STATE OF MICHIGAN

MICHIGAN COURT OF APPEALS

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

Case No. 343517

v.

SECRETARY OF STATE, and MICHIGAN BOARD OF STATE CANVASSERS,
Defendants/Cross Defendants,

And

VOTERS NOT POLITICIANS BALLOT COMMITTEE, d/b/a/ VOTERS NOT POLITICIANS, COUNT MI VOTE, d/b/a VOTERS NOT POLITICIANS, KATHRYN A. FAHEY, WILLIAM R. BOBIER and DAVIA C. DOWNEY
Intervening Defendants/Cross-Plaintiffs

_____/

PLAINTIFFS' COMBINED RESPONSE TO INTERVENING DEFENDANTS' BRIEF IN SUPPORT OF CROSS-CLAIM AND REPLY TO INTERVENING DEFENDANTS' OPPOSITION TO PLAINTIFFS' OPENING BRIEF

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COUNTER-STATEMENT OF QUESTIONS INVOLVED

Plaintiffs rely on the Statement of Question Involved presented in their opening Brief.

As to the additional question presented by Intervening Defendant: "Should the prompt performance of Defendants' clear legal duties be enforced by this Court without further delay?" Plaintiffs state that Defendants—Secretary of State Ruth Johnson and the Board of State Canvassers—have no clear legal duty to take further action to place the VNP Proposal on the 2018 general election ballot, and, once ordered by the courts, will have a clear legal duty to prevent its submission.

As to the additional question presented by Intervening Defendant: "Is the statutory requirement of MCL 168.482(3) that initiative petitions for amendment of the Constitution list existing provisions that would be altered or abrogated by the proposed amendment unconstitutional?" Plaintiffs state that the answer is "no," and that the statute is valid.

I. INTRODUCTION

> **"[W]hen you have an initiated 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." Official Record, Constitutional Convention 1961-62, p. 2463 (Convention Vice President, J. Edward Hutchinson).**

In this action, Plaintiffs—Citizens Protecting Michigan's Constitution, Jeanne Daunt, and Joseph Spyke—seek relief in the form of mandamus against the Defendants, Secretary of State Ruth Johnson ("Secretary") and the Board of State Canvassers ("Board"). The relief sought is an order directing Defendants to reject a petition that proposes to submit a ballot question at the 2018 general election. The proposal in turn, is sponsored and supported by the Intervening Defendants (collectively, "VNP").

The ballot question at issue proposes to amend the existing Constitution of 1963 ("Constitution"), among other things, to establish an ostensibly "independent" redistricting commission and to revise Michigan's longstanding, traditional redistricting criteria. (The proposal is hereafter referred to as the "VNP Proposal"). In their Cross-Claim, VNP seeks a writ of mandamus directing the opposite relief: that is, immediate certification of the petition by the Board even though, pursuant to MCL 168.477(1), the Board need not certify ballot questions until September 6, 2018.

Notwithstanding the arguments advanced in VNP's Brief in Opposition/in Support of their Cross Claim,[1] Plaintiffs necessarily prevail and are entitled to the relief sought because:

(1) The VNP Proposal would abrogate *Const 1963, art 1, § 5*, art 6, § 13, art 9, § 17, and art 11, § 1 and the petition, as circulated, failed to republish those abrogated sections as required by MCL 168.482(3); and

(2) The VNP Proposal would make changes of such size and significance that it constitutes a proposed "revision" rather than an "amendment," and, under the binding precedent of *Citizens Protecting Michigan's Constitution v Sec'y of State*, 280 Mich App 273; 761 NW2d 210 (2008), it is not susceptible to submission as an initiated amendment under Const 1963, art 2, § 12.

It is no surprise that the VNP Proposal abrogates multiple sections of the existing Constitution. It seeks to make wide-ranging changes that affect the "foundation power" of state government—i.e., the manner in which legislators are chosen. Not only would it depart from the mandatory, core redistricting criteria of following county lines, which has been part of Michigan's constitutional framework since 1835, but it would create a new commission of unelected laypersons subject to none of the ordinary checks and balances that apply to the existing devices 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. [VNP Brief at Appendix B, p. 6.]

VNP argues that the statutory requirement in MCL 168.482(3)—that petitions republish abrogated sections of the existing constitution—is unconstitutional. That statutory requirement

[1] Adhering to the format and procedure used by Intervening Defendants, Plaintiffs here file a combined reply to VNP's Response in Opposition and response to VNP's Brief in Support of their Cross-Claim. The Court's May 11, 2018 scheduling order required that responses and reply briefs be filed by 1:00 p.m. on May 31.

has existed in its current form for almost 80 years. As multiple decisions of the Supreme Court have recognized, the petition republication requirement is one that is "invited" or "beckoned" by Const 1963, art 12, § 2, which specifies that the form of petitions is to be prescribed by law. The republication requirement is a matter of form—it makes no substantive limitation on the content constitutional proposals, and is wholly consistent with the Constitution's initiative provisions.

VNP further ignores that this Court is bound to apply the framework established in *Citizens* for determining whether a proposal constitutes a "revision" (requiring a constitutional convention) or an "amendment" (which may be submitted via initiative). This Court is required to apply *Citizens*, and under the quantitative/qualitative test established therein, the VNP Proposal is ineligible to appear on the ballot.

VNP's other arguments are similarly unavailing, and this Court should order Defendants to reject the VNP Proposal and to take no further action to place it on the 2018 general election ballot.

II. ARGUMENT

A. VNP fails to reconcile the language of the VNP Proposal with the sections of the existing constitution which the Proposal abrogates.

1. "Abrogation" is a narrowly defined term and its application is straightforward for proposals that comprise mere amendments.

It is plain that the petition used to circulate the VNP Proposal failed to republish the sections of the 1963 Constitution that the Proposal would abrogate. This failure was contrary to state law and the petition was thus defective. VNP's attempts to explain away these unpublished abrogations are meritless.

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. MCL 168.482(3). The Michigan Supreme Court, in *Protect Our Jobs v Board of State Canvassers*, 492 Mich 763; 822 NW2d 534 (2012), explained that "abrogation" is a narrow concept. As in its previous decisions in *Massey*[2] and *Ferency*,[3] the Supreme Court in *Protect Our Jobs* acknowledged that requiring every *distant* effect or *indirect* consequence of a proposal to be republished in a petition would not be beneficial or in keeping with the purpose of the statutory republication requirement. 492 Mich at 779-780. And that is *not* the test Plaintiffs here seek to apply.

As explained in *Protect Our Jobs,* 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." 492 Mich at 783. An abrogation is more likely to exist where the existing provision creates a mandatory requirement or uses exclusive language. *Id.* Even a small abrogation[4] must be republished—including an abrogation of "discrete subparts, sentences, clauses, or even single words" in the existing Constitution. See i*d.* at 284.

Given the narrow confines of the test, it becomes apparent *why* abrogated sections must be republished. An abrogation renders *existing* language of the Constitution a nullity—it changes the language as a practical matter, so that the Constitution can no longer be read as originally intended. See *Protect Our Jobs*, 482 Mich at 783.

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[2] `*Massey v Sec'y of State*, 457 Mich 410; 579 NW2d 862 (1998).

[3] *Ferency v Sec'y of State,* 409 Mich 569; 297 NW2d 544 (1980).

[4] In *Protect Our Jobs*, the relevant proposal's requirement that liquor licenses be issued to the eight casinos contemplated by the amendment—even where such licenses were but a minor part of the proposal—kept the proposal off the ballot because the existing constitution conferred "complete control" on the liquor control commission over liquor licenses. *Id.* at 790.

2. VNP's attempts to harmonize the VNP Proposal with abrogated sections of the existing Constitution are wholly inadequate.

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

- Const 1963, art 11, § 1, concerning oaths and tests for public office;
- Const 1963, art 9, § 17, concerning payments of funds from the state Treasury; and
- Const 1963, art 1, § 5, concerning free speech;
- Const 1963, art 6, § 13, concerning the jurisdiction of circuit courts;

a) The VNP Proposal would establish political tests for office contrary to art 11, § 1.

The existing Oath Clause in Const 1963, art 11, § 1 provides that, apart from the oath as specified in that section, "*no* other oath, affirmation, or *any* religious test shall be required as a qualification for any office or public trust." (Emphasis added).

VNP asserts, without explanation, that their Proposal's imposition of qualifications on applicants for the job of commissioner (in proposed art 4, § 6(1)) are not really "qualifications" for office. They also assert that the oath imposed on applicants (by proposed art 4, § 6(2)), which requires that applicants swear that such qualifications are met, is not really an oath within the ambit of the Oath Clause. (VNP Brief, p 44.) Neither of these arguments is valid. Their final argument—that harmonization is possible because the oath in the Oath Clause requires upholding the Constitution, and the new oath, affirmations, and tests imposed by the VNP Proposal will, after adoption, be part of the Constitution—misses the point. The existing Oath Clause says "*no other* oath, affirmation, or any religious test" shall be required—the absolute language by necessity

excludes others (see Const 1963, art 11, § 1), and VNP was obligated to affirmatively state that it would be abrogated.

