county and municipal lines. It restricts powers of the courts to review plans, of the governor to remove public officers and control budgetary matters, and of Legislature (and the people themselves, for that matter) to make revisions to redistricting plans after their initial adoption by the VNP commission. It shifts the locus of power over redistricting decisions to an entirely new unelected body, and supplies an alien set of novel criteria for that body to use. According to the Supreme Court, "[*a*]*ny* change in the means by which the members of the Legislature are chosen is a fundamental matter." See *In re Apportionment of State Legislature—1982*, 413 Mich at 136-137. The VNP Proposal is not limited to a single change in the means by which members of the legislature are chosen; it makes *many* such fundamental changes.

This last point is well illustrated by the decision in *Citizens*. In its decision on the RMGN Proposal, this Court in *Citizens* highlighted one change *in particular* in explaining why the proposal satisfied the "qualitative" prong of the revision versus amendment test:

> The impact of the proposal on the operation of the three branches of government, and the electoral process, is substantial. As just

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The Apol Standards' application to State House and Senate districts was codified in 1996. See MCL 4.261. Congressional redistricting follows largely the same standards. See MCL 3.63 (adopted in 1999). The Apol Standards require single member districts, and require districts to be areas of convenient territory contiguous by land. MCL 4.261(a)-(c); see also MCL 3.63(c)(i). They further specify that State House and Senate districts shall have population not exceeding 105% and no less than 95% of the ideal district size, with even smaller variation (102% to 98%) permitted in cities or townships with more than one district. MCL 4.261(d), (i). The Apol Standards establish a hierarchy for their application. MCL 4.261(e)-(h); see also MCL 3.63(c)(i)-(ix). First, "district lines shall preserve county lines with the least cost to the principle of equality of population." MCL 4.261(e); see also MCL 3.63(c)(ii) ("Congressional district lines shall break as few county boundaries as is reasonably possible."). Second, the Legislature should avoid breaking municipal boundaries to the extent possible. MCL 4.261(f)-(g); see also MCL 3.63(c)(iv). Only when necessary to stay within the range of allowable population divergence may the Legislature break municipal lines. MCL 4.261(h); see also MCL 3.63(c)(v).

The Apol Standards will be abandoned if the VNP Proposal is adopted.

> one example, the proposal strips the Legislature of any authority to propose and enact a legislative redistricting plan. It abrogates a portion of the judicial [sic, legislative] power by giving a new executive branch redistricting commission authority to conduct legislative redistricting. It then removes from the judicial branch the power of judicial review over the new commission's actions. We agree with the Attorney General that the proposal affects the "foundation power" of government by "wresting from" the legislative branch and the judicial branch any authority over redistricting and consolidating that power in the executive branch, albeit in a new independent agency with plenary authority over redistricting. [*Citizens*, 280 Mich App at 306.]

As with the RMGN Proposal in *Citizens*, this Court should find that the expansive and fundamental changes of the VNP Proposal—including but not limited to changes displacing county lines as the primary criteria of redistricting—are too disruptive to the structures of government to be achieved as an amendment. These changes are not some mere "correction of detail," *Citizens*, 280 Mich App at 296 (quotations omitted), but a general revision of the Constitution, and a writ of mandamus should issue to prevent the VNP Proposal from being placed on the ballot.

C. The VNP Proposal violates the requirement that petitions republish all provisions that would be altered or abrogated by a proposed amendment.

1. State law requires that all portions of the constitution that are "altered or abrogated" must be published as part of the circulated petition.

To properly inform voters, the Constitution requires publication before election of all constitutional provisions that a proposed constitutional amendment would alter or abrogate. "Such proposed amendment, existing provisions of the constitution which would be altered or abrogated thereby, and the question as it shall appear on the ballot shall be published in full as provided by law." Const 1963, art 12, § 2. Pursuant to the power granted by the Constitution to

prescribe the requirements for *petitions*, the legislature "extend[ed] the educational function of this requirement to persons signing petitions" as well. *Ferency v Sec'y of State*, 409 Mich 569, 592-593; 297 NW2d 544 (1980). Thus, in section 482 of the Michigan Election Law, the Legislature has required that "[i]f the proposal would alter or abrogate an existing provision of the constitution, the petition shall so state and the provisions to be altered or abrogated shall be inserted. . . ." MCL 168.482(3).

These requirements are aimed at ensuring that all petition signers and, potentially, eventual voters "are fully informed of the [e]ffect" of the petition they are being asked to sign. See, e.g., *Carman v Sec'y of State*, 384 Mich 443, 454; 185 NW2d 1 (1971). That is, these protections "advise the elector" as to the constitutional changes being made by the petition he or she is being asked to support. *Coalition to Defend Affirmative Action & Integration v Bd of State Canvassers*, 262 Mich App 395, 401; 686 NW2d 287 (2004) (quotations omitted). Without these protections, a petition signer would sign a petition without understanding the impact of doing so, thereby inadvertently supporting a proposition with which he or she does not understand or actually agree.

2. A provision is abrogated when it is rendered a nullity.

Before turning to the multiple, specific provisions of the existing Constitution abrogated by the VNP Proposal *but not republished in the petition*, Plaintiffs provide a brief summary of how the term "abrogated" has been defined by the Michigan Supreme Court. A proposed amendment "*abrogates* an existing provision when it renders that provision wholly inoperative." *Protect Our Jobs*, 492 Mich at 773 (emphasis added). An existing constitutional provision is rendered wholly inoperative "if the proposed amendment would make the existing provision a

nullity or if it would be impossible for the amendment to be harmonized with the existing provision when the two provisions are considered together." *Id.* at 783 (footnote omitted).

The Michigan Supreme Court has explained that the potential of abrogation is high where existing provisions of the Constitution confer exclusive or complete control on a particular person or entity:

> Determining whether the existing and new provisions can be harmonized requires careful consideration of the actual language used in both the existing provision and the proposed amendment. An existing provision that uses nonexclusive or nonabsolute language is less likely to be rendered inoperative simply because a proposed new provision introduces in some manner a change to the existing provision. . . . [A] proposed amendment more likely renders an existing provision inoperative if the existing provision creates a mandatory requirement or uses language providing an exclusive power or authority because any change to such a provision would tend to negate the specifically conferred constitutional requirement. [*Id.*]

The analysis is also a granular one, and "requires consideration of not just the whole existing constitutional provision, but also the provision's discrete subparts, sentences, clauses, or even, potentially, *single words*." *Id.* at 784 (emphasis added).

This principle was applied by the Michigan Supreme Court in *Protect Our Jobs*. There, the Court considered, among other initiatives, a proposal to amend the Constitution to establish eight casinos at specified locations (the "Casino Proposal"). *Id.* at 775. The Casino Proposal would have added language requiring that "[a]ll [eight] of the casinos authorized by this section shall be granted liquor licenses issued by the state of Michigan. . . ." *Id.* at 790 (quotations omitted) (emphasis omitted). The petition circulated in support of the Casino Proposal failed, however, to republish Const 1963, art 4, § 40, which states that the "liquor control commission which . . . shall exercise *complete control* over the alcoholic beverage traffic within this state." Const 1963, art 4, § 40 (emphasis added); *Protect Our Jobs*, 492 Mich at 791.

The court in *Protect Our Jobs* held that the absolute language of Const 1963, art 4, § 40—conferring "complete control" on the liquor control commission—necessarily communicates exclusivity of control, and that "*any* infringement on that control abrogates that exclusivity; an amendment that contemplates anything less than complete control logically renders that power in § 40 inoperative." *Protect Our Jobs*, 492 Mich at 790-791. Because the proposed addition in the Casino Proposal would "nullify the complete control" of the liquor commission, the court held that republication was required. *Id.* at 791. It did not matter that the abrogation of the "complete control" was slight—the court explained that "[e]ven though the amendment affects only a small fraction of the power to control alcoholic beverage traffic, which power itself is only a portion of Const 1963, art 4, § 40, a provision of § 40 has been negated and, thus, abrogated, thereby requiring republication of the entire constitutional section." *Id.* at 791 n 32. The failure of the circulators of the Casino Proposal to republish Const 1963, art 4, § 40 as part of the circulated petition was thus a fatal violation of MCL 168.482(3), and the court prevented the entire Casino Proposal from reaching the 2012 general election ballot. *Id.* at 791.

The legal principles enunciated in *Protect Our Jobs* are controlling here.

3. The VNP Proposal petition failed to republish multiple provisions of the existing Constitution that would be abrogated if the Proposal is adopted.

The same fatal flaw that existed for the Casino Proposal in *Protect Our Jobs* is present in the petition that circulated the VNP Proposal, but multiple times over. That is, the VNP Proposal has failed to republish *several* sections of the existing Constitution even though absolute or exclusive provisions in these sections will be nullified by the Proposal's adoption. These include the following:

a. Const 1963, art 6, § 13

Existing Const 1963, art 6, § 13 provides in relevant part as follows:

> **§ 13. Circuit courts; jurisdiction, writs, supervisory control over inferior courts.**
> Sec. 13. The circuit court *shall have original jurisdiction in all matters* not prohibited by law. . . . [Const 1963, art 6, § 13 (emphasis added).]

Conversely, article 4, § 6(19) of the VNP Proposal, if adopted, will provide, in relevant part:

> (19) THE SUPREME COURT, *IN THE EXERCISE OF ORIGINAL JURISDICTION*, SHALL DIRECT THE SECRETARY OF STATE OR THE COMMISSION TO PERFORM THEIR RESPECTIVE DUTIES, MAY REVIEW A CHALLENGE TO ANY PLAN ADOPTED BY THE COMMISSION, AND SHALL REMAND A PLAN TO THE COMMISSION FOR FURTHER ACTION IF THE PLAN FAILS TO COMPLY WITH THE REQUIREMENTS OF THIS CONSTITUTION, THE CONSTITUTION OF THE UNITED STATES OR SUPERSEDING FEDERAL LAW. [Ex. 1, VNP Proposal, art 4, § 6(19) (emphasis added).]

Like the provision conferring "complete control" over liquor licensing to the liquor control commission in *Protect Our Jobs*, Const 1963, art 6, § 13 confers original jurisdiction in "*all* matters not prohibited by law" on the circuit court and is exclusive and absolute. Const 1963, art 6, § 13 (emphasis added). The proposed amendment would divest the circuit court of its exclusive original jurisdiction, not by law[18] but by a constitutional amendment. Const 1963, art 6, § 13 cannot be harmonized with the VNP Proposal's conferring of original jurisdiction on the Supreme Court, and Const 1963, art 6, § 13 thus would be abrogated by the VNP Proposal.

[18] The phrase "prohibited by law" refers exclusively to prohibitions provided by the Legislature. See *People v Bulger*, 462 Mich 495, 509; 614 NW2d 103 (2000) ("[T]his Court has consistently held that the use of the phrase 'provided by law' in our constitution contemplates *legislative* action."), *abrogated on other grounds by Halbert v Michigan*, 545 US 605 (2005).

The VNP Proposal does not republish Const 1963, art 6, § 13, and thus does not comply with the requirements of Michigan law. See MCL 168.482(3).

b. Const 1963, art 1, § 5

Existing Const 1963, art 1, § 5 provides in relevant part as follows:

> **§ 5. Freedom of speech and of press.**
> Sec. 5. *Every person* may freely speak, write, express and publish his views on *all* subjects, being responsible for the abuse of such right. . . . [Const 1963, art 1, § 5 (emphasis added).]

Conversely, article 4, § 6(11) of the VNP Proposal, if adopted, will provide, in relevant part:

> (11) THE COMMISSION, ITS MEMBERS, STAFF, ATTORNEYS, AND CONSULTANTS *SHALL NOT DISCUSS REDISTRICTING MATTERS* WITH MEMBERS OF THE PUBLIC OUTSIDE OF AN OPEN MEETING OF THE COMMISSION, EXCEPT THAT A COMMISSIONER MAY COMMUNICATE ABOUT REDISTRICTING MATTERS WITH MEMBERS OF THE PUBLIC TO GAIN INFORMATION RELEVANT TO THE PERFORMANCE OF HIS OR HER DUTIES IF SUCH COMMUNICATION OCCURS (A) IN WRITING OR (B) AT A PREVIOUSLY PUBLICLY NOTICED FORUM OR TOWN HALL OPEN TO THE GENERAL PUBLIC. . . . [Ex. 1, VNP Proposal, art 4 § 6 (emphasis added).]

The existing rights conferred in Const 1963, art 1, § 5 are both exclusive and absolute—"every person" may speak on "all subjects." The proposed amendment, if approved, would restrict the commission, its staff, attorneys, and consultants[19] from discussing any "redistricting matters"—not merely commission activities, but even redistricting matters in other states or

[19] Governmental employees "do not forfeit their constitutionally protected free speech interest by virtue of accepting government employment." *Shirvell v Dep't of Attorney Gen*, 308 Mich App 702, 732; 866 NW2d 478 (2015). When and whether a public employee's speech is protected by the constitutional guarantee of free speech is subject to a content-specific balancing analysis, including whether the employee is speaking "as a citizen upon matters of public concern" or only on matters of personal interest, and whether the government can show sufficient justification for its restrictions related to its purposes as the employer. See *id.* at 733-736. The VNP Proposal would dispense with this framework, barring speech on all "redistricting matters" regardless of content or context.

appellate court or local redistricting not altered by the proposed constitutional amendment—outside of a public meeting, or in certain limited circumstances, in writing. The proposed restrictions on the liberty of speech would extend beyond to matters beyond Commission activities, and in any event, cannot be harmonized with and are thus incompatible with the existing protections for unrestricted speech conferred by Const 1963, art 1, § 5.

The VNP Proposal does not republish Const 1963, art 1, § 5, and thus does not comply with the requirements of Michigan law. See MCL 168.482(3).

c. Const 1963, art 9, § 17

Existing Const 1963, art 9, §17 provides in relevant part as follows:

> **§ 17 Payments from state treasury.**
> Sec. 17. *No* money shall be paid out of the state treasury *except* in pursuance of appropriations made by law. [Const 1963, art 9, § 17 (emphasis added).]

Conversely, article 4, § 6(5) of the VNP Proposal, if adopted, will provide, in relevant part:

> (5) . . . EACH COMMISSIONER *SHALL* RECEIVE COMPENSATION AT LEAST EQUAL TO 25 PERCENT OF THE GOVERNOR'S SALARY. THE STATE OF MICHIGAN *SHALL* INDEMNIFY COMMISSIONERS FOR COSTS INCURRED *IF THE LEGISLATURE DOES NOT APPROPRIATE SUFFICIENT FUNDS* TO COVER SUCH COSTS. [Ex. 1, VNP Proposal, art 4 § 6(5) (emphasis added).]

The existing constitutional provision affected (Const 1963, art 9, § 17) is both exclusive and absolute—"no money shall be paid" from the state treasury in the absence of an appropriation made by law. This provision is incompatible with the proposed requirement that the State of Michigan compensate and indemnify commissioners for costs incurred even in the absence of an appropriation. That incompatibility would render existing Const 1963, art 9, § 17 a nullity, and thus abrogate Const 1963, art 9, § 17.

The VNP Proposal does not republish Const 1963, art 9, § 17, and thus does not comply with the requirements of Michigan law. See MCL 168.482(3).

d. Const 1963, art 11, § 1

Existing Const 1963, art 11, § 1 provides in relevant part as follows:

> **§ 1 Oath of Public Officers.**
> Sec. 1. All officers, legislative, executive and judicial, before entering upon the duties of their respective offices, shall take and subscribe the following oath or affirmation: I do solemnly swear (or affirm) that I will support the Constitution of the United States and the constitution of this state, and that I will faithfully discharge the duties of the office of ..... according to the best of my ability. *No other oath*, affirmation, or any religious test *shall be required as a qualification for any office or public trust.* [Const 1963, art 11, § 1 (emphasis added).]

Conversely, article 4, § 6(2) of the VNP Proposal, if adopted, will provide, in relevant part:

> (2) COMMISSIONERS SHALL BE SELECTED THROUGH THE FOLLOWING PROCESS:
>
> (A) THE SECRETARY OF STATE SHALL DO ALL OF THE FOLLOWING:
>
> ***
>
> (III) REQUIRE APPLICANTS TO *ATTEST UNDER OATH* THAT THEY MEET THE *QUALIFICATIONS* SET FORTH IN THIS SECTION; AND EITHER THAT THEY AFFILIATE WITH ONE OF THE TWO POLITICAL PARTIES WITH THE LARGEST REPRESENTATION IN THE LEGISLATURE (HEREINAFTER, "MAJOR PARTIES") AND IF SO, IDENTIFY THE PARTY WITH WHICH THEY AFFILIATE, OR THAT THEY DO NOT AFFILIATE WITH EITHER OF THE MAJOR PARTIES. . . . [Ex. 1, VNP Proposal, art 4, § 6(2) (emphasis added).]

The VNP Proposal would require any person applying to become a commissioner to attest under oath that he or she meets the qualifications for the office of commissioner. The existing provisions of Const 1963, art 11, § 1 are both exclusive and absolute—"*no other oath* shall be required" as a qualification of assuming office. The two provisions are incompatible.

The proposed oath requirement for persons seeking to qualify as a commissioner cannot be harmonized with the one-oath mandate of the existing Constitution. The adoption of the former would render the latter a nullity, and abrogate the existing oath provision.

The VNP Proposal does not republish Const 1963, art 11, § 1, and thus does not comply with the requirements of Michigan law.[20] See MCL 168.482(3).

4. The failure to republish abrogated sections in the petition circulated by VNP precludes placement of the VNP Proposal on the 2018 general election ballot.

Omission of any one of the above abrogated provisions of the existing Constitution is fatal to the VNP Proposal. A petition is invalid if it fails to republish even a slight abrogation of the Constitution's existing language. *Protect Our Jobs*, 492 Mich at 784, 791.

As with the Casino Proposal in *Protect Our Jobs*, this Court again should direct that the VNP Proposal was not properly circulated as required by MCL 168.482(3), and thus that it is incapable of being submitted to the voters. The Secretary should be directed to carry out that determination.

[20] Because of the sweeping nature of the VNP Proposal, other examples could be found. For example, the VNP Proposal would abrogate—without republishing—Const 1963, art 11, § 5, which section states that the Civil Service Commission shall have authority to regulate "all conditions of employment in the classified service." Const 1963, art 11, § 5. Conversely, the VNP Proposal states that "*no employer* shall discharge ... any employee because of the employee's membership on the commission or attendance or scheduled attendance at any meeting of the commission." Ex. 1, art 4, §6(21). In the event a commission member is selected from among the employees in the classified service, the Civil Service Commission's exclusive authority over "all conditions of employment" will no longer be exclusive; it could not, for example, authorize disciplinary action against a state employee for repeatedly missing work to participate in the affairs of the redistricting commission.

IV. CONCLUSION

The VNP Proposal is an attempt to make general revisions to the Michigan Constitution by amendment, which may not be done without holding a constitutional convention. Const 1963, art 12, § 3.

Further, the petition circulating the VNP Proposal failed to publish all altered and abrogated provisions of the existing Constitution as required by state law. MCL 168.482(3).

For both of these independent reasons, the VNP Proposal is not eligible for inclusion on the 2018 general election ballot. A writ of mandamus should issue directing the Secretary and Board to reject the Petition and further directing the Secretary and Board not to place the VNP Proposal on the ballot for the 2018 general election.

V. RELIEF REQUESTED

WHEREFORE, Plaintiffs respectfully request that this Honorable Court:

A. Determine, after plenary review, that the VNP Proposal is not ballot eligible and thereafter issue a writ of mandamus to the Secretary and Board directing them to reject the Petition and further directing them not to place the VNP Proposal on the ballot;

B. Grant exceptional issuance of this Court's judgment, pursuant to MCR 7.215(F)(2); and

C. Grant Plaintiffs such other and further relief as is equitable and just.

Respectfully submitted,

DICKINSON WRIGHT PLLC

Dated: April 25, 2018

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LANSING 37874-2 530314v15

EXHIBIT 1

INITIATIVE PETITION
AMENDMENT TO THE CONSTITUTION

A proposal to amend the Michigan Constitution to create an Independent Citizens Redistricting Commission. If adopted, this amendment would transfer the authority to draw Congressional and State Legislative district lines from the Legislature and Governor to the Independent Commission. The selection process will be administered by the Secretary of State. Thirteen commissioners will be randomly selected from a pool of registered voters, and consist of four members who self-identify with each of the two major political parties, and five non-affiliated, independent members. Current and former partisan elected officials, lobbyists, party officers and their employees are not eligible to serve. The proposal is to be voted on in the November 6, 2018 General Election.

FOR THE FULL TEXT OF THE PROPOSED AMENDMENT AND PROVISIONS OF THE EXISTING CONSTITUTION THAT ARE ALTERED OR ABROGATED BY THE PROPOSAL IF ADOPTED, SEE THE REVERSE SIDE AND ATTACHED PAGES OF THIS PETITION.

We, the undersigned qualified and registered electors, residents in the county of _____, State of Michigan, respectively petition for amendment to constitution.

WARNING — A person who knowingly signs this petition more than once, signs a name other than his or her own, signs when not a qualified and registered elector, or sets opposite his or her signature on a petition, a date other than the actual date the signature was affixed, is violating the provisions of the Michigan election law.

INDICATE CITY OR TOWNSHIP IN WHICH REGISTERED TO VOTE	SIGNATURE	PRINTED NAME	STREET ADDRESS OR RURAL ROUTE	ZIP CODE	DATE OF SIGNING MO	DAY	YEAR
CITY OF ☐ TOWNSHIP OF ☐	1.						
CITY OF ☐ TOWNSHIP OF ☐	2.						
CITY OF ☐ TOWNSHIP OF ☐	3.						
CITY OF ☐ TOWNSHIP OF ☐	4.						
CITY OF ☐ TOWNSHIP OF ☐	5.						
CITY OF ☐ TOWNSHIP OF ☐	6.						
CITY OF ☐ TOWNSHIP OF ☐	7.						
CITY OF ☐ TOWNSHIP OF ☐	8.						
CITY OF ☐ TOWNSHIP OF ☐	9.						
CITY OF ☐ TOWNSHIP OF ☐	10.						

CERTIFICATE OF CIRCULATOR

The undersigned circulator of the above petition asserts that he or she is 18 years of age or older and a United States citizen; that each signature on the petition was signed in his or her presence; that he or she has neither caused nor permitted a person to sign the petition more than once and has no knowledge of a person signing the petition more than once; and that, to his or her best knowledge and belief, each signature is the genuine signature of the person purporting to sign the petition, the person signing the petition was at the time of signing a registered elector of the city or township indicated preceding the signature, and the elector was qualified to sign the petition.

☐ If the circulator is not a resident of Michigan, the circulator shall make a cross or check mark in the box provided, otherwise each signature on this petition sheet is invalid and the signatures will not be counted by a filing official. By making a cross or check mark in the box provided, the undersigned circulator asserts that he or she is not a resident of Michigan and agrees to accept the jurisdiction of this state for the purpose of any legal proceeding or hearing that concerns a petition sheet executed by the circulator and agrees that legal process served on the Secretary of State or a designated agent of the Secretary of State has the same effect as if personally served on the circulator.

WARNING — A circulator knowingly making a false statement in the above certificate, a person not a circulator who signs as a circulator, or a person who signs a name other than his or her own as circulator is guilty of a misdemeanor. 000031

Paid for with regulated funds by Voters Not Politicians Ballot Committee, PO Box 8382, Grand Rapids, MI 49518

CIRCULATOR — Do not sign or date certificate until after circulating petition.

_____ _____/_____/_____

(Signature of Circulator) (Date)

_____

(Printed Name of Circulator)

_____

Complete Residence Address (Street and Number or Rural Route) [Do Not Enter a Post Office Box]

_____

(City or Township, State, Zip Code)

_____

(County of Registration, If Registered to Vote, of a Circulator who is not a Resident of Michigan)

INITIATIVE PETITION
AMENDMENT TO THE CONSTITUTION

The proposal, if adopted, would amend Article IV, Sections 1 through 6, Article V, Sections 1, 2, and 4 Article VI, Sections 1 and 4 as follows (new language capitalized, deleted language struck out with a line):

Article IV – Legislative Branch

§ 1 Legislative power.

Sec. 1. EXCEPT TO THE EXTENT LIMITED OR ABROGATED BY ARTICLE IV, SECTION 6 OR ARTICLE V, SECTION 2, The legislative power of the State of Michigan is vested in a senate and a house of representatives.

§ 2 Senators, number, term.

Sec. 2. The senate shall consist of 38 members to be elected from single member districts at the same election as the governor for four-year terms concurrent with the term of office of the governor.

~~Senatorial districts; apportionment factors.~~

~~In districting the state for the purpose of electing senators after the official publication of the total population count of each federal decennial census, each county shall be assigned apportionment factors equal to the sum of its percentage of the state's population as shown by the last regular federal decennial census computed to the nearest one-one hundredth of one percent, multiplied by four and its percentage of the state's land area computed to the nearest one-one hundredth of one percent.~~

~~Apportionment rules.~~

~~In arranging the state into senatorial districts, the apportionment commission shall be governed by the following rules:~~

~~(1) Counties with 12 or more apportionment factors shall be entitled as a class to senators in the proportion that the total apportionment factors of such counties bear to the total apportionment factors of the state computed to the nearest whole number. After each such county has been allocated one senator, the remaining senators to which this class of counties is entitled shall be distributed among such counties by the method of equal proportions applied to the apportionment factors.~~

~~(2) Counties having less than 12 apportionment factors shall be entitled as a class to senators in the proportion that the total apportionment factors of such counties bear to the total apportionment factors of the state computed to the nearest whole number. Such counties shall thereafter be arranged into senatorial districts that are compact, convenient, and contiguous by land, as rectangular in shape as possible, and having as nearly as possible 12 apportionment factors, but in no event less than 10 or more than 15. Insofar as possible, existing senatorial districts at the time of reapportionment shall not be altered unless there is a failure to comply with the above standards.~~

~~(3) Counties entitled to two or more senators shall be divided into single member districts. The population of such districts shall be as nearly equal as possible but shall not be less than 75 percent nor more than 125 percent of a number determined by dividing the population of the county by the number of senators to which it is entitled. Each such district shall follow incorporated city or township boundary lines to the extent possible and shall be compact, contiguous, and as nearly uniform in shape as possible.~~

§ 3 Representatives, number, term; contiguity of districts.

Sec. 3. The house of representatives shall consist of 110 members elected for two-year terms from single member districts apportioned on a basis of population as provided in this article. ~~The districts shall consist of compact and convenient territory contiguous by land.~~

~~Representative areas; single and multiple county.~~

~~Each county which has a population of not less than seven-tenths of one percent of the population of the state shall constitute a separate representative area. Each county having less than seven-tenths of one percent of the population of the state shall be combined with another county or counties to form a representative area of not less than seven-tenths of one percent of the population of the state. Any county which is included under the initial allocations as provided in this section shall be joined with that contiguous representative area having the smallest percentage of the state's population. Each such representative area shall be entitled initially to one representative.~~

~~Apportionment of representatives to areas.~~

~~After the assignment of one representative to each of the representative areas, the remaining house seats shall be apportioned among the representative areas on the basis of population by the method of equal proportions.~~

~~Districting of single county areas entitled to 2 or more representatives.~~

~~Any county comprising a representative area entitled to two or more representatives shall be divided into single member representative districts as follows:~~

~~(1) The population of such districts shall be as nearly equal as possible but shall not be less than 75 percent nor more than 125 percent of a number determined by dividing the population of the representative area by the number of representatives to which it is entitled.~~

~~(2) Such single member districts shall follow city and township boundaries where applicable and shall be composed of compact and contiguous territory as nearly square in shape as possible.~~

~~Districting of multiple county representative areas.~~

~~Any representative area consisting of more than one county entitled to more than one representative, shall be divided into single member districts as equal as possible in population, adhering to county lines.~~

~~**§ 4 Annexation or merger with a city.**~~

~~Sec. 4. In counties having more than one representative or senatorial district, the territory in the same county annexed to or merged with a city between apportionments shall become a part of a contiguous representative or senatorial district in the city with which it is combined, if provided by ordinance of the city. The district or districts with which the territory shall be combined shall be determined by such ordinance certified to the secretary of state. No such change in the boundaries of a representative or senatorial district shall have the effect of removing a legislator from office during his term.~~

~~**§ 5 Island areas; contiguity.**~~

~~Sec. 5. Island areas are considered to be contiguous by land to the county of which they are a part.~~

§ 6 INDEPENDENT CITIZENS REDISTRICTING COMMISSION FOR STATE LEGISLATIVE AND CONGRESSIONAL DISTRICTS. ~~Commission on legislative apportionment.~~

Sec. 6.

(1) AN INDEPENDENT CITIZENS REDISTRICTING COMMISSION FOR STATE LEGISLATIVE AND CONGRESSIONAL DISTRICTS (HEREINAFTER, THE "COMMISSION") IS HEREBY ESTABLISHED AS A PERMANENT COMMISSION IN THE LEGISLATIVE BRANCH.

THE COMMISSION SHALL CONSIST OF 13 COMMISSIONERS. THE COMMISSION SHALL ADOPT A REDISTRICTING PLAN FOR EACH OF THE FOLLOWING TYPES OF DISTRICTS: STATE SENATE DISTRICTS, STATE HOUSE OF REPRESENTATIVE DISTRICTS, AND CONGRESSIONAL DISTRICTS. EACH COMMISSIONER SHALL:

(A) BE REGISTERED AND ELIGIBLE TO VOTE IN THE STATE OF MICHIGAN;

(B) NOT CURRENTLY BE OR IN THE PAST 6 YEARS HAVE BEEN ANY OF THE FOLLOWING:

(I) A DECLARED CANDIDATE FOR PARTISAN FEDERAL, STATE, OR LOCAL OFFICE,

(II) AN ELECTED OFFICIAL TO PARTISAN FEDERAL, STATE, OR LOCAL OFFICE;

(III) AN OFFICER OR MEMBER OF THE GOVERNING BODY OF A NATIONAL, STATE, OR LOCAL POLITICAL PARTY;

(IV) A PAID CONSULTANT OR EMPLOYEE OF A FEDERAL, STATE, OR LOCAL ELECTED OFFICIAL OR POLITICAL CANDIDATE, OF A FEDERAL, STATE, OR LOCAL POLITICAL CANDIDATE'S CAMPAIGN, OR OF A POLITICAL ACTION COMMITTEE;

(V) AN EMPLOYEE OF THE LEGISLATURE;

(VI) ANY PERSON WHO IS REGISTERED AS A LOBBYIST AGENT WITH THE MICHIGAN BUREAU OF ELECTIONS, OR ANY EMPLOYEE OF SUCH PERSON; OR

(VII) AN UNCLASSIFIED STATE EMPLOYEE WHO IS EXEMPT FROM CLASSIFICATION IN STATE CIVIL SERVICE PURSUANT TO ARTICLE XI, SECTION 5, EXCEPT FOR EMPLOYEES OF COURTS OF RECORD, EMPLOYEES OF THE STATE INSTITUTIONS OF HIGHER EDUCATION, AND PERSONS IN THE ARMED FORCES OF THE STATE;

(C) NOT BE A PARENT, STEPPARENT, CHILD, STEPCHILD, OR SPOUSE OF ANY INDIVIDUAL DISQUALIFIED UNDER PART (1)(B) OF THIS SECTION; OR

(D) NOT BE OTHERWISE DISQUALIFIED FOR APPOINTED OR ELECTED OFFICE BY THIS CONSTITUTION.

(E) FOR FIVE YEARS AFTER THE DATE OF APPOINTMENT, A COMMISSIONER IS INELIGIBLE TO HOLD A PARTISAN ELECTIVE OFFICE AT THE STATE, COUNTY, CITY, VILLAGE, OR TOWNSHIP LEVEL IN MICHIGAN.

(2) COMMISSIONERS SHALL BE SELECTED THROUGH THE FOLLOWING PROCESS:

(A) THE SECRETARY OF STATE SHALL DO ALL OF THE FOLLOWING:

(I) MAKE APPLICATIONS FOR COMMISSIONER AVAILABLE TO THE GENERAL PUBLIC NOT LATER THAN JANUARY 1 OF THE YEAR OF THE FEDERAL DECENNIAL CENSUS. THE SECRETARY OF STATE SHALL CIRCULATE THE APPLICATIONS IN A MANNER THAT INVITES WIDE PUBLIC PARTICIPATION FROM DIFFERENT REGIONS OF THE STATE. THE SECRETARY OF STATE SHALL ALSO MAIL APPLICATIONS FOR COMMISSIONER TO TEN THOUSAND MICHIGAN REGISTERED VOTERS, SELECTED AT RANDOM, BY JANUARY 1 OF THE YEAR OF THE FEDERAL DECENNIAL CENSUS.

(II) REQUIRE APPLICANTS TO PROVIDE A COMPLETED APPLICATION.

