STATE OF MICHIGAN
IN THE SUPREME COURT

REPRODUCTIVE FREEDOM FOR ALL, a Michigan ballot question committee, Peter Bevier, an individual, and Jim Lederer, an individual

Plaintiffs,

v.

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

Defendants.
_____/

SC No. 164760

This case involves a claim that state governmental action is invalid.

BRIEF OF PROFESSORS EVAN CAMINKER, DANIEL DEACON, SAM ERMAN, ELLEN KATZ, LEAH LITMAN, AND NINA MENDELSON AS AMICI CURIAE IN SUPPORT OF PLAINTIFF

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1. Did the Defendants violate their clear legal duty to qualify and certify the Reproductive Freedom For All petition and ballot question to appear on the November 8, 2022 general election ballot when: (1) the form of the petition meets all of the statutory requirements of MCL 168.482, and (2) the Reproductive Freedom For All petition collected more than the required number of valid signatures to propose a constitutional amendment to the electorate?

   Plaintiffs' answer: Yes

   Amici's answer: Yes

INTEREST OF AMICI CURIAE[1]

Professors Evan Caminker, Daniel Deacon, Sam Erman, Ellen Katz, Leah Litman, and Nina Mendelson are teachers and scholars of constitutional law and statutory interpretation, and they have an interest in the proper interpretation of Michigan constitutional and legislative provisions. They are also Michigan residents who have an interest in not being illegally disenfranchised by the Board of Canvassers.

[1] Pursuant to MCR 7.312(H)(4), amici state that no counsel for a party authored this brief in whole or in part, nor did anyone, other than amici or their counsel, make a monetary contribution intended to fund the preparation or submission of the brief.

INTRODUCTION

This case is about the future of democracy in Michigan. Specifically, it is about whether the State Board of Canvassers can disenfranchise almost a million Michiganders, and deny the opportunity to vote on fundamental freedoms to millions more, on the basis of less than ideal spacing between the words on a petition.

To ask that question is to answer it. The Michigan Constitution created the ballot initiative process to allow *the people* the power to amend their Constitution. It does not allow the unelected State Board of Canvassers to subvert the will of the voters by invoking technical-sounding, law-adjacent arguments to deny people the ability to vote at all. (There are spaces between the words on the petition, but the Board apparently wanted bigger spaces or more of them.) Neither the Michigan Constitution nor any statute authorizes the Board to review petitions for ideal spacing. The Board cannot simply conjure up grounds that are not unambiguously mentioned in the statute and use those grounds to reject petitions and override the results of a valid, democratic process. Nor does the Board have the authority to reject petitions for reasons related to the substance of the petition. To do so would deny Michiganders their constitutionally reserved authority to engage in direct democracy.

This Court should promptly order the Board to qualify the ballot for the upcoming election. Anything less enables the Board to subvert democracy.

I. The Democracy Principle Informs the Scope of the Board of Canvassers' Authority.

The Michigan Constitution reflects a "democracy principle," a commitment to popular sovereignty, majority rule, and political equality, some version of which is contained in all 50 state Constitutions. Bulman-Pozen & Seifter, *Countering the New Election Subversion: The Democracy Principle and the Role of State Courts*, __ Wis L Rev __ (forthcoming 2022), at 5,

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4177005 (last accessed Sept 4, 2022). The democracy principle is reflected in many places throughout the Michigan Constitution. Cf., e.g., *People v Pagano*, 507 Mich 26, 40; 967 NW2d 590 (2021) (VIVIANO, J., concurring) (invoking the structure of the Michigan Constitution to interpret it); *In re Konschuh*, 507 Mich 984; 959 NW2d 708, 710 (2021) (mem) (CAVANAUGH, J., concurring) (same).