VNP ignores altogether the political test and oath imposed by their proposed art 4, § 6(2)(A)(iii). That is, the VNP Proposal *requires* that persons seeking to hold the office of redistricting commissioner must swear, under oath, that they affiliate with either the Republican Party, the Democrat Party, or that the applicant is non-affiliating. (See VNP Proposal, Ex. 1, art 4, § (6)(2)(A)(iii).)[5]

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 political party." *Id.* at 395-396. The Court held that requiring a candidate to, under oath,[6] affiliate with a party as a condition of candidacy "contravenes the constitutional

[5] An applicant to the commission 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. 1, art 4, § 6(2)(D)(i) (requiring Secretary of State to eliminate incomplete applications).) Indeed, the Secretary cannot select persons who refuse to, under oath, affirm their political affiliation. (VNP Proposal, Ex. 1, art 4, § 6(2)(D)(ii).)

[6] Const 1908, art 16, § 2 provided "[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.").

provision" mandating "no other oath, declaration, or test" as a condition for holding office. *Id.* at 399.[7]

Like the impermissible statute in *Vaughan*, the VNP Proposal establishes a condition for the office of commissioner that persons affirmatively state, under oath, their political persuasion. Setting wholly aside that requiring subjective assessments from applicants as to their affiliation (when Michigan does not require voters to register with a party) is a fundamentally flawed method of assuring balance on the Commission, the VNP Proposal would abrogate the Oath Clause. The failure to republish is fatal.

b) The VNP Proposal would require payments from the State Treasury without appropriations, and thus abrogate Const 1963, art 9, § 17.

VNP's arguments that existing article 9, § 17 is not abrogated by the VNP Proposal are similarly without merit. (See VNP Br., p. 42.) The conflict, again, is between article 9, § 17's command that "no money shall be paid out of the state treasury except in pursuance of appropriations made by law," and VNP's proposed article 4, § 6(5), which 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. 1.)

VNP argues first that there is no abrogation because proposed art 4, § 5 requires that the Legislature appropriate funds for the commission's use, and thus "there will be no need to have

[7] In another decision, *Dapper v Smith*, 138 Mich 104; 101 NW 60 (1904), the Supreme Court held that a local act—requiring persons appearing on the ballot in Kent County to swear an oath that they desired to serve in office—also violated the Oath Clause. 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 local act impermissibly limited voters' choice and ability to nominate reluctant candidates for office. *Id.*

any payment of money out of the State Treasury without an appropriation." (VNP Br., p. 42.) This ignores that the VNP Proposal contemplates *by its very own terms* that the Legislature will not always make such appropriations—specifying that the state "*shall* indemnify" the commissioners for costs *not* covered by an appropriation. But further, proposed art 4, § 5 requires only that the Legislature make an appropriation "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." Even if the Legislature *routinely* appropriates such amount as contemplated, *nothing* in the VNP Proposal caps the commission's budget to that amount, or subjects the VNP commission's spending to *any* limitation by the other branches of government.

This leads to a potentially catastrophic situation:

- The redistricting commission will have an unlimited budget;
- The State must indemnify—i.e., reimburse[8]— 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 1, art 4, § 6(3)(E).)

Most crucially, that result is plainly at odds with article 9, § 17's requirement that payments from the State Treasury be made *only* pursuant to appropriations by the Legislature. The public—asked to sign the VNP petition—should have been made aware that the Proposal will nullify this important limitation. This abrogation 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 *by design*.

[8] In common understanding, "indemnify" means "to make compensation to for incurred hurt, loss, or damage." "Indemnify" Merriam-Webster.com. Merriam-Webster, n.d. Web. (accessed May 26 2018).

VNP's final argument with respect to article 9, § 17 is also groundless. They argue that their proposed art 4, § 6(5) does not include any language suggesting "that a judicial decree to enforce [the 'shall indemnify'] obligation could require a payment from the State Treasury … without an appropriation…." (VNP Br., p. 43.) VNP suggests instead that an appropriation could be compelled by the courts—i.e., that their new provision "would create a constitutionally-based cause of action for indemnification in favor of the Commissioners which could also be asserted by means of a *Complaint for mandamus*." (*Id.* (emphasis added).) This is absurd: 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)[9] (citing Const 1963, art 9, § 17, and holding that the Court "lacks the power to require the Legislature to appropriate funds.").[10]

The VNP Proposal makes an end-run around the appropriation process and commands the State Treasurer to rob from funds appropriated for other purposes to pay the indemnity. VNP's attempts to twist the words of the Proposal after the fact are ineffective. There is an abrogation of existing article 9, § 17, and republication was required in the petition.

[9] Reh'g on other grounds, 450 Mich 574 (1996), declined to follow on other grounds, *Studier v MPSERS*, 472 Mich 642 (2005). See also *Flynn v Truner,* 99 Mich 96; 57 NW 1092 (1894) (holding mandamus will not lie to compel the Auditor General to draw a warrant in excess of the appropriation for the particular purpose).

[10] VNP cites two decisions for the proposition that legislative appropriations "may be enforced by judicial decree," but neither decision comes even close to supporting VNP's asserted premise. (VNP Br, p. 43.) VNP first cites *Adair v Michigan*, 497 Mich 89; 860 NW2d 93 (2014)—a controversy that involved a *declaratory action* with respect to whether the Legislature had adopted an appropriate *formula* with respect to its implementation of Headlee mandates. VNP second cites *46th Circuit Trial Court v County of Crawford,* 476 Mich 131; 719 NW2d 553 (2006), concerning an action to compel funding from a *county*—not the Legislature. Neither case discussed Const 1963, art 9, § 17.

c) The Free Speech Clause in Const 1963, art 1, § 5 would be abrogated.

Obvious conflict exists between the Free Speech Clause of existing article 1, § 5 and the VNP Proposal's new article 4, § 11. The former provides that "*every* person may *freely* speak, write, express and publish his views on *all* subjects, being responsible for the abuse of that right." Const 1963, art 1, § 5 (emphasis added). The latter restricts the ability of 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. 1, art 4, § (6)(11).)

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

- "*every* person" will no longer mean *every* person, but will exclude commissioners, their lawyers, their consultants, and their staff;
- "*freely*" will no longer mean "freely," but will reduce the mode of permissible communication to open meetings and writing; and
- "on *all* subjects" will no longer mean "on *all* subjects," but will exclude *all* redistricting matters. (This includes redistricting matters and issues that are not even before the commission.)

If the VNP Proposal is adopted, for the first time, as a matter of constitutional law—i.e., within the four corners of the document itself—there will be language restricting a public official from discussing his or her views on the very task given over to his or her command. This is neither in the public interest nor in keeping with the rights of those public officials. Public officials, like

other citizens, are "entitled to speak as they please on matters vital to them." *Wood v Georgia*, 370 US 357, 389 (1962).[11]

VNP claims this is "a very slight restriction upon the exercise of the limited right of free speech." It also argues that the restrictions of the VNP Proposal can be reconciled with the Free Speech Clause because the Clause already acknowledges that persons must be "responsible for abuse[12] of that right." (VNP Br., p. 41.) The first argument misses the controlling language of *Protect Our Jobs*: *any* abrogation, even a (purportedly) slight one, must be republished. See 492 Mich at 784, 790-791. VNP's second argument is tautological—i.e., because the VNP Proposal *says* the commissioners, their lawyers, staff and consultants may not discuss redistricting matters with the public, a violation of that edict will necessarily—in VNP's calculus—be an "abuse" of free speech rights.[13] By that same token, if the VNP Proposal instead said, e.g., that judges may only speak to the public on Wednesdays, or that the Governor's staff may only communicate with the public by e-mail, VNP's argument would be that any violation of *these* restrictions would *also* be tantamount to an "abuse" of free speech rights.

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[11] See also Op Atty Gen 1969, No. 4647, p. 87 (finding members of Michigan's board of education have protected constitutional right to express their views on controversial subjects in the manner of their choosing). "Under our system of government, counter-argument and education are the weapons available to expose these matters, not abridgement of the rights of free speech and assembly." *Id.*

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

[13] Whether or not a particular curtailment of free speech rights of public officials may satisfy the strict scrutiny standard applied to such restrictions (see generally *Widmar v Vincent*, 454 US 263, 269-270 (1981)) is not the question here at issue. Nor can such question be evaluated in the abstract.

Neither argument being helpful to VNP, it remains that the VNP Proposal was circulated on a petition that did not republish Const 1963, art 1, § 5, and was thus fatally defective.

d) The express and detailed vesting of original jurisdiction in the Supreme Court in the VNP Proposal necessarily precludes Circuit Court original jurisdiction, and thus abrogates Const 1963, art 6, § 13.

The VNP Proposal specifies 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. 1, art 4, § 6(19) (emphasis added).) 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 …." (Emphasis added).

VNP argues that proposed art 4, § 6(19) is not in conflict with existing Const 1963, art 6, § 13 because proposed art 4, § 6(19) never expressly says that the circuit court does not have *concurrent* original jurisdiction. But this attempt at harmonization twists the VNP Proposal too far. The expression of the multiple forms of relief that the Supreme Court "shall" provide and in the exercise of "original jurisdiction" necessarily divests the circuit court of original jurisdiction over those same matters. Stated otherwise, the Supreme Court "shall" afford those types of relief which means the circuit court may not.