(III) REQUIRE APPLICANTS TO ATTEST UNDER OATH THAT THEY MEET THE QUALIFICATIONS SET FORTH IN THIS SECTION; AND EITHER THAT THEY AFFILIATE WITH ONE OF THE TWO POLITICAL PARTIES WITH THE LARGEST REPRESENTATION IN THE LEGISLATURE (HEREINAFTER, "MAJOR PARTIES"), AND IF SO, IDENTIFY THE PARTY WITH WHICH THEY AFFILIATE, OR THAT THEY DO NOT AFFILIATE WITH EITHER OF THE MAJOR PARTIES.

(B) SUBJECT TO PART (2)(C) OF THIS SECTION, THE SECRETARY OF STATE SHALL MAIL ADDITIONAL APPLICATIONS FOR COMMISSIONER TO MICHIGAN REGISTERED VOTERS SELECTED AT RANDOM UNTIL 30 QUALIFYING APPLICANTS THAT AFFILIATE WITH ONE OF THE TWO MAJOR PARTIES HAVE SUBMITTED APPLICATIONS, 30 QUALIFYING APPLICANTS THAT IDENTIFY THAT THEY AFFILIATE WITH THE OTHER OF THE TWO MAJOR PARTIES HAVE SUBMITTED APPLICATIONS, AND 40 QUALIFYING APPLICANTS THAT IDENTIFY THAT THEY DO NOT AFFILIATE WITH EITHER OF THE TWO MAJOR PARTIES HAVE SUBMITTED APPLICATIONS, EACH IN RESPONSE TO THE MAILINGS.

(C) THE SECRETARY OF STATE SHALL ACCEPT APPLICATIONS FOR COMMISSIONER UNTIL JUNE 1 OF THE YEAR OF THE FEDERAL DECENNIAL CENSUS.

(D) BY JULY 1 OF THE YEAR OF THE FEDERAL DECENNIAL CENSUS, FROM ALL OF THE APPLICATIONS SUBMITTED, THE SECRETARY OF STATE SHALL:

(I) ELIMINATE INCOMPLETE APPLICATIONS AND APPLICATIONS OF APPLICANTS WHO DO NOT MEET THE QUALIFICATIONS IN PARTS (1)(A) THROUGH (1)(D) OF THIS SECTION BASED SOLELY ON THE INFORMATION CONTAINED IN THE APPLICATIONS;

(II) RANDOMLY SELECT 60 APPLICANTS FROM EACH POOL OF AFFILIATING APPLICANTS AND 80 APPLICANTS FROM THE POOL OF NON-AFFILIATING APPLICANTS. 50% OF EACH POOL SHALL BE POPULATED FROM THE QUALIFYING APPLICANTS TO SUCH POOL WHO RETURNED AN APPLICATION MAILED PURSUANT TO PART 2(A) OR 2(B) OF THIS SECTION, PROVIDED, THAT IF FEWER THAN 30 QUALIFYING APPLICANTS AFFILIATED WITH A MAJOR PARTY OR FEWER THAN 40 QUALIFYING NON-AFFILIATING APPLICANTS HAVE APPLIED TO SERVE ON THE COMMISSION IN RESPONSE TO THE RANDOM MAILING, THE BALANCE OF THE POOL SHALL BE POPULATED FROM THE BALANCE OF QUALIFYING APPLICANTS TO THAT POOL. THE RANDOM SELECTION PROCESS USED BY THE SECRETARY OF STATE TO FILL THE SELECTION POOLS SHALL USE ACCEPTED STATISTICAL WEIGHTING METHODS TO ENSURE THAT THE POOLS, AS CLOSELY AS POSSIBLE, MIRROR THE GEOGRAPHIC AND DEMOGRAPHIC MAKEUP OF THE STATE; AND

(III) SUBMIT THE RANDOMLY-SELECTED APPLICATIONS TO THE MAJORITY LEADER AND THE MINORITY LEADER OF THE SENATE, AND THE SPEAKER OF THE HOUSE OF REPRESENTATIVES AND THE MINORITY LEADER OF THE HOUSE OF REPRESENTATIVES.

(E) BY AUGUST 1 OF THE YEAR OF THE FEDERAL DECENNIAL CENSUS, THE MAJORITY LEADER OF THE SENATE, THE MINORITY LEADER OF THE SENATE, THE SPEAKER OF THE HOUSE OF REPRESENTATIVES, AND THE MINORITY LEADER OF THE HOUSE OF REPRESENTATIVES MAY EACH STRIKE FIVE APPLICANTS FROM ANY POOL OR POOLS, UP TO A MAXIMUM OF 20 TOTAL STRIKES BY THE FOUR LEGISLATIVE LEADERS

(F) BY SEPTEMBER 1 OF THE YEAR OF THE FEDERAL DECENNIAL CENSUS, THE SECRETARY OF STATE SHALL RANDOMLY DRAW THE NAMES OF FOUR COMMISSIONERS FROM EACH OF THE TWO POOLS OF REMAINING APPLICANTS AFFILIATING WITH A MAJOR PARTY, AND FIVE COMMISSIONERS FROM THE POOL OF REMAINING NON-AFFILIATING APPLICANTS.

(3) EXCEPT AS PROVIDED BELOW, COMMISSIONERS SHALL HOLD OFFICE FOR THE TERM SET FORTH IN PART (10) OF THIS

SECTION. IF A COMMISSIONER'S SEAT BECOMES VACANT FOR ANY REASON, THE SECRETARY OF STATE SHALL FILL THE VACANCY BY RANDOMLY DRAWING A NAME FROM THE REMAINING QUALIFYING APPLICANTS IN THE SELECTION POOL FROM WHICH THE ORIGINAL COMMISSIONER WAS SELECTED. A COMMISSIONER'S OFFICE SHALL BECOME VACANT UPON THE OCCURRENCE OF ANY OF THE FOLLOWING:

(A) DEATH OR MENTAL INCAPACITY OF THE COMMISSIONER;

(B) THE SECRETARY OF STATE'S RECEIPT OF THE COMMISSIONER'S WRITTEN RESIGNATION;

(C) THE COMMISSIONER'S DISQUALIFICATION FOR ELECTION OR APPOINTMENT OR EMPLOYMENT PURSUANT TO ARTICLE XI, SECTION 8;

(D) THE COMMISSIONER CEASES TO BE QUALIFIED TO SERVE AS A COMMISSIONER UNDER PART (1) OF THIS SECTION; OR

(E) AFTER WRITTEN NOTICE AND AN OPPORTUNITY FOR THE COMMISSIONER TO RESPOND, A VOTE OF 10 OF THE COMMISSIONERS FINDING SUBSTANTIAL NEGLECT OF DUTY, GROSS MISCONDUCT IN OFFICE, OR INABILITY TO DISCHARGE THE DUTIES OF OFFICE.

(4) THE SECRETARY OF STATE SHALL BE SECRETARY OF THE COMMISSION WITHOUT VOTE, AND IN THAT CAPACITY SHALL FURNISH, UNDER THE DIRECTION OF THE COMMISSION, ALL TECHNICAL SERVICES THAT THE COMMISSION DEEMS NECESSARY. THE COMMISSION SHALL ELECT ITS OWN CHAIRPERSON. THE COMMISSION HAS THE SOLE POWER TO MAKE ITS OWN RULES OF PROCEDURE. THE COMMISSION SHALL HAVE PROCUREMENT AND CONTRACTING AUTHORITY AND MAY HIRE STAFF AND CONSULTANTS FOR THE PURPOSES OF THIS SECTION, INCLUDING LEGAL REPRESENTATION.

(5) BEGINNING NO LATER THAN DECEMBER 1 OF THE YEAR PRECEDING THE FEDERAL DECENNIAL CENSUS, AND CONTINUING EACH YEAR IN WHICH THE COMMISSION OPERATES, THE LEGISLATURE SHALL APPROPRIATE FUNDS SUFFICIENT TO COMPENSATE THE COMMISSIONERS AND TO ENABLE THE COMMISSION TO CARRY OUT ITS FUNCTIONS, OPERATIONS AND ACTIVITIES, WHICH ACTIVITIES INCLUDE RETAINING INDEPENDENT, NONPARTISAN SUBJECT-MATTER EXPERTS AND LEGAL COUNSEL, CONDUCTING HEARINGS, PUBLISHING NOTICES AND MAINTAINING A RECORD OF THE COMMISSION'S PROCEEDINGS, AND ANY OTHER ACTIVITY NECESSARY FOR THE COMMISSION TO CONDUCT ITS BUSINESS, AT AN AMOUNT EQUAL TO NOT LESS THAN 25 PERCENT OF THE GENERAL FUND/GENERAL PURPOSE BUDGET FOR THE SECRETARY OF STATE FOR THAT FISCAL YEAR. WITHIN SIX MONTHS AFTER THE CONCLUSION OF EACH FISCAL YEAR, THE COMMISSION SHALL RETURN TO THE STATE TREASURY ALL MONEYS UNEXPENDED FOR THAT FISCAL YEAR. THE COMMISSION SHALL FURNISH REPORTS OF EXPENDITURES, AT LEAST ANNUALLY, TO THE GOVERNOR AND THE LEGISLATURE AND SHALL BE SUBJECT TO ANNUAL AUDIT AS PROVIDED BY LAW. EACH COMMISSIONER SHALL RECEIVE COMPENSATION AT LEAST EQUAL TO 25 PERCENT OF THE GOVERNOR'S SALARY. THE STATE OF MICHIGAN SHALL INDEMNIFY COMMISSIONERS FOR COSTS INCURRED IF THE LEGISLATURE DOES NOT APPROPRIATE SUFFICIENT FUNDS TO COVER SUCH COSTS

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

(7) THE SECRETARY OF STATE SHALL ISSUE A CALL CONVENING THE COMMISSION BY OCTOBER 15 IN THE YEAR OF THE FEDERAL DECENNIAL CENSUS. NOT LATER THAN NOVEMBER 1 IN THE YEAR IMMEDIATELY FOLLOWING THE FEDERAL DECENNIAL CENSUS, THE COMMISSION SHALL ADOPT A REDISTRICTING PLAN UNDER THIS SECTION FOR EACH OF THE FOLLOWING TYPES OF DISTRICTS: STATE SENATE DISTRICTS, STATE HOUSE OF REPRESENTATIVE DISTRICTS, AND CONGRESSIONAL DISTRICTS.

(8) BEFORE COMMISSIONERS DRAFT ANY PLAN, THE COMMISSION SHALL HOLD AT LEAST TEN PUBLIC HEARINGS THROUGHOUT THE STATE FOR THE PURPOSE OF INFORMING THE PUBLIC ABOUT THE REDISTRICTING PROCESS AND THE PURPOSE AND RESPONSIBILITIES OF THE COMMISSION AND SOLICITING INFORMATION FROM THE PUBLIC ABOUT POTENTIAL PLANS. THE COMMISSION SHALL RECEIVE FOR CONSIDERATION WRITTEN SUBMISSIONS OF PROPOSED REDISTRICTING PLANS AND ANY SUPPORTING MATERIALS, INCLUDING UNDERLYING DATA, FROM ANY MEMBER OF THE PUBLIC. THESE WRITTEN SUBMISSIONS ARE PUBLIC RECORDS.

(9) AFTER DEVELOPING AT LEAST ONE PROPOSED REDISTRICTING PLAN FOR EACH TYPE OF DISTRICT, THE COMMISSION SHALL PUBLISH THE PROPOSED REDISTRICTING PLANS AND ANY DATA AND SUPPORTING MATERIALS USED TO DEVELOP THE PLANS. EACH COMMISSIONER MAY ONLY PROPOSE ONE REDISTRICTING PLAN FOR EACH TYPE OF DISTRICT. THE COMMISSION SHALL HOLD AT LEAST FIVE PUBLIC HEARINGS THROUGHOUT THE STATE FOR THE PURPOSE OF SOLICITING COMMENT FROM THE PUBLIC ABOUT THE PROPOSED PLANS. EACH OF THE PROPOSED PLANS SHALL INCLUDE SUCH CENSUS DATA AS IS NECESSARY TO ACCURATELY DESCRIBE THE PLAN AND VERIFY THE POPULATION OF EACH DISTRICT, AND A MAP AND LEGAL DESCRIPTION THAT INCLUDE THE POLITICAL SUBDIVISIONS, SUCH AS COUNTIES, CITIES, AND TOWNSHIPS; MAN-MADE FEATURES, SUCH AS STREETS, ROADS, HIGHWAYS, AND RAILROADS; AND NATURAL FEATURES, SUCH AS WATERWAYS, WHICH FORM THE BOUNDARIES OF THE DISTRICTS.

(10) EACH COMMISSIONER SHALL PERFORM HIS OR HER DUTIES IN A MANNER THAT IS IMPARTIAL AND REINFORCES PUBLIC CONFIDENCE IN THE INTEGRITY OF THE REDISTRICTING PROCESS. THE COMMISSION SHALL CONDUCT ALL OF ITS BUSINESS AT OPEN MEETINGS. NINE COMMISSIONERS, INCLUDING AT LEAST ONE COMMISSIONER FROM EACH SELECTION POOL SHALL CONSTITUTE A QUORUM, AND ALL MEETINGS SHALL REQUIRE A QUORUM. THE COMMISSION SHALL PROVIDE ADVANCE PUBLIC NOTICE OF ITS MEETINGS AND HEARINGS. THE COMMISSION SHALL CONDUCT ITS HEARINGS IN A MANNER THAT INVITES WIDE PUBLIC PARTICIPATION THROUGHOUT THE STATE. THE COMMISSION SHALL USE TECHNOLOGY TO PROVIDE CONTEMPORANEOUS PUBLIC OBSERVATION AND MEANINGFUL PUBLIC PARTICIPATION IN THE REDISTRICTING PROCESS DURING ALL MEETINGS AND HEARINGS.

(11) THE COMMISSION, ITS MEMBERS, STAFF, ATTORNEYS, AND CONSULTANTS SHALL NOT DISCUSS REDISTRICTING MATTERS WITH MEMBERS OF THE PUBLIC OUTSIDE OF AN OPEN MEETING OF THE COMMISSION, EXCEPT THAT A COMMISSIONER MAY COMMUNICATE ABOUT REDISTRICTING MATTERS WITH MEMBERS OF THE PUBLIC TO GAIN INFORMATION RELEVANT TO THE PERFORMANCE OF HIS OR HER DUTIES IF SUCH COMMUNICATION OCCURS (A) IN WRITING OR (B) AT A PREVIOUSLY PUBLICLY NOTICED FORUM OR TOWN HALL OPEN TO THE GENERAL PUBLIC.

THE COMMISSION, ITS MEMBERS, STAFF, ATTORNEYS, EXPERTS, AND CONSULTANTS MAY NOT DIRECTLY OR INDIRECTLY SOLICIT OR ACCEPT ANY GIFT OR LOAN OF MONEY, GOODS, SERVICES, OR OTHER THING OF VALUE GREATER THAN $20 FOR THE BENEFIT OF ANY PERSON OR ORGANIZATION, WHICH MAY INFLUENCE THE MANNER IN WHICH THE COMMISSIONER, STAFF, ATTORNEY, EXPERT, OR CONSULTANT PERFORMS HIS OR HER DUTIES.

(12) EXCEPT AS PROVIDED IN PART (14) OF THIS SECTION, A FINAL DECISION OF THE COMMISSION REQUIRES THE CONCURRENCE OF A MAJORITY OF THE COMMISSIONERS. A DECISION ON THE DISMISSAL OR RETENTION OF PAID STAFF OR CONSULTANTS REQUIRES THE VOTE OF AT LEAST ONE COMMISSIONER AFFILIATING WITH EACH OF THE MAJOR PARTIES AND ONE NON-AFFILIATING COMMISSIONER. ALL DECISIONS OF THE COMMISSION SHALL BE RECORDED, AND THE RECORD OF ITS DECISIONS SHALL BE READILY AVAILABLE TO ANY MEMBER OF THE PUBLIC WITHOUT CHARGE.

(13) THE COMMISSION SHALL ABIDE BY THE FOLLOWING CRITERIA IN PROPOSING AND ADOPTING EACH PLAN, IN ORDER OF PRIORITY:

(A) DISTRICTS SHALL BE OF EQUAL POPULATION AS MANDATED BY THE UNITED STATES CONSTITUTION, AND SHALL COMPLY WITH THE VOTING RIGHTS ACT AND OTHER FEDERAL LAWS.

(B) DISTRICTS SHALL BE GEOGRAPHICALLY CONTIGUOUS. ISLAND AREAS ARE CONSIDERED TO BE CONTIGUOUS BY LAND TO THE COUNTY OF WHICH THEY ARE A PART.

(C) DISTRICTS SHALL REFLECT THE STATE'S DIVERSE POPULATION AND COMMUNITIES OF INTEREST. COMMUNITIES OF INTEREST MAY INCLUDE, BUT SHALL NOT BE LIMITED TO, POPULATIONS THAT SHARE CULTURAL OR HISTORICAL CHARACTERISTICS OR ECONOMIC INTERESTS. COMMUNITIES OF INTEREST DO NOT INCLUDE RELATIONSHIPS WITH POLITICAL PARTIES, INCUMBENTS, OR POLITICAL CANDIDATES.

(D) DISTRICTS SHALL NOT PROVIDE A DISPROPORTIONATE ADVANTAGE TO ANY POLITICAL PARTY. A DISPROPORTIONATE ADVANTAGE TO A POLITICAL PARTY SHALL BE DETERMINED USING ACCEPTED MEASURES OF PARTISAN FAIRNESS.

(E) DISTRICTS SHALL NOT FAVOR OR DISFAVOR AN INCUMBENT ELECTED OFFICIAL OR A CANDIDATE.

(F) DISTRICTS SHALL REFLECT CONSIDERATION OF COUNTY, CITY, AND TOWNSHIP BOUNDARIES.

(G) DISTRICTS SHALL BE REASONABLY COMPACT.

(14) THE COMMISSION SHALL FOLLOW THE FOLLOWING PROCEDURE IN ADOPTING A PLAN:

(A) BEFORE VOTING TO ADOPT A PLAN, THE COMMISSION SHALL ENSURE THAT THE PLAN IS TESTED, USING APPROPRIATE TECHNOLOGY, FOR COMPLIANCE WITH THE CRITERIA DESCRIBED ABOVE.

(B) BEFORE VOTING TO ADOPT A PLAN, THE COMMISSION SHALL PROVIDE PUBLIC NOTICE OF EACH PLAN THAT WILL BE VOTED ON AND PROVIDE AT LEAST 45 DAYS FOR PUBLIC COMMENT ON THE PROPOSED PLAN OR PLANS. EACH PLAN THAT WILL BE VOTED ON SHALL INCLUDE SUCH CENSUS DATA AS IS NECESSARY TO ACCURATELY DESCRIBE THE PLAN AND VERIFY THE POPULATION OF EACH DISTRICT, AND SHALL INCLUDE THE MAP AND LEGAL DESCRIPTION REQUIRED IN PART (9) OF THIS SECTION.

(C) A FINAL DECISION OF THE COMMISSION TO ADOPT A REDISTRICTING PLAN REQUIRES A MAJORITY VOTE OF THE COMMISSION, INCLUDING AT LEAST TWO COMMISSIONERS WHO AFFILIATE WITH EACH MAJOR PARTY, AND AT LEAST TWO COMMISSIONERS WHO DO NOT AFFILIATE WITH EITHER MAJOR PARTY. IF NO PLAN SATISFIES THIS REQUIREMENT FOR A TYPE OF DISTRICT, THE COMMISSION SHALL USE THE FOLLOWING PROCEDURE TO ADOPT A PLAN FOR THAT TYPE OF DISTRICT:

(I) EACH COMMISSIONER MAY SUBMIT ONE PROPOSED PLAN FOR EACH TYPE OF DISTRICT TO THE FULL COMMISSION FOR CONSIDERATION.

(II) EACH COMMISSIONER SHALL RANK THE PLANS SUBMITTED ACCORDING TO PREFERENCE. EACH PLAN SHALL BE ASSIGNED A POINT VALUE INVERSE TO ITS RANKING AMONG THE NUMBER OF CHOICES, GIVING THE LOWEST RANKED PLAN ONE POINT AND THE HIGHEST RANKED PLAN A POINT VALUE EQUAL TO THE NUMBER OF PLANS SUBMITTED.

(III) THE COMMISSION SHALL ADOPT THE PLAN RECEIVING THE HIGHEST TOTAL POINTS, THAT IS ALSO RANKED AMONG THE TOP HALF OF PLANS BY AT LEAST TWO COMMISSIONERS NOT AFFILIATED WITH THE PARTY OF THE COMMISSIONER SUBMITTING THE PLAN, OR IN THE CASE OF A PLAN SUBMITTED BY NON-AFFILIATED COMMISSIONERS, IS RANKED AMONG THE TOP HALF OF PLANS BY AT LEAST TWO COMMISSIONERS AFFILIATED WITH A MAJOR PARTY. IF PLANS ARE TIED FOR THE HIGHEST POINT TOTAL, THE SECRETARY OF STATE SHALL RANDOMLY SELECT THE FINAL PLAN FROM THOSE PLANS. IF NO PLAN MEETS THE REQUIREMENTS OF THIS SUBPARAGRAPH, THE SECRETARY OF STATE SHALL RANDOMLY SELECT THE FINAL PLAN FROM AMONG ALL SUBMITTED PLANS PURSUANT TO PART (14)(C)(I).

(15) WITHIN 30 DAYS AFTER ADOPTING A PLAN, THE COMMISSION SHALL PUBLISH THE PLAN AND THE MATERIAL REPORTS, REFERENCE MATERIALS, AND DATA USED IN DRAWING IT, INCLUDING ANY PROGRAMMING INFORMATION USED TO PRODUCE AND TEST THE PLAN. THE PUBLISHED MATERIALS SHALL BE SUCH THAT AN INDEPENDENT PERSON IS ABLE TO REPLICATE THE CONCLUSION WITHOUT ANY MODIFICATION OF ANY OF THE PUBLISHED MATERIALS.

(16) FOR EACH ADOPTED PLAN, THE COMMISSION SHALL ISSUE A REPORT THAT EXPLAINS THE BASIS ON WHICH THE COMMISSION MADE ITS DECISIONS IN ACHIEVING COMPLIANCE WITH PLAN REQUIREMENTS AND SHALL INCLUDE THE MAP AND LEGAL DESCRIPTION REQUIRED IN PART (9) OF THIS SECTION. A COMMISSIONER WHO VOTES AGAINST A REDISTRICTING PLAN MAY SUBMIT A DISSENTING REPORT WHICH SHALL BE ISSUED WITH THE COMMISSION'S REPORT.

(17) AN ADOPTED REDISTRICTING PLAN SHALL BECOME LAW 60 DAYS AFTER ITS PUBLICATION. THE SECRETARY OF STATE SHALL KEEP A PUBLIC RECORD OF ALL PROCEEDINGS OF THE COMMISSION AND SHALL PUBLISH AND DISTRIBUTE EACH PLAN AND REQUIRED DOCUMENTATION.

(18) THE TERMS OF THE COMMISSIONERS SHALL EXPIRE ONCE THE COMMISSION HAS COMPLETED ITS OBLIGATIONS FOR A CENSUS CYCLE BUT NOT BEFORE ANY JUDICIAL REVIEW OF THE REDISTRICTING PLAN IS COMPLETE.

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

(20) THIS SECTION IS SELF-EXECUTING. IF A FINAL COURT DECISION HOLDS ANY PART OR PARTS OF THIS SECTION TO BE IN CONFLICT WITH THE UNITED STATES CONSTITUTION OR FEDERAL LAW, THE SECTION SHALL BE IMPLEMENTED TO THE MAXIMUM EXTENT THAT THE UNITED STATES CONSTITUTION AND FEDERAL LAW PERMIT. ANY PROVISION HELD INVALID IS SEVERABLE FROM THE REMAINING PORTIONS OF THIS SECTION.

(21) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, NO EMPLOYER SHALL DISCHARGE, THREATEN TO DISCHARGE, INTIMIDATE, COERCE, OR RETALIATE AGAINST ANY EMPLOYEE BECAUSE OF THE EMPLOYEE'S MEMBERSHIP ON THE COMMISSION OR ATTENDANCE OR SCHEDULED ATTENDANCE AT ANY MEETING OF THE COMMISSION.

(22) NOTWITHSTANDING ANY OTHER PROVISION OF THIS CONSTITUTION, OR ANY PRIOR JUDICIAL DECISION, AS OF THE EFFECTIVE DATE OF THE CONSTITUTIONAL AMENDMENT ADDING THIS PROVISION, WHICH AMENDS ARTICLE IV, SECTIONS 1 THROUGH 6, ARTICLE V, SECTIONS 1, 2 AND 4, AND ARTICLE VI, SECTIONS 1 AND 4, INCLUDING THIS PROVISION, FOR PURPOSES OF INTERPRETING THIS CONSTITUTIONAL AMENDMENT THE PEOPLE DECLARE THAT THE POWERS GRANTED TO THE COMMISSION ARE LEGISLATIVE FUNCTIONS NOT SUBJECT TO THE CONTROL OR APPROVAL OF THE LEGISLATURE, AND ARE EXCLUSIVELY RESERVED TO THE COMMISSION. THE COMMISSION, AND ALL OF ITS RESPONSIBILITIES, OPERATIONS,

FUNCTIONS, CONTRACTORS, CONSULTANTS AND EMPLOYEES ARE NOT SUBJECT TO CHANGE, TRANSFER, REORGANIZATION, OR REASSIGNMENT, AND SHALL NOT BE ALTERED OR ABROGATED IN ANY MANNER WHATSOEVER, BY THE LEGISLATURE. NO OTHER BODY SHALL BE ESTABLISHED BY LAW TO PERFORM FUNCTIONS THAT ARE THE SAME OR SIMILAR TO THOSE GRANTED TO THE COMMISSION IN THIS SECTION.

~~A commission on legislative apportionment is hereby established consisting of eight electors, four of whom shall be selected by the state organizations of each of the two political parties whose candidates for governor received the highest vote at the last general election at which a governor was elected preceding each apportionment. If a candidate for governor of a third political party has received at such election more than 25 percent of such gubernatorial vote, the commission shall consist of 12 members, four of whom shall be selected by the state organization of the third political party. One resident of each of the following four regions shall be selected by each political party organization: (1) the upper peninsula; (2) the northern part of the lower peninsula, north of a line drawn along the northern boundaries of the counties of Bay, Midland, Isabella, Mecosta, Newaygo and Oceana; (3) southwestern Michigan, these counties south of region (2) and west of a line drawn along the western boundaries of the counties of Bay, Saginaw, Shiawassee, Ingham, Jackson and Hillsdale; (4) southeastern Michigan, the remaining counties of the state.~~

~~Eligibility to membership.~~

~~No officers or employees of the federal, state or local governments, excepting notaries public and members of the armed forces reserve, shall be eligible for membership on the commission. Members of the commission shall not be eligible for election to the legislature until two years after the apportionment in which they participated becomes effective.~~

~~Appointment, term, vacancies.~~

~~The commission shall be appointed immediately after the adoption of this constitution and whenever apportionment or districting of the legislature is required by the provisions of this constitution. Members of the commission shall hold office until each apportionment or districting plan becomes effective. Vacancies shall be filled in the same manner as for original appointment.~~

~~Officers, rules of procedure, compensation, appropriation.~~

~~The secretary of state shall be secretary of the commission without vote, and in that capacity shall furnish, under the direction of the commission, all necessary technical services. The commission shall elect its own chairman, shall make its own rules of procedure, and shall receive compensation provided by law. The legislature shall appropriate funds to enable the commission to carry out its activities.~~

~~Call to convene; apportionment; public hearings.~~

~~Within 30 days after the adoption of this constitution, and after the official total population count of each federal decennial census of the state and its political subdivisions is available, the secretary of state shall issue a call convening the commission not less than 30 nor more than 45 days thereafter. The commission shall complete its work within 180 days after all necessary census information is available. The commission shall proceed to district and apportion the senate and house of representatives according to the provisions of this constitution. All final decisions shall require the concurrence of a majority of the members of the commission. The commission shall hold public hearings as may be provided by law.~~

~~Apportionment plan; publication; record of proceedings.~~

~~Each final apportionment and districting plan shall be published as provided by law within 30 days from the date of its adoption and shall become law 60 days after publication. The secretary of state shall keep a public record of all the proceedings of the commission and shall be responsible for the publication and distribution of each plan.~~

~~Disagreement of commission; submission of plans to supreme court.~~

~~If a majority of the commission cannot agree on a plan, each member of the commission, individually or jointly with other members, may submit a proposed plan to the supreme court. The supreme court shall determine which plan complies most accurately with the constitutional requirements and shall direct that it be adopted by the commission and published as provided in this section.~~

~~Jurisdiction of supreme court on elector's application.~~

~~Upon the application of any elector filed not later than 60 days after final publication of the plan, the supreme court, in the exercise of original jurisdiction, shall direct the secretary of state or the commission to perform their duties, may review any final plan adopted by the commission, and shall remand such plan to the commission for further action if it fails to comply with the requirements of this constitution.~~

Article V – Executive Branch

§ 1 Executive power.

Sec. 1. EXCEPT TO THE EXTENT LIMITED OR ABROGATED BY ARTICLE V, SECTION 2, OR ARTICLE IV, SECTION 6, The executive power is vested in the governor.

§ 2 Principal departments.

Sec. 2. All executive and administrative offices, agencies and instrumentalities of the executive branch of state government and their respective functions, powers and duties, except for the office of governor and lieutenant governor, and the governing bodies of institutions of higher education provided for in this constitution, shall be allocated by law among and within not more than 20 principal departments. They shall be grouped as far as practicable according to major purposes.

Organization of executive branch; assignment of functions; submission to legislature.

Subsequent to the initial allocation, the governor may make changes in the organization of the executive branch or in the assignment of functions among its units which he considers necessary for efficient administration. Where these changes require the force of law, they shall be set forth in executive orders and submitted to the legislature. Thereafter the legislature shall have 60 calendar days of a regular session, or a full regular session if of shorter duration, to disapprove each executive order. Unless disapproved in both houses by a resolution concurred in by a majority of the members elected to and serving in each house, each order shall become effective at a date thereafter to be designated by the governor.

EXEMPTION FOR INDEPENDENT CITIZENS REDISTRICTING COMMISSION FOR STATE LEGISLATIVE AND CONGRESSIONAL DISTRICTS.

NOTWITHSTANDING ANY OTHER PROVISION OF THIS CONSTITUTION OR ANY PRIOR JUDICIAL DECISION, AS OF THE EFFECTIVE DATE OF THE CONSTITUTIONAL AMENDMENT ADDING THIS PROVISION, WHICH AMENDS ARTICLE IV, SECTIONS 1 THROUGH 6, ARTICLE V, SECTIONS 1, 2 AND 4, AND ARTICLE VI, SECTIONS 1 AND 4, INCLUDING THIS PROVISION, FOR PURPOSES OF INTERPRETING THIS CONSTITUTIONAL AMENDMENT THE PEOPLE DECLARE THAT THE POWERS GRANTED TO INDEPENDENT CITIZENS REDISTRICTING COMMISSION FOR STATE AND CONGRESSIONAL DISTRICTS (HEREINAFTER, "COMMISSION") ARE LEGISLATIVE FUNCTIONS NOT SUBJECT TO THE CONTROL OR APPROVAL OF THE GOVERNOR, AND ARE EXCLUSIVELY RESERVED TO THE COMMISSION. THE COMMISSION, AND ALL OF ITS RESPONSIBILITIES, OPERATIONS, FUNCTIONS, CONTRACTORS, CONSULTANTS AND EMPLOYEES ARE NOT SUBJECT TO CHANGE, TRANSFER, REORGANIZATION, OR REASSIGNMENT, AND SHALL NOT BE ALTERED OR ABROGATED IN ANY MANNER WHATSOEVER, BY THE GOVERNOR. NO OTHER BODY SHALL BE ESTABLISHED BY LAW TO PERFORM FUNCTIONS THAT ARE THE SAME OR SIMILAR TO THOSE GRANTED TO THE COMMISSION IN ARTICLE IV, SECTION 6.

§ 4 Commissions or agencies for less than 2 years.

Sec. 4. EXCEPT TO THE EXTENT LIMITED OR ABROGATED BY ARTICLE V, SECTION 2 OR ARTICLE IV, SECTION 6, Temporary

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

Article VI – Judicial Branch

§ 1 Judicial power in court of justice; divisions.

Sec. 1. EXCEPT TO THE EXTENT LIMITED OR ABROGATED BY ARTICLE IV, SECTION 8, OR ARTICLE V, SECTION 2, The judicial power of the state is vested exclusively in one court of justice which shall be divided into one supreme court, one court of appeals, one trial court of general jurisdiction known as the circuit court, one probate court, and courts of limited jurisdiction that the legislature may establish by a two-thirds vote of the members elected to and serving in each house.

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

Sec. 4. EXCEPT TO THE EXTENT LIMITED OR ABROGATED BY ARTICLE IV, SECTION 8, OR ARTICLE V, SECTION 2, The supreme court shall have general superintending control over all courts, power to issue, hear and determine prerogative and remedial writs, and appellate jurisdiction as provided by rules of the supreme court. The supreme court shall not have the power to remove a judge.

Provisions of existing Constitution altered or abrogated by the proposal if adopted.

Article IV – Legislative Branch

§1 Legislative power.

Sec. 1. The legislative power of the State of Michigan is vested in a senate and a house of representatives.