For starters, the Michigan Constitution begins with the fundamental principle that "[a]ll political power is inherent in the people." Const 1963, art 1, § 1. See Bulman-Pozen & Seifter, *The Democracy Principle in State Constitutions*, 119 Mich L Rev 859, 870 (2021) (citing Michigan's constitutional provision as evidence of the democracy principle); 1 Official Record, Constitutional Convention 1961, p 3 ("From your deliberations the people of Michigan will expect a document forthrightly reaffirming our faith in democracy."). The Michigan Constitution also confers a right to vote. Const 1963, art 2, § 1 ("Every citizen of the United States who has attained the age of 21 years, who has resided in this state six months, and who meets the requirements of local residence provided by law, shall be an elector and qualified to vote in any election except as otherwise provided in this constitution."); see Bulman-Pozen & Seifter, *The Democracy Principle*, 119 Mich L Rev at 870-71 (invoking the provision as evidence of the democracy principle). And it forecloses particular restrictions on the franchise. Const 1963, art 1, § 2 ("[N]or shall any person be denied the enjoyment of his civil or political rights or be discriminated against in the exercise thereof because of religion, race, color or national origin.").

The ballot initiative process also reflects the democracy principle. First instituted under the Michigan Constitution of 1908, Const 1908, art 17, § 2, the people of Michigan expanded the initiative process through amendment in 1913. See *League of Women Voters of Mich v Secretary of State*, 508 Mich 520, 546; 975 NW2d 840 (2022). And the people kept the ballot initiative

process as a mechanism for direct democracy in the current Constitution. See Const 1963, art 12, § 2 ("Amendments may be proposed to this constitution by petition of the registered electors of this state."). As this Court has recognized, "[t]he people . . . chose[] to retain for themselves, in Const 1963, art 12, § 2, the power to initiate proposed constitutional amendments." *Citizens Protecting Mich's Constitution v Secretary of State*, 503 Mich 42, 59; 921 NW2d 247 (2018); see *Protect Our Jobs v Bd of State Canvassers*, 492 Mich 763, 772; 822 NW2d 534 (2012) ("[T]he people have also reserved certain powers to themselves. Among those powers is the right to amend the Constitution by petition and popular vote.").

The ballot initiative process supplies an essential mechanism through which the people retain political power and participate in democracy. See 2 Official Record, Constitutional Convention 1961, p 2464 ("[D]eliberation need not only take place in a deliberative body. It can take place in the body politic. And if I sense anything . . . it is that most people feel the political wall is too high to jump, that ordinary citizens cannot accomplish change, and this leads to a state of apathy and inertia which, in my judgment, is very dangerous in a democratic society."). Indeed, the "initiative" process is the "[m]ost significant" "way[] for the people to engage directly in lawmaking." Bulman-Pozen & Seifter, *The Democracy Principle*, 119 Mich L Rev at 876; see *Citizens Protecting Mich's Constitution*, 503 Mich at 509, quoting *Blank v Dep't of Corrections*, 462 Mich 103, 150; 611 NW2d 530 (2000) (MARKMAN, J., concurring) ("[T]here is no more constitutionally significant event than when the wielders of '[a]ll political power' under that document, Const 1963, art 1, § 1, choose to exercise their extraordinary authority to directly approve or disapprove of an amendment thereto. Const 1963, art 12, §§ 1 and 2."). Convention delegates recognized that "the people of the state of Michigan will . . . grow in a number of ways . . . and we do have to keep open the way in which the reserved power of the people may operate upon the constitution so that

the constitution can be flexible in meeting the needs of the people." 2 Official Record, Constitutional Convention 1961, p 2462.

Because the initiative process is a mechanism for "the people" to engage in direct, democratic lawmaking, the initiative process in article 12, § 2 of the Constitution is self-executing, providing a way to directly amend the Constitution that does not require further legislative action and that cannot be blocked by the legislature. See *Wolverine Golf Club v Secretary of State*, 384 Mich 461, 466; 185 NW2d 392 (1971); *Ferency v Secretary of State*, 409 Mich 569, 591 n 9; 297 NW2d 544 (1980) ("While some of the legislation-like procedural detail was eliminated in the 1963 Constitution, much was retained with the express purpose of preserving the self-executing character."). The process "serves as an express limitation on the authority of the Legislature"; it is a "power[] that the people have reserved to themselves *from* the legislature." *League of Women Voters of Mich*, 508 Mich at 536, quoting *Woodland v Mich Citizens Lobby*, 423 Mich 199, 214; 378 NW2d 337 (1985). See Bulman-Pozen & Seifter, *The Democracy Principle*, 119 Mich L Rev at 877 (explaining how many states' direct-democracy mechanisms "describe the initiative as a popular withholding of power from the legislature" and have features that "insulate democracy from representative government"). The initiative process is "in derogation of the power of the legislature, so to speak." 2 Official Record, Constitutional Convention 1961, p 2460. See also 2 Official Record, Constitutional Convention 1961, p 2463 ("I feel very strongly that if we are going to have a responsive government we are going to have to give people back home the opportunity . . . to act as a sort of a check and balance to an unresponsive legislature.").