In *Bowie v Arder*, 441 Mich 23; 490 NW2d 568 (1992), the Michigan Supreme Court held that the Legislature's detailed statutes delineating procedures and powers over transfers of parental custody in the former Probate Code *necessarily* foreclosed circuit court jurisdiction over those

same matters. The *Bowie* Court made this determination despite the existence of Const 1963, art 6, § 13. The plain legislative intent of the Probate Code was that the probate courts were to handle such matters; the specification of procedures to be used by one court foreclosed—*by law* (and thus *consistent* with existing Const 1963, art 6, § 13)—jurisdiction in another. So too is it with the VNP Proposal's specification of remedies in proposed art 4, § 6(19). Since the latter change is not "by law" but by Constitutional decree, the VNP Proposal cannot be reconciled with existing Const 1963, art 6, § 13.

VNP's attempt at reconciliation is again unavailing. Failure to republish Const 1963, art 6, § 13 remains a fatal flaw that precludes the VNP Proposal from reaching the ballot. MCL 168.482(3); *Protect Our Jobs*, 492 Mich at 790-791.

3. VNP's substantial compliance discussion mischaracterizes binding precedent.

The republication requirement of section 483(2) of the Election Law is mandatory—"[i]f the proposal would … abrogate an existing provision of the constitution, the petition *shall* so state and the provisions to be altered or abrogated *shall* be inserted …." MCL 168.482(3) (emphasis added). The Michigan Supreme Court has held that "shall" means "shall" in the Election Law: it has foreclosed a finding of "substantial compliance" for defective petitions under section 482, *including* those circulating constitutional amendments. *Stand Up for Democracy v Sec'y of State*, 492 Mich 588, 594, 601-602; 822 NW2d 159 (2012) (finding a "clear intent that petitions for … *constitutional amendments* strictly comply with the form and content requirements of the statute") (emphasis added); *Protect Our Jobs*, 492 Mich at 778 (holding republication requirement of section 482(3) "uses the mandatory language 'shall,'" and "[a]ccordingly, the principle articulated in *Stand Up* applies with equal force here ….")

Contrary to *Stand Up,* VNP asserts that substantial compliance with the mandatory republication requirement of section 482(3) should be deemed sufficient. (VNP Br. pp. 34-36.) VNP characterizes the foreclosure of substantial compliance for constitutional amendment petitions in *Stand Up* as dicta. (*Id.*, p. 37 and n. 28.) It is not.[14] And additional binding case law, addressed specifically to section 482(3), confirms that substantial compliance is not available. *Protect Our Jobs*, 492 Mich at 778. VNP failed to mention the latter.

VNP's substantial compliance arguments should be flatly rejected.

B. Section 482(3) of the Election Law is a valid enactment within the ambit of Const 1963, art 12, § 2.

1. Section 482(3) must be presumed constitutional.

The core of VNP's Brief is dedicated to their argument that a statutory requirement—one that has existed ***unchanged for nearly 80 years***[15]—is unconstitutional. (See VNP Br., pp. 21-38.) That is, VNP argues that the petition republication requirement in section 482(3) of the Election Law unconstitutionally infringes on the People's right of initiative. But in an attempt to convince this panel that it should invalidate long-standing state law, VNP omits key legislative and jurisprudential developments in the history of that provision. As set forth below, these developments show conclusively that the republication requirement is within the contemplation of Const 1963, art 12, § 2.

[14] Where a court intentionally "takes up, discusses, and decides a question germane to, though not necessarily decisive of, the controversy," the court's analysis cannot be dicta. See *Detroit v Pub Utilities Comm*, 288 Mich 267, 299-300; 286 NW 368 (1939).

[15] See Ex 2, Tab B—Public Act 246 of 1941, at C.S. 6.685(12). As discussed further below, the language of former C.S. 6.685(12) was re-codified at MCL 168.482 as part of a 1955 consolidation of election laws in the current Election Law.

The standards applicable to this question are as follows: Statutes are presumed constitutional and courts are duty bound to construe them so. *Taylor v Smithkline Beecham Corp*, 468 Mich 1, 6; 658 NW2d 127 (2003). The courts must exercise their power to declare law unconstitutional with extreme caution.[16] *Phillips v Mirae, Inc*, 470 Mich 416, 422; 685 NW2d 174 (2004). Every reasonable presumption must be indulged in favor of the validity of the act. *Id.*, 470 Mich at 423.

2. The republication requirement is plainly a "form" requirement.

As acknowledged by VNP, Const 1963, art 12, § 2 expressly states that a petition circulating a proposed constitutional initiative "shall be in the form, and shall be signed and circulated in such manner, as prescribed by law." VNP contends that MCL 168.482(3)'s requirement (that petitions list provisions that would be altered or abrogated) does not qualify as a regulation of a petition's "form," and is, instead, "an attempt to establish a requirement of *substantive content*, as appropriately characterized by the Court's decision in *Ferency*."[17] (VNP Br., p. 30 (emphasis added).) This argument fails for multiple reasons.

Most crucially, section 482(3)'s republication requirement places no limitation on the *substance* of a ballot proposal. Section 482(3) requires that a petition include, where applicable, a *field* with the heading: "[p]rovisions of existing constitution altered or abrogated by the proposal if adopted." MCL 168.482(3). The statute makes no specific limitation on *what* then may be

[16] Pursuant to MCR 7.206(D)(1), an opening brief of a claimant must conform, as nearly as possible, to the requirements of MCR 7.212(C). Pursuant to `212(C), an appellant's brief in a matter where a statute is challenged as being unconstitutional must include, in the caption, an all-caps advisory placing the Court and the other parties on notice of such matter. VNP failed to include the required notice.

[17] *Ferency v Sec'y of State,* 409 Mich 569; 297 NW2d 544 (1980).

placed in that field. A proposed amendment may abrogate one or many provisions (as well as *any* provisions), of the Constitution—the content of the amendment remains fully within the purview of the proposal's drafter. Consistent with VNP's own definition of "form," section 482(3) directs merely the "the shape and structure" of the petition, "as distinguished from the" particular content "of which it is composed." (VNP Br., p. 32 (citing *Pinkston-Poling*, 227 FSupp3d at 852.)

Since section 482(3) describes the required form, but makes no limitation on the content, of a petition, it is plainly within the ambit of Const 1963, art 12, § 2's invitation to the Legislature to prescribe the "form" of petitions by law. That fact alone is decisive.

3. The petition republication requirement is nearly 80 years old; its history demonstrates that republication is a matter of *form* within the ambit of Const 1963, art 12, § 2.

Article 12, § 2 of the 1963 Constitution requires that the *ballot* republish existing sections of the Constitution that would be abrogated by a proposed constitutional amendment. Section 482(3) requires that a circulated *petition* do so as well. MCL 168.482(3).

Both requirements were drafted by the same Legislature. The *ballot* requirement was enacted as Proposal 1 of 1941, which was legislatively referred.[18] Two months after Proposal 1's adoption, the same Legislature adopted the *petition* requirement in Public Act 246 of that year. The statute read then almost exactly what it reads now: "If the proposal would … abrogate any existing provision … the petition should so state and the provisions to be altered or abrogated shall be inserted …." See former C.S. 6.685(12). The Legislature considered the republication to be a matter for "form," expressly denominating it to be one in the statute. *Id.*

[18] See Ex 2, an Appendix setting forth the history of the republication requirements in greater detail.

When the delegates met in 1961 to revise Michigan's Constitution, the petition republication requirement of section 482(3) had been Michigan law for 20 years. It was thus in the delegates' contemplation when they added the clause in Const 1963, art 12, § 2 stating that the "form" of petitions was to be "prescribed by law."[19]

This history shows dispositively that the petition republication requirement of section 482(3) was considered a matter of form by the Legislature when first enacted in 1941 and a permissible regulation by the Constitutional delegates in 1961 and 1962.[20] VNP's arguments ignore this history, and should thus be rejected.

4. The republication requirement is not an undue burden.

While section 482(3) does not restrict *what* sections may be abrogated, it does mandate, as a matter of form, that abrogated sections be republished. Abrogated provisions are as much a component of an amendment as language being added to the Constitution—if a petition drafter does not understand what is being abrogated in the existing Constitution, they do not understand their own proposal. This is not an "undue burden" given the importance of Michigan's Constitution to the functioning of its government.

[19] The delegates to the 1961-62 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. …." Official Record, Constitutional Convention, p 3200 (delegate Brown).

[20] Of further significance, is that the schedules to the 1963 Constitution required that the Attorney General review and recommend changes to existing laws required by changes made in the new Constitution. Const 1963, Schedule, § 1. No change was thereafter made to the petition republication requirement in MCL 168.482(3), which has remained in place to this day.

For a typical amendment—*i.e.,* a "mere correction of detail"[21]—it should not be difficult to identify abrogated sections. Only one of the four proposals in *Protect Our Jobs* failed to satisfy the abrogation requirement—and no petition since has been rejected on that basis.[22] 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 statutory detail on numerous items concerning the operation of the proposed redistricting commission. As stated below, the VNP Proposal is not really an amendment but a revision, requiring a Constitutional Convention.[23] It is thus no surprise that the VNP Proposal abrogates a number of the sections of the existing Constitution. VNP's failure to identify those sections is fatal to the VNP Proposal's submission to the voters under MCL 168.482(3).