§ 2 Senators, number, term.

Sec. 2. The senate shall consist of 38 members to be elected from single member districts at the same election as the governor for four-year terms concurrent with the term of office of the governor.

Senatorial districts, apportionment factors.

In districting the state for the purpose of electing senators after the official publication of the total population count of each federal decennial census, each county shall be assigned apportionment factors equal to the sum of its percentage of the state's population as shown by the last regular federal decennial census computed to the nearest one-one hundredth of one percent multiplied by four and its percentage of the state's land area computed to the nearest one-one hundredth of one percent.

Apportionment rules.

In arranging the state into senatorial districts, the apportionment commission shall be governed by the following rules:

(1) Counties with 13 or more apportionment factors shall be entitled as a class to senators in the proportion that the total apportionment factors of such counties bear to the total apportionment factors of the state computed to the nearest whole number. After each such county has been allocated one senator, the remaining senators to which this class of counties is entitled shall be distributed among such counties by the method of equal proportions applied to the apportionment factors.

(2) Counties having less than 13 apportionment factors shall be entitled as a class to senators in the proportion that the total apportionment factors of such counties bear to the total apportionment factors of the state computed to the nearest whole number. Such counties shall thereafter be arranged into senatorial districts that are compact, convenient, and contiguous by land, as rectangular in shape as possible, and having as nearly as possible 13 apportionment factors, but in no event less than 10 or more than 16. Insofar as possible, existing senatorial districts at the time of reapportionment shall not be altered unless there is a failure to comply with the above standards.

(3) Counties entitled to two or more senators shall be divided into single member districts. The population of such districts shall be as nearly equal as possible but shall not be less than 75 percent nor more than 125 percent of a number determined by dividing the population of the county by the number of senators to which it is entitled. Each such district shall follow incorporated city or township boundary lines to the extent possible and shall be compact, contiguous, and as nearly uniform in shape as possible.

§ 3 Representatives, number, term; contiguity of districts.

Sec. 3. The house of representatives shall consist of 110 members elected for two-year terms from single member districts apportioned on a basis of population as provided in this article. The districts shall consist of compact and convenient territory contiguous by land.

Representative areas, single and multiple county.

Each county which has a population of not less than seven-tenths of one percent of the population of the state shall constitute a separate representative area. Each county having less than seven-tenths of one percent of the population of the state shall be combined with another county or counties to form a representative area of not less than seven-tenths of one percent of the population of the state. Any county which is isolated under the initial allocation as provided in this section shall be joined with that contiguous representative area having the smallest percentage of the state's population. Each such representative area shall be entitled initially to one representative.

Apportionment of representatives to areas.

After the assignment of one representative to each of the representative areas, the remaining house seats shall be apportioned among the representative areas on the basis of population by the method of equal proportions.

Districting of single county area entitled to 2 or more representatives.

Any county comprising a representative area entitled to two or more representatives shall be divided into single member representative districts as follows:

(1) The population of such districts shall be as nearly equal as possible but shall not be less than 75 percent nor more than 125 percent of a number determined by dividing the population of the representative area by the number of representatives to which it is entitled.

(2) Such single member districts shall follow city and township boundaries where applicable and shall be composed of compact and contiguous territory as nearly square in shape as possible.

Districting of multiple county representative areas.

Any representative area consisting of more than one county, entitled to more than one representative, shall be divided into single member districts as equal as possible in population, adhering to county lines.

§ 4 Annexation or merger with a city.

Sec. 4. In counties having more than one representative or senatorial district, the territory in the same county annexed to or merged with a city between apportionments shall become a part of a contiguous representative or senatorial district in the city with which it is combined, if provided by ordinance of the city. The district or districts with which the territory shall be combined shall be determined by such ordinance certified to the secretary of state. No such change in the boundaries of a representative or senatorial district shall have the effect of removing a legislator from office during his term.

§ 5 Island areas, contiguity.

Sec. 5. Island areas are considered to be contiguous by land to the county of which they are a part.

§ 6 Commission on legislative apportionment.

Sec. 6. A commission on legislative apportionment is hereby established consisting of eight electors, four of whom shall be selected by the state organizations of each of the two political parties whose candidates for governor received the highest vote at the last general election at which a governor was elected preceding each apportionment. If a candidate for governor of a third political party has received at such election more than 25 percent of such gubernatorial vote, the commission shall consist of 12 members, four of whom shall be selected by the state organization of the third political party. One resident of each of the following four regions shall be selected by each political party organization: (1) the upper peninsula; (2) the northern part of the lower peninsula, north of a line drawn along the northern boundaries of the counties of Bay, Midland, Isabella, Mecosta, Newaygo and Oceana; (3) southwestern Michigan, those counties south of region (2) and west of a line drawn along the western boundaries of the counties of Bay, Saginaw, Shiawassee, Ingham, Jackson and Hillsdale; (4) southeastern Michigan, the remaining counties of the state.

Eligibility to membership.

No officers or employees of the federal, state or local governments, excepting notaries public and members of the armed forces reserve, shall be eligible for membership on the commission. Members of the commission shall not be eligible for election to the legislature until two years after the apportionment in which they participated becomes effective.

Appointment, term, vacancies.

The commission shall be appointed immediately after the adoption of this constitution and whenever apportionment or districting of the legislature is required by the provisions of this constitution. Members of the commission shall hold office until each apportionment or districting plan becomes effective. Vacancies shall be filled in the same manner as for original appointment.

Officers, rules of procedure, compensation, appropriation.

The secretary of state shall be secretary of the commission without vote, and in that capacity shall furnish, under the direction of the commission, all necessary technical services. The commission shall elect its own chairman, shall make its own rules of procedure, and shall receive compensation provided by law. The legislature shall appropriate funds to enable the commission to carry out its activities.

Call to convene; apportionment; public hearings.

Within 30 days after the adoption of this constitution, and after the official total population count of each federal decennial census of the state and its political subdivisions is available, the secretary of state shall issue a call convening the commission not less than 30 nor more than 45 days thereafter. The commission shall complete its work within 180 days after all necessary census information is available. The commission shall proceed to district and apportion the senate and house of representatives according to the provisions of this constitution. All final decisions shall require the concurrence of a majority of the members of the commission. The commission shall hold public hearings as may be provided by law.

Apportionment plan, publication; record of proceedings.

Each final apportionment and districting plan shall be published as provided by law within 30 days from the date of its adoption and shall become law 60 days after publication. The secretary of state shall keep a public record of all the proceedings of the commission and shall be responsible for the publication and distribution of each plan.

Disagreement of commission; submission of plans to supreme court.

If a majority of the commission cannot agree on a plan, each member of the commission, individually or jointly with other members, may submit a proposed plan to the supreme court. The supreme court shall determine which plan complies most accurately with the constitutional requirements and shall direct that it be adopted by the commission and published as provided in this section.

Jurisdiction of supreme court on elector's application.

Upon the application of any elector filed not later than 60 days after final publication of the plan, the supreme court, in the exercise of original jurisdiction, shall direct the secretary of state or the commission to perform their duties, may review any final plan adopted by the commission, and shall remand such plan to the commission for further action if it fails to comply with the requirements of this constitution.

Article V – Executive Branch

§1 Executive power.

Sec. 1. The executive power is vested in the governor.

§ 2 Principal departments.

Sec. 2. All executive and administrative offices, agencies and instrumentalities of the executive branch of state government and their respective functions, powers and duties, except for the office of governor and lieutenant governor, and the governing bodies of institutions of higher education provided for in this constitution, shall be allocated by law among and within not more than 20 principal departments. They shall be grouped as far as practicable according to major purposes.

Organization of executive branch; assignment of functions; submission to legislature

Subsequent to the initial allocation, the governor may make changes in the organization of the executive branch or in the assignment of functions among its units which he considers necessary for efficient administration. Where these changes require the force of law, they shall be set forth in executive orders and submitted to the legislature. Thereafter the legislature shall have 60 calendar days of a regular session, or a full regular session if of shorter duration, to disapprove each executive order. Unless disapproved in both houses by a resolution concurred in by a majority of the members elected to and serving in each house, each order shall become effective at a date thereafter to be designated by the governor.

§ 4 Commissions or agencies for less than 2 years.

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

Article VI – Judicial Branch

§ 1 Judicial power in court of justice; divisions.

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

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

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

EXHIBIT B

STATE OF MICHIGAN
IN THE COURT OF APPEALS

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

Plaintiffs,

v

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

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,**

Prospective Intervening Defendants.

Court of Appeals
No. 343517

Peter H. Ellsworth (P23657)
Robert P. Young (P35486)
Ryan M. Shannon (P74535)
DICKINSON WRIGHT PLLC
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AFFIDAVIT OF WILLIAM R. BOBIER

STATE OF MICHIGAN)
) SS
COUNTY OF OCEANA)

William R. Bobier, 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 a citizen of the United States and the State of Michigan.

3. I am a qualified elector of the State of Michigan, registered to vote in Ferry Township, within Oceana County.

4. I was elected to serve as a Member of the Michigan House of Representatives in 1990, and served as such until 1998.

5. As a Member of the Michigan House of Representatives, I have witnessed the redistricting process, and I voted in support of adoption of the "Apol Standards" included in 1996 PA 463. It was my belief in doing so that the adoption of those standards represented a laudable attempt to promote fairness in the redistricting process, but the subsequent redistricting processes have led me to believe that this objective has not been accomplished.

6. I believe that the constitutional amendment proposed by the Voters Not Politicians ballot proposal is a valid attempt to correct a serious malfunction of our democratic process. I have therefore supported the effort of Voters Not Politicians, and signed its petition for placement of its proposal on the 2018 General Election ballot.

7. As a supporter of the Voters Not Politicians ballot proposal, I have a strong interest in being able to vote in favor of that proposal, and will be aggrieved if I am prevented from doing so without just and legally sufficient cause.

Further, Deponent sayeth not.

William R. Bobier

Subscribed and sworn before me on
the 8th day of May, 2018.

Marsha J. Mangels
Notary Public, Oceana County
Acting in Oceana County
My Commission expires: 4-29-23

Marsha J. Mangels, Notary Public
State of Michigan, County of Oceana
My Commission Expires 04/29/2023
Acting in Oceana County

EXHIBIT C

STATE OF MICHIGAN

IN THE COURT OF APPEALS

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

Plaintiffs,

Court of Appeals
No. 343517

v

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

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,**

Prospective Intervening Defendants.

Peter H. Ellsworth (P23657)
Robert P. Young (P35486)
Ryan M. Shannon (P74535)
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(517) 285-4737

AFFIDAVIT OF DAVIA C. DOWNEY

AFFIDAVIT OF DAVIA C. DOWNEY

STATE OF MICHIGAN)
) SS
COUNTY OF INGHAM)

Davia C. Downey, 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 a citizen of the United States and the State of Michigan.

3. I am a qualified elector of the State of Michigan, registered to vote in the City of East Lansing, within Ingham County.

4. I signed Voters Not Politicians' voter-initiated petition to amend the state Constitution, and have been heavily involved in the volunteer effort to secure the approval of that proposal for inclusion on the 2018 General Election ballot.

5. As a supporter of the Voters Not Politicians ballot proposal, I have a strong interest in being able to vote in favor of that proposal, and will be aggrieved if I am prevented from doing so without just and legally sufficient cause.

Further, Deponent sayeth not.

Davia C. Downey

Subscribed and sworn before me on
the 8th day of May, 2018.

Deborah L. Coveart

Notary Public, Ingham County
Acting in Ingham County
My Commission expires: 5-15-19

DEBORAH L. COVEART
NOTARY PUBLIC - STATE OF MICHIGAN
COUNTY OF CLINTON
My Commission Expires May 15, 2019
Acting in the County of Ingham

EXHIBIT D

STATE OF MICHIGAN
IN THE COURT OF APPEALS

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

Plaintiffs,

v

SECRETARY OF STATE and MICHIGAN BOARD OF STATE CANVASSERS,

Defendants,

and

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

Prospective Intervening Defendants.

Court of Appeals
No. 343517

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STIPULATION FOR INTERVENTION

The Plaintiffs in the above-entitled original action and Prospective Intervening Defendants Count MI Vote, Voters Not Politicians Ballot Committee, d/b/a Voters Not Politicians, Kathryn A. Fahey, William R. Bobier and Davia C. Downey hereby stipulate, by their undersigned legal counsel, that the aforementioned Prospective Intervening Defendants should be permitted to intervene as Intervening Defendants in this action.

Peter H. Ellsworth / with permission G.I.C.C.

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EXHIBIT E

STATE OF MICHIGAN
IN THE COURT OF APPEALS

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

Plaintiffs,

v

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

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.

Court of Appeals
No. 343517

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ANSWER AND AFFIRMATIVE DEFENSES OF INTERVENING DEFENDANTS TO PLAINTIFFS' COMPLAINT FOR MANDAMUS

ANSWER OF INTERVENING DEFENDANTS TO PLAINTIFFS' COMPLAINT FOR MANDAMUS

Now Come 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, answering Plaintiffs' Complaint for Mandamus as follows:

1. The Intervening Defendants admit the allegations set forth in Paragraph 1.

2. The Intervening Defendants admit the allegations set forth in Paragraph 2.

3. In response to Paragraph 3, the Intervening Defendants acknowledge that the Plaintiffs are opposed to VNP's ballot proposal. Intervening Defendants neither admit nor deny the remaining allegations set forth in Paragraph 3, having insufficient personal knowledge to either admit or deny the same, but shall leave Plaintiffs to their proofs.

4. In response to Paragraph 4, the Intervening Defendants acknowledge that if approved by the voters, VNP's ballot proposal would delete, add to, or amend a total of eleven sections spread between three articles of the 1963 Constitution. Intervening Defendants deny that the proposed amendment would "effect sweeping changes to all three branches of state government as well as the electoral process itself."

5. In response to Paragraph 5, the Intervening Defendants deny that VNP's proposal has multiple purposes, as all of its provisions have been conceived and designed to accomplish a single overall purpose – to remedy the widely-perceived abuses associated with partisan "gerrymandering" of state legislative and congressional election districts by the establishment of a new politically-balanced Independent Citizens Redistricting Commission having sole and exclusive authority to develop and establish redistricting plans with corresponding election district

maps for state Senate districts, state House of Representatives districts, and Michigan's congressional districts. Plaintiff's remaining allegations concerning the details of VNP's proposal require no further response, as the proposal, a copy of which has been submitted with Plaintiffs' Complaint for Mandamus, speaks for itself.

6. In response to Paragraph 6, the Intervening Defendants acknowledge that, if approved by the voters, VNP's proposed constitutional amendment would supersede the current statutory redistricting provisions, and require that redistricting be performed by an Independent Citizens Redistricting Commission, subject to limited judicial review.

7. In response to Paragraph 7, the Intervening Defendants acknowledge that, if approved by the voters, VNP's proposed constitutional amendment would supersede the current statutory redistricting provisions and require that redistricting be performed by an Independent Citizens Redistricting Commission in accordance with the criteria specified therein, all of which are set forth in VNP's proposal, which speaks for itself.

8. In response to Paragraph 8, the Intervening Defendants acknowledge that VNP's proposed constitutional amendment would amend provisions in three articles of the Constitution, affecting all three branches of government in varying degrees, but deny Plaintiff's assertion that this would upset "the framework by which the People's representatives are chosen." If approved by the voters, VNP's proposed constitutional amendment would supersede the current statutory redistricting provisions and require that redistricting be performed by an Independent Citizens Redistricting Commission in accordance with the criteria specified therein, all of which are set forth in VNP's proposal, which speaks for itself.

9. The Intervening Defendants deny, as untrue, the allegations set forth in Paragraph 9.

10. In response to Paragraph 10, the Intervening Defendants acknowledge that Plaintiffs seek a writ of mandamus providing the direction specified, for the reasons stated therein. In further response, Intervening Defendants affirmatively state that the specified grounds for issuance of the requested writ of mandamus are without merit, for the reasons to be discussed in Intervening Defendants' brief in opposition to Plaintiffs' Complaint for Mandamus.

PARTIES

11. The Intervening Defendants neither admit nor deny the allegations set forth in Paragraph 11, having insufficient personal knowledge to either admit or deny the same, but shall leave Plaintiffs to their proofs.

12. The Intervening Defendants neither admit nor deny the allegations set forth in Paragraph 12, having insufficient personal knowledge to either admit or deny the same, but shall leave Plaintiffs to their proofs.

13. The Intervening Defendants neither admit nor deny the allegations set forth in Paragraph 13, having insufficient personal knowledge to either admit or deny the same, but shall leave Plaintiffs to their proofs.

14. The Intervening Defendants admit the allegations set forth in Paragraph 14.

15. The Intervening Defendants admit the allegations set forth in Paragraph 15.

JURISDICTION

16. The Intervening Defendants admit the allegations set forth in Paragraph 16.

ADMINISTRATIVE HISTORY

17. The Intervening Defendants admit the allegation set forth in Paragraph 17.

18. The Intervening Defendants admit the allegations set forth in Paragraph 18, and in further response, affirmatively state that petitions containing more than 425,000 signatures were filed with the Secretary of State in support of VNP's proposal on December 18, 2017.

19. The Intervening Defendants admit the allegation set forth in Paragraph 19.

20. The Intervening Defendants admit the allegations set forth in Paragraph 20.

21. In response to Paragraph 21, the Intervening Defendants agree that the Board of State Canvassers is not empowered to review substantive issues concerning the sufficiency of language included in a petition, and acknowledge that the Plaintiff Citizens Protecting Michigan's Constitution filed a *pro forma* challenge to VNP's proposal with the Board on April 26, 2018, raising the same issues which have been raised in this Court in Plaintiffs' Complaint for Mandamus.

22. The Intervening Defendants admit the allegations set forth in Paragraph 22.

23. The Intervening Defendants neither admit nor deny the allegations set forth in Paragraph 23, having insufficient personal knowledge to either admit or deny the same, but shall leave Plaintiffs to their proofs.

COUNT I – MANDAMUS

INELIGIBILITY OF GENERAL REVISION FOR INITIATIVE PROCESS

24. Intervening Defendants incorporate their responses to Paragraphs 1 through 23, as if fully set forth herein.

25. In response to Paragraph 25, the Intervening Defendants acknowledge that Const 1963, art 12, § 2 addresses the People's reserved right to propose amendments of the Constitution by voter initiative and specifies procedures for the exercise of that right, and that Const 1963, art

12, § 3 addresses the separate and unrelated procedure for convening a constitutional convention for a "general revision" of the Constitution. Those provisions speak for themselves.

26. The Intervening Defendants deny, as untrue, the allegation set forth in Paragraph 26. Intervening Defendants acknowledge that Const 1963, art 12, § 3 provides a separate procedure for convening a constitutional convention for the purpose of a "general revision" of the Constitution. The holding of the Court of Appeals in the cited decision is that, in light of that separate provision, a "general revision" of the Constitution cannot be proposed by means of a voter-initiated petition. In further response, the Intervening Defendants affirmatively state that VNP's proposed constitutional amendment does not constitute a revision of the Constitution, general or otherwise, and has been properly proposed by means of a voter-initiated petition under Const 1963, art 12, § 2.

27. The Intervening Defendants deny, as untrue, the allegation set forth in Paragraph 27, as the representation of the law asserted therein is contrary to binding decisions of the Supreme Court recognizing the principle that a proposed amendment may modify multiple sections if it has one general object or purpose and all of the proposed changes are germane to the accomplishment of that purpose.

28. In response to Paragraph 28, the Intervening Defendants acknowledge that the cited decision employed the referenced qualitative/quantitative test to determine whether the petition at issue in that case proposed an "amendment" or a "general revision" of the Constitution. In further response, the Intervening Defendants note that the Supreme Court affirmed only the result ordered in that decision without approving the rationale for this Court's decision, and contend that the test employed in this Court's decision cannot be applied without consideration of the binding decisions of the Supreme Court recognizing that a proposed amendment may modify multiple sections if it

has one general object or purpose and all of the proposed changes are germane to the accomplishment of that purpose.

29. The Intervening Defendants deny, as untrue, the allegation set forth in Paragraph 29.

30. Paragraph 30 requires no response, as VNP's proposal, a copy of which has been submitted with Plaintiffs' Complaint for Mandamus, speaks for itself.

31. In response to Paragraph 31, the Intervening Defendants deny Plaintiffs' claim that VNP's proposal would make "fundamental changes to the structures of state government as they exist in the current Constitution." The cited provisions of VNP's proposal require no response, as they speak for themselves. The legal conclusions and arguments set forth in the various sub-paragraphs of Paragraph 31 require no response, and will be addressed in the Intervening Defendants' Brief in Opposition to Plaintiffs' Complaint for Mandamus. Although not required to respond to legal conclusions and arguments included in those sub-paragraphs, the Intervening Defendants shall provide the following answers to the allegations made therein:

a. In response to Paragraph 31.a., the Intervening Defendants acknowledge that VNP's proposal calls for the creation of an Independent Citizens Redistricting Commission for State Legislative and Congressional Districts (the "Commission") as a permanent Commission in the legislative branch – a Commission which would have exclusive authority to develop and establish redistricting plans, with corresponding election district maps, for state Senate districts, state House of Representatives districts, and Michigan's congressional districts, subject to limited judicial review.

b. The Intervening Defendants admit the allegation set forth in Paragraph 31.b.

c. In response to Paragraph 31.c., the Intervening Defendants acknowledge that the Proposed Const 1963, art 4, § 6 (5) would require the Legislature to appropriate money to compensate the Commissioners and pay for the operation of the Commission as specified therein, and directs that the State shall indemnify the Commissioners for costs incurred if the Legislature should fail to discharge its constitutionally mandated duty to appropriate money to pay those costs. The Intervening Defendants deny that this obligation to provide indemnification is contrary to Const 1963, art 7, § 17, as the proposed amendment does not propose an obligation to pay money out of the state Treasury without an appropriation.

d. In response to Paragraph 31.d., the Intervening Defendants acknowledge that VNP's proposal precludes legislative oversight, that it prescribes duties to be performed by the Secretary of State in relation to the selection of the Commission's members, and that it would require the Secretary to perform additional duties to assist the Commission in the performance of its prescribed duties. The specifics are set forth in VNP's proposal, which speaks for itself. The speculation that the Commissioners "will be susceptible to the influence of the partisan-elected Secretary of State" is irrelevant, and requires no response.

e. In response to Paragraph 31.e., the Intervening Defendants deny Plaintiffs' claim that "Commission members are accountable to no one but themselves", as they would be subject to removal, as specified in the proposed Const 1963, art 4, § 6 (3). Intervening Defendants acknowledge that the Commissioners would not be subject to removal by the Governor, but note that Const 1963, art 5, § 10 does not

confer authority upon the Governor to remove elected or appointed officers in the legislative branch. Intervening Defendants acknowledge that the Commission members would not be subject to discipline by the Civil Service Commission, but note that members of boards and commissions are not part of the classified civil service.

f. In response to Paragraph 31.f., the Intervening Defendants deny Plaintiffs' claim that the Governor would be "stripped" of all budgeting control over the Commission. Although the proposal imposes a duty upon the Legislature to appropriate money to pay for the Commission's expenses, it does not purport to limit the Governor's authority to disapprove specific appropriations. Intervening Defendants acknowledge that the Governor would not be empowered to reduce expenditures for the Commission under Const 1963, art 5, § 20, but note that the Governor would not have authority to do so in any event, as that provision states that, [t]he governor may not reduce expenditures of the legislative and judicial branches or from funds constitutionally dedicated for specific purposes."

g. The Intervening Defendants admit the allegation set forth in Paragraph 31.g.

h. The Intervening Defendants admit the allegation set forth in Paragraph 31.h.

i. In response to Paragraph 31.i., the Intervening Defendants acknowledge that Const 1963, art 4, § 6 would allow limited review of the Commission's operations and redistricting plans by the Supreme Court, but would not allow the Court to exercise the legislative function of fashioning and promulgating its own

plan. The proposed Const 1963, art 4, § 6 (19) would provide that the Supreme Court, in the exercise of its original jurisdiction, "shall direct the Secretary of State and the Commission to perform their respective duties"; that the Court "may review a challenge to any plan adopted by the Commission"; and that the Court "shall remand a plan to the Commission for further action" if the plan fails to comply with state or federal constitutional requirements or superseding federal law. The proposed Subsection (19) would also provide, however, that, "[i]n no event shall any body, except the Independent Citizens Redistricting Commission acting pursuant to this section, promulgate and adopt a redistricting plan or plans for this state."

j. In response to Paragraph 31.j., the Intervening Defendants acknowledge that VNP's proposal would alter the existing constitutional provisions governing redistricting of state legislative districts in Article IV and supersede the existing statutory provisions governing redistricting of state legislative and congressional districts, all of which speak for themselves. In further response, the Intervening Defendants note that the proposed Const 1963, art 4, § 6 (13) would require that districts reflect consideration of county, city and township boundaries.

k. In response to Paragraph 31.j., the Intervening Defendants acknowledge that VNP's proposal would alter the existing constitutional provisions governing redistricting of state legislative districts in Article IV and supersede the existing statutory provisions governing redistricting of state legislative and congressional districts, all of which speak for themselves. In further response, the Intervening

Defendants note that the proposed Const 1963, art 4, § 6 (13) states that, "Districts shall be reasonably compact."

l. In response to Paragraph 31.l., the Intervening Defendants acknowledge that VNP's proposal would alter the existing constitutional provisions governing redistricting of state legislative districts in Article IV and supersede the existing statutory provisions governing redistricting of state legislative and congressional districts, all of which speak for themselves. Plaintiffs' argumentative assertions and characterizations require no response.

m. In response to Paragraph 31.m., the Intervening Defendants deny, as untrue, Plaintiffs' argumentative claim that the criteria provided in VNP's proposal "may be impossible or nearly impossible to implement." Further response to Plaintiffs' argumentative assertions and characterizations is not required.

n. In response to Paragraph 31.n., the Intervening Defendants acknowledge that a specific redistricting plan adopted by the Commission would not be subject to referendum or repeal by initiated law, as those options apply only to legislation or measures that the Legislature would be empowered to enact. The reserved right of the people to further amend the constitution by voter initiative pursuant to Const 1963, art 12, § 2 would not be affected.

32. The Intervening Defendants deny, as untrue, the allegation set forth in Paragraph 32.

33. The Intervening Defendants deny, as untrue, the allegation set forth in Paragraph 33.

34. The Intervening Defendants deny, as untrue, the allegation set forth in Paragraph 34.

35. The Intervening Defendants deny, as untrue, the allegation set forth in Paragraph 35, as the Secretary and the Board have no duty to reject the Petition.

36. In response to Paragraph 36, the Intervening Defendants acknowledge that Plaintiffs have no "other" remedy, as there is no proper basis for issuance of a writ of mandamus, or any other remedy, for the claims asserted in their Complaint for Mandamus.

COUNT II – MANDAMUS

FAILURE TO REPUBLISH ABROGATED SECTIONS

37. Intervening Defendants incorporate their responses to Paragraphs 1 through 36, as if fully set forth herein.

38. In response to Paragraph 38, the Intervening Defendants acknowledge that MCL 168.482(3) includes the directive stated therein. In further response, the Intervening Defendants affirmatively state that enforcement of this purely statutory requirement by rejection of VNP's proposal would be unconstitutional as an impermissible curtailment or undue burdening of the people's reserved right to propose amendment of the Constitution by voter initiative pursuant to Const 1963, art 12, § 2.

39. The Intervening Defendants deny, as untrue, the allegation set forth in Paragraph 39, for the reasons stated in response to Paragraph 38.

40. The Intervening Defendants deny, as untrue, the allegations set forth in Paragraph 40. Although not required to respond to legal conclusions and arguments included in the various sub-paragraphs, the Intervening Defendants shall provide the following answers to the allegations made therein:

a. The Intervening Defendants deny, as untrue, the allegations set forth in Paragraph 40.a. In further response, the Intervening Defendants note that Const 1963, art 6, § 13 does not purport to confer any exclusive jurisdiction upon the circuit courts, and although the proposed amendment would confer original jurisdiction upon the Supreme Court to address matters related to redistricting and the Commission's performance of its duties, the proposal contains no language purporting to make that jurisdiction exclusive.

b. The Intervening Defendants deny, as untrue, the allegations set forth in Paragraph 40.b. In further response, the Intervening Defendants affirmatively note that the right to speak, write and publish on all subjects conferred under Const 1963, art 1, § 5, is not absolute, as its language specifically provides that every person is responsible for abuse of that right. Const 1963, art 1, § 5 may be harmonized with the proposed amendment because the more specific provision of the proposed Const 1963, art 4, § 6 (11), imposes a slight restriction upon the exercise of that right to facilitate the Commission's proper and effective performance of its duty to ensure that its proceedings are undertaken in the open in order to ensure that the development of its redistricting plans will not be controlled by partisan political interests. If a Commissioner or a member of the Commission's staff violates this

specific constitutional directive, it may properly be said that he or she has abused the right conferred under Const 1963, art 1, § 5.

c. The Intervening Defendants deny, as untrue, the allegations set forth in Paragraph 40.c. In further response, the Intervening Defendants affirmatively note that the proposed amendment would provide a mandatory constitutional directive that the Legislature appropriate funds sufficient to compensate the Commissioners and to enable the Commission to carry out its functions, operations and activities, and that the appropriation made for these purposes be not less than the amount specified – 25 percent of the General Fund/ General Purpose Budget for the Secretary of State for each fiscal year when the Commission is performing its duties. Thus, if the Legislature complies with that constitutional obligation, as the Court should assume it will, there will be no need to have any payment of money out of the State Treasury without an appropriation.

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

The Intervening Defendants acknowledge that the proposed Const 1963, art 4, § 6 requires the State of Michigan to indemnify the Commissioners for costs incurred if the Legislature does not appropriate sufficient funds to cover such costs in violation of its constitutionally prescribed duty to do so. This provision would create a constitutionally-based cause of action for indemnification in favor of the

Commissioners which could be asserted by means of a Complaint for Mandamus, but the proposed amendment does not include any language directing that a judgment in their favor would be paid out of the state Treasury without an appropriation. Thus, a judgment in favor of the Commissioners would stand on the same footing as any other judgment against the state, the enforcement of which is dependent upon an appropriation of money to pay it.

d. The Intervening Defendants deny, as untrue, the allegations set forth in Paragraph 40.d. In further response, the Intervening Defendants affirmatively note that the oath of office required for public officers under Const 1963, art 11, § 1 requires public officers to swear or affirm that they will support the Constitution of this state. The requirements for qualification of Commissioners under the proposed Const 1963, art 4, § (6)(1) would be constitutionally-based, and the oath required by the proposed Const 1963, art 4, § (6)(2)(iii) is nothing more than a sworn or affirmed confirmation that the constitutional qualifications are met with respect to each candidate proposed for selection to serve as a Commissioner. The proposed amendment can be harmonized with Const 1963, art 11, § 1 because the oath required by the proposed Const 1963, art 4, § (6)(2)(iii) does not impose any requirement beyond the requirements imposed by the proposed Const 1963, art 4, § (6)(1), and thus, it cannot be construed as a pledge that is in any way inconsistent with, or beyond the scope of the officer's duty to uphold the state Constitution, as pledged by the oath of office required under Const 1963, art 11, § 1.

41. The Intervening Defendants deny, as untrue, the allegation set forth in Paragraph 41.

42. The Intervening Defendants deny, as untrue, the allegation set forth in Paragraph 42.

43. The Intervening Defendants deny, as untrue, the allegation set forth in Paragraph 43.

44. In response to Paragraph 44, the Intervening Defendants acknowledge that Plaintiffs have no "other" remedy, as there is no proper basis for issuance of a writ of mandamus, or any other remedy, for the claims asserted in their Complaint for Mandamus.

RELIEF REQUESTED

WHEREFORE, the Intervening Defendants respectfully request that this Honorable Court:

A. Deny Plaintiffs' Complaint for Mandamus;

B. Enter its Order pursuant to MCR 7.216(A)(7) and (9), directing the Secretary of State and the Board of State Canvassers to comply with all of their statutory duties concerning certification, approval and placement of the ballot proposal at issue on the 2018 General Election ballot without delay, and requiring timely and complete reporting of actions taken for the required performance of those duties.

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

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

E. Grant the Intervening Defendants such additional or different relief as is equitable and just.

Respectfully submitted,

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Attorneys for the Intervening Defendants

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Dated: May 10, 2018

INTERVENING DEFENDANTS' AFFIRMATIVE DEFENSES TO PLAINTIFFS' COMPLAINT FOR MANDAMUS

Now Come 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, listing the following Affirmative Defenses to Plaintiff's Complaint for Mandamus:

1. Plaintiffs have failed to state a cause of action for which relief may be granted.

2. Plaintiffs have failed to establish, and cannot establish, the existence of a clear legal duty which may be enforced by issuance of a writ of mandamus.

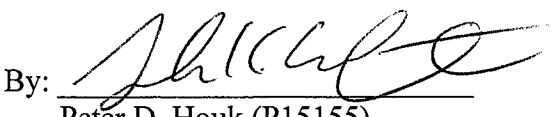
3. The statutory requirement of MCL 168.482(3) that a petition proposing amendment of the Constitution list and publish all existing constitutional provisions that would be altered or abrogated by the proposed amendment is unconstitutional.

