Order

Michigan Supreme Court
Lansing, Michigan

Megan K. Cavanagh,
Chief Justice

Brian K. Zahra
Richard H. Bernstein
Elizabeth M. Welch
Kyra H. Bolden
Kimberly A. Thomas
Noah P. Hood,
Justices

September 3, 2026

SC: 170595 & (3)(5)(8)(10)(13)(15)

AMERICANS FOR CITIZEN VOTING-MICHIGAN and FRED SMITH,
Plaintiffs,

v

BOARD OF STATE CANVASSERS, SECRETARY OF STATE, and DIRECTOR OF ELECTIONS,
Defendants,

and

PROMOTE THE VOTE ACTION and ROBERT LABRANT,
Intervening Defendants.

On order of the Court, the motions to expedite, for immediate consideration, to intervene, and for leave to file a brief are GRANTED. The complaint for mandamus and declaratory judgment is considered, and relief is DENIED, because the Court is not persuaded that it should grant the requested relief. The motion to show cause is DENIED.

Plaintiffs are not entitled mandamus relief. To obtain the extraordinary remedy of a writ of mandamus, a plaintiff must establish that (1) the plaintiff has a clear legal right to the performance of a specific duty; (2) the defendant has a clear legal duty to perform the requested act; (3) that act is ministerial, involving no exercise of discretion or judgment; and (4) the plaintiff has no other legal or equitable remedy. *Miller v Detroit*, 250 Mich 633 (1930); *Kennedy v Secretary of State*, 515 Mich 893, 893 (2024). Because the actions taken by the Board of State Canvassers in this case were discretionary, mandamus relief cannot issue.

Although this Court cannot order mandamus relief, the Legislature can amend MCL 168.476 to address whether audits should occur within a certain timeframe once signatures are submitted to the Bureau of Elections, whether and when affidavits must be considered in order to rehabilitate a rejected signature, and whether rejected signatures for which an affidavit has been submitted should be compared to the affidavit. But MCL

168.476 contains no requirements on any of these matters. As a result, mandamus relief is not available.

WELCH, J. (*concurring*).

I concur in the Court's denial order. Mandamus relief is an extraordinary remedy that cannot issue here since the actions taken by defendant Board of State Canvassers were discretionary. See *Kennedy v Secretary of State*, 515 Mich 893, 893 (2024). I write separately for two reasons. First, I highlight that state law dictates the process due to plaintiffs in this case, and no one disputes that plaintiffs received that process. Second, the statute at issue here, MCL 168.476, mandates that the Board of State Canvassers compare petition signatures to those in the qualified voter file. Neither this Court nor the Board can ignore this provision.

This case involves a ballot proposal by plaintiff Americans for Citizen Voting—Michigan (ACVM) to amend the Michigan Constitution to require proof of citizenship to vote. Our state Constitution contains a direct democracy provision that allows a proposed constitutional amendment to be placed on a general election ballot if a petition is signed by a threshold number of registered electors. Const 1963, art 12, § 2. That same constitutional provision requires the Legislature to enact laws setting forth the procedures for signing and circulating petitions, along with procedures for evaluating the validity and sufficiency of the petition signatures supporting an amendment effort. *Id*. ("Any such petition shall be in the form, and shall be signed and circulated in such manner, as prescribed by law. The person authorized by law to receive such petition shall upon its receipt determine, as provided by law, the validity and sufficiency of the signatures on the petition . . . ."). And the Legislature, in creating such procedures, mandated that the Board of State Canvassers validate petition signatures by comparing them to signatures in the electors' qualified voter files. MCL 168.476(1) ("The qualified voter file shall be used to determine the validity of petition signatures by verifying the registration of signers and the genuineness of signatures on petitions . . . .").

Plaintiffs received all of the procedural protections provided under MCL 168.476. The United States Court of Appeals for the Sixth Circuit has approved the constitutionality of an earlier version of this statutory scheme. See *Taxpayers United for Assessment Cuts v Austin*, 994 F2d 291, 297 n 4 (CA 6, 1993) ("It is clear that there has been no violation of the plaintiffs' procedural due process rights because the Board and the Michigan courts gave the plaintiffs all of the procedure that they were due."). The issue is simply whether defendants complied with the statutory scheme. They did.

My colleague Justice ZAHRA sets forth the procedural history of this case, which I need not repeat here. In short, the Board canvassed a random sample of the signatures plaintiffs submitted in support of ACVM's petition, and after processing challenges by an

opposition group, the signatures fell 17 short from placement on the ballot.[1] The Board exercised discretion in accepting 14 rehabilitative affidavits, leaving ACVM three signatures short of the threshold number of valid signatures dictated by our Constitution and state election laws. MCL 168.476(1) does not mandate the Board to accept affidavits to rehabilitate rejected signatures, nor does it dictate the process of reviewing affidavits if the Board chooses to do so. Plaintiffs argue that this process was deficient, but they do not argue that they were denied the process to which MCL 168.476 entitles them.[2] See *Taxpayers United for Assessment Cuts*, 994 F2d at 299 ("[A] state is not required to use the best method for examining its petitions. A state is only constitutionally required to use a method that is rationally related to the legitimate interest of ensuring that an election is fair and honest. The system used by Michigan does just that.").

