IN THE SUPREME COURT OF THE STATE OF MICHIGAN

PERRY JOHNSON,

Plaintiff,

v

MICHIGAN BOARD OF STATE CANVASSERS, JOCELYN BENSON, in her official capacity as Secretary of State, and JONATHAN BRATER, in his official capacity as Director of the Michigan Bureau of Elections.

Defendants.

DOCKET NO. _____

COURT OF APPEALS NO. 361564

EMERGENCY APPLICATION FOR REVIEW AND FOR PEREMPTORY RELIEF

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EMERGENCY APPLICATION FOR REVIEW AND FOR PEREMPTORY RELIEF

*****DECISION NEEDED BY JUNE 3, 2022*****

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Statement of Jurisdiction and Order Appealed From

This Court has jurisdiction pursuant to MCR 7.303(B)(1) and MCL 600.215. The Court of Appeals, in an original action pursuant to MCL 600.217(3); MCL 600.310; MCR 7.203(C)(2) and (5); MCL 600.4401; and MCR 3.305,[1] issued a published *per curiam* opinion on June 1, 2022 at 9:00 a.m. denying Mr. Johnson's request for a writ of mandamus. *Johnson v Bd. of State Canvassers*, No. 361564 (Mich. App. June 1, 2022) (slip op.) (**Exhibit 15**). Having been denied relief in the Court of Appeals, Plaintiff-Appellant Perry Johnson seeks emergency review and peremptory relief in this Court.

Finally, because initial review in this case is had in the Court of Appeals, MCL 600.217(3); MCL 600.310; MCR 7.203(C)(2) and (5); MCL 600.4401, there is no avenue for mandatory appellate review anywhere. This reason alone should weigh in favor of this Court accepting discretionary review of this matter and issuing a decision on the merits.

This application is being timely filed within 42 days of the Court of Appeals June 1, 2022 "order or opinion resolving an appeal or original action." MCR 7.305(C)(2)(a).

[1] MCL 168.552(12) provides that "[a] person who filed a nominating petition with the secretary of state and who feels aggrieved by a determination made by the board of state canvassers" may "have the determination reviewed by mandamus, certiorari, or other appropriate process in the supreme court." But the Supreme Court has held that, "[d]espite the language of MCL 168.552(12), a mandamus action against the Board of State Canvassers is properly filed in the Court of Appeals or the circuit court." *Schwarzberg v Board of State Canvassers*, 649 NW2d 73 (Mich. July 3, 2002) (Table) MCR 7.203(C)(5), MCR 3.305(A).

Statement of Questions Presented

I.

Did the Court of Appeals Err in Finding Defendants Did Not Have a Clear Legal Duty to Check the Challenged Signatures Against the Qualified Voter File Before Disqualifying Those Signatures?

Plaintiff-Appellant Perry Johnson answers:	Yes.
Defendant-Appellee Board of Canvassers presumably answers:	No.
Defendant-Appellee Michigan Secretary of State presumably answers:	No.
Defendant-Appellee Bureau of Elections Director presumably answers:	No.
In a published opinion, the Court of Appeals answered:	No.

II.

Did the Court of Appeals Err in Failing to Grant Mandamus Relief Based on Defendants' Violation of Their Clear Legal Duties To Respect Johnson's Due Process Rights?

Plaintiff-Appellant Perry Johnson answers:	Yes.
Defendant-Appellee Board of Canvassers presumably answers:	No.
Defendant-Appellee Michigan Secretary of State presumably answers:	No.
Defendant-Appellee Bureau of Elections Director presumably answers:	No.
In a published opinion, the Court of Appeals answered:	No.

Introduction

In a published opinion, the Court of Appeals denied Perry Johnson's request for mandamus, holding that the Board of State Canvassers "did not have a clear legal duty to conduct a comparison of each [allegedly] fraudulent signature against *the qualified voter file*." Slip Op. at 11 (emphasis). The basis for the Court's holding was its conclusion that, under MCL 168.544c(11), "the Board had the discretion to disqualify…obviously fraudulent signatures without checking the signature against *local registration records*." *Id.* (emphasis added).

Here's the problem: the statewide "qualified voter file" and "local registration records" are two *completely* different things. One's maintained by the state, the other's maintained by the hundreds of local authorities in the cities and townships around Michigan. Under MCL 168.552—the statute dealing with the Board's investigation of nominating petitions—checking signatures for genuineness against the qualified voter file (QVF) is the mandatory first step in the investigation process, while checking signatures against local registration records is a discretionary second step that can only be taken if the first step (QVF comparison) is inconclusive.

So, contrary to the holding of the Court of Appeals' published opinion, the Board discretionary authority to "[d]isqualify obviously fraudulent signatures on a petition…without checking the signatures against *local registration records*," has absolutely no effect on the Board's mandatory legal duty to "determine the genuineness of a signature on a petition" by comparing it to "[t]he qualified voter file" under MCL 168.552(13). Thus, under the plain language of MCL 168.552(8) and (13) and MCL 168.554c(11), the Board lacks discretion to simply skip the first, mandatory step in the process, even if it has discretion to skip the secondary local records verification step under the right circumstances. By holding otherwise, the Court of Appeals effectively rewrote the plain language of MCL 168.544c and MCL 168.552. Since the Court of Appeals—like any other court—lacks authority to rewrite statutes, this Court must step in, reverse

the Court of Appeals' opinion, and iron out the wrinkle in the fabric of Michigan law created by the lower court's published opinion.

The Court of Appeals' holding also violates the fundamental principle of Michigan law that "statutes controlling the manner in which elections are conducted [are to] be construed as far as possible in a way which prevents the disenfranchisement of voters through the fraud or mistake of others." *Kennedy v Board of State Canvassers*, 127 Mich App 493, 496; 339 NW2d 477 (1983); *Santia v Board of State Canvassers*, 152 Mich App 1, 6; 391 NW2d 504 (1986) (same); *Attorney General v Board of State Canvassers*, 318 Mich App 242, 250; 896 NW2d 485 (2016) (citations omitted) ("When interpreting law governing elections, we must construe the statutes as far as possible in a way which prevents the disenfranchisement of voters through the fraud or mistake of others."). By denying Mr. Johnson's mandamus and allowing Defendants to disqualify signatures in violation of MCL 168.552, the Court of Appeals effectively silenced the voices of the thousands of Michiganders who signed Perry Johnson's nominating petitions, to say nothing of the thousands of Michiganders who signed petitions for other candidates that were disqualified for similarly improper reasons.

And, aside from their violations of the Michigan Election Law and judicial precedent, Defendants' investigation of Mr. Johnson's petitions violated their clear legal duty to respect his due process rights by failing to provide him with an itemized list of the invalidated signatures justifying each disqualification and, thus, denying him notice and a meaningful opportunity to respond to their allegations that 2,335 signatures on his petitions were invalid for non-fraudulent reasons.

