STATE OF MICHIGAN
IN THE SUPREME COURT

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

Plaintiffs-Appellants,

v.

SECRETARY OF STATE, and MICHIGAN BOARD OF STATE CANVASSERS,

Defendants/Cross-Defendants-Appellees,

and

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

Intervening Defendants/Cross-Plaintiffs-Appellees.

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Supreme Court Case No. _____
Court of Appeals Case No. 343517

PLAINTIFFS CITIZENS PROTECTING MICHIGAN'S CONSTITUTION, JOSEPH SPYKE AND JEANNE DAUNT'S EMERGENCY APPLICATION FOR LEAVE TO APPEAL

ORAL ARGUMENT REQUESTED

DECISION REQUESTED BY SEPTEMBER 6, 2018

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STATEMENT IDENTIFYING THE OPINION APPEALED AND DATE OF ENTRY

By published opinion and order dated June 7, 2018, the Michigan Court of Appeals denied the Complaint for Mandamus filed by Citizens Protecting Michigan's Constitution, Jeanne Daunt, and Joseph Spyke (collectively, "CPMC"). (**Exhibit 1**, 6/7/18 COA Op.) The Complaint for Mandamus sought an order directing the Defendants, Secretary of State Ruth Johnson ("Secretary") and the Michigan Board of State Canvassers ("Board") to reject and take no further action to place the Voters Not Politicians Ballot Proposal ("VNP Proposal") on the 2018 General Election ballot. The Court also granted a cross-claim for mandamus filed by Intervening Defendants, including Voters Not Politicians (collectively, "VNP"), directing the Secretary and Board to take all necessary measures to place the VNP Proposal on the 2018 General Election Ballot.

CPMC seeks leave to appeal from that decision. This Court has jurisdiction pursuant to MCR 7.303(B)(1).

CPMC seeks: 1) this Court's review of the decision of the Court of Appeals denying their Complaint for Mandamus; and 2) an order of mandamus from this Court, either by peremptory order or after plenary review, directing the Secretary of State and the Board of State Canvassers to reject and take no further action to place the VNP Proposal on the 2018 General Election Ballot.

STATEMENT OF QUESTIONS PRESENTED

The VNP Proposal is a ballot question that, if adopted, would amend the Michigan Constitution by creating an "independent" redistricting commission and changing Michigan's traditional redistricting criteria. The Proposal would add more than 3,000 words and delete more than 1,000 words in the existing Constitution. It would moreover eliminate typical checks and balances that apply to the branches of government by giving the Commission an unlimited budget, providing for removal of commissioners only by other commissioners, and preventing the courts from drawing redistricting plans even as a last resort.

CPMC requested mandamus relief in an original action in the Court of Appeals directing the Secretary and Board to reject the VNP Proposal and to take no further action to place it on the 2018 General Election ballot. The VNP Proposal abrogated and failed to republish, as required by MCL 168.482(3), four sections of the Michigan Constitution. Further, the VNP Proposal is so massive and makes changes of such a fundamental nature that it cannot be accomplished as an initiated amendment, and instead requires a constitutional convention under Const 1963, art 2, § 3.

The Court of Appeals denied CPMC's Complaint for Mandamus. Instead, it issued a published opinion and order directing the Secretary and Board to take all necessary steps to place the VNP Proposal on the ballot.

I. The decision of the Court of Appeals panel was contrary to binding Supreme Court precedent. Further, this matter involves significant constitutional questions that go the core of our constitutional government. Should this Court grant leave to appeal?

The Court of Appeals did not answer this question.

CPMC answers: "Yes"

II. The Court of Appeals held that the VNP Proposal does not abrogate Const 1963, art 1, § 5, art 6, § 13, art 9, § 17, and art 11, § 1, and thus the petition circulating the Proposal did not violate MCL 168.482(3) by failing to republish those provisions. Where the Court of Appeals misapplied this Court's precedent concerning whether an abrogation has occurred, should this Court, upon review, reverse the decision of the Court of Appeals?

The Court of Appeals did not answer this question.

CPMC answers: "Yes"

III. Longstanding Michigan law precludes submission by an initiated amendment of changes that are too massive or too fundamental to the operation of state government. Such measures must be submitted to the voters only after a constitutional convention. The Court of Appeals panel misapplied this law in determining the VNP Proposal was susceptible to submission as an amendment. Upon review, should this Court reverse the decision of the Court of Appeals?

The Court of Appeals did not answer this question.

CPMC answers: "Yes"

I. INTRODUCTION AND REASONS FOR GRANTING LEAVE TO APPEAL

A. Introductory Matters

In this Application, Citizens Protecting Michigan's Constitution, Jeanne Daunt, and Joseph Spyke (collectively, "CPMC") seek review of a published decision of a panel of the Court of Appeals in which that Court denied CPMC's request for mandamus relief. CPMC ultimately seeks mandamus relief in the form of an order directing Defendants—Secretary of State Ruth Johnson ("Secretary") and the Board of State Canvassers ("Board")—to reject a petition that proposes to submit a ballot question at the 2018 General Election. The proposal, in turn, is supported and sponsored by the Intervening Defendants (collectively, "VNP").

The ballot question at issue proposes to amend the existing Constitution, among other things, to establish an "independent" redistricting commission and to revise Michigan's longstanding, traditional redistricting criteria. (The proposal hereafter is referred to as the "VNP Proposal.") While these two features are among the primary purposes of the VNP Proposal, the Proposal makes a multitude of other changes in service of these purposes that would fundamentally change the ordinary operation of state government. VNP does not shy away from the fundamental change envisioned by the VNP Proposal. In VNP's own words: "The principal purpose of the Proposal is to completely take the power of redistricting away from the Legislature and the Governor, and place that power with the newly created Independent Citizens Redistricting Commission." (Appendix B to VNP May 22 Response Brief, p. 6.)

The VNP Proposal would abrogate four sections of the existing Constitution—art 1, § 5, art 6, § 13, art 9, § 17, and art 11, § 1. Under state law, these sections had to be republished with the petition circulated in support of the VNP Proposal. MCL 168.482(3). They were not.

The Court of Appeals panel below, *in a published decision*, erred in that it found that no abrogation would occur with respect to these four provisions if the VNP Proposal were to be

adopted. It misapplied the test for abrogation as established by this Court in *Protect Our Jobs v Board of State Canvassers,* 492 Mich 763; 822 NW2d 534 (2012). The Court of Appeals panel focused on whether the changes to be made by the VNP Proposal were conceptually *possible*—but the controlling legal analysis to be applied assesses whether the changes nullify existing language such that the public should be told of the nullification in the petition. Because it applied the wrong test, the Court of Appeals panel reached the wrong conclusions.

Further, while abrogation is a narrow concept, even purportedly slight abrogations must be republished. The Court of Appeals panel did not follow this rule as established in *Protect Our Jobs. Id.* at 790-791.

The Court of Appeals panel also erred in that it found that the VNP Proposal was an appropriate initiated amendment rather than a revision that must be made by constitutional convention. Under longstanding Michigan law, an amendment is confined to a mere "correction of detail."[1] Amendments may not include sprawling compilations of changes; and amendments may not include fundamental changes to the operation of state government. The VNP Proposal does both. Changes of such magnitude can only be made by a constitutional convention under Const 1963, art 12, § 3

The VNP Proposal represents a massive change to our Constitution. If adopted, it would—by sheer volume of words—be more than two and a half times larger than any previous amendment made to the Constitution. More important, it would also make substantive fundamental changes to the Constitution—not only in the area of redistricting, but also in establishing a commission that

[1] *Citizens Protecting Mich's Constitution v Sec'y of State ("Citizens")*, 280 Mich App 273, 296; 761 NW2d 210, aff'd in part, appeal denied in part by 482 Mich 960 (2008) (quotations omitted).

is not subject to budget controls, laws, judicial remedies, or other checks and balances that exist between the branches in Michigan's representative democracy.

The Court of Appeals panel's decision to deny mandamus relief to CPMC was plain error. If left unaddressed by this Court, the panel's published decision will confound application of the legal principles to be applied in all future cases. It should be reversed, and the VNP Proposal should not be submitted to the voters in November.

B. Review should be granted.

This Court should grant review because the issues involved are of significant public interest and the case is one against the Secretary of State and Board of State Canvassers. See MCR 7.305(B)(2). The Court of Appeals panel, in a published decision, misapplied the controlling precedent of this Court and of the Court of Appeals. The questions at issue concern the application of this Court's jurisprudence on core questions concerning the manner in which constitutional amendments will be proposed going forward. They also include whether it is even possible under the Michigan Constitution for the changes in the VNP Proposal to be accomplished without the careful study and planning of a constitutional convention. The questions of this case include fundamental issues of: (i) who will pick our legislators and how; (ii) when and how our core governing document can be changed; and (iii) when and whether the public is to be made aware of the scope of changes to be enacted by proposed ballot initiatives when they are presented in a petition.

For these same reasons, this case involves legal principles of major significance to the state's jurisprudence. See MCR 7.305(B)(3). There are many at issue here, including the interpretation of a multitude of the provisions of the 1963 Constitution. The Court of Appeals panel adopted constructions of, for example, the right to free speech in Const 1963, art 1, § 5, or the Oath Clause in Const 1963, art 11, § 1, that diminish the protections of those constitutional

provisions. Further, the VNP Proposal, if enacted, would limit this Court's authority and discretion on issues of major political significance, and require this Court to hear, as a matter of right (and as a trial court), a broad set of challenges to redistricting plans every ten years.

Finally, review should be granted because the decision of the Court of Appeals panel plainly conflicts with the Supreme Court's decision in *Protect Our Jobs*. See MCR 7.305(B)(5)(b). While this Court has held that even a small abrogation must be republished in a petition pursuant to MCL 168.482(3), the Court of Appeals panel decision departed forcefully from that holding, instead finding that purportedly minor and slight abrogations do not require republication.

Most important, if this Court refuses to grant leave and examine the decision of the Court of Appeals panel, the substantive constitutional issues raised herein may be foreclosed from further review if the VNP Proposal is placed on the ballot and approved by the voters. See generally *Carman v Hare,* 384 Mich 443; 185 NW2d 1 (1971).

II. CONCISE STATEMENT OF MATERIAL FACTS AND PROCEEDINGS

A. Material Facts

1. Parties

Plaintiff-Appellant CPMC is a duly registered ballot question committee organized for, among other things, opposing the VNP Proposal. Plaintiff-Appellant Joseph Spyke is an Ingham County resident and voter who has been a paid employee of a political candidate within the last 6 years; he would thus be precluded from serving on the redistricting commission if the VNP Proposal is adopted. (See VNP Proposal, **Exhibit 2**, art 4, § 6(1)(B)(iv).) Plaintiff-Appellant Jeanne Daunt is a Genesee County resident and voter who will be aggrieved if the VNP Proposal is adopted because the Proposal would preclude her from serving on the redistricting commission merely because she is the parent of a person otherwise disqualified. (See VNP Proposal, Ex 2, art 4, § (6)(1)(C).)

Defendant-Appellees are the Michigan Secretary of State Ruth Johnson and the Michigan Board of State Canvassers. The Secretary has overall responsibility for preparation of the ballot and submission of constitutional amendment initiatives to the voters. MCL 168.31(1)(f); MCL 168.471. The Board is responsible, among other things, for determining the sufficiency of signatures submitted in support of a petition to amend the Constitution. MCL 168.476(1).

Intervening Defendants are a ballot question committee and concerned electors who support the passage of the Voters Not Politicians Proposal.

2. Administrative History of VNP Proposal

On December 18, 2017, VNP filed the petition containing the VNP Proposal with the Secretary. Upon 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 must be completed not later than two months before the election, by which time the Board is required to issue an official declaration as to the sufficiency of petitions. MCL 168.476(2); MCL 168.477(1). Here, such certification must occur no later than September 6, 2018.

CPMC sent a letter to the Secretary on April 18, 2018 advising of deficiencies in the petition used to circulate the VNP Proposal and of the VNP Proposal's ineligibility to appear on the ballot. (See **Exhibit 3**.) The Secretary did not respond.

CPMC also filed a protest with the Board, advising that it was seeking review in the courts of the threshold question of whether the VNP Proposal was eligible to appear on the ballot. The Board, which need not act to certify questions until September 6, 2018, has not certified the VNP Proposal to date. Simultaneously with filing this Application, CMPC has requested a stay to issue from this Court on further action by the Board and Secretary while this Court considers the matters at issue.

3. The VNP Proposal

The VNP Proposal runs 7 pages of 8-point type text. (See Ex 2.) It would make multiple changes to the existing Constitution, but chief among these is the transfer of authority over the decennial task of apportionment of the districts used to elect members of the Michigan House, Senate, and U.S. Congressional delegation. Redistricting authority would be transferred from the Legislature, Governor, and Courts to a new (purportedly) independent redistricting commission made up of 13 electors. In place of the current constitutional mandatory redistricting criteria that district lines are to follow county and municipal borders, the VNP Proposal would substitute a list of new, non-binding criteria. After compliance with federal law and contiguity are considered, the next criterion for consideration by the commission is that "districts shall reflect the state's diverse population and communities of interest," which term is to include, but not be limited to, "populations that share cultural or historical characteristics or economic interests." (VNP Proposal, Ex 2, art 4, § 6(13)(C).)

Other elements of the VNP Proposal include, but are not limited to:

- **Commission Creation.** Establishment of the redistricting commission in the Legislature, though location in the Legislature is nominal only as: (i) the proposed commission will not be elected by the People or by members of the Legislature, (ii) its members will not be subject to removal or budget control by the Legislature, and (iii) the commissioners will be selected by and advised by the Secretary of State rather than the Legislature. (VNP Proposal, Ex 2, art 4, § 6(1), (2).)

- **Qualifications.** Establishment of qualifications for the commissioners, including that commissioners may not be candidates, officials, members of national, state, or local political parties, paid consultants or employees of officials or candidates, lobbyists, or unclassified state employees, or the family member of such a person, or have been an officeholder in the previous five years. (VNP Proposal, Ex 2, art 4, § 6(1).)

- **Selection by Secretary.** Delineation of a detailed selection process to be implemented by the Secretary of State to create the commission on a decennial basis, including that applicants to the commission must subscribe to application forms and swear under oath that they (as a matter of subjective assessment) affiliate with Democrats, Republicans, or consider themselves to be non-affiliating. The

Secretary is then to draw "randomly" from the pool of applicants four self-identifying Democrats, four self-identifying Republicans, and five self-identifying non-affiliating voters (which would ostensibly include members of the Green Party, Libertarians, Freedom Party, Socialists, as well as "moderate" voters who do not identify with any party) (VNP Proposal, Ex 2, art 4, § 6(2).)

  - **Pool Criteria to be set by Secretary.** The "random" selection by the Secretary, however, is subject to the requirement that the "Secretary . . . use accepted statistical weighting methods to ensure that the pools, as closely as possible, mirror the geographic and demographic makeup of the state." (As there are a multitude of demographic factors—*e.g.*, gender, sex, race, income, union membership, military service, age, disability, profession—the Secretary, a partisan-elected official, will have broad discretion as to fashioning the pool of applicants from which members will be drawn.) (*Id.*)

- **Removal process.** Absent death, resignation, infirmity, or failure to satisfy criteria listed in the VNP Proposal, commissioners may only be removed for conviction of a crime involving dishonesty related to their office, or after at least 10 of the other 12 commission members vote to expel the member. (VNP Proposal, Ex 2, art 4, § 6(3).)

- **Appropriation and Indemnification**. The Legislature will be required to appropriate an amount "equal to not less than 25 percent of the general fund/general purpose budget for the Secretary" for the fiscal year to support the redistricting commission's activities. If the amount appropriated is not enough to cover the commission's cost or the Legislature fails to make the appropriation, the state of Michigan "shall indemnify commissioners for costs incurred." (VNP Proposal, Ex 2, art 4, § 6(5).)

- **Public Meetings; No Other Public Communication**. The Commission must hold ten public meetings before beginning to draft plans, and an additional five meetings after it drafts any plan. The Commissioners, their staff, lawyers, and consultants "shall not discuss redistricting matters with members of the public outside of an open meeting of the commission," except that a commission member may communicate in writing to gain information relevant to the performance of his or her duties. (VNP Proposal, Ex 2, art 4, § 6(8)-(11).)

- **Establishment of Criteria**. In addition to the incomprehensible and undefined "communities of interest" criterion as noted above, the VNP Proposal would direct the commission to "abide by" the following criteria in order of priority (VNP Proposal, Ex 2, art 4, § 6(13)):

  - Districts shall not provide a "disproportionate advantage" to any political party, which is to be determined using "accepted measures of partisan fairness." (There are no such "accepted measures of partisan fairness" presently recognized by Michigan courts or the Supreme Court of the United States. Nor is it plain whether a district would be considered

"disproportionate" if not balanced 50-50; or how voter models are to be selected, or applied, since Michigan voters do not register by party, and since voter trends and populations shift over time and from election to election).

- Districts shall not "favor or disfavor" an incumbent elected official or candidate. (What that means is not plain. *E.g.*, preserving the core of an existing district in a new map could be seen as "favoring" an incumbent; but choosing the opposite could be seen as "disfavoring" an incumbent, meaning either choice would be in tension with the criteria.)

- Districts shall "reflect consideration" of (but not necessarily follow as is currently required) county, city and township boundaries.

- Districts shall be reasonably compact.

- **Nondiscretionary Supreme Court Original Jurisdiction**. The Supreme Court shall be required to review any and all challenges to plans adopted by the commission in every instance as a trial court, but will have no ability to order a final plan into place. (VNP Proposal, Ex 2, art 4, § 6(19).)

- **Employer Constraints**. Private and public employers of commission members may not discharge or retaliate against employees because of their membership on the commission or their attendance at any of the commission's meetings (which meetings are not limited in number). (VNP Proposal, Ex 2, art 4, § 6(21).)

- **No Legislative or Executive Branch Control**. The VNP Proposal states that the commission, its members, and staff are not subject to control or approval of the Legislature or the Executive Branch. (VNP Proposal, Ex 2, art 4, § 6(22), and art 5, § 2.) The Governor cannot remove commissioners, and cannot veto the commission's budgets. (*Id.*)

B. Proceedings at the Court of Appeals

CPMC filed its Complaint for Mandamus and initial Brief in Support with the Court of Appeals panel on April 25, 2018.

VNP moved to intervene on May 10, and the Court of Appeals panel granted the motion on May 11. Upon intervening, VNP filed a Cross-Claim against the Defendant Board and Secretary seeking a writ of mandamus directing the Board and Secretary to place the VNP Proposal on the 2018 General Election ballot.

Pursuant to MCR 7.206(D)(2), in the ordinary course, parties have 21 days to file responses to briefs filed in support of complaints for mandamus. MCR 7.206(D)(4) also provides that a court may peremptorily deny relief, grant relief, or order the parties to proceed to a full hearing with additional briefing.