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

[22] VNP references communications it had with Election Bureau staff in seeking voluntary, non-binding approval of the petition prior to circulation. (VNP Br., p. 39.) There is no statutory preliminary approval procedure, and these communications are moreover irrelevant to the issue of compliance with MCL 168.482(3) because the incorrect legal guidance or mistakes of state officials are not binding on courts. See, e.g., *De Lamiellure Trust v Dept' of Treasury*, 305 Mich App 282; 853 NW2d 708 (2014) (incorrect advice of by assessor could not estop collection of tax); see also *Krushew v Mietz*, 276 Mich 553, 558; 268 NW2d 736 (1936) ("[E]veryone is presumed to know the law, … and hence, had no right to rely on such representations or opinions and will not be permitted to say he was misled by them.") Conversely, the communications show that VNP's counsel did not argue that MCL 168.482(3) was unconstitutional in his submissions to the Board of Elections staff concerning VNP's understanding of abrogation republication requirements. (See VNP Br. at Ex. B.) Only now, after VNP realized that it failed to republish several abrogated provisions, does it argue that MCL 168.482(3) is unconstitutional.

[23] That process is meant, in part, to reconcile changes in the Constitution with its existing provisions. Official Record, Constitutional Convention, p. 2463 (Convention Vice President, J. Edward Hutchinson) (as quoted in the Introduction).

5. The Supreme Court has already implicitly rejected a constitutional attack on section 482(3); VNP mischaracterizes other precedent.

Though no court has expressly decided the constitutionality of section 482(3), there is language in Michigan Supreme Court decisions supporting its validity. In addition to calling the petition republication requirement "invited," (*Protect Our Jobs*, 492 Mich at 778) and "beckoned" (*Carman v Hare,* 384 Mich 443, 448; 185 NW2d 1 (1971)) by Const 1963, art 12, § 2, the Court in *Carman* implicitly rejected a constitutional attack on section 482(3) when it stated that Proposal C of 1970 should have been enjoined prior to its ultimate submission to the voters under section 482(3). A summary of these authorities—which VNP sorely mischaracterizes—is set forth in an Appendix at Exhibit 3.

The Appendix at Exhibit 3 also contains a summary of *Massey v Sec'y of* State, 457 Mich 410; 579 NW2d 862 (1998) and *Ferency v Sec'y of State,* 409 Mich 569; 297 NW2d 544 (1980). As set forth in the Appendix, there are three key points that VNP omits in their Brief with respect to these cases:

- First, *Massey,* like *Carman*, involved a *post-election* challenge. The relative burdens and available remedies in pre-election cases change dramatically once an election has occurred. See *Stand Up*, 492 Mich at 606-60; *Carman*, 384 Mich at 455.

- Second, when VNP cites these cases to suggest that petition defects arising under section 482(3) can be cured by "corrective action" pre-election (VNP Br., p. 35), VNP is fundamentally mischaracterizing these cases. The pre-election "corrective action" referenced was not a "cure" that would save the petition, but the courts' *enjoining submission of the question to the voters altogether*. 384 Mich at 455.

- Third, in 1986, the Supreme Court forcefully receded from the background principles in *Ferency* that are cited and discussed at length by VNP. See *Consumers Power Co v Att'y* Gen, 426 Mich 1; 392 NW2d 513 (1986). Those principles applied to the 1908 Constitution, and not the 1963 Constitution. 426 Mich at 9.

Finally, VNP's statement that the Court in *Ferency* "characterized" the republication requirement in any manner helpful to VNP's position is fundamentally misleading. (VNP Br., p. 30.) The *Ferency* Court forcefully *avoided* the constitutional question as concerned section 482(3). See 409 Mich at 593 ("Assuming, *arguendo*, that a new[24] requirement regarding substantive content is a regulation of form ….") To claim that the Court "characterized" section 482(3) as a regulation of substance is to *mischaracterize Ferency*.

For these reasons, in addition to those discussed above, this Court should reject VNP's constitutional arguments, and apply section 482(3) to reject submission of the VNP Proposal.

C. The VNP Proposal cannot be submitted to the voters as an initiated amendment.

1. *Citizens* is binding on this panel.

For the reasons set forth above, MCL 168.482(3)'s petition republication requirement is plainly constitutional and within the scope of permissible legislative action under Const 1963, art 12, § 2 (which invites the Legislature to prescribe the "form" of petitions). The Court, however, need not reach that issue *at all* if it adopts the claim set forth in Count I of Plaintiff's Complaint. That is, that the VNP Proposal is a revision rather than an amendment of the Constitution and as such, cannot be accomplished by an initiative (but requires a constitutional convention[25] instead).

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[24] The Court in *Ferency* was apparently not made aware that the republication had originally been adopted 40 years earlier.

[25] VNP suggests that the People's opportunity to convene a convention only comes once every 16 years. (VNP Br., p. 12.) While Const 1963, art 12, § 3 requires that the question of convening a convention be put to the voters once every 16 years, the Legislature can refer the question at any election under Const 1963, art 12, § 1. The People can also compel a convention at the time of their choosing by way of an initiated amendment. The People did so previously, in fact. After the 16-year convention question failed to pass in 1958, the People adopted what has been referred to as the "Gateway Amendment" in 1960, requiring a convention to be held even though the vote had failed to require one just two years earlier.

VNP has essentially conceded all with respect to this Count because it fails to address one irrefutable fact: this panel is bound to follow the framework and analysis set forth in *Citizens Protecting Michigan's Constitution v Sec'y of State*, 280 Mich App 273; 761 NW2d 210 (2008).

The unanimous *Citizens* decision was appealed to the Michigan Supreme Court. The Supreme Court did not reverse the Court of Appeals' ruling, but on a 6-1 vote, it upheld the result in keeping the Reform Michigan Government Now! (RMGN) Proposal off the 2008 general election ballot. 482 Mich 960 (2008). Under the Michigan Court Rules, a published opinion of the Court of Appeals is *controlling* on a subsequent Court of Appeals panel in future cases. MCR 7.215(C)(1). If a future panel disagrees with that precedent, it does not have the option to reverse that controlling case on its own. Reversal can only come from the Supreme Court or where a conflict panel is convened and overturns the prior decision. Until one of those two things happens, this panel *must* follow the test established in *Citizens*, and in particular, *must* analyze whether the VNP Proposal is an "amendment" or a "revision" under the qualitative and quantitative prongs identified by the *Citizens* decision. See *Tebo v Havlik*, 418 Mich 350, 362; 343 NW2d 181 (1984).

The Court of Appeals in *Citizens* plainly held that a "revision" of the Constitution under Const 1963, art 12, § 3, exists where a proposal makes change of such magnitude or significance that it works a "fundamental change" to the structure of state government. 280 Mich App at 296. 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.* The Court further held that the difference is to be analyzed under a two-pronged "qualitative" and "quantitative" framework. *Id.* at 299.

This Court must thus reject, on the basis of binding precedent, VNP's argument that Const 1963, art 12, §§ 2 and 3, do not impose restrictions on the scope or subject matter of an initiated

amendment. (VNP Br., pp. 9-11.) This Court is also required to reject, under binding precedent, VNP's argument that the word "revision" in Const 1963, art 12, § 3, refers to a "process" as opposed to a particular, characteristic and fundamental change. (VNP Br., pp. 12-15.) Finally, this Court is required to reject VNP's argument that the framework set forth in *Citizens* should be "limited to the facts of that highly unusual case." (VNP Br., p. 16.) Nothing in *Citizens* suggests that the revise/amend, qualitative/quantitative framework established therein was to be limited to only the RMGN Proposal there at issue.

The Court in *Citizens* further did not invent the framework it used for analyzing the RMGN Proposal out of whole cloth. Its decision was based on the Supreme 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 224 (citing *Laing*, 259 Mich at 221-222). It also expressly relied on the Supreme Court's decision in *Pontiac Sch Dist 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. … [280 Mich App at 298.]

In sum, this Court's analysis must proceed under the rubric established in *Citizens*. That analysis compels the conclusion that the VNP Proposal is not eligible for submission to the voters as an initiated amendment.

2. Plaintiffs in no way assert a single-object challenge.

VNP suggests at multiple points that *Citizens* does not preclude submission of the VNP Proposal to the voters because the Proposal "addresses the single subject and purpose of redistricting reform." (See VNP Br., p. 15, n 16; see also VNP Br., p. 10.)[26] They further protest that the mere complexity of a proposed change should not be a factor in assessing its ballot eligibility. This argument confuses a "single purpose" challenge with a challenge asserting that a particular proposal constitutes a "fundamental change." Plaintiffs here make the latter.

As recognized by the panel in *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 336, 342-343; 350-351; 801 P.2d 1077 (1990), in which the court precluded submission of a single-purpose, single-article proposed change 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 made fundamental changes to the California judiciary; it thus was 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

[26] VNP cites *Graham v Miller*, 348 Mich 684; 84 NW2d 46 (1957), in which the Supreme Court held that there was no single-object limitation on amendments. As in *Massey* and *Carman*, *Graham* involved a post-election challenge to an adopted amendment.

Cal3d 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.").

The RMGN Proposal in *Citizens* was multifarious and far-reaching. It had multiple purposes and was longer than the VNP Proposal. But comparison with the RMGN Proposal is not the test. The holding of *Citizens* was not limited to the RMGN Proposal. The *Citizens* Court held that the RMGN Proposal "does not even approach the field of application for the amendment procedure." 280 Mich App at 305. Under both the *qualitative* and *quantitative* prongs, the VNP Proposal similarly does not even approach that field, and must be rejected.