4. Enforcement of the aforementioned statutory requirement of MCL 168.482(3) would be unconstitutional, as an impermissible curtailment or undue burdening of the people's reserved right to propose amendments of the Constitution by voter initiative pursuant to Const 1963, art 12, § 2.

5. Plaintiffs' Complaint for Mandamus is barred by the doctrine of Laches.

Respectfully submitted,

FRASER TREBILCOCK DAVIS & DUNLAP. P.C.
Attorneys for the Intervening Defendants

By: 

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Dated: May 10, 2018

EXHIBIT F

STATE OF MICHIGAN
IN THE COURT OF APPEALS

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

Plaintiffs,

v

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

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CROSS-CLAIM OF INTERVENING DEFENDANTS AGAINST DEFENDANTS SECRETARY OF STATE AND BOARD OF STATE CANVASSERS

Now Come Intervening Defendants / Cross-Plaintiffs 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 Cross-Claim against Defendants / Cross-Defendants Secretary of State and Board of State Canvassers pursuant to MCR 2.203(D) and (E), and stating the following in support of their Cross-Complaint:

PARTIES

1. Intervening Defendant / Cross-Plaintiff Voters Not Politicians Ballot Committee is a ballot question committee which was registered with the Michigan Secretary of State as such in accordance with the Michigan Campaign Finance Act, MCL 169.201, *et seq.*, on February 22, 2017. (Affidavit of Kathryn A. Fahey – Exhibit A – ¶ 4)

2. Intervening Defendant / Cross-Plaintiff Count MI Vote is a Michigan non-profit corporation which was subsequently formed and incorporated for the purpose of operating the previously-organized Voters Not Politicians Ballot Committee under the assumed names "Voters Not Politicians" and "Voters Not Politicians Ballot Committee." For ease of reference, the aforementioned Intervening Defendant / Cross-Plaintiff entities shall be referred to collectively herein as "Voters Not Politicians" or "VNP." (Fahey Affidavit – Exhibit A – ¶ 4)

3. VNP is the sponsor of the voter-initiated ballot proposal at issue in this litigation. The purpose of VNP's proposal is to create an Independent Citizens Redistricting Commission for State Legislative and Congressional Districts (the "Commission") as a permanent Commission in the legislative branch – a Commission which would have exclusive authority to develop and establish redistricting plans, with corresponding election district maps, for state Senate districts, state House of Representatives districts, and Michigan's congressional

districts. This has been proposed and actively supported by VNP's organizers and volunteers as a desired means to remedy the widely-perceived abuses associated with partisan "gerrymandering" of state legislative and congressional election districts by the establishment of new constitutionally-mandated procedures designed to ensure that the redistricting process can no longer be dominated by one political party. (Fahey Affidavit – Exhibit A – ¶ 7)

4. Intervening Defendant / Cross-Plaintiff Kathryn A. Fahey is a qualified elector of the State of Michigan, registered to vote in Gaines Township, within Kent County. She is the founder of the Voters Not Politicians Ballot Committee, was an incorporator of Count MI Vote and a signer of VNP's petition, and currently serves as the Ballot Committee's Treasurer. As an organizer and supporter of VNP's voter-initiated proposal for amendment of the Constitution, she has a strong interest in having an opportunity to vote in favor of that proposal and will be aggrieved if she is prevented from doing so without just and legally sufficient cause. (Fahey Affidavit – Exhibit A – ¶¶ 3, 5, 6, 8, 13)

5. Intervening Defendant / Cross-Plaintiff William R. Bobier is a former member of the Michigan House of Representatives. He is a qualified elector of the State of Michigan, registered to vote in Ferry Township, within Oceana County. Mr. Bobier signed VNP's petition and is a supporter of the Voters Not Politicians ballot proposal. As such, he has a strong interest in being able to vote in favor of that proposal, and will be aggrieved if he is prevented from doing so without just and legally sufficient cause. (Bobier Affidavit – Exhibit B – ¶¶ 3, 6-7)

6. Intervening Defendant / Cross-Plaintiff Davia C. Downey is a qualified elector of the State of Michigan, registered to vote in the City of East Lansing, within Ingham County. Ms. Downey signed VNP's petition and is a supporter of the Voters Not Politicians ballot proposal. As such, she has a strong interest in being able to vote in favor of that proposal, and

will be aggrieved if she is prevented from doing so without just and legally sufficient cause. (Downey Affidavit – Exhibit C – ¶¶ 3, 6-7)

7. Defendant / Cross-Defendant Secretary of State is Michigan's chief election officer. MCL 168.21. As such, the Secretary is the official with whom a petition proposing a constitutional amendment must be filed, and has overall responsibility for preparation of the ballot and the submission of ballot questions, including the responsibility to certify the constitutionally required statement of the purpose for designation on the ballot to each County Clerk, together with the form in which proposed constitutional amendments or other special questions shall be printed on the ballot. Const 1963, art 12, § 2; MCL 168.32(2); MCL 168.471; MCL 168.480.

8. Defendant / Cross-Defendant Board of State Canvassers is a state Board, established under Const 1963, art 2, § 7, which has statutory responsibility for canvassing voter-initiated petitions for amendment of the Constitution to determine the sufficiency of the required technical form of the petitions proposing such amendments and the sufficiency of the signatures submitted in support. MCL 168.476; MCL 168.477. The Board also has responsibility for approving the constitutionally-required 100-word statement of purpose prepared for inclusion on the ballot by the Secretary of State's Bureau of Elections. MCL 168.32(2).

JURISDICTION

9. 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).

ADMINISTRATIVE HISTORY

10. VNP's initiative petition for the ballot proposal at issue was filed with the Secretary of State as required by MCL 168.471 on June 28, 2017, and VNP sought preliminary approval of the form of the petition by the Board of State Canvassers. After consultations with Bureau of Elections staff and revision of the proposal originally submitted, the Board of State Canvassers approved the form of VNP's petition during its meeting held on August 17, 2017. (Fahey Affidavit – Exhibit A – ¶ 8, and meeting minutes attached thereto as Exhibit 1)

11. Upon receiving the Board of State Canvassers' preliminary approval of its petition, VNP immediately began the process of collecting the required voter signatures. Under the applicable statutory provisions, VNP was required to collect a minimum of 315,654 valid signatures within 180 days. On December 18, 2017, VNP filed petitions containing more than 425,000 signatures with the Secretary of State Bureau of Elections. (Fahey Affidavit – Exhibit A – ¶ 9, and Bureau of Elections' receipt for petitions attached thereto as Exhibit 2)

12. On April 12, 2018, the Board of State Canvassers made a sample of the petition signatures available for public inspection and issued a Notice establishing a deadline of April 26, 2018, for submission of challenges to the sufficiency of the petition signatures. (Fahey Affidavit – Exhibit A – ¶ 10, and Notice attached thereto as Exhibit 3)

13. The Plaintiffs' Complaint for Mandamus in this case was filed on April 25, 2018.

14. On April 26, 2018, Plaintiff Citizens Protecting Michigan's Constitution ("CPMC") filed a Challenge with the Board of State Canvassers which raised the same issues raised in its Complaint for Mandamus while acknowledging that the subject matter of its challenge was within the jurisdiction of the courts. That challenge did not raise any challenge to the validity or sufficiency of the petition signatures or any issues regarding the form of VNP's

petition beyond the issues raised in CPMC's Complaint for Mandamus. (Fahey Affidavit – Exhibit A – ¶ 12, and CPMC Challenge attached thereto as Exhibit 4)

15. Upon information and belief, no other challenges to the sufficiency of VNP's petition or the signatures filed in support have been filed with the Board of State Canvassers, before or after the expiration of the April 26, 2018 deadline for the filing of such challenges.

16. On May 3, 2018, VNP's General Counsel James Lancaster delivered a letter to the Chairperson of the Board of State Canvassers requesting that the Board convene a meeting and certify VNP's voter-initiated proposal for inclusion on the 2018 General Election ballot as soon as possible. A copy of that letter is attached as Exhibit D. In support of that request, Attorney Lancaster cited the expiration of the April 26, 2018 deadline for filing of challenges to VNP's petition signatures with no other challenges having been filed, and the preliminary findings of the Bureau of Elections, consistent with the findings of VNP's independent political consultant, that analysis of the signature sample had revealed an abundantly sufficient number of valid signatures.

17. The Board of State Canvassers has not responded to the request made in Attorney Lancaster's Letter of May 3, 2018. The Board has scheduled a meeting for May 10, 2018, but consideration of matters concerning VNP's ballot proposal has not been included in the agenda for that meeting, a copy of which is attached as Exhibit E.

COUNT I – MANDAMUS

18. The Intervening Defendants / Cross-Plaintiffs re-allege and incorporate all of the allegations made in Paragraphs 1 through 17, as if fully set forth herein.

19. The Board of State Canvassers has a clear legal duty to certify a voter-initiated ballot proposal for inclusion on the ballot if: 1) The proposal has been supported by a sufficient

number of valid petition signatures; 2) There has been no allegation, supported by sufficient proof, that the number of valid signatures submitted in support of the proposal is insufficient; and 3) There is no allegation, supported by sufficient proof, that the technical form of the ballot proposal petition or the manner of its circulation or signing did not satisfy the validly enacted statutory requirements governing the technical form or the manner of signing or circulation of petitions.

20. The Board of State Canvassers has a clear legal duty to certify a voter-initiated ballot proposal for inclusion on the ballot if it has provided its preliminary approval of the form of the ballot proposal petition and a sufficient number of valid signatures has been collected in compliance with the statutory requirements governing the circulation and filing of the petitions filed in support of the proposal. *Citizens for Protection of Marriage v Board of State Canvassers,* 263 Mich App 486, 492-493; 688 NW2d 538 (2004).

21. The Board of State Canvassers has a clear legal duty to approve the constitutionally-required 100-word summary of purpose of a proposed constitutional amendment prepared by the Bureau of Elections pursuant to MCL 168.32(2) if the summary complies with the applicable constitutional and statutory requirements.

22. The Secretary of State has a clear legal duty to satisfy its aforementioned constitutional and statutory responsibilities for preparation of the ballot and submission of ballot questions, including the responsibility to certify the constitutionally required statement of the purpose for designation on the ballot to each County Clerk, together with the form in which proposed constitutional amendments or other special questions shall be printed on the ballot.

23. 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.

24. Plaintiffs' Complaint for Mandamus and supporting Brief have appropriately acknowledged that the Board of State Canvassers does not have jurisdiction to address the issues raised in Plaintiffs' Complaint for Mandamus. (Complaint for Mandamus, ¶ 21; Brief in Support of Complaint for Mandamus, p. 5.) Plaintiff's Complaint for Mandamus also informed the Court that they would be filing a *pro forma* protest setting forth the arguments made in Count II of their Complaint with the Board of State Canvassers before the expiration of the challenge period on April 26, 2018, "out of an abundance of caution in the event this Court disagrees." (Complaint for Mandamus, ¶ 21)

25. The Challenge filed by Plaintiff CPMC with the Board of State Canvassers on April 26, 2018, raised the same issues raised in its Complaint for Mandamus while acknowledging that the subject matter of its challenge was within the jurisdiction of the courts and stating that its Challenge was being filed as "a precautionary measure in the event that a court determines otherwise." (Challenge – Exhibit 4 of Fahey Affidavit (Exhibit A) pp. 2-3) That challenge did not raise any challenge to the validity or sufficiency of the petition signatures or any issues regarding the form of VNP's petition beyond the issues raised in CPMC's Complaint for Mandamus.

26. The Intervening Defendants / Cross-Plaintiffs agree that the issues raised in Plaintiffs' Complaint for Mandamus and Plaintiff CPMC's Challenge filed with the Board of

State Canvassers are within the jurisdiction of the courts, and that the Board of State Canvassers does not have jurisdiction to consider those issues.

27. Mandamus is the appropriate remedy for a party seeking to compel action by election officials.

28. The Secretary of State and the Board of State Canvassers have a clear legal duty to promptly and faithfully perform the legal duties discussed in Paragraphs 19 through 22.

29. The Intervening Defendants / Cross-Plaintiffs have a clear legal right to the prompt performance of the clear legal duties discussed in Paragraphs 19 through 22.

30. The performance of the clear legal duties discussed in Paragraphs 19 through 22 is ministerial, requiring no exercise of discretion.

31. The Intervening Defendants / Cross-Plaintiffs have filed this Cross-claim to ensure that the clear legal duties discussed in Paragraphs 19 through 22 will be promptly performed if this Court rejects Plaintiffs' legal challenges and denies their request for a writ of mandamus. To serve that important purpose, the interests of justice would be best served by the issuance of an Order granting a writ of mandamus against Defendants Secretary of State and Board of State Canvassers requiring their performance of those clear legal duties without delay if this Court rejects Plaintiffs' legal challenges and denies their request for a writ of mandamus. Actions taken by the Secretary of State and the Board of State Canvassers in compliance with that Order would, of course, be subject to modification by the Michigan Supreme Court.

32. There is no other available legal remedy that can sufficiently assure the timely performance of the clear legal duties discussed in Paragraphs 19 through 22 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.

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 the Secretary of State and the Board of State Canvassers requiring them to comply with all of their constitutional and statutory duties concerning certification, approval and placement of the ballot proposal at issue on the 2018 General Election ballot, including all of the clear legal duties discussed in Paragraphs 19 through 22 above, without delay.

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

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

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

F. Grant the Intervening Defendants / Cross-Plaintiffs such additional or different relief as is equitable and just.

Respectfully submitted,

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

By: _____

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(517) 285-4737

Dated: May 10, 2018

EXHIBIT A

STATE OF MICHIGAN
IN THE COURT OF APPEALS

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

Plaintiffs,

v

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

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**,

Prospective Intervening Defendants.

Court of Appeals
No. 343517

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Robert P. Young (P35486)
Ryan M. Shannon (P74535)
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AFFIDAVIT OF KATHRYN A. FAHEY

STATE OF MICHIGAN)
) SS
COUNTY OF INGHAM)

Kathryn A. Fahey, 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 a citizen of the United States and the State of Michigan.

3. I am a qualified elector of the State of Michigan, registered to vote in Gaines Township, within Kent County.

4. Prospective Intervening Defendant Voters Not Politicians Ballot Committee is a ballot question committee which was registered with the Michigan Secretary of State as such in accordance with the Michigan Campaign Finance Act, MCL 169.201, *et seq.*, on February 22, 2017. Prospective Intervening Defendant Count MI Vote is a Michigan non-profit corporation which was subsequently formed and incorporated for the purpose of operating the previously-organized Voters Not Politicians Ballot Committee under the assumed names "Voters Not Politicians" and "Voters Not Politicians Ballot Committee." For ease of reference, the aforementioned entities shall be referred to collectively herein as "Voters Not Politicians" or "VNP."

5. I am the founder of the Voters Not Politicians Ballot Committee and an incorporator of Count MI Vote, and I currently serve as the Ballot Committee's Treasurer.

6. As founder of the Voters Not Politicians Ballot Committee, I have been heavily involved in the development of the ballot proposal at issue in the above-entitled litigation, and have also been heavily involved in the organization of the large-scale volunteer effort to secure the approval of that proposal for inclusion on the 2018 General Election ballot.

7. The purpose of VNP's proposal is to create an Independent Citizens Redistricting Commission for State Legislative and Congressional Districts (the "Commission") as a permanent Commission in the legislative branch – a Commission which would have exclusive authority to develop and establish redistricting plans, with corresponding election district maps, for state Senate districts, state House of Representatives districts, and Michigan's congressional districts. This has been proposed and actively supported by VNP's organizers and volunteers as a desired means to remedy the widely-perceived abuses associated with partisan "gerrymandering" of state legislative and congressional election districts by the establishment of new constitutionally mandated procedures designed to ensure that the redistricting process can no longer be dominated by one political party.

8. VNP's initiative petition for the ballot proposal at issue was filed with the Secretary of State as required by MCL 168.471 on June 28, 2017, and VNP sought preliminary approval of the form of the petition by the Board of State Canvassers. After consultations with Bureau of Elections staff and revision of the proposal originally submitted, the Board of State Canvassers approved the form of VNP's petition during its meeting held on August 17, 2017. A copy of the minutes of that meeting is attached as Exhibit 1.

9. Upon receiving the Board of State Canvassers' preliminary approval of its petition, VNP immediately began the process of collecting the required voter signatures. Under the applicable constitutional and statutory provisions, VNP was required to collect a minimum of 315,654 valid signatures within 180 days. On December 18, 2017, VNP filed petitions containing more than 425,000 signatures, including my own, with the Secretary of State Bureau of Elections. A copy of the Secretary of State Bureau of Elections' receipt for the petitions filed on December 18, 2017 is attached as Exhibit 2.

10. On April 12, 2018, the Board of State Canvassers made a sample of the petition signatures available for public inspection and issued a notice establishing a deadline of April 26, 2018, for submission of challenges to the petition signatures. A copy of that notice is attached as Exhibit 3.

11. The Complaint for Mandamus in this case was filed on April 25, 2018.

12. On April 26, 2018, Plaintiff Citizens Protecting Michigan's Constitution ("CPMC") filed a Challenge with the Board of State Canvassers which raised the same issues raised in its Complaint for Mandamus while acknowledging that the subject matter of its challenge was within the jurisdiction of the courts. That challenge did not raise any challenge to the validity or sufficiency of the petition signatures or any issues regarding the form or content of VNP's petition beyond the issues raised in CPMC's Complaint for Mandamus. A copy of CPMC's Challenge filed with the Board of State Canvassers is attached as Exhibit 4.

13. As the founder of the Voters Not Politicians Ballot Committee and one who has worked tirelessly to support its effort to secure the placement of its ballot proposal on the 2018 General Election ballot, I have a strong interest in being able to vote in favor of that proposal, and will be aggrieved if I am prevented from doing so without just and legally sufficient cause.

Further, Deponent sayeth not.

Kathryn A. Fahey

Subscribed and sworn before me on
the 9th day of May, 2018.

Notary Public, Ingham County
Acting in Ingham County
My Commission expires: 5-15-2019

DEBORAH L. COVEART
NOTARY PUBLIC - STATE OF MICHIGAN
COUNTY OF CLINTON
My Commission Expires May 15, 2019
Acting in the County of Ingham

EXHIBIT 1

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

Meeting
of the
Board of State Canvassers

August 17, 2017
Lansing Center, 333 East Michigan Avenue
Lansing, Michigan

Called to order: 10:06 a.m.

Members present: Norm Shinkle – Chairperson
Julie Matuzak – Vice Chairperson
Colleen Pero
Jeannette Bradshaw

Members absent: None.

Agenda item: Consideration of meeting minutes for approval.

Board action on agenda item: The Board approved the minutes of the June 21, 2017 meeting as submitted. Moved by Matuzak; supported by Pero. Ayes: Shinkle, Matuzak, Pero, Bradshaw. Nays: None. Motion carried.

Agenda item: Recording of the results of the August 8, 2017 special primary for the office of State Representative, 1st District.

Board action on agenda item: The Board recorded the results of the August 8, 2017 special primary for the office of State Representative, 1st District as certified by the Wayne County Board of Canvassers on August 16, 2017. Moved by Bradshaw; supported by Pero. Ayes: Shinkle, Matuzak, Pero, Bradshaw. Nays: None. Motion carried.

Agenda item: Canvass and certification of the August 8, 2017 special primary for the office of State Representative, 109th District.

Board action on agenda item: Based on an examination of the returns received by the Secretary of State for the August 8, 2017 special primary, the Board certified that the attached report is a true statement of votes cast for the office of State Representative, 109th District. The Board further

certified that the persons named in the attached List of Nominees are duly nominated for the office of State Representative, 109th District, and are qualified to appear as candidates for that office on the November 7, 2017 special election ballot. The Board also authorized staff of the Bureau of Elections to represent the Board in any recount of votes cast at the August 8, 2017 special primary. Moved by Matuzak; supported by Pero. Ayes: Shinkle, Matuzak, Pero, Bradshaw. Nays: None. Motion carried. Time of certification: 10:09 a.m.

Agenda item: Consideration of the form of an initiative petition submitted for approval by MI Time to Care, P.O. Box 1502, Royal Oak, Michigan 48068. (This proposal would enact the Earned Sick Time Act, requiring employers to provide sick leave for personal and family health needs subject to certain conditions.)

Board action on agenda item: The Board approved the form of the initiative petition sponsored by MI Time to Care with the understanding that the Board's approval does not extend to: (1) The substance of the proposal which appears on the petition; (2) The substance of the summary of the proposal which appears on the signature side of the petition; or (3) The manner in which the proposal language is affixed to the petition. Moved by Pero; supported by Matuzak. Ayes: Shinkle, Matuzak, Pero, Bradshaw. Nays: None. Motion carried.

Agenda item: Consideration of the form of an initiative petition to amend the State Constitution submitted for approval by Abrogate Prohibition Michigan, 3867 East Shaffer Road, Midland, Michigan 48642. (This proposal would amend the Michigan Constitution to legalize the use of marijuana for agricultural, personal, recreational, commercial or other purposes.)

Board action on agenda item: The Board approved the form of the initiative petition to amend the State Constitution as submitted by Abrogate Prohibition Michigan with the understanding that the Board's approval does not extend to: (1) The substance of the proposal which appears on the petition; (2) The substance of the summary of the proposal which appears on the signature side of the petition; or (3) The manner in which the proposal language is affixed to the petition. Moved by Bradshaw; supported by Matuzak. Ayes: Shinkle, Matuzak, Pero, Bradshaw. Nays: None. Motion carried.

Agenda item: Consideration of the form of an initiative petition to amend the State Constitution submitted for approval by Voters Not Politicians Ballot Committee, P.O. Box 8362, Grand Rapids, Michigan 49518. (This proposal would amend the Michigan Constitution to create the Independent Citizens Redistricting Commission and authorize the Commission to adopt reapportionment plans for Congressional, State Senate and State House of Representatives districts.)

Board action on agenda item: The Board approved the form of the initiative petition to amend the State Constitution as submitted by Voters Not Politicians with the understanding that the Board's approval does not

extend to: (1) The substance of the proposal which appears on the petition; or (2) The substance of the summary of the proposal which appears on the signature side of the petition; or (3) The manner in which the proposal language is affixed to the petition; or (4) Whether the petition properly characterizes those provisions of the Constitution that are altered or abrogated by the proposal if adopted. Moved by Pero; supported by Matuzak. Ayes: Shinkle, Matuzak, Pero, Bradshaw. Nays: None. Motion carried.

Agenda item: Such other and further business as may be properly presented to the Board.

Board action on agenda item: None.

Adjourned: 11:50 a.m.

Chairperson

Vice-Chairperson

Member

Member

September 19, 2017
Date

EXHIBIT 2

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

BUREAU OF ELECTIONS
2017 DEC 18 P 2:17
DEPT OF STATE

PETITION FILING RECEIPT

- **Date:** DECEMBER 18, 2017
- **Filer:** VOTERS NOT POLITICIANS BALLOT COMMITTEE
  P.O. BOX 8362
  GRAND RAPIDS, MI 49518

- **This acknowledges the receipt of** 188 **boxes of constitutional amendment petitions.**
- **This acknowledges the receipt of** 74,721 **sheets of constitutional amendment petitions.**
- **Minimum number of valid signatures required:** 315,654

Carol Bueno
Bureau of Elections

I agree that the foregoing is a correct count of the number of petition sheets that I am filing with the Secretary of State. The estimated number of petition signatures being filed is

428,587

Media Contacts: DAVID WAYMIRE 517-290-3610
ELIZABETH BATTISTE
248-404-7846
ebattiste@martinwaymire.com
dwaymire@ " " "

Kathryn A Fahey
Signature of person filing petition
KATHRYN A. FAHEY, TREASURER VNP Ballot Com
Phone: (616) 227-0576
Email: katiefahey2@gmail.com

EXHIBIT 3

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

April 12, 2018

CHALLENGE DEADLINE ESTABLISHED FOR INITIATIVE PETITION TO AMEND THE MICHIGAN CONSTITUTION SPONSORED BY VOTERS NOT POLITICIANS

An initiative petition proposing an amendment to the Michigan Constitution to create the Independent Citizens Redistricting Commission and authorize the Commission to adopt reapportionment plans for Congressional, State Senate and State House of Representatives districts, was filed with the Secretary of State on December 18, 2017 by Voters Not Politicians.

The Board of State Canvassers has established a uniform deadline for challenging signatures sampled from an initiative, constitutional amendment or referendum petition to elapse at 5:00 p.m. on the 10th business day after copies of the sampled signatures are made available to the public. (See minutes of November 8, 2013 meeting of the Board of State Canvassers.)

Please be advised that copies of the signatures sampled from this constitutional amendment petition were made available for release to the public on April 12, 2018. **Therefore, the deadline to submit challenges to this petition will elapse at 5:00 p.m. on April 26, 2018.**

Please contact the Bureau of Elections at (517) 373-2540 if you wish to purchase a copy of the sampled signatures for the petition.

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

EXHIBIT 4

STATE OF MICHIGAN
DEPARTMENT OF STATE
BOARD OF STATE CANVASSERS

In re Initiative Petition to Revise the Michigan Constitution Sponsored by Voters Not Politicians

_____/

Peter H. Ellsworth (P23657)
Robert P. Young (P35486)
Ryan M. Shannon (P74535)
DICKINSON WRIGHT PLLC
Attorneys for Citizens Protecting Michigan's Constitution
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(517) 371-1730

_____/

CHALLENGE OF CITIZENS PROTECTING MICHIGAN'S CONSTITUTION REGARDING THE VNP PETITION'S FAILURE TO REPUBLISH ABROGATED SECTIONS OF THE EXISTING CONSTITUTION

This challenge is filed by Citizens Protecting Michigan's Constitution ("CPMC"), a duly formed ballot question committee. CPMC challenges the initiative petition to revise the Michigan Constitution as filed and supported by Voters Not Politicians ("VNP"). The content of the petition is hereafter referred to as the "VNP Proposal." The VNP Proposal has multiple purposes, but chief among them is the creation of a 13-member "independent" redistricting commission, the transfer of all lawmaking authority over redistricting of legislative and U.S. Congressional districts to the new commission, and the establishment of new redistricting criteria to be applied by the commission.

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 the 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. A copy of the Brief in Support of CPMC's complaint for mandamus is submitted with this challenge.

As set forth in the attached Brief in Support, the petition circulated in support of the VNP Proposal does not comply with the republication requirements set forth in section 482 of the Michigan Election Law. MCL 168.482(3). The VNP Proposal abrogates language in at least four existing sections of the Constitution, but the petition failed to republish these same sections as required:

a. The Proposal abrogates, and the petition failed to republish, article 6, § 13 of the existing Constitution, which section confers *exclusive* original jurisdiction in all matters on the Circuit Courts except as prohibited by law. The Proposal creates original jurisdiction over redistricting matters instead in the Supreme Court.

b. The Proposal abrogates, and the petition failed to republish, article 1, § 5 of the existing Constitution, which section guarantees freedom of speech on all subjects. The Proposal instead restricts the speech of redistricting commission members, staff, attorneys, and consultants on all redistricting matters.

c. The Proposal abrogates, and the petition failed to republish, article 9, § 17 of the existing Constitution, which section prohibits the payment of money out of the state treasury except in pursuance of appropriations made by law. The Proposal instead mandates indemnification of redistricting commissioners even if the legislature does not appropriate sufficient funds.

d. The Proposal abrogates and fails to republish article 11, § 1 of the existing Constitution, which section sets forth the exclusive oath that may be required of public officers and specifies that no other oath shall be required as a qualification for any public office or public trust. The Proposal instead mandates an oath to be given by applicants seeking to hold office as redistricting commissioners regarding the

applicants' political affiliations.[1]

The Board is not required, by law, to complete its canvass of signatures and certify the petition until two months before the election. MCL 168.476(2); MCL 168.477(1). Such certification is thus not required here until September 6, 2018. 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. In the event the Court of Appeals does not act prior to the date required for certification, CPMC request that the Board reject the petition.

Respectfully submitted,

DICKINSON WRIGHT PLLC

Dated: April 26, 2018

By: _____

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

LANSING 37874-2 532634v2

[1] Because of the sweeping nature of the VNP Proposal, other examples could be found. For example, the Proposal abrogates and fails to republish article 11, § 5 of the existing Constitution, which section grants authority to regulate "all conditions of employment in the classified service" to the Civil Service Commission. The Proposal instead prohibits the Civil Service Commission, along with all other employers, from discharging or disciplining any employee (including, e.g., a classified employee selected as redistricting commission members) because of the employee's selection or involvement as a redistricting commission member.

STATE OF MICHIGAN
MICHIGAN COURT OF APPEALS

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

Plaintiffs,

Case No. _____

v.

SECRETARY OF STATE, and MICHIGAN BOARD OF STATE CANVASSERS,

Defendants.

_____/

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PLAINTIFFS' BRIEF IN SUPPORT OF THEIR COMPLAINT FOR MANDAMUS

ORAL ARGUMENT REQUESTED

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STATEMENT OF BASIS OF JURISDICTION

This Court has original jurisdiction to entertain an action for "mandamus against a state officer." MCR 7.203(C)(2) (citing MCL 600.4401). The Secretary of State and Board of State Canvassers are "state officers" for the purpose of mandamus. See *Citizens Protecting Michigan's Constitution v Sec'y of State*, 280 Mich App 273, 282; 761 NW2d 210, *aff'd in part, appeal denied in part by* 482 Mich 960 (2008).

STATEMENT OF QUESTION INVOLVED

On December 18, 2017, a ballot question committee known as Voters Not Politicians ("VNP") submitted an initiative petition to Defendant Secretary of State ("Secretary"). In general, the petition seeks to place before the voters at the 2018 general election a proposal to amend the Michigan Constitution (the "VNP Proposal"). The VNP Proposal seeks to make fundamental changes in Michigan government by "amending" three articles of the Constitution and changing 4,834 words in the articles of the Michigan Constitution governing the legislative, executive, and judicial branches; language in 11 sections would be deleted or amended.

The VNP Proposal is actually a general revision of the Michigan Constitution that cannot be accomplished by an amendment. See Const 1963, art 12, § 3. Further, the VNP Proposal failed to republish all sections of the existing Constitution that are to be altered or abrogated by the VNP Proposal—a requirement under state law.

Plaintiffs seek a writ of mandamus: (a) directing the Secretary and Board of State Canvassers ("Board") to reject the petition; and (b) directing the Secretary and Board to take no further steps to place the VNP Proposal on the ballot for the 2018 general election.

Question: Should this Court issue a writ of mandamus directing the Secretary and Board to reject the initiative petition and to take no further steps to place the VNP Proposal on the 2018 general election ballot?

Plaintiffs answer "Yes.

I. INTRODUCTION

"Constitutional modification requires *strict* adherence to the methods and approaches included in the constitution itself." *Citizens Protecting Michigan's Constitution v Sec'y ("Citizens")*, 280 Mich App 273, 276; 761 NW2d 210, *aff'd in part, appeal denied in part by* 482 Mich 960 (2008) (emphasis added).

This is an original action for mandamus against Defendant Secretary of State Ruth Johnson ("Secretary") in her capacity as Michigan's chief election officer and Defendant Board of State Canvassers ("Board"). Plaintiff Citizens Protecting Michigan's Constitution ("CPMC") is a duly registered ballot question committee established pursuant to the Michigan Campaign Finance Act, MCL 169.201 *et seq.*

The petition at issue proposes to submit a ballot question at the 2018 general election; it is sponsored by a ballot question committee calling itself Voters Not Politicians ("VNP"). (The revisions included in the petition are hereinafter referred to as the "VNP Proposal.") CPMC seeks an order from this Court directing the Secretary and the Board to reject the petition. (See **Exhibit 1**, VNP Proposal.)

The VNP Proposal is set forth in 7 pages of single-spaced fine print in the petition. It would change approximately 4,834 words in the articles of Michigan's 1963 Constitution (the "Constitution") governing all three branches of government. The changes include amending, deleting, or inserting language across 11 different sections of the existing Constitution.

These revisions have multiple purposes, but chief among them is the creation of a 13 member "independent" redistricting commission in the legislative branch comprised of persons without recent political experience chosen by the secretary of state. The VNP Proposal would transfer the power to enact laws establishing congressional and state legislative districts from the Legislature to this new body which, though formed in the legislative branch, will act as a superagency, in reality, a new branch of government, exercising a powerful mixture of

legislative, executive, and judicial powers on the core issue of how the lawmakers of the state are to be elected. The new commission would be immune from any control by the legislature or the governor and its redistricting plans *would not even be subject to the People's reserved powers of initiative and referendum*. The revisions would, in tandem, alter the longstanding requirements underpinning the drawing of Michigan's voter districts, including the requirement—which has appeared in every version of the Constitution since 1835—that voting districts be drawn along county and municipal boundaries to the extent possible. Instead, under the VNP Proposal, consideration of the maintenance of county and municipal boundaries would be subordinated to a multitude of new, albeit nebulous, criteria, chief among them that the "districts shall reflect the state's diverse population and communities of interest" and shall reflect "accepted measures of political fairness." (Ex. 1, VNP Proposal, art 4, § 13(C)-(D).) (No "accepted measure" of political fairness has yet been recognized by the courts or even by political scientists.)

