

BOARD OF STATE CANVASSERS MEETING

August 31, 2022

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STATE OF MICHIGAN
DEPARTMENT OF STATE

JOCELYN BENSON, SECRETARY OF STATE

BOARD OF STATE CANVASSERS MEETING

201 Townsend Street, Lansing, Michigan

Wednesday, August 31, 2022, 9:00 a.m.

BOARD: MR. ANTHONY DAUNT - Chair
MS. MARY ELLEN GUREWITZ - Vice Chair
MR. RICHARD HOUSKAMP - Board Member
MS. JEANNETTE BRADSHAW - Board Member
MR. JONATHAN BRATER - Elections Staff
MR. ADAM FRACASSI - Elections Staff

APPEARANCES:

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1 for your understanding. I'm sure the attorneys, aside from
2 Mr. Avers, are okay with this. You're just kind of sitting
3 around collecting their hourly rate, so -- but up next,
4 agenda item would be consideration of the meeting minutes
5 for approval from August 19, 2022. Is there --

6 MS. BRADSHAW: Mr. Chair, I'd like to make a
7 motion to approve the minutes of our last meeting that was
8 held on August 19th, 2022.

9 MR. HOUSKAMP: I'll second.

10 MR. DAUNT: Okay. We have a motion and support.
11 Is there discussion? Not seeing any. All those in favor of
12 the motion say "aye."

13 ALL: Aye.

14 MR. DAUNT: Any opposed? Okay.

15 (Whereupon motion passed at 12:06 p.m.)

16 MR. DAUNT: And the next item, item number three,
17 certification of the recount for the Office of State
18 Representative, 34th District. We do have an individual who
19 would like to speak, but I'm going to turn it over to
20 Director Brater for a brief explanation of what this is and
21 what we're dealing with.

22 MR. BRATER: Thank you, Chair Daunt. So this
23 concerned a recount of the 34th State House District
24 republican primary election in Lenawee County. So in this
25 instance according to the certified results Dale Zorn was

1 the winner by eight votes. The second place candidate, Ryan
2 Rank requested a recount and Mr. Zorn did not object to the
3 recount and a recount of the entire race was conducted. The
4 Bureau of Elections staff conducted this recount on your
5 behalf with assistance both from county and municipal
6 election officials in Lenawee County. And I would just
7 commend the work of staff both at the state as well as the
8 county and local level in conducting this recount.

9 The result of the recount did not change the
10 result. Dale Zorn who was the winning candidate gained 13
11 votes during the hand recount of the paper ballots and Ryan
12 Rank gained four votes. That's fairly typical. We often
13 find during a hand count the numbers will go up slightly.
14 The most common explanation for that is that a tabulator
15 will read a mark either as an under vote, not cast for a
16 candidate, or it might read something as an over vote and
17 not count a vote for everyone because two boxes are marked
18 perhaps by a stray pen mark. But when human beings look at
19 that, they determined that it was a vote for one of the
20 candidates and it should be counted. Again, that is done by
21 a team of recount officials. So nonetheless, the result
22 didn't change. In fact, Dale Zorn's margin increased from
23 an eight vote margin to a 17 vote margin. And there are no
24 outstanding challenges pending for the Board of State
25 Canvassers there.

1 Finally, I want to note that ten of the precincts
2 were not able to be recounted. By and large the officials
3 did a good job of keeping things in balance in that
4 precinct, but there were two -- in that county, but there
5 were two precincts that had out of balance precincts that
6 could not be explained during the recount, meaning that the
7 number of ballots they had in the container was not matching
8 the number of names of voters on the list. I expect that
9 with additional time probably it could have been determined
10 what caused that but during the recount period it wasn't
11 possible to explain that and there were no remarks with the
12 materials that we had. And then additionally, several
13 precincts -- this was the predominant issue -- unrecountable
14 because of issues with the way that ballot containers were
15 sealed. For example, a seal number may not have been
16 properly recorded or in a couple instances clerks had broken
17 the seals on the containers to retrieve materials before
18 they brought them to the recount board which is an error.
19 It needs to be brought to the recount board fully sealed.
20 So unfortunately because our recount statute is very strict,
21 that meant that we were not able to recount those precincts.
22 We will follow up with the county municipalities to make
23 sure they understand the proper procedures in terms of
24 maintaining the sealing of ballots in certified containers.
25 I'll just note that those ballots in those precincts are

1 still retained. So if, you know, one of the candidates or
2 any other member of the public wanted to view those ballots,
3 they could by making a public records request, but we're not
4 allowed to recount them under those circumstances.