Though the statutory deadline in this case is not until September 6, 2018—and the courts have authority to extend that deadline if necessary—the Court of Appeals panel *sua sponte* expedited its consideration of CPMC's Complaint and VNP's Cross-Claim. On May 11, the Court of Appeals panel ordered that all answers to the Complaint and Cross-Claim were due May 22, that VNP's Brief in Support of its Cross-Claim was due May 22, and that CPMC would then have 9 days—until 1:00 p.m. on May 31—to file a response. Though both CPMC and VNP requested oral argument, the Court of Appeals denied that request, stating it would peremptorily decide the motions on the initial briefs alone.

On May 17, CPMC filed a motion requesting additional time to file a response, in part, because VNP's Cross-Claim stated that VNP intended to raise a new issue in its May 22 brief: *i.e.*, the constitutionality of MCL 168.482(3)'s petition republication requirement. CPMC also sought oral argument. On May 18, the panel denied CPMC's motion for additional time, and again refused oral argument.

On May 31, CPMC filed a combined response to VNP's May 22 opening brief and a reply to VNP's May 22 response to CPMC's opening brief. VNP also filed a reply.

One week later, on June 7, 2018, the Court of Appeals panel issued a *per curiam* opinion and order for publication, giving the order immediate effect pursuant to MCR 7.215(F)(2).

In the opinion, the Court of Appeals panel rejected VNP's argument that the petition republication requirement of MCL 168.482(3) was unconstitutional. (6/7/18 COA Op, Ex 1, p. 21 n 51.) It also rejected VNP's argument that substantial compliance with the requirement was

sufficient (in the face of binding precedent to the contrary in *Protect Our Jobs*.) The opinion and order nonetheless denied CPMC's request for mandamus and granted VNP's cross-claim for mandamus, directing the Board and Secretary to take "all necessary measures to place the proposal on the November 2018 general election ballot." (*Id.* at p. 28.)

III. STANDARD OF REVIEW

This Court reviews for abuse of a discretion a court's decision whether to grant or deny mandamus. *Stand Up for Democracy v Sec'y of State*, 492 Mich 588, 598; 822 NW2d 159 (2012).

The courts are obliged to make the threshold determination of whether an initiative petition meets the constitutional prerequisites for acceptance on the ballot. *Citizens*, 280 Mich App at 283, 291. Once the courts make such a determination, the acts of the Secretary and Board regarding the petition are ministerial in nature, and thus the proper subject of a writ of mandamus. *Id.* at 291-292.

IV. ARGUMENT

A. The Court of Appeals misapplied *Protect Our Jobs*

1. Section 482(3) of the Election Law requires republication of abrogated provisions.

Section 482(3) of the Election Law requires that a petition circulating a proposed constitutional amendment republish those existing provisions of the 1963 Constitution that would be abrogated if the proposal were adopted. See MCL 168.482(3). The petition republication requirement has been Michigan law since 1941.[2] The republication requirement is mandatory—substantial compliance with the requirement will not suffice. *Protect Our Jobs*, 492 Mich at 778 (citing *Stand Up*, 492 Mich at 594).

[2] See former C.S. 6.685(12), enacted in Public Act 246 of 1941; re-codified at MCL 168.482 in 1955.

Abrogated provisions are as much a component of a proposed amendment as language being added to the Constitution by a proposal—if petition drafters do not understand what is being abrogated in the existing Constitution, they do not understand their own proposal. In *Carman v Hare*, the Supreme Court explained that the petition republication requirement in Section 482(3) of the Election Law was designed "to inform the Petition-signer, should he sign, of" the effect "an initiated proposal will have on an existing constitutional provision (or provisions) should the proposal receive electoral approval." *Id.* at 454. The Court called this method of dissemination "wholesome and desirable."[3] *Id.*

In *Protect Our Jobs*, the Michigan Supreme Court explained that "abrogation" is a narrow concept. It does not encompass every *distant* or *indirect* consequence of a proposal. *Id.* at 779-780. Instead, an abrogation exists if it is not possible "for the amendment to be harmonized with the existing provision when the two provisions are considered together." *Id.* at 783. That being said, an abrogation is more likely to exist where the existing provision creates a mandatory requirement or uses absolute or exclusive language. *Id.* at 783. Even a small abrogation must be republished—including an abrogation of "discrete subparts, sentences, clauses, or even, potentially, single words" in the existing Constitution. *Id.* at 784.

This latter rule is well-illustrated in *Protect Our Jobs*. The proposal at issue there would have amended the Constitution to authorize eight new casinos in Michigan (the "Casino

[3] The delegates to the 1961-62 Constitutional Convention well understood the importance of the petition process as a means of educating voters. Delegate Brown, speaking in favor of increasing the minimum number of required signatures, stated as follows: "All that we ask is that there be an informed electorate when a proposition is put on the ballot. The circulation of petitions better informs the electorate with respect to any candidate, better informs the electorate with respect to any issue than almost anything you can do in a campaign. When you go to people and ask for signatures, you are telling them what the proposition is. . . ." 2 Official Record, Constitutional Convention 1961, p. 3200 (Delegate Brown).

Proposal"). Amongst the multiple changes meant to facilitate the establishment of the casinos was an ancillary requirement that each of the eight casinos receive liquor licenses. *Id.* at 790. Because the existing Constitution confers "*complete* control" on the liquor control commission over liquor licenses (in Const 1963, art 4, § 40), and because such language was absolute, even the *minor* encroachment of constitutionally granting eight liquor licenses was enough to require republication. *Id.* at 790-791. The Court explained 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." *Id.* (second emphasis added).

The principle is thus plain: this Court precluded the *entire* Casino Proposal from reaching the ballot because of the abrogation of a single word in the Constitution (*i.e.*, "*complete*"). It made no difference that the liquor control commission would continue to have "complete control" over *all other* liquor licenses in the state. The inquiry ended once this Court determined that an absolute or exclusive piece of language was infringed by a restriction on the liquor control commission.

2. The VNP Proposal would abrogate multiple sections of the existing Constitution.

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, four provisions of the existing Constitution would be abrogated by the VNP Proposal and were not republished with the circulated VNP petition:

- Const 1963, art 9, § 17, concerning payments of funds from the state Treasury and requiring appropriations;
- Const 1963, art 11, § 1, restricting all oaths and tests for public office except for the single oath specified;
- Const 1963, art 1, § 5, concerning free speech; and
- Const 1963, art 6, § 13, conferring original jurisdiction on the circuit courts.

a) The VNP Proposal requires payment of state money without an appropriation, abrogating Const 1963, art 9, § 17, which the petition did not republish.

Article 9, § 17 of the 1963 Constitution commands that "[*n*]*o* money shall be paid out of the state treasury *except* in pursuance of appropriations made *by law*." Const 1963, art 9, § 17 (emphasis added). "By law," refers only to laws adopted by the legislature.[4] Like the "*complete* control" language of Const 1963, art 4, § 40 that was held to be abrogated in *Protect Our Jobs,* the limitation in Const 1963, art 9, § 17 is absolute and mandatory—*i.e.*, "[*n*]*o* money *shall*" be paid without an appropriation.

The VNP Proposal, in art 4, § 6(5), would conversely require that "[t]he state of Michigan *shall* indemnify commissioners for costs incurred *if the legislature does not appropriate* sufficient funds to cover such costs." (VNP Proposal, Ex 2, art 4 § 6(5) (emphasis added).) While the VNP Proposal requires that the Legislature appropriate 25% of the Secretary's annual budget to pay the costs of the commission, the "shall indemnify" language of proposed art 4, § 6(5) requires the State to pay amounts in *excess* of such an appropriation if the commission's budget exceeds that amount.

The two provisions are plainly irreconcilable under the definition of abrogation in *Protect Our Jobs*. Because Const 1963, art 9, § 17 was not republished with the VNP Proposal petition, the petition violated Section 482(3) of the Election Law, and the VNP Proposal cannot be permitted to reach the ballot.

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

(1) The Court of Appeals panel ignored the plain language of the VNP Proposal.

VNP argued below with respect to the abrogation of Const 1963, art 9, § 17, that its Proposal did not really mean what it said. That is, the VNP Proposal contemplates, by its very own terms, that the indemnification will occur "*if the legislature does not appropriate* sufficient funds to cover such costs." (VNP Proposal, Ex 2, art 4, § 6(5) (emphasis added).) VNP argued instead that, when the Proposal says that the State would have to indemnify commissioners even "if the legislature does not appropriate sufficient funds," what it really meant was that the Legislature would, in every instance, have to appropriate sufficient funds. And if the Legislature did not, VNP asserted, the *courts* could make it do so by way of a "constitutionally created" cause of action—*i.e.*, that courts could by mandamus require the Legislature to make an appropriation. (VNP May 22 Response Brief, p. 43.) Under this twisted reading of their own proposal, VNP suggested that no indemnification would be necessary without an appropriation. (*Id.*)

Incredibly, though this "cause of action" theory is *not* what the VNP Proposal says *on its face*, the Court of Appeals panel adopted VNP's argument. (6/7/18 COA Op, Ex 1, pp. 25-26.)

Most noteworthy, this portion of the panel's decision contravenes well-settled law that Michigan's courts are not empowered to order mandamus against the Legislature to compel the making of appropriations. *Musselman v Governor*, 448 Mich 503, 522; 533 NW2d 237 (1995)[5] (citing Const 1963, art 9, § 17 and holding that the Court "lacks the power to require the Legislature to appropriate funds"). The Court of Appeals panel stated that it need not settle that issue. (6/7/18

[5] Reh'g on other grounds, 450 Mich 574; 545 NW2d 346 (1996), declined to follow on other grounds, *Studier v Mich Pub Sch Emps Ret Bd*, 472 Mich 642; 698 NW2d 350 (2005). See also *Flynn v Truner*, 99 Mich 96, 97-98; 57 NW 1092 (1894) (holding mandamus will not lie to compel the Auditor General to draw a warrant in excess of the appropriation even for the particular purpose of the appropriation.)

COA Op, Ex 1, p. 26.) But it *is* settled, and CPMC cited ample authority in its Brief before the Court for that principle.

The panel below made an additional error when it asserted that the VNP Proposal could survive as an independent *constitutional* appropriation. The panel cited *Civil Service Commission of Michigan v Auditor General*, 302 Mich 673, 679; 5 NW2d 536 (1942) for the proposition that there can be a "constitutional appropriation apart from any action by the legislature." (6/7/18 COA Op, Ex 1, p. 26.) The panel failed to study the entire case.

The initial appropriation at issue in *Civil Service Commission* arose under a constitutional directive that the *Legislature* appropriate 1% of the aggregate state service annual payroll to pay for the civil service commission's operations—not an automatic indemnification provision like that in the VNP Proposal. The Court further was addressing a question of whether the civil service commission's setting of rates of payment could operate as an automatic appropriation without the need for legislative action. The Court held that it could not. *Id.* at 679-680. In discussing the possibility of an automatic *constitutional* appropriation, this Court looked to several other state constitutions where, *e.g.*, a certain public officer was stated to receive "an annual salary of two thousand five hundred dollars" or "four thousand dollars per annum." *Id.*. The Court in *Civil Service Commission* stated that for there to be a *constitutional* appropriation, the constitutional provision must "name[] a definite sum." *Id.* at 679.

The VNP Proposal includes no definite sum, and places no upward limit on the amount of expenses the State "shall indemnify" on the commissioners' behalf. It requires indemnification of *any* amount incurred by a commissioner that is *not* covered by a legislative appropriation—it is thus wholly unlike the examples given in *Civil Service Commission*.

In *Civil Service Commission,* immediately after the material cited by the Court of Appeals panel is further analysis that bears directly on the issue here—but which was not cited or recognized by panel:

> "The principle contended for is contrary to the genius of republican government. Under all constitutional governments recognizing three distinct and independent magistracies, the control of the purse strings of government is a legislative function. Indeed, it is the supreme legislative prerogative, indispensable to the independence and integrity of the Legislature, and not to be surrendered or abridged, save by the Constitution itself, without disturbing the balance of the system and endangering the liberties of the people. The right of the Legislature to control the public treasury, to determine the sources from which the public revenues shall be derived and the objects upon which they shall be expended, to dictate the time, the manner, and the means both of their collection and disbursement, is firmly and inexpugnably established in our political system. This supreme prerogative of the Legislature, called in question by Charles I, was the issue upon which Parliament went to war with the King, with the result that ultimately the absolute control of Parliament over the public treasury was forever vindicated as a fundamental principle of the British Constitution. The American commonwealths have fallen heirs to this great principle, and the prerogative in question passes to their Legislatures without restriction or diminution, except as provided by their Constitutions, by the simple grant of the legislative power." [*Civil Serv Comm'n*, 302 Mich at 682-683 (quoting *State v Emerson*, 8 A2d 154, 156 (Del 1939)).]

The Court went on:

> "This historical and constitutional division of the powers of government forbids the extension, otherwise than by explicit language or necessary implication, of the powers of one department to another."
>
> We further said that if there is any ambiguity, the doubt should be resolved in favor of the traditional separation of governmental powers. . . . To set up, even in effect, a fourth department of government contravenes . . . the Constitution. . . . [*Id.* at 683-684 (quoting *Wood v State Admin Bd*, 255 Mich 220, 224; 238 NW 16 (1931)).]

Not only do the principles delineated in *Civil Service Commission confirm* that requiring indemnification without legislative action is contrary to the purpose of Const 1963, art 9, § 17, but they explain why the change would be fundamentally disruptive to the core functioning of state government—a principle to which CPMC will return below.

Because Const 1963, art 9, § 17 will be abrogated by the automatic VNP Proposal indemnification of commissioners (the state "shall indemnify") in the absence of an appropriation, republication was required in the petition. The petition was defective under MCL 168.482(3), and thus the petition must be rejected.

b) The VNP Proposal establishes a political test for office, contrary to the existing Oath Clause; the petition failed to republish this section.

The Oath Clause in Michigan's Constitution—Const 1963, art 11, § 1—provides that, apart from the specific oath set forth in that section, "[*n*]*o 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, art 4, § 6(2) of the VNP Proposal will provide, in relevant part:

> (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. [VNP Proposal, Ex 2, art 4, § 6(2).]

The oath and affirmation that persons subjectively[6] deem themselves to affiliate with Republicans, Democrats, or consider themselves to be non-affiliating (*e.g.*, as a Green Party member, Libertarian Party member, or "independent voter") are prerequisites under the VNP Proposal to applicants ultimately sitting on the commission. *An applicant who does not affirm their affiliating or non-affiliating status will have their application rejected and will be ineligible to sit on the commission.* (See VNP Proposal, Ex 2, art 4, § 6(2)(D)(i).) Indeed, the Secretary cannot select persons who refuse to, under oath, affirm their political affiliation. (*Id.* at art 4, § 6(2)(D)(i), (ii).)

The existing Oath Clause is irreconcilable with the political affiliation test of the VNP Proposal. In the controlling case of *Harrington v Vaughn*, 211 Mich 395; 179 NW 283 (1920), the Supreme Court considered the validity of a statute requiring a candidate for office to file an affidavit stating that "he is a member of a certain political party, naming it, and that he will support the principles of that party." *Id.* at 395. This Court held that requiring a candidate, under oath,[7] to affiliate with a party as a condition of candidacy "contravenes the constitutional provision" mandating "no other oath, declaration, or test" as a condition for holding office. *Id.* at 396, 399.

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[6] Michigan does not require or even allow voters to register with the State as Republicans, Democrats, or otherwise.

[7] *Harrington* was construing Const 1908, art 16, § 2, which provided that "[n]o other oath, declaration or test shall be required as a qualification for any office or public trust." In the 1962 Address to the People issued by the Constitutional Convention, the delegates explained that they intended "[n]o change from Sec. 2, article XVI, of the present constitution except for improvement of phraseology." See Michigan Constitutional Convention, *What the Proposed Constitution Means to You: A Report to the People of Michigan by Their Elected Delegates to the Constitutional Convention of 1961-62*, p. 94 (1962). See *People v Nutt*, 469 Mich 565, 574; 677 NW2d 1 (2004) ("[T]he Address to the People [is] certainly relevant as [an] aid[] in determining the intent of the ratifiers.")

The VNP Proposal petition did not republish the Oath Clause; this defect was fatal under Section 482(3) of the Election Law.

(1) The Court of Appeals panel misapplied *Harrington* and ignored *Dapper*.

The Court of Appeals panel believed *Harrington* to be distinguishable on the basis that "[i]n ruling that the oath was unconstitutional, the Court cited with approval the Attorney General's reasoning that the candidate would be bound by an oath other than the constitutional oath of office." (6/7/18 COA Op, Ex 1, p. 27 (citing *Harrington*, 211 Mich at 397).) The panel stated "the same is not true here, as the oath required by the VNP Proposal relates only to the information on the application and does not bind a candidate once he or she becomes a commissioner." (*Id.*)

The Court of Appeals panel wholly misstated the holding in *Harrington*. Immediately below the referenced reasoning of the Attorney General in *Harrington*, the Supreme Court expressly *rejected* the notion that its holding was limited only to those tests that would continue to apply to a candidate once the candidate took office. The *Harrington* Court stated:

> Where is the logic of saying that, when elected, the officer cannot be subjected to any test oath other than the constitutional oath of office, but before he can be a candidate he must subject himself to a different test oath, or he cannot be a candidate, and is therefore in practical effect, barred from holding the office? [*Harrington*, 211 Mich at 397.]

The Court in *Harrington* next cited, and stated that it was constrained to follow, *Dapper v Smith*, 138 Mich 104; 101 NW 60 (1904). In *Dapper*, the Supreme Court held that an act requiring persons appearing on the ballot to swear an oath merely that the person *desired* to serve in office *also* violated the Oath Clause. *Id.* at 105-106. Noting that the Oath Clause "is not one designed for the benefit of the aspirant for public station alone," but "is in the interest of the electorate as

well," the Court held that the act impermissibly limited voters' choice and ability to nominate reluctant candidates for office. *Id.*

CPMC cited and discussed *Dapper* in its Response Brief (CPMC May 31 Response Brief, p. 7 n 7). The Court of Appeals panel here ignored *Dapper*. The plain language of *Harrington* and *Dapper,* however, show unequivocally that the basis used by the panel to distinguish *Harrington* was meritless. The Oath Clause is not limited to only oaths or affirmations that apply *during* the official's term of office, but oaths, affirmations, and political tests that apply as a *condition* of being nominated for office as well (and thus including the one in the VNP Proposal).

(2) The Court of Appeals panel overlooked plain language in Supreme Court precedent rejecting its attempt to distinguish *Harrington*.