Because the citizen-initiated constitutional amendment process is a self-executing mechanism through which the people, the ultimate wielders of political power, retain and exercise that political power, "the Legislature is constrained from encroaching upon" the initiative process. *League of*

Women Voters of Mich, 508 Mich at 549. So too are executive officers: "[o]f the right of qualified voters of the State to propose amendments to the Constitution by petition it may be said, generally, that it can be interfered with neither by the legislature, the courts, nor the officers charged with any duty in the premises." *Scott v Secretary of State*, 202 Mich 629, 643; 168 NW 709 (1918). Neither the legislature nor entities created by the legislature can "unduly burden the self-executing constitutional procedure." *Ferency*, 409 Mich at 591 n 10; *League of Women Voters of Mich*, 508 Mich at 549-50; *Protect Our Jobs*, 492 Mich at 772.

Accordingly, "[t]his Court has consistently protected the right of the people to amend their Constitution." *Protect Our Jobs*, 492 Mich at 772. It has further emphasized that constitutional "'provisions by which the people reserve to themselves a direct legislative voice ought to be liberally construed' and their exercise should be facilitated rather than restricted." *Ferency*, 409 Mich at 602, quoting *Kuhn v Dep't of Treasury*, 384 Mich 378, 385; 183 NW2d 796 (1971); see *Citizens Protecting Mich's Constitution*, 503 Mich at 60-61 (explaining that the question is whether "any clear limitations may be found in the Constitution" on "the extent of the people's right to initiate constitutional amendments"). Accordingly, courts in Michigan have abided by the "long-held notion that, when interpreting a constitutional initiative or referendum provision, courts are to adopt a liberal construction of the same in order 'to facilitate, rather than hamper the exercise by the people of these reserved rights.'" *League of Women Voters v Benson*, No 19-000084-MM, 2019 WL 6036702, at *6 (Mich Ct Cl Sept 27, 2019), quoting *Newsome v Riley*, 69 Mich App 725, 729; 245 NW2d 374 (Mich Ct App 1976).

The democracy principle translates into an interpretive presumption about how to read the statutes governing the initiative process and the Board's authority under those statutes. Statutes concerning the initiative process must be interpreted in favor of allowing direct democracy to

occur, and against the government's ability to prevent the people from voting. If a statute can reasonably be read to enable Michigan residents to exercise the franchise and the political power they reserved for themselves in the initiative process, courts should adopt that interpretation, and reject a contrary interpretation that disempowers the people. And the Board must show that a petition clearly violates a statutory requirement in order to justify throwing out the votes of hundreds of thousands of Michiganders and preventing many more from voting.

II. The Board Lacks the Authority to Reject the Reproductive Freedom For All Petition.

A. The Board's Role Is Limited to the Specific Authority Granted to the Board by Statute.

The democracy principle informs the scope of the Board of Canvassers' authority. The legislature and Board of Canvassers were established by the Michigan Constitution, Const 1963, art 2, § 7; Const 1963, art 4, § 1, and their authority must be read in light of the Michigan Constitution. See *League of Women Voters of Mich*, 508 Mich at 536; *Raise the Wage MI v Bd of State Canvassers*, __ Mich __; 970 NW2d 677 (2022) (mem).