3. Regardless of whether it has a single purpose, the VNP Proposal makes multiple fundamental changes to existing state government.

Despite VNP's protestations, the VNP Proposal makes multiple "fundamental" changes that go well beyond "mere corrections of detail." VNP asserts that the VNP Proposal will "affect *only* three of the Constitution's twelve articles." (VNP Br., p. 17 (emphasis added).) Setting aside that three of twelve is fully one quarter of the Constitution, the impacted articles—4, 5, and 6—are only the three articles that establish and govern the three branches of state government. The VNP Proposal's disruptions to the framework of state government have been described at some length in Plaintiffs' opening brief, but in concise review:

- The Proposal eliminates the ability of the courts to adopt a redistricting plan as a remedy even of last resort. (VNP Proposal, Ex 1, art 4, § 6(13).)
    - VNP calls this a "narrow limitation," (VNP Br., p. 19) but twice since 1963, where the Legislature was unable to draw a plan that would satisfy state and federal law in time for the first general election following a decennial census, the Michigan Supreme Court has had to draw the plan itself. See *In re Apportionment of State Legislature*-1982, 413 Mich 96; 321 NW2d 565 (1982); *In re Apportionment of State Legislature,* 439 Mich 251; 483 NW2d 52 (1992)1.

- The Proposal gives an unlimited budget, without the need for appropriation, to the commission and commissioners, requiring that the state "shall indemnify" each for losses incurred. (See VNP Proposal, Ex 1, art 4, § 6(5).)
    - VNP's own counsel characterized this as a "stark" departure from the Legislature's existing authority over appropriations. (See VNP Br. at Ex B, at p. 8.)
- The Proposal eliminates the Governor's veto power over adopted redistricting plans, and also eliminates the People's reserved referendum power over such plans. It removes core checks and balances underpinning the function of state government:
    - The Governor, Legislature, and Courts cannot remove commissioners;
    - The Governor, Legislature, and Courts cannot limit the budget of the commission; and
    - The Governor, Legislature, and Courts cannot draw plans themselves, even where the commission fails to do so in time to comply with federal law.
- 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.
- 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 before.

Commissioners—who again, have an unlimited budget which the state *must* indemnify under the proposal—cannot be removed by the other branches. Pursuant to article 4, § 6(3) of the VNP Proposal, absent death, infirmity, voluntary resignation, or a commissioner doing something that disqualifies the commissioner *after-the-fact* of appointment under proposed article 4, § 6(1),[27] there are only two mechanisms for removal of a commissioner:

[27] E.g., post-appointment disqualification might arise due to the commissioner being the parent of a child who decides—unilaterally—to run for political office after the commissioner assumes office, or, e.g., disqualification might arise where the commissioner marries a long-time significant other who happens to be employed by a political office holder. (Compare VNP Proposal, Ex 1, art 4, § 6(3)(D), and § 6(1)(C).)

(1) 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

(2) 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 1, art 4, § 6(3)(D).

But 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 concomitant elimination of *mandatory* redistricting criteria. The existing mandatory requirement that districts follow county, township, and municipal boundary lines to the extent possible has existed in some form in every Michigan Constitution since 1835. (Plaintiffs' Br., pp. 20-25.) District maps drawn by the Legislature and the Courts under the current Constitution are subject to these mandates, as well as the mandatory requirements that districts be compact and contiguous by land. See *In re Apportionment of Wayne County Bd of Commissioners—1982*, 413 Mich 224, 253; 321 NW2d 615 (1982). These mandates help to facilitate elections, to preserve local organizations, and to "limit[] the potential for gerrymandering." *In re Apportionment—1982,* 413 Mich at 133, n 20.

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. The Court in *Citizens* called a change in redistricting methodology one that affected the "foundation power," of government. 280 Mich App at 306. The commission will choose the lines used to select the People's representatives—the body that establishes law—and will do so using a non-mandatory list of criteria that includes "communities of interest" and "political fairness." Nothing is more fundamental—or more likely to summon of necessity the careful study, deliberation, and refinement of a constitutional convention before submission to the voters for adoption—than this.

VNP makes no effort to address the fundamental nature of these changes in its Brief. The focus of their arguments is on a framework inconsistent with *Citizens* and on the fact that all of the many changes worked by the VNP Proposal relate back to efforts at remodeling the state's redistricting apparatus. That is not the test—their singular focus in briefing on a nonexistent "single object" challenge has resulted in their failure to answer the charge that the VNP Proposal would work a "fundamental change" to the Constitution. Under *Citizens*, the VNP Proposal is not susceptible to adoption as an amendment under Const 1963, art 12, § 2. This Court should order its rejection.

4. VNP failed to respond as to the application of the *quantitative* prong.

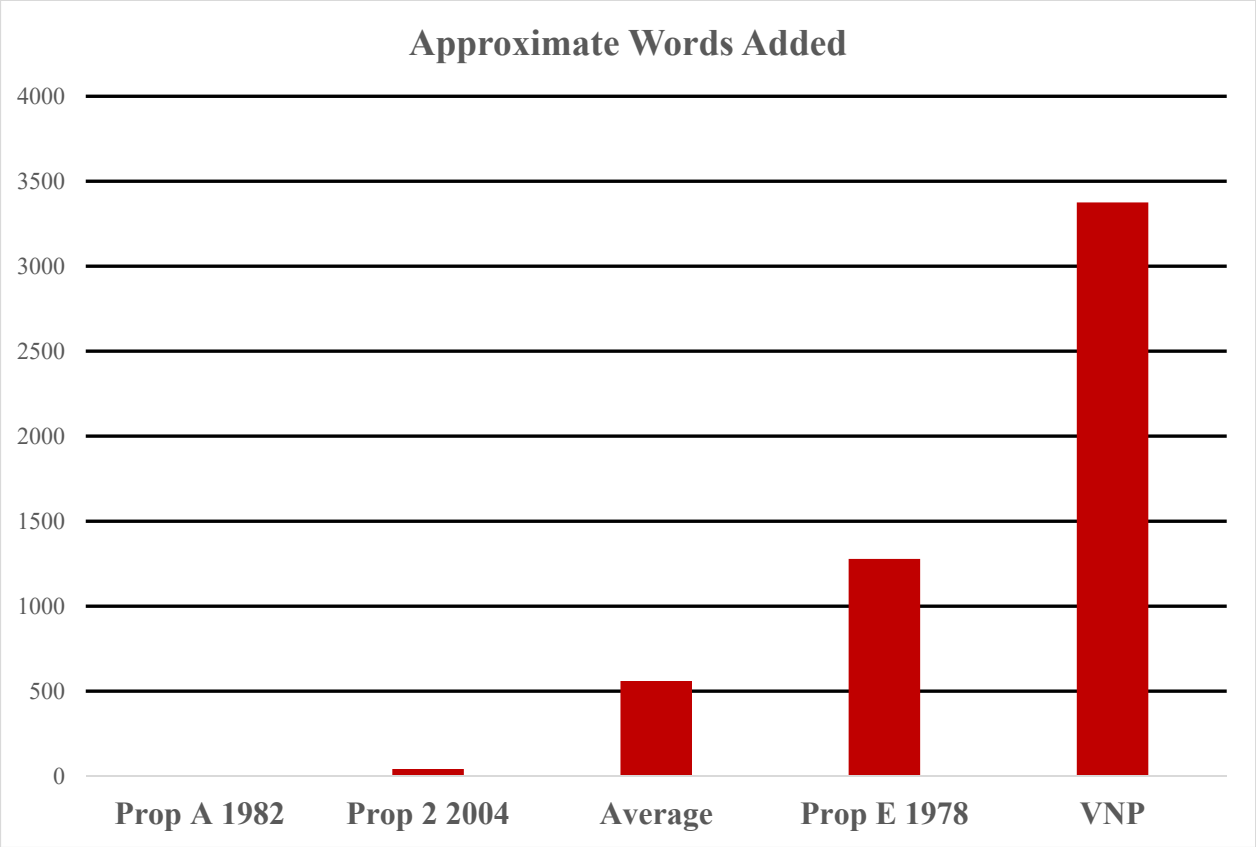
Because VNP fails to address the binding framework of *Citizens*, it also fails to address Plaintiffs' discussion of the VNP Proposal under the *quantitative* prong. Since VNP has adhered to the notion that *Citizens*' framework should not apply—since the VNP Proposal may not be *as bad* as the RMGN Proposal—Plaintiffs must repeat again: that is not the test.

The VNP Proposal changes three articles and eleven sections of the existing Constitution. It adds approximately 3,375 words and strikes approximately 1,459 words. 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' Br., 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.



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.

VNP failed in its Brief to address the quantitative prong of *Citizens* in any meaningful way. It remains the case that the sheer size of the VNP Proposal disqualifies it from submission under the initiated amendment process. A proposal of its size may only be accomplished via convention under Const 1963, art 12, § 3.

III. CONCLUSION

From the nature of the arguments posed in VNP's Response/Brief in Support of their own Cross-Claim, it is apparent that *Plaintiffs'* request for mandamus is the one that should be granted. VNP hinges their opposition on an attempt to convince this Court not to follow the binding precedent of *Citizens* and *Protect Our Jobs*, and further, on a request to have this Court invalidate a statute that has been part of Michigan law for nearly 80 years.