5 So with that, we recommend certification of the
6 result as being unchanged from the certified result from the
7 county canvass.

8 MR. DAUNT: Okay. Thank you, sir. Any questions?
9 Jeannette, I see you have some. Please go ahead.

10 MS. BRADSHAW: I always have questions about
11 recounts. And I say that because I've been to a number of
12 recounts. So I just want to make sure because we are
13 dealing with new lines now that the House District 34, is
14 that a cross-county or is that simply in Lenawee County?

15 MR. BRATER: I believe it's entirely within
16 Lenawee County.

17 MS. BRADSHAW: Okay. And then were the --

18 MR. BRATER: We'll double check that, though. But
19 I believe --

20 MS. BRADSHAW: We're going to double check?

21 MR. BRATER: -- yeah, but I believe it's totally
22 within Lenawee.

23 MS. BRADSHAW: And then you did kind of hit the
24 spot, the questions that I was going to ask which was about
25 the improper ballot containers, the sealing of them. They

1 didn't have, like, improper containers?

2 MR. BRATER: There were some instances, I believe,
3 in which the ballots were in containers that were not
4 certified for use under the current standards. So they were
5 probably older containers that they were using that they
6 should not be using. They should be using the current
7 certified ballot containers.

8 MS. BRADSHAW: Okay. And so in that case that is
9 probably where the seal -- so you had sealing issues and
10 then there were containers that were used. And I know in
11 the past we've actually had municipalities that didn't even
12 have the certified actual seals they were supposed to use.
13 I remember that a couple years ago. And then the other
14 question I had for you, was there any challenges made to the
15 county board? That -- obviously we didn't have it come to
16 us, but were there challenges made on petitions that were
17 settled by the county?

18 MR. BRATER: On individual votes or on individual
19 ballots or practices?

20 MS. BRADSHAW: Ballots?

21 MR. BRATER: Yes. Adam, do you have that
22 available?

23 MR. FRACASSI: Sure.

24 MR. BRATER: Go ahead.

25 MR. FRACASSI: So first, to answer your first

1 question, it is wholly contained. I have confirmed that.
2 Second, so there were challenges that were made at the
3 recount that were addressed. They were withdrawn prior to
4 it being closed, like, prior to the recount being completed
5 at the local level.

6 MS. BRADSHAW: And so just -- just so everyone
7 understands why I'm asking these questions. So on a recount
8 if there are challenges to ballots -- and I know I've got
9 the Bureau here, too, you know -- that any kind of those
10 challenges would be made to the county board of canvassers.
11 And if the county board of canvassers did not come to a
12 conclusion or an answer on that, then it would come to us on
13 the State Board of Canvassers to determine any kind of issue
14 on those ballots. Did I follow that correctly?

15 MR. FRACASSI: Yes, that is --

16 MS. BRADSHAW: Yes.

17 MR. FRACASSI: -- correct and it didn't even need
18 to go to the county -- county board.

19 MS. BRADSHAW: Right. Okay. So they were removed
20 before that process would even happen. And then you said
21 unremarked -- unremarked errors, balance errors. Can you go
22 a little bit more into that, please?

23 MR. BRATER: Yeah. So when a -- when a precinct
24 is out of balance on election night, if there is a remark
25 that explains why it's out of balance, it can still be

1 recounted. So, for example, if you have one more name in
2 the poll book than you do ballots, but somebody came into
3 the polling place, checked in and then left with their
4 ballot, that explains that. And so that would be the kind
5 of remark that would say, that -- that would allow us to
6 recount it because it would be -- it explains out of balance
7 precinct. In this case we didn't have something like that
8 so we weren't able to determine the reason during the
9 recount why these precincts were out of balance and for that
10 reason we're not allowed to recount them.