In particular, the democracy principle requires courts to strictly construe any limitations that the legislature has imposed on the initiative process. See *Mich Civil Rights Initiative v Bd of State Canvassers*, 268 Mich App 506, 520; 708 NW2d 139 (2005) ("[A]n attempt by the board to go beyond its authority clearly outlined in the Constitution and statute undermines the constitutional provision that reserves for the people of the state of Michigan the power to propose laws through ballot initiatives."). "[W]here . . . there is doubt as to the meaning of legislation regulating the reserved right of initiative, that doubt is to be resolved in favor of the people's exercise of the right." *Ferency*, 409 Mich at 593. This is in part because the initiative process is a *constraint* on the legislature: it is a mechanism by which the people reserved to themselves the power to make the laws governing them free from the control of the government. See *Woodland*, 423 Mich at 214.

This Court is accordingly "wary of finding a[]textual limitations on voter-initiated amendments." *Citizens Protecting Mich's Constitution*, 503 Mich at 73 (assessing whether legislation falls within the constitutional limitations on the initiative process).

This interpretive maxim also reflects the legislature's "limited role" in the "details" of the initiative process. *League of Women Voters of Mich*, 508 Mich at 545, 549. While the legislature is permitted to "prescribe[] by law" the form of petitions and the manner in which they may be signed, *id.* at 545, both "the constitutional text and convention debates point to a limited role for the Legislature." *Id.* at 549. That is how the Address to the People described the legislature's authority—as limited. See 2 Official Record, Constitutional Convention 1961, p 3407 ("Details as to form of petitions, their circulation and other elections procedures are left to the determination of the legislature."). This Court has accordingly held that the legislature may not "unduly burden" the initiative process. *League of Women Voters of Mich*, 508 Mich at 549-50. The legislature lacks the authority to "impose" a "substantive requirement that does not advance any of the express constitutional requirements" of the initiative process. *Id.* at 544; *id.* at 550 (The "clearest examples of requirements that the Legislature can provide by statute" "are of the sort that Const 1908, art 17, § 2 formerly provided directly in the Constitution itself.").

Because the Board of State Canvassers derives its power from the legislature's limited constitutional authority over the initiative process, the Board's authority is "limited" to specific authority that is clearly granted to the Board by statute. See *Unlock Mich v Bd of State Canvassers*, 507 Mich 1015; 961 NW2d 211 (2021) (mem). And "where . . . there is doubt as to the meaning of legislation regulating the reserved right of initiative, that doubt is to be resolved in favor of the people's exercise of the right." *Ferency*, 409 Mich at 593. That principle ensures that "officers charged with any duty" regarding the initiative process, as well as the legislature itself, do not

"interfere[]" with "the right . . . to propose amendments to the Constitution by petition." *League of Women Voters of Mich*, 508 Mich at 549, quoting *Scott*, 202 Mich at 643; see Bulman-Pozen & Seifter, *Democracy Principle*, 119 Mich L Rev at 924 ("In direct democracy states, this commitment limits the extent to which government actors may countermand decisions made by the people themselves."). Accordingly, in just the past sixteen years this Court has ordered the Board of State Canvassers to place at least three ballot initiatives on the ballot where the Board lacked authority to reject a petition but nevertheless deadlocked. See *Unlock Mich*, 507 Mich 1015; *Protect Our Jobs*, 492 Mich 763; *Mich Civil Rights Initiative v Bd of State Canvassers*, 475 Mich 903; 716 NW2d 590 (2006).

B. The Board Has No Authority to Reject Petitions on the Basis of Spacing Because the Statute Does Not Have Any Requirements Related to Spacing.

Because the statutes specifying the form of petitions for ballot initiatives do not unambiguously prescribe any requirements regarding spacing, the Board lacked the authority to reject the petitions on that basis. The statute lists many requirements regarding the form of a petition, but it contains none about spacing. The statute provides that the petition "must be 8-1/2 inches by 14 inches in size," MCL 168.482(1); it dictates specifics about the "form" of "the heading of each part of the petition," such as "INITIATIVE PETITION AMENDMENT TO THE CONSTITUTION," MCL 168.482(2); it requires a "summary in not more than 100 words of the purpose of the proposed amendment" and "[t]he full text of the amendment," MCL 168.482(3); it requires a particular statement to "appear beneath the petition heading," MCL 168.482(4); it requires a specific warning to be "printed" "immediately above the place for signatures, on each part of the petition," MCL 168.482(5), among other things, *see* MCL 168.482(6), (7), (8).