For multiple reasons, therefore, Defendants failed to establish that Mr. Johnson's nominating petitions contain less than 15,000 valid signatures. So Defendants also have a clear

legal duty to declare the sufficiency of Mr. Johnson's petitions and certify him as a candidate for the August 2, 2022 primary. The Court of Appeals erred by ruling to the contrary. And, because the Court of Appeals' opinion is published, those errors will be precedentially binding in every future case involving signatures on a nominating petition. So, the requirements of MCR 7.305 are met; there's an "issue of significant public interest," one that "involves a legal principle of major significance," from a decision below that is "clearly erroneous" and conflicts with binding authority from both this Court and other published decisions of the Court of Appeals. *See* MCR 7.305(B)(2),(3), and (5). This Court needs to step in and ensure that the law is followed by reversing the Court of Appeals and granting Mr. Johnson's request for a writ of mandamus directing Defendants to ensure he appears on the August 2, 2022 primary ballot.

Statement of Facts[2]

A. Mr. Johnson submitted nominating petitions with 23,193 signatures supporting his candidacy—8,193 more than the 15,000 statutory minimum.

Perry Johnson is a candidate for Governor of the State of Michigan who seeks the Republican Party's nomination via the August 2, 2022 primary ballot. To be included on the official primary ballot, a candidate for nomination by a political party for the office of governor must submit nominating petitions with at least 15,000 valid signatures. MCL 168.53; MCL 168.544f.[3]

By statute, nominating petitions for the office of governor "shall be received by the secretary of state for filing in accordance with this act up to 4 p.m. of the fifteenth Tuesday before the August primary." MCL 168.53. The 2022 primary election is scheduled for August 2, 2022

[2] Aside from **Exhibits 15 and 16**, all exhibit number references are to the exhibits attached to Perry Johnson's complaint, which is attached hereto as **Exhibit 16.**

[3] A gubernatorial candidate must also have petitions that are "signed by at least 100 registered resident electors in each of at least ½ of the congressional districts of the state." MCL 168.53. It's undisputed that Mr. Johnson satisfies this criterion.

and April 19, 2022 is the fifteenth Tuesday before that date. So the deadline for Mr. Johnson to submit nominating petitions was April 19, 2022. *Id.*; **Exhibit 2**, 2022 Michigan Election Dates, pg. 4. Although only 15,000 signatures are needed to certify his name as a candidate for the August 2, 2022 primary, Mr. Johnson filed nominating petitions containing more than 23,000 signatures. And he filed those petitions on or before April 19, 2022.[4]

B. The Bureau's Staff Reports.

The Secretary of State's Bureau of Elections issued its staff reports to the candidates and their counsel on May 23, 2022 at 7:55 p.m., at least a half-hour after it leaked the findings to the news media. **Exhibit 7**, Staff Report Email; **Exhibit 14**, Tweets About Johnson Staff Report (showing receipt of reports by news media before 7:30).

The Staff Report on Perry Johnson's nominating petitions concluded that although he submitted a total of 23,193 signatures, only 13,800 were facially valid. **Exhibit 8**, Perry Johnson Staff Report, pg. 1. Because that's less than the threshold requirement, the Bureau staff recommended that the Board determine that Mr. Johnson's petition was insufficient to qualify him as a Republican gubernatorial candidate for the August 2, 2022 primary. *Id.* at 6.

The Staff Report identified a total 9,393 signatures on Mr. Johnson's petitions as invalid. *Id.* at 1. Specifically, it concluded that:

a. 68 signatures were invalid because the signer was not registered to vote.

[4] Prior to the issuance of the Bureau of Elections Staff Report and Recommendations, a Carol Bray submitted a challenge to Mr. Johnson's nominating petitions. **Exhibit 3**, Carol Bray's Sworn Complaint. The Bureau never processed this Complaint as it recommended that Mr. Johnson not be placed on the ballot irrespective of the complaint. Importantly, Ms. Bray's complaint, even if taken as entirely accurate, did not challenge enough signatures to result in Mr. Johnson falling below the required 15,000 signature threshold. Additional information regarding the deficiencies in Ms. Bray's complaint can be found in **Exhibits 3** through **6.**

b. 1,336 signatures were invalid because of "[j]urisdiction errors (no city in county known by name given by signer, dual jurisdiction entry, jurisdiction name, given by signer does not align with address)"

c. 269 signatures were invalid because of "[d]ate errors (no date given by signer, date of birth entered, or date given by signer is later than circulator's date of signing)"

d. 81 signatures were invalid because of "[a]ddress errors (no street address or rural route given)"

e. 239 signatures were invalid because of "[c]irculator errors (circulator did not sign or date petition)"

f. 15 signatures were invalid because of "[s]ignature errors (no signature or incomplete signature)"

g. 402 signatures were invalid because of "[m]iscellaneous errors (signatures of dubious authenticity, where the petition signature does not match the signature on file or multiple signatures appear to have been written by the same individual)"

h. 6,983 signatures were invalid because they were "on sheets submitted by fraudulent-petition circulators." *Id.*

Incredibly, the Staff used an unprecedented targeting "process" to strike *every single signature* from any individual or entity whom it declared to be a "fraudulent-petition circulator." In other words, instead of reviewing each signature for authenticity with the presumption that every signature on every sheet is valid, the Staff indiscriminately struck more than 68,000 signatures, including 6,983 from Mr. Johnson's nominating petition based on this error of law.

The Staff described its process for identifying allegedly fraudulent signatures:

> Staff reviewed each petition sheet submitted by Mr. Johnson. During that review, staff flagged each sheet which was signed by a fraudulent-petition circulator. For additional information on sheets submitted by fraudulent-petition circulators, see *Staff Report on Fraudulent Nominating Petitions*.
>
> In total, staff's review of Mr. Johnson's petition sheets identified 9,393 invalid signatures and 13,800 facially valid signatures, which dropped him below the 15,000 threshold and rendered him ineligible for the ballot. [*Id.* at 1.]

In other words, although the Bureau's staff reviewed every sheet to identify the circulator's identity, it didn't look at each individual signature on the petitions. The signatures from allegedly fraudulent-petition circulators were identified as follows, *Id.* at 2:

Signatures from the following fraudulent-petition circulators were included in Mr. Johnson's submission:

Davon Best	60 signatures
Antonio Braxton	177 signatures
Brianna Briggs	254 signatures
Nicholas Carlton	404 signatures
DeShawn Evans	401 signatures
Jehvon Evans	70 signatures
Justin Garland	203 signatures
LeVaughn Hearn	108 signatures
Brianna Heron	450 signatures
Aaliyah Ingram	154 signatures
Niccolo Mastromatteo	97 signatures
Giovannee Smith	460 signatures
Ryan Snowden	1,077 signatures
Trevon Stewart	29 signatures
Stephen Tinnin	1,034 signatures
Yazmine Vasser	576 signatures
Diallo Vaughn	440 signatures
William Williams	989 signatures
	6,983 signatures

To support its conclusion that 6,983 signatures on Mr. Johnson's petitions were invalid and not genuine, the Bureau Staff claimed that during their review it identified three categories to support its broad-based conclusions.