The multitude of changes the VNP Proposal works to the Constitution—including the transfer, limitation, or expansion of powers in all three branches of government—are too disruptive to the original constitutional structures and underpinnings of government to be accomplished by the amendment process. The scale and impact of the VNP Proposal is simply too great for its contents to be summarized for their presentation to voters in the voting booth or petitioner-signers passing a signature gatherer on a public sidewalk.

Mandamus should issue because the petition fails to comply with the requirements of Michigan law and the Constitution—requirements that must be satisfied for submission of ballot questions to the voters. First, the VNP Proposal's changes constitute a "general revision" of the Constitution, and not a mere amendment. Under longstanding, black-letter Michigan law, a revision can only be accomplished through a Constitutional Convention—it cannot be

accomplished by a ballot initiative. Second, the petition fails—as required by statute—to set forth all of the provisions of the existing Constitution that would be "altered" or "abrogated" by the VNP Proposal.

Collectively, these constitutional and statutory requirements serve to assure that voters understand the measures before them, and are not misled into supporting or voting for provisions with which they do not agree. The constitutional requirement that fundamental changes amounting to a general revision occur only through a constitutional convention is also designed to assure that appropriate study, debate, and analysis occur with respect to such changes by constitutional delegates before the voters are asked to approve them.

As discussed below, controlling case law exists for both issues. First, this Court has held that attempted revisions of the Constitution are not eligible for placement on the ballot and has also established the test for determining whether a proposal is an amendment which may be submitted directly to the electorate or a revision which may only be submitted after being proposed by a constitutional convention.[1] Second, the Supreme Court has held that a petition that fails to republish the provisions of the Constitution that will be altered or abrogated is not eligible for placement on the ballot and has also established the specific rules for determining whether an existing constitutional provision is being altered or abrogated.[2] The sponsors of the VNP Proposal failed to heed these cases. Under controlling case law, the VNP Proposal is not an amendment but, rather a revision, and it fails to identify and republish at least four existing constitutional provisions that would be altered or abrogated. These defects are fatal. Accordingly, the VNP Proposal is not eligible for placement on the 2018 ballot.

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[1] *Citizens*, 280 Mich App at 277, 305.

[2] *Protect Our Jobs v Bd of State Canvassers*, 492 Mich 763, 778, 781; 822 NW2d 534 (2012).

Mandamus is the appropriate remedy where, as a matter of law, the court determines that a ballot proposal is ineligible for submission to the electorate. Michigan courts have repeatedly ordered such relief over the years. This Court too should enter an order precluding submission of the VNP Proposal to the voters.

II. FACTS

A. Parties

1. Plaintiffs

Plaintiff CPMC is a duly registered ballot question committee organized for, among other things, the purpose of opposing the VNP Proposal.

Plaintiff Joseph Spyke is an Ingham County resident and voter who will be aggrieved if the VNP Proposal is adopted because the VNP Proposal, if approved, would abridge his rights of initiative and referendum with respect to redistricting plans adopted for the State of Michigan. He will further be aggrieved because he has, within the past 6 years, been a paid employee of a political candidate, and is thus ineligible to serve on the redistricting commission. See Ex. 1, VNP Proposal, art 4, § 6(1)(b)(iv).

Plaintiff Jeanne Daunt is a Genesee County resident and voter who will be aggrieved if the VNP Proposal is adopted because the VNP Proposal, if approved, would preclude her from serving on the redistricting commission merely because she is the parent of a person otherwise disqualified from serving on the commission. See Ex. 1, VNP Proposal, art 4, § 6(1)(c).

2. Defendants

Defendant Secretary is Michigan's chief election officer. MCL 168.21. She holds office under the Constitution, and is the single executive heading the Department of State. Const 1963, art 5, § 3. She has overall responsibility for the preparation of the ballot and the submission of

statewide ballot questions. MCL 168.31(1)(f). She is also the official with whom a petition calling for a constitutional amendment must be filed. MCL 168.471.

Defendant Board is a state board established pursuant to Const 1963, art 2, § 7. Among other things, the Board is responsible for determining the sufficiency of signatures submitted in support of a petition to amend the Constitution. MCL 168.476(1). Though Plaintiffs do not believe that the Board has jurisdiction to address the questions posed by this suit—and Plaintiffs further believe that the Secretary can provide adequate mandamus relief—the Board is included in this action as a cautionary measure in the event that this Court may disagree.[3]

B. Schedule for Administrative Review

1. Statutory Deadlines

On December 18, 2017, VNP filed the petition containing the VNP Proposal with the Secretary of State. Upon the receipt of a petition proposing a constitutional amendment, the Board is required to "canvass the petitions to ascertain if the petitions have been signed by the requisite number of qualified and registered electors." MCL 168.476(1). The canvass of signatures must be completed not later than two months before the election, and the Board is required to issue an official declaration as to the sufficiency of petitions at least two months before an election. MCL 168.476(2); MCL 168.477(1). Here, such certification must thus occur by no later than September 6, 2018.

[3] Within the protest period as established by the Board for challenges to the VNP Proposal petition, Plaintiffs plan to make a *pro forma* protest to the Board, setting forth the claims in Count II of their Complaint out of an abundance of caution as well. In *Citizens*, the court held that this Court is the proper forum to present a challenge that a ballot initiative proposal constitutes a revision—requiring a constitutional convention under Const 1963, art 2, § 3—rather than an amendment permitted by Const 1963, art 2, § 2. See 280 Mich App at 282-283, 289-291.

In the case of a proposed constitutional amendment such as the VNP Proposal, the Secretary of State must certify the question to county clerks not less than 60 days before the election, MCL 168.480, to enable the question to be included in ballots presented in each county. Here, such certification would be required by September 7, 2018.

On April 18, 2018, Plaintiff CPMC sent a letter to the Secretary advising her of the deficiencies in the petition used to circulate the VNP Proposal and of the VNP Proposal's ineligibility to appear on the ballot. The Secretary did not respond prior to the filing of CPMC's Complaint.

2. This case is ripe for judicial review.

This controversy is ripe for review because it involves a threshold determination of whether the VNP Proposal petition on its face meets the constitutional prerequisites for acceptance. *Mich United Conservation Clubs v Sec'y of State*, 463 Mich 1009, 1009; 625 NW2d 377 (2001) (citing *Scott v Sec'y of State*, 202 Mich 629, 644; 168 NW 709 (1918); *Leininger v Alger*, 316 Mich 644, 654-655; 26 NW2d 348 (1947)). All of the information necessary to resolve this controversy—*i.e.*, whether the VNP Proposal is a constitutional revision rather than an amendment, or fails to republish altered or abrogated provisions of the Constitution as required by law—is presently available.

The procedural situation in this case is analogous to the procedural situations presented in *Citizens* and *Michigan United Conservation Clubs*. In each of those matters, the issue was whether a proposed ballot initiative complied with requirements for submission to the voters. In both cases, the courts found that the threshold issue of ballot eligibility was ripe, and ultimately, the proposals were blocked from the ballot. See *Mich United Conservation Clubs*, 463 Mich at

1009; *Mich United Conservation Clubs v Sec'y of State*, 464 Mich 359, 365-366; 630 NW2d 297 (2001); *Citizens*, 280 Mich App at 282-283.

III. ARGUMENT

A. Standard of Review

There are numerous issues presented by the VNP Proposal. All or parts of this proposal may violate provisions of the United States Constitution, federal statutes, or the Michigan Constitution. The Michigan Supreme Court, however, has made it plain that substantive attacks on the validity of a ballot proposal are premature if made before the voters adopt the proposition in question. *Hamilton v Vaughan*, 212 Mich 31, 33-35; 179 NW 553 (1920).

The Michigan Supreme Court, however, has made a distinction between those types of substantive challenges and questions relating to whether a proposal satisfies requirements as to content to be *eligible* to be placed on the ballot. Where a proposition is not eligible to be placed before the voters, the Court has not hesitated to issue a writ of mandamus ordering election officials not to place the question on the ballot. See *Protect Our Jobs v Bd of State Canvassers*, 492 Mich 763, 791-792; 822 NW2d 534 (2012).

The applicable test in actions for mandamus has been stated as follows:

> Generally, mandamus lies only where there exists a clear legal duty incumbent upon the defendant and a clear legal right in the plaintiff to the discharge of such duty. The legal duty must usually be a specific act of a ministerial nature, although occasionally mandamus will lie though the act sought to be compelled is discretionary. [*Wayne Cnty v State Treasurer*, 105 Mich App 249, 251; 306 NW2d 468 (1981).]

The Secretary is the state official whose duty it is to implement the amendment provisions in the Constitution. See MCL 168.471 *et seq.* It is the duty of the Secretary to preclude a ballot

initiative from being placed on a ballot if, as here, the question is not eligible for the ballot in the first instance. See *Leininger*, 316 Mich at 654-656; *Scott*, 202 Mich at 643-646.

A writ of mandamus directing the Secretary not to place a question on the ballot is the appropriate relief where the courts determine the proposal ineligible as a matter of law. See *Mich United Conservation Clubs*, 464 Mich at 365-366. This Court has authority to determine the lawfulness of particular proposals to amend the constitution, and once determined, can direct the Secretary to carry out her clear legal duties of preventing submission of proposals to the voters. *Citizens*, 280 Mich App at 287, 291.

In sum, mandamus is well recognized as the appropriate remedy for a party seeking to compel action by election officials with respect to certification of initiative petitions.

B. The VNP Proposal is an attempted general revision of the Constitution and may not be accomplished without a constitutional convention.

1. Whether a proposal is an "amendment" or a "revision" depends on both the quantity and quality of the proposed changes.

The People have reserved to themselves the authority to modify the Constitution. Such modification, however, "requires *strict* adherence to the methods and approaches included in the constitution itself." *Citizens*, 280 Mich App at 276 (emphasis added).

The Constitution provides three different methods by which its words may be changed. First, Const 1963, art 12, § 1 provides that the legislature may propose an amendment and present it to the electors. Second, Const 1963, art 12. § 2 permits an "amendment" to be proposed by petition and approved by vote of the electors. Third, Const 1963, art 12, § 3 provides for a "revision" of the Constitution through a constitutional convention, with subsequent approval by the voters of a new constitution or changes referred by the convention.

An "amendment" under Const 1963, art 12, §§ 1 and 2 is not the same as a "revision" under Const 1963, art 12, § 3. *Citizens*, 280 Mich App at 277, 295. The difference is described in *Citizens*. There (in 2008), this Court found that a proposal submitted by a ballot question committee called Reform Michigan Government Now! (the "RMGN Proposal") constituted a general revision that could not be accomplished through a ballot proposal. *Id.* at 307.

In making its determination, the *Citizens* Court undertook a comprehensive review of jurisprudence concerning the difference between an "amendment" and a "revision." In first reviewing Michigan jurisprudence, it found that the Michigan Supreme Court long ago had explained that a "revision" "'suggests *fundamental* change,'" in contrast to an "amendment" which is a mere "'*correction* of detail.'" *Id.* at 296 (quoting *Kelly v Laing*, 259 Mich 212, 217; 242 NW 891 (1932)) (emphasis added). From *Laing* and another decision—*Pontiac School District v City of Pontiac*, 262 Mich 338; 247 NW 474 (1933)—the court developed the proper analysis: "the analysis should consider not only the *quantitative* nature of the proposed modification, but also the *qualitative* nature of the proposed modification." *Citizens*, 280 Mich App at 298. The analysis "must take into account the degree to which the proposal interferes with, or modifies, the operation of government. . . . [T]he greater the degree of interference with, or modification of, government, the more likely the proposal amounts to a 'general revision.'" *Id.*

The *Citizens* Court then turned to jurisprudence from *other* states to both confirm and elaborate the contours of this test. *Id.* at 299. Decisions from Delaware and Alaska applied a similar "quantitative/qualitative" approach to distinctions between an "amendment" (permissibly submitted to voters as a ballot proposal) and a "revision" (requiring a constitutional convention) under analogous constitutional provisions of those states. See *Citizens*, 280 Mich App at 303-

304 (discussing *Bess v Ulmer*, 985 P2d 979, 987 (Alaska 1999) (interpreting Alaska Const, art 13, §§ 1, 2) and *Opinion of the Justices*, 264 A2d 342, 346 (Del 1970) (interpreting Del Const, art 16, §§ 1, 2)). In *Bess v Ulmer*, the Supreme Court of Alaska explained that, in determining whether a particular question could be submitted to voters or required a convention, the "core determination is always the same: whether the changes are so significant as to create a need to consider the constitution as an organic whole." *Bess*, 985 P2d at 987.

The *Citizens* Court also found particularly instructive several decisions from California. See *Citizens*, 280 Mich App at 299, 303 (discussing *McFadden v Jordan*, 32 Cal 2d 330; 196 P2d 787 (Cal 1948) and *Raven v Deukmejian*, 52 Cal 3d 336; 801 P2d 1077 (Cal 1990)). In *McFadden*, the California Supreme Court held that a proposed initiative entitled the "California Bill of Rights," which would have repealed or altered 15 of the 25 articles in the California Constitution, added five new topics, and impacted the functions of the legislative and judicial branches, constituted a "revision" rather than an "amendment." *McFadden*, 32 Cal 2d at 345, 349-350. The *McFadden* Court pointed out that while the amendment procedure was "relatively simple," the constitution entrusted general revision to "the formidable bulwark of a constitutional convention as a protection against improvident or hasty (or any other) revision." *Id.* at 347.

Subsequent decisions of the California Supreme Court found that a "revision" can result from a change to only a *small* portion of the constitution if the change is fundamental. See *Raven*, 52 Cal 3d at 342-343, 350-51. In *Raven*, the California Supreme Court found that an initiative proposal affecting only a *single article* would have caused a fundamental change to the Constitution by limiting the interpretive powers of the California judiciary. *Id.* at 354-355. The proposal in *Raven* would have prevented California courts from interpreting the rights of criminal defendants more broadly than interpretations applied to the federal Constitution. *Id.* at

352. The court held that the initiative "substantially alter[ed] the substance and integrity of the state Constitution" and thus was not a proper subject matter for a ballot proposal. *Id.* at 352, 355.[4] It further held that a quantitatively large change could constitute a revision even if not qualitatively fundamental—"[s]ubstantial changes [to the constitution] *in either respect* could amount to a revision." *Raven*, 52 Cal 3d at 350 (emphasis added).

The *Citizens* Court concluded by stating "[w]e agree with the reasoning of these decisions and find them to be consistent with Michigan law. . . ." *Citizens*, 280 Mich App at 304. The Court summarized the Michigan test as follows:

> [T]o determine whether a proposal effects a "general revision" of the constitution, and is therefore not subject to the initiative process established for amending the constitution, the Court must consider both the quantitative nature and the qualitative nature of the proposed changes. More specifically, the determination depends on, not only the number of proposed changes or whether a wholly new constitution is being offered, but on the scope of the proposed changes and the degree to which those changes would interfere with, or modify, the operation of government. [*Id.* at 305.]

Turning finally to the RMGN Proposal before it, the *Citizens* Court had little trouble concluding that the proposal constituted a revision rather than an amendment. *Id.* Quantitatively, the proposal affected four articles, 24 existing sections, and added four new sections. *Id.* Qualitatively, the proposal was multifarious and made fundamental changes to the structure of government by altering legislative, judicial, and executive branch powers as well as the election process itself. *Id.* at 306. The court held that "the proposal does not even approach the field of application for the amendment procedure." *Id.* at 305 (quotations omitted). The court issued a writ of mandamus, finding "[t]he substantial entirety of the petition alters the core, fundamental

[4] See also *Amador Valley Joint Union High Sch Dist v State Bd of Equalization*, 22 Cal 3d 208. 223; 583 P2d 1281 (Cal 1978) ("[E]ven a relatively simple enactment may accomplish such far reaching changes in the nature of our basic governmental plan as to amount to a revision. . . .").

underpinnings of the constitution," and thus the "power of initiative established by Const 1963, art 12, § 2, for amending the constitution does not extend to the RMGN initiative petition." *Id.* at 307.

The Michigan Supreme Court affirmed this Court's decision in *Citizens Protecting Michigan's Constitution v Sec'y of State*, 482 Mich 960; 755 NW2d 157, 157 (2008). A majority of the justices, however, did not agree on the reasoning. Accordingly, as to the principles of law discussed, the decision of this Court in *Citizens* is binding precedent. *Tebo v Havlik*, 418 Mich 350, 362; 343 NW2d 181 (1984).

As discussed in the following section, like the RMGN Proposal, the VNP Proposal also alters the legislative, judicial, and executive branch powers specified in the constitution, and makes sweeping changes to the election process as well. These are fundamental changes and they would disrupt the basic structure of government. The same conclusion and result as followed with the RMGN Proposal should follow here as well.

2. The VNP Proposal is a general revision of the Constitution and thus not eligible for submission to the voters through the initiative process.

a. The VNP Proposal is a revision under the quantitative prong.

Application of the quantitative prong weighs conclusively in favor of a determination that the VNP Proposal is a revision rather than an amendment. The VNP Proposal would impact all three branches of Michigan government, changing the articles governing the legislative, judicial, and executive branches, repealing or altering 11 sections. While the VNP proposal does not add new sections, it inserts fully 22 new *subsections* in Const 1963, art 4, § 6.

In any framing, the VNP Proposal is massive. It would change approximately 4,834 words[5] in the Constitution—adding approximately 3,375 words and striking an additional 1,459 words. *The 4,834 words changed in the VNP Proposal would comprise more than 25% of the Michigan Constitution of 1963 as originally ratified.*[6] The exceptional size of the VNP Proposal can be seen by comparing it to other amendments: Between 1963 and 2010, 31 amendments to the Michigan Constitution have been adopted.[7] On average, each added a mere 559 words.[8] The VNP Proposal, in contrast, adds more than *six times* this average, to say nothing of the 1,459 words it deletes. Indeed, absent action by this Court preventing its placement on the 2018 general election ballot, the VNP Proposal would be the *largest ever* proposal submitted to voters outside of the work of a constitutional convention.[9]

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[5] For comparison, the entire United States Constitution as originally ratified (*i.e.*, without counting subsequent amendments) was only 4,543 words.

[6] As originally enacted, the 1963 Constitution was 19,203 words. See Citizens Research Council of Michigan, Amending the Michigan Constitution: Trends and Issues, Special Report, at 2, (No. 360-03, March 2010) available at http://www.crcmich.org/PUBLICAT/2010s/2010/rpt36003.pdf (last visited April 16, 2018).

[7] *Id.* at 1-2.

[8] *Id.*

[9] For discussion of prior initiatives submitted to voters and the number of articles and sections impacted, see Secretary of State, Initiatives and Referendums Under the Constitution of the State of Michigan of 1963 (2008), available at https://www.michigan.gov/documents/sos/Const_Amend_189834_7.pdf (last visited April 16, 2018).

The voters of Michigan cannot constitutionally be asked to vote on such a measure. Certainly, they should not be asked to do so without the benefit of the recommendation of a constitutional convention as required by Const 1963, art 12, § 3.[10]

Under the Constitution, amendments are meant to be mere "correction[s] of detail," *Citizens*, 280 Mich App at 296 (quotations omitted). They are not meant to be sprawling compilations of changes, with multiple purposes that voters must decide to adopt or reject all at once. As the California Supreme Court explained in *McFadden*, such proposals are unacceptable for submission to the voters without a convention:

> The proposal is offered as *a single amendment* but it obviously is multifarious. It does not give the people an opportunity to express approval or disapproval severally as to each major change suggested; rather does it, apparently, have the purpose of aggregating for the measure the favorable votes from electors of many suasions who, wanting strongly enough any one or more propositions offered, might grasp at that which they want, tacitly accepting the remainder. Minorities favoring each proposition severally might, thus aggregated, adopt all. Such an appeal might well be proper in voting on a revised constitution, proposed under the safeguards provided for such a procedure, but it goes beyond the legitimate scope of a single amendatory article. [*McFadden*, 32 Cal 2d at 346 (emphasis added).]

[10] In addition to deciding on whether to recommend wholesale constitutional revision for submission to the voters, constitutional conventions are empowered to "explain and disseminate information about the proposed constitution" to the public. Const 1963, art 12, § 3. For the 1907-08 Convention, this included an "Address to the People" issued as part of the 1908 Report of the Committee on Submission; this Address described major changes and explained the Convention's the reasons behind submitting them. For the 1961-62 Constitutional Convention, this included a lengthy (109-page) pamphlet entitled "What the New State Constitution Means to You: A Report to the People of Michigan by their Elected Delegates to the Constitutional Convention of 1961-62," again explaining the process, purpose, and specific recommendations of the Convention. Voters do not have the benefit of similar official explanatory materials when considering whether to ratify an amendment.

The language of Michigan's Constitution supports this interpretation of the word "amendment" as meaning a short correction to the existing constitution with a narrow purpose. Const 1963, art 12, § 2 uses the word "amendment" in the singular ten times; it requires that each "ballot . . . contain a statement of the *purpose* of the proposed amendment"—not the *purposes*. Const 1963, art 12, § 2 (emphasis added). The VNP Proposal has multiple purposes and makes multiple amendments.

State law confirms that an "amendment" is to be limited in scope. Unlike revisions enacted through constitutional conventions, the purpose of a constitutional *amendment*, under state law, must be susceptible to summarization in 100 words. See Const 1963, art 12, § 2; MCL 168.32(2). The VNP Proposal is too massive and too varied in its purposes to possibly be summarized in 100 words in a way that will apprise the voters of its effects on their Constitution in the manner contemplated by law. See Const 1963, art 12, § 2; MCL 168.32(2). The sheer scale of the VNP Proposal similarly means that it could not have been reasonably summarized to apprise persons signing a circulated petition of those same effects.[11]

With these considerations in mind, there can be little doubt that the VNP Proposal works a revision to the Michigan Constitution under the quantitative prong. Further, as is set forth below, the qualitative prong *also* supports the VNP Proposal's lack of ballot eligibility.

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[11] In *Citizens Protecting Michigan's Constitution*, three justices of the Michigan Supreme Court would have held that the RMGN Proposal's size and multiple purposes made summarizing its purpose in 100 words an impossibility, and that this provided an independent basis for withholding the RMGN Proposal from the 2008 general election ballot. See 482 Mich at 960 (Cavanagh, Weaver, and Markman, JJ., concurring). These justices noted that the 100 word requirement in article 12, § 2 "establishes a clear limitation on the scope of constitutional amendments under § 2." *Id.* Because of the VNP Proposal is expansive and multifarious, it is similarly unsusceptible to summary in 100 words in any manner that would meaningfully apprise voters of its purposes.

b. The VNP Proposal is a revision under the qualitative prong.

i. The VNP Proposal creates a "superagency," in effect an additional branch of government that combines powers of all three branches, but is shielded from the checks and balances built into the Constitution.

Like the RMGN Proposal at issue in *Citizens*, the VNP Proposal has many purposes. The VNP Proposal seeks to enact, among other things, the following major changes to the Constitution:

Impact on Legislative Powers and Oversight

1. The VNP Proposal creates a 13 member "independent" redistricting commission in the legislative branch and transfers to it *all lawmaking powers over redistricting* of the Legislature and the Michigan congressional delegation. (Ex. 1, VNP Proposal, art 4, § 6(1).)

2. Even though established in the legislative branch, the commission is vested with "exclusive" control over redistricting and is not subject to the control of the Legislature. (Ex. 1, VNP Proposal, art 4, § 6(22).)

3. The Legislature is stripped of control over commission appropriations and budgeting measures; the proposal mandates that the commission shall receive a minimum of an amount equal to 25% of the Department of State's annual budget—more if the commission alone determines it needs more. Further, the State is required to *indemnify* commission members for costs incurred even if the Legislature does not approve funds to do so, which is directly contrary to Const 1963, art 7, § 17. (Ex. 1, VNP Proposal, art 4, § 6(5).)

4. The VNP Proposal precludes legislative oversight, and the powers of the secretary of state are vastly expanded by placing that official in charge of the redistricting commission and the selection of redistricting commission members. (And because commission members are required to have no recent political experience, they will be susceptible to the influence of the partisan-elected secretary of state). (Ex. 1, VNP Proposal, art 4, § 6(2).)

Limitations on Executive Branch Oversight

5. Commission members are accountable to no one but themselves and cannot be removed by the governor under Const 1963, art 5, § 10, or disciplined by the Civil Service Commission. (Ex. 1, VNP Proposal, art 5, § 2.)

6. The governor is stripped of all budgeting control over the commission; the governor has no power to order expenditure reductions under Const 1963, art 5, § 20 as he or she can for other agencies. (*Id.*)

7. The commission is vested with exclusive control over procuring, contracting, and hiring staff, consultants, and lawyers. (Ex. 1, VNP Proposal, art 4, § 6(4).)

8. Commission members are guaranteed a salary equal to 25% of the governor's salary, and that amount may not be changed by any other body including the Legislature or the Civil Service Commission. (Ex. 1, VNP Proposal, art 4, § 6(5).)

Limitations on Judicial Powers

9. The VNP Proposal vests original jurisdiction in the Michigan Supreme Court to review redistricting plans for compliance with state and federal constitutional requirements but strips the Supreme Court and the judiciary of the power to fashion a remedy if a plan is found defective; the only allowable action is to return the plan to the commission. (Ex. 1, VNP Proposal, art 4, § 6(19).)

Changes to the Constitutional Criteria Governing Legislative and Congressional Districts

10. The VNP Proposal dispenses with the current requirement that districts be drawn along county and municipal boundaries to the extent possible, a requirement that has been in every Michigan constitution since 1835. (Ex. 1, VNP Proposal, art 4, § 6(13).)

11. The VNP Proposal also dispenses with the current mandatory requirement that districts be compact. (*Id.*)

12. Existing *mandatory* redistricting criteria (*i.e.*, the requirement that districts follow county and municipal boundaries) are scrapped and replaced with a laundry list (in descending order of priority) of *non-mandatory* criteria beginning with "Districts shall reflect the state's diverse population and communities of interest" which is no standard at all. "Reasonable" compactness is last on the list and "consideration of county, city, and township boundaries" is second to the last. (*Id.*)

13. The VNP Proposal's other new criteria may be impossible or nearly impossible to implement: "Districts shall not provide a disproportionate advantage to any political party" as determined by undefined "accepted measures of political fairness" of which there are none that have been recognized by the courts. Similarly, the VNP Proposal directs that districts shall not "favor or disfavor" incumbents without providing a clue

as to what that actually means. (*Id.*)[12]

Elimination of Direct Democracy Powers as to Redistricting

14. The VNP Proposal eliminates the right of the people to nullify a redistricting plan by referendum or to repeal or modify a plan by citizens' initiative.[13]

Any one of these changes will present a serious modification to and interference with the existing structures of the Constitution; taken as a whole, these changes unquestionably upend key constitutional foundations and reorganize the operation of the entirety of state government. No branch is spared—even the judiciary's powers over redistricting (both as to review and remedy) have been curtailed and displaced. The new commission is a "superagency"—a chimera,[14] helmed by a partisan-elected official in the executive branch (the secretary of state), but placed in the legislative branch (albeit with no legislative control or oversight), and moreover, immune from most types of remedial orders now available to the judicial branch. In this superagency, the

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[12] Another requirement that will be impossible to comply with is the mandate in the VNP Proposal that the Secretary select each of the thirteen commissioners in a manner that "as closely as possible, mirror[s] the … demographic makeup of the state." See Ex. 1, VNP Proposal, art. VI, § 6(2)(D)(ii). There are literally hundreds if not thousands of demographic characteristics the Secretary can choose from, such as race, age, gender, income, military service, primary language, disability, education level, occupation, marital status, sexual preference, union membership, religious preference, or any other number of factors. The Secretary will be able to choose in each cycle whatever factors best suit the Secretary's political preference, but with only 13 commission members, it will never be possible to "mirror" the "demographic makeup of the state."

[13] In Const 1963, art 9, § 9, the Constitution provides that "[t]he people reserve to themselves the power to propose laws and to enact and reject laws, called the initiative, and the power to approve or reject laws enacted by the legislature," which power "extends only to laws which the legislature may enact under this constitution." Because "exclusive" power over redistricting would be reposed in the new commission, the VNP Proposal would also eliminate the People's direct power—a fundamental change.

[14] Any mythical animal with parts taken from various animals. Chimera Definition, OxfordDictionaries.com, https://en.oxforddictionaries.com/definition/chimera (last visited April 16, 2018).

powers of all three branches are to be reposed, and many of the checks and balances otherwise imposed on the three branches are rendered inoperative.

The creation of a new, independent agency—standing fully outside of the control of the governor or the legislature—is contrary to one of the primary policies of the 1961-62 Constitutional Convention. By the late 1950s, the number of government agencies and questions over the location of executive control had grown unwieldy, and there was little central control over many of them. The executive branch contained some 120 agencies, many of which exercised unsupervised control over affairs within their respective realms. Following a 1959 cash crisis and payless payday, the delegates to the Convention proposed new measures for the streamlining of government by reducing such agencies to no more than 20 and for assuring centralized oversight and management of agencies by a single executive.[15] The VNP Proposal

[15] As explained by the Michigan Supreme Court in *House Speaker v Governor*, 443 Mich 560, 562; 506 NW2d 190 (1993) with respect to the purposes of the 1961 and 1962 constitutional convention: "Perhaps the biggest need for restructuring was in the executive branch, which, before the new constitution, was composed of so many boards, commissions, and departments that the executive branch lacked any kind of effective coordination or supervision." The Court explained further:

> To give the Governor, at its head, some real control over the executive branch, the convention delegates agreed that the executive branch had to be given some logical structure. To provide such structure, the constitution included a provision mandating that all entities within the executive branch be allocated among and within not more than twenty principal departments. [*Id.* at 562-563 (footnotes omitted).]

[Footnote continues....]

reverses these fundamental policy reforms made in the 1963 Constitution. The new commission creates a new fiefdom with no ability of the voters to reign in its powers by ordinary political means (except perhaps through yet another constitutional amendment).

ii. The VNP Proposal abandons core redistricting criteria that have existed since the State's founding.

But perhaps most disruptive is the VNP Proposal's impact on the election process itself. Legislative districts are the building blocks of a representative government. The VNP Proposal disrupts the very means by which the People's representatives are chosen. Nothing is more fundamental to the entire legislative process.[16] For this reason, the Michigan Supreme Court long ago recognized that "[*a*]*ny* change in the means by which the members of the Legislature are chosen is a fundamental matter." *In re Apportionment of State Legislature—1982*, 413 Mich 96, 136-137; 321 NW2d 565 (1982) (emphasis added). In *Citizens*, this Court referred to authority over and the means of redistricting as affecting the "'foundation power' of government." *Citizens*, 280 Mich App at 306.

The Court cited to the convention record for support. See *id.* at 562 n 1 and n 2 ("As one convention delegate stated: 'Reorganization is a must if the governor is to have a structure of government such that he can maintain contact with the heads of his principal departments in such a way as to not only know what is going on but to be able to give some supervision and direction to the functioning of state government."); see also *id.* at 582 n 28, 583 n 29 (citing further convention statements). The 1963 Constitution similarly added a provision establishing a bi-partisan legislative council to centralize and oversee bill drafting, research, and other services for members of the Legislature. See Const 1963, art 4, § 15; see also 2 Official Record, Constitutional Convention 1961, p. 2389 ("We felt, however, that there was a reason for adding this provision in the constitution, in that it gave additional strength to the one single thing which the legislature can do to make itself the strongest possible kind of a legislature, to go along with the strong governor here in Michigan.").

[16] The "Guarantee Clause" of the United States Constitution requires that every state have a "Republican Form of Government." US Const, art IV, § 4.

The VNP Proposal *both* transfers the historical legislative power over redistricting to a new commission, but also adopts nebulous and alien standards for the drawing of districts. These new standards abandon the longstanding core redistricting criteria that district boundaries follow existing county and municipal lines—criteria that have been imposed by every Michigan Constitution *since at least 1835*.

As the Michigan Supreme Court explained:

> We see in the constitutional history of this state dominant commitments to contiguous, single-member districts drawn along the boundary lines of local units of government which, within those limitations, are as compact as feasible. [*In re Apportionment of State Legislature—1982*, 413 Mich at 140.]

As further observed by Justices Levin and Fitzgerald:

> [O]ne cannot deny that throughout its history Michigan has remained firmly committed to avoiding the fragmentation of county lines and, more recently, . . . avoiding the fragmentation of city and township lines. . . . [C]ounty lines have remained inviolate. The reason for following county lines was not the "political unit" theory of representation but rather that each Michigan Constitution has required preservation of the electoral autonomy of the counties. [*In re Apportionment of State Legislature—1982*, 413 Mich 149, 186-187; 321 NW2d 585 (1982) (Levin and Fitzgerald, JJ., concurring).]