Under the democracy principle, courts prefer a (reasonable) interpretation of a statute that facilitates direct democracy and avoids disenfranchising Michiganders. Or, put another way, a

statute must unambiguously empower the Board to restrict the initiative process and prevent citizens from voting or disenfranchise citizens who signed a petition. The fact that the list of statutory requirements for petitions does not include any mention of spacing or the typeface or point type of spacing means that the statute does not unambiguously foreclose the people from voting. "Michigan has recognized the princip[le] of *expressio unius est exclusio alterious* — express mention in a statute of one thing implies the exclusion of other similar things." *Stowers v Wolodzko*, 386 Mich 119, 133; 191 NW2d 355 (1971). Because the statute here speaks to many details regarding the form of petitions but not to spacing, the Board is not empowered to graft its own opinions regarding spacing on top of the requirements specified by the legislature. The Board accordingly lacked the statutory authority to reject the petition on that basis.

This interpretation of the statutes governing the Board's authority is bolstered by the existence of other prescribed requirements for the "type" of the "text of the amendment" that do not include spacing. The required "form" of petitions described in Section 482 does not include anything related to spacing or the typeface or point type of spacing. That section does provide that the "type" of the "text of the amendment" must be "8-point type." MCL 168.482(3). Because the legislature required a certain "type" for the "text of the amendment," but not the amendment's spacing or the amendment as a whole, the Board is not authorized to inspect petitions for ideal spacing. Spacing and text are related enough that the legislature's mention of one but not the other supports an inference that the legislature meant to prescribe requirements about one but not the other. See *Bronner v. City of Detroit*, 507 Mich 158, 173; 968 NW2d 310 (2021) (explaining that the expressio unius canon "properly applies only when the unius (or technically, unum, the thing specified) can reasonably be thought to be an expression of all that shares in the grant or prohibition involved").

That is especially true because in the same statutory section, the legislature did include a requirement for the "type" of something other than "text": it required "12-point type" for the "summary" "of the purpose of the proposed amendment." MCL 168.482(3). If the legislature wanted to impose a requirement as to the "type" of the "amendment" rather than the "text," it could have done so. But it did not, and so this Court should not expansively interpret the law to allow the Board to reject a petition on a ground (spacing) that is not unambiguously mentioned in the statute. Cf. *Raise the Wage MI*, __ Mich __; 970 NW2d at 677-78 (mem) (VIVIANO, J., concurring) (invoking the canon of expression unius est exclusion alterius to determine the requirements of a petition and permissible content of a petition).

Nor can the Board claim the authority to inspect petitions for spacing based on the requirement governing the "type" of the "text of the amendment." MCL 168.482(3). "Text" does not unambiguously or necessarily refer to spacing or spaces. As relevant here, "text" means "the words of something" or "written matter." Merriam-Webster, *text*, https://www.merriam-webster.com/dictionary/text (last accessed Sept 4, 2022). See also Cambridge Dictionary, *text*, https://dictionary.cambridge.org/us/dictionary/english/text ("the written words") (last accessed Sept 4, 2022); Dictionary.com, *text*, https://www.dictionary.com/browse/text ("the original words"; "the actual wording") (last accessed Sept 4, 2022). It is for that reason that this Court previously concluded the type size requirement did not apply to any "union label or other printer's mark" that appeared on a petition; labels and marks do not constitute text. *Raise the Wage MI*, __ Mich __; 970 NW2d 677. Neither does spacing.

Other aspects of the statute reinforce the idea that the Board's authority is more limited where, as here, petitions have already been circulated, and the petition summary was previously approved by the Board. See MCL 168.482b(1) ("The board of state canvassers may not consider a challenge

to the sufficiency of a submitted petition on the basis of the summary being misleading or deceptive if that summary was approved before circulation of the petition."). The Chairman of the Board moved to approve the form of the Reproductive Freedom For All petition at an earlier meeting, subject to Reproductive Freedom For All deleting a duplicative "the," which it did. (See WAC Challenge, March 23, 2022 Meeting Tr at 52-53 Plaintiffs' App'x C, at 68.)