11 MS. BRADSHAW: And this was a full recount
12 including absentee ballots as well or no?

13 MR. BRATER: Yes, it also included the absentee
14 ballots.

15 MS. BRADSHAW: Okay. Because you do have to a
16 separate request for AV ballots or am I kind of --

17 MR. BRATER: Yeah. All of the precincts to be
18 recounted have to be requested.

19 MS. BRADSHAW: All right. I just want to make
20 sure because we have individuals who have not heard this
21 before, so -- or been through this process so I want to make
22 sure everyone understands what we're doing and what our role
23 is when it comes to recounts for these state houses or state
24 senate seats. Thank you, Mr. Chair, for allowing me my
25 questions today.

1 MR. DAUNT: Absolutely. We do have one witness
2 who -- anybody else have any questions? We do have one
3 witness who would like to speak. Mr. Doster, please come
4 up. I'll give you 11 seconds and -- Mr. Doster?

5 MR. ERIC DOSTER: Where's my -- where's my button
6 here?

7 MR. DAUNT: It's a little tiny one next to the
8 base of the microphone.

9 MS. BRADSHAW: Little.

10 UNIDENTIFIED SPEAKER: The big one. The big mic.

11 MR. ERIC DOSTER: Oh. Big mic?

12 MR. STEVEN LIEDEL: Right-hand side of the one
13 closest to --

14 UNIDENTIFIED SPEAKER: It's already on.

15 MR. ERIC DOSTER: Is it already on?

16 MR. DAUNT: Your 11 seconds are up.

17 MS. BRADSHAW: Nope. You're not on. Not lit up.

18 MR. ERIC DOSTER: Hold on. Is that it?

19 MR. DAUNT: Can you help him, Steve?

20 MR. ERIC DOSTER: Tell me where it is.

21 MR. STEVEN LIEDEL: How many lawyers does it take
22 to turn on a microphone?

23 MR. ERIC DOSTER: Two.

24 ERIC DOSTER

25 MR. ERIC DOSTER: Eric Doster. I was representing

1 Dale Zorn in that recount. And, you know, Dale on election
2 or Senator Zorn on election night won by seven votes, picked
3 up one vote in the canvass and then stretched to another
4 nine votes during the recount so his new nickname is
5 Landslide Zorn. But the reason why I'm here, I just wanted
6 to report to this Board that your staff on your behalf did
7 an outstanding job. I know Dave Tarrant's here. Dave
8 Foster ran the recount, (inaudible) is always around. It
9 was very efficient. We had a lot of precincts. I've been
10 doing this for 30-some years and I didn't think we were
11 going to get through the entire 58 precincts in one day but
12 we did. Ten of them were unrecountable, but, like, three or
13 four of them just -- Jeannette, to your point or
14 questions -- three or four of them got taken out in one fell
15 swoop. Director Brater mentioned the clerk who did the --
16 she opened up the ballot box but that's not -- they did a
17 really good job. So, anyway, I am just here to say thank
18 you.

19 And then there was two things I do want to point
20 out. And, again, from this side of the table that I
21 appreciate. When we got in, we had lanyards that said,
22 like, "Team Rank" or "Team Zorn" or "Team Moore." That's a
23 nice innovation that I haven't seen before and frankly I
24 appreciate because it was able to allow me to identify my
25 own representatives. Okay? And then the second innovation

1 that, again, I like it, I really commend it, I hope you use
2 it in the future, we had a running total on a -- what do
3 you -- what do you call that?