First, the Staff concluded that "[A] number of fraudulent signatures that were purported to be from voters who had been canceled… for a variety of reasons which included moving out of state and death" or that "listed an address where the voter has not resided from at least one to eight years prior to signing." *Id.* at 2. But, despite claiming to identify an unspecified "number" of such signatures, the Bureau Staff only specifically identified two such signatures. *Id.*

Next, the Staff claimed it identified signatures where "the voter's name is misspelled, either in the signature block or in the block for the voter's printed name." *Id.* at 2. Without any reference

to authority, the Staff propounded that "[m]isspelling of the purported individual's own name is an indicator of fraud" and "a large number of signatures in which the proffered signature appears to have a different spelling than the printed name is an indicator of fraud." *Id.* But, despite purporting to identify a "large number" of such signatures, the Report only specifically identified 8 signatures where the signer allegedly misspelled the voter's name and 4 signatures where "the name of the voter's jurisdiction or street was spelled wrong, or the jurisdiction was mischaracterized" (e.g., referring to Bloomfield Hills as Bloomfield), for a total of 12 signatures. *Id.* at 3.

Third, the Staff claimed to have identified signatures where there was a "repeated use of an uncommon signature abbreviation"—i.e. "the use of a first name and last initial as a signature." *Id.* at 4. Again, without reference to any authority, the Staff concluded that using a first name and last initial is "rare." *Id.* But, despite claiming that this "unusual combination was included throughout the fraudulent petition sheets," the Report only specifically identifies 3 such examples. *Id.* So, despite claiming that 6,983 signatures on Mr. Johnson's petitions were invalid due to widespread fraud, the Bureau only specifically identified a grand total of 17 signatures as fraudulent. *Id.* at 2-4.

The report went on to identify how many signatures it determined were invalid for a variety of jurisdictional reasons during the face review, including: (1) listing the county instead of the township or city (521 signatures); (2) listing a city or township that was not located within the count listed on the heading (711 signatures); and (3) listing more than one township or city (104 signatures). *Id.* at 4-5. But, aside from including 2 petition sheets with 20 signatures, the Report failed to specifically identify any of the remaining 1,316 signatures that were allegedly invalid because of jurisdiction. *Id.* at 4-5.

The Report also claimed that 402 signatures were invalid because of "miscellaneous errors, including signatures of dubious authenticity submitted by circulators other than those listed in the fraudulent-circulator report." *Id.* at 5. But, aside from mentioning one person who circulated "4 petition sheets [with] 40 signatures of dubious authenticity," the Report failed to specifically identify any of the remaining 362 signatures that were allegedly of dubious authenticity or explain what made them dubious.

Finally, the Report noted that, although Carol Bray challenged Mr. Johnson's signatures, "the challenge was not processed because the circulators named above are the same ones the staff had already identified as fraudulent-petition circulators in its own review. Mr. Johnson did not meet the threshold for certification to the ballot based on the staff's initial review." *Id.* at 6.

In addition to preparing a Staff Report on Mr. Johnson's petition, the Bureau also prepared an omnibus Staff Report that focused on the allegedly fraudulent petition circulators. **Exhibit 9**, Staff Report on Fraudulent Nominating Petitions (the "Omnibus Report").

The Omnibus report claimed that during its review of the nominating petitions for the August 2, 2021 primary, the Bureau staff "identified 36 petition circulators who submitted fraudulent petition sheets consisting entirely of invalid signatures." *Id.* at 1 (footnotes omitted). According to the Bureau, "All petition sheets submitted by these circulators displayed suspicious patterns indicative of fraud, and staff reviewing these signatures against the Qualified Voter File (QVF) did not identify any signatures that appeared to be submitted by a registered voter." *Id.*

The Omnibus report purports to "explain[] how and when staff identified the fraudulent petition sheets, the process developed to address the fraudulent sheets, and an appendix showing examples of the practices these circulators used to submit invalid signatures." *Id.* at 1. The Bureau claims that because of the large number of candidates trying to qualify for the August 2, 2022

primary ballot, "Bureau staff began to review nominating petitions at the end of March, after several gubernatorial candidates had submitted nominating petitions." *Id.* at 2. "During this review, staff noticed a large number of petition sheets, submitted by certain circulators, appeared fraudulent and consisted entirely of invalid signatures." *Id.*

According to the Omnibus Report, these petition sheets "tended to display at least one of the following patterns": (1) an "unusually large number of petition sheets where every signature line was completed, or where every line was completed but one or two lines were crossed out"; (2) sheets with "signs of apparent attempts at 'intentional' signature invalidity"; (3) an "unusually large number of petition sheets that showed no evidence of normal wear that accompanies circulation"; (4) sheets that "appeared to be 'round-tabled'"; (5) sheets on which "blank and completed lines were randomly interspersed" which apparently indicates "that a sheet had been submitted 'mid-round-table'"; (6) sheets "where all ten lines had signatures and partial addresses or dates, but only a random subset were fully completed"; (7) sheets on which every instance of the handwriting of certain letters was nearly identical across lines, including signatures; and (8) sheets "where the two or three distinct handwriting styles appeared on multiple sheets." *Id.* at 2.

The Omnibus Report claims that these observations led the Bureau staff to begin comparing some signatures to the QVF, which revealed more issues, including: (1) discrepancies between the petition signatures and the QVF signatures; (2) signatures corresponding to addresses where voter was previously registered; (3) signatures corresponding to formerly registered voters whose registrations were cancelled due to death; (4) signatures where the name on the petition was spelled differently than in the QVF, or "where the petition used the voter's middle name or a diminutive or nickname"; and (5) signatures that listed the mailing address jurisdiction rather than the actual jurisdiction. *Id.* at 3.