The panel below cited to *Advisory Opinion on Constitutionality of 1975 PA 227*, 396 Mich 465, 510; 242 NW2d 3 (1976) for the precept that the political oath and affirmation required of VNP commissioners (*i.e.*, that they satisfy the Proposal's criteria to be on the commission) are "akin to the affidavits required to file a nominating petition under MCL 168.558" (which concern financial reporting requirements). (6/7/18 COA Op, Ex 1, p. 27.) This is a remarkable oversight by the Court of Appeals panel with respect to the political test imposed by the VNP Proposal on those seeking the position of commissioner. The following quote from the *Advisory Opinion*—which the Court of Appeals panel failed to identify in its decision—demonstrates the fundamental error as to the panel's analysis on this point:

> The oath, affirmation or religious test provision contained in art. 11, s 1 was designed to protect a right which the citizens of our state and nation hold most dear: freedom of belief. While the government may legitimately impose restrictions upon the expression of one's beliefs, it is wholly without power to compel or require a citizen to adopt a belief. Cases involving 'loyalty oaths' fall within that category.

> Essentially, in both *Dapper* . . . and *Harrington* . . . , the Court upheld the right of belief of the citizen in the face of the government attempt to force the citizen to make a decision. In *Harrington*, the Court held that *the government could not force a political candidate to choose a political philosophy*. In *Dapper*, the potential candidate *could not even be forced to decide if he wanted to be a candidate*. . . . The financial disclosure requirements are not analogous. [*Advisory Opinion*, 396 Mich at 510 (emphasis added).]

There is simply no basis for the panel's conclusion that the political test imposed by the VNP Proposal—*i.e.*, requiring applicants to state their political affiliation as a condition for being selected—is not in direct tension with the Oath Clause. Nor, after studying the 1975 *Advisory Opinion*, can there be any support for the panel's attempt at distinguishing *Harrington* on the basis that the oath in that case continued to apply after the candidate took office.

The Court of Appeals panel simply and unquestionably came to the wrong result. The abrogation is clear and unequivocal, and republication was required. Because the VNP Proposal petition did not republish the Oath Clause, it was defective under MCL 168.482(3), and rejection of the proposal for appearing on the ballot is required.

c) The Free Speech Clause would be abrogated by the VNP Proposal's restriction on the speech of commissioners and their staff.

There is an obvious and irreconcilable conflict between art 1, § 5 of the existing Constitution and art 4, § 11 of the VNP Proposal. The former provides that "[*e*]*very* 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). The latter restricts commissioners, their lawyers, their consultants, and their staff from communicating on "redistricting matters" with members of the public, except in open meetings or in writing. (VNP Proposal, Ex 2, art 4, § 6(11).)

If the VNP Proposal is adopted, the Free Speech Clause will be abrogated in these ways:

- "[*e*]*very* person" will no longer mean *every* person, but will exclude commissioners, their lawyers, their consultants, and their staff;

- "*freely*" will no longer mean "freely," and instead commissioners, lawyers, consultants, and staff will be limited to communications in open meetings and writing;

- "on *all* subjects" will no longer mean "on *all* subjects," but will exclude all redistricting matters (including redistricting matters that are not even before the commission).

The Court of Appeals panel here remarkably held that a limitation on the manner and scope of the speech of *some* persons on *some* topics did not abrogate the absolute language of Const 1963, art 1, § 5:

> Const 1963, art 1, § 5 would remain *fully* operative. Section 6(11) of the VNP Proposal does not restrict *all speech, but does place limits on matters related to official commission work*. Commissioners would retain their right to speak freely, but when speaking on official business, they would be restricted to doing so in an open meeting, in writing, or at a publicly noticed public forum. [(6/7/18 COA Op, Ex 1, p. 25 (emphasis added).)]

This is nonsensical. If all persons cannot speak freely on all matters, but are limited in the manner they can speak, there is an obvious and plain abrogation of the absolute language of art 1, § 5. The Court of Appeals panel may consider this abrogation slight. But, any abrogation, even a slight one, *must* be republished. See *Protect Our Jobs*, 492 Mich at 784, 790-791. In *Protect Our Jobs*, the issuance of eight liquor licenses was enough. *Id.* So too must it be with the curtailment of the manner of speech of commissioners, their staff, and consultants under the VNP Proposal.

(1) The Court of Appeals panel's adoption of VNP's "abuse" argument answered the wrong question—it did not address whether abrogation occurred, but made improper public policy assessments.

The panel below stated: "[CPMC] argue[s] that the restrictions on the liberty of speech would extend to matters beyond commission matters and they suggest that the restrictions are neither in the public interest nor in keeping with the rights of the public officials. We reject these policy arguments, as the issue before this Court is the alleged abrogation of existing constitutional provisions, not whether the VNP Proposal promotes sound social policy." (6/7/18/ COA Op, Ex 1, p. 25.)

This is an ironic criticism, because the Court of Appeals adopted VNP's argument below that the restriction at issue could be reconciled with art 1, § 5 because the Free Speech Clause states that persons shall be responsible for the "abuse of that right."[8] Public officials, like other citizens, are "entitled to speak as they please on matters vital to them." *Wood v Georgia*, 370 US 375, 389; 82 S Ct 1364; 8 L Ed 2d 569 (1962).[9] In finding that a redistricting commissioner's speech could be restricted under the "abuse" language in the Free Speech Clause, the Panel itself engaged in an analysis on *public policy* grounds rather than with respect to whether an abrogation occurred.

[8] The Free Speech Clause's reference to responsibility for "abuse" is most frequently invoked in *libel* and *defamation* contexts—far afield from the reconciliation applied by the Court of Appeals here. See, e.g., *Rouch v Enquirer & News of Battle Creek*, 427 Mich 157, 191-192; 398 NW2d 245 (1986) (discussing abuse of free speech in context of defamation case).

[9] See also OAG, 1969, No. 4647, p. 87 (September 29, 1969) (finding members of Michigan Board of Education have protected constitutional right to express their views on controversial subjects in the manner of their choosing).

Regardless, the "abuse" argument is purely tautological—*i.e.*, in the panel's formulation, because the VNP Proposal *says* the commissioners may not discuss redistricting matters, a violation of that edict will necessarily be an abuse of the right once the VNP Proposal is enacted. By that same token, it would not matter what the restriction is—if a constitutional proposal added a restriction (*e.g.*, that judges shall not speak on Wednesdays), it would be an "abuse" to violate it.

The Court of Appeals misapplied *Protect Our Jobs*, and ignored the plain abrogation of Const 1963, art 1, § 5. Because the VNP Proposal petition did not republish an abrogated section of the Constitution as required by MCL 168.482(3), it was defective.

d) The creation of exclusive jurisdiction over redistricting matters in the Supreme Court was a plain abrogation of Const 1963, art 6, § 13.

The VNP Proposal provides that 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." (VNP Proposal, Ex 2, art 4, § 6(19)). The VNP Proposal thus plainly and expressly contemplates that the Supreme Court "shall" be the body that orders the three specified remedies "in the exercise of original jurisdiction."

Existing Const 1963, art 6, § 13 conversely confers original jurisdiction on the circuit court "in *all* matters not prohibited by law." Const 1963, art 6, § 13 (emphasis added). As noted above, "by law" means by legislation.[10]

[10] *Bulger*, 462 Mich at 509.

The Court of Appeals panel highlighted the "by law" language, but misapplied it. It stated that the "by law" language "illustrates that the framers intended that the circuit courts' jurisdiction would have exceptions." (6/7/18 COA Op, Ex 1, p. 24.) It ignored that those exceptions *must be legislative in nature*, and cannot be conferred by a Constitutional amendment without a resulting abrogation. This is yet another instance of the panel answering the wrong question—*i.e.*, the question is not whether reposing original jurisdiction in another court is *possible* (*e.g.*, by law), but whether the People must be made aware of a change to the absolute grant of original jurisdiction to the circuit court circuit if made via a proposed constitutional amendment. They must be, and they were not. See MCL 168.482(3).

The Court of Appeals panel also *yet again* ignored the abrogation framework of *Protect Our Jobs*, where the mere granting of eight liquor licenses was sufficient to keep the Casino Proposal off the ballot. The Court of Appeals panel instead concluded that since only *one type* of case—*i.e.*, redistricting cases—will be removed from circuit courts' jurisdiction "[i]n all *other* respects, Const 1963, art 6, § 13 remains unaffected." (6/7/18 COA Op, Ex 1, p. 24 (emphasis added).) An abrogation in only *one respect* was apparently not enough for the Court of Appeals panel to identify an abrogation—a plain misapplication of *Protect Our Jobs*. The Court of Appeals panel went on: "The existing constitutional provision has not been eviscerated. No abrogation therefore would occur because the existing provision would neither be negated nor rendered wholly inoperative." (6/7/18 COA Op, Ex 1, p. 24.)

Existing Const 1963, art 6, § 13 specifies that the circuit court shall have original jurisdiction in "*all* matters," not just some. This is absolute language. Since the Court of Appeals panel concluded that "the circuit court will not have jurisdiction over the proposal" under the VNP Proposal, it was also compelled to reach the conclusion that an abrogation occurred. (See 6/7/18 COA Op, Ex 1, p. 24.) It did not, and the panel's decision should be reversed.

B. The Court of Appeals should be reversed.

As shown above, the Court of Appeals panel repeatedly asked and answered the wrong question. The abrogation analysis is not concerned with whether a particular change is *possible*, but whether the change, when made, would nullify existing language requiring notification to the People. Under *Protect Our Jobs*, even minor infringements on absolute or mandatory language require republication. The panel plainly did not apply this test.

The Court of Appeals panel seems to have exercised inappropriate solicitude for the VNP Proposal's drafters. It states, *e.g.*, that "VNP should not be penalized for including specific details within its proposal, particularly where many of the proposed additions are merely operational details." (6/7/18 COA Op, Ex 1, p. 20.) This sensibility is contrary to the purpose of the republication requirement—republication is not a punishment, but a measure designed to assure that the public understands how their core governing document is being altered. Further, many of the "operational details" the panel referenced are actually major changes to the normal operation of state government, of which the public must be made aware.

The VNP Proposal's abrogation of the appropriation requirement in Const 1963, art 9, § 17, for example, leads to a potentially catastrophic situation:

- The redistricting commission will have an unlimited budget;
- The State must indemnify—*i.e.*, reimburse—commissioners; and
- Except for death, infirmity, resignation, or conviction for crimes involving dishonesty, Commissioners may only be removed by the vote of a supermajority of other commissioners. (See VNP Proposal, Ex 2, art 4, § 6(3).)

The abrogation of Const 1963, art 9, § 17 could expose the State's assets to the unrestricted whims of the commission—a body that will be substantially answerless to the other branches of government (and even the citizens since the VNP Proposal precludes challenges by referendum or

initiative) *by design*. Whether or not this is good policy is not the question—but unquestionably, the public should be made aware that this important restriction is being abrogated.

For a typical amendment—*i.e.*, a mere "correction of detail"[11]—it should not be difficult to identify abrogated sections. The VNP Proposal, however, is not a mere "correction of detail." It spans some 7 pages of fine-print (8-point), single-spaced type, and includes massive statutory detail[12] on numerous items concerning the operation of the proposed redistricting commission. In including such detail, the Proposal's drafters abrogated multiple sections, and thus its drafters were required to republish those multiple sections with the petition. MCL 168.482(3).

This Court should reverse the Court of Appeals panel decision and should also order rejection of the VNP petition by the Secretary and Board.

C. The Court of Appeals misapplied *Citizens, Laing, and Pontiac* in holding the VNP Proposal was not a revision and could be submitted as an initiated amendment.

1. The Constitution creates a clear distinction between an initiated "amendment" and a "revision."

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 methods by which its words may be changed:

- The Legislature may propose an "amendment" and present it to the electors. Const 1963, art 12, § 1;
- An "amendment" may be proposed by petition and approved by vote of the electors. Const 1963, art 12, § 2; or

[11] *Citizens*, 280 Mich App at 296.

[12] As discussed further below, the VNP Proposal is not really an amendment but a revision, requiring a Constitutional Convention. It is thus no surprise that the VNP Proposal abrogates a number of the sections of the existing Constitution.

- A "revision" of the Constitution may be made through a constitutional convention, with subsequent approval by the voters of a new constitution or changes referred by the convention. Const 1963, art 12, § 3.

An initiated amendment under Const 1963, art 12, § 2 stands apart from the other two methods in one important regard: it is not drafted by the People's representatives in the Legislature or in a constitutional convention, but by private interests. There is no official forum by which an initiative must be refined before it is submitted to the voters, and apart from a 100-word statement of purpose and the circulation of a petition, there are no formal means to educate voters as to its effect on the structures of government. As Convention Vice President Hutchinson explained on the floor of the 1961-1962 Convention:

> When you have an initiative constitutional amendment, you have no forum for debate—at least no organized forum for debate. There is no way that an initiated amendment to the constitution can be submitted to a body like the legislature which can amend it and perfect it in the course of debate to improve its language to see the weaknesses of what is proposed, to bring it back into kilter, perhaps, with the other provisions of the constitution, and so forth. All of this is missing when a constitutional amendment is initiated. For that reason, the use of the initiative should not be made easier. [2 Official Record, Constitutional Convention 1961, p. 2463 (Convention Vice President, J. Edward Hutchinson).]

With study and debate, fundamental changes can be ironed out and fit within the framework of the existing Constitution in a purposeful manner. Conventions also have the added benefit of disseminating information to the People concerning proposed, fundamental changes. That is, conventions are empowered to "explain and disseminate information about the proposed" revision to the public. Const 1963, art 12, § 3. For example, lengthy "Addresses to the People" were published for both the 1908 and 1963 Conventions. Voters do not have the benefit of similar official explanatory materials when considering whether to ratify an initiated amendment. They only have the petition itself to assess what changes are being made to their constitution. And this

fact underscores why constitutional provisions being abrogated must be republished in the petition the People are asked to sign and support.

The language of Michigan's Constitution supports the concept that an "amendment" should thus be only a short correction 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." Const 1963, art 12, § 2 (emphasis added). State law similarly confirms that an "amendment" is to be limited in scope. Unlike revisions proposed by 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).[13]

2. The Constitution does not allow fundamental changes to occur by way of initiated amendments.

It is plain under longstanding Michigan law that what may be achieved by an "amendment" under Const 1963, art 12, § 2, is different from what may be achieved by a "revision" under Const 1963, art 12, § 3. Most recently, the Court of Appeals in *Citizens* plainly held that a "revision" under Const 1963, art 12, § 3, exists where a proposal makes a change of such magnitude or significance that it would work a "fundamental change" to the structure of state government. 280

[13] The VNP Proposal makes a multitude of changes—albeit ones that are purportedly in support of the primary goal of establishing an independent redistricting commission. Nonetheless, knowledge of this multitude of ancillary changes—many of which are fundamentally disruptive to the structure of state government—is essential for voters' to understand the consequences of their approval. Summary of these changes is not feasible in 100 words in a way that will apprise the voters of the considerable effects of the VNP Proposal as described above. In *Citizens*, three justices of the Michigan Supreme Court would have kept the sprawling proposal there at issue from the ballot on the *independent* basis that it was not susceptible to summary in 100 words. See 482 Mich at 960 (Cavanagh, Weaver, and Markman, JJ., concurring.) These justices noted that the 100 word requirement in Const 1963, art 12, § 2 "establishes a clear limitation on the scope of constitutional amendments under § 2." *Id.* The VNP Proposal is similarly not susceptible to summary in 100 words in any manner that would meaningfully apprise voters of its purposes other than at such a high level of abstraction that the summary essentially would be meaningless.

Mich App at 296 (quotations omitted). Such revision can *only* be accomplished by constitutional convention. *Id.* An amendment under Const 1963, art 12, § 2, in contrast, is a mere "correction of detail." *Id.* (quotations omitted)

The *Citizens* Court applied a two-prong qualitative/quantitative test in assessing whether the proposal before it was susceptible to submission as an initiated amendment, or would require a convention. There at issue was the "Reform Michigan Government Now!" Proposal (the "RMGN Proposal"), which would have amended 4 articles and 24 sections of the existing Constitution. *Id*. at 305. Given the quantity of words that would be changed as well as the fundamental nature of the multiple changes in the RMGN Proposal, the *Citizens* Court ordered that the RMGN Proposal be prevented from reaching the ballot. *Id.* at 305-308.

The Court in *Citizens* did not invent the framework it used for analyzing the RMGN Proposal. Its decision was based on this Court's decision in *Kelly v Laing*, 259 Mich 212; 242 NW 891 (1932), which, the *Citizens* Court noted, "stands for the proposition that there is a *qualitative* aspect to the meanings of the words 'amendment' and 'revision' when used to describe changes to 'fundamental law' such as the constitution." 280 Mich App at 297 (citing *Laing*, 259 Mich at 217, 221-222). It also expressly relied on the Supreme Court's decision in *Pontiac School District v City of Pontiac*, 262 Mich 338; 247 NW 474 (1933), where the Court considered a post-election challenge to a constitutional amendment limiting property tax assessments. The *Citizens* Court explained:

> In *Laing* and *City of Pontiac*, our Supreme Court established the proper analysis for determining whether a proposal is a "general revision" of, or merely an "amendment" to, the constitution: the analysis should consider not only the *quantitative* nature of the proposed modification, but also the *qualitative* nature of the proposed modification. More specifically, the analysis does not turn solely on whether the proposal offers a wholly new constitution, but must take into account the degree to which the proposal interferes

with, or modifies, the operation of government. [*Citizens*, 280 Mich App at 298.]

3. The Court of Appeals panel failed to meaningfully assess the qualitative prong because it incorrectly assumed that multiple changes in service of a single goal could not be a revision.

The panel here claimed that it proceeded to review the VNP Proposal while mindful that the holding in *Citizens* was not "to prevent the citizens from voting on a proposal simply because that proposal is allegedly too complex or too confusing." (6/7/18 COA Op, Ex 1, p. 17 (quotations omitted).) That is not the test CPMC set forth below or advocates here. Nor does CPMC make any kind of "single object" challenge. Because the Court of Appeals panel mistakenly framed the issue and CPMC's argument in this fashion, it missed the fact that the key question is not whether a change is complex, but whether the change is *fundamental*.

As acknowledged by *Citizens*, even a relatively simple or short proposal can impact the core structure of government and thus require a constitutional convention. The *Citizens* Court cited with approval, *e.g.*, *Raven v Deukmejian*, 52 Cal3d 335, 342-343; 350-51; 801 P2d 1077 (1990), in which the court precluded submission of a single-purpose, single-article proposed constitutional amendment[14] that "sought to limit the rights of criminal defendants by mandating that California courts not offer greater protections than those offered by the United States Supreme Court's interpretation of the federal constitution." *Citizens,* 280 Mich App at 303. Under the qualitative prong, the fairly limited and straightforward proposal in *Raven* nonetheless constituted a revision because it would have made fundamental changes to the California judiciary; it thus was

[14] Like the Michigan Constitution, the California Constitution differentiates between "amendments," which may be submitted by initiative petitions pursuant to Cal Const, art XVIII, § 3, and "revisions," which may only be accomplished by calling a constitutional convention pursuant to Cal Const, art XVIII, § 2.

not a proper subject matter for a ballot proposal. *Id.*; see also *Amador Valley Joint Union High Sch Dist v State Bd of Equalization*, 22 Cal 3d 208, 223; 583 P2d 1281 (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 also.").

a) The VNP Proposal makes multiple fundamental changes.