Because the Board followed the process that MCL 168.476 dictates, I agree in full that the extraordinary remedy of mandamus relief cannot issue here. See *Kennedy v Secretary of State*, 515 Mich 893, 893 (2024). Just three months ago, the Court of Appeals

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[1] The challengers claimed that the ACVM campaign used five "blacklisted" circulators who were named in a 2024 Bureau of Elections memo that listed circulator names appearing on petition sheets showing clear indications of fraud. The challengers also state that within the audited sample of 1000 signatures, there were at least 100 duplicate signatures—a duplication rate of 10%. More broadly, one person signed the petition 38 times, and 10 people collectively signed the petition 229 times.

[2] As noted, Michigan law requires officials to compare signatures using the qualified voter file. See MCL 168.476(1) ("The qualified voter file shall be used to determine the validity of petition signatures by verifying the registration of signers and the genuineness of signatures on petitions when the qualified voter file contains digitized signatures."). That same statute authorizes—but does not mandate—the Board to "hold hearings upon any complaints filed or for any purpose considered necessary by the board to conduct investigations of the petitions." MCL 168.476(2). It is undisputed that no statute exists *requiring* officials to consider voter affidavits or any extrinsic evidence other than the qualified voter file.

In this case, ACVM received *more* process than the statute requires. First, Bureau staff considered ACVM's challenges to rejected signatures, reviewed affidavits, and rehabilitated challenged signatures. Second, after the Bureau issued its reports, the Board held a full hearing at which ACVM's counsel made arguments. Finally, and most important, as Justice ZAHRA's dissent notes, the Board relied upon affidavits to rehabilitate 14 signatures.

In other words, despite having no statutory obligation to do so, see MCL 168.476, officials accepted briefing, held a hearing, considered the affidavits ACVM submitted, and then accepted many of ACVM's efforts to rehabilitate challenged signatures.

and then this Court denied mandamus to a judicial candidate who made similar arguments to those of plaintiffs here. See *Drissman v Mich Dep't of State*, ___Mich ___; 35 NW3d 354 (2026).[3] I concurred in the Court's denial order in *Drissman*, and I noted concerns with our Legislature's policies regarding the signature verification process. *Id*. (WELCH, J., concurring). But only the Legislature can make these policy choices. See Const 1963, art 12, § 2.

I also write to respond to an additional point in Justice ZAHRA's dissent. The statutory provision at issue in this case, MCL 168.476(1), states directly that "the qualified voter file shall be used [by the Board of State Canvassers] to determine the validity of petition signatures . . . ." The Board of State Canvassers already considered the affidavits and compared the signatures on both the petitions and the affidavits to the qualified voter file as required by law. The Legislature did not permit an alternative comparison mechanism to the qualified voter file.

Justice ZAHRA would remand this matter for the Board to consider "whether the four affidavits were in fact valid evidence that the affiants properly signed the petitions in question." In other words, Justice ZAHRA would instruct the Board to ignore the statutory language and consider the affidavits standing alone as evidence of the disputed signatures' validity. If the Board were to do so, it would violate MCL 168.476(1) by verifying a signature without comparison to the qualified voter file. MCL 168.476 simply does not allow the Board to act in the manner Justice ZAHRA prefers. The statute is clear that the qualified voter file is the comparator for signatures. Justice ZAHRA raises important *policy* concerns about the manner in which signatures are canvassed—concerns similar to those I raised in *Drissman.* See *Drissman*, ___ Mich at ___; 35 NW3d at 356-357 (WELCH, J., concurring). But again, only the Legislature can fix that process.

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[3] At issue in *Drissman* was MCL 168.552, which governs the procedures for verifying the signatures on nominating petitions for candidates for elected office. The operative statutory language is the same as that in MCL 168.476 regarding verifying initiative petition signatures. See MCL 168.552(13) ("The qualified voter file shall be used to determine the genuineness of a signature on a petition."). In *Drissman*, the Bureau of Elections reviewed the petition signatures that the plaintiff submitted in support of his candidacy for judicial office and determined that he had an insufficient number of signatures to qualify for the ballot. The plaintiff argued that the Bureau should have considered affidavits submitted from alleged signatories. We denied mandamus. I concurred in the Court's denial order, noting that even if affidavits were timely filed, the signatures must be matched to the qualified voter file and that nothing in the statute required state officials to accept affidavits as evidence that the person signed the nomination petition. *Id*. at ___; 35 NW3d at 355 (WELCH, J., concurring). I noted specifically that "[t]he Legislature can prevent this from recurring by amending the statute to provide that reviewing officials must consider affidavits from voters . . . ." *Id*. at ___; 35 NW3d at 357.