These issues led Bureau staff to identify "numerous circulators" who they believed to be forging signatures "utilizing an outdated mailing list obtained from some source." *Id.* Usually, the Bureau's approach to nominating petitions has two stages. First, staff "face reviews" every petition sheet and signature for facial compliance with the Michigan Election Law, which entails checking the heading and circulator certificate; ensuring that the signature is accompanied by address, date, and name; and checking that the listed city or township is in the county listed on the heading. *Id.* at 3-4. After this stage, if the candidate has enough facially valid signatures to qualify for the ballot, the Bureau notes the difference (or "cushion") and then "reviews any challenges to the petition's sufficiency." *Id.* at 4. If the cushion exceeds the number of challenges the Bureau doesn't process the challenge. If not, the Bureau processes the challenge to determine whether the candidate has enough signatures to meet the required threshold. *Id.*

The Omnibus Report acknowledges that "the Bureau has previously not developed a separate review procedure for fraudulent petition sheets." *Id.* Thus, "in the past," the Bureau "would review sheets and signatures individually if identified during face review or during a challenge." *Id.*

But "because of the unprecedent number of fraudulent petition sheets consisting of invalid signatures identified during the initial review of petition sheets," the Omnibus Report admitted that the Bureau concluded that "it was not practical to review these sheets individually during the course of ordinary face review and challenge processing." *Id.*

So the Bureau came up with a new process including what they characterized as "an additional step." *Id.* Specifically, "[p]rior to face review, staff reviewed each candidate's petitions for petitions signed by circulators who were suspected of submitting fraudulent sheets" and "separated" them from the remaining petition sheets for each candidate *Id.* After separating these

allegedly fraudulent sheets, the Bureau staff didn't do a comparison of every single signature they contained as Michigan law normally requires. Rather, "staff conducted a targeted signature check of signatures across each circulator's sheets for each candidate to confirm that these circulators' submissions in fact consisted of fraudulent sheets with invalid signatures." *Id.* at 4-5.

After determining "that all reviewed signatures"—*but not all signatures*—"appearing on sheets signed by the fraudulent-petition circulators were invalid," the Bureau staff counted up the total number of signatures on the allegedly fraudulent sheets and subtracted it from the number of signatures submitted by the candidate. *Id.* at 5. If the candidate still had more than enough signatures to meet the required threshold, "the petitions were then put through the face review and challenge process." *Id.* If not, then the Bureau "recommended the Board determine the petitions insufficient." *Id.*

The Bureau recognized that it has no "reason to believe that any specific candidate or campaigns were aware of the activities of fraudulent-petition circulators," (*id.* at 5), nonetheless they are the ones being punished because the Secretary's office invented an extra-statutory process to create a "shortcut" for staff who were unable to otherwise comply with the law.

C. The Board of Canvassers' May 26, 2022 Hearing, the Court of Appeals, and this Appeal.

The Board held a hearing on Mr. Johnson's nominating petition on May 26, 2022. At the hearing, Bureau Director Brater claimed that it takes two weeks to proof and print ballots and, because of the June 18, 2022 deadline, ballot printing needs to begin on June 3, 2022. Director Brater also provided additional details regarding the Bureau's investigation of the nominating petitions. He claimed that during the Bureau's initial investigation where it determined that more than 68,000 signatures were on petitions by the alleged fraudulent circulators, it looked at every petition sheet. But he also maintained that it was not possible for the Bureau staff to compare each

and every one of those 68,000 signatures with the digitized signature in the QVF. In fact, Director Brater admitted that Bureau staff only compared about 7,000 of the more than 68,000 with the related QVF entries. At no point did Director Brater ever state how many signatures on Mr. Johnson's petitions were reviewed by Bureau staff. But at one point, he maintained that Michigan law doesn't require Bureau staff to check every signature against the QVF.

The Bureau presented no other evidence. To this day, no one has ever compared each of the 6,983 signatures on Mr. Johnson's petitions that were disqualified by the Bureau with the QVF. Indeed, there is no evidence that *any* of those 6,983 signatures has been compared with the QVF.

Instead, the Bureau made numerous sweeping statements about how not a single one of the signatures on the petition sheets circulated by the allegedly fraudulent circulators was genuine. However, counsel for Mr. Johnson presented evidence that the Bureau's shotgun approach had in fact invalidated genuine signatures. Specifically, counsel for Mr. Johnson presented a sworn affidavit from a voter who stated that she signed nominating petitions at the Clawson, Michigan post office on March 14, 2022, and that her handwriting appeared on a nominating petition circulated by Justin Garland of Detroit. **Exhibit 10**, Affidavit; **Exhibit 11**, Perry Johnson Nominating Petition 1930.

Justin Garland was one of the circulators that the Bureau claimed submitted 100% fraudulent signatures (despite having failed to compare each of his signatures with QVF). Counsel for Mr. Johnson also presented evidence that the nomination petition signed by the voter had other indicia of reliability, namely that each of the signers lived within a few miles of the post office where the voter signed the petition.

At the hearing, the Board deadlocked 2-2 along partisan lines on a motion to accept the Staff Report related to Mr. Johnson's nominating petition. As such, the Board failed to certify Mr.

Johnson's nominating petition. The Secretary of State, therefore, has not and will not certify Mr. Johnson's name as a Republican candidate for the Office of Governor on the August 2, 2022 primary ballot.

The very next day, Mr. Johnson filed an original action for mandamus in the Court of Appeals and sought expedited review before the Court of Appeals, as provided for in MCL 600.217(3); MCL 600.310; MCR 7.203(C)(2) and (5); MCL 600.4401. See **Exhibit 16**. Expedited review was swiftly granted. *Johnson v Bd of State Canvassers*, unpublished order of the Court of Appeals (Docket No. 361564). The Court of Appeals subsequently issued its published opinion on June 1, 2022. The Court of Appeals erroneously concluded that the Board "had a clear legal duty to investigate, but it did not have a clear legal duty to conduct a comparison of each fraudulent signature against the qualified voter file." Slip Op. at 11 (**Exhibit 15**).

The crux of the Court of Appeals' holding was that, because "the Board had the discretion to disqualify their obviously fraudulent signatures without checking the signatures against local registration records" under MCL 168.544c(11), the Board therefore, "had a clear legal duty to investigate, but it did not have a clear legal duty to conduct a comparison of each fraudulent signature against the qualified voter file." *Id.* at 11. The Court of Appeals also erroneously failed to address Mr. Johnson's due process claim except for in a short footnote. *Id.* at 11 n.8. The Court of Appeals failed to address any of Mr. Johnsons other arguments or the remaining mandamus factors. See generally *id*.

Mr. Johnson now comes to this Court with an emergency application for review and a contemporaneously filed motion for expedited consideration. Due to the extreme exigencies of the election calendar, Mr. Johnson requests any responses to this application be filed on Thursday June 2nd and this Court issue its ruling by the end of business on Friday June 3rd.

Standard of Review

Generally, courts review the grant or denial of a writ of mandamus for an abuse of discretion. *Wilcoxon v Detroit Election Comm*, 301 Mich App 619, 630; 838 NW2d 183 (2013). But, whether the first two elements required for issuance of a writ of mandamus are present is a question of law, which this Court reviews de novo. *Coal for a Safer Detroit v Detroit City Clerk*, 295 Mich App 362, 367; 820 NW2d 208 (2012). A Court "necessarily abuses its discretion when it makes an error of law." *Pirgu v United Servs Auto Ass'n*, 499 Mich 269, 274; 884 NW2d 257 (2016); *People v Rajput*, 505 Mich 7, 11; 949 NW2d 32 (2020).