The VNP Proposal makes multiple "fundamental" changes that go well beyond "mere corrections of detail." In seeking to establish an "independent" commission, the proposal has departed from the checks and balances that apply to the three branches in a constitutional democracy. By design, the VNP Proposal seeks to insulate the commission from any meaningful limitation on its power, and each such change is thus a *fundamental* one:

- **No final judicial remedy.** The Proposal eliminates the ability of the courts to adopt a redistricting plan as a remedy even of last resort. (VNP Proposal, Ex 2, art 4, § 6(19)). Michigan's courts have routinely been engaged in the drafting and implementation of redistricting plans—the Supreme Court twice has drawn the redistricting plans used in Michigan in the last 40 years. See *In re Apportionment of State Legislature-1982*, 413 Mich 96; 321 NW2d 565 (1982); *In re Apportionment of State Legislature-1992*, 439 Mich 251; 483 NW2d 52 (1992).

- **Unlimited budget.** The Proposal gives an unlimited budget, without the need for an appropriation, to the commission and commissioners, requiring that the state "shall indemnify" each for losses incurred. (See VNP Proposal, Ex 2, art 4, § 6(5).) The Governor, Legislature, and Courts cannot limit the budget of the commission.

- **No removal.** The Governor, Legislature, and Courts cannot remove commissioners. Pursuant to art 4, § 6(3) of the VNP Proposal, absent death, infirmity, voluntary resignation, or a commissioner doing something that disqualifies a commissioner *after-the-fact* of appointment under proposed art 4, § 6(1), there are only two mechanisms for removal of a commissioner:

    - Where the commissioner is convicted of a crime involving dishonesty, deceit, fraud, or a breach of the public trust arising out of their office; or

    - Where a 10-vote supermajority of the other commissioners finds substantial neglect of duty, gross misconduct, or inability to discharge the duties of office and votes to remove the offending commissioner. [See VNP Proposal, Ex 2, art 4, § 6(3)(D).]

- **Unelected officials.** The Proposal transfers redistricting power from *elected* officials in the Legislature, who will be accountable to the People at the ballot box, to *appointed* ones who will never stand for election under the plans they adopt.

- **Political tests.** The Proposal requires officers to swear under oath that they affiliate with political parties (or conversely, that they do not)—something that has *never* been required for elective office in this State. (VNP Proposal, Ex 2, art 4, § 6(2)(A)(iii).)

- **No initiated laws.** The Proposal also eliminates the People's right to propose, enact, and reject redistricting plans under Const 1963, art 2, § 9 (as the power of initiated laws extends only to "laws which the legislature may enact").

The Court of Appeals panel contrasted the VNP Proposal with the RMGN Proposal on the basis that the RMGN Proposal "would have reorganized the operation of the whole state government," concluding that "[t]his case therefore is quickly distinguishable from the much broader RMGN proposal." (6/7/18 COA Op, Ex 1, p. 17.) But this conclusion missed the number of fundamental changes the VNP Proposal works in service of its goal of commission independence—*i.e.*, the VNP Proposal *does* depart from the core underpinning of state government in a number of ways, creating a novel, unchecked entity wholly unlike anything that has come before. Merely concluding that VNP may not be as far reaching as RMGN in the fundamental changes it would make is not a sufficient legal analysis of the "amendment or revision" question under Michigan precedent.

Just because the VNP Proposal's changes are in furtherance of a larger goal of reforming redistricting in Michigan does not mean that they are not multifarious or fundamental in nature. No other body in Michigan government operates in the way the VNP Commission will operate. The members of no other body are as insulated from removal, budgeting limitations, or the electorate. The autonomous boards of the University of Michigan and Michigan State University, for example, are made up of trustees and directors who are elected by the public; university budgets are subject to legislative appropriation. The members of this Court are subject to statewide election

and the courts are subject to state law. The VNP Commission, in contrast, stands alone. Though nominally part of the "Legislature" under the Proposal, the VNP commission exists outside of existing state government. Only the Secretary—a single, partisan-elected official—has any control over the selection of the commission. The commission further blends authorities that presently exist[15] in the legislative, judicial, and executive branches as a sort of "superagency," but again, without the normal checks and balances that apply to those branches.

b) The departure from mandatory redistricting criteria is a fundamental change and will disrupt the operation of state government.

Perhaps most fundamental, especially in the face of the elimination of checks and balances on the commission under the Proposal, is the VNP Proposal's elimination of mandatory redistricting criteria. 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] In *Citizens*, the Court of Appeals referred to authority over the means of redistricting as affecting the "'foundation power' of government." *Citizens*, 280 Mich App at 306. The Court explained, in

[15] The creation of a new, independent agency—standing fully outside of the control of the governor or the legislature—is further contrary to one of the primary policy goals of the 1961-62 Constitutional Convention which was the reduction of autonomous state agencies. 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, e.g., contained some 120 agencies, many of which exercised unsupervised control. 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. See *House Speaker v Governor,* 443 Mich 560, 562-563; 506 NW2d 190 (1993). The VNP Proposal reverses these fundamental policy reforms made in the 1963 Constitution. It creates a new fiefdom with no ability of the voters to reign in its powers by ordinary political means.

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

evaluating the portion of the RMGN Proposal that would have created a materially similar commission to that proposed here:

> [T]he 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.]

The Court of Appeals panel here, paradoxically, held that "the public policy issues raised by the proposal's non-adherence to the county framework are not the province of this branch of government at this stage of the initiative petition process." (6/7/18 COA Op, Ex 1, p. 20.) In characterizing and avoiding a "public policy" question, the Court avoided the real question before it as well—*i.e.*, whether the change VNP proposed is a "fundamental" one.

(1) Mandatory criteria are essential to assure orderly and fair redistricting.

When the Supreme Court invalidated the redistricting commission established by current Const 1963, art 4, § 6 in 1982, it did so on the basis that just *one* of the mandatory criteria specified—*i.e.*, a weighted land area/population formula—had been invalidated by federal law. See *In re Apportionment of State Legislature—1982*, 413 Mich 96, 109; 321 NW2d 565 (1982) (citing *Reynolds v Sims*, 377 US 533; 84 S Ct 1362; 12 L Ed 2d 506 (1964)). In finding the functioning of the commission itself to be non-severable from the unconstitutional criterion, the Court stated as follows:

> The invalidity here declared goes to the heart of the political process in a constitutional democracy. . . .

> A constitutional democracy cannot exist . . . without a legislature that represents the people, freely and popularly elected in accordance with a process on which they have agreed. . . .
>
> The Legislature has the ultimate authority to make the laws by which the people are governed. *Any change in the means by which the members of the Legislature are chosen is a fundamental matter*.
>
> ***
>
> Some voters might view with favor an apportionment commission that is governed by neutral principles, known in advance, and which redistricts and reapportions the state *in a largely mechanical manner* with little partisan maneuvering.
>
> ***
>
> The notion that the people of this state confided to an apportionment commission without apportionment rules absolute discretion to reapportion the Legislature and thereby reallocate political power in this state limited only by human ingenuity and by no federal constitutional standard that a computer cannot circumvent is unthinkable. [*Id.* at 136-139 (emphasis added).]

In short, binding criteria are essential to the orderly operation of redistricting, and to *avoiding* gerrymandering and thus to avoiding the development of an unfair partisan advantage. This is especially so if redistricting is done by an unelected administrative agency such as the one that would be created by the VNP Proposal. District maps drawn by the Legislature and the Courts under the current Constitution are subject to the mandate that district lines follow county lines and the lines of political subdivisions, as well as the mandatory requirements that districts be compact and contiguous by land. See *In re Apportionment of Wayne Cnty Bd of Comm'rs—1982*, 413 Mich 224, 253; 321 NW2d 615 (1982).

These criteria are moreover as old as the State itself. See *In re Apportionment of State Legislature-1982*, 413 Mich at 129-130 n 18. "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." *Id.* (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 following county and municipal lines. *Id.* at 131 n 19. When the Supreme Court adopted the integrity of county and municipal lines as the Court's *own* primary goal for drafting the 1982 apportionment plan, it explained, 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).

If the VNP Proposal is adopted, the commission need not follow (but merely must "consider") county or township lines. Compactness and following boundary lines of political subdivisions will be subordinated to consideration of "communities of interest" and "political fairness," which are no standards at all, but instead, subjective measures that will free the commission to draw whatever district plans it chooses. Because district lines will not follow local unit lines, local clerks preparing ballots will have to deal with districts that cross multiple jurisdictions, and print a wide variety of ballots for voters who, though they reside in the same city, fall into multiple House, Senate, or Congressional districts. While this is a policy issue in

one sense, it is also a factor in assessing how *fundamental* and *disruptive* to the existing operation of state government the VNP Proposal's changes will be.

The abandonment of mandatory criteria, and placement of the redistricting task into the hands of an unelected commission made up of persons with no required expertise, is absolutely a fundamental change that goes to the heart of government. In 1982, this Court said the apportionment commission created by the 1963 Constitution could not be allowed to operate without the detailed apportionment rules that had become unconstitutional under federal law. Like that commission, the citizens redistricting commission that would be created by the VNP Proposal would be allowed to operate without binding apportionment criteria, thus duplicating the situation described by this Court as "unthinkable." 413 Mich at 136-139.

The Court in *Citizens*, as noted, called a change in redistricting methodology one that affected the "foundation power" of government. *Citizens*, 280 Mich App at 306; see also *In re Apportionment of State Legislature*—1982, 413 Mich at 136-137 ("Any change in the means by which members of the Legislature are chosen is a fundamental matter.") Nothing is more fundamental—or more likely to summon the necessity of the careful study, deliberation, and refinement of a constitutional convention before submission to the voters for adoption—than this.

(2) The Court of Appeals panel committed a key error in discussing *Citizens*.

As set forth above, the VNP Proposal at multiple points prohibits legislative control over the commission. Not only does the Legislature have no say in the commission's budget, but the Legislature cannot remove commissioners and has no say in how commissioners are chosen. (See VNP Proposal, Ex 2, art 4, § 6(22).)

In addressing the quotation noted above from *Citizens*, in which the panel remarked that the establishment of a redistricting commission under the RMGN Proposal "affects the 'foundation

power' of government" and "'wrest[s] from' the legislative branch and the judicial branch any authority over redistricting," the Court of Appeals panel here made a key error. (6/7/18, COA Op, Ex 1, pp. 18-19 (quotations omitted).) It stated that the VNP Proposal "does not wrest complete power from the legislative branch . . . where the legislature retains power to veto potential commission members." (6/7/18 COA Op, Ex 1, pp. 19.)

There is no legislative veto over commission members in the VNP Proposal. Under proposed art 4, § 6(2)(E) of the VNP Proposal, the majority and minority leaders in each legislative chamber may "strike" up to five applicants from the Secretary's chosen pool of 200 applicants. This has the effect of reducing the applicant pool by 10%—but this is by no means a "veto" of a proposed commissioner by the legislature.

For the Court of Appeals panel to characterize the five "strikes" from the pool of 200 as being a "veto"—especially one that maintains meaningful legislative control over the commission—reveals that the panel misunderstood the VNP Proposal. Mistakenly believing there to be a "veto" over proposed members may well have led the Court of Appeals to the wrong conclusion—especially since it led the Court to distinguish VNP's redistricting commission from that contained in the RMGN Proposal based on the greater size of the latter. Legally, the two are materially the same—and both plainly affect the "foundation power" of government.

The panel also erred in characterizing the VNP Commission as being a slightly modified replication of the commission created in Const 1963, art 4, § 6 that was held unconstitutional by this Court. (In so saying, the panel did not appear to understand that this Court had held it unconstitutional or why this Court had done so.) The differences are too great to call the new commission a mere modification of the old. For just three salient examples:

- The old commission members were appointed *by the state parties*, assuring some semblance of partisan balance. The new commission will be made up based on subjective assessments of applicants as to whether they "affiliate" with a party or

not, and based on the "demographic" factors selected by the partisan-elected Secretary of State who will choose all of the members of the new commission. This assures no partisan balance, especially since Michigan does not require or allow voters to register as belonging to a political party, and since "non-affiliating" voters may include, e.g., members of the Green Party, Libertarian Party, Socialist Party, or other third parties.

- The old commission had mandatory and formulaic criteria that limited its discretion in drawing maps. The fact that one of those was held to be unconstitutional was why this Court struck down the entirety: there were no longer complete mandatory criteria. *In re Apportionment of State Legislature—1982,* 413 Mich at 136-139. The new commission—other than federal law—has only a nebulous list of criteria, commencing with "communities of interest" and "political fairness," which are not binding standards in any formulation.

- The old commission was subject to legislative control with respect to its budget. It was not insulated from the other three branches to nearly the degree of the new commission in the VNP Proposal.

Because the Court of Appeals panel did not focus on these key changes in its analysis, and instead considered the VNP Proposal's commission to be a continuation of the old, it failed to apply the correct standard under the *qualitative* prong. The question again is not whether the proposed changes are *possible*, but whether they are *fundamental*, and whether they affect the core structures of Michigan's government. The VNP Proposal plainly does, and just as plainly requires refinement and study at a convention before submission to the voters.

c) The change to the role of the Courts in redistricting is another fundamental change that should be studied by a convention.

The removal of authority of this Court to draw redistricting plans is another fundamental change that will disrupt the structure and operation of government under the existing Constitution. As noted above, this Court has had to adopt plans following legislative impasses on redistricting in two of the four census cycles since 1980.

The VNP Proposal compels this Court, in an original action, to "review a challenge to any plan adopted by the commission," but removes the possibility that this Court can afford final relief

on its own, since "[i]n no event shall any body, except the . . . commission . . . , promulgate and adopt a redistricting plan or plans for this state." (VNP Proposal, Ex 2, art 4, § 6(19).) Because this Court must entertain, by right, every challenge to commission plans and cannot draw a map itself, the Court can be assured that, in every decennial cycle, it will have to entertain a multitude of original suits while acting as a trial court. The Court may direct commissioners again and again to draft replacement plans in the same cycle, and where the commission fails, this Court still may not act, even as a remedy, to create a plan.

When the commission reaches an impasse, fails to act, or repeatedly acts in a manner inconsistent with the state or federal law, Federal courts, of necessity, will end up drawing state maps. *Growe v. Emison*, 507 US 25, 36-37; 113 S Ct 1075; 122 L Ed 2d 388 (1993) ("[T]he District Court would have been justified in adopting its own plan if it had been apparent that the state court, through no fault of the District Court itself, would not develop a redistricting plan in time for the primaries."). This paralysis, and the resulting intervention by Federal courts, is another fundamental change.

A convention of delegates, studying the issue and refining the purposes of a commission, may have seen the danger in depriving this Court of an ultimate remedy with respect to redistricting. Changes of this nature should not be susceptible to submission to the voters as initiated amendments for this reason.

4. The quantitative prong shows that the VNP Proposal is not a proper subject for an amendment.

In any framing, the VNP Proposal is massive. It would impact all three branches of government, changing the articles governing the legislative judicial, and executive branches, repealing or altering 11 existing sections. While the VNP proposal does not add new sections, it inserts fully 22 new *subsections* in Const 1963, art 4, § 6.

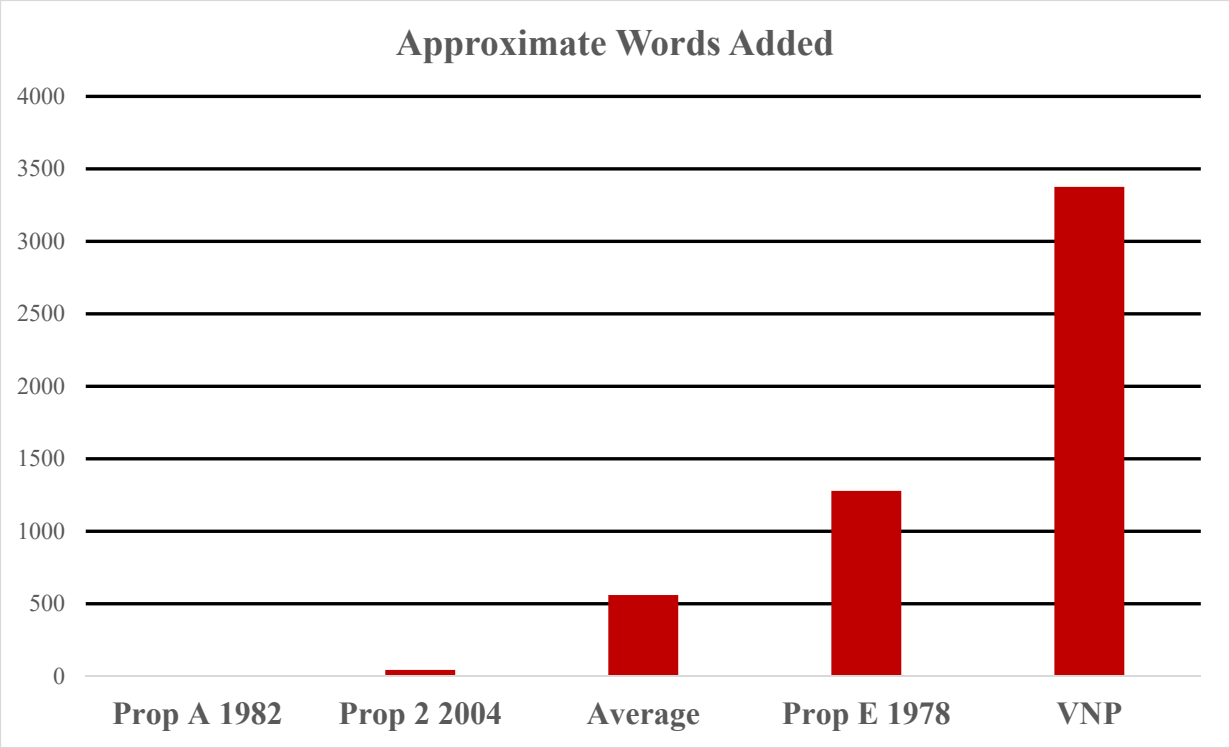
It would further change approximately 4,834 words in the Constitution—more words than comprise the entire length of the United States Constitution as originally ratified,[17] and more than 25% of the Michigan Constitution of 1963 as originally ratified.[18] If enacted, it would add more words to the Constitution—at once—than any other amendment previously adopted under the existing Constitution.