For these reasons, I respectfully concur in the Court's denial order.

HOOD, J. (*concurring*).

I agree with the Court's decision to deny mandamus and declaratory relief. I write separately to address a recurring issue in the statutory scheme governing ballot-petition review and propose a statutory fix. As the Court correctly notes, the Board of State Canvassers' actions in this case were discretionary, so mandamus relief cannot issue.[4] We therefore do not reach the merits of the Board's sufficiency determination, and I express no view on that question. Instead, I write to address the statutory framework and timelines that govern the Board's petition-review process.

MCL 168.476 provides the Board's duty to canvass petitions to determine whether they contain the requisite number of signatures of qualified and registered electors. See MCL 168.476(1). It also requires the Bureau of Elections to make public its staff report on any challenges filed against the petition at least two business days before the Board meets to make a final determination. See MCL 168.476(3). The statute provides only one deadline for the Board itself: it must complete the canvass at least two months before the election at which the proposal will be submitted. See MCL 168.476(2).

Read as a whole, MCL 168.476 outlines complementary duties for the Board and the Bureau and contemplates the Bureau's review of petition signatures. See MCL 168.476(1), (3). But the timelines it sets give the Board and Bureau discretion to fulfill

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[4] I acknowledge that the partial dissent concurs in the denial of mandamus, and I agree that plaintiffs have not satisfied the exacting standards for that extraordinary remedy under our state's law. See MCL 168.476 (describing the Board of State Canvassers' nonministerial duties in determining petition sufficiency). I respectfully question, however, the legal basis for the dissent's proposal to remand this matter to the Board for further proceedings. Although Michigan courts have, in certain appellate postures, remanded matters to the Board for further action, the dissent cites no authority permitting such a remand in an original-jurisdiction mandamus action in which we deny mandamus relief. It is not clear that our authority extends to remanding an original action for mandamus despite our denial of mandamus relief. In many respects, mandamus is peerless. Cf. *Taxpayers for Mich Constitutional Government v Dep't of Technology, Mgt, & Budget*, 508 Mich 48, 81 (2021). " 'The primary purpose of the writ of mandamus is to enforce duties created by law where the law has established no specific remedy and where, in justice and good government, there should be one.' " *Id*., quoting *State Bd of Ed v Houghton Lake Community Sch*, 430 Mich 658, 667 (1988). It appears that the dissent's proposed remand would require a form of mandamus directing the Board to take certain actions, a remedy the Court has already declined to grant.

their respective duties up until two months before the November election. See MCL 168.476(2). Under MCL 168.648, the Secretary of State must notify county clerks of the candidates, constitutional amendments, and questions to be placed on the ballot at least 60 days before an upcoming election, which occurs in early September for the November election. This notice triggers the printing of ballots, which must occur in time to meet various statutory deadlines to transmit ballots to voters. See, e.g., MCL 168.759a(5) (requiring clerks to transmit or mail absent voter ballots to certain military voters at least 45 days before the election). Yet MCL 168.476 permits the Board to continue its canvass until essentially that same point, as it need only finish two months before the election. MCL 168.476(2).

A structural tension in the current statutory scheme is that the Board's petition-review deadline and the Secretary of State's ballot-finalization deadline essentially overlap. MCL 168.476 permits the Board to make its determination up to the point the Secretary of State must issue notice under MCL 168.648. This overlap in the statutory deadlines compresses any adversarial proceedings and, by extension, judicial review. This sometimes makes timely relief functionally impossible. Petitioners must also act well in advance, as Michigan law requires constitutional-amendment petitions to be filed at least 120 days before the election and initiative petitions to be filed at least 160 days before the election. See MCL 168.471. In practice, the Bureau may have months to review petitions, while litigants may have only days to decide whether to sue, and courts have even less time to resolve such disputes. Our courts have managed these pressures with integrity, but the statutory scheme requires amendment.

MCL 168.476 has not been amended since 2005. See MCL 168.476, as amended by 2005 PA 71. As public participation in Michigan's electoral processes grows, it may exceed the capacity of the statute's current timelines. The Legislature should consider revising MCL 168.476 to require earlier deadlines, which would allow more meaningful adversarial proceedings and judicial review. One option would be to require the Bureau to complete and publish its staff report either within two months of petition submission or at least one month before the Secretary of State's ballot-notice deadline under MCL 168.648, which triggers the finalization and printing of ballots. Such amendments might correct the structural timing problem that presently limits meaningful review of these disputes.

I offer these observations in the hope they assist the Legislature in evaluating whether the current statutory scheme governing ballot-petition review remains adequate. Accordingly, I respectfully concur in full with the Court's denial.

ZAHRA, J. (*concurring in part and dissenting in part*).