Further, as a general matter, "[q]uestions of law are reviewed de novo." *Burba v Burba (After Remand)*, 461 Mich 637, 647; 610 NW2d 873 (2000). This includes "[q]uestions of statutory interpretation." *Vega v Lakeland Hospitals at Niles and St Joseph, Inc*, 479 Mich 243, 246; 736 NW2d 561 (2007).

Argument I

The Court of Appeals' holding in its published opinion that Defendants have discretion to disqualify petition signatures without first comparing them to the QVF constitutes jurisprudentially significant error requiring reversal because it conflicts with the plain language of MCL 168.544c and MCL 168.552 and binding judicial precedent.

The Court of Appeals erred in concluding that the Board could invalidate signatures on Mr. Johnson's nominating petition based on "patterns" discerned from mostly subjective factors, Slip Op. at 3-4, when the law requires that the Board "shall" use the "qualified voter file" to "determine the genuineness of a signature on a petition." MCL § 168.552(13). That's each and every signature on the petition—not some—and certainly not "patterns" based on a review of other factors. Arguments to the contrary flout established rules of statutory construction and run headlong into this State's policy of favoring enfranchisement of voters, not disenfranchisement.

A. Relevant Principles of Statutory Construction.

When interpreting statutes, this Court's primary "goal is to give effect to the Legislature's intent," which it does by "focusing first on the statute's plain language." *Ally Fin Inc v State Treasurer*, 502 Mich 484, 493; 918 NW2d 662 (2018) (citations omitted). "This Court must give effect to every word, phrase, and clause," taking care to ensure that none are rendered mere "surplusage." *Iliades v Dieffenbacher North America Inc*, 501 Mich 326, 336; 915 NW2d 338 (2018). And this Court must construe the relevant statutory provisions together "to create a harmonious body of law." *People v Mazur*, 497 Mich 302, 313, 872 NW2d 201 (2015).

Just as important, "a court may read nothing into an unambiguous statute that is not within the manifest intent of the Legislature as derived from the words of the statute itself." *Mich Association of Home Builders v City of Troy*, 504 Mich 204, 212-213; 934 NW2d 713 (2019) (citations omitted). And "[w]hen the Legislature uses different words, the words are generally intended to connote different meanings." *United States Fidelity Ins. & Guaranty Co. v Mich Catastrophic Claims Ass'n (On Rehearing)*, 484 Mich 1, 14, 795 NW2d 101 (2009); *Reading Law*, p 170 ("A word or phrase is presumed to bear the same meaning through a text; a material various in terms suggests a variation in meaning."). So, "[c]ourts cannot assume that the Legislature inadvertently omitted from one statute the language that it placed in another statute, and then, on the basis of that assumption, apply what is not there." *Farrington v Total Petroleum, Inc.*, 442 Mich 201, 210, 501 NW2d 76 (1993); *Nickola v MIC Gen Ins Co*, 500 Mich 115, 125; 894 NW2d 552 (2017) ("The omission of a provision in one part of a statute that is included in another part of the same statute should be construed as intentional."). Indeed, "to supply omissions transcends the judicial function." *People v Pinkney*, 501 Mich 259, 286 n 67; 912 NW2d 535 (2018) (citations and quotation marks omitted); *Hobbs v McLean*, 117 US 567, 579, 6 S Ct 870, 29 L Ed 940

(1886) ("When a provision is left out of a statute, either by design or mistake of the legislature, the courts have no power to supply it. To do so would be to legislate and not to construe.").

B. The Court of Appeals' published opinion conflicts with the plain language of MCL 168.544c and MCL 166.552 because it improperly conflates the statewide "qualified voter file" and "local registration records."

Here, the Court of Appeals violated these well-established principles of statutory constructions in its published opinion. As noted above, MCL 168.552(13) requires that "[t]he qualified voter file shall be used to determine the genuineness of a signature on a petition." The Court of Appeals excused the Board from having to comply with the plain language of section 168.552(13) by focusing instead on 168.544c(11). That statute allows the Board to "[d]isqualify obviously fraudulent signatures on a petition" "without checking the signatures against local *registration records*," MCL § 168.552(11)(a) (emphasis added), where "[a]n individual has signed a petition with multiple names." *Id.* § 168.552(10); *see also* Slip Op. at 11. There are two reasons why the Court of Appeals' analysis conflicts with the relevant statutory language.

First, "registration records," are *not* the same as the "qualified voter file." Section 168.552(8) uses both phrases. It says that the Board "may cause a doubtful signature to be checked against the *qualified voter file* or the *registration records*" maintained by local political subdivisions. MCL § 168.552(8) (emphasis added). The statute goes on to say that where the Board "is unable to verify the genuineness of a signature on a petition," the Board "shall cause the petition to be forwarded to the proper city clerk or township clerk to compare the signatures on the petition with the signatures on the *registration record*." *Id.* Similarly, MCL 168.552(13) states that, although "[t]he qualified voter file shall be used to determine the genuineness of a signature on a petition," the Board can have a "city or township clerk…compare the petition signature contained on the master card" if "the qualified voter file does not contain a digitized signature of an elector."

So, the plain language unambiguously provides that the qualified voter file serves as the mandatory first step for any determination of the genuineness of a petition signature; using the local registration records to fill in gaps left by the statewide QVF is necessarily a second step that can only happen after QVF comparison. Thus, by allowing the Board to "[d]isqualify obviously fraudulent signatures on a petition" "without checking the signatures against *local registration records*," the plain language of MCL § 168.552(11)(a) only authorizes the Board to skip the second step and says nothing about the mandatory first step. (emphasis added).

It follows that, under the plain language of MCL 168.552(8) and (13) and MCL 168.554c(11), the Board lacks discretion to simply skip the first, mandatory step in the process, even if it has discretion to skip the secondary local records verification step under the right circumstances. By holding otherwise, the Court of Appeals effectively rewrote the plain language of the Michigan Election Law to read the phrase "qualified voter record" into section 168.552(11)(a) and read the phrase "qualified voter file" out of section 168.552(13). But, under this Court's well-established precedent, it lacked authority to do so. So the Court of Appeals' published opinion must be reversed because it conflicts with the plain language of MCL 168.544c and MCL 168.552. Nor could the Court of Appeals simply excuse the Board from having to determine the genuineness of every signature on the petition, which the Board failed to do. *See* Slip Op. at 8, n.6 (recognizing same).

C. The Court of Appeals' published opinion conflicts with the plain language of MCL 168.544c and MCL 168.552 because it incorrectly excludes the Board's determination that a signature is "obviously fraudulent" from the determinations of "genuineness" that, under MCL 168.552(13) must be completed by comparisons to the QVF.