The following chart helps illustrate the unique size of the VNP Proposal. The five bars included respectively represent the approximate number of words added to the Constitution by the following:

- Proposal A of 1982, which amended Const 1963, art 4, § 11 to allow the Legislature to pass laws reforming its members' immunity from civil arrest and process;
- Proposal 2 of 2004—the Marriage Amendment—which added Const 1963, art 1, § 25, specifying what relationships can be recognized as a "marriage or similar union" for any purpose;
- The 559 words added by the *average* of all amendments adopted to the 1963 Constitution between 1963 and 2010 (see Plaintiffs' COA Brief in Support., p. 13, n 8);
- Proposal E of 1978—the "Headlee Amendment"—amending Const 1963, art 9, § 6, and adding new §§ 25-34; and
- The VNP Proposal itself.

[17] The United States Constitution as originally ratified (i.e., without counting subsequent amendments), was 4,543 words.

[18] As originally enacted, the 1963 Constitution was 19,203 words. See Citizens Research Counsel 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).



Proposal E of 1978 is the largest one-time amendment to the 1963 Constitution made thus far, and added approximately 1,278 words. Unlike VNP—which amends three sections—Proposal E moreover made amendments to only a single article of the Constitution—article 9, concerning taxation. As shown above, VNP would add more than 260% of the content added by Proposal E.

The VNP Proposal is in a class all its own. The Court of Appeals dedicated but a single paragraph to addressing the quantitative prong, concluding only that "VNP should not be penalized for including specific details." (6/7/18 COA Op, Ex 1 p. 20.) That is not the test of the quantitative prong. The question is whether the size of the proposal is so great—its volume so massive—that the proposal exceeds the scope of being a mere "correction of detail." *Citizens*, 280 Mich App at 296.

The quantitative prong plainly establishes VNP's ineligibility for submission as an initiated amendment. The Court of Appeals did not seek to balance the quantitative and qualitative factors at all—given VNP's unprecedented size, it should not have been hard for it exceed the qualitative

portion of the test. The Court of Appeals should be reversed, and CPMC's request for mandamus should be granted.

V. RELIEF REQUESTED

Plaintiffs-Appellants CPMC respectfully request that this Court:

A. Peremptorily reverse the decision of the Court of Appeals and issue a writ of mandamus directing the Secretary and Board to reject the VNP Proposal and to take no further action to place it on the 2018 General Election ballot;

B. Alternatively, grant the application for leave to appeal and thereafter issue a writ of mandamus directing the Secretary and Board to reject the VNP Proposal and to take no further action to place it on the 2018 General Election ballot;

C. Grant such other relief as equity requires.

Respectfully submitted,

DICKINSON WRIGHT PLLC

Dated: June 11, 2018

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EXHIBIT 1

STATE OF 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/Cross-Defendants,

and

VOTERS NOT POLITICIANS BALLOT COMMITTEE, doing business as VOTERS NOT POLITICIANS; COUNT MI VOTE, doing business as VOTERS NOT POLITICIANS; KATHRYN A. FAHEY; WILLIAM R. BOBIER; and DAVIA C. DOWNEY;

Intervening Defendants/Cross-Plaintiffs.

FOR PUBLICATION
June 7, 2018
9:15 a.m.

No. 343517

Before: CAVANAGH, P.J., and K. F. KELLY and Fort HOOD, JJ.

PER CURIAM.

Plaintiffs Citizens Protecting Michigan's Constitution (CPMC), Joseph Spyke, and Jeanne Daunt seek a writ of mandamus that orders defendants Secretary of State (Secretary) and the Board of State Canvassers (the Board) to reject an initiative petition filed by Voters Not Politicians concerning the forming of an independent citizen commission regarding redistricting and to not place it on the 2018 general election ballot. Intervening defendants Voters Not Politicians Ballot Committee and Count MI Vote, both doing business as Voters Not Politicians (VNP), Kathryn A. Fahey, William R. Bobier, and Davia C. Downey filed a cross-complaint, asking this Court to direct defendants to immediately execute their clear legal duties regarding the initiative petition. We deny the relief sought in the complaint for a writ of mandamus and grant the cross-complaint.

I. FACTS AND PROCEDURAL HISTORY

A. THE PARTIES

Plaintiff CPMC is a ballot question committee. Plaintiff Spyke is a qualified elector registered to vote in Ingham County and is a former paid employee of a political candidate. Plaintiff Daunt, a qualified elector registered to vote in Genesee County, is the parent of a person otherwise disqualified from serving on the proposed commission.

Defendant Secretary is the chief election officer of the state and has supervisory authority over local election officials. MCL 168.21. See also Const 1963, art 5, § 3. Defendant Board is a constitutionally created board; Const 1963, art 2, § 7. Its duties are established by law; MCL 168.22(2) and MCL 168.841. It canvasses initiative petitions to determine if the requisite number of qualified and registered electors has signed the petition. It makes the final decision regarding the sufficiency of the petition. MCL 168.476.

Intervening defendant VNP is a ballot question committee. Intervening defendant Fahey, a qualified elector registered to vote within Kent County, is the founder of VNP and serves as treasurer. Intervening defendant Bobier, who signed the VNP petition, is a qualified elector registered to vote within Oceana County and a former elected member of the Michigan House of Representatives. Intervening defendant Downey, who signed the VNP petition, is a qualified elector registered to vote within Ingham County.

B. THE INITIATIVE PETITION

On June 28, 2017, intervening defendant VNP Ballot Committee filed an initiative petition for the ballot proposal with the Secretary as required by MCL 168.471.[1] After staff at the Bureau of Elections initially refused to recommend that the petition be approved, VNP redrafted the proposal to further address issues of abrogation and alteration. The Board approved the form of the petition on August 17, 2017, noting that its approval did not extend to the substance of the proposal, the substance of the summary of the proposal, the manner in which the proposal language is affixed to the petition, or whether the petition properly characterizes those provisions of the Constitution that have been altered or abrogated.

On December 18, 2017, VNP submitted the initiative petition supported by over 425,000 signatures[2] of registered voters for an amendment to the constitution to be placed on the November 2018 general election ballot. Primarily the VNP Proposal would amend Article 4, § 6 of Michigan's 1963 Constitution regarding the commission on legislative redistricting by changing the composition of the commission and its administration.[3] A new independent citizen

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[1] That statute provides, in pertinent part: "Petitions under section 2 of article XII of the state constitution of 1963 proposing an amendment to the constitution shall be filed with the secretary of state at least 120 days before the election at which the proposed amendment is to be voted upon."

[2] According to the Secretary and the Board, only 315,654 signatures were needed.

[3] On the initiative petition, the proposal is summarized as follows, in pertinent part: "A proposal to amend the Michigan Constitution to create an Independent Citizens Redistricting Commission.

commission would have exclusive authority to develop and establish redistricting plans for the senate, house and congressional districts.

To prevent the VNP Proposal from appearing on the ballot, and before the Board could certify the petition as sufficient or insufficient, counsel for CPMC sent a letter to the Secretary, urging her to reject the VNP Proposal on the ground that it should not be submitted to voters because it was massive and would enact sweeping changes to the constitution. CPMC contended that it was a general revision to the constitution and thus could not be accomplished by ballot initiative. Further, the VNP Proposal purportedly omitted multiple sections of the constitution that would be abrogated by the proposal. CPMC asserted that the Secretary had a clear legal duty to reject the petition.

Counsel for VNP then sent a letter to the Board, requesting that it certify the VNP Proposal for the November 2018 general election ballot. VNP observed that no challenges to the 428,587 signatures had been filed by the deadline. Further, two separate entities had analyzed the sampled signatures and determined that 466 out of 505 sample signatures were valid, thereby confirming that a sufficient number of signatures support the proposal. VNP indicated that the instant suit by CPMC was irrelevant to the Board's clear legal duty to certify the VNP Proposal.

On May 22, 2018, the Bureau of Elections released its staff report pursuant to MCL 168.476(3). In it, the Bureau staff recommended that the Board certify the petition.

After plaintiffs filed the instant complaint for mandamus, intervening defendants moved to intervene. This Court granted the motion to intervene and accepted the cross-complaint filed by intervening defendants. *Citizens Protecting Michigan's Constitution v Secretary of State*, unpublished order of the Court of Appeals, entered May 11, 2018 (Docket No. 343517).

The Board notes that it must complete its canvass of VNP's petition at least two months before the November 2018 general election. Const 1963, art 12, § 2; MCL 168.476(2); MCL 168.477(1). Also, the Director of Elections also must prepare a statement of not more than 100 words for placement on the ballot. MCL 168.32(2).

C. BACKGROUND

VNP asserts that its proposal is "a desired means to remedy the widely-perceived abuses associated with partisan 'gerrymandering'[4] of state legislative and congressional election

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If adopted, this amendment would transfer the authority to draw Congressional and State Legislative district lines from the Legislature and the 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-identity 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. . . ."

[4] The term "gerrymander" is a portmanteau of the name of Elbridge Gerry, a signer of the Declaration of Independence, fifth Vice President of the United States, and the eighth Governor

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." More than a century ago, Justice Morse of our Supreme Court warned of the "greatest danger to our free institutions" where a political party retains its political power by dividing election districts in a manner to give special advantages to one group:

> By this system of gerrymandering, if permitted, a political party may control for years the government, against the wishes, protests, and votes of a majority of the people of the State, each Legislature, chosen by such means, perpetuating its political power by like legislation from one apportionment to another. [*Giddings v Secretary of State*, 93 Mich 1, 13; 52 NW 944 (1892), MORSE, C.J., concurring.][5]

Ninety years later, our Supreme Court commented that, "[i]n many states, the most egregious gerrymandering is practiced by the Legislature with the aid of computers to achieve results which will pass must under federal standards yet favor the partisan interests of the dominant political faction." *In re Apportionment of State Legislature—1982*, 413 Mich 96, 137; 321 NW2d 565 (1982). In short, "[i]t is axiomatic that apportionment is of overwhelming importance to the political parties." *In re Apportionment of State Legislature—1992*, 439 Mich 715, 716; 486 NW2d 639 (1992). Or, as Senator John Cornyn of Texas once said, "You can't take the politics out of politics, and there is nothing more political than redistricting."[6]

We are not alone in analyzing redistricting issues. Challenges to alleged unconstitutional partisan gerrymandering are pending before the United States Supreme Court in two cases.[7] Further, suit has been brought in the United States District Court, Eastern District of Michigan, to contest Michigan's existing apportionment plan.[8]

In the United States, a minority of states employ a nonpartisan independent mechanism for the drawing of legislative districts.[9] In most of the remaining states, including Michigan, whichever party is in control of the state Legislature draws the districts.[10]

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of Massachusetts, known for designing legislative districts in strange shapes, one of which resembled a salamander. *Arizona State Legislature v Arizona Independent Redistricting Comm*, __ US ___; 135 S Ct 2652, 2658 n 1; 192 L Ed 2d 704 (2015).

[5] Justice McGrath concurred with his brethren justices and added with regard to gerrymandering that "[t]he greatest danger to the Republic is not from ignorance, but from machinations to defeat the expression of the popular will." *Id.* at 13-14 (MCGRATH, J., concurring).

[6] Aarab and Regnier, *Mapping the Treasure State: What States Can Learn from Redistricting in Montana*, Montana Law Review, 76 Mont L Rev 257 (2015) (citation omitted). <http://www.montanalawreview.org/mont-l-rev/mapping-the-treasure-state-what-states-can-learn-from-redistricting-in-montana> (accessed May 25, 2018).

[7] *Gill v Whitford*, No. 16-1161 (Wisconsin), and *Benisek v Lamone*, No. 17-333 (Maryland).

[8] *League of Women Voters of Michigan v Secretary of State*, No. 17-14148 (WestLaw 6610622).

[9] See *All About Redistricting*, Prof. Justin Levitt, Loyola Law School, <http://redistricting.lls.edu/who.php> (accessed May 24, 2018) and National Conference of State

D. THE 1963 CONSTITUTION—REDISTRICTING

Under the 1963 Michigan constitution, the 38 members of Michigan's senate and the 110 members of the house of representatives are elected according to the district in which they reside. The constitution sets forth the apportionment factors and rules for individual districts, which are redrawn after the publication of the total population within the federal decennial census. Const 1963, art 4.

The apportionment of districts for representatives and senators is not a recent phenomenon, as the Michigan Constitution of 1835 addressed apportionment[11] and set forth parameters for representative districting[12] and for senate districts.[13] Fifteen years later, Article 4 was revised to provide for the division of a county into representative districts, when necessary, by board of supervisors.[14] The 1908 Constitution continued the division of counties into districts by a board of supervisors.[15] In the general election in 1952, the voters passed Proposition 3, which amended Articles 2-4 of § 5 of the 1908 Constitution to establish senate districts with geographic boundaries that were not subject to alteration based on a population change.[16] After

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Legislatures, *Redistricting Law 2010*, pp 161-162, <http://www.ncsl.org/Portals/1/Documents/Redistricting/Redistricting_2010.pdf> (accessed May 25, 2018).

[10] See previous footnote, *All About Redistricting*.

[11] Const 1835, art 4, § 4 provided, in pertinent part, that the Legislature "shall apportion anew the representatives and senators among the several counties and districts, according to the number of white inhabitants."

[12] Const 1835, art 4, § 4 provided in part that representatives were to be chosen "by the electors of the several counties or districts into which the State shall be divided for that purpose." That section added that there would be one representative for each organized county, "but no county hereafter organized shall be entitled to a separate representative until it shall have attained a population equal to the ratio of representation hereafter established."

[13] Const 1835, art 4, § 6 provided: "The State shall be divided, at each new apportionment, into a number of not less than four nor more than eight senatorial districts, to be always composed on contiguous territory; so that each district shall elect an equal number of senators annually, as nearly as may be: and no county shall be divided in the formation of such districts."

[14] Const 1850, art 4, § 3 provided that representative districts should have "as nearly as may be an equal number of inhabitants," and further provided, in pertinent part: "In every county entitled to more than one representative, the board of supervisors shall assemble at such time and place as the legislature shall prescribe, and divide the same into representative districts, equal to the number of representatives to which such county is entitled by law . . . ."

[15] Const 1908, art 4, § 3 provided in pertinent part that "[i]n every county entitled to more than one representative, the board of supervisors shall assemble at such time and place as shall be prescribed by law, divide the same into representative districts equal to the number of representatives to which such county is entitled by law . . . ."

[16] In 1960, an elector brought a mandamus action to prevent the Secretary of State from performing acts related to the senate districting, alleging that the 1952 amendments were violative of equal protection. Our Supreme Court dismissed the action and the United States Supreme Court remanded. See *Scholle v Secretary of State*, 360 Mich 1; 104 NW2d 63 (1960), vacated and remanded sub nom, *Scholle v Hare*, 369 US 429 (1962). On remand, our Supreme

the 1961 Constitutional Convention, the 1963 Constitution called for districts to be apportioned under a weighted formula based on land area and population.

Under the current constitution, senate districts are aligned with Michigan's counties, each of which is assigned an apportionment factor of the state's population, based on the census, multiplied by four and the county's percentage of the total land area. Const 1963, art 4, § 2. The constitution also sets forth particular rules for the dividing of the state into senatorial districts. Const 1963, art 4, § 2.

House districts are defined by representative areas that "shall consist of compact and convenient territory contiguous by land." Const 1963, art 4, § 3. The districts also are defined by county and based on population. Const 1963, art 4, § 3.

After one representative is assigned to each representative area as defined above, the remaining house seats are apportioned on the basis of population. Const 1963, art 4, § 3. Counties that are entitled to two or more representatives are divided into single member districts, which are created based on population and which, if possible, should follow city and township boundaries and "be composed of compact and contiguous territory as nearly square in shape as possible." Const 1963, art 4, § 3. Representative areas that contain more than one county, and are entitled to more than one representative, are divided into single member districts, which adhere to county lines and are as equal as possible in population.[17] Const 1963, art 4, § 3.

Thus, over half a century ago, the Constitution of 1963 established criteria and procedures to appoint a commission to decide the apportionment of legislative districts for the senate and house of representatives. Const 1963, art 4, § 6; *In re Apportionment of Legislature—1972*, 387 Mich 442, 450; 197 NW2d 249 (1972) ("The people in adopting the 1963 State Constitution, provided the procedure to carry out legislative reapportionment."). The constitution provided for an eight-member commission whose purpose was to "district and apportion the senate and house of representatives according to the provisions of this constitution." Const 1963, art 4, § 6, ¶ 5. A new commission would be appointed whenever the constitution requires apportionment or districting. Const 1963, art 4, § 6, ¶ 3. Four members were selected by the state organizations of the Democratic and Republican parties.[18] Const 1963, art 4, § 6, ¶ 1. The state political organizations also selected a resident from four specific regions, including the upper peninsula and three portions of the lower peninsula—the north, the southwest and the southeast. Const 1963, art 4, § 6, ¶ 1. With two exceptions, commission members could not be officers or employees of government and could not serve in the Legislature for two years after the apportionment in which they participated became effective.

Court decided that the amendments concerning senate districts were invalid. *Scholle v Secretary of State (On Remand)*, 367 Mich 176; 116 NW2d 350 (1962).

[17] The constitution also provides for procedures for territory that is annexed or merged with a city between apportionments. Const 1963, art 4, § 4. Islands also are taken into account. Const 1963, art 4, § 5.

[18] If a third political party offered a candidate for governor who received over 25% of the gubernatorial vote, the commission would increase to 12 members, with four chosen from the third political party's state organization. Const 1963, art 4, § 6, ¶ 1.

Const 1963, art 4, § 6, ¶ 2. Members held office until the apportionment they worked on became operative. Const 1963, art 4, § 6.

When a majority of the commission could not agree on redistricting, the members could submit a proposed plan to our Supreme Court. Const 1963, art 4, § 6, ¶ 7. 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 publish as provided in this section." Const 1963, art 4, § 6, ¶ 7.[19]

Since the commission's inception, the apportionment of legislative districts has not been without conflict, causing our Supreme Court to preside over apportionment issues on several occasions. Or, as stated by Justice Brennan:

> The constitution creates a Commission on Legislative Apportionment. Four members are Republicans, four members are Democrats. Every ten years the Commission meets. Every ten years the Commission is unable to agree. [*In re Apportionment of Legislature—1972*, 387 Mich at 459, BRENNAN, J., dissenting.]

The very first commission after the adoption of the 1963 Constitution illustrates Justice Brennan's point. In May 1964, our Supreme Court directed the commission to adopt a particular plan when the commissioners could not agree. *In re Apportionment of State Legislature—1964*, 372 Mich 418, 480; 126 NW2d 731 (1964). The United States Supreme Court then issued *Reynolds v Sims*, 377 US 553; 84 S Ct 1362; 12 L Ed 2d 506 (1964), ruling that the weighted land area/population formulae rules violated the Equal Protection Clause of the United States Constitution. The Court indicated that the states should "make an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as is practicable." *Id.* at 577.