Indeed, "Michigan's adherence to the principle that county and township lines should be preserved in the creation of election districts *dates back to the formation of the Northwest Territory on July 13, 1787*, and has been voiced in every Michigan constitution adopted since that date." *In re Apportionment of State Legislature—1982*, 413 Mich at 129-130 n 18 (citing, *inter alia*, Northwest Ordinance 1787, § 9; Const 1835, art 4, § 4; Const 1835, art 4, § 6; Const 1850, art 4, § 2; Const 1850, art 4, § 3; Const 1908, art 5, § 2; Const 1908, art 5, § 3) (emphasis added).

The framers of the current 1963 Constitution also emphasized the primary importance of county lines. *Id.* at 131 n 19. As explained by the Supreme Court in *In re Apportionment of State Legislature—1982:*

> The overarching priority that the delegates to the constitutional convention attached to the preservation of county units, while discernible upon an examination of the final product of their deliberations, is underscored by statements made on the floor of the convention. . . . In speaking about the Senate plan, the majority report [of the Committee on Legislative Organization] said " . . . *the county unit become*[*s*] *the major building block in creating senate districts*." 2 Official Record, Constitutional Convention 1961, p 2036.
>
> Insofar as the House plan was concerned, the majority report said: "All house districts will follow county boundary lines. This is recommended in order to assure citizens clearly identifiable and traditionally recognized voting districts, and to conform to the long established county organization patterns of many groups, including the political parties. Many states follow county lines in districting, and the weight of testimony heard by the committee overwhelmingly favored continuing this practice in Michigan." 2 Official Record, p 2036. [*Id.*]

The Supreme Court went on to quote Delegate Dehnke:

> The paramount importance of the county line principle was also discussed at length by Delegate Dehnke, himself a member of the Committee on Legislative Organization, when he took the floor to defend the majority report[:] "Now it has been recognized—it became clear early in our proceedings before the committee—that the delegates from both sides were agreed that it would not be advisable to permit the cutting of counties in forming legislative districts in either house. Practical considerations convinced both groups that this would not be advisable and should not be done if it could possibly be avoided. Counties, of course, are not sovereign entities. I don't know of anyone who claimed that they were. But, historically, our counties have been formed for the convenience of the state, to facilitate the administration of government. They may be said to be the agents of the state, as a convenient unit for the administration of state laws and the maintenance of law and order; for judicial administration, for welfare administration, for keeping records of deeds, probates and so on." 2 Official Record, p 2099. [*Id.*]

The Supreme Court also pointed out that preserving county lines was more important to the framers than other redistricting criteria including compactness, uniformity, and squareness:

> When comments such as these are taken into account, there can be little room to doubt that the integrity of county lines was a *principle of prime importance* to the framers of the 1963 Constitution. The primacy under the 1963 Constitution of the county-line requirement is such that it takes precedence over the other criteria of preserving city and township lines (in those few instances where they cross county lines), compactness, uniformity and squareness. [*Id.*]

The Supreme Court—in adopting the integrity of county and municipal lines as the Court's *own* primary goal for drafting the 1982 apportionment plan—went on to explain, quoting delegate W. F. Hanna, the benefits of following county and municipal lines, including minimizing the potential for gerrymandering:

> The provisions of the 1963 Constitution requiring that election districts be organized along county, city and township lines to the extent possible (i) enable voters living in a particular community to combine their votes more effectively to elect a representative from that area, (ii) facilitate the conduct of the election by reducing the number of precincts and special ballots, (iii) tend to preserve existing political party organizations, and (iv) *limit the potential for gerrymandering*. [*Id.* at 133 n 20 (emphasis added).]

Ten years later, the Supreme Court reiterated the importance of honoring jurisdictional lines "in order to foster effective representative government." *In re Apportionment of the State Legislature—1992*, 439 Mich 251, 252; 483 NW2d 52 (1992).[17]

[17] In 1981-82, the Michigan Supreme Court was called upon to draft redistricting plans for the state legislature because the legislature and the governor were unable to agree on plans. The court established detailed redistricting criteria and rules premised on the constitutional preference for drawing district lines along county and municipal boundaries. These criteria came to be known as the "Apol Standards," named after the special master retained by the court in 1982. The Apol Standards were utilized by the court in 1982 and again in 1992 after both political parties endorsed their use. See *In re Apportionment of State Legislature—1982*, 413 Mich at 140-141; *In re Apportionment of State Legislature—1992*, 439 Mich 715, 720-722; 486 NW2d 639 (1992). [Footnote continues...]

The VNP Proposal, as detailed above, does much more than just depart from the principle of following county and municipal lines. It restricts powers of the courts to review plans, of the governor to remove public officers and control budgetary matters, and of Legislature (and the people themselves, for that matter) to make revisions to redistricting plans after their initial adoption by the VNP commission. It shifts the locus of power over redistricting decisions to an entirely new unelected body, and supplies an alien set of novel criteria for that body to use. According to the Supreme Court, "[*a*]*ny* change in the means by which the members of the Legislature are chosen is a fundamental matter." See *In re Apportionment of State Legislature—1982*, 413 Mich at 136-137. The VNP Proposal is not limited to a single change in the means by which members of the legislature are chosen; it makes *many* such fundamental changes.

This last point is well illustrated by the decision in *Citizens.* In its decision on the RMGN Proposal, this Court in *Citizens* highlighted one change *in particular* in explaining why the proposal satisfied the "qualitative" prong of the revision versus amendment test:

> The impact of the proposal on the operation of the three branches of government, and the electoral process, is substantial. As just

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The Apol Standards' application to State House and Senate districts was codified in 1996. See MCL 4.261. Congressional redistricting follows largely the same standards. See MCL 3.63 (adopted in 1999). The Apol Standards require single member districts, and require districts to be areas of convenient territory contiguous by land. MCL 4.261(a)-(c); see also MCL 3.63(c)(i). They further specify that State House and Senate districts shall have population not exceeding 105% and no less than 95% of the ideal district size, with even smaller variation (102% to 98%) permitted in cities or townships with more than one district. MCL 4.261(d), (i). The Apol Standards establish a hierarchy for their application. MCL 4.261(e)-(h); see also MCL 3.63(c)(i)-(ix). First, "district lines shall preserve county lines with the least cost to the principle of equality of population." MCL 4.261(e); see also MCL 3.63(c)(ii) ("Congressional district lines shall break as few county boundaries as is reasonably possible."). Second, the Legislature should avoid breaking municipal boundaries to the extent possible. MCL 4.261(f)-(g); see also MCL 3.63(c)(iv). Only when necessary to stay within the range of allowable population divergence may the Legislature break municipal lines. MCL 4.261(h); see also MCL 3.63(c)(v).

The Apol Standards will be abandoned if the VNP Proposal is adopted.

> one example, the proposal strips the Legislature of any authority to propose and enact a legislative redistricting plan. It abrogates a portion of the judicial [sic, legislative] power by giving a new executive branch redistricting commission authority to conduct legislative redistricting. It then removes from the judicial branch the power of judicial review over the new commission's actions. We agree with the Attorney General that the proposal affects the "foundation power" of government by "wresting from" the legislative branch and the judicial branch any authority over redistricting and consolidating that power in the executive branch, albeit in a new independent agency with plenary authority over redistricting. [*Citizens*, 280 Mich App at 306.]

As with the RMGN Proposal in *Citizens*, this Court should find that the expansive and fundamental changes of the VNP Proposal—including but not limited to changes displacing county lines as the primary criteria of redistricting—are too disruptive to the structures of government to be achieved as an amendment. These changes are not some mere "correction of detail," *Citizens*, 280 Mich App at 296 (quotations omitted), but a general revision of the Constitution, and a writ of mandamus should issue to prevent the VNP Proposal from being placed on the ballot.

C. The VNP Proposal violates the requirement that petitions republish all provisions that would be altered or abrogated by a proposed amendment.

1. State law requires that all portions of the constitution that are "altered or abrogated" must be published as part of the circulated petition.

To properly inform voters, the Constitution requires publication before election of all constitutional provisions that a proposed constitutional amendment would alter or abrogate. "Such proposed amendment, existing provisions of the constitution which would be altered or abrogated thereby, and the question as it shall appear on the ballot shall be published in full as provided by law." Const 1963, art 12, § 2. Pursuant to the power granted by the Constitution to

prescribe the requirements for *petitions*, the legislature "extend[ed] the educational function of this requirement to persons signing petitions" as well. *Ferency v Sec'y of State*, 409 Mich 569, 592-593; 297 NW2d 544 (1980). Thus, in section 482 of the Michigan Election Law, the Legislature has required that "[i]f the proposal would alter or abrogate an existing provision of the constitution, the petition shall so state and the provisions to be altered or abrogated shall be inserted. . . ." MCL 168.482(3).

These requirements are aimed at ensuring that all petition signers and, potentially, eventual voters "are fully informed of the [e]ffect" of the petition they are being asked to sign. See, e.g., *Carman v Sec'y of State*, 384 Mich 443, 454; 185 NW2d 1 (1971). That is, these protections "advise the elector" as to the constitutional changes being made by the petition he or she is being asked to support. *Coalition to Defend Affirmative Action & Integration v Bd of State Canvassers*, 262 Mich App 395, 401; 686 NW2d 287 (2004) (quotations omitted). Without these protections, a petition signer would sign a petition without understanding the impact of doing so, thereby inadvertently supporting a proposition with which he or she does not understand or actually agree.

2. A provision is abrogated when it is rendered a nullity.

Before turning to the multiple, specific provisions of the existing Constitution abrogated by the VNP Proposal *but not republished in the petition*, Plaintiffs provide a brief summary of how the term "abrogated" has been defined by the Michigan Supreme Court. A proposed amendment "*abrogates* an existing provision when it renders that provision wholly inoperative." *Protect Our Jobs*, 492 Mich at 773 (emphasis added). An existing constitutional provision is rendered wholly inoperative "if the proposed amendment would make the existing provision a

nullity or if it would be impossible for the amendment to be harmonized with the existing provision when the two provisions are considered together." *Id.* at 783 (footnote omitted).

The Michigan Supreme Court has explained that the potential of abrogation is high where existing provisions of the Constitution confer exclusive or complete control on a particular person or entity:

> Determining whether the existing and new provisions can be harmonized requires careful consideration of the actual language used in both the existing provision and the proposed amendment. An existing provision that uses nonexclusive or nonabsolute language is less likely to be rendered inoperative simply because a proposed new provision introduces in some manner a change to the existing provision. . . . [A] proposed amendment more likely renders an existing provision inoperative if the existing provision creates a mandatory requirement or uses language providing an exclusive power or authority because any change to such a provision would tend to negate the specifically conferred constitutional requirement. [*Id.*]

The analysis is also a granular one, and "requires consideration of not just the whole existing constitutional provision, but also the provision's discrete subparts, sentences, clauses, or even, potentially, *single words*." *Id.* at 784 (emphasis added).

This principle was applied by the Michigan Supreme Court in *Protect Our Jobs*. There, the Court considered, among other initiatives, a proposal to amend the Constitution to establish eight casinos at specified locations (the "Casino Proposal"). *Id.* at 775. The Casino Proposal would have added language requiring that "[a]ll [eight] of the casinos authorized by this section shall be granted liquor licenses issued by the state of Michigan. . . ." *Id.* at 790 (quotations omitted) (emphasis omitted). The petition circulated in support of the Casino Proposal failed, however, to republish Const 1963, art 4, § 40, which states that the "liquor control commission which . . . shall exercise *complete control* over the alcoholic beverage traffic within this state." Const 1963, art 4, § 40 (emphasis added); *Protect Our Jobs*, 492 Mich at 791.

The court in *Protect Our Jobs* held that the absolute language of Const 1963, art 4, § 40—conferring "complete control" on the liquor control commission—necessarily communicates exclusivity of control, and that "*any* infringement on that control abrogates that exclusivity; an amendment that contemplates anything less than complete control logically renders that power in § 40 inoperative." *Protect Our Jobs*, 492 Mich at 790-791. Because the proposed addition in the Casino Proposal would "nullify the complete control" of the liquor commission, the court held that republication was required. *Id.* at 791. It did not matter that the abrogation of the "complete control" was slight—the court explained that "[e]ven though the amendment affects only a small fraction of the power to control alcoholic beverage traffic, which power itself is only a portion of Const 1963, art 4, § 40, a provision of § 40 has been negated and, thus, abrogated, thereby requiring republication of the entire constitutional section." *Id.* at 791 n 32. The failure of the circulators of the Casino Proposal to republish Const 1963, art 4, § 40 as part of the circulated petition was thus a fatal violation of MCL 168.482(3), and the court prevented the entire Casino Proposal from reaching the 2012 general election ballot. *Id.* at 791.

The legal principles enunciated in *Protect Our Jobs* are controlling here.

3. The VNP Proposal petition failed to republish multiple provisions of the existing Constitution that would be abrogated if the Proposal is adopted.

The same fatal flaw that existed for the Casino Proposal in *Protect Our Jobs* is present in the petition that circulated the VNP Proposal, but multiple times over. That is, the VNP Proposal has failed to republish *several* sections of the existing Constitution even though absolute or exclusive provisions in these sections will be nullified by the Proposal's adoption. These include the following:

a. Const 1963, art 6, § 13

Existing Const 1963, art 6, § 13 provides in relevant part as follows:

> **§ 13. Circuit courts; jurisdiction, writs, supervisory control over inferior courts.**
> Sec. 13. The circuit court *shall have original jurisdiction in all matters* not prohibited by law. . . . [Const 1963, art 6, § 13 (emphasis added).]

Conversely, article 4, § 6(19) of the VNP Proposal, if adopted, will provide, in relevant part:

> (19) THE SUPREME COURT, *IN THE EXERCISE OF ORIGINAL JURISDICTION*, SHALL DIRECT THE SECRETARY OF STATE OR THE COMMISSION TO PERFORM THEIR RESPECTIVE DUTIES, MAY REVIEW A CHALLENGE TO ANY PLAN ADOPTED BY THE COMMISSION, AND SHALL REMAND A PLAN TO THE COMMISSION FOR FURTHER ACTION IF THE PLAN FAILS TO COMPLY WITH THE REQUIREMENTS OF THIS CONSTITUTION, THE CONSTITUTION OF THE UNITED STATES OR SUPERSEDING FEDERAL LAW. [Ex. 1, VNP Proposal, art 4, § 6(19) (emphasis added).]

Like the provision conferring "complete control" over liquor licensing to the liquor control commission in *Protect Our Jobs*, Const 1963, art 6, § 13 confers original jurisdiction in "*all* matters not prohibited by law" on the circuit court and is exclusive and absolute. Const 1963, art 6, § 13 (emphasis added). The proposed amendment would divest the circuit court of its exclusive original jurisdiction, not by law[18] but by a constitutional amendment. Const 1963, art 6, § 13 cannot be harmonized with the VNP Proposal's conferring of original jurisdiction on the Supreme Court, and Const 1963, art 6, § 13 thus would be abrogated by the VNP Proposal.

[18] The phrase "prohibited by law" refers exclusively to prohibitions provided by the Legislature. See *People v Bulger*, 462 Mich 495, 509; 614 NW2d 103 (2000) ("[T]his Court has consistently held that the use of the phrase 'provided by law' in our constitution contemplates *legislative* action."), *abrogated on other grounds by Halbert v Michigan*, 545 US 605 (2005).

The VNP Proposal does not republish Const 1963, art 6, § 13, and thus does not comply with the requirements of Michigan law. See MCL 168.482(3).

b. Const 1963, art 1, § 5

Existing Const 1963, art 1, § 5 provides in relevant part as follows:

> **§ 5. Freedom of speech and of press.**
> Sec. 5. *Every person* may freely speak, write, express and publish his views on *all* subjects, being responsible for the abuse of such right. . . . [Const 1963, art 1, § 5 (emphasis added).]

Conversely, article 4, § 6(11) of the VNP Proposal, if adopted, will provide, in relevant part:

> (11) THE COMMISSION, ITS MEMBERS, STAFF, ATTORNEYS, AND CONSULTANTS *SHALL NOT DISCUSS REDISTRICTING MATTERS* WITH MEMBERS OF THE PUBLIC OUTSIDE OF AN OPEN MEETING OF THE COMMISSION, EXCEPT THAT A COMMISSIONER MAY COMMUNICATE ABOUT REDISTRICTING MATTERS WITH MEMBERS OF THE PUBLIC TO GAIN INFORMATION RELEVANT TO THE PERFORMANCE OF HIS OR HER DUTIES IF SUCH COMMUNICATION OCCURS (A) IN WRITING OR (B) AT A PREVIOUSLY PUBLICLY NOTICED FORUM OR TOWN HALL OPEN TO THE GENERAL PUBLIC. . . . [Ex. 1, VNP Proposal, art 4 § 6 (emphasis added).]

The existing rights conferred in Const 1963, art 1, § 5 are both exclusive and absolute—"every person" may speak on "all subjects." The proposed amendment, if approved, would restrict the commission, its staff, attorneys, and consultants[19] from discussing any "redistricting matters"—not merely commission activities, but even redistricting matters in other states or

[19] Governmental employees "do not forfeit their constitutionally protected free speech interest by virtue of accepting government employment." *Shirvell v Dep't of Attorney Gen*, 308 Mich App 702, 732; 866 NW2d 478 (2015). When and whether a public employee's speech is protected by the constitutional guarantee of free speech is subject to a content-specific balancing analysis, including whether the employee is speaking "as a citizen upon matters of public concern" or only on matters of personal interest, and whether the government can show sufficient justification for its restrictions related to its purposes as the employer. See *id.* at 733-736. The VNP Proposal would dispense with this framework, barring speech on all "redistricting matters" regardless of content or context.

appellate court or local redistricting not altered by the proposed constitutional amendment—outside of a public meeting, or in certain limited circumstances, in writing. The proposed restrictions on the liberty of speech would extend beyond to matters beyond Commission activities, and in any event, cannot be harmonized with and are thus incompatible with the existing protections for unrestricted speech conferred by Const 1963, art 1, § 5.

The VNP Proposal does not republish Const 1963, art 1, § 5, and thus does not comply with the requirements of Michigan law. See MCL 168.482(3).

c. Const 1963, art 9, § 17

Existing Const 1963, art 9, §17 provides in relevant part as follows:

> **§ 17 Payments from state treasury.**
> Sec. 17. *No* money shall be paid out of the state treasury *except* in pursuance of appropriations made by law. [Const 1963, art 9, § 17 (emphasis added).]

Conversely, article 4, § 6(5) of the VNP Proposal, if adopted, will provide, in relevant part:

> (5) . . . EACH COMMISSIONER *SHALL* RECEIVE COMPENSATION AT LEAST EQUAL TO 25 PERCENT OF THE GOVERNOR'S SALARY. THE STATE OF MICHIGAN *SHALL* INDEMNIFY COMMISSIONERS FOR COSTS INCURRED *IF THE LEGISLATURE DOES NOT APPROPRIATE SUFFICIENT FUNDS* TO COVER SUCH COSTS. [Ex. 1, VNP Proposal, art 4 § 6(5) (emphasis added).]

The existing constitutional provision affected (Const 1963, art 9, § 17) is both exclusive and absolute—"no money shall be paid" from the state treasury in the absence of an appropriation made by law. This provision is incompatible with the proposed requirement that the State of Michigan compensate and indemnify commissioners for costs incurred even in the absence of an appropriation. That incompatibility would render existing Const 1963, art 9, § 17 a nullity, and thus abrogate Const 1963, art 9, § 17.

The VNP Proposal does not republish Const 1963, art 9, § 17, and thus does not comply with the requirements of Michigan law. See MCL 168.482(3).

d. Const 1963, art 11, § 1

Existing Const 1963, art 11, § 1 provides in relevant part as follows:

> **§ 1 Oath of Public Officers.**
> Sec. 1. All officers, legislative, executive and judicial, before entering upon the duties of their respective offices, shall take and subscribe the following oath or affirmation: I do solemnly swear (or affirm) that I will support the Constitution of the United States and the constitution of this state, and that I will faithfully discharge the duties of the office of ..... according to the best of my ability. *No other oath*, affirmation, or any religious test *shall be required as a qualification for any office or public trust.* [Const 1963, art 11, § 1 (emphasis added).]

Conversely, article 4, § 6(2) of the VNP Proposal, if adopted, will provide, in relevant part:

> (2) COMMISSIONERS SHALL BE SELECTED THROUGH THE FOLLOWING PROCESS:
>
> (A) THE SECRETARY OF STATE SHALL DO ALL OF THE FOLLOWING:
>
> ***
>
> (III) REQUIRE APPLICANTS TO *ATTEST UNDER OATH* THAT THEY MEET THE *QUALIFICATIONS* SET FORTH IN THIS SECTION; AND EITHER THAT THEY AFFILIATE WITH ONE OF THE TWO POLITICAL PARTIES WITH THE LARGEST REPRESENTATION IN THE LEGISLATURE (HEREINAFTER, "MAJOR PARTIES") AND IF SO, IDENTIFY THE PARTY WITH WHICH THEY AFFILIATE, OR THAT THEY DO NOT AFFILIATE WITH EITHER OF THE MAJOR PARTIES. . . . [Ex. 1, VNP Proposal, art 4, § 6(2) (emphasis added).]

The VNP Proposal would require any person applying to become a commissioner to attest under oath that he or she meets the qualifications for the office of commissioner. The existing provisions of Const 1963, art 11, § 1 are both exclusive and absolute—"*no other oath* shall be required" as a qualification of assuming office. The two provisions are incompatible.

The proposed oath requirement for persons seeking to qualify as a commissioner cannot be harmonized with the one-oath mandate of the existing Constitution. The adoption of the former would render the latter a nullity, and abrogate the existing oath provision.

The VNP Proposal does not republish Const 1963, art 11, § 1, and thus does not comply with the requirements of Michigan law.[20] See MCL 168.482(3).

4. The failure to republish abrogated sections in the petition circulated by VNP precludes placement of the VNP Proposal on the 2018 general election ballot.

Omission of any one of the above abrogated provisions of the existing Constitution is fatal to the VNP Proposal. A petition is invalid if it fails to republish even a slight abrogation of the Constitution's existing language. *Protect Our Jobs*, 492 Mich at 784, 791.

As with the Casino Proposal in *Protect Our Jobs*, this Court again should direct that the VNP Proposal was not properly circulated as required by MCL 168.482(3), and thus that it is incapable of being submitted to the voters. The Secretary should be directed to carry out that determination.

[20] Because of the sweeping nature of the VNP Proposal, other examples could be found. For example, the VNP Proposal would abrogate—without republishing—Const 1963, art 11, § 5, which section states that the Civil Service Commission shall have authority to regulate "all conditions of employment in the classified service." Const 1963, art 11, § 5. Conversely, the VNP Proposal states that "*no employer* shall discharge ... any employee because of the employee's membership on the commission or attendance or scheduled attendance at any meeting of the commission." Ex. 1, art 4, §6(21). In the event a commission member is selected from among the employees in the classified service, the Civil Service Commission's exclusive authority over "all conditions of employment" will no longer be exclusive; it could not, for example, authorize disciplinary action against a state employee for repeatedly missing work to participate in the affairs of the redistricting commission.

IV. CONCLUSION

The VNP Proposal is an attempt to make general revisions to the Michigan Constitution by amendment, which may not be done without holding a constitutional convention. Const 1963, art 12, § 3.

Further, the petition circulating the VNP Proposal failed to publish all altered and abrogated provisions of the existing Constitution as required by state law. MCL 168.482(3).

For both of these independent reasons, the VNP Proposal is not eligible for inclusion on the 2018 general election ballot. A writ of mandamus should issue directing the Secretary and Board to reject the Petition and further directing the Secretary and Board not to place the VNP Proposal on the ballot for the 2018 general election.

V. RELIEF REQUESTED

WHEREFORE, Plaintiffs respectfully request that this Honorable Court:

A. Determine, after plenary review, that the VNP Proposal is not ballot eligible and thereafter issue a writ of mandamus to the Secretary and Board directing them to reject the Petition and further directing them not to place the VNP Proposal on the ballot;

B. Grant exceptional issuance of this Court's judgment, pursuant to MCR 7.215(F)(2); and

C. Grant Plaintiffs such other and further relief as is equitable and just.

Respectfully submitted,

DICKINSON WRIGHT PLLC

Dated: April 25, 2018

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LANSING 37874-2 530314v15

EXHIBIT 1

INITIATIVE PETITION
AMENDMENT TO THE CONSTITUTION

A proposal to amend the Michigan Constitution to create an Independent Citizens Redistricting Commission. If adopted, this amendment would transfer the authority to draw Congressional and State Legislative district lines from the Legislature and Governor to the Independent Commission. The selection process will be administered by the Secretary of State. Thirteen commissioners will be randomly selected from a pool of registered voters, and consist of four members who self-identify with each of the two major political parties, and five non-affiliated, independent members. Current and former partisan elected officials, lobbyists, party officers and their employees are not eligible to serve. The proposal is to be voted on in the November 6, 2018 General Election.

FOR THE FULL TEXT OF THE PROPOSED AMENDMENT AND PROVISIONS OF THE EXISTING CONSTITUTION THAT ARE ALTERED OR ABROGATED BY THE PROPOSAL IF ADOPTED, SEE THE REVERSE SIDE AND ATTACHED PAGES OF THIS PETITION.

We, the undersigned qualified and registered electors, residents in the county of _____, State of Michigan, respectively petition for amendment to constitution.

WARNING — A person who knowingly signs this petition more than once, signs a name other than his or her own, signs when not a qualified and registered elector, or sets opposite his or her signature on a petition, a date other than the actual date the signature was affixed, is violating the provisions of the Michigan election law.

INDICATE CITY OR TOWNSHIP IN WHICH REGISTERED TO VOTE	SIGNATURE	PRINTED NAME	STREET ADDRESS OR RURAL ROUTE	ZIP CODE	DATE OF SIGNING		
					MO	DAY	YEAR
CITY OF ☐ TOWNSHIP OF ☐	1.						
CITY OF ☐ TOWNSHIP OF ☐	2.						
CITY OF ☐ TOWNSHIP OF ☐	3.						
CITY OF ☐ TOWNSHIP OF ☐	4.						
CITY OF ☐ TOWNSHIP OF ☐	5.						
CITY OF ☐ TOWNSHIP OF ☐	6.						
CITY OF ☐ TOWNSHIP OF ☐	7.						
CITY OF ☐ TOWNSHIP OF ☐	8.						
CITY OF ☐ TOWNSHIP OF ☐	9.						
CITY OF ☐ TOWNSHIP OF ☐	10.						

CERTIFICATE OF CIRCULATOR

The undersigned circulator of the above petition asserts that he or she is 18 years of age or older and a United States citizen; that each signature on the petition was signed in his or her presence; that he or she has neither caused nor permitted a person to sign the petition more than once and has no knowledge of a person signing the petition more than once; and that, to his or her best knowledge and belief, each signature is the genuine signature of the person purporting to sign the petition, the person signing the petition was at the time of signing a registered elector of the city or township indicated preceding the signature, and the elector was qualified to sign the petition.

☐ If the circulator is not a resident of Michigan, the circulator shall make a cross or check mark in the box provided, otherwise each signature on this petition sheet is invalid and the signatures will not be counted by a filing official. By making a cross or check mark in the box provided, the undersigned circulator asserts that he or she is not a resident of Michigan and agrees to accept the jurisdiction of this state for the purpose of any legal proceeding or hearing that concerns a petition sheet executed by the circulator and agrees that legal process served on the Secretary of State or a designated agent of the Secretary of State has the same effect as if personally served on the circulator.

WARNING — A circulator knowingly making a false statement in the above certificate, a person not a circulator who signs as a circulator, or a person who signs a name other than his or her own as circulator is guilty of a misdemeanor. 000031

Paid for with regulated funds by Voters Not Politicians Ballot Committee, PO Box 8382, Grand Rapids, MI 49518

CIRCULATOR — Do not sign or date certificate until after circulating petition.

_____ _____/_____/_____
(Signature of Circulator) (Date)

_____
(Printed Name of Circulator)

_____
Complete Residence Address (Street and Number or Rural Route) [Do Not Enter a Post Office Box]

_____
(City or Township, State, Zip Code)

_____
(County of Registration, If Registered to Vote, of a Circulator who is not a Resident of Michigan)

INITIATIVE PETITION
AMENDMENT TO THE CONSTITUTION

The proposal, if adopted, would amend Article IV, Sections 1 through 6, Article V, Sections 1, 2, and 4 Article VI, Sections 1 and 4 as follows (new language capitalized, deleted language struck out with a line):

Article IV – Legislative Branch

§ 1 Legislative power.

Sec. 1. EXCEPT TO THE EXTENT LIMITED OR ABROGATED BY ARTICLE IV, SECTION 6 OR ARTICLE V, SECTION 2, The legislative power of the State of Michigan is vested in a senate and a house of representatives.

§ 2 Senators, number, term.

Sec. 2. The senate shall consist of 38 members to be elected from single member districts at the same election as the governor for four-year terms concurrent with the term of office of the governor.

~~Senatorial districts; apportionment factors.~~

~~In districting the state for the purpose of electing senators after the official publication of the total population count of each federal decennial census, each county shall be assigned apportionment factors equal to the sum of its percentage of the state's population as shown by the last regular federal decennial census computed to the nearest one-one hundredth of one percent multiplied by four and its percentage of the state's land area computed to the nearest one-one hundredth of one percent.~~

~~Apportionment rules.~~

~~In arranging the state into senatorial districts, the apportionment commission shall be governed by the following rules:~~

~~(1) Counties with 13 or more apportionment factors shall be entitled as a class to senators in the proportion that the total apportionment factors of such counties bear to the total apportionment factors of the state computed to the nearest whole number. After each such county has been allocated one senator, the remaining senators to which this class of counties is entitled shall be distributed among such counties by the method of equal proportions applied to the apportionment factors.~~

~~(2) Counties having less than 13 apportionment factors shall be entitled as a class to senators in the proportion that the total apportionment factors of such counties bear to the total apportionment factors of the state computed to the nearest whole number. Such counties shall thereafter be arranged into senatorial districts that are compact, convenient, and contiguous by land, as rectangular in shape as possible, and having as nearly as possible 13 apportionment factors, but in no event less than 10 or more than 15. Insofar as possible, existing senatorial districts at the time of reapportionment shall not be altered unless there is a failure to comply with the above standards.~~

~~(3) Counties entitled to two or more senators shall be divided into single member districts. The population of such districts shall be as nearly equal as possible but shall not be less than 75 percent nor more than 125 percent of a number determined by dividing the population of the county by the number of senators to which it is entitled. Each such district shall follow incorporated city or township boundary lines to the extent possible and shall be compact, contiguous, and as nearly uniform in shape as possible.~~

§ 3 Representatives, number, term; contiguity of districts.

Sec. 3. The house of representatives shall consist of 110 members elected for two-year terms from single member districts apportioned on a basis of population as provided in this article. ~~The districts shall consist of compact and convenient territory contiguous by land.~~

~~Representative areas; single and multiple county.~~

~~Each county which has a population of not less than seven-tenths of one percent of the population of the state shall constitute a separate representative area. Each county having less than seven-tenths of one percent of the population of the state shall be combined with another county or counties to form a representative area of not less than seven-tenths of one percent of the population of the state. Any county which is isolated under the initial allocation as provided in this section shall be joined with that contiguous representative area having the smallest percentage of the state's population. Each such representative area shall be entitled initially to one representative.~~

~~Apportionment of representatives to areas.~~

~~After the assignment of one representative to each of the representative areas, the remaining house seats shall be apportioned among the representative areas on the basis of population by the method of equal proportions.~~

~~Districting of single county areas entitled to 2 or more representatives.~~

~~Any county comprising a representative area entitled to two or more representatives shall be divided into single member representative districts as follows:~~

~~(1) The population of such districts shall be as nearly equal as possible but shall not be less than 75 percent nor more than 125 percent of a number determined by dividing the population of the representative area by the number of representatives to which it is entitled.~~

~~(2) Such single member districts shall follow city and township boundaries where applicable and shall be composed of compact and contiguous territory as nearly square in shape as possible.~~

~~Districting of multiple county representative areas.~~

~~Any representative area consisting of more than one county, entitled to more than one representative, shall be divided into single member districts as equal as possible in population, adhering to county lines.~~

~~**§ 4 Annexation or merger with a city.**~~

~~Sec. 4. In counties having more than one representative or senatorial district, the territory in the same county annexed to or merged with a city between apportionments shall become a part of a contiguous representative or senatorial district in the city with which it is combined, if provided by ordinance of the city. The district or districts with which the territory shall be combined shall be determined by such ordinance certified to the secretary of state. No such change in the boundaries of a representative or senatorial district shall have the effect of removing a legislator from office during his term.~~

~~**§ 5 Island areas; contiguity.**~~

~~Sec. 5. Island areas are considered to be contiguous by land to the county of which they are a part.~~

§ 6 INDEPENDENT CITIZENS REDISTRICTING COMMISSION FOR STATE LEGISLATIVE AND CONGRESSIONAL DISTRICTS. ~~Commission on legislative apportionment.~~

Sec. 6.

(1) AN INDEPENDENT CITIZENS REDISTRICTING COMMISSION FOR STATE LEGISLATIVE AND CONGRESSIONAL DISTRICTS (HEREINAFTER, THE "COMMISSION") IS HEREBY ESTABLISHED AS A PERMANENT COMMISSION IN THE LEGISLATIVE BRANCH.