The second problem with the Court of Appeals' statutory analysis is that it impermissibly excludes a determination by the Board that a signature is obviously fraudulent under MCL 168.544c(11) from MCL 168.552(13)'s mandate that "[t]he qualified voter file shall be used to

determine the genuineness of a signature on a petition." A determination that something is "genuine" involves ascertaining whether that thing is "authentic," "real," or "free of forgery." Black's Legal Dictionary (11th ed. 2019) (defining "genuine" as "authentic or real; having the quality of what a given thing purports to be or have" and "free of forgery or counterfeiting"); Merriam-Webster's Collegiate Dictionary (11th ed, 2020) (defining "genuine" as "actually proceeding from the alleged source or author"). In contrast, a determination that something is fraudulent involves ascertaining whether that thing "is not what it seems or is represented to be." See Merriam-Webster's Collegiate Dictionary (11th ed, 2020) (defining "fraudulent" as "based on, or done by fraud" and "fraud" as "an act of deceiving or misrepresenting" or "one that is not what it seems or is represented to be"). So, if the terms "genuineness" and "obviously fraudulent" are given their plain meaning, it's clear that a determination that a signature is "obviously fraudulent" under MCL 168.544c(11) necessarily constitutes a "determin[ation]" of "the genuineness of a signature on a petition." MCL 168.552(13). And, by the unambiguous language of MCL 168.552(13), such determinations "shall" be made by comparison to the QVF. It follows that, even if the Court of Appeals didn't improperly conflate the QVF with local registration records, the lower court's holding still conflicts with the plain language of MCL 168.544c and MCL 168.552.

For multiple reasons, therefore, the Court of Appeals' holding that MCL 168.544c(11) gives the Board discretion to disqualify petition signatures without first comparing them to the QVF directly conflicts with the plain language of both MCL 168.552(13) and MCL 168.544c(11). And, because the Court of Appeals' opinion is published, this Court must step in and reverse the Court of Appeals ruling.

D. The Court of Appeals' published opinion conflicts with the principle established by binding judicial precedent that election statutes like MCL 168.544c and MCL 168.552 "must" be construed "as far as possible" to "prevent the disenfranchisement of voters through the fraud…of others."

In addition to conflicting with the plain language of the Michigan Election Law, the Court of Appeals' opinion also violates the principle of Michigan law requiring Courts to construe the statutes governing elections in a way that empower voters. It's well established that "statutes controlling the manner in which elections are conducted be construed as far as possible in a way which prevents the disenfranchisement of voters through the fraud or mistake of others." *Kennedy v Board of State Canvassers*, 127 Mich App 493, 496; 339 NW2d 477 (1983); *Santia v Board of State Canvassers*, 152 Mich App 1, 6; 391 NW2d 504 (1986) (same); *Attorney General v Board of State Canvassers*, 318 Mich App 242, 250; 896 NW2d 485 (2016) (citations omitted) ("When interpreting law governing elections, we must construe the statutes as far as possible in a way which prevents the disenfranchisement of voters through the fraud or mistake of others.").

Sections 168.552 and 168.544c(11) unquestionably govern the conduct of elections. These statutes form the framework for how prospective candidates appear on the ballot. *See* Slip Op. at 2. Voters who support these candidates cannot easily vote for them unless they actually appear on the ballots. *See generally Anderson v Celebrezze*, 460 U.S. 780 (1983) (holding that an Ohio statute requiring independent candidates to file statements of candidacy by March to appear on a November ballot unconstitutionally burdened the right to vote and associate under the First and Fourteenth Amendments to the U.S. Constitution). So MCL 168.552 and MCL 168.544c(11) "must" be construed "as far as possible" to prevent "the disenfranchisement of voters through the fraud or mistake of others." *Attorney General v Board of State Canvassers*, 318 Mich App 242, 250; 896 NW2d 485 (2016) (citations omitted). Thus, even if the Court of Appeals' statutory analysis doesn't violate the plain language of the Michigan Election Law (it does) and is just as

plausible an interpretation as that offered by Mr. Johnson (it is not), then reversal is still warranted under *Kennedy* and *Attorney General* because the Court of Appeals' interpretation of MCL 168.544c and MCL 168.552 is far more likely to disenfranchise innocent voters because of someone else's fraud than Mr. Johnson's proposed interpretation.

But the Court of Appeals failed to honor this principle. Instead, it construed sections 168.552 and 168.544c(11) in a manner that deprives at least 13,800 Michiganders of the opportunity to vote for Mr. Johnson. *See* Slip Op. at 2. Further, the statutory analysis suggested by Defendants and adopted by the Court of Appeals has deprived at least one—and potentially more—voters who actually signed the petitions that the Bureau threw out as fraudulent.[5] That's so only because the Board discerned a pattern, unrelated to the conduct of the candidate or his campaign, *id.* at 3 n.4, and certainly the result of any of the 13,800 people who provided facially valid signatures in support of Mr. Johnson's candidacy. *Id.*

E. Failure to correct the error in the Court of Appeals' published opinion could have catastrophic consequences for Michigan voters.

This Court must correct the error of law made by the Court of Appeals, and the time to do so is *now*. The court's decision conflicts with the plain language of MCL 168.554c and MCL 168.552. And, because the Court of Appeals' opinion is published, those errors will be precedentially binding in every future case involving signatures on a nominating petition (and,

[5] The one voter is Amy Sudik, of Clawson. She produced an affidavit stating that she "reviewed a copy of nominating petition #001930" which was circulated by Justin Garland (one of the allegedly fraudulent circulators), and confirmed that "the following petition entry on line 3 is [her] handwriting" and that she was not coerced into "signing the nominating petition." **Ex. 10**, Amy Sudik Affidavit; **Ex. 11**, Johnson Petition Sheet 1930; **Ex. 8**, Johnson Staff Report (identifying Justin Garland as an alleged fraudulent circulator). Aside from her, Bureau Director Brater has admitted that "it is not impossible that one or more of the presumed fraudulent signatures is genuine or might be close enough to match the QVF." Corrected Brater Court of Appeals Brief at 25-26. He also admitted that, of the 61,833 signatures the Bureau never compared with the QVF, "[i]t is not impossible that one or more of those 61,833 signatures is genuine." *Id.* at 14.

given the similarity between MCL 168.552 and MCL 168.479, it may also affect cases related to ballot-initiative petitions). So, the requirements of MCR 7.305 are met; there's an "issue of significant public interest," one that "involves a legal principle of major significance," from a decision below that is "clearly erroneous" and conflicts with binding authority from both this Court and other published decisions of the Court of Appeals. *See* MCR 7.305(B)(2),(3), and (5).