Our Supreme Court then ordered the commission to adopt a different plan, the Austin-Kleiner plan, because it more closely aligned with *Reynolds* in that its districts contained population as nearly equal as practicable. *In re Apportionment of State Legislature—1964*, 373 Mich 247; 128 NW2d 721 (1964). An elector then challenged the Austin-Kleiner plan and again the commission could not agree, so again our Supreme Court was called upon. *In re Apportionment of State Legislature—1965-1966*, 377 Mich 396, 474; 140 NW2d 436 (1966). The Court ultimately dismissed the challenge, but not before Justice Black suggested that the eight commissioners' names be placed in a jury box, seven of them chosen at random, and those seven be directed to apportion the districts.[20] *Id.* at 413.

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[19] The Supreme Court also has original jurisdiction over an elector's application filed within 60 days of the final publication of the plan. The Court may direct the secretary of state or the commission to perform their duties, review any final plan adopted by the commissioners and "shall remand such plan to the commission for further action if it fails to comply with the requirements of this constitution." Const 1963, art 4, § 6, ¶ 8.

[20] Perhaps that suggested procedure could be considered somewhat of a precursor to the VNP Proposal of randomly drawing candidates for the commission.

In 1972, after the Commission on Legislative Apportionment failed to settle on a plan,[21] the apportionment issue again was before our Supreme Court, which decided that the Hatcher-Kleiner plan most closely complied with the constitutional requirements, without addressing the constitutionality of the requirements themselves. *In re Apportionment of State Legislature—1972,* 387 Mich at 458.

Ten years later, our Supreme Court examined whether the commission's authority continued despite the holding from the United States Supreme Court that the apportionment rules are unconstitutional and, if so, what standards governed. The Court held that *Reynolds* invalidated the weighted land area/population formulae and the remaining apportionment rules in Article 4 were "inextricably interdependent" and thus were not severable. Likewise, the commission's functions, and the commission itself, were dependent on the rules and could not be severed. *In re Apportionment of State Legislature—1982,* 413 Mich at 116. The Court added that "[t]he matter should be returned to the political process in a manner which highlights rather than hides the choices the people should make." *Id.* at 138.

Thereafter, rather than relying on a commission, which was held to be inextricably related to the apportionment formulae negated by the United States Supreme Court, the Michigan Supreme Court appointed Bernard J. Apol, former Director of Elections, to produce maps to conform with the pertinent apportionment rules.[22] In 1982, the Court adopted Apol's plan. *In re Apportionment of State Legislature—1982,* 413 Mich 146; 321 NW2d 584 (1982).

Almost 10 years later, in a statement reflecting upon the 1982 decision, Justice Levin indicated that the people were to have adopted new apportionment rules:

> Another assumption of the compromise [within the 1982 decision] was that responsible persons would come forth and place on the ballot, and the people would adopt, new apportionment rules in time for the 1992 and 1994 elections. Indeed, that was one of the arguments for non-severability—to highlight the need for a new constitutional provisions regarding legislative apportionment. The Court's exhortation has not been heeded. [*In re Apportionment of State Legislature—1990,* 437 Mich 1208, 1211; 463 NW2d 713 (1990), LEVIN, J., concurring.]

In 1990, the Legislature failed to arrive at an apportionment. *In re Apportionment of the State Legislature—1992,* 439 Mich at 723. Lawsuits were filed and, in 1991, our Supreme Court appointed a panel of special masters to accomplish the reapportionment. *Id.* at 724. This Court ultimately accepted, for the most part, the plan that the masters proffered. *In re Apportionment of the State Legislature—1992,* 439 Mich 251; 483 NW2d 52 (1992).

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[21] Notably, the commission still met, notwithstanding that the United States Supreme Court and the Michigan Supreme Court had ruled that much of the language regarding apportionment was not to be enforced. It was to be the final time that the commission was utilized.

[22] The Apol standards require single member districts, which are areas of contiguous land and drawn by as equal population as possible.

In 1996, the Legislature enacted guidelines for the redistricting of senate and house of representative districts, see MCL 4.261 *et seq.* In 1999, the Legislature passed the congressional redistricting act, MCL 3.61 *et seq.* Thus, after the past two federal decennial censuses, redistricting has occurred without a commission, as the Legislature has decided the districts. With that history in mind, we turn to the VNP Proposal to amend the Constitution to create an independent citizen redistricting commission.

E. THE VNP PROPOSAL

The VNP Proposal seeks to make changes to 11 sections within three articles of Michigan's 1963 Constitution: Article 4 (legislative branch), Article 5 (executive branch) and Article 6 (judicial branch).[23] The majority of those changes are to Article 4, involving the existing commission on legislative apportionment. The VNP Proposal essentially would accomplish the following:

- Create an independent citizens commission regarding legislative apportionment;
- Set forth the parameters for the independent commission regarding its structure, operation and funding;
- Eliminate legislative oversight over the independent commission, vest original jurisdiction in the Supreme Court regarding challenges related to the independent commission, and create an exception in the power of the executive branch to the extent limited or abrogated by the independent commission.

The VNP Proposal creates an exception to the legislative power of the state senate and house of representatives by exempting the new independent citizens redistricting commission from legislative control.[24] The VNP Proposal retains the structure of the senate at 38 members elected from single member districts,[25] and the structure of the house of representatives with 110 members from single member districts apportioned on a basis of population.[26] However, the VNP Proposal eliminates the existing constitutional provisions in Const 1963, art 4, §§ 2-5 relating to senate districts and representative areas and their corresponding rules for apportionment.[27]

The VNP Proposal's primary change is the replacement of the current commission on legislative apportionment with parameters for a new independent citizens redistricting commission. In place of the eight-member commission, the VNP proposal provides for 13 commissioners; each major political party would have four members and the remaining five members would be declared independent voters.[28] The pool of candidates would be drawn from

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[23] Specifically, the VNP Proposal modifies Article 4, §§ 1-6; Article 5, §§ 1, 2 and 4; and Article 6, §§ 1 and 4.
[24] VNP Proposal art 4, § 1.
[25] VNP Proposal art 4, § 2.
[26] VNP Proposal art 4, § 3.
[27] VNP Proposal art 4, §§ 2-5.
[28] VNP Proposal art 4, § 6(1).

eligible registered Michigan voters.[29] With certain exceptions, candidates would not be eligible to serve if they were current or former lobbyists, partisan elected officials or candidates, or a relative of a disqualified individual.[30]

Under the VNP Proposal, commissioners are to be chosen from a pool of applicants, which may include randomly selected voters.[31] Applicants must submit a completed application, must attest under oath that they meet the qualifications, and must identify which of the two major political parties with which they are affiliated, or whether they do not affiliate with either party.[32]

The VNP Proposal sets forth specific parameters and timelines for the application procedure, including that legislative leaders may strike candidates from consideration.[33] The proposal also designates the funding process and provides for a cause of action should funding not occur.[34]

The VNP Proposal includes considerable detail regarding the commission's public hearings and contact with the public. It specifies directives regarding the commissioners' discussion of commission business, and aims to make records available to the public.[35]

The VNP Proposal lists seven criteria for a redistricting plan, giving the most weight to population and geographic contiguity.[36] Additionally, the VNP Proposal describes guidelines for the commission's adoption of a new redistricting plan and the publication of its related data.[37]

Under the VNP Proposal, the Michigan Supreme Court has original jurisdiction regarding the independent citizens redistricting commission to: (1) direct the Secretary or commission to perform their respective duties; (2) review a challenge to any plan that the commission adopts, (3) remand a plan to the commission for further action if the plan does not comply with the requirements of the Michigan Constitution, the United States Constitution or superseding federal law.[38] Only the commission, and no other body, shall promulgate and adopt a redistricting plan.[39]

In Article 5, involving the executive branch, the VNP Proposal continues vesting the power in the executive branch but excepts the independent citizens redistricting commission, noting that the commission's powers are exclusively reserved for the commission.[40] The VNP Proposal alters section 4, involving the establishment of executive branch commissions or

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[29] VNP Proposal art 4, § 6(1)(A).
[30] VNP Proposal art 4, § 6(1)(B)-(E).
[31] VNP Proposal art 4, § 6(2)(A)(i).
[32] VNP Proposal art 4, § 6(2)(A).
[33] VNP Proposal art 4, § 6(2).
[34] VNP Proposal art 4, § 6(5)-(6).
[35] VNP Proposal art 4, § 6(8)-(12).
[36] VNP Proposal art 4, § 6(13)(A-G).
[37] VNP Proposal art 4, § 6(14)-(15).
[38] VNP Proposal art 4, § 6(19).
[39] *Id.*
[40] VNP Proposal art 5, §§ 1-2.

agencies, by adding the language "to the extent limited or abrogated by article v, section 2 or article iv, section 6," the sections involving independent citizens redistricting commission.[41] With regard to Article 6, the judicial branch, the VNP Proposal leaves intact the power of the branch, except to the extent limited or abrogated by the independent citizens redistricting commission.[42]

II. ANALYSIS

> [I]n the very rare case . . . when an 'initiative petition does not meet the constitutional requires for acceptance,' a court may find it necessary to intervene in the initiative process. But because the judicial branch should rarely interfere with the legislative process, such cases should be, and are, rare . . . . [*Coalition for a Safer Detroit v Detroit City Clerk*, 295 Mich App 362, 372; 820 NW2d 208 (2012) (citations omitted).]

This case is not one of the rare cases where this Court should intervene.

The people of Michigan long have reserved the right to amend their constitution. *City of Jackson v Comm'r of Revenue*, 316 Mich 694, 710; 26 NW2d 569 (1947); *Scott v Secretary of State*, 202 Mich 629, 643; 168 NW 709 (1918). To do so, they may bring an initiative petition before the voters by submitting a proposal to be placed on the ballot. Const 1963, art 12, § 2. *Wolverine Golf Club v Secretary of State*, 24 Mich App 711, 716; 180 NW2d 820 (1970), aff'd 384 Mich 461 (1971). Any person or organization opposing the submission of an initiative petition may bring an action for mandamus to preclude the placement of that petition onto the ballot. See *Hamilton v Secretary of State*, 212 Mich 31, 33; 179 NW 553 (1920); *Coalition for a Safer Detroit*, 295 Mich App at 371. In an exceptional case, a court may deem it necessary to intervene in the initiative process. See *Detroit v Detroit City Clerk*, 98 Mich App 136, 139; 296 NW2d 207 (1980).

A. MANDAMUS

This Court has jurisdiction over this original action pursuant to MCL 600.4401(1) ("[a]n action for mandamus against a state officer shall be commenced in the court of appeals . . . ."). See also MCR 7.203(C)(2).[43] The Secretary and the Board are "state officers" for mandamus purposes. See *Comm for Constitutional Reform v Secretary of State*, 425 Mich 336, 338 n 2; 389 NW2d 430 (1986). Further, Michigan Election Law provides that a person aggrieved by a decision of the Board may seek relief in the form of mandamus. MCL 168.479.[44] Thus,

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[41] VNP Proposal, art 5, § 4.

[42] VNP Proposal, art 6, §§ 1, 4.

[43] Under that rule, this Court has jurisdiction over an action for "mandamus against a state officer."

[44] MCL 168.479 provides: "Any person or persons, feeling themselves aggrieved by any determination made by said board, may have such determination reviewed by mandamus, certiorari, or other appropriate remedy in the supreme court."

mandamus is the proper remedy for a party seeking to compel election officials to carry out their duties. See, e.g., *Wolverine Golf Club*, 24 Mich App at 716.

This Court has the authority to issue a prerogative writ of mandamus, but mandamus is an extraordinary remedy. *LeRoux v Secretary of State*, 465 Mich 594, 606; 640 NW2d 849 (2002); *O'Connell v Director of Elections*, 316 Mich App 91, 100; 891 NW2d 240 (2016). Whether a writ issues is within the discretion of the court. See *Carter v Ann Arbor City Attorney*, 271 Mich App 425, 438; 722 NW2d 243 (2006). In a mandamus action, this Court considers whether the defendant has a clear legal duty and whether the plaintiff has a clear right to performance of that duty. *Attorney General v Bd of State Canvassers*, 318 Mich App 242, 248; 896 NW2d 485 (2016). Specifically, the plaintiff has the burden to show:

> (1) a clear legal right to the act sought to be compelled; (2) a clear legal duty by the defendant to perform the act; (3) that the act is ministerial, leaving nothing to the judgment or discretion of the defendant; and (4) that no other adequate remedy exists. [*Twp of Casco v Secretary of State*, 472 Mich 566, 621; 701 NW2d 102 (2005), YOUNG, J., concurring in part.]

A clear legal right has been defined as a right " 'clearly founded in, or granted by, law; a right which is inferable as a matter of law from uncontroverted facts regardless of the difficulty of the legal question to be decided.' " *Univ Medical Affiliates, PC v Wayne County Executive*, 142 Mich App 135, 143; 369 NW2d 277 (1985) (citation omitted). The plaintiff has the burden to demonstrate an entitlement to the extraordinary remedy of a writ of mandamus. *Herp v Lansing City Clerk*, 164 Mich App 150, 161; 416 NW2d 367 (1987).

Plaintiffs here include a duly registered ballot question committee (CPMC), a former paid employee of a political candidate (Spyke), and the parent of a person otherwise disqualified from serving on the proposed commission (Daunt). Spyke and Daunt contend that they will be aggrieved by the VNP Proposal because they would be precluded from serving on the redistricting commission pursuant to the revised criteria. They assert a clear legal right to have the Secretary and the Board reject the petition and not place it on the ballot.

The Secretary has a clear legal duty to "[p]repare the form of ballot for any proposed amendment to the constitution or proposal under the initiative or referendum provision of the constitution to be submitted to the voters of this state." MCL 168.31(1)(f). The Secretary argues, however, that her only remaining duty is to certify the ballot to the counties after Board certification.

The Board has a clear legal duty regarding ballot questions, as it examines petitions to ascertain that they have sufficient signatures. MCL 168.476. The Board also makes an official declaration regarding the sufficiency of the petition. MCL 168.477(1). The Board's duty is to certify the proposal after determining whether the form of the petition substantially complies with statutory requirements and whether the proposal has sufficient signatures in support. See *Protecting Michigan Taxpayers v Bd of State Canvassers*, __ Mich App __, ___; __ NW2d __ (2018) (Docket No. 343566); slip op at 5 n 2. In essence, the Board ascertains whether sufficient valid signatures support the petition and whether the petition is in proper form.

"A ministerial act is one in which the law prescribes and defines the duty to be performed with such precision and certainty as to leave nothing to the exercise of discretion or judgment." *Hillsdale Co Senior Servs, Inc v Hillsdale Co*, 494 Mich 46, 58 n 11; 832 NW2d 728 (2013) (quotation marks and citation omitted).

This Court has settled the question of whether the Board's and the Secretary's clear legal duties are ministerial where, as here, the parties dispute whether an initiative petition proposal is an "amendment" to, or a "general revision" of, the constitution. In *Citizens Protecting Michigan's Constitution v Secretary of State*, 280 Mich App 273; 761 NW2d 210 (2008), aff'd in result only 482 Mich 960 (2008), the panel explained that, because the determinations of whether a proposal is a general revision or an amendment to the constitution, and whether a proposal serves more than a single purpose, require judgment, they are not ministerial tasks to be performed by the Secretary or the Board. *Id.* at 286-287. However, *this Court* is obliged to make the threshold determination of whether an initiative petition meets the constitutional prerequisites for acceptance on the ballot. *Id.* at 283, 291. Based on this Court's decision, the Board and the Secretary would have a clear legal duty regarding the initiative petition. At that point, the act of the Board and the Secretary regarding the petition would be ministerial in nature, not requiring the exercise of judgment or discretion. *Id.* at 291-292. Consequently, as we have determined that the VNP Proposal meets the constitutional prerequisites, the Secretary's and the Board's actions in placing it on the ballot will be ministerial.

It does not appear to be disputed that plaintiffs had no other adequate remedy available in law or equity.

Historically, challenges regarding a petition's substance have been viewed as premature if brought before the initiative legislation comes into effect, see *Hamilton*, 212 Mich 31, but challenges regarding the legality or sufficiency of the form of the petitions themselves may be entertained earlier, *Leininger v Secretary of State*, 316 Mich 644; 26 NW2d 348 (1947). Questions whether a petition meets the constitutional prerequisites for acceptance are ripe for review. *Michigan United Conservation Clubs v Secretary of State*, 463 Mich 1009; 625 NW2d 377 (2001). Because the instant challenge is to whether the VNP Proposal is eligible to be on the ballot, the issue is ripe for review. See also, *Citizens Protecting Michigan's Constitution*, 280 Mich App at 283, 288.

B. AMENDMENT VERSUS GENERAL REVISION

Article 12, § 2 of Michigan's 1963 Constitution addresses the amendment of the constitution via initiative petition. It sets forth the requirements for such a petition to be placed on the ballot and provides:

> Amendments may be proposed to this constitution by petition of the registered electors of this state. Every petition shall include the full text of the proposed amendment, and be signed by registered electors of the state equal in number to at least 10 percent of the total vote cast for all candidates for governor at the last preceding general election at which a governor was elected. Such petitions shall be filed with the person authorized by law to receive the same at least 120 days before the election at which the proposed amendment is to be voted

upon. Any such petition shall be in the form, and shall be signed and circulated in such manner, as prescribed by law. The person authorized by law to receive such petition shall upon its receipt determine, as provided by law, the validity and sufficiency of the signatures on the petition, and make an official announcement thereof at least 60 days prior to the election at which the proposed amendment is to be voted upon.

Any amendment proposed by such petition shall be submitted, not less than 120 days after it was filed, to the electors at the next general election. Such proposed amendment, existing provisions of the constitution which would be altered or abrogated thereby, and the question as it shall appear on the ballot shall be published in full as provided by law. Copies of such publication shall be posted in each polling place and furnished to news media as provided by law.

The ballot to be used in such election shall contain a statement of the purpose of the proposed amendment, expressed in not more than 100 words, exclusive of caption. Such statement of purpose and caption shall be prepared by the person authorized by law, and shall consist of a true and impartial statement of the purpose of the amendment in such language as shall create no prejudice for or against the proposed amendment.

If the proposed amendment is approved by a majority of the electors voting on the question, it shall become part of the constitution, and shall abrogate or amend existing provisions of the constitution at the end of 45 days after the date of the election at which it was approved. If two or more amendments approved by the electors at the same election conflict, that amendment receiving the highest affirmative vote shall prevail.[45]

The above language does not impose, or even suggest, limitation on the scope of a voter initiative proposing a constitutional amendment.