THE COMMISSION SHALL CONSIST OF 13 COMMISSIONERS. THE COMMISSION SHALL ADOPT A REDISTRICTING PLAN FOR EACH OF THE FOLLOWING TYPES OF DISTRICTS: STATE SENATE DISTRICTS, STATE HOUSE OF REPRESENTATIVE DISTRICTS, AND CONGRESSIONAL DISTRICTS. EACH COMMISSIONER SHALL:

(A) BE REGISTERED AND ELIGIBLE TO VOTE IN THE STATE OF MICHIGAN;

(B) NOT CURRENTLY BE OR IN THE PAST 6 YEARS HAVE BEEN ANY OF THE FOLLOWING:

(I) A DECLARED CANDIDATE FOR PARTISAN FEDERAL, STATE, OR LOCAL OFFICE.

(II) AN ELECTED OFFICIAL TO PARTISAN FEDERAL, STATE, OR LOCAL OFFICE;

(III) AN OFFICER OR MEMBER OF THE GOVERNING BODY OF A NATIONAL, STATE, OR LOCAL POLITICAL PARTY;

(IV) A PAID CONSULTANT OR EMPLOYEE OF A FEDERAL, STATE, OR LOCAL ELECTED OFFICIAL OR POLITICAL CANDIDATE, OF A FEDERAL, STATE, OR LOCAL POLITICAL CANDIDATE'S CAMPAIGN, OR OF A POLITICAL ACTION COMMITTEE;

(V) AN EMPLOYEE OF THE LEGISLATURE;

(VI) ANY PERSON WHO IS REGISTERED AS A LOBBYIST AGENT WITH THE MICHIGAN BUREAU OF ELECTIONS, OR ANY EMPLOYEE OF SUCH PERSON; OR

(VII) AN UNCLASSIFIED STATE EMPLOYEE WHO IS EXEMPT FROM CLASSIFICATION IN STATE CIVIL SERVICE PURSUANT TO ARTICLE XI, SECTION 5, EXCEPT FOR EMPLOYEES OF COURTS OF RECORD, EMPLOYEES OF THE STATE INSTITUTIONS OF HIGHER EDUCATION, AND PERSONS IN THE ARMED FORCES OF THE STATE;

(C) NOT BE A PARENT, STEPPARENT, CHILD, STEPCHILD, OR SPOUSE OF ANY INDIVIDUAL DISQUALIFIED UNDER PART (1)(B) OF THIS SECTION; OR

(D) NOT BE OTHERWISE DISQUALIFIED FOR APPOINTED OR ELECTED OFFICE BY THIS CONSTITUTION.

(E) FOR FIVE YEARS AFTER THE DATE OF APPOINTMENT, A COMMISSIONER IS INELIGIBLE TO HOLD A PARTISAN ELECTIVE OFFICE AT THE STATE, COUNTY, CITY, VILLAGE, OR TOWNSHIP LEVEL IN MICHIGAN.

(2) COMMISSIONERS SHALL BE SELECTED THROUGH THE FOLLOWING PROCESS:

(A) THE SECRETARY OF STATE SHALL DO ALL OF THE FOLLOWING:

(I) MAKE APPLICATIONS FOR COMMISSIONER AVAILABLE TO THE GENERAL PUBLIC NOT LATER THAN JANUARY 1 OF THE YEAR OF THE FEDERAL DECENNIAL CENSUS. THE SECRETARY OF STATE SHALL CIRCULATE THE APPLICATIONS IN A MANNER THAT INVITES WIDE PUBLIC PARTICIPATION FROM DIFFERENT REGIONS OF THE STATE. THE SECRETARY OF STATE SHALL ALSO MAIL APPLICATIONS FOR COMMISSIONER TO TEN THOUSAND MICHIGAN REGISTERED VOTERS, SELECTED AT RANDOM, BY JANUARY 1 OF THE YEAR OF THE FEDERAL DECENNIAL CENSUS.

(II) REQUIRE APPLICANTS TO PROVIDE A COMPLETED APPLICATION.

(III) REQUIRE APPLICANTS TO ATTEST UNDER OATH THAT THEY MEET THE QUALIFICATIONS SET FORTH IN THIS SECTION; AND EITHER THAT THEY AFFILIATE WITH ONE OF THE TWO POLITICAL PARTIES WITH THE LARGEST REPRESENTATION IN THE LEGISLATURE (HEREINAFTER, "MAJOR PARTIES"), AND IF SO, IDENTIFY THE PARTY WITH WHICH THEY AFFILIATE, OR THAT THEY DO NOT AFFILIATE WITH EITHER OF THE MAJOR PARTIES.

(B) SUBJECT TO PART (2)(C) OF THIS SECTION, THE SECRETARY OF STATE SHALL MAIL ADDITIONAL APPLICATIONS FOR COMMISSIONER TO MICHIGAN REGISTERED VOTERS SELECTED AT RANDOM UNTIL 30 QUALIFYING APPLICANTS THAT AFFILIATE WITH ONE OF THE TWO MAJOR PARTIES HAVE SUBMITTED APPLICATIONS, 30 QUALIFYING APPLICANTS THAT IDENTIFY THAT THEY AFFILIATE WITH THE OTHER OF THE TWO MAJOR PARTIES HAVE SUBMITTED APPLICATIONS, AND 40 QUALIFYING APPLICANTS THAT IDENTIFY THAT THEY DO NOT AFFILIATE WITH EITHER OF THE TWO MAJOR PARTIES HAVE SUBMITTED APPLICATIONS, EACH IN RESPONSE TO THE MAILINGS.

(C) THE SECRETARY OF STATE SHALL ACCEPT APPLICATIONS FOR COMMISSIONER UNTIL JUNE 1 OF THE YEAR OF THE FEDERAL DECENNIAL CENSUS.

(D) BY JULY 1 OF THE YEAR OF THE FEDERAL DECENNIAL CENSUS, FROM ALL OF THE APPLICATIONS SUBMITTED, THE SECRETARY OF STATE SHALL:

(I) ELIMINATE INCOMPLETE APPLICATIONS AND APPLICATIONS OF APPLICANTS WHO DO NOT MEET THE QUALIFICATIONS IN PARTS (1)(A) THROUGH (1)(D) OF THIS SECTION BASED SOLELY ON THE INFORMATION CONTAINED IN THE APPLICATIONS;

(II) RANDOMLY SELECT 60 APPLICANTS FROM EACH POOL OF AFFILIATING APPLICANTS AND 80 APPLICANTS FROM THE POOL OF NON-AFFILIATING APPLICANTS. 50% OF EACH POOL SHALL BE POPULATED FROM THE QUALIFYING APPLICANTS TO SUCH POOL WHO RETURNED AN APPLICATION MAILED PURSUANT TO PART 2(A) OR 2(B) OF THIS SECTION, PROVIDED, THAT IF FEWER THAN 30 QUALIFYING APPLICANTS AFFILIATED WITH A MAJOR PARTY OR FEWER THAN 40 QUALIFYING NON-AFFILIATING APPLICANTS HAVE APPLIED TO SERVE ON THE COMMISSION IN RESPONSE TO THE RANDOM MAILING, THE BALANCE OF THE POOL SHALL BE POPULATED FROM THE BALANCE OF QUALIFYING APPLICANTS TO THAT POOL. THE RANDOM SELECTION PROCESS USED BY THE SECRETARY OF STATE TO FILL THE SELECTION POOLS SHALL USE ACCEPTED STATISTICAL WEIGHTING METHODS TO ENSURE THAT THE POOLS, AS CLOSELY AS POSSIBLE, MIRROR THE GEOGRAPHIC AND DEMOGRAPHIC MAKEUP OF THE STATE; AND

(III) SUBMIT THE RANDOMLY-SELECTED APPLICATIONS TO THE MAJORITY LEADER AND THE MINORITY LEADER OF THE SENATE, AND THE SPEAKER OF THE HOUSE OF REPRESENTATIVES AND THE MINORITY LEADER OF THE HOUSE OF REPRESENTATIVES.

(E) BY AUGUST 1 OF THE YEAR OF THE FEDERAL DECENNIAL CENSUS, THE MAJORITY LEADER OF THE SENATE, THE MINORITY LEADER OF THE SENATE, THE SPEAKER OF THE HOUSE OF REPRESENTATIVES, AND THE MINORITY LEADER OF THE HOUSE OF REPRESENTATIVES MAY EACH STRIKE FIVE APPLICANTS FROM ANY POOL OR POOLS, UP TO A MAXIMUM OF 20 TOTAL STRIKES BY THE FOUR LEGISLATIVE LEADERS.

(F) BY SEPTEMBER 1 OF THE YEAR OF THE FEDERAL DECENNIAL CENSUS, THE SECRETARY OF STATE SHALL RANDOMLY DRAW THE NAMES OF FOUR COMMISSIONERS FROM EACH OF THE TWO POOLS OF REMAINING APPLICANTS AFFILIATING WITH A MAJOR PARTY, AND FIVE COMMISSIONERS FROM THE POOL OF REMAINING NON-AFFILIATING APPLICANTS.

(3) EXCEPT AS PROVIDED BELOW, COMMISSIONERS SHALL HOLD OFFICE FOR THE TERM SET FORTH IN PART (18) OF THIS

SECTION. IF A COMMISSIONER'S SEAT BECOMES VACANT FOR ANY REASON, THE SECRETARY OF STATE SHALL FILL THE VACANCY BY RANDOMLY DRAWING A NAME FROM THE REMAINING QUALIFYING APPLICANTS IN THE SELECTION POOL FROM WHICH THE ORIGINAL COMMISSIONER WAS SELECTED. A COMMISSIONER'S OFFICE SHALL BECOME VACANT UPON THE OCCURRENCE OF ANY OF THE FOLLOWING:

(A) DEATH OR MENTAL INCAPACITY OF THE COMMISSIONER;

(B) THE SECRETARY OF STATE'S RECEIPT OF THE COMMISSIONER'S WRITTEN RESIGNATION;

(C) THE COMMISSIONER'S DISQUALIFICATION FOR ELECTION OR APPOINTMENT OR EMPLOYMENT PURSUANT TO ARTICLE XI, SECTION 8;

(D) THE COMMISSIONER CEASES TO BE QUALIFIED TO SERVE AS A COMMISSIONER UNDER PART (1) OF THIS SECTION; OR

(E) AFTER WRITTEN NOTICE AND AN OPPORTUNITY FOR THE COMMISSIONER TO RESPOND, A VOTE OF 10 OF THE COMMISSIONERS FINDING SUBSTANTIAL NEGLECT OF DUTY, GROSS MISCONDUCT IN OFFICE, OR INABILITY TO DISCHARGE THE DUTIES OF OFFICE.

(4) THE SECRETARY OF STATE SHALL BE SECRETARY OF THE COMMISSION WITHOUT VOTE, AND IN THAT CAPACITY SHALL FURNISH, UNDER THE DIRECTION OF THE COMMISSION, ALL TECHNICAL SERVICES THAT THE COMMISSION DEEMS NECESSARY. THE COMMISSION SHALL ELECT ITS OWN CHAIRPERSON. THE COMMISSION HAS THE SOLE POWER TO MAKE ITS OWN RULES OF PROCEDURE. THE COMMISSION SHALL HAVE PROCUREMENT AND CONTRACTING AUTHORITY AND MAY HIRE STAFF AND CONSULTANTS FOR THE PURPOSES OF THIS SECTION, INCLUDING LEGAL REPRESENTATION.

(5) BEGINNING NO LATER THAN DECEMBER 1 OF THE YEAR PRECEDING THE FEDERAL DECENNIAL CENSUS, AND CONTINUING EACH YEAR IN WHICH THE COMMISSION OPERATES, THE LEGISLATURE SHALL APPROPRIATE FUNDS SUFFICIENT TO COMPENSATE THE COMMISSIONERS AND TO ENABLE THE COMMISSION TO CARRY OUT ITS FUNCTIONS, OPERATIONS AND ACTIVITIES, WHICH ACTIVITIES INCLUDE RETAINING INDEPENDENT, NONPARTISAN SUBJECT-MATTER EXPERTS AND LEGAL COUNSEL, CONDUCTING HEARINGS, PUBLISHING NOTICES AND MAINTAINING A RECORD OF THE COMMISSION'S PROCEEDINGS, AND ANY OTHER ACTIVITY NECESSARY FOR THE COMMISSION TO CONDUCT ITS BUSINESS, AT AN AMOUNT EQUAL TO NOT LESS THAN 25 PERCENT OF THE GENERAL FUND/GENERAL PURPOSE BUDGET FOR THE SECRETARY OF STATE FOR THAT FISCAL YEAR. WITHIN SIX MONTHS AFTER THE CONCLUSION OF EACH FISCAL YEAR, THE COMMISSION SHALL RETURN TO THE STATE TREASURY ALL MONEYS UNEXPENDED FOR THAT FISCAL YEAR. THE COMMISSION SHALL FURNISH REPORTS OF EXPENDITURES, AT LEAST ANNUALLY, TO THE GOVERNOR AND THE LEGISLATURE AND SHALL BE SUBJECT TO ANNUAL AUDIT AS PROVIDED BY LAW. EACH COMMISSIONER SHALL RECEIVE COMPENSATION AT LEAST EQUAL TO 25 PERCENT OF THE GOVERNOR'S SALARY. THE STATE OF MICHIGAN SHALL INDEMNIFY COMMISSIONERS FOR COSTS INCURRED IF THE LEGISLATURE DOES NOT APPROPRIATE SUFFICIENT FUNDS TO COVER SUCH COSTS

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

(7) THE SECRETARY OF STATE SHALL ISSUE A CALL CONVENING THE COMMISSION BY OCTOBER 15 IN THE YEAR OF THE FEDERAL DECENNIAL CENSUS, NOT LATER THAN NOVEMBER 1 IN THE YEAR IMMEDIATELY FOLLOWING THE FEDERAL DECENNIAL CENSUS, THE COMMISSION SHALL ADOPT A REDISTRICTING PLAN UNDER THIS SECTION FOR EACH OF THE FOLLOWING TYPES OF DISTRICTS: STATE SENATE DISTRICTS, STATE HOUSE OF REPRESENTATIVE DISTRICTS, AND CONGRESSIONAL DISTRICTS.

(8) BEFORE COMMISSIONERS DRAFT ANY PLAN, THE COMMISSION SHALL HOLD AT LEAST TEN PUBLIC HEARINGS THROUGHOUT THE STATE FOR THE PURPOSE OF INFORMING THE PUBLIC ABOUT THE REDISTRICTING PROCESS AND THE PURPOSE AND RESPONSIBILITIES OF THE COMMISSION AND SOLICITING INFORMATION FROM THE PUBLIC ABOUT POTENTIAL PLANS. THE COMMISSION SHALL RECEIVE FOR CONSIDERATION WRITTEN SUBMISSIONS OF PROPOSED REDISTRICTING PLANS AND ANY SUPPORTING MATERIALS, INCLUDING UNDERLYING DATA, FROM ANY MEMBER OF THE PUBLIC. THESE WRITTEN SUBMISSIONS ARE PUBLIC RECORDS.

(9) AFTER DEVELOPING AT LEAST ONE PROPOSED REDISTRICTING PLAN FOR EACH TYPE OF DISTRICT, THE COMMISSION SHALL PUBLISH THE PROPOSED REDISTRICTING PLANS AND ANY DATA AND SUPPORTING MATERIALS USED TO DEVELOP THE PLANS. EACH COMMISSIONER MAY ONLY PROPOSE ONE REDISTRICTING PLAN FOR EACH TYPE OF DISTRICT. THE COMMISSION SHALL HOLD AT LEAST FIVE PUBLIC HEARINGS THROUGHOUT THE STATE FOR THE PURPOSE OF SOLICITING COMMENT FROM THE PUBLIC ABOUT THE PROPOSED PLANS. EACH OF THE PROPOSED PLANS SHALL INCLUDE SUCH CENSUS DATA AS IS NECESSARY TO ACCURATELY DESCRIBE THE PLAN AND VERIFY THE POPULATION OF EACH DISTRICT, AND A MAP AND LEGAL DESCRIPTION THAT INCLUDE THE POLITICAL SUBDIVISIONS, SUCH AS COUNTIES, CITIES, AND TOWNSHIPS; MAN-MADE FEATURES, SUCH AS STREETS, ROADS, HIGHWAYS, AND RAILROADS; AND NATURAL FEATURES, SUCH AS WATERWAYS, WHICH FORM THE BOUNDARIES OF THE DISTRICTS.

(10) EACH COMMISSIONER SHALL PERFORM HIS OR HER DUTIES IN A MANNER THAT IS IMPARTIAL AND REINFORCES PUBLIC CONFIDENCE IN THE INTEGRITY OF THE REDISTRICTING PROCESS. THE COMMISSION SHALL CONDUCT ALL OF ITS BUSINESS AT OPEN MEETINGS. NINE COMMISSIONERS, INCLUDING AT LEAST ONE COMMISSIONER FROM EACH SELECTION POOL SHALL CONSTITUTE A QUORUM, AND ALL MEETINGS SHALL REQUIRE A QUORUM. THE COMMISSION SHALL PROVIDE ADVANCE PUBLIC NOTICE OF ITS MEETINGS AND HEARINGS. THE COMMISSION SHALL CONDUCT ITS HEARINGS IN A MANNER THAT INVITES WIDE PUBLIC PARTICIPATION THROUGHOUT THE STATE. THE COMMISSION SHALL USE TECHNOLOGY TO PROVIDE CONTEMPORANEOUS PUBLIC OBSERVATION AND MEANINGFUL PUBLIC PARTICIPATION IN THE REDISTRICTING PROCESS DURING ALL MEETINGS AND HEARINGS.

(11) THE COMMISSION, ITS MEMBERS, STAFF, ATTORNEYS, AND CONSULTANTS SHALL NOT DISCUSS REDISTRICTING MATTERS WITH MEMBERS OF THE PUBLIC OUTSIDE OF AN OPEN MEETING OF THE COMMISSION, EXCEPT THAT A COMMISSIONER MAY COMMUNICATE ABOUT REDISTRICTING MATTERS WITH MEMBERS OF THE PUBLIC TO GAIN INFORMATION RELEVANT TO THE PERFORMANCE OF HIS OR HER DUTIES IF SUCH COMMUNICATION OCCURS (A) IN WRITING OR (B) AT A PREVIOUSLY PUBLICLY NOTICED FORUM OR TOWN HALL OPEN TO THE GENERAL PUBLIC.

THE COMMISSION, ITS MEMBERS, STAFF, ATTORNEYS, EXPERTS, AND CONSULTANTS MAY NOT DIRECTLY OR INDIRECTLY SOLICIT OR ACCEPT ANY GIFT OR LOAN OF MONEY, GOODS, SERVICES, OR OTHER THING OF VALUE GREATER THAN $20 FOR THE BENEFIT OF ANY PERSON OR ORGANIZATION, WHICH MAY INFLUENCE THE MANNER IN WHICH THE COMMISSIONER, STAFF, ATTORNEY, EXPERT, OR CONSULTANT PERFORMS HIS OR HER DUTIES.

(12) EXCEPT AS PROVIDED IN PART (14) OF THIS SECTION, A FINAL DECISION OF THE COMMISSION REQUIRES THE CONCURRENCE OF A MAJORITY OF THE COMMISSIONERS. A DECISION ON THE DISMISSAL OR RETENTION OF PAID STAFF OR CONSULTANTS REQUIRES THE VOTE OF AT LEAST ONE COMMISSIONER AFFILIATING WITH EACH OF THE MAJOR PARTIES AND ONE NON-AFFILIATING COMMISSIONER. ALL DECISIONS OF THE COMMISSION SHALL BE RECORDED, AND THE RECORD OF ITS DECISIONS SHALL BE READILY AVAILABLE TO ANY MEMBER OF THE PUBLIC WITHOUT CHARGE.

(13) THE COMMISSION SHALL ABIDE BY THE FOLLOWING CRITERIA IN PROPOSING AND ADOPTING EACH PLAN, IN ORDER OF PRIORITY:

(A) DISTRICTS SHALL BE OF EQUAL POPULATION AS MANDATED BY THE UNITED STATES CONSTITUTION, AND SHALL COMPLY WITH THE VOTING RIGHTS ACT AND OTHER FEDERAL LAWS.

(B) DISTRICTS SHALL BE GEOGRAPHICALLY CONTIGUOUS. ISLAND AREAS ARE CONSIDERED TO BE CONTIGUOUS BY LAND TO THE COUNTY OF WHICH THEY ARE A PART.

(C) DISTRICTS SHALL REFLECT THE STATE'S DIVERSE POPULATION AND COMMUNITIES OF INTEREST. COMMUNITIES OF INTEREST MAY INCLUDE, BUT SHALL NOT BE LIMITED TO, POPULATIONS THAT SHARE CULTURAL OR HISTORICAL CHARACTERISTICS OR ECONOMIC INTERESTS. COMMUNITIES OF INTEREST DO NOT INCLUDE RELATIONSHIPS WITH POLITICAL PARTIES, INCUMBENTS, OR POLITICAL CANDIDATES.

(D) DISTRICTS SHALL NOT PROVIDE A DISPROPORTIONATE ADVANTAGE TO ANY POLITICAL PARTY. A DISPROPORTIONATE ADVANTAGE TO A POLITICAL PARTY SHALL BE DETERMINED USING ACCEPTED MEASURES OF PARTISAN FAIRNESS.

(E) DISTRICTS SHALL NOT FAVOR OR DISFAVOR AN INCUMBENT ELECTED OFFICIAL OR A CANDIDATE.

(F) DISTRICTS SHALL REFLECT CONSIDERATION OF COUNTY, CITY, AND TOWNSHIP BOUNDARIES.

(G) DISTRICTS SHALL BE REASONABLY COMPACT.

(14) THE COMMISSION SHALL FOLLOW THE FOLLOWING PROCEDURE IN ADOPTING A PLAN:

(A) BEFORE VOTING TO ADOPT A PLAN, THE COMMISSION SHALL ENSURE THAT THE PLAN IS TESTED, USING APPROPRIATE TECHNOLOGY, FOR COMPLIANCE WITH THE CRITERIA DESCRIBED ABOVE.

(B) BEFORE VOTING TO ADOPT A PLAN, THE COMMISSION SHALL PROVIDE PUBLIC NOTICE OF EACH PLAN THAT WILL BE VOTED ON AND PROVIDE AT LEAST 45 DAYS FOR PUBLIC COMMENT ON THE PROPOSED PLAN OR PLANS. EACH PLAN THAT WILL BE VOTED ON SHALL INCLUDE SUCH CENSUS DATA AS IS NECESSARY TO ACCURATELY DESCRIBE THE PLAN AND VERIFY THE POPULATION OF EACH DISTRICT, AND SHALL INCLUDE THE MAP AND LEGAL DESCRIPTION REQUIRED IN PART (9) OF THIS SECTION.

(C) A FINAL DECISION OF THE COMMISSION TO ADOPT A REDISTRICTING PLAN REQUIRES A MAJORITY VOTE OF THE COMMISSION, INCLUDING AT LEAST TWO COMMISSIONERS WHO AFFILIATE WITH EACH MAJOR PARTY, AND AT LEAST TWO COMMISSIONERS WHO DO NOT AFFILIATE WITH EITHER MAJOR PARTY. IF NO PLAN SATISFIES THIS REQUIREMENT FOR A TYPE OF DISTRICT, THE COMMISSION SHALL USE THE FOLLOWING PROCEDURE TO ADOPT A PLAN FOR THAT TYPE OF DISTRICT:

(I) EACH COMMISSIONER MAY SUBMIT ONE PROPOSED PLAN FOR EACH TYPE OF DISTRICT TO THE FULL COMMISSION FOR CONSIDERATION.

(II) EACH COMMISSIONER SHALL RANK THE PLANS SUBMITTED ACCORDING TO PREFERENCE. EACH PLAN SHALL BE ASSIGNED A POINT VALUE INVERSE TO ITS RANKING AMONG THE NUMBER OF CHOICES, GIVING THE LOWEST RANKED PLAN ONE POINT AND THE HIGHEST RANKED PLAN A POINT VALUE EQUAL TO THE NUMBER OF PLANS SUBMITTED.

(III) THE COMMISSION SHALL ADOPT THE PLAN RECEIVING THE HIGHEST TOTAL POINTS, THAT IS ALSO RANKED AMONG THE TOP HALF OF PLANS BY AT LEAST TWO COMMISSIONERS NOT AFFILIATED WITH THE PARTY OF THE COMMISSIONER SUBMITTING THE PLAN, OR IN THE CASE OF A PLAN SUBMITTED BY NON-AFFILIATED COMMISSIONERS, IS RANKED AMONG THE TOP HALF OF PLANS BY AT LEAST TWO COMMISSIONERS AFFILIATED WITH A MAJOR PARTY. IF PLANS ARE TIED FOR THE HIGHEST POINT TOTAL, THE SECRETARY OF STATE SHALL RANDOMLY SELECT THE FINAL PLAN FROM THOSE PLANS. IF NO PLAN MEETS THE REQUIREMENTS OF THIS SUBPARAGRAPH, THE SECRETARY OF STATE SHALL RANDOMLY SELECT THE FINAL PLAN FROM AMONG ALL SUBMITTED PLANS PURSUANT TO PART (14)(C)(I).

(15) WITHIN 30 DAYS AFTER ADOPTING A PLAN, THE COMMISSION SHALL PUBLISH THE PLAN AND THE MATERIAL REPORTS, REFERENCE MATERIALS, AND DATA USED IN DRAWING IT, INCLUDING ANY PROGRAMMING INFORMATION USED TO PRODUCE AND TEST THE PLAN. THE PUBLISHED MATERIALS SHALL BE SUCH THAT AN INDEPENDENT PERSON IS ABLE TO REPLICATE THE CONCLUSION WITHOUT ANY MODIFICATION OF ANY OF THE PUBLISHED MATERIALS.

(16) FOR EACH ADOPTED PLAN, THE COMMISSION SHALL ISSUE A REPORT THAT EXPLAINS THE BASIS ON WHICH THE COMMISSION MADE ITS DECISIONS IN ACHIEVING COMPLIANCE WITH PLAN REQUIREMENTS AND SHALL INCLUDE THE MAP AND LEGAL DESCRIPTION REQUIRED IN PART (9) OF THIS SECTION. A COMMISSIONER WHO VOTES AGAINST A REDISTRICTING PLAN MAY SUBMIT A DISSENTING REPORT WHICH SHALL BE ISSUED WITH THE COMMISSION'S REPORT.

(17) AN ADOPTED REDISTRICTING PLAN SHALL BECOME LAW 60 DAYS AFTER ITS PUBLICATION. THE SECRETARY OF STATE SHALL KEEP A PUBLIC RECORD OF ALL PROCEEDINGS OF THE COMMISSION AND SHALL PUBLISH AND DISTRIBUTE EACH PLAN AND REQUIRED DOCUMENTATION.

(18) THE TERMS OF THE COMMISSIONERS SHALL EXPIRE ONCE THE COMMISSION HAS COMPLETED ITS OBLIGATIONS FOR A CENSUS CYCLE BUT NOT BEFORE ANY JUDICIAL REVIEW OF THE REDISTRICTING PLAN IS COMPLETE.

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

(20) THIS SECTION IS SELF-EXECUTING. IF A FINAL COURT DECISION HOLDS ANY PART OR PARTS OF THIS SECTION TO BE IN CONFLICT WITH THE UNITED STATES CONSTITUTION OR FEDERAL LAW, THE SECTION SHALL BE IMPLEMENTED TO THE MAXIMUM EXTENT THAT THE UNITED STATES CONSTITUTION AND FEDERAL LAW PERMIT. ANY PROVISION HELD INVALID IS SEVERABLE FROM THE REMAINING PORTIONS OF THIS SECTION.

(21) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, NO EMPLOYER SHALL DISCHARGE, THREATEN TO DISCHARGE, INTIMIDATE, COERCE, OR RETALIATE AGAINST ANY EMPLOYEE BECAUSE OF THE EMPLOYEE'S MEMBERSHIP ON THE COMMISSION OR ATTENDANCE OR SCHEDULED ATTENDANCE AT ANY MEETING OF THE COMMISSION.

(22) NOTWITHSTANDING ANY OTHER PROVISION OF THIS CONSTITUTION, OR ANY PRIOR JUDICIAL DECISION, AS OF THE EFFECTIVE DATE OF THE CONSTITUTIONAL AMENDMENT ADDING THIS PROVISION, WHICH AMENDS ARTICLE IV, SECTIONS 1 THROUGH 6, ARTICLE V, SECTIONS 1, 2 AND 4, AND ARTICLE VI, SECTIONS 1 AND 4, INCLUDING THIS PROVISION, FOR PURPOSES OF INTERPRETING THIS CONSTITUTIONAL AMENDMENT THE PEOPLE DECLARE THAT THE POWERS GRANTED TO THE COMMISSION ARE LEGISLATIVE FUNCTIONS NOT SUBJECT TO THE CONTROL OR APPROVAL OF THE LEGISLATURE, AND ARE EXCLUSIVELY RESERVED TO THE COMMISSION. THE COMMISSION, AND ALL OF ITS RESPONSIBILITIES, OPERATIONS,

FUNCTIONS, CONTRACTORS, CONSULTANTS AND EMPLOYEES ARE NOT SUBJECT TO CHANGE, TRANSFER, REORGANIZATION, OR REASSIGNMENT, AND SHALL NOT BE ALTERED OR ABROGATED IN ANY MANNER WHATSOEVER, BY THE LEGISLATURE. NO OTHER BODY SHALL BE ESTABLISHED BY LAW TO PERFORM FUNCTIONS THAT ARE THE SAME OR SIMILAR TO THOSE GRANTED TO THE COMMISSION IN THIS SECTION.

~~A commission on legislative apportionment is hereby established consisting of eight electors, four of whom shall be selected by the state organizations of each of the two political parties whose candidates for governor received the highest vote at the last general election at which a governor was elected preceding each apportionment. If a candidate for governor of a third political party has received at such election more than 25 percent of such gubernatorial vote, the commission shall consist of 12 members, four of whom shall be selected by the state organization of the third political party. One resident of each of the following four regions shall be selected by each political party organization: (1) the upper peninsula; (2) the northern part of the lower peninsula, north of a line drawn along the northern boundaries of the counties of Bay, Midland, Isabella, Mecosta, Newaygo and Oceana; (3) southwestern Michigan, those counties south of region (2) and west of a line drawn along the western boundaries of the counties of Bay, Saginaw, Shiawassee, Ingham, Jackson and Hillsdale; (4) southeastern Michigan, the remaining counties of the state.~~

~~Eligibility to membership.~~

~~No officers or employees of the federal, state or local governments, excepting notaries public and members of the armed forces reserve, shall be eligible for membership on the commission. Members of the commission shall not be eligible for election to the legislature until two years after the apportionment in which they participated becomes effective.~~

~~Appointment, term, vacancies.~~

~~The commission shall be appointed immediately after the adoption of this constitution and whenever apportionment or districting of the legislature is required by the provisions of this constitution. Members of the commission shall hold office until each apportionment or districting plan becomes effective. Vacancies shall be filled in the same manner as for original appointment.~~

~~Officers, rules of procedure, compensation, appropriation.~~

~~The secretary of state shall be secretary of the commission without vote, and in that capacity shall furnish, under the direction of the commission, all necessary technical services. The commission shall elect its own chairman, shall make its own rules of procedure, and shall receive compensation provided by law. The legislature shall appropriate funds to enable the commission to carry out its activities.~~

~~Call to convene; apportionment; public hearings.~~

~~Within 30 days after the adoption of this constitution, and after the official total population count of each federal decennial census of the state and its political subdivisions is available, the secretary of state shall issue a call convening the commission not less than 30 nor more than 45 days thereafter. The commission shall complete its work within 180 days after all necessary census information is available. The commission shall proceed to district and apportion the senate and house of representatives according to the provisions of this constitution. All final decisions shall require the concurrence of a majority of the members of the commission. The commission shall hold public hearings as may be provided by law.~~

~~Apportionment plan; publication; record of proceedings.~~

~~Each final apportionment and districting plan shall be published as provided by law within 30 days from the date of its adoption and shall become law 60 days after publication. The secretary of state shall keep a public record of all the proceedings of the commission and shall be responsible for the publication and distribution of each plan.~~

~~Disagreement of commission; submission of plans to supreme court.~~

~~If a majority of the commission cannot agree on a plan, each member of the commission, individually or jointly with other members, may submit a proposed plan to the supreme court. The supreme court shall determine which plan complies most accurately with the constitutional requirements and shall direct that it be adopted by the commission and published as provided in this section.~~

~~Jurisdiction of supreme court on elector's application.~~

~~Upon the application of any elector filed not later than 60 days after final publication of the plan, the supreme court, in the exercise of original jurisdiction, shall direct the secretary of state or the commission to perform their duties, may review any final plan adopted by the commission, and shall remand such plan to the commission for further action if it fails to comply with the requirements of this constitution.~~

Article V – Executive Branch

§ 1 Executive power.

Sec. 1. EXCEPT TO THE EXTENT LIMITED OR ABROGATED BY ARTICLE V, SECTION 2, OR ARTICLE IV, SECTION 6, The executive power is vested in the governor.