Furthermore, correcting the errors in the Court of Appeals' analysis will make a real difference to thousands of Michiganders. Not only does the court's opinion wrinkle the fabric of Michigan law by creating precedent inconsistent with the language of the Michigan Election Law and disenfranchise the thousands of real human voters who signed Perry Johnson's nominating petitions, it also creates the possibility for future disenfranchisement of Michigan's most vulnerable voters. The unfettered discretion to disqualify so-called obviously fraudulent signatures conveyed by the Court of Appeals could allow future Secretaries of State and other election officials to engage in the sort of second-guessing of signatures that may, according to experts in quoted in news stories and certain advocacy organization studies, disproportionately result in rejection of authentic signatures from—and thus, disenfranchisement of—"elderly voters, young voters, and voters of color,"[6] as well as "people with disabilities, trans and gender-nonconforming people, women, people for whom English is a second language, and military personnel."[7] But, as noted above, Michigan law demands a better approach. See *Attorney General v Board of State*

[6] David A. Graham, *Signed, Sealed, Delivered—Then Discarded*, The Atlantic (2020), available at: https://www.theatlantic.com/ideas/archive/2020/10/signature-matching-is-the-phrenology-of-elections/616790/.

[7] Lila Carpenter, *Signature Match Laws Disproportionately Impact Voters Already on the Margins*, ACLU Voting Rights Project (November 2, 2018), available at https://www.aclu.org/blog/voting-rights/signature-match-laws-disproportionately-impact-voters-already-margins.

Canvassers, 318 Mich App 242, 250; 896 NW2d 485 (2016) (citations omitted). So this Court must grant Mr. Johnson's application and peremptorily reverse the Court of Appeals.

Argument II

The Court of Appeals failed to properly address Mr. Johnson's due process claim that the Defendants-Appellees failed in their clear legal duty by depriving him of notice of which of his signatures were disqualified (and why) and a meaningful opportunity to respond to their assertions of invalidity.

The Court of Appeals also erred by dismissing, in a mere footnote, Mr. Johnson's due process claim as a "merits" issue while simultaneously reasoning that proper process was provided. Slip Op. at 11 n.8 (**Exhibit 15**). Astonishingly, it reached that conclusion even though the record is clear that Defendants-Appellees failed in their duty to give Mr. Johnson adequate "notice and an opportunity to be heard in a *meaningful* time and manner" regarding the 2,332 signatures the Bureau disqualified for reasons other than alleged fraud. See *Spranger v City of Warren*, 308 Mich App 477, 483; 865 NW2d 52 (2014) (emphasis added).

First, the Court of Appeals erred by asserting that the following actions by the Board constitute due process:

> [Mr. Johnson] was provided with the names of each of the fraudulent petition circulators, was told how many signatures they had collected that were invalidated, and was made aware that each and every signature submitted by those individuals have, in fact, been invalidated. Based on that information, it is clear that he was provided with notice as to what signatures were being invalidated and the basis for which they were being invalidated. He was also provided with a meaningful opportunity to challenge the finding of invalidity at the May 26, 2022 hearing before the Board. [Slip Op. at 11 n.8 (Exhibit 15)].

For one thing, even if the Court of Appeals is right that Defendants provided Mr. Johnson with due process with regarding the allegedly fraudulent signatures, that has nothing to do with the signatures that were disqualified for non-fraud reasons. Missing from the Court of Appeals' list is the most important element, a list of the specific voters and signatures that were deemed to

invalid for non-fraud reasons (and the reasons why). Without that crucial information, Mr. Johnson could not meaningfully challenge the recommendations of the Bureau because he is left to simply guess at which voters are invalid and which voters are not. But the Bureau didn't provide Mr. Johnson with an itemized list of those disqualified signatures, or a specific explanation why the vast majority of them were invalid. Instead, the Bureau only specifically identified 78 signatures that it contends are invalid. Even if it's assumed that those 78 signatures are invalid (it's not clear that they are), the Bureau's failure to itemize or explain the 2,332 remaining signatures deprived Mr. Johnson's of any meaningful opportunity to respond to those allegations or rehabilitate any of the disqualified signatures. Put another way, to respond to allegations of invalidity in the Bureau's staff report without an itemized list, Mr. Johnson would have to magically divine which signatures the Bureau had concluded were invalid and why. That isn't a "meaningful" opportunity to respond. It can't be. Due process requires more.

Second, the Court of Appeals erred in treating the denial of Mr. Johnson's due process rights as separate and apart from the requested mandamus, this is error.

The requirements to be granted mandamus relief are clear. A party seeking mandamus relief must show the following four elements: "(1) the plaintiff has a clear legal right to the performance of the duty sought to be compelled, (2) the defendant has a clear legal duty to perform such act, (3) the act is ministerial in nature such that it involves no discretion or judgment, and (4) the plaintiff has no other adequate legal or equitable remedy." *Wilcoxon v City of Detroit Election Com'n*, 301 Mich App 619, 632-633; 838 NW2d 183 (2013) (citations omitted); *Deleeuw v State Bd of Canvassers*, 263 Mich App 496, 500; 693 NW2d 179 (2004).

Here, all four factors are met with respect to Mr. Johnson's due process claim.

A. Mr. Johnson has a clear legal right to seek public office and be granted due process under the constitution.

Initially, Mr. Johnson has a fundamental "right to seek public office" that is "basic to the proper operation of our democratic form of government." *Wojcinski v State Bd of Canvassers*, 347 Mich 573, 577-578; 81 NW2d 390 (1957). The thousands of voters who signed petitions in support of his nomination as a candidate for the office of Governor of Michigan have a First Amendment right to have their voices heard and signatures counted. *Socialist Workers Party v Secretary of State*, 412 Mich 571, 588, 317 NW2d 1 (1982) (The "expression of political preference ... [is] the bedrock of self-governance."); *Norman v Reed*, 502 US 279, 288; 112 S Ct 698; 116 L Ed 2d 711 (1992) (recognizing the "the constitutional interest of like-minded voters to gather in pursuit of common political ends, thus enlarging the opportunities of all voters to express their own political preferences."); *League of Women Voters of Michigan v Secretary of State*, ___ Mich ___; ___ NW2d ___; 2022 WL 211736 at *15 (Mich January 24, 2022) (**Exhibit 13**), quoting *Meyer v Grant*, 486 US 414, 421-422, 108 S Ct 1886, 100 L Ed 2d 425 (1988) ("Petition circulation is protected by the First Amendment because it is 'core political speech' that 'involves both the expression of a desire for political change and a discussion of the merits of the proposed change.'").

B. Defendants have a clear legal duty to, at minimum, provide Mr. Johnson sufficient information to challenge the Bureau's findings.