4 MS. BRADSHAW: Spreadsheet.

5 MR. DAVE TARRANT: Spreadsheet.

6 MR. ERIC DOSTER: Was it a spreadsheet? But it
7 was on a board. It was on, like, a big Smart board. What
8 was --

9 MR. DAVE TARRANT: Oh, TV.

10 MR. DAUNT: Big TV. And --

11 MR. DAUNT: A TV.

12 MR. ERIC DOSTER: And I love efficiency and this
13 was very efficient.

14 MR. DAVE TARRANT: Monitor.

15 MR. ERIC DOSTER: Monitor. But it was a big, big
16 monitor and I'm not technical so I didn't know how to run
17 it, but I could ask people to scroll through it for me. But
18 normally during these recounts you're sitting down and
19 constantly sitting at a computer and saying, "okay, what did
20 you get for this precinct or with that?" I didn't have to
21 do that because it was on this monitor. So I just wanted to
22 say thank you. Your staff did an outstanding job. And if
23 you have any questions, I'm happy to answer. But your
24 staff -- thank you.

25 MS. BRADSHAW: Mr. Doster, I have to say that I

1 appreciate the comments because having been to a number of
2 recounts -- and thank you for the staff for actually
3 identifying people because I've been in those rooms, you
4 know, during -- just even judicial recounts where I walk in
5 and I don't -- unless I know who you are, like, I know --

6 MR. ERIC DOSTER: Yeah.

7 MS. BRADSHAW: -- you or Mr. Pirich when he was in
8 front of us. You know, --

9 MR. ERIC DOSTER: Everyone knew John.

10 MS. BRADSHAW: -- I knew who you guys were, but --

11 MR. ERIC DOSTER: Yeah.

12 MS. BRADSHAW: -- you know, in most cases but, you
13 know, they are -- I just want to say thank you for bringing
14 that up.

15 MR. ERIC DOSTER: You're welcome. Thank you.

16 MR. DAUNT: Thank you, sir. All right. It would
17 appear that we are looking for a motion on certification of
18 the recount for --

19 MS. BRADSHAW: I will make that motion. So based
20 on the examination of the recount of the votes cast at the
21 August 2nd, 2022, primary election for candidates who sought
22 the republican nomination to the office of State
23 Representative, District 34, I move that the Board certify
24 that the attached is a true statement of the votes given in
25 the election. And I further move that the Board certify

1 that Dale Zorn -- I'm not going to say "Landslide" because
2 that's not in this motion -- was elected as the republican
3 nominee to the office State Representative, District 34.

4 MR. HOUSKAMP: I'll second that.

5 MR. DAUNT: We have a motion and a second. Any
6 discussion on this? Seeing none, all those in favor of the
7 motion as stated please signify by saying "aye."

8 ALL: Aye.

9 MR. DAUNT: Any opposed? Motion carries four to
10 zero.

11 (Whereupon motion passed at 12:18 p.m.)

12 MR. DAUNT: All right. Agenda item number four,
13 consideration of the sufficiency of the initiative petition
14 submitted by Promote the Vote 2022. Mr. Brater, I will turn
15 it over to you for a rundown of the staff report and items
16 that you handled and then we'll hear from our witnesses.

17 MR. BRATER: Thank you, Chair Daunt. So this is
18 the Promote the Vote 2022 constitutional amendment petition.
19 It was submitted on July 11th, 2022, and the number of valid
20 signatures required for certification was 425,059. The
21 total filing that was received included 664,029 signatures
22 on 141,339 sheets. Following the practice that the Board
23 has adopted, the Bureau of Elections first conducted a face
24 review of all the sheets and determined which sheets should
25 not be included for consideration as containing valid

1 signatures because the entire sheet was invalid. And based
2 on that, we determined that 13,614 signatures on 4,298
3 sheets should be excluded from the potential universe of
4 valid signatures. At that point, we proceeded to sort,
5 count, and stamp the sheets to get a total number of
6 signatures before drawing the sample. Under the random
7 sampling procedures that the Board has adopted, we had a
8 sample of 568 sampled signatures. And based upon the
9 universe, the total they had which was a pretty high
10 cushion, they needed to have a -- at least 389 of that 568
11 total sample be valid registered voters that are otherwise
12 acceptable signatures in order for us to recommend
13 certification. And that equates to a, I believe they needed
14 a percentage of 62 -- is that right? -- 62.5 percent?
15 Sorry. I'm on the wrong page here. No, 6- -- yeah. Sorry.
16 68.5. I apologize.