C. The Board's Limited Authority to Reject Petitions Based on Their Substance and the Possibility of Confusion Does Not Extend to Less Than Ideal Spacing.

Nor does the Board possess a general authority to reject petitions that otherwise comply with the statutory requirements on the ground that the Board feels the petition is misleading. The statutes circumscribe a limited set of situations where the Board could reject a petition as substantively misleading. But none of the provisions addressing substantive clarity apply here. See MCL 168.482b(2) (imposing various requirements on the summary of purpose of the proposed amendment, including that it "consist of a true and impartial statement" and "not create prejudice for or against the proposed amendment" and "written using words that have a common everyday meaning"); MCL 168.482(3) (requiring a petition to "state" the constitutional "provisions to be altered or abrogated"); MCL 168.482(7) (requiring a petition to indicate whether "a circulator of the petition is a paid signature gatherer"). And the Board satisfied the presentation requirements aimed at ensuring the clarity of a petition and minimizing any confusion on the part of state voters as explained *supra* in Part II.B.

By specifying particular grounds on which the Board could reject a petition for being misleading or confusing, the legislature precluded the Board from employing a general, roving authority to reject petitions that might be misleading or confusing. And, as discussed, the statute did not include spacing as a requirement for a petition's clarity or as a ground on which the Board could reject a petition as possibly misleading.

Moreover, any potential confusion argument was addressed when the Board precleared the petition for circulation. Cf. MCL 168.482b(1) ("The board of state canvassers may not consider a challenge to the sufficiency of a submitted petition on the basis of the summary being misleading or deceptive if that summary was approved before circulation of the petition."). The Chairman of the Board moved to approve the form of the Reproductive Freedom For All petition at an earlier meeting, subject to Reproductive Freedom For All deleting a duplicative "the," which it did. (See WAC Challenge, March 23, 2022 Meeting Tr at 52-53 Plaintiffs' App'x C, at 68.)

Even if the Board did have some limited authority to review petitions for substantive clarity or the potential for voter confusion, the challengers and Board members who voted against qualifying the petition have not shown that any signer, much less a substantial number of them, were confused about what the petition meant. And in light of the democracy principle, that was their burden to carry. In order to disenfranchise the Michiganders who signed the petition and to block many more Michiganders from voting on the ballot initiative this fall, they must demonstrate that the petition clearly and unambiguously violated some statutory requirement to the detriment of voters.

This case illustrates the dangers of authorizing the Board to reject a petition on the ground that the Board feels voters might be misled because of spacing. That authority runs the risk of being exercised in order to reject a petition that the Board does not support. Cf. Bulman-Pozen & Seifter, *Countering The New Election Subversion*, __ Wis L Rev__, at 2 ("Among the threats to American democracy, the most serious may also be the most banal: that future elections will be compromised not by violence but by state officials quietly changing the law."); Gellman, *Trump's Next Coup Has Already Begun*, The Atlantic (Dec 6, 2021), https://www.theatlantic.com/magazine/archive/2022/01/january-6-insurrection-trump-coup-2024-election/620843/ (last accessed Sept 4, 2022)**Error! Bookmark not defined.**; Hasen,

Identifying and Minimizing the Risk of Election Subversion and Stolen Elections in the Contemporary United States, 135 Harv L Rev F 265, 284 (2022) ("By far the most likely way in which election subversion would infect United States elections in the near term is through a respectable bloodless coup dependent upon technical legal arguments overcoming valid election results."). A Board member might well claim that one reason why people signed a petition with which the Board member disagrees is because people simply did not understand the petition. But "[a] necessary assumption of the petition process must be that the signer has undertaken to read and understand the petition. Otherwise, this process would be subject to perpetual collateral attack . . . which essentially concern matters of political dispute." *Mich Civil Rights Initiative*, 475 Mich at 904 (MARKMAN, J., concurring). See Bulman-Pozen & Seifter, *Democracy Principle*, 119 Mich L Rev at 924 ("Especially as partisan polarization has increased, commentators have observed an uptick . . . in state officials' efforts to limit the opportunities for and effects of popular initiatives."). Rejecting a petition on those grounds would allow the Board to subvert the will of the people. That runs counter to the basic structure of the initiative process, which provides a mechanism for the people to exercise their political power at the expense of the government's authority.