Next, the Secretary and Board members, as constitutional officers and pursuant to their oaths of office, have a clear legal duty to consider the lawfulness and constitutionality of their every action. See Const 1963, Art. 11, § 1; see also MCL 168.22c. To that end, while the Secretary and Board have some discretion in carrying out their duties in relation to the Michigan election law, they lack discretion to ignore binding precedent or rewrite the plain language of statutes. See *West Bloomfield Hosp v Cert of Need Bd*, 208 Mich App 393; 528 NW2d 744 (1995), rev'd on other grounds 452 Mich 515 (1996) (When the Legislature has spoken, "the agency may not ignore

the Legislature's mandate."); *Mich Charitable Gaming Ass'n v Mich*, 310 Mich App 584, 593; 873 NW2d 827 (2015) (An agency's decision "cannot conflict with the intent of the Legislature as expressed in the plain language of the statute."); *People v Wyngaard*, 462 Mich 659, 676 n 2; 614 NW2d 143 (2000) (Cavanagh, J., concurring in part and dissenting in part) (an agency like the Board can't ignore binding judicial precedent; rather, it is "bound to follow the law whether it be…case law or statutory law.").

C. Granting Mr. Johnson's sufficient due process—which at a minimum required he be provided with an itemized list of the 2,332 signatures disqualified for non-fraud reasons without explanation—is non-discretionary and ministerial.

Due process requires more than a mere opportunity to be heard. Rather, Mr. Johnson has a due process right to "notice and an opportunity to be heard in a *meaningful* time and manner." *Spranger v City of Warren*, 308 Mich App 477, 483; 865 NW2d 52 (2014). A meaningful opportunity means, among other things, "the chance to know and respond to the evidence." *Cummings v Wayne Co*, 210 Mich App 249, 253; 533 NW2d 13 (1995). In order to give Mr. Johnson a proper "chance to know and respond to the evidence," *id*., the following actions are constitutionally required:

- Provide Mr. Johnson with copies of any evidence that the Board or Bureau used to evaluate the validity or genuineness of the signatures on his petitions, including digitized signature records from the QVF or local authorities, in order to meaningfully contest the challenges to his petitions;
- Allow Mr. Johnson to be present through counsel during any of signature-by-signature review of his petitions by the Board or its staff;
- Provide Mr. Johnson with an itemized list (including page and line reference) of the 9,383 specific signatures on his petitions that the Bureau and Board considered invalid;
- Provide Mr. Johnson with a specific explanation for why each one of the 9,383 allegedly invalid signatures on his petitions was considered by the Bureau and Board to be invalid;

- Give Mr. Johnson each of the above items of information with enough time to allow him to meaningfully respond to Defendants' assertions of invalidity;
- Provide Mr. Johnson with the evidence that the Bureau and Board used to determine the invalidity of each one of the 9,383 allegedly invalid signatures that they deducted from his total.

Defendants failed to do every single one of those things with respect to Mr. Johnson. And, by doing so, Defendants violated his constitutional due process right to notice and a meaningful opportunity to be heard.

Even assuming due process doesn't require the rest of the above actions, at minimum Defendants' failure to give Mr. Johnson an itemized list of the signatures on his petition that were allegedly invalid for non-fraudulent reasons deprived him of any meaningful opportunity to respond to the Bureau's allegations that 2,332 signatures on his petitions were invalid for non-fraud reasons—more than enough to put him over the 15,000-signature threshold.[8] That failure also deprived Mr. Johnson of "the chance to know and respond to the evidence." *Id*. Put another way, to respond to allegations of invalidity in the Bureau's staff report without an itemized list, Mr. Johnson would have to magically divine which signatures the Bureau had concluded were invalid and why. That isn't a "meaningful" opportunity to respond. It can't be. Due process requires more.

D. Aside from Mandamus, Mr. Johnson has no other adequate legal or equitable remedy to be placed on the primary ballot.

This is it. Without relief in this Court, Mr. Johnson will not be on the ballot this August and every single one of the over 15,000 voters who validly signed a petition to place him on the ballot will be denied their candidate. The Board's unlawful denial of ballot access violates not only Mr. Johnson's rights, but also "the right of individuals to associate for the advancement of political

[8] This is aside from the 6,983 allegedly fraudulent signatures that the Board failed to review under the proper procedures.

beliefs, and the right of qualified voters, regardless of their political persuasion, to cast their votes effectively." *Williams v Rhodes*, 393 US 23, 30 (1968). "There is a fundamental difference between actions taken to get a candidate's name on the ballot and actions taken to prevent it from appearing. Associating for the purpose of getting a candidate's name or a legislative proposal on the ballot is protected activity under the First Amendment; conspiring for the purpose of having it removed is not." *Deleeuw v State Bd of Canvassers*, 263 Mich App 496; 693 NW2d 179 (2004), citing *Meyer v Grant*, 486 US 414, 421–422 (1988).

Furthermore, even assuming that Mr. Johnson's due process claim is a "merits" issue, the procedure provided by Michigan law to challenge a determination of the Board is a writ of mandamus, MCL 168.552(4). Given the "extreme time constraints" created by the deadlines imposed by the Michigan Election Law, there would simply never be sufficient time under the election calendar to pursue a declaratory action to effectuate the rights of a person aggrieved by the Board's actions. See *Scott v Director of Elections*, 490 Mich 888, 889; 804 NW2d 119 (2011). Put simply, Mr. Johnson should not have to stomach the violation of his constitutional rights because the statutory procedure and the election calendar work together to prevent meaningful merits review of Board determinations. The procedure itself works a due process violation to those seeking office under similar circumstances.

Therefore, because Mr. Johnson has a right to seek public office, he cannot be deprived of that right without due process of law under both the Michigan and Federal Constitutions. Mich Const 1963, art 1, § 17; US Const, Amend. V and XIV. Michigan courts have recognized that candidates have due process rights related to elections and elected office. See *Kennedy v Board of State Canvassers*, 127 Mich App 493, 497-498; 339 NW2d 477 (1983); see also *People ex rel Clay v Stuart*, 74 Mich 411; 41 NW 1091 (1889).

Defendants-Appellees had a clear legal duty to follow the United States and Michigan Constitutions and to respect Mr. Johnson's due process rights. By violating that duty, Defendants deprived him of the ability to rehabilitee either the 6,983 allegedly fraudulent signatures or the 2,332 undisputedly non-fraudulent yet still somehow disqualified signatures. Either group puts Mr. Johnson over the threshold for appearing on the August 2, 2022 primary ballot. It follows that Constitutional Due Process requires that those signatures not be disqualified.

Conclusion

For the reasons stated above, the Court of Appeals reversibly erred in finding that Perry Johnson was not entitled to writ of mandamus directing Defendants to immediately take all necessary measures to place Perry Johnson's name on the ballot as a Republican candidate for Governor of Michigan in the August 2, 2022 primary election, including a declaration by the Board that Mr. Johnson's petition is sufficient and certification by the Secretary of State of his name as a republican candidate for Governor on the August 2, 2022 primary ballot. And, since the Court of Appeals' opinion was published, the error it contains is jurisprudentially significant error warranting this Court's intervention. So this Court should grant Mr. Johnson's application, peremptorily reverse the Court of Appeals' published opinion, and issue an order granting the writ of mandamus requested in Mr. Johnson's complaint.

Respectfully submitted,

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