Michigan's Constitution protects and holds in high esteem the right to exercise direct democracy. Our Constitution states, in very strong terms, that "[t]he people reserve to themselves" the power to propose legislation (initiative), approve or reject legislation

(referendum), and amend their Constitution (citizen-initiated constitutional amendment). Const 1963, art 2, § 9. The facts of this case are disconcerting with regard to the Bureau of Elections' treatment of plaintiffs' efforts to exercise their constitutional right to propose to the people an amendment to our state Constitution. Plaintiffs seek a writ of mandamus, a declaratory judgment, and a remedy for constitutional due-process and equal-protection violations. With regard to the five affidavits rejected as untimely, I concur in the denial of the writ of mandamus. Enforcement of deadlines is a discretionary function not subject to a writ of mandamus. I dissent, however, from the Court's refusal to vacate the order rejecting four affidavits because the affiant's signature allegedly did not match the digital signature for the voter in the Qualified Voter File (QVF). Because I believe plaintiffs' state and federal due-process rights have been violated, I would vacate the order of the Board of State Canvassers (the Board) and remand the matter to the Board to consider evidence of whether the four affidavits rejected because the affiant's signature did not match the digital signature in the QVF were in fact executed by the person who signed and supported the petition to place this constitutional amendment before the voters in this November's general election.

I. FACTS & PROCEDURE

Plaintiff Americans for Citizen Voting—Michigan (ACVM) sponsored and organized a citizen-initiated petition to amend the Michigan Constitution to include provisions that it purports will strengthen protections against noncitizens voting by requiring proof of citizenship in order to vote. Article 12, § 2 of the 1963 Michigan Constitution permits amendment of the Constitution by a petition signed by registered electors equal in number to at least 10% of the total vote cast for all candidates for Governor at the last preceding general gubernatorial election at which a Governor was elected. Because 4,461,980 Michigan voters cast ballots for a candidate for Governor in the 2022 gubernatorial election, ACVM's petition needed 446,198 registered-elector signatures to qualify for the ballot. ACVM cleared this bar by gathering 709,841 signatures, which were submitted more than four months ahead of the July 6, 2026 deadline on March 4, 2026.

Pursuant to MCL 168.476, the Board is tasked with canvassing petitions to ascertain whether they have been signed by the requisite number of qualified and registered electors. In practice, the Board fulfills that duty by reviewing work prepared by the Bureau of Elections (the Bureau). Here, the Bureau reviewed a random sample of 1,000 signatures, which in this case represents approximately 0.1% of the more than 700,000 signatures gathered. As applied here, 629 of the 1,000 sampled signatures had to be accepted as valid to meet the constitutional threshold.

On August 17, 2026, roughly five-and-a-half months after submission, the Bureau completed its initial review and counted 692 valid signatures—well above the 629-signature minimum. However, after processing challenges by a political opposition group, the Bureau invalidated 80 more signatures, leaving only 612 valid signatures in the

sample—17 short. Of the 393 signatures thrown out of the sample, the Bureau deemed 94 invalid based on the staff's determination that each signature on the petition did not sufficiently agree with the corresponding digitized signature on file in the state's QVF. With 612 otherwise valid signatures and only 629 needed, rejection of the 94 QVF-mismatch signatures dictated the petition's fate.

ACVM claimed that many, if not all, of the 94 allegedly invalid signatures were in fact valid and genuine. However, without access to the QVF, it could not meaningfully challenge the Bureau's mismatch determination. To alleviate the privacy concerns[5] concerning the QVF's contents, ACVM proposed an *in camera* review. The Bureau responded the same day, declining to disclose the QVF or make any other accommodation. It took the position that releasing the QVF signatures or allowing an *in camera* review—even under a confidentiality agreement or protective order—would violate both state and federal law. It told ACVM that, while it could not obtain the QVF signatures, ACVM could rehabilitate signatures by contacting the voters who signed the petition and asking each one to sign an affidavit identifying the page signed, confirming that he or she was the signer.

Acting on that guidance, ACVM contacted the struck signers and obtained 23 sworn, notarized affidavits, which ACVM presented to the Board on a rolling basis ahead of its upcoming August 24, 2026 meeting. Each affiant confirmed reviewing his or her signature on the petition and confirmed it as his or her own.

At the Board's meeting on August 24, 2026, the Board accepted 14 of the 23 affidavits presented. It rejected the other nine. This brought the total number of valid signatures up to 626, which was just three shy of the 629 required. Director Jonathan Brater's on-the-record recommendation to the Board was to conclude that there were 626 valid signatures, leaving ACVM three signatures short. Of the nine affidavits rejected, the rejections were split into two groups. The Board rejected four of them—two by unanimous vote, one by majority vote, and one by a 2-2 deadlock—because it concluded that the voters' signatures on the affidavits still did not sufficiently match their QVF signatures.[6]

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[5] It is difficult to comprehend what privacy concerns the Bureau is set on protecting. Does one have a privacy interest in one's signature? Would not the desire for transparency in the process outweigh whatever privacy interests a voter may have in this situation? And regardless of what privacy concerns are espoused by the Bureau, would the people's right to direct democracy weigh in favor of producing disputed signatures under a protective order? The Bureau summarily rejected these concerns and instead twice made determinations based on secret evidence not available to plaintiffs or this Court.