In contrast, Article 12, § 3 of the 1963 Constitution, involves general revision of the Constitution via a constitutional convention and it provides:

At the general election to be held in the year 1978, and in each 16th year thereafter and at such times as may be provided by law, the question of a general revision of the constitution shall be submitted to the electors of the state. If a majority of the electors voting on the question decide in favor of a convention for such purpose, at an election to be held not later than six months after the proposal was certified as approved, the electors of each representative district as then organized shall elect one delegate and the electors of each senatorial district as then organized shall elect one delegate at a partisan election. The delegates so

[45] The 1835 Michigan Constitution included a passage regarding constitutional amendments, Const 1835, art 13, § 1, but limited those amendments to the Legislature. The 1908 Constitution permitted amendments by petition Const 1908, art 17, § 2.

> elected shall convene at the seat of government on the first Tuesday in October next succeeding such election or at an earlier date if provided by law.
>
> The convention shall choose its own officers, determine the rules of its proceedings and judge the qualifications, elections and returns of its members. To fill a vacancy in the office of any delegate, the governor shall appoint a qualified resident of the same district who shall be a member of the same party as the delegate vacating the office. The convention shall have power to appoint such officers, employees and assistants as it deems necessary and to fix their compensation; to provide for the printing and distribution of its documents, journals and proceedings; to explain and disseminate information about the proposed constitution and to complete the business of the convention in an orderly manner. Each delegate shall receive for his services compensation provided by law.
>
> No proposed constitution or amendment adopted by such convention shall be submitted to the electors for approval as hereinafter provided unless by the assent of a majority of all the delegates elected to and serving in the convention, with the names and vote of those voting entered in the journal. Any proposed constitution or amendments adopted by such convention shall be submitted to the qualified electors in the manner and at the time provided by such convention not less than 90 days after final adjournment of the convention. Upon the approval of such constitution or amendments by a majority of the qualified electors voting thereon the constitution or amendments shall take effect as provided by the convention.[46]

Our courts long have recognized that an amendment is not the same as a general revision and have attempted to define the differences between them where the constitutional provisions themselves do not define the terms. Eight decades ago, in 1932, our Supreme Court discussed the fundamental distinctions between revision and amendment in *Kelly v Laing*, 259 Mich 212; 242 NW 891 (1932). The Court held that an initiative petition may encompass one proposed amendment, but may involve more than one section, provided "all sections are germane to the purpose of the amendment." *Id.* at 216. Another question raised in *Laing* was whether the changes at issue could be raised by amendment, or whether they comprised a general revision. The Court described the differences between the two concepts:

> 'Revision' and 'amendment' have the common characteristics of working changes in the charter and are sometimes used inexactly, but there is an essential difference between them. Revision implies a re-examination of the whole law and a redraft without obligation to maintain the form, scheme, or structure of the old. As applied to fundamental law, such as a constitution or charter, it suggests a convention to examine the whole subject and to prepare and submit a new instrument, whether the desired changes from the old be few or many. Amendment implies continuance of the general plan and purport of the law, with

[46] Michigan's 1835 Constitution contained a section regarding a constitutional convention. See Const 1835, art 13, § 2.

> corrections to accomplish its purpose. Basically, revision suggests fundamental change, while amendment is a correction of detail. [*Id.* at 217.]

Our Supreme Court added:

> An amendment is usually proposed by persons interested in a specific change and little concerned with its effect upon other provisions of the charter. [In contrast, t]he machinery of revision is in line with our historical and traditional system of changing fundamental law by convention, which experience has shown best adapted to make necessary readjustments. [*Id.* at 221-222.]

One year after *Laing*, our Supreme Court had occasion to consider whether a proposal was a revision or an amendment in *Sch Dist of City of Pontiac v City of Pontiac*, 262 Mich 338, 344; 247 NW 474 (1933). The plaintiff argued that the proposal to limit property taxes that had been approved in the general election was so far-reaching as to invalidate the Constitution and thus was a general revision. The Court disagreed, concluding that it was an amendment because the proposal did not "interfere with" nor "modify" the operation of governmental agencies in such a way to render it a general revision.[47] *Id.* at 345.

In 2008, building on the precepts from *Laing* and *Pontiac*, this Court discussed the difference between an amendment of the constitution and a general revision of the constitution in *Citizens Protecting Michigan's Constitution*, 280 Mich App 273. Regarding a complaint for mandamus filed by plaintiff CPMC concerning an initiative petition from Reform Michigan Government Now (RMGN) for the general election ballot, this Court analyzed the constitutional provisions governing an amendment, as compared to a general revision. The Court held that it was "absolutely clear" that the procedures for constitutional amendment could not achieve a general revision of the constitution. *Id.* at 277. While the constitution provides for amendment under the initiative petition procedure Article 12, § 2, a general revision of the constitution can occur only by the constitutional convention procedure in Article 12, § 3. *Id.*

This Court decided that the courts also must consider "the degree to which the proposal interferes with, or modifies, the operation of government." *Id.* at 298. The more the proposal modifies or interferes with the operation of government, the more likely it is to be a general revision. *Id.* The Court held:

> [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*

[47] In light of *Laing* and *Pontiac* from our Supreme Court, it is puzzling why intervening defendants chose to discuss alternate definitions of "amendment" and "revision." We rely on the terms as defined in *Laing*, rather than the dictionary definitions proffered by intervening defendants.

degree to which those changes would interfere with, or modify, the operation of government. [*Id.* at 305 (emphasis supplied).]

The RMGN proposal in *Citizens Protecting Michigan's Constitution* would have made myriad changes to the 1963 Michigan Constitution related to a far-ranging field of topics, from reducing the number of senators, representatives, appellate justices and judges, to granting any citizen standing for certain environmental lawsuits, to limiting lobbying activities; the opinion listed 29 distinct changes to a multitude of constitutional provisions. *Id.* at 279-281. The proposal also would have created a new commission with authority over legislative districting, established rules for creating legislative districting plans and eliminated judicial review over districting plans. *Id.* at 280. In total, it would have altered over two dozen sections of four articles within the constitution and added four additional sections. *Id.* at 295.

This Court decided that the RMGN proposal did not "even approach the 'field of application' for the amendment procedure." *Id.* at 305 (citation omitted). The Court observed that the proposal would have modified "the fundamental governmental structure" under the Constitution. *Id.* at 306. Moreover, it would have done so in an abrupt manner, within less than six months of the November 2008 election. *Id.* at 306-307. The Court concluded that "[t]he substantial entirety of the petition alters the core, fundamental underpinnings of the constitution, amounting to a wholesale revision, not a mere amendment." *Id.* at 307. Our Supreme Court affirmed in result only and did not adopt this Court's reasoning.[48]

The RMGN proposal would have reorganized the operation of the whole state government. The same is simply not true in this case. Here, rather than proposing "sprawling compilations of changes" as characterized by plaintiffs, the VNP Proposal has a singular focus: to create an independent citizen redistricting commission with exclusive authority to establish redistricting plans for legislative districts. This case therefore is quickly distinguishable from the much broader RMGN proposal in *Citizens Protecting Michigan's Constitution.*

The question then becomes whether, under the *Citizens Protecting Michigan's Constitution* legal framework, the VNP Proposal falls within the description of an amendment. Intervening defendants argue that this Court should limit *Citizens Protecting Michigan's Constitution* to its own "highly unusual" facts, particularly because the Court set forth a qualitative/quantitative standard borrowed primarily from the decisions of other state courts. Nevertheless, we are bound by *Citizens Protecting Michigan's Constitution* as a published decision issued after 1990, MCR 7.215(J)(1). But even in following *Citizens Protecting Michigan's Constitution,* we keep in mind that Court's clarification at the outset that its decision was not "to prevent the citizens from voting on a proposal simply because that proposal is allegedly too complex or confusing." *Id.* at 276.

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[48] In Justice Corrigan's concurrence, she noted that this Court did not clearly err in its articulation of the difference between an amendment and a general revision or in its ultimate conclusion. Two justices agreed with her. *Citizens Protecting Michigan's Constitution*, 482 Mich at 964 (CORRIGAN, J., concurring). However, as noted, a majority of our Supreme Court did not adopt this Court's reasoning.

Four years after *Citizens Protecting Michigan's Constitution*, our Court had an occasion to consider whether a ballot initiative was an amendment or a general revision in *Protect Our Jobs v Bd of State Canvassers (On Remand)*, unpublished per curiam opinion of the Court of Appeals, issued August 27, 2012 (Docket No. 311828), aff'd on other grounds 492 Mich 763 (2012).[49] The proposal would have added a new article I, § 28 to provide the right to bargain collectively, and a new paragraph to article II, § 5 to protect the collective bargaining right for classified civil service employees. CPMC challenged the proposal as, among other things, being a general revision rather than an amendment. *Id.* at 1-2. This Court relied on the qualitative and quantitative test in *Citizens Protecting Michigan's Constitution.* The Court acknowledged that the proposal might have an effect on provisions and statutes, but also observed that the proposal was confined to a single subject matter and directly added only one section to the constitution and changed one other. This Court resolved that the initiative proposal was "far more akin to a correction of detail than a fundamental change, when viewed in the proper context of the constitution as a whole." *Id.* at 2-3.

This case falls somewhere between *Citizens Protecting Michigan's Constitution* and *Protect Our Jobs.* The VNP Proposal is nowhere near as diverse and titanic as the RMGN proposal, but nor is it as concise as the proposal in *Protect Our Jobs.*

Here, the VNP Proposal maintains the structure of a commission for legislative districting. It continues the general plans for a commission, but changes the details of how the commission members are chosen and the specifics regarding the commission's operation. It does not seek to change fundamental law—senate and house members still will represent, and be chosen by, voters in legislative districts and the number of senators and representatives will not change, unlike the RMGN proposal. The VNP proposal was put forward by a ballot committee intent on a specific change: to modify the commission membership to provide for an independent commission to draw legislative lines, and restrict membership on the commission to those who essentially are not partisan elected officials or lobbyists. In short, the VNP Proposal was intended to remedy perceived abuses from partisan gerrymandering of districts. This proposal does not interfere with or modify the operation of the government in such a way as to render it a general revision. Here, the provision seeks only to modify the section of the constitution that involve a single, narrow focus—the independent citizen redistricting commission.

We acknowledge that the *Citizens Protecting Michigan's Constitution* Court commented upon a portion of the RMGN proposal dealing with the proposed changes to the districting commission:

> As just 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 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

[49] On later appeal in *Protect Our Jobs,* our Supreme Court did not address the general revision/amendment argument raised in this Court, but limited its analysis to the republication requirement of Const 1963, art 12, § 2 and MCL 168.482(3).

> 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 Protecting Michigan's Constitution*, 280 Mich App at 306.]

The instant proposal does not wrest complete power from the legislative branch and the judicial branch, where the legislature retains the power to veto potential commission members and the judiciary retains control over challenges related to the commission. The proposal does shift the duty of redistricting from the Legislature to the independent commission, a commission that is similar in structure to the one described in our existing constitution. The proposal does not otherwise reduce general legislative power.

With regard to our Supreme Court, the proposal provides for Supreme Court oversight in a similar manner to the existing constitutional provisions, but does preclude the Supreme Court from ordering the adoption of a plan other than that arrived at by the independent commission. The power of the executive branch would not be materially changed, although the commission's functions would not be subject to control by the Governor. Plaintiffs seek to parse out these changes into 14 enumerated points, but those points merely seek to shift the Court's focus from the forest to the trees. This issue should not be made more complicated than necessary.

Further, the *Citizens Protecting Michigan's Constitution* Court did not consider the proposed change in isolation, but as one part of the 29 items on the vast proposal. *Citizens Protecting Michigan's Constitution* did not hold that an initiative could not succeed on any *one* of those 29 subjects; rather, it held that the petition encompassing *all* 29 changes could not be considered a mere amendment. We do not construe the proposed amendment here as so far-reaching in the framework of the constitution so as to be a reexamination of the whole section. Where our existing Constitution has provided for a commission to draw the districting lines, it follows that an independent commission to do the same would not be so violative of the Constitution so as to preclude this proposal from placement on the ballot.

Moreover, the VNP Proposal is not wholly new. It does not create an entirely new commission regarding redistricting; the commission already exists in our Constitution, although admittedly it has not been active for decades given *Reynolds*. The VNP Proposal merely changes the method by which the commissioners will be chosen going forward and adds additional members who are avowed independent voters. It does not wholly impede legislative power, where legislative leaders retain the power to veto proposed commission members. Undeniably, it introduces new concepts,[50] but it does so in a finite manner. The body of Michigan case law does not hold that the addition of new concepts within the framework of our existing constitution precludes an initiative petition.

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[50] VNP's general counsel's admitted as much in his August 9, 2017 memorandum to the Board: "Creating a 'commission' that is not subject to the oversight or authority of the executive branch is a new and significantly different concept not previously found within the 1963 Constitution. Further, though this commission would be housed within the legislative branch, its actions are not subject to approval or oversight by the Legislature. This is another new concept."

Plaintiffs maintain that the VNP Proposal abandons core redistricting criteria that have existed since the State's founding. Our Supreme Court has ruled that "[t]he basic building blocks of the apportionment rules are the counties." *In re Apportionment of State Legislature—1982*, 413 Mich at 125. The public policy issues raised by the proposal's nonadherence to the county framework are not the province of this branch of government at this stage of the initiative petition process. We do not believe that the choosing of geographical legislative districts for representation is truly a "fundamental function" or an "operation of government."

With regard to the quantitative portion of the *Citizens Protecting Michigan's Constitution,* the VNP Proposal changes eleven sections within three articles of the constitution. The *essential* changes can be quickly enumerated, yet plaintiffs repeatedly point out that the proposal would add 4,834 words to the constitution and even included a bar graph in their reply brief. VNP should not be penalized for including specific details within its proposal, particularly where many of the proposed additions are merely operational details.

Plaintiffs also argue that the proposal is multifarious and goes beyond the scope of a single amendment. The VNP Proposal is undeniably detailed, but it is targeted to achieve a single, specific purpose. To the extent that plaintiffs urge this Court to accept that the meaning of an amendment includes a "short" correction to the existing constitution, we have found no such limitation in legal authority.

Further, plaintiffs maintain that the proposal should have a lengthy explanation of its changes, pointing out that the information disseminated after the 1961-1962 Constitutional Convention included a 109-page pamphlet. Here, such a lengthy pamphlet would not be necessary to describe the changes proposed by the VNP Proposal, particularly when considering that the most recent constitutional convention resulted in myriad innovative changes to the existing constitution, including the mandate of equal rights protections and the establishment of the Civil Rights Commission.

Plaintiffs also argue that the multifarious nature of the VNP Proposal is illustrated by the fact that it cannot be easily summarized into 100 words. This argument is premature, as the Director of Elections has not yet fulfilled her duty under MCL 168.32(2) to draft the 100-word summary.

Plaintiffs add that some of the requirements of the proposal will be impossible to comply with, focusing on the requirement that the Secretary select commissioners in a manner that mirrors the demographic makeup of the state. That argument is irrelevant to the threshold question before this Court regarding whether the proposal is eligible to be placed on the ballot, but instead pertains to the merits of the proposal, an issue that is not before this Court.

In sum, we opine that the VNP Proposal is closer to the proposal in *Protect Our Jobs* than to the proposal in *Citizens.* We hold that the VNP Proposal, although undeniably introducing new concepts, does not modify or interfere with the fundamental operation of government or create a wholly new constitutional provision so as to make it a general revision to the Constitution rather than an amendment.

C. REPUBLICATION

Proposals to amend the Constitution must publish those sections that the proposal will alter or abrogate. Article 12, § 2 governs amendment of the constitution by petition and vote and it provides, in pertinent part: "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." The provision's aim is to advise the voter of the amendment's purpose and identify which provision(s) of the constitutional law it changes or replaces. *Massey v Secretary of State,* 457 Mich 410, 417; 579 NW2d 862 (1998). Care must be taken, however, not to confuse the voter by publishing myriad constitutional provisions "which were or might be directly or only remotely, and possibly only contingently, affected by the proposed amendment." *Sch Dist of City of Pontiac v City of Pontiac,* 262 Mich at 344.

The Legislature has enacted the publishing requirements for petitions. MCL 168.482(3) provides in relevant part: "If 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, preceded by the words: 'Provisions of existing constitution altered or abrogated by the proposal if adopted.' "[51]

Our Supreme Court has held that an initiative petition must comply with mandatory statutory provisions that set forth requirements regarding a petition's form. *Stand Up for Democracy v Board of State Canvassers,* 492 Mich 588; 822 NW2d 159 (2012).[52] Where MCL 168.482(3) contains the mandatory term "shall," petitions must comply with the republication requirement. *Protect Our Jobs,* 492 Mich at 778. Provisions of the constitution must be republished on petitions where "a proposed constitutional provision amends or replaces ('alters or abrogates') a specific provision of the Constitution, that such provision should be published along with the proposed amendment . . . ." *Sch Dist of City of Pontiac,* 262 Mich at 344. Our Supreme Court has explained that an alteration or abrogation ensues "if the proposed amendment would add to, delete from, or change the existing wording of the provision, or would render it wholly inoperative." *Ferency v Secretary of State*, 409 Mich 569, 597; 297 NW2d 544 (1980). The fact that a proposed amendment will affect a provision does not inevitably mean the provision is "altered or abrogated." *Id.* at 596–597.

In 2012, our Supreme Court observed that the republication requirement continued to be subject to debate, which inspired the Court to provide additional clarity. It reasoned that, to establish that a proposed amendment "alters" an existing provision such that republication is required, an amendment must: (1) add words to an existing provision; (2) delete words from an existing provision; or (3) change the wording in an existing provision. *Protect Our Jobs*, 492 Mich at 782. Consequently, the Court concluded that a new constitutional provision does not

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[51] We reject intervening defendants' contention that the statutory republication requirement in MCL 168.482(3) is unconstitutional because it imposes undue burdens upon the exercise of the people's right to propose amendments via voter initiative. Where our Supreme Court has applied the requirements of MCL 168.482 to voter initiative petitions, this Court is bound by that legal authority and thus does not consider the constitutionality of the statute.

[52] Intervening defendants argue that *Stand Up* does not apply here because the language of Const 1963, art 2, § 9, which was at issue in *Stand Up*, is substantially different from the language of Const 1963, art 12, § 2, at issue here. Notwithstanding, where our Supreme Court cited *Stand Up* in *Protect Our Jobs,* which involved Const 1963, art 2, § 2, this Court does likewise.