17 So the result of our review of each of the
18 signatures in the random sample indicated that they did have
19 a total of 445 valid signatures in the sample and that
20 projects to a total estimated number of signatures that are
21 valid of 507,780, and that's 62,760 more than the minimum
22 threshold that would be required for certification. The
23 margin is high enough that under the statistical model that
24 we use to extrapolate the projected number of valid
25 signatures and predict how many there are based on the

1 sample, because of that margin the confidence level is 100
2 percent.

3 I will note that there were some objections raised
4 to some of the sheets that we excluded initially. There
5 were a total of 200 signatures that we excluded from the
6 universe initially based on our face review that the
7 proponents, Promote the Vote, objected to. After looking at
8 their review, we agreed that 200 out of the 264 signatures
9 that they thought should go back in should go back in which
10 increased our universe of valid signatures from 650,415 to
11 650,615, but that is a 99.97 percent accurate universe and
12 therefore the difference was so small that it made no
13 difference in our -- in our projected number of valid
14 signatures. We did not get -- so based on that we're
15 recommending certification based on the number of valid
16 signatures.

17 We did not get challenges to individual signatures
18 on the grounds that the voter was not registered or a
19 duplicate signature or something like that, but there was a
20 challenge that was filed by Defend Your Vote and their
21 challenge concerns an argument I'm sure we're going to hear
22 about shortly that there are sections of the constitution
23 that would be altered or abrogated by this proposed
24 constitutional amendment that were not listed in the
25 petition. So section 482 provides -- of the election law

1 does provide that the sections that would be altered or
2 abrogated should be listed on the face of the petition.
3 Staff reviewed that challenge. We did provide you in our
4 staff report with some of the relevant case law from the
5 courts in terms of, you know, what constitutes a provision
6 being changed or replaced or altered or abrogated. But
7 given the fact that the petition did include sections that
8 were altered or abrogated and the argument we received was
9 about the interaction between the -- what would be the new
10 sections of the constitution and existing sections and the
11 interplay of those sections. In our view that was a legal
12 argument. That was more of a judicial function and
13 therefore we didn't weigh in as the -- as the secretary and
14 the staff to the Board, we didn't weigh in on the legal
15 merits of those arguments.

16 So -- so our -- our recommendation is based on the
17 number of signatures being valid, being in excess of what is
18 required and us not identifying a specific basis where the
19 Board could, you know, make those sort of judicial
20 determinations about how sections are affected and our
21 recommendation is based on that.

22 MR. DAUNT: Mr. Director, thank you.

23 MS. BRADSHAW: Mr. Chair, may I ask a question --

24 MR. DAUNT: You may.

25 MS. BRADSHAW: -- of Director Brater? Just

1 because we do have two constitutional amendments, petitions
2 to be in front of us. Director Brater, can you go over
3 how -- what the role of this Board is up until now and what
4 our role is, you know, where we -- up until now? We'll go
5 do that question first. I might have to ask the second
6 part, Chairman, after. But what our role is in this
7 petition process getting us to today.

8 MR. BRATER: Sure. Well, so first if there is a
9 proposed constitutional amendment petition, initiative
10 petition, the proponents have the option -- they're not
11 required to do it, but they have the option of requesting
12 that I draft a 100-word summary which the Board has to
13 approve that will go on the face of the petition and that
14 has to be fair and impartial and explain what the petition
15 does. They did follow that process in this case and the
16 Board did approve language that they used on the petition.
17 That forecloses the Board from considering argument that the
18 petition on the face was misleading because the Board has
19 already approved the language that went on there.