VNP's attempts at reconciling what are plain abrogations of multiple sections of the existing Constitution are unavailing. The failure to republish those sections in the petition just as plainly violates MCL 168.482(3), which exists as an invited regulation of form under Const 1963, art 12, § 3. Similarly unavailing are VNP's citations of multiple *post-election* cases and attempts to characterize *Stand Up* and *Protect Our Jobs'* holdings as dicta.

Whether the purposes of the VNP Proposal are desirable or not is not the question here—nor is the question whether the flaws of the Proposal will cause it to collapse of its own weight should it be enacted. The questions here posed are merely: (1) is the Proposal too massive in scale or too significant in effect to be enacted without first being subjected to the refining forum of a constitutional convention? and (2) did the petition fail to comply with the mandatory republication requirement of MCL 168.482(3)? The answer to both questions is yes.

The Court should direct the Secretary and Board to reject the VNP Proposal; it should deny the relief sought in VNP's Cross-Claim.

Respectfully submitted,

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LANSING 37874-2 533561v3

EXHIBIT 1

INITIATIVE PETITION
AMENDMENT TO THE CONSTITUTION

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

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

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

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

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

CERTIFICATE OF CIRCULATOR

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

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

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

Paid for with regulated funds by Voters Not Politicians Ballot Committee, PO Box 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, ~~The~~ the judicial power of the state is vested exclusively in one court of justice which shall be divided into one supreme court, one court of appeals, one trial court of general jurisdiction known as the circuit court, one probate court, and courts of limited jurisdiction that the legislature may establish by a two-thirds vote of the members elected to and serving in each house.

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

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

Exhibit 2

Enactment History of the Constitutional and Statutory Republication Requirements

Const. 1963, art 12, § 2 requires that a *ballot* including a proposed constitutional amendment must republish the provisions of the existing Constitution that will be altered or abrogated if the proposal is adopted. It further states that the "form" as well as the "manner of circulation" of petitions proposing constitutional amendments are to be "prescribed by law."

Section 482(3) of the Election Law similarly requires that a *petition* circulated in support of a proposed ballot initiative republish sections of the existing Constitution that would be altered or abrogated.

The history of the two requirements shows they are inextricably linked:

- The constitutional requirement was added by the People's ratification of Proposal 1 of 1941, which was not an initiated amendment, but instead a *legislatively referred* amendment under former Const 1908, proposed under Joint Resolution 1 of 1941. (Tab A.)

- The People ratified the insertion of the ballot republication requirement on April 7, 1941.

- Following ratification, Const 1908, art 17, § 3 included for the first time the requirement that "all proposed amendments to the constitution … shall be published in full, with any existing provisions of each constitution which would be altered or abrogated thereby, and a copy thereof shall be posted in each polling place." (Tab A.)

- Two months after adoption of Proposal 1 of 1941, on June 16, 1941, the current *statutory* requirement, as now set forth in 482(3), was adopted by the Legislature in Public Act 246 of 1941, and codified at former C.S. 6.685(12). (Tab B.)

Former C.S. 6.685 provided, at the time of adoption, in relevant part as follows:

> [6.685(12)] Petitions; form, type text; warning to signers
>
> Sec. 12. *FORM*[1] OF PETITION: The size of all petitions mentioned in this section shall be 8 1/2" x 13". If the measure to be submitted

[1] Notably, the Legislature included the "form of petition" language in the *body* of the enactment—it was not added subsequently by a legislative service bureau. Because the "form of petition" heading was included in the enactment itself, it is not a "catchline" and thus not subject to the general rule that catchlines are not to be used as interpretive aids. See generally MCL 8.4b.

> proposes a constitutional amendment, initiation of legislation, or referendum of legislation, the heading of each part of the petition shall be prepared in the following *form,* and printed in capital letters in type of the approximate size set forth:
>
> …
>
> If the proposal would alter or abrogate any existing provision of the constitution, the petition should so state and the provisions to be altered or abrogated shall be inserted, preceded by the words: "Provision of existing constitution altered or abrogated by such proposal if adopted." (Emphasis added.)

Former C.S. 6.685(12)'s petition republication requirement is in all material respects *identical* to the requirement in current MCL 168.482(3). 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 the existing constitution altered or abrogated by the proposal if adopted."

Thus, the *same* Legislature that referred Joint Resolution 1 of 1941 (and thus drafted the ballot republication requirement for referral to the voters in April of 1941) on the heels of that referral *also* drafted and adopted the current *petition* requirement in section 482(3), defining it to be, in their construction, a matter of the petition's "form."

TAB A

PUBLIC AND LOCAL ACTS

OF

THE LEGISLATURE

OF THE

STATE OF MICHIGAN

PASSED AT THE

REGULAR SESSION OF 1941

CONTAINING JOINT RESOLUTIONS, AMENDMENTS TO CONSTITUTION AND ABSTRACTS OF PROCEEDINGS RELATIVE TO CHANGE OF BOUNDARIES OF TOWNSHIPS AND INCORPORATION, ETC., OF CITIES AND VILLAGES.

COMPILED BY

HARRY F. KELLY

SECRETARY OF STATE

FRANKLIN DEKLEINE COMPANY
PRINTERS • LITHOGRAPHERS • BOOKBINDERS
LANSING — 1941

[No. 1.]

A JOINT RESOLUTION proposing an amendment to sections 2 and 3 of article 17 of the state constitution, relative to the circulation, filing, canvassing and certifying of petitions proposing constitutional amendments, and summarization of amendments and questions.

Resolved by the Senate and House of Representatives of the state of Michigan, That the following amendment to sections 2 and 3 of article 17 of the state constitution relative to the circulation, filing, canvassing and certifying of petitions proposing constitutional amendments, and summarization of amendments and questions, is hereby proposed, agreed to and submitted to the people of this state:

ARTICLE XVII

Petitions initiating constitutional amendments; signatures.

Sec. 2. Amendments may also be proposed to this constitution by petition of the qualified and registered electors of this state. Every such petition shall include the full text of the amendment so proposed, and be signed by qualified and registered electors of the state equal in number to not less than 10 per centum of the total vote cast for all candidates for governor at the last preceding general election, at which a governor was elected. Petitions of qualified and registered electors proposing an amendment to this constitution shall be filed with the secretary of state or such other person or persons hereafter authorized by law to receive same at least 4 months before the election at which such proposed amendment is to be voted upon. The legislature may prescribe penalties for causing or aiding and abetting in causing any fictitious or forged name to be affixed to any petition, or for knowingly causing petitions bearing fictitious or forged names to be circulated. Upon receipt of said petition the secretary of state or other person or persons hereafter authorized by law shall canvass the same to ascertain if such petition has been signed by the requisite number of qualified and registered electors, and may, in determining the validity thereof, cause any doubtful signatures to be checked against the registration records by the clerk of any political subdivision in which said petitions were circulated, for properly determining the authenticity of such signatures. If the secretary of state or other person or persons hereafter authorized by law to receive and canvass same determines the petition is legal and in proper form and has been signed by the required number of qualified and registered electors, the proposed amendment shall be submitted to the electors at the next regular election at which any state officer is to be elected. An official declaration of the sufficiency or insufficiency of the petition shall be made by the secretary of state or such other person or persons as shall hereafter be authorized at least 2 months prior to such election. Any constitutional amendment initiated by the people as herein provided, shall take effect and become a part of the constitution if the same shall be approved by the number of qualified electors required in section 1 hereof for the approval of amendments proposed by the legislature, and not otherwise. Every amendment shall take effect 30 days after the election at which it is approved. The secretary of state or such other person or persons as may be hereafter authorized by law shall submit all proposed amendments to the constitution initiated by the people for adoption or rejection in compliance herewith. The petition shall consist of sheets in such form and hav-

The above resolution was ratified by the people April 7, 1941.

ing printed or written at the top thereof such heading as shall be designated or prescribed by the secretary of state, or such other person or persons hereafter authorized by law to receive, canvass and check the same. Such petition shall be signed by qualified and registered electors in person only with the residence address of such persons, showing street names and also residence numbers in cities and villages having street numbers, and the date of signing the same. To each of such petitions, which may consist of 1 or more sheets, shall be attached the affidavit of the qualified and registered elector circulating the same, who shall be required to identify himself by affixing his address below his signature, stating that each signature thereto was signed in the presence of such qualified and registered elector and is the genuine signature of the person signing the same, and that to the best knowledge and belief of the affiant each person signing the petition was at the time of signing a qualified and registered elector.

Publication of proposed amendments; posting; ballots, caption.

Sec. 3. All proposed amendments to the constitution and other questions to be submitted to the electors shall be published in full, with any existing provisions of the constitution which would be altered or abrogated thereby, and a copy thereof shall be posted in each polling place. The purpose of any such proposed amendment or question shall be designated on the ballots for submission to the electors in not more than 100 words, exclusive of caption. Such designation and caption shall be prepared by the secretary of state or by such other authority as shall be hereafter designated by law within 10 days after the filing of any proposal and shall consist of a true and impartial statement of the purpose of the amendment or question in such language as shall create no prejudice for or against such proposal.