D. The Challengers Did Not Clearly Establish That There Were Spacing Errors in the Petition or Confusion About the Petition.

Finally, the challengers and the Board have not clearly established that there were spacing "errors" in the petition. There are spaces between the words of the proposed amendment. At most the members of the Board would have liked the spaces to appear bigger than they did. The affidavit from the printer indicates that the program used by the printer inadvertently minimized, but did not eliminate, spaces between certain words in the proposed amendment on petitions that were revised to include the Director of Elections' petition summary and the Board Chairman's revision to the proposed language of the petition. (See Jan 19, 2022 Board Minutes, Plaintiffs' App'x A, at

3; WAC Challenge, March 23, 2022 Meeting Tr. At 52-53 Plaintiffs' App'x C, at 68; RFFA First Challenge Response, Plaintiffs' App'x I, at 220-22.) There are spaces in the text and the PDF text file provided to the Secretary of State before the petition was circulated. (RFFA First Challenge Response, Plaintiffs' App'x I, at 213-16.) An independent analysis by *Bridge Michigan* confirmed this. Oosting & Yu, *735K signed abortion-rights petition. How word spaces may keep it off ballot*, Bridge Michigan (Sept. 1, 2022), https://www.bridgemi.com/michigan-government/735k-signed-abortion-rights-petition-how-word-spaces-may-keep-it-ballot (last accessed Sept 4, 2022); Jonathan Oosting @jonathanoosting, Twitter.com, https://twitter.com/jonathanoosting/status/1565450755208773633 (Sept 1, 2022 5:25 pm) (linking to a video, https://vimeo.com/745538798, showing how a copy-paste of the petition text reveals there are spaces between the words) (last accessed Sept 4, 2022).

Nor have the challengers clearly shown that the spacing in the petition was not in 8-point typeface. But that was their burden to carry because they sought to justify disenfranchising the hundreds of thousands of Michiganders who signed the petition. To the extent they are arguing that the Board can reject petitions on the ground that the petitions are misleading or confusing, they have not established that there was any meaningful confusion here. See *supra* Part II.C.

The Reproductive Freedom For All petition consists of words that are in the correct typeface, and Reproductive Freedom For All collected more than the required number of signatures on petitions. The Board is accordingly required to qualify the ballot proposal to appear on the November ballot. See MCL 168.476 ("Upon receiving notification of the filing of the petitions, the board of state canvassers shall canvass the petitions to ascertain if the petitions have been signed by the requisite number of qualified and registered voters."); *Mich Civil Rights Initiative*, 475 Mich at 903 (mem) (MARKMAN, J., concurring); *McLeod v State Bd of Canvassers*, 304 Mich

120, 127; 7 NW2d 240 (1942) (explaining that the duties of the Board of State Canvassers are "purely ministerial and clerical").

CONCLUSION

Nothing in the Michigan Constitution or Michigan statutes unambiguously authorizes the Board of State Canvassers to reject signed petitions because the petitions contain less than ideal spacing. Almost a million Michiganders indicated they want to be able to vote on the Reproductive Freedom For All ballot initiative. There is no indication that the signers did not know what the petition meant.

Those facts resolve this case. Any doubts about the meaning of the Michigan constitutional and statutory provisions about the ballot initiative process must be construed in favor of allowing Michiganders to vote, and against the Board's authority to prevent that from happening. In any case, there are spaces on the petitions, and so the Board was doubly wrong to reject them.

The voters of Michigan want to be able to vote on the Reproductive Freedom For All ballot initiative. They must be allowed to do so. The Reproductive Freedom For All ballot question has collected enough valid signatures to appear on the ballot and has followed all of the requirements of Michigan law with respect to the form of the petition. The Board has a legal duty to certify the ballot initiative to appear on the general election ballot. This Court should compel the Board to carry out its clear legal duty.

Respectfully submitted,

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