20 There are al- -- the Board also offers preliminary
21 approval as to form. That's something that's done as a
22 courtesy to petition circulators so that the Board and staff
23 can have a look at the petition form before it goes out.
24 They also availed themselves of that in this case. And then
25 they're also required under 483(a) of the Election Law to

1 provide us with a copy of the petition that will be
2 circulated before they go out and circulate. So that's been
3 the Board's responsibilities up to this point. And now, at
4 this stage, the Board's responsibility is to determine
5 whether there are enough valid signatures on the petition,
6 and that includes both the signatures belonging to voters
7 who are registered and otherwise eligible to complete the
8 form, and then also the sheets that those individuals sign
9 have to meet the formal requirements of Section 42 of the
10 Election Law. And then further on we will consider the
11 questions of the 100-word summary that will go on the
12 ballot, but that's also within the Board's purview.

13 MS. BRADSHAW: I was just going to say thank you
14 for the explanation. I think that it's important for
15 everyone to kind of understand where our role is and that
16 where we are in this process and I appreciate that. And
17 thank you, Mr. Chair, for allowing me to ask that question.

18 MR. DAUNT: Absolutely. Are there other questions
19 for Director Brater? All right. In that sense, I'll call
20 up Mr. Trebilcock. He is representing the sponsors of this;
21 correct?

22 MR. CHRIS TREBILCOCK: Yeah, I am.

23 MR. DAUNT: Okay.

24 MR. CHRIS TREBILCOCK: But typically, at least in
25 past practice, usually the challengers go first and then we

1 respond to the challenges and that's the way the process
2 works in terms of they submit a challenge and then we file a
3 response to that challenge. But as -- as Chair --

4 MR. DAUNT: I --

5 MR. HOUSKAMP: That might be a way to go.

6 MR. CHRIS TREBILCOCK: -- I -- I --

7 MR. DAUNT: I actually was just following some
8 guidance I had of previous ones. So I am --

9 MR. FRACASSI: It's up to you.

10 MR. BRATER: It's up to you.

11 MS. BRADSHAW: It's up to you.

12 MR. DAUNT: I am --

13 MS. BRADSHAW: Because you're just going to have
14 him come back up.

15 MR. DAUNT: -- yeah. I mean, you're going to --

16 MS. GUREWITZ: I think that because a challenge
17 was filed and a response was filed, that it does make more
18 sense to have the challenger and then the responder.

19 MR. DAUNT: That's fine with me. I'm --

20 MR. CHRIS TREBILCOCK: That's the way us lawyers
21 are used to it, but, hey --

22 MR. DAUNT: I have -- I have no doubt that you
23 guys are going to ping pong back and forth on this. So in
24 that instance, I'll have Jonathon Koch come up on behalf of
25 the challenger. And, Mr. Koch, you are an attorney. Please

1 state your name, spell it for our reporter, who you're here
2 on behalf of. And just for your edification, looking at
3 giving around, you know, five minutes for you to expound,
4 we'll ask questions. You know, if you think you need more
5 time, please just let us know but our goal would be to try
6 to wrap this.

7 JONATHAN KOCH

8 MR. JONATHAN KOCH: Chairman Daunt, members of the
9 Board, my name is Jonathon Koch, J-o-n-a-t-h-a-n K-o-c-h.
10 I represent the ballot question committee Defend Your Vote.
11 We are the entity that filed the challenge to Promote the
12 Vote's petition.

13 There are three points I want to address to the
14 Board. First, the Board has a duty to address the alter and
15 abrogate issue and to declare that a petition that does not
16 comply with the form requirements of the Michigan Election
17 Law is insufficient and it must be rejected, and that the
18 alter and abrogate requirement is a form requirement that
19 falls within that. Second, the alter and abrogate
20 requirement is a form requirement, but it matters. It's --
21 it's important because it ensures that voters are informed
22 about the consequences of the proposed constitutional
23 amendments that they're being asked to vote on. And third,
24 Promote the Vote's proposal would abrogate several
25 constitutional provisions including Article 2, Section 2,

1 that were not republished in the petition. Because that
2 they did not republish those petitions, it is not in the
3 form prescribed by law which means this Board has a duty to
4 reject it and refuse to certify it.