Resolved further, That the foregoing amendment shall be submitted to the people of the state at the next regular election. The secretary of state shall certify said proposed amendment to the clerks of the various counties of the state in the manner required by law. It shall be the duty of the board of election commissioners of each county to prepare ballots for the use of the electors when voting on said proposed amendment, which ballot, after setting forth the proposed amendment in full, shall be substantially in the following form:

"Vote on amendment to sections 2 and 3 of article 17 of the state constitution,

"Shall sections 2 and 3 of article 17 of the state constitution be amended to provide that amendments may be proposed to the state constitution by petitions of qualified and registered electors, equal in number to not less than 10 per cent of the total vote cast for candidates for governor at the last preceding general election; to provide that the secretary of state or person or persons authorized by law to receive and canvass said petitions may employ adequate means for eliminating other than authentic signatures to petitions; to regulate the circulation of such petitions; and to provide for the statement of the purpose of such amendment upon the ballots for submission to the electors?

"Yes ( )

"No ( )."

It shall be the duty of the board of election commissioners in each county to deliver the ballots so prepared to the inspectors of election of the several voting precincts within their respective counties within the time ballots to be used at said election are required to be delivered to such inspectors under the general election law. All votes cast upon said amendment shall be counted, canvassed and returned in the same manner as is provided by law for counting, canvassing and returning votes cast for state officers.

TAB B

PUBLIC AND LOCAL ACTS

OF

THE LEGISLATURE

OF THE

STATE OF MICHIGAN

PASSED AT THE

REGULAR SESSION OF 1941

CONTAINING JOINT RESOLUTIONS, AMENDMENTS TO CONSTITUTION AND ABSTRACTS OF PROCEEDINGS RELATIVE TO CHANGE OF BOUNDARIES OF TOWNSHIPS AND INCORPORATION, ETC., OF CITIES AND VILLAGES.

COMPILED BY

HARRY F. KELLY

SECRETARY OF STATE

FRANKLIN DEKLEINE COMPANY
PRINTERS • LITHOGRAPHERS • BOOKBINDERS
LANSING — 1941

[No. 245.]

AN ACT to amend section 6 of Act No. 117 of the Public Acts of 1935, entitled "An act to create county school districts within the state, in certain counties; to provide for the government, control, and administration of such districts, for the election of county boards of education in said county school districts; to define the powers and duties of the county boards of education; to terminate the authority of township boards in said counties; to organize school districts and to alter the boundaries thereof; to abolish the office of county commissioner of schools in said counties; to provide for the appointment of county superintendent of schools and assistants; to define the duties and fix the compensation for the same, and as to such counties to repeal Act No. 147 of the Public Acts of 1891, being sections 7703 to 7711 of the Compiled Laws of 1929, and all other acts or parts of acts conflicting with the provisions of this act."

The People of the State of Michigan enact:

Section amended.

Section 1. Section 6 of Act No. 117 of the Public Acts of 1935, entitled "An act to create county school districts within the state, in certain counties; to provide for the government, control, and administration of such districts, for the election of county boards of education in said county school districts; to define the powers and duties of the county boards of education; to terminate the authority of township boards in said counties; to organize school districts and to alter the boundaries thereof; to abolish the office of county commissioner of schools in said counties; to provide for the appointment of county superintendent of schools and assistants; to define the duties and fix the compensation for the same, and as to such counties to repeal Act No. 147 of the Public Acts of 1891, being sections 7703 to 7711 of the Compiled Laws of 1929, and all other acts or parts of acts conflicting with the provisions of this act," is hereby amended to read as follows:

[15.166] County school districts; compensation of members of board of education.

Sec. 6. Members of the county board of education shall receive the same per diem compensation and actual and necessary traveling expenses as are allowed to members of the boards of supervisors. Such compensation and expenses shall be audited, allowed and paid from funds of said county board of education.

Approved June 16, 1941.

[No. 246.]

AN ACT to regulate the form, circulation, filing and canvassing of initiatory and referendum petitions; to prescribe the duties of certain officers in connection therewith; to provide the manner in which questions or proposals originated by the filing of such petitions shall be submitted to the electors; to provide penalties for the violation of any of the provisions of this act, and to repeal all acts and parts of acts inconsistent herewith.

The People of the State of Michigan enact:

[6.685(1)] Initiatory petitions proposing constitutional amendment, time for filing.

Section 1. Petitions of qualified and registered electors proposing an amendment to the constitution shall be filed with the secretary of state at

least 4 months before the election at which such proposed amendment is to be voted upon.

[6.685(2)] Initiatory petitions proposing legislation, time for filing.

Sec. 2. Petitions to initiate legislation shall be filed with the secretary of state not less than 10 days before the beginning of a session of the legislature.

[6.685(3)] Referendum petitions, time for filing.

Sec. 3. Referendum petitions shall be presented to and filed with the secretary of state within 90 days after the final adjournment of the legislature.

[6.685(4)] Board of state canvassers and attorney general authorized to perform election duties pursuant to constitutional amendment; to phrase questions for ballots.

Sec. 4. Wherever the phrases "secretary of state, or such other person or persons as may hereafter be authorized by law," or "secretary of state, or by such other authority as shall hereafter be designated by law," are used in section 1 of article 5 or sections 2 and 3 of article 17 of the constitution of this state, such phrases shall be considered to mean and have reference to a board to be composed of the state officers comprising the board of state canvassers and the attorney general, and such board shall exercise the duties prescribed in such constitutional provisions, including the duty of preparing a statement of the purpose of any such proposed amendment or question to be designated on the ballots for submission to the electors in not more than 100 words, exclusive of the caption, which said statement shall consist of a true and impartial statement of the purpose of the amendment or question in such language as shall create no prejudice for or against such proposal.

[6.685(5)] Same; meeting of board following filing of petition.

Sec. 5. Upon the filing of any such petition it shall be the duty of the secretary of state to immediately notify said board of the filing of any such petition and to call a meeting of said board on a day certain within 10 days from the filing of any such petition and notify the members thereof of the meeting called to consider said petitions.

[6.685(6)] Same; canvassing of petitions; checking of doubtful signatures; time for completion.

Sec. 6. Upon receipt of said petitions said board shall canvass the same to ascertain if such petitions have been signed by the requisite number of qualified and registered electors, and for the purpose of determining the validity thereof may cause any doubtful signatures to be checked against the registration records by the clerk of any political subdivision in which said petitions were circulated for properly determining the authenticity of such signatures. It shall be the duty of the clerk of any political subdivision to cooperate fully with said board in any request made to said clerks by said board in determining the validity of doubtful signatures by rechecking the same against registration records and said clerk shall make the requested rechecks in an expeditious and proper manner. Said board may hold hearings upon any complaints filed or for any purpose deemed necessary by said board to conduct investigations of said petitions, and to conduct said hearings said board shall have the power to issue subpoenas and to administer oaths. Said board may also adjourn from time to time awaiting receipt of returns from investigations that are being made or for other necessary purposes but shall complete said canvass at least 2 months prior to the election at which such proposals are to be submitted.

[6.685(7)] Declaration of sufficiency or insufficiency of petition; publication of purpose of proposal.

Sec. 7. An official declaration of the sufficiency or insufficiency of any such petition shall be made by the said board at least 2 months prior to the

election at which such proposals are to be submitted. In case it shall be declared that such petition is sufficient, the secretary of state shall send copies of the statement of purpose of such proposal as prepared by the board referred to in section 4 of this act to the several daily and weekly newspapers published in the state of Michigan, with the request that said papers give as wide publicity as possible to said proposed amendment or other question. Publication of any matter by any paper under the provisions of this section shall be without expense or cost to the state of Michigan.

[6.685(8)] Same; notice to be transmitted to party, who filed petition, upon request.

Sec. 8. At the time of filing any such petition the person or persons filing the same may request a notice of the approval or rejection of said petitions to be forwarded by said board to such person or persons or any other persons so designated at the time of the filing of such petitions. In any case where such a request is made at the time of filing of the petitions it shall be the duty of the secretary of state, immediately upon the determination thereof, to transmit by registered mail to said person or persons an official notice of the sufficiency or insufficiency of said petitions.

[6.685(9)] Review of determination of board in supreme court.

Sec. 9. 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.

[6.685(10)] Certification of proposed constitutional amendments and propositions to be voted on; statement of purposes; copies, posting.

Sec. 10. Whenever a proposed constitutional amendment or other special question is to be submitted to the electors of the state for a popular vote, the secretary of state shall, not less than 35 days before the election, certify the same to the clerk of each county in the state, together with the form in which such amendment or other special questions shall be submitted. The secretary of state shall also furnish the several county clerks in the state 2 copies of the text of each amendment or question, and 2 copies of each said statement for each voting precinct in their respective counties. The county clerk shall furnish the said copies of such statement to the several township and city clerks in his county at the time other supplies for the election are furnished; and each such township or city clerk shall, before the opening of the polls on election day, deliver the copies of such text and statement to which each voting precinct in his township or city is entitled, to the board of election inspectors of said precinct, who shall post the same in conspicuous places in the room where such election is held.

[6.685(11)] Constitutional amendment or proposition, printing of, upon ballot.

Sec. 11. Whenever any proposed constitutional amendment or other question is to be submitted to the electors, the board of election commissioners of each county shall cause such proposed constitutional amendment or other special question to be printed in accordance with the form submitted by the secretary of state.

[6.685(12)] Petitions; form, type, text; warning to signers.