[6] The Board rejected the remaining five affidavits—all by a 2-2 deadlock—as untimely as required pursuant to Mich Admin Code, R 168.846, because they were submitted less than

In the end, ACVM came up three signatures shy of the total needed for the petition to be certified. Three days later, on August 27, 2026, plaintiffs filed this original action seeking mandamus and declaratory relief and asking this Court to direct defendants to take all necessary steps to certify the petition for placement on the November 2026 general election ballot. They also moved for an order to show cause and for immediate consideration.

II. BACKGROUND LAW

Under MCL 168.479(1), persons aggrieved by a "determination made by the board of state canvassers may have the determination reviewed by mandamus or other appropriate remedy in the supreme court." Accordingly, petitioners filed this original action in this Court.

Plaintiffs primarily seek a writ of mandamus. Mandamus is an extraordinary remedy. A writ of mandamus shall issue only where (1) the plaintiff has a clear legal right to the performance of a specific duty; (2) the defendant has a clear legal duty to perform the requested act; (3) that act is ministerial, involving no exercise of discretion or judgment; and (4) the plaintiff has no other legal or equitable remedy.[7] To be deemed ministerial, an act must be "one in which 'the law prescribes and defines the duty to be performed with

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48 hours before the meeting. One of the affidavits rejected as untimely included plaintiff Fred Smith's affidavit, which plaintiffs claim the Board determined valid but for the untimely submission. In fact, according to plaintiffs, the Board conceded the validity of all five late-submitted affidavits. For example, regarding Thomas Doughty's affidavit, the Chair stated that "all four of us agree that the signature matches." The Chair then confirmed with the Vice Chair that the signature "matches the voter," and "is a valid signature," and that the only remaining question was "whether it was submitted on time . . . [w]ithin the 48-hour rule[.]" Asked whether the ground for rejection was "the 48-hour procedural rule, primarily," the Vice Chair answered: "That's correct." Board member Paul Cordes added: "I agree the procedure is important, but I don't necessarily know that it trumps someone who is confirming that they put their name on these petitions." Plaintiffs seek a writ of mandamus essentially declaring these five signatures valid. But this in essence would require a finding that the Board lacked discretion to enforce their 48-hour time frame. As it relates to these five affidavits, I conclude that plaintiffs' claim lacks merit. Whether to enforce a time limit is a matter of discretion. The Board was not under a clear legal duty to reject that time limit. Accordingly, a writ of mandamus may not enter as it relates to these five affidavits.

[7] See *Miller v Detroit*, 250 Mich 633, 636 (1930); *Lickfeldt v Dep't of Corrections*, 247 Mich App 299, 302 (2001).

such precision and certainty as to leave nothing to the exercise of discretion or judgment.' "[8]

Plaintiffs also seek a declaratory judgment. MCR 2.605(A)(1) states: "In a case of actual controversy within its jurisdiction, a Michigan court of record may declare the rights and other legal relations of an interested party seeking a declaratory judgment, whether or not other relief is or could be sought or granted." "[A]n 'actual controversy' exists for the purposes of a declaratory judgment where a plaintiff pleads and proves facts demonstrating an adverse interest necessitating a judgment to preserve the plaintiff's legal rights."[9] "A litigant may have standing in this context if the litigant has a special injury or right, or substantial interest, that will be detrimentally affected in a manner different from the citizenry at large[.]"[10]

Plaintiffs also seek a remedy for alleged constitutional violations. Questions of constitutional law and statutory interpretation are reviewed de novo.[11] In interpreting a statute, this Court has held:

> As with any statutory interpretation, our goal is to give effect to the Legislature's intent, focusing first on the statute's plain language. In so doing, we examine the statute as a whole, reading individual words and phrases in the context of the entire legislative scheme. When a statute's language is unambiguous, the Legislature must have intended the meaning clearly expressed, and the statute must be enforced as written. No further judicial construction is required or permitted.[12]

Plaintiffs assert these challenges with respect to the Board's exercise of its canvassing function. Under the Michigan Election Law, MCL 168.1 *et seq*., the following statutory provision addresses the process that the Board is to take to determine whether an initiative petition was signed by the requisite number of qualified voters:

> Upon receiving notification of the filing of the petitions, the board of state canvassers shall canvass the petitions to ascertain if the petitions have

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[8] *Hillsdale Co Senior Servs*, *Inc v Hillsdale Co*, 494 Mich 46, 58 n 11 (2013), quoting *Toan v McGinn*, 271 Mich 28, 34 (1935).

[9] *Mich Ass'n of Home Builders v City of Troy*, 504 Mich 204, 225 (2019).