5 With respect to the duty to address the alter and
6 abrogate issue, the Supreme Court has held that this Board's
7 duty with respect to petitions is to determine the
8 sufficiency of the form. The MCL 168.482(2) says that each
9 part of the petition must, mandatory, be in the form
10 prescribed by the rest of the statute and in the very next
11 subsection it says that if the proposal would alter or
12 abrogate an existing provision to the constitution, it must
13 so state -- the petition must so state and the provisions to
14 be altered or abrogated must be inserted.

15 As Mr. Avers mentioned earlier, to abrogate a
16 provision means that it is rendered wholly inoperative, but
17 it doesn't have to be the entire provision. It can be a
18 discreet part of a provision including something as small as
19 a single word. The upshot is that the requirement that the
20 petition republish the provisions that are altered and
21 abrogate is a form requirement that this Board is tasked
22 with determining and deciding before it makes the decision
23 to certification. And if a petition does not republish a
24 constitutional provision that would be altered or abrogated
25 if the petition is adopted, the Supreme Court has said that

1 that is fatal to the petition which means it must be
2 rejected.

3 Skipping over to, ahead to whether alter and
4 abrogate's provisions, our challenge rate is five separate
5 rounds. Each, any one of them is true and sufficient.
6 Today I'm going to focus on Article 2, Section 2. That's
7 the provision of Michigan's constitution that gives the
8 legislature authority to, quote, "exclude persons from
9 voting because of mental incompetence or commitment to a
10 jail or penal institution." In plain English, Article 2,
11 Section 2 authorizes our state's legislature to exclude
12 otherwise qualified voters from voting if they are mentally
13 incompetent or incarcerated. The petition, if adopted,
14 would destroy that grant of authority in two steps. First,
15 it provides that all qualified electors would have a
16 fundamental right to vote. Then it provides that no one,
17 not the legislature or any other person can quote, enact or
18 use any law that would have the intent or effect of denying,
19 abridging, interfering or unreasonably burdening that right.
20 Note that if that's adopted, even something that's a
21 reasonable interference or a reasonable denial, would be
22 constitutionally invalid. If Promote the Vote's proposal is
23 adopted, the legislature would be prohibited from enacting
24 any law that would exclude someone from voting because they
25 are other- -- if they are otherwise qualified to do so.

1 As Mr. Avers mentioned, there are four
2 qualifications for voting under Michigan's constitution and
3 the Michigan Election Law. The four qualifications are U.S.
4 citizenship, they have attained the minimum age, they are a
5 resident of the state, and they are a resident of a locality
6 in the state where they would be voting. The statute does
7 not list incarcerated status. It doesn't list mental
8 competence as qualifications for voting. This Board courts
9 no one except for the legislature can rewrite statutes to
10 say that they mean something that they don't say based on
11 their plain text. What that means is that someone who is
12 serving a sentence, who's been convicted of a felony,
13 serving in prison, who is currently incarcerated but is a
14 U.S. citizen who's of the age to vote, who's a resident of
15 Michigan and the resident of a locality in Michigan, that
16 person is qualified to vote despite, in spite of, regardless
17 of their incarcerated status. As I'm sure you're going to
18 hear from Mr. Trebilcock, they disagree with that. They say
19 that in their -- in their response to our challenge they
20 say, well, as an abrogated that isn't affected because a
21 restriction on an incarcerated felon's ability to vote,
22 that's -- that's just another qualification. But as we know
23 from the statute that said -- in the constitution provision
24 regarding qualifications of electors, that isn't true. And,
25 in fact, we know that from the statute that the legislature

1 has enacted as an exercise of their Article 2, Section 2
2 authority. Can I continue for a minute or two?

3 MR. DAUNT: Yup.

4 MR. JONATHAN KOCH: MCL 168.492(a) provides that
5 an otherwise qualified voter who is currently in prison but
6 has not been sentenced or convicted can vote. But that same
7 otherwise qualified person who has been convicted and has
8 been sentenced can no longer vote. Which means that for the
9 legislature to actualize its authority under Article 2,
10 Section 2, it would be restricting someone who's otherwise
11 qualified to vote and the legislature has recognized that.
12 Because that authority would just be obliterated by the
13 amendments proposed in the petition, it is Article 2,
14 Section 2 would be rendered wholly inoperative which means
15 it's been abrogated. It was not republished so the petition
16 doesn't -- doesn't meet the form requirements of the
17 Michigan Election Law 168 -- MCL 168.482(3).