Sec. 12. FORM OF PETITION: The size of all petitions mentioned in this section shall be 8½″ x 13″. If the measure to be submitted proposes a constitutional amendment, initiation of legislation, or referendum of legislation, the heading of each part of the petition shall be prepared in the following form, and printed in capital letters in type of the approximate size set forth:

INITIATIVE PETITION

AMENDMENT TO THE CONSTITUTION

OR

INITIATION OF LEGISLATION

OR

REFERENDUM OF LEGISLATION

PROPOSED BY INITIATIVE PETITION

The words "amendment" "initiation of legislation" or "referendum of legislation," printed in 14 point black face type shall precede the title. The full text of the amendment so proposed shall follow, printed in 8 point type. If the proposal would alter or abrogate any existing provision of the constitution, the petition should so state and the provisions to be altered or abrogated shall be inserted, preceded by the words: "Provision of existing constitution altered or abrogated by such proposal if adopted."

We, the undersigned qualified and registered electors, residents in the city of ..... or the township of ....., state of Michigan, hereby in the county of ....., respectively petition for said (amendment to constitution) (initiation of legislation) (referendum of legislation).

Immediately above the place for signatures, on each part of the petition shall be printed in 12 point type the following warning:

WARNING

Whoever knowingly signs this petition more than once, signs a name other than his own, signs when not a qualified and registered elector, or sets opposite his signature on a petition, a date other than the actual date such signature was affixed, is violating the provisions of this act.

NAME	Street No. (In cities and townships having street Nos., otherwise R.R. Nos.)	Date of signing: Mo.	day	year
1				
2				
3 3½″	3″		2″	
4 20 numbered lines as above				

State of Michigan }
County of ..... } ss

The undersigned, being first duly sworn, deposes and says that he is a qualified and registered elector; that all the signatures upon the foregoing petition were made in his presence; that each signature to the petition is the genuine signature of the person signing the same, and that to his best knowledge and belief each person signing the petition was at the time of signing a qualified and registered elector, of the city of .....

or township of ..... in the county of .....
and state of Michigan.
Subscribed and sworn to before me
this .....day of .....A. D., 19 ...

.....
Signature of circulator

.....
Notary Public ..... county, Mich.

.....
My commission expires .....
Address of circulator

[6.685(13)] Same; circulation, signers required to be registered electors of same municipality; signature and address of circulator.

Sec. 13. No one of said petitions or parts of said petitions shall be circulated in more than 1 city or township, and all signers to said petition shall be qualified and registered electors in said city or township. The circulator of said petition shall be required to identify himself by affixing his address below his signature.

[6.685(14)] Violations; fictitious or forged names; signing more than once.

Sec. 14. It shall be unlawful for any person to cause or aid and abet in causing any fictitious or forged name to be affixed to any initiative or referendum petition or to any petition proposing an amendment to the constitution of the state of Michigan, or for knowingly causing any such petition bearing fictitious or forged names to be circulated. It shall be unlawful for anyone to sign any such petition more than once, or sign a name other than his own. Any person found guilty of violating the provisions of this section shall be deemed guilty of a misdemeanor.

Approved June 16, 1941.

[No. 247.]

AN ACT to provide for the annexation of school districts or parts of school districts in unincorporated territory, incorporated cities or villages, annexed to or consolidated with a city having a school district of the third class therein at the time of the annexation of or consolidation with said unincorporated territory, incorporated cities or villages; to provide for a referendum of school electors in the school districts or parts of school districts affected; and to provide for the division and/or transfer of the property and debts of districts so affected.

The People of the State of Michigan enact:

[15.2071] Annexation of school districts or parts of districts in territory consolidated with a city having a school district of third class; resolution of school boards; petition; referendum.

Section 1. Where unincorporated territory, incorporated cities or villages have been or are annexed to or consolidated with a city comprising a third class school district at the time of the annexation of or consolidation with said unincorporated territory, incorporated cities or villages, any school district or parts of school districts within such annexed or consolidated territory, city or village shall be annexed to and become a part of the said third class school district whenever the respective governing bodies of the said third class school district and of the school district or parts of school districts, to be annexed thereto shall by resolution so determine. Such resolution shall be adopted upon presentation to the respective governing bodies of a petition requesting such action and containing the signatures of not less

EXHIBIT 3

Exhibit 3

Authorities Concerning Constitutionality of MCL 168.482(3)

Carman implicitly rejected a constitutional challenge to section 482(3)

In *Carman v Hare*, 384 Mich 443; 185 NW2d 1 (1971), the Supreme Court considered a post-election challenge to the validity of Proposal C of 1970 (the Parochiaid Amendment). Before the election, Proposal C had been challenged on the basis that the petition circulated in its support failed to republish an altered section of the existing constitution. The Court of Appeals, in *Carman v Hare*, 26 Mich App 403; 182 NW2d 563 (1970), held that there was no failure to republish and allowed the proposal to go on the ballot; the Supreme Court denied leave to appeal and Proposal C was ultimately submitted to and adopted by the voters. See 384 Mich 751.

In a post-election challenge made on the same grounds, the Supreme Court—on further review—stated that "the … omission doubtless *would have* arrested the initiation and enjoined submission of the mentioned proposal" had the Court taken the case during the pre-election period. 384 Mich at 449 (emphasis added). It made this determination even though the plaintiffs in Carman asserted in their complaint that MCL 168.482's republication requirement was unconstitutional. See 26 Mich App at 408. The Supreme Court's post-election determination concerning the Proposal C petition—i.e. that its failure to republish altered sections should have kept Proposal C off the ballot—thus implicitly rejected the previously raised constitutionality argument as well.

Further, like the Court in *Protect Our Jobs*, which called the petition republication requirement constitutionally "invited," the Court in *Carman* called the requirement "constitutionally beckoned," again citing Const 1963, art 12, § 2's provision that a "petition shall be in the form … as prescribed by law." 384 Mich at 448. It explained that the purpose "of the salient requirement of the statute [section 482(3)]" was "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." *Id*.

Massey was a post-election challenge, which applies different standards

VNP cites *Carman* as well as *Massey v Sec'y of State*, 457 Mich 410, 414-415; 579 NW2d 862 (1998), to suggest that petition defects arising under section 482(3) can be cured by republication of abrogated sections on the ballot. That is, it cites those authorities to support the proposition that "[o]ther decisions of our Supreme Court have suggested that a failure to identify provisions to be altered or abrogated may be remedied by corrective action directed by judicial decree before the election." (VNP Br., p. 35.) This, however, is yet another instance of VNP failing to properly characterize authority. The "corrective action" referenced was not the Secretary of State's subsequent satisfaction of the *ballot* republication requirement (as distinguished from the *petition* republication requirement) as VNP suggests, but instead, the courts' enjoining submission of the question to the voters altogether.

Carman and *Massey* were both *post-election* challenges—something VNP fails to bring to the Court's attention in its Brief. To suggest that either decision supported relaxing the mandatory requirement of section 482(3) in a *pre-election* challenge is a plain misreading of those decisions. The burdens of persuasion concerning invalidation of a ballot initiative shift dramatically post-

election—a defect that would prevent a question from reaching the ballot pre-election is viewed "through different eyeglasses once the electors have voted affirmatively." *Carman*, 384 Mich at 455; see also *Massey*, 457 Mich at 415. As the Supreme Court explained in 2012 in *Stand Up*: "while this Court has recognized application of the substantial compliance doctrine to mandatory petition requirements post-election, it has not recently sanctioned application of substantial compliance to nonconforming petitions before an election." 492 Mich at 606-607.

VNP's arguments failed to apprise the Court of this important contextual history. VNP thus failed to accurately explain the holdings in *Carman* and *Massey* concerning the appropriate "corrective action" to remedy a defective petition. In a pre-election challenge like that at issue here, a petition's failure to republish abrogated sections has but one remedy: rejection of the petition. That is the appropriate remedy here, and the Court should thus order the Secretary and Board to reject the VNP Proposal.

Ferency* was receded from by *Consumers Power

In its limited discussion of the constitutional right of initiative—and background discussion of principles concerning the Legislature's role in regulating initiative rights—*Ferency* relied on the Supreme Court's 1923 decision in *Hamilton v Sec'y of State*, 211 Mich 541; 191 NW 829 (1923), in which the Court found the initiative rights under the 1908 Constitution to be self-executing and to invite little or no legislative embellishment. Six years after *Ferency*—in 1986—the Michigan Supreme Court powerfully receded from *Ferency's* reliance on *Hamilton* when it upheld the constitutionality of MCL 168.472a's 180-day signature requirement in *Consumers Power Co v Att'y Gen*, 426 Mich 1; 392 NW2d 513 (1986).

VNP does not cite or discuss *Consumers Power Co*., but the Court there expressly rejected the non-binding framing of initiative rights being self-executing that was made by the Court in *Ferency*. It explained that *Hamilton* was decided under the 1908 Constitution, and further that: "[t]he Constitution of 1963, unlike that of 1908, does summon legislative aid in the area of the form of these petitions as well as in the areas of circulation and signing." 426 Mich at 9 (emphasis added). Thus, a 180-day signature freshness requirement (as was at issue in *Consumers Power*), though not included in the Constitution and though burdening the right of the people to propose initiatives, was found to be constitutional. So too must it be with the regulation of form now at issue here—i.e., the republication of abrogated sections under MCL 168.482(3).