[10] *Lansing Sch Ed Ass'n v Lansing Bd of Ed*, 487 Mich 349, 372 (2010).

[11] See *Madugula v Taub*, 496 Mich 685, 695 (2014).

[12] *Id*. at 696 (citations and quotation marks omitted).

> been signed by the requisite number of qualified and registered electors. The qualified voter file shall be used to determine the validity of petition signatures by verifying the registration of signers and the genuineness of signatures on petitions when the qualified voter file contains digitized signatures. If the qualified voter file indicates that, on the date the elector signed the petition, the elector was not registered to vote, there is a rebuttable presumption that the signature is invalid. If the qualified voter file indicates that, on the date the elector signed the petition, the elector was not registered to vote in the city or township designated on the petition, there is a rebuttable presumption that the signature is invalid. If the board is unable to verify the genuineness of a signature on a petition using the digitized signature contained in the qualified voter file, the board may cause any doubtful signatures to be checked against the registration records by the clerk of any political subdivision in which the petitions were circulated, to determine the authenticity of the signatures or to verify the registrations. Upon request, the clerk of any political subdivision shall cooperate fully with the board in determining the validity of doubtful signatures by rechecking the signature against registration records in an expeditious and proper manner.[13]

III. ANALYSIS

Plaintiffs argue that defendants violated ACVM's due-process rights by refusing to provide the digitized signature records from the QVF after finding 94 signatures to be invalid for not sufficiently agreeing with the signature on file. At the Board's August 24, 2026 meeting, the Bureau confirmed, as required by MCL 168.476(1), that its invalidity findings resulted from staff visually comparing the 94 petition signatures against the corresponding digitized signature records in the QVF. However, the staff report contained no images of those records that would have let ACVM evaluate, respond to, or rebut the Bureau's conclusions. The Bureau also rejected ACVM's request for limited, confidential access to the 94 disputed digitized signature records and otherwise did not allow ACVM to view them. While the Bureau maintained that ACVM could rehabilitate a signature by having the voter sign an affidavit attesting to the fact that they are a properly registered Michigan voter who signed the petition at issue, this proposed remedy was illusory. This is because the Bureau and the Board were unconcerned with whether the affiant attested to the fact that he or she supported and properly signed the petition. Instead, the Bureau made its determination not on the basis of whether the affiant did indeed sign the petition, but rather whether the affiant's signature, in the unchecked opinion of the Bureau, failed to conform to the digital signature captured in the QVF.

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[13] MCL 168.476(1).

Preliminarily, the Bureau's delay in its review is curiously unexplained and concerning. ACVM submitted its petitions with over 700,000 signatures on March 4, 2026, but the Bureau waited more than five-and-a-half months—averaging roughly six signatures reviewed per day—before issuing its staff report on August 17, 2026. This left ACVM with only five days to identify and contact the 94 affected voters whose signatures allegedly did not match the digital signature on the QVF, confirm they signed the petition, and obtain rehabilitating affidavits. Despite this compressed time line, ACVM still managed to procure from 23 of the affected voters affidavits confirming that their signatures were genuine. However, this effort does not offset the reality that the Bureau's delay—and the resulting five-day window—deprived ACVM of a "meaningful" opportunity to rebut the Bureau's findings as to the remaining 71 voters. Thus, even assuming that the Bureau's affidavit mechanism is otherwise a valid alternative to direct QVF access, the Bureau's 168-day delay in publishing its report itself deprived ACVM of a meaningful opportunity to know and respond to the evidence used to strike its signatures. Neither Michigan law nor the federal or state Constitution permits decisionmakers to base determinations on evidence that interested parties cannot review.[14]

I am also deeply concerned that the Bureau's proposed alternative—comparing affidavit signatures to the QVF—independently violates due process because it, too, depends on comparing signatures to QVF records that ACVM cannot view. A notarized affidavit is sworn testimony given under penalty of perjury and verified by a notary who

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[14] Justice WELCH responds that plaintiffs received all of the process that was due to them under the statute. I respond with two points. First, although this Court has never held that the Bureau of Elections' random-sampling procedure for validating signatures violates the statute, there is a credible argument to be made that it does. As Justice WELCH notes, the Bureau is responsible to "determine . . . the validity and sufficiency of the signatures on the petition . . . ." Const 1963, art 12, § 2; see also MCL 168.476(1). As I note below, I question whether the random-sampling procedure—particularly the one employed under the circumstances of this case—can be said to have reliably determined the validity of the signatures on the petition. Regardless, it should be undisputed that any such shortcut should be heavily weighted in favor of the petitioners in order to comply with the statutory requirements. Second, although the process of rehabilitating signatures by way of affidavit is not enshrined in statute, the Bureau extends it to both petitioners and the public (including the signatories of the petition) as a means of addressing challenges to the signatures. For the Bureau to offer such a chance for rehabilitation, only to make it illusory by continued cross-checking with undisclosed signatures on the QVC, pulls the rug out from under the people of Michigan. Due process requires more than this. Once offered, the process must be fair.