§ 2 Principal departments.

Sec. 2. All executive and administrative offices, agencies and instrumentalities of the executive branch of state government and their respective functions, powers and duties, except for the office of governor and lieutenant governor, and the governing bodies of institutions of higher education provided for in this constitution, shall be allocated by law among and within not more than 20 principal departments. They shall be grouped as far as practicable according to major purposes.

Organization of executive branch; assignment of functions; submission to legislature.

Subsequent to the initial allocation, the governor may make changes in the organization of the executive branch or in the assignment of functions among its units which he considers necessary for efficient administration. Where these changes require the force of law, they shall be set forth in executive orders and submitted to the legislature. Thereafter the legislature shall have 60 calendar days of a regular session, or a full regular session if of shorter duration, to disapprove each executive order. Unless disapproved in both houses by a resolution concurred in by a majority of the members elected to and serving in each house, each order shall become effective at a date thereafter to be designated by the governor.

EXEMPTION FOR INDEPENDENT CITIZENS REDISTRICTING COMMISSION FOR STATE LEGISLATIVE AND CONGRESSIONAL DISTRICTS.

NOTWITHSTANDING ANY OTHER PROVISION OF THIS CONSTITUTION OR ANY PRIOR JUDICIAL DECISION, AS OF THE EFFECTIVE DATE OF THE CONSTITUTIONAL AMENDMENT ADDING THIS PROVISION, WHICH AMENDS ARTICLE IV, SECTIONS 1 THROUGH 6, ARTICLE V, SECTIONS 1, 2 AND 4, AND ARTICLE VI, SECTIONS 1 AND 4, INCLUDING THIS PROVISION, FOR PURPOSES OF INTERPRETING THIS CONSTITUTIONAL AMENDMENT THE PEOPLE DECLARE THAT THE POWERS GRANTED TO INDEPENDENT CITIZENS REDISTRICTING COMMISSION FOR STATE AND CONGRESSIONAL DISTRICTS (HEREINAFTER, "COMMISSION") ARE LEGISLATIVE FUNCTIONS NOT SUBJECT TO THE CONTROL OR APPROVAL OF THE GOVERNOR, AND ARE EXCLUSIVELY RESERVED TO THE COMMISSION. THE COMMISSION, AND ALL OF ITS RESPONSIBILITIES, OPERATIONS, FUNCTIONS, CONTRACTORS, CONSULTANTS AND EMPLOYEES ARE NOT SUBJECT TO CHANGE, TRANSFER, REORGANIZATION, OR REASSIGNMENT, AND SHALL NOT BE ALTERED OR ABROGATED IN ANY MANNER WHATSOEVER, BY THE GOVERNOR. NO OTHER BODY SHALL BE ESTABLISHED BY LAW TO PERFORM FUNCTIONS THAT ARE THE SAME OR SIMILAR TO THOSE GRANTED TO THE COMMISSION IN ARTICLE IV, SECTION 6.

§ 4 Commissions or agencies for less than 2 years.

Sec. 4. EXCEPT TO THE EXTENT LIMITED OR ABROGATED BY ARTICLE V, SECTION 2 OR ARTICLE IV, SECTION 6, Temporary

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

Article VI – Judicial Branch

§ 1 Judicial power in court of justice; divisions.

Sec. 1. EXCEPT TO THE EXTENT LIMITED OR ABROGATED BY ARTICLE IV, SECTION 6, OR ARTICLE V, SECTION 2, The judicial power of the state is vested exclusively in one court of justice which shall be divided into one supreme court, one court of appeals, one trial court of general jurisdiction known as the circuit court, one probate court, and courts of limited jurisdiction that the legislature may establish by a two-thirds vote of the members elected to and serving in each house.

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

Sec. 4. EXCEPT TO THE EXTENT LIMITED OR ABROGATED BY ARTICLE IV, SECTION 6, OR ARTICLE V, SECTION 2, The supreme court shall have general superintending control over all courts, power to issue, hear and determine prerogative and remedial writs, and appellate jurisdiction as provided by rules of the supreme court. The supreme court shall not have the power to remove a judge.

Provisions of existing Constitution altered or abrogated by the proposal if adopted.

Article IV – Legislative Branch

§1 Legislative power.

Sec. 1. The legislative power of the State of Michigan is vested in a senate and a house of representatives.

§ 2 Senators, number, term.

Sec. 2. The senate shall consist of 38 members to be elected from single member districts at the same election as the governor for four-year terms concurrent with the term of office of the governor.

Senatorial districts, apportionment factors.

In districting the state for the purpose of electing senators after the official publication of the total population count of each federal decennial census, each county shall be assigned apportionment factors equal to the sum of its percentage of the state's population as shown by the last regular federal decennial census computed to the nearest one-one hundredth of one percent multiplied by four and its percentage of the state's land area computed to the nearest one-one hundredth of one percent.

Apportionment rules.

In arranging the state into senatorial districts, the apportionment commission shall be governed by the following rules:

(1) Counties with 13 or more apportionment factors shall be entitled as a class to senators in the proportion that the total apportionment factors of such counties bear to the total apportionment factors of the state computed to the nearest whole number. After each such county has been allocated one senator, the remaining senators to which this class of counties is entitled shall be distributed among such counties by the method of equal proportions applied to the apportionment factors.

(2) Counties having less than 13 apportionment factors shall be entitled as a class to senators in the proportion that the total apportionment factors of such counties bear to the total apportionment factors of the state computed to the nearest whole number. Such counties shall thereafter be arranged into senatorial districts that are compact, convenient, and contiguous by land, as rectangular in shape as possible, and having as nearly as possible 13 apportionment factors, but in no event less than 10 or more than 16. Insofar as possible, existing senatorial districts at the time of reapportionment shall not be altered unless there is a failure to comply with the above standards.

(3) Counties entitled to two or more senators shall be divided into single member districts. The population of such districts shall be as nearly equal as possible but shall not be less than 75 percent nor more than 125 percent of a number determined by dividing the population of the county by the number of senators to which it is entitled. Each such district shall follow incorporated city or township boundary lines to the extent possible and shall be compact, contiguous, and as nearly uniform in shape as possible.

§ 3 Representatives, number, term; contiguity of districts.

Sec. 3. The house of representatives shall consist of 110 members elected for two-year terms from single member districts apportioned on a basis of population as provided in this article. The districts shall consist of compact and convenient territory contiguous by land.

Representative areas, single and multiple county.

Each county which has a population of not less than seven-tenths of one percent of the population of the state shall constitute a separate representative area. Each county having less than seven-tenths of one percent of the population of the state shall be combined with another county or counties to form a representative area of not less than seven-tenths of one percent of the population of the state. Any county which is isolated under the initial allocation as provided in this section shall be joined with that contiguous representative area having the smallest percentage of the state's population. Each such representative area shall be entitled initially to one representative.

Apportionment of representatives to areas.

After the assignment of one representative to each of the representative areas, the remaining house seats shall be apportioned among the representative areas on the basis of population by the method of equal proportions.

Districting of single county area entitled to 2 or more representatives.

Any county comprising a representative area entitled to two or more representatives shall be divided into single member representative districts as follows:

(1) The population of such districts shall be as nearly equal as possible but shall not be less than 75 percent nor more than 125 percent of a number determined by dividing the population of the representative area by the number of representatives to which it is entitled.

(2) Such single member districts shall follow city and township boundaries where applicable and shall be composed of compact and contiguous territory as nearly square in shape as possible.

Districting of multiple county representative areas.

Any representative area consisting of more than one county, entitled to more than one representative, shall be divided into single member districts as equal as possible in population, adhering to county lines.

§ 4 Annexation or merger with a city.

Sec. 4. In counties having more than one representative or senatorial district, the territory in the same county annexed to or merged with a city between apportionments shall become a part of a contiguous representative or senatorial district in the city with which it is combined, if provided by ordinance of the city. The district or districts with which the territory shall be combined shall be determined by such ordinance certified to the secretary of state. No such change in the boundaries of a representative or senatorial district shall have the effect of removing a legislator from office during his term.

§ 5 Island areas, contiguity.

Sec. 5. Island areas are considered to be contiguous by land to the county of which they are a part.

§ 6 Commission on legislative apportionment.

Sec. 6. A commission on legislative apportionment is hereby established consisting of eight electors, four of whom shall be selected by the state organizations of each of the two political parties whose candidates for governor received the highest vote at the last general election at which a governor was elected preceding each apportionment. If a candidate for governor of a third political party has received at such election more than 25 percent of such gubernatorial vote, the commission shall consist of 12 members, four of whom shall be selected by the state organization of the third political party. One resident of each of the following four regions shall be selected by each political party organization: (1) the upper peninsula; (2) the northern part of the lower peninsula, north of a line drawn along the northern boundaries of the counties of Bay, Midland, Isabella, Mecosta, Newaygo and Oceana; (3) southwestern Michigan, those counties south of region (2) and west of a line drawn along the western boundaries of the counties of Bay, Saginaw, Shiawassee, Ingham, Jackson and Hillsdale; (4) southeastern Michigan, the remaining counties of the state.

Eligibility to membership.

No officers or employees of the federal, state or local governments, excepting notaries public and members of the armed forces reserve, shall be eligible for membership on the commission. Members of the commission shall not be eligible for election to the legislature until two years after the apportionment in which they participated becomes effective.

Appointment, term, vacancies.

The commission shall be appointed immediately after the adoption of this constitution and whenever apportionment or districting of the legislature is required by the provisions of this constitution. Members of the commission shall hold office until each apportionment or districting plan becomes effective. Vacancies shall be filled in the same manner as for original appointment.

Officers, rules of procedure, compensation, appropriation.

The secretary of state shall be secretary of the commission without vote, and in that capacity shall furnish, under the direction of the commission, all necessary technical services. The commission shall elect its own chairman, shall make its own rules of procedure, and shall receive compensation provided by law. The legislature shall appropriate funds to enable the commission to carry out its activities.

Call to convene; apportionment; public hearings.

Within 30 days after the adoption of this constitution, and after the official total population count of each federal decennial census of the state and its political subdivisions is available, the secretary of state shall issue a call convening the commission not less than 30 nor more than 45 days thereafter. The commission shall complete its work within 180 days after all necessary census information is available. The commission shall proceed to district and apportion the senate and house of representatives according to the provisions of this constitution. All final decisions shall require the concurrence of a majority of the members of the commission. The commission shall hold public hearings as may be provided by law.

Apportionment plan, publication; record of proceedings.

Each final apportionment and districting plan shall be published as provided by law within 30 days from the date of its adoption and shall become law 60 days after publication. The secretary of state shall keep a public record of all the proceedings of the commission and shall be responsible for the publication and distribution of each plan.

Disagreement of commission; submission of plans to supreme court.

If a majority of the commission cannot agree on a plan, each member of the commission, individually or jointly with other members, may submit a proposed plan to the supreme court. The supreme court shall determine which plan complies most accurately with the constitutional requirements and shall direct that it be adopted by the commission and published as provided in this section.

Jurisdiction of supreme court on elector's application.

Upon the application of any elector filed not later than 60 days after final publication of the plan, the supreme court, in the exercise of original jurisdiction, shall direct the secretary of state or the commission to perform their duties, may review any final plan adopted by the commission, and shall remand such plan to the commission for further action if it fails to comply with the requirements of this constitution.

Article V – Executive Branch

§ 1 Executive power.

Sec. 1. The executive power is vested in the governor.

§ 2 Principal departments.

Sec. 2. All executive and administrative offices, agencies and instrumentalities of the executive branch of state government and their respective functions, powers and duties, except for the office of governor and lieutenant governor, and the governing bodies of institutions of higher education provided for in this constitution, shall be allocated by law among and within not more than 20 principal departments. They shall be grouped as far as practicable according to major purposes.

Organization of executive branch; assignment of functions; submission to legislature

Subsequent to the initial allocation, the governor may make changes in the organization of the executive branch or in the assignment of functions among its units which he considers necessary for efficient administration. Where these changes require the force of law, they shall be set forth in executive orders and submitted to the legislature. Thereafter the legislature shall have 60 calendar days of a regular session, or a full regular session if of shorter duration, to disapprove each executive order. Unless disapproved in both houses by a resolution concurred in by a majority of the members elected to and serving in each house, each order shall become effective at a date thereafter to be designated by the governor.

§ 4 Commissions or agencies for less than 2 years.

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

Article VI – Judicial Branch

§ 1 Judicial power in court of justice; divisions.

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

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

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

EXHIBIT B

STATE OF MICHIGAN
IN THE COURT OF APPEALS

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

Plaintiffs,

v

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

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,**

Prospective Intervening Defendants.

Court of Appeals
No. 343517

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Robert P. Young (P35486)
Ryan M. Shannon (P74535)
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James R. Lancaster (P38567)
Lancaster Associates PLC
Attorneys for the Prospective Intervening Defendants
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Lansing, Michigan 48901
(517) 285-4737

AFFIDAVIT OF WILLIAM R. BOBIER

STATE OF MICHIGAN)
) SS
COUNTY OF OCEANA)

William R. Bobier, 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 a citizen of the United States and the State of Michigan.

3. I am a qualified elector of the State of Michigan, registered to vote in Ferry Township, within Oceana County.

4. I was elected to serve as a Member of the Michigan House of Representatives in 1990, and served as such until 1998.

5. As a Member of the Michigan House of Representatives, I have witnessed the redistricting process, and I voted in support of adoption of the "Apol Standards" included in 1996 PA 463. It was my belief in doing so that the adoption of those standards represented a laudable attempt to promote fairness in the redistricting process, but the subsequent redistricting processes have led me to believe that this objective has not been accomplished.

6. I believe that the constitutional amendment proposed by the Voters Not Politicians ballot proposal is a valid attempt to correct a serious malfunction of our democratic process. I have therefore supported the effort of Voters Not Politicians, and signed its petition for placement of its proposal on the 2018 General Election ballot.

7. As a supporter of the Voters Not Politicians ballot proposal, I have a strong interest in being able to vote in favor of that proposal, and will be aggrieved if I am prevented from doing so without just and legally sufficient cause.

Further, Deponent sayeth not.

William R. Bobier

Subscribed and sworn before me on
the 8th day of May, 2018.

Marsha J Mangels
Notary Public, Oceana County
Acting in Oceana County
My Commission expires: 4-29-23

Marsha J. Mangels, Notary Public
State of Michigan, County of Oceana
My Commission Expires 04/29/2023
Acting in Oceana County

Fraser Trebilcock

EXHIBIT C

STATE OF MICHIGAN

IN THE COURT OF APPEALS

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

Plaintiffs,

v

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

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,**

Prospective Intervening Defendants.

Court of Appeals
No. 343517

Peter H. Ellsworth (P23657)
Robert P. Young (P35486)
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AFFIDAVIT OF DAVIA C. DOWNEY

AFFIDAVIT OF DAVIA C. DOWNEY

STATE OF MICHIGAN)
) SS
COUNTY OF INGHAM)

Davia C. Downey, 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 a citizen of the United States and the State of Michigan.

3. I am a qualified elector of the State of Michigan, registered to vote in the City of East Lansing, within Ingham County.

4. I signed Voters Not Politicians' voter-initiated petition to amend the state Constitution, and have been heavily involved in the volunteer effort to secure the approval of that proposal for inclusion on the 2018 General Election ballot.

5. As a supporter of the Voters Not Politicians ballot proposal, I have a strong interest in being able to vote in favor of that proposal, and will be aggrieved if I am prevented from doing so without just and legally sufficient cause.

Further, Deponent sayeth not.

Davia C. Downey

Subscribed and sworn before me on
the 8th day of May, 2018.

Deborah L. Coveart

Notary Public, Ingham County
Acting in Ingham County
My Commission expires: 5-15-19

DEBORAH L. COVEART
NOTARY PUBLIC - STATE OF MICHIGAN
COUNTY OF CLINTON
My Commission Expires May 15, 2019
Acting in the County of Ingham

EXHIBIT D

LANCASTER
ASSOCIATES

May 3, 2018

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

Re: Voters Not Politicians Ballot Committee

Dear Chairperson Shinkle:

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

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

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

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

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

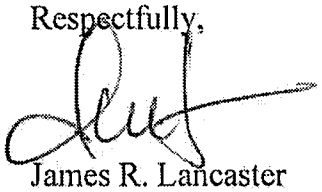
The ballot question committee sponsored by the Michigan Chamber of Commerce, Citizens Protecting Michigan's Constitution ("CPMC"), has filed a challenge which raises only legal issues, which it has acknowledged are outside of the jurisdiction of the Board. CPMC has

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

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

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

Respectfully,



James R. Lancaster

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

Exhibit A

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

April 12, 2018

CHALLENGE DEADLINE ESTABLISHED FOR INITIATIVE PETITION TO AMEND THE MICHIGAN CONSTITUTION SPONSORED BY VOTERS NOT POLITICIANS

An initiative petition proposing an amendment to the Michigan Constitution to create the Independent Citizens Redistricting Commission and authorize the Commission to adopt reapportionment plans for Congressional, State Senate and State House of Representatives districts, was filed with the Secretary of State on December 18, 2017 by Voters Not Politicians.

The Board of State Canvassers has established a uniform deadline for challenging signatures sampled from an initiative, constitutional amendment or referendum petition to elapse at 5:00 p.m. on the 10th business day after copies of the sampled signatures are made available to the public. (See minutes of November 8, 2013 meeting of the Board of State Canvassers.)

Please be advised that copies of the signatures sampled from this constitutional amendment petition were made available for release to the public on April 12, 2018. **Therefore, the deadline to submit challenges to this petition will elapse at 5:00 p.m. on April 26, 2018.**

Please contact the Bureau of Elections at (517) 373-2540 if you wish to purchase a copy of the sampled signatures for the petition.

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

Exhibit B

Practical Political Consulting
920 North Washington
Lansing, Michigan 48906

To: James R. Lancaster
Voters Not Politicians General Counsel

From: Alan Fox and Mark Grebner

Re: Review of Sample Signatures Of The Voters Not Politicians Petitions

Date: April 18, 2018

You had asked us to review and analyze the 505 signatures that the Bureau of Elections has drawn from the Voters Not Politicans' petitions.

The Bureau has reviewed a universe of 74,295 sheets containing 427,075 signatures.

You provided to us on Friday copies of the petitions sheets containing each sample signature. We compared each of the 505 signatures to the information in our database. We believe that at least 466 of the signatures are clearly and unquestionably valid. This results in a 92.27% validity rate.

VNP needs 73.91% of its signatures to be valid in order to have the 315,654 signatures necessary to qualify for the ballot. Obviously, the percentage of valid signatures in the sample puts VNP well above this threshold.

Based on our analysis, we expect the Board of State Canvassers will determine that there are a sufficient number of signatures to qualify the Voters Not Politicians proposal for the 2018 General Election Ballot.

Exhibit C

Pierce, Carol (MDOS) <piercec1@michigan.gov> 4/16/2018 4:51 PM

Voters Not Politicians

To James Lancaster <lancaster-law@comcast.net> Copy Peter Houk <phouk@fraserlawfirm.com> • Graham Crabtree <gcrabtree@fraserlawfirm.com> • Jonathan Raven <jraven@fraserlawfirm.com>

We have completed our initial review of the sampled signatures.

Please note that we will continue to perform our verification process steps that may result in some status changes prior to our staff report.

Attached is a spreadsheet outlining the sheet number, line number and current status of the signature's validity.

Regards,

Carol Pierce
Election Specialist, Election Liaison Division
Bureau of Elections, Secretary of State
800-292-5973 517-373-2540

You can't teach people everything they need to know. The best you can do
is position them where they can find what they need to know when they need it
—Seymour Papert

- VNP_SampledSheetsLines.xlsx (33 KB)

Voters Not
Politicians
Sample results ~ 505 signature sample

	Sheet	Line	
1	36	1	R
2	160	2	R
3	267	4	R
4	372	2	OC
5	451	10	R
6	528	4	R
7	553	1	R
8	562	1	R
9	678	4	R
10	679	5	R
11	919	8	R
12	938	10	R
13	1017	10	R
14	1022	2	R
15	1114	1	R
16	1217	2	R
17	1433	1	R
18	1490	1	R
19	1614	10	R
20	1869	7	NR
21	1874	8	R
22	2008	1	NR
23	2143	8	NR
24	2250	9	R
25	2378	9	R
26	2436	1	NR
27	2467	1	R
28	2821	1	R
29	2908	9	R
30	2923	1	R
31	3059	10	R
32	3126	2	R
33	3222	7	R
34	3237	1	R
35	3543	4	R
36	3650	7	R
37	4026	8	R
38	4395	2	R
39	4417	2	R

40	4563	2	R
41	4622	6	R
42	4751	7	R
43	4828	1	R
44	5111	2	R
45	5330	8	R
46	5681	1	R
47	5764	10	R
48	5956	4	R
49	6216	2	R
50	6320	7	R
51	6533	8	R
52	6562	3	R
53	6907	3	R
54	6939	7	R
55	6999	3	R
56	7616	9	R
57	7631	3	R
58	7640	2	R
59	7759	1	R
60	7877	9	R
61	8092	5	NR
62	8321	3	R
63	8326	5	R
64	8434	10	R
65	8494	3	R
66	8508	7	R
67	8513	6	R
68	8535	7	R
69	8607	1	R
70	8608	2	R
71	8653	4	R
72	8865	3	R
73	8996	1	R
74	9122	4	R
75	9499	8	R
76	9533	5	R
77	9722	1	NR
78	9861	6	R
79	10426	5	R
80	10526	1	R
81	10642	4	R
82	10679	7	R
83	10731	5	NR
84	11247	2	R
85	11553	5	R
86	11646	6	NR

87	11804	2	R
88	11836	5	NR
89	11865	1	R
90	11877	7	R
91	11940	1	R
92	12265	6	R
93	12465	7	R
94	12789	1	R
95	12817	4	R
96	12926	10	R
97	12966	1	R
98	13308	5	R
99	13451	9	R
100	13568	2	R
101	13607	2	R
102	13705	3	R
103	13768	5	R
104	14218	4	R
105	14301	1	R
106	14392	6	R
107	14447	1	R
108	14563	4	R
109	14858	2	IN
110	14999	10	R
111	15257	3	R
112	15396	8	R
113	15649	10	R
114	15777	1	R
115	15795	1	NR
116	15918	10	R
117	15926	7	R
118	16073	10	R
119	16121	8	R
120	16139	9	R
121	16275	6	R
122	16311	9	R
123	16654	4	R
124	16726	7	R
125	16728	1	R
126	16772	10	R
127	16773	4	R
128	16878	1	R
129	17301	7	R
130	17393	5	R
131	17417	1	R
132	17457	2	R
133	17526	6	R

134	17652	1	R
135	17659	8	R
136	17846	10	NR
137	17943	1	R
138	18189	7	R
139	18474	1	R
140	18474	1	R
141	18583	7	IN
142	18600	6	R
143	18974	2	R
144	19170	5	R
145	19345	1	R
146	19451	1	R
147	19527	3	R
148	19752	2	ND
149	20038	9	IN
150	20145	2	R
151	20400	7	R
152	20530	3	R
153	20690	3	R
154	21007	2	R
155	21311	9	R
156	21630	2	R
157	21636	5	R
158	21770	7	R
159	21884	5	NR
160	21957	1	R
161	22003	5	R
162	22282	6	R
163	22286	4	R
164	22289	1	R
165	22405	4	R
166	22488	1	R
167	23032	1	R
168	23156	2	R
169	23562	2	R
170	23680	9	R
171	23754	6	R
172	23774	2	R
173	23833	4	R
174	24026	2	R
175	24425	3	R
176	24717	4	R
177	24789	7	R
178	25181	5	R
179	25275	7	R
180	25397	2	R

181	25423	2	R
182	25525	3	R
183	25587	1	R
184	25605	2	R
185	25609	1	R
186	25802	8	R
187	25887	1	R
188	26078	4	NR
189	26308	4	R
190	26515	1	R
191	26666	4	R
192	27151	10	R
193	27152	2	R
194	27193	5	R
195	27760	9	R
196	27865	5	R
197	27964	10	NR
198	28087	7	R
199	28524	5	R
200	28596	9	R
201	28774	1	R
202	28974	5	R
203	29094	5	R
204	29490	2	R
205	29696	8	R
206	29858	3	NR
207	29885	5	R
208	30451	5	R
209	30558	7	R
210	30795	5	R
211	30830	4	R
212	31049	8	R
213	31214	2	R
214	31216	6	R
215	31315	10	R
216	31378	2	R
217	31443	9	R
218	31552	5	R
219	31626	3	R
220	31976	5	R
221	32196	4	R
222	32351	3	R
223	32450	7	R
224	32463	6	R
225	32479	4	R
226	32507	7	NR
227	32542	7	R

228	32717	2	NA
229	32761	2	R
230	33255	10	R
231	33293	5	R
232	33429	3	R
233	33845	3	R
234	33886	6	R
235	33897	1	IN
236	33982	4	R
237	34244	6	R
238	34406	2	R
239	34599	9	R
240	34710	9	R
241	34714	10	R
242	34794	10	R
243	34869	1	R
244	34893	5	R
245	35297	7	R
246	35418	1	R
247	35651	9	R
248	35919	5	R
249	36006	1	R
250	36032	1	R
251	36232	3	R
252	36370	5	R
253	36759	6	R
254	36764	8	R
255	36765	9	R
256	36861	7	R
257	37030	9	R
258	37041	2	R
259	37168	10	R
260	37350	2	R
261	37425	3	R
262	37432	7	OC
263	37823	2	R
264	37926	5	R
265	37933	2	R
266	37972	1	R
267	38317	1	R
268	38449	9	R
269	38655	5	R
270	38692	7	R
271	38960	4	R
272	38968	2	NA
273	39272	1	R
274	39462	1	R

275	39603	8	R
276	39707	5	R
277	40196	1	R
278	40679	4	R
279	40727	3	R
280	41338	4	R
281	41465	2	R
282	41663	10	R
283	41902	1	R
284	41912	1	R
285	41931	6	R
286	41937	8	R
287	42256	1	R
288	42329	6	R
289	42419	9	R
290	42668	2	R
291	42802	6	R
292	43108	7	R
293	43191	6	R
294	43409	8	R
295	43441	2	R
296	43959	4	R
297	43973	5	R
298	44384	4	NR
299	44471	3	R
300	44994	4	R
301	44997	1	R
302	45255	6	R
303	45288	10	R
304	45307	3	R
305	45603	2	R
306	45859	1	R
307	46199	1	R
308	46203	1	R
309	46327	10	R
310	46586	5	R
311	46723	7	R
312	46970	4	R
313	46970	5	R
314	47156	5	R
315	47239	3	NR
316	47369	7	R
317	47464	2	R
318	47480	8	NR
319	47544	3	R
320	47571	5	R
321	47645	2	R

322	47751	1	R
323	47765	4	R
324	47777	1	R
325	47819	5	R
326	47926	9	R
327	48181	4	R
328	48646	7	R
329	48941	4	R
330	49099	1	R
331	49194	6	R
332	49353	5	R
333	49366	4	R
334	49506	1	R
335	49540	8	R
336	49616	1	R
337	49763	4	R
338	49931	3	NR
339	49939	1	R
340	49962	2	R
341	50251	7	R
342	50513	9	R
343	50579	9	R
344	50646	10	R
345	50857	8	R
346	50904	3	R
347	51294	6	R
348	51346	5	R
349	51543	1	R
350	51770	3	R
351	51774	1	R
352	51979	7	R
353	51995	3	R
354	52011	9	R
355	52123	1	R
356	52253	6	R
357	52480	8	R
358	52493	9	R
359	52493	8	R
360	52593	5	R
361	53357	5	R
362	53587	3	R
363	53638	9	R
364	53775	10	R
365	53914	3	R
366	54177	9	R
367	54201	4	R
368	54251	5	R

369	54698	6	R
370	54861	7	R
371	54903	1	R
372	55098	3	R
373	55307	5	R
374	55568	4	R
375	55771	6	R
376	55831	1	R
377	56353	2	R
378	56452	5	R
379	56632	2	R
380	56640	1	R
381	56674	7	R
382	56866	2	R
383	56874	4	R
384	57002	10	R
385	57063	6	R
386	57259	1	R
387	57296	4	NR
388	57320	9	R
389	57324	7	R
390	57384	3	R
391	57451	5	R
392	57529	1	R
393	57609	2	R
394	57679	10	R
395	57987	8	R
396	58196	10	R
397	58254	2	R
398	58329	1	R
399	58428	5	R
400	58451	7	R
401	58507	4	R
402	58988	2	R
403	58989	4	R
404	59156	2	R
405	59229	7	R
406	59467	5	R
407	59957	3	R
408	60044	10	R
409	60098	2	R
410	60157	7	R
411	60424	1	R
412	60428	9	R
413	60505	4	R
414	60792	3	R
415	60924	2	R

416	61098	6	R
417	61099	7	R
418	61295	1	R
419	61393	2	R
420	61395	7	R
421	61459	2	R
422	61715	10	R
423	62265	6	R
424	62744	9	R
425	62805	6	R
426	62927	2	OC
427	63090	2	R
428	63274	7	NR
429	63409	2	R
430	63428	7	R
431	63467	5	R
432	63930	1	R
433	64010	3	R
434	64107	2	R
435	64108	5	R
436	64185	9	R
437	64273	7	R
438	64275	2	IN
439	64279	2	R
440	64680	8	R
441	64988	6	R
442	65004	1	R
443	65164	3	R
444	65215	8	R
445	65426	7	OC
446	65515	8	R
447	65605	1	R
448	65875	1	NR
449	65954	1	R
450	65959	1	R
451	66571	5	R
452	66600	2	R
453	66934	7	R
454	67146	6	R
455	67482	7	R
456	67740	1	R
457	67930	10	R
458	67948	1	R
459	68034	5	R
460	68056	5	R
461	68213	1	R
462	68325	4	R

463	68590	4	R
464	68644	5	NR
465	68779	1	R
466	68811	3	R
467	69058	2	R
468	69070	9	R
469	69087	7	R
470	69253	3	R
471	69367	1	R
472	69431	5	R
473	69562	3	R
474	69625	4	R
475	70077	6	R
476	70471	8	SDC
477	70556	1	R
478	70786	2	R
479	70873	9	IN
480	71006	10	R
481	71093	6	R
482	71269	3	R
483	71278	5	R
484	71308	2	R
485	71488	10	R
486	71859	8	R
487	71932	4	R
488	71947	9	R
489	72548	8	R
490	72630	2	R
491	72771	1	R
492	72780	3	R
493	72813	6	R
494	72855	2	R
495	72904	3	R
496	72956	1	R
497	73129	2	R
498	73247	8	R
499	73692	6	R
500	73693	7	R
501	73791	10	R
502	73889	1	R
503	74006	5	R
504	74019	6	R
505	74114	1	NR

Exhibit D

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

April 23, 2018

STAFF REPORT:

COALITION TO REGULATE MARIJUANA LIKE ALCOHOL PETITION

SPONSOR: Coalition to Regulate Marijuana Like Alcohol, 2570 Champlain Street NWE, Suite 12, Washington, D.C. 20009.

DATE OF FILING: November 20, 2017.

NUMBER OF VALID SIGNATURES REQUIRED: 252,523 signatures.

TOTAL FILING: 59,601 sheets containing 365,384 signatures.

SIGNATURE SAMPLE

EXCLUDED FROM SAMPLE: 1,022 sheets containing 3,282 signatures.

	Sheets	Signatures
Torn, mutilated, or damaged sheets:	10	53
Defective circulator certificate: (Omitted or incorrect date, failure of out-of-state circulator to check box)	147	872
Jurisdiction error: (Invalid jurisdiction entry by circulator or every signer on sheet)	865	2,357
TOTAL:	1,022	3,282

INCLUDED IN SAMPLE: 58,579 sheets containing 362,102 signatures (the universe).

The two-stage sampling process was selected for the canvass of this petition. Under the Board's established procedures, a small sample is drawn (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 must be taken to provide a result with the maximum confidence level that can be obtained.

NUMBER OF SAMPLED SIGNATURES: 500 signatures.

SAMPLE RESULT: 383 valid signatures; 117 invalid signatures.

Valid signatures	
Registered signers; signatures verified:	383
Invalid signatures	
Signatures determined invalid due to signer's registration status:	62
Dual jurisdiction entries:	29
Other jurisdiction errors (no jurisdiction by that name located in county listed in heading, address given is located outside of the listed jurisdiction):	19
Signature errors (missing or incomplete signatures, non-matching signatures):	5
Date errors (incorrect or omitted date, signature dated after circulator's signature):	2
Total	500

The standard ten business day challenge period elapsed on February 9, 2018 without an opponent having filed a challenge against this petition.

FINAL RESULT OF SIGNATURE SAMPLE

Number of valid signatures	Formula Result
365 or more	Certify
334 – 364	Sample more signatures
333 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 277,370 valid signatures (at a confidence level of 99.96%).

STAFF RECOMMENDATION

Staff recommends that the Board **certify** the petition.

EXHIBIT E

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

-- NOTICE --

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

Included on the Agenda will be:

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

Sally Williams, Secretary
Board of State Canvassers

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

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

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