"alter" an existing provision where the new provision leaves completely intact the text of all existing provisions.[53] *Id.*

With regard to whether an amendment "abrogates" an existing provision, the *Protect Our Jobs* Court stated that "the 'abrogation' standard makes clear that republication is only triggered by a change that would essentially eviscerate an existing provision." *Id.* The Court went on to state:

> Our caselaw establishes that an existing provision of the Constitution is abrogated and, thus, must be republished if it is rendered 'wholly inoperative.' 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. That is, if two provisions are incompatible with each other, the new provision would abrogate the existing provision and, thus, the existing provision would have to be republished. An existing provision is not rendered wholly inoperative if it can be reasonably construed in a manner consistent with the new provision, i.e., the two provisions are not incompatible.
>
> Determining whether the existing and new provisions can be harmonized requires careful consideration of the actual language used in both the existing provision and the proposed amendment. An existing provision that uses nonexclusive or nonabsolute language is less likely to be rendered inoperative simply because a proposed new provision introduces in some manner a change to the existing provision. Rather, when the existing provision would likely continue to exist as it did preamendment, although it might be affected or supplemented in some fashion by the proposed amendment, no abrogation occurs. On the other hand, a proposed amendment more likely renders an existing provision inoperative if the existing provision creates a mandatory requirement or uses language providing an exclusive power or authority because any change to such a provision would tend to negate the specifically conferred constitutional requirement. [*Id.* at 782-783 (citations omitted).]

The abrogation inquiry requires examination of the entire existing constitutional provision, as well as the provision's "discrete subparts, sentences, clauses, or even, potentially, single words." *Id.* at 784. The petition must republish the entire provision if the proposed amendment "renders wholly inoperative" any of the existing provision's components. *Id.*

The Court summarized its holding regarding republication as follows:

> 1. When the existing language of a constitutional provision would be altered or abrogated by the proposed amendment, republication of the existing provision is required.

[53] "The phrase 'the existing wording' should be taken literally." *Massey*, 457 Mich at 418.

2. The language of the amendment itself, rather than how proponents or opponents of the amendment characterize its meaning, controls whether an existing provision would be altered or abrogated by the proposed amendment.

3. When the existing language of a constitutional provision would not be altered, but the proposed amendment would render the entire provision or some discrete component of the provision wholly inoperative, abrogation would occur and republication of the existing language is required.

4. When the existing language would not be altered or abrogated, but the proposed amendment would only have an effect on the existing language, and the new and existing provisions can be harmoniously construed, republication of the existing provision is not required.

5. When the existing language would not be altered or abrogated, but the proposed amendment would only have an effect on the existing language, thereby requiring that the new and existing provisions be interpreted together, republication of the existing provision is not required. [*Id.* at 791-792.]

Additionally, the *Protect Our Jobs* Court cited *Ferency's* caution against adopting an overly expansive definition of the terms "alter or abrogate" so as not to "chill" the people's ability to amend the constitution. It added that petition circulators should not be required to append the entire constitution to their petition. *Id.* at 780 (citing *Ferency*, 409 Mich at 597-598). The courts and the Legislature may not impose "undue burdens" on the people's right to amend. *Wolverine Golf Club*, 384 Mich at 466 (citation omitted).

The VNP Proposal does not *alter* the challenged sections at issue because it does not add words, delete words or change words in the existing sections. Consequently, the analysis that follows examines only whether the VNP Proposal *abrogates* existing constitutional provisions.

1. CIRCUIT COURT JURISDICTION

Existing Const 1963, art 6, § 13 provides:

> The circuit court shall have original jurisdiction in all matters not prohibited by law; appellate jurisdiction from all inferior courts and tribunals except as otherwise provided by law; power to issue, hear and determine prerogative and remedial writs; supervisory and general control over inferior courts and tribunals within their respective jurisdictions in accordance with rules of the supreme court; and jurisdiction of other cases and matters as provided by rules of the supreme court.

In the VNP Proposal, article 4, § 6(19) provides, in relevant part:

> 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.[54]

Plaintiffs contend that the proposal creates original jurisdiction over redistricting matters in the Supreme Court instead of in the circuit court and that § 6(19) abrogates Const 1963, art 6, § 13 because it would divest the circuit court of its exclusive original jurisdiction. Notably, our current constitution already gives the Supreme Court authority over redistricting commission matters, Const 1963, art 4, § 6, ¶¶ 7-8.

Also, the substance of Const 1963, art 6, § 13 would not be changed by the VNP Proposal. Article 6, § 13 does not have exclusive language. Rather, it provides the circuit court with jurisdiction in *all matters not prohibited by law*, which illustrates that the framers intended that the circuit courts' jurisdiction would have exceptions. Article 6, § 13 therefore does not suggest that such jurisdiction cannot be limited or affected by other constitutional provisions.

Indeed, our Courts recognize that exceptions to the circuit court's jurisdiction exist. Plaintiffs cite *Bowie v Arder*, 441 Mich 23; 490 NW2d 568 (1992), for their proposition that the VNP Proposal abrogates Const 1963, art 6, § 13 because the change would be not "by law," but by constitutional decree. Notwithstanding, the *Bowie* Court recognized that the circuit courts' jurisdiction may be subject to an exception where jurisdiction is "given exclusively to another court by constitution or statute . . . ." *Id.* at 38. See also MCL 600.605.[55] See also, *Prime Time Int'l Distributing, Inc v Dep't of Treasury*, 322 Mich App 46, 52; 910 NW2d 683 (2017), observing that the circuit courts are presumed to have jurisdiction unless expressly prohibited or jurisdiction is given to another court by constitution or statute.

Further, the VNP Proposal can be harmonized with Const 1963, art 6, § 13 because the only effect is that the circuit court will not have jurisdiction over the commission. In all other respects, Const 1963, art 6, § 13 remains unaffected. The existing constitutional provision has not been eviscerated. No abrogation therefore would occur because the existing provision would be neither negated nor rendered wholly inoperative.

2. FREEDOM OF SPEECH

Const 1963, art 1, § 5 provides as follows:

> Every person may freely speak, write, express and publish his views on all subjects, being responsible for the abuse of such right; and no law shall be enacted to restrain or abridge the liberty of speech or of the press.

The VNP Proposal provides in article 4, § 6(11), in relevant part:

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[54] The proposed language appears on the petition in all capital letters, but for ease of readability, we have not used all capital letters.

[55] That statute provides: "Circuit courts have original jurisdiction to hear and determine all civil claims and remedies, except where exclusive jurisdiction is given in the constitution or by statute to some other court or where the circuit courts are denied jurisdiction by the constitution or statutes of this state."

> 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.

Plaintiffs suggest that the VNP Proposal would restrict the free speech of commissioners. They argue that the restrictions on the liberty of speech would extend to matters beyond commission matters and they suggest that the restrictions are neither in the public interest nor in keeping with the rights of the public officials. We reject these policy arguments, as the issue before this Court is the alleged abrogation of existing constitutional provisions, not whether the VNP Proposal promotes sound social policy. We also point out that the speech of government employees may be subject to certain restrictions given the public employees' potential to express views that are contrary to governmental policies; a citizen entering government service "must accept certain limitations on his or her freedom [of speech]." *Shirvell v Dep't of Attorney General*, 308 Mich App 702, 733; 866 NW2d 478 (2015) (quotation marks and citations omitted).

With regard to abrogation, none would occur because Const 1963, art 1, § 5 would remain fully operative. Section 6(11) of the VNP Proposal does not restrict all speech, but does place limits on matters related to official commission work. Commissioners would retain their right to speak freely, but when speaking on official business, they would be restricted to doing so in an open meeting, in writing, or at a publicly noticed public forum. That constraint is accounted for by the condition in Const 1963, art 1, § 5 that every person "is responsible for the abuse of that right [to free speech]." Thus, the right to free speech is not wholly unrestricted.

Additionally, Const 1963, art 1, § 5 is not rendered a nullity because it has relevancy well beyond the scope of matters related to the commission. The VNP Proposal does not replace Const 1963, art 1, § 5, nor does it render that section wholly inoperative. Plaintiffs have taken a very broad view of the *Protect Our Jobs* standard, arguing that "*any* abrogation," even a slight one, requires republication. A restriction, however, is not an abrogation—and *Protect Our Jobs* holds that the provisions must be impossible to harmonize. Republication is not required when the new proposed amendment would have only an effect on existing language. *Protect Our Jobs*, 492 Mich at 791-792.

3. APPROPRIATIONS CLAUSE

The Appropriations Clause, Const 1963, art 9, § 17, provides:

> No money shall be paid out of the state treasury except in pursuance of appropriations made by law.

The VNP Proposal sets forth article 4, § 6(5), in relevant part:

> 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.

Plaintiffs contend that the existing provision is incompatible with the proposed requirement that the state compensate and indemnify commissioners for costs incurred even absent an appropriation. They note that the proposal mandates indemnification of commissioners even if the Legislature does not approve sufficient funding.

In examining the Appropriations Clause from the 1908 Constitution,[56] our Supreme Court recognized that "the weight of authority" held that the clause did not restrict appropriations to enactments from the Legislature, but also afforded "a constitutional appropriation apart from any action by the legislature." *Civil Service Comm v Auditor General*, 302 Mich 673, 679; 5 NW2d 536 (1942). But even so, the VNP Proposal accounts for the legislative appropriation, as it provides for a cause of action if the Legislature does not appropriate the funds—thereby indicating that the money is to come from the Legislature via an appropriation.

Plaintiffs' claims that the commission will have an unlimited budget and that the state's assets will be subject to the "unrestricted whims" of the commissioners are irrelevant as they do not pertain to the question of whether the VNP Proposal abrogates the existing appropriations clause by setting forth a particular minimum budget for the commission and providing for a cause of action if the Legislature fails to appropriate the funds. The proposed § 6(5) does not require a payment from the State Treasury absent an appropriation, but merely provides for a constitutional cause of action should the Legislature fail to fulfill its obligation to fund the commission. To the extent that plaintiffs argue that the courts cannot order the Legislature to make an appropriation, that question need not be settled at this time. Here, the only question is whether the VNP proposed amendment replaces, renders wholly operative or eviscerates the appropriations clause. It does not.

4. OATH OF OFFICE

Const 1963, art 11, § 1 concerns the oath taken by public officers and provides:

> 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.

The VNP Proposal sets forth article 4, § 6(2), in relevant part:

> (2) Commissioners shall be selected through the following process:
>
> (A) The Secretary of State shall do all of the following:

[56] The language from the 1908 Appropriations Clause, Const 1908, art 10, § 16, is the same as the language in the current version.

* * *

> (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. . . .

Plaintiffs maintain that the existing provision requires only one oath, and the new provision would render the existing provision a nullity. The affirmation in proposed § 6(2)(a)(ii) is not an oath of office, but is merely an affirmation that the applicant satisfies the commissioner qualifications, which are enumerated in a separate section, § 6(1). This position finds support in *Advisory Opinion on Constitutionality of 1975 PA 227*, 396 Mich 465, 510: 242 NW2d 3 (1976), where our Supreme Court ruled that an oath regarding financial disclosure was akin to the affidavits required to file a nominating petition under MCL 168.558.

In contrast, the oath in *Harrington v Secretary of State*, 211 Mich 395, 396; 179 NW2d 283 (1920), cited by plaintiffs, required the candidate to swear in part that he would "support the principles of [the] political party of which he is a member if nominated and elected." That loyalty oath was to cover the entire term of office, even after election, and for so long as he or she remained in office. In ruling that the oath was unconstitutional, the Court cited with approval the Attorney General's reasoning that the candidate would be bound by an oath other than the constitutional oath of office. *Id.* at 397. The same is not true here, as the oath required by the VNP Proposal relates only to the information on the application and does not bind a candidate once he or she becomes a commissioner.

Thus, the existing oath of office provision is unaffected by the affirmation. The proposal does not make the existing constitutional provision a nullity.

5. CIVIL SERVICE EMPLOYEES

In a footnote, plaintiffs add a final example, stating that VNP Proposal should have republished Const 1963, art 11, § 5, regarding civil service employees, where the Civil Service Commission has the authority to regulate "all conditions of employment in the classified service." The VNP Proposal in art 4, § 6(21) provides:

> 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.

Plaintiffs argue that if a civil service employee becomes a member of the commission, the Civil Service Commission's authority over "all conditions of employment" will no longer be exclusive. This argument has been abandoned, as plaintiffs opted to give it cursory treatment. *Huntington Nat'l Bank v Daniel J Aronoff Living Trust*, 305 Mich App 496, 517; 853 NW2d 481 (2014). Even so, the two provisions can be harmonized. Therefore, we cannot conclude that the proposal abrogates the existing provision.

D. CROSS-COMPLAINT

Intervening defendants seek a writ of mandamus against defendants to direct defendants to comply with their duties concerning certification, approval and placement of the VNP Proposal on the 2018 general election ballot. We have concluded that plaintiffs' complaint for mandamus should be denied. Consequently, intervening defendants' cross-claim should be granted with respect to the Board, as the Board has the duty to make the final decision regarding the sufficiency of the petition. Intervening defendants also ask that this Court designate that its order have immediate effect pursuant to MCR 7.215(F)(2).

III. CONCLUSION

The complaint is without merit. The petition is not a general revision of the constitution, where it is narrowly tailored to address a single subject: the replacement of the current constitutional provision providing for an eight-member redistricting commission with a thirteen-member commission comprised of eight partisan members and five members who are declared independent voters not affiliated with either major political party. The VNP Proposal is confined to a single purpose, that of correcting the partisan aspects of the constitutional provisions regarding the redistricting commission and does so without interfering with the operation of government. Hence, we decide that the proposal is an amendment, albeit an amendment set forth in considerable detail, permitted by voter initiative. Also, the petition complies with the republication requirement. The petition neither abrogates nor alters the existing sections of the constitution as asserted by plaintiffs.

The complaint for mandamus is denied and the cross-complaint is granted. Defendant Board is directed to take the necessary steps to place the proposal on the ballot for the general election. No costs, a public question being involved. This opinion is given immediate effect pursuant to MCR 7.215(F)(2).

/s/ Mark J. Cavanagh
/s/ Kirsten Frank Kelly
/s/ Karen M. Fort Hood

Court of Appeals, State of Michigan

ORDER

Citizens Protecting Michigan's Constitution v Secretary of State

Docket No. 343517

Mark J. Cavanagh
Presiding Judge

Kirsten Frank Kelly

Karen M. Fort Hood
Judges

The Court orders that the complaint for a writ of mandamus is DENIED. The Voters Not Politicians proposal offered by intervening defendants does not set forth a general revision of the constitution, but is confined to the single purpose of modifying current constitutional provisions regarding the redistricting commission. Therefore, the proposed constitutional amendment in this case is permitted by way of a ballot initiative. See *Citizens Protecting Michigan's Constitution v Secretary of State*, 280 Mich App 273; 761 NW2d 210 (2008), aff'd in result only 482 Mich 960 (2008). Further, the petition complies with the republication requirement of MCL 168.482(3), where the petition neither abrogates nor alters the existing sections of the constitution as asserted by plaintiffs. *Protect Our Jobs v Bd of State Canvassers (On Remand)*, 492 Mich 763; 822 NW2d 534 (2012).

The cross-complaint is GRANTED. Defendants are directed to take all necessary measures to place the proposal on the November 2018 general election ballot. This order is given immediate effect pursuant to MCR 7.215(F)(2).

/s/ Mark J. Cavanagh

COURT OF APPEALS OF THE STATE OF MICHIGAN 1965

A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

June 7, 2018
Date

Chief Clerk

EXHIBIT 2

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 8362, 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, ~~T~~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 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, ~~T~~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, ~~T~~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, ~~T~~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, ~~T~~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 3

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April 18, 2018

Hon. Ruth Johnson
Secretary of State
Michigan Department of State
430 W. Allegan St.
Lansing, MI 48909

Re: Voters Not Politicians Ballot Proposal

Dear Secretary Johnson:

We are counsel for Citizens Protecting Michigan's Constitution ("CPMC"), a ballot question committee that opposes the revision of the Michigan Constitution set forth in the petition filed by Voters Not Politicians ("VNP").

The proposal in VNP's petition (the "VNP Proposal"), if approved by voters, would delete, add, or amend language in eleven sections across three articles of the Michigan Constitution of 1963 ("Constitution"), effecting sweeping changes to all three branches of state government as well as the electoral process itself. It would add approximately 3,375 words to and strike approximately 1,459 words in the Constitution, which would make it the largest ballot-initiated revision to the Constitution since its 1963 adoption.

Not only is the VNP Proposal massive in size, it also makes significant and fundamental changes to the core structures of Michigan's government. Among other changes, it would create a 13 member "independent" redistricting commission in the legislative branch, replace existing mandatory redistricting criteria with new non-mandatory criteria, and transfer the existing authority over redistricting from all three branches of government exclusively to the commission. The Michigan Supreme Court has recognized that "[a]ny change in the means by which the members of the Legislature are chosen in is a fundamental matter." *In re Apportionment of State Legislature-1982*, 413 Mich 96, 136-137; 321 NW2d 565 (1982).

Due to the massive size of the petition and the sweeping changes it seeks to enact, it is not susceptible to submission to the voters. The Michigan Constitution of 1963 differentiates between "amendments," which are mere corrections of detail, and "revisions," which are greater and more fundamental changes and which can only be accomplished by constitutional convention. See Const 1963, art 12, §§ 2, 3; *Citizens Protecting Michigan's Constitution v Sec'y*, 280 Mich App 273, 277; 761 NW2d 210 (2008). Because the VNP Proposal constitutes a "revision" to the Michigan Constitution, it cannot be accomplished by ballot-initiative. The People deserve the

benefits of the study, deliberation, and recommendations of a constitutional convention *before* they are asked to approve or reject such changes.

Additionally, the petition circulated by VNP in support of their proposal omitted multiple sections of the existing Constitution that would be abrogated if the VNP Proposal is adopted. These include: article 1, § 5; article 6, § 13; article 9, § 17; and article 11, § 1. The electors signing the petition thus were not advised of these abrogated provisions. This is contrary to Michigan law—i.e., section 482 of the Michigan Election Code, MCL 168.482—which requires that petitions circulating a proposed amendment to the Constitution republish all provisions of the existing Constitution that would be abrogated if the amendment were to be adopted. *Protect Our Jobs v Bd of State Canvassers*, 492 Mich 763, 791-792; 822 NW2d 534 (2012).

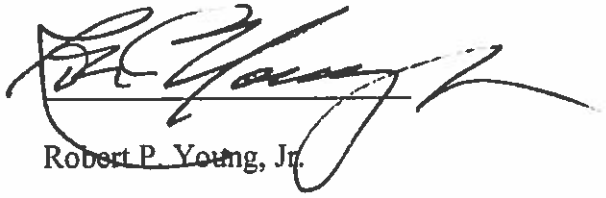
For each of these reasons, we believe that you have a clear legal duty to reject the petition filed by VNP, and to refuse to further process the petition or take any other action in furtherance of the VNP Proposal appearing on the 2018 General Election ballot.

In the event you do not agree, or in the event you do not intend otherwise to exercise your authority to reject the VNP Proposal, please advise us as soon as possible.

Thank you for your review.

Sincerely,

DICKINSON WRIGHT PLLC



Robert P. Young, Jr.

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