confirms the signer's identity via government ID before notarization.[15] The Board's process of comparing affidavit signatures to QVF signatures—and rejecting affidavits that do not match—violates due process. The purpose of the QVF is not to ensure that voters do not change the appearance of their signatures. Rather, it is to ensure that a person wishing to participate in the election process is in fact who they purport to be. The Bureau's position ignores what each ACVM affidavit actually is—sworn testimony that the affiant signed the petition, that the signature is genuine, and that the affiant is the person he or she claims to be—and instead treats each affidavit merely as another visual comparison to the undisclosed digital signature maintained in the QVF. Because the affidavit is sworn testimony, it accomplishes the objective of confirming that the alleged signatory actually signed the petition, obviating the need for a QVF comparison. The Bureau was required to accept it absent "clear, positive and credible evidence in opposition" that is sufficient to impeach the substance of the affidavit.[16]

The Bureau's reasoning for rejecting the testimony provided by sworn affidavit is also fatally circular. The Bureau seeks to preserve the confidentiality of the voter who purportedly signed the petition and claims that ACVM does not need QVF access because it can rehabilitate signatures via affidavits. However, by subjecting those very affidavits to the same QVF comparison, the Bureau nullifies the alternative to cure the alleged defects found by the Bureau and denies ACVM a meaningful opportunity to rebut unknown evidence with a remedy subject to that same unknown evidence. In short, the Bureau tells ACVM that they do not need the QVF because they can use affidavits, but successful use of the affidavits requires access to the QVF.[17]

The Bureau's process invalidates affidavit signatures using QVF evidence that ACVM cannot meaningfully rebut, just as it cannot meaningfully rebut the underlying petition-signature comparison. Either way, signatures are invalidated on the basis of evidence ACVM cannot know or meaningfully address. And it invalidates sworn testimony in the form of affidavits that provide far more meaningful evidence than a digital file maintained by the Bureau. This falls woefully short of the due process required under the Michigan and United States Constitutions.

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[15] See MCL 55.285(6)(b); *June v Sch Dist No 11, Southfield Twp*, 283 Mich 533, 537-538 (1938).

[16] *Vriesman v Ross*, 9 Mich App 102, 106 (1967).

[17] Justice WELCH takes the position that comparison of the signatures on the affidavits to the QVC was required. However, the statute states only that "the qualified voter file shall be used [by the Board of State Canvassers] to determine the validity of petition signatures . . . ." MCL 168.476(1). It says nothing regarding the determination of the validity of affidavit signatures.

I conclude that the rejection of the four affidavits in which the affiant's signature allegedly did not match the undisclosed digital file maintained by the Bureau was a violation of the federal and state due-process rights of both ACVM and the four Michigan voters who attested to the fact that they signed the petition to amend our Constitution. These four voters exercised their First Amendment rights by signing the petition and an affidavit but still did not have their signatures counted. Those signatures should have been accepted and the matter should be placed on the November ballot for consideration by the entirety of Michigan's electorate.

IV. REMEDY

As noted above, MCL 168.479 provides that this Court may review cases of this kind "by mandamus or other appropriate remedy." In this case, mandamus is not deserved. Although plaintiffs have asserted constitutional violations, they have not met their burden of demonstrating that defendants had a clear legal duty to perform as plaintiffs ask. In particular, plaintiffs have failed to show that defendants were required to perform a ministerial duty that involved no exercise of discretion. However, another remedy is appropriate in light of the Bureau's and Board's violations of plaintiffs' due-process rights. In light of the fact that the Board's determinations are reviewable by this Court, I would vacate the Board's decision declining to certify the four signatures with accompanying affidavits that allegedly did not match the signatures in the QVC. I would remand the matter to the Board limited to consideration of whether the four affidavits were in fact valid evidence that the affiants properly signed the petitions in question. As public servants, the members of the Board are sworn to uphold the state Constitution. At a minimum, this Court should have remanded to the Board to cure the due-process violation by, for example, arranging an *in camera* review of the QVC signatures and providing plaintiffs an opportunity to rebut the comparison, or, alternatively, by accepting the affidavits as legally sufficient in their own right, or, finally, by accepting late submissions of additional affidavits.

V. ADDITIONAL CONSIDERATIONS

I further note the host of irregularities that should be cause for great concern to both the Legislature and the people of this State. At this stage of the proceedings, there is no explanation for the Bureau's five-and-a-half month delay in verifying the 1,000-signature sample. As noted earlier, this amounts to no more than six signatures reviewed per day. Further, the Bureau's decision to hear the late-filed challenges to signatures on the petition is in stark contrast to its decision not to accept rehabilitative affidavits filed no more than two days after the deadline.

Aside from these blatantly suspect occurrences, this case presents other concerns. For example, it requires only a rudimentary understanding of statistics to know that a three-

signature discrepancy in a 1,000-signature sample drawn from a 700,000-signature pool is well within the statistical margin of error for such a data set. In other words, it is possible—maybe even probable—that the petitioners met their burden of gathering the requisite number of signatures. The Board's verification procedures, however, do not provide for any kind of additional sampling in close cases. In this case, a petition that garnered enough signatures to correspond to approximately 7% of the population of Michigan is held off the ballot by a three-signature discrepancy. This result flies in the face of our constitutional right to access direct democracy.

Next, many of the decisions made in this matter were made according to a default by split vote. That means that this initiative will not be put on the ballot, not because a majority of the Board believed the initiative failed to meet the requirements, but because the Board members could not agree. Such a circumstance is the opposite of the democratic institution that the citizen ballot initiative was designed to be.

Additionally, the whole of this review process, start to finish, is nearly entirely insulated from meaningful judicial review. In the absence of circumstances sufficiently extreme to qualify as a denial of due process, most of the decisions of the Board are reviewed under a mandamus standard of relief. Mandamus relief is exacting and exceedingly rare, effectively creating a silo around the Board's decisions. Unless and until the Legislature takes corrective action, the citizen-initiated ballot measure mechanism will continue to be subject to political gamesmanship.

I therefore again call on the Michigan Legislature to fix the broken system that permits the Bureau of Elections and the Board of State Canvassers to deny the people their state constitutional right to exercise direct democracy without sufficient time for courts to provide meaningful appellate review and judicial process.[18] The entire process should be completed and the Board's determinations made at least two months before the ballots go to print. Clearly the Bureau and the Board will not act in a timelier manner without legislation mandating it. No other reason can explain the Bureau's five-and-a-half month delay from the filing of 700,000-plus petition signatures to the Bureau's review of a sample of 1,000 signatures to assess compliance. The people of Michigan deserve better.

VI. CONCLUSION

My colleagues and I agree that mandamus is inappropriate under the circumstances. We disagree, however, on whether the Bureau's illusory and circular remedy to rehabilitate

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[18] See *Johnson v Bd of State Canvassers*, 509 Mich 1015, 1016 (2022) (ZAHRA, J., concurring); *Promote the Vote 2022 v Bd of State Canvassers*, 510 Mich 884, 893-894 (2022) (ZAHRA, J., dissenting); *Reproductive Freedom for All v Bd of State Canvassers*, 510 Mich 894, 901-902 (2022) (ZAHRA, J., dissenting).

rejected signatures by affidavit violates plaintiffs' state and federal due-process rights such that the Court should intervene in this matter. I find this odd in light of this Court's persistent willingness to sail into uncharted procedural waters in close cases, all for the sake of preserving the democratic process enshrined in the citizen-initiative ballot proposal mechanism. [19] In a case where clear injustice has occurred and naked political motivations are on display, my colleagues are strangely incapable of action despite a perfectly valid and legal remedy that this Court (for once) has authority to award. Again, the people of Michigan deserve better.

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[19] In particular, I note my colleague Justice BERNSTEIN's inconsistent position on these cases. In the past, he has stated that his "long-expressed interest in letting the people of Michigan make their own decisions at the ballot box speaks for itself." *Reproductive Freedom for All*, 510 Mich at 897 (BERNSTEIN, J., concurring). In his own words, he has, "[t]hroughout the years, . . . voted to grant relief in a number of election cases" because of his "consistent belief in the importance of elections in our representative democracy." *Id.* at 896. See *Rocha v Secretary of State*, 509 Mich 1025, 1026-1028 (2022) (BERNSTEIN, J., joining the statement of VIVIANO, J., dissenting); *Raise the Wage MI v Bd of State Canvassers*, 509 Mich 876, 877 (2022) (BERNSTEIN, J., concurring in part and dissenting in part); *Attorney General v Bd of State Canvassers*, 500 Mich 907, 914 (2016) (BERNSTEIN, J., dissenting); *Johnson v Bd of State Canvassers*, 509 Mich 1015, 1021 (2022) (BERNSTEIN, J., dissenting); *Markey v Secretary of State*, 509 Mich 1021, 1021 (2022) (BERNSTEIN, J., would have ordered oral argument); *Craig v Bd of State Canvassers*, 509 Mich 1021, 1021 (2022) (BERNSTEIN, J., would have ordered oral argument); *Cavanagh v Bd of State Canvassers*, 509 Mich 1028 (2022) (BERNSTEIN, J., would have ordered oral argument); *Davis v Highland Park City Clerk*, 509 Mich 1029, 1029-1030 (2022) (BERNSTEIN, J., joining the statement of WELCH, J., dissenting); *League of Women Voters of Mich v Secretary of State*, 506 Mich 886, 887-888 (2020) (BERNSTEIN, J., dissenting).

SEAL OF THE MICHIGAN SUPREME COURT · DISCITE JUSTITIAM MONITI · LANSING ·

I, Elizabeth Kingston-Miller, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

September 3, 2026

Clerk

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