18 We've heard a lot of talk about the substance of
19 these petitions. That is beside the point for this Board.
20 It doesn't matter whether it's a good idea to have
21 incarcerated felons vote. It doesn't matter if it's a good
22 idea to allow ballot harvesting in Jackson State Prison.
23 What matters is that the people have a right to be informed
24 of the effects of the constitutional amendments they're
25 being asked to consider. They have a right to know what is

1 going to be abrogated. Here the petition would abrogate
2 Article 2, Section 2, but that was not republished. As a
3 result, that -- that -- that failure to republish is fatal
4 to Promote the Vote's petition and this Board has a duty to
5 reject it.

6 MR. DAUNT: Okay.

7 MS. BRADSHAW: I have one question.

8 MR. DAUNT: Yes.

9 MS. BRADSHAW: But just one. Let me ask Director
10 Brater and then I'll ask you. Is that okay? Because I --
11 it's -- is this one of the petitions that came to us twice
12 for approval to form? Because I cannot recall.

13 MR. BRATER: We'll have to check on that.

14 MR. DAUNT: I don't think so.

15 MS. BRADSHAW: I can't remember if this was or
16 not.

17 MR. DAUNT: I don't think so.

18 MS. BRADSHAW: I know the second one was, but this
19 one --

20 MR. DAUNT: Secure MI Vote which was essentially
21 kind of --

22 MS. BRADSHAW: Right. But that was the checkbox.
23 I didn't know if Promote the Vote had a -- can't remember if
24 we did a -- on the -- an approval pending that they removed
25 the union label. I don't know if this one came under that

1 and that's why I'm asking this question.

2 MR. BRATER: I think it did, but we're checking.

3 MS. BRADSHAW: Because it turns in my question for
4 you. So --

5 MR. DAUNT: I believe --

6 MS. BRADSHAW: -- let me wait 'til I get the
7 answer and then I'll --

8 MR. DAUNT: -- if my recollection is correct, the
9 sponsors agreed to make that change -- make that change
10 conditional and so they didn't have to come back.

11 MS. BRADSHAW: Yeah, that's what I was looking,
12 conditional.

13 MR. DAUNT: I believe that's how it went, but --

14 MS. BRADSHAW: Yeah. I just want to --

15 MR. BRATER: That's -- that's -- that's correct.

16 MS. BRADSHAW: -- that's -- okay. So this one was
17 not. All right. So the question I have is if there was a
18 question of abrogation or alteration, was it not -- why was
19 it not brought up when we were approving this petition to
20 form?

21 MR. JONATHAN KOCH: I mean, the most honest answer
22 is I don't know. My client didn't exist. That's the best
23 answer I have for you.

24 MS. BRADSHAW: I'm just -- I'm asking maybe
25 because obviously it's, you know, we are now at the point

1 that we are looking at signatures as already, you know, and
2 that's -- this is why I'm asking the question to you, so --

3 MR. JONATHAN KOCH: I understand the practical
4 reality of that, but I think my response would be that
5 regardless of what has happened or whether it could have
6 been raised earlier, this Board still has a duty to follow
7 the law, to apply the law as it's written, and that's what
8 it says.

9 MS. BRADSHAW: I understand. So my next question
10 is to Director Brater if that's okay?

11 MR. DAUNT: Yeah, please.

12 MS. BRADSHAW: Unless anyone has any questions?

13 MR. DAUNT: Go ahead. Continue.

14 MS. BRADSHAW: My next question, Director
15 Brater -- and I'm sorry, Adam, but I'm going to ask this
16 one, too. Have we -- oh, we probably have in my time on
17 this Board, but it's been a little bit. Have we had this
18 issue come up before in front of us? And if we did, can you
19 refresh my memory on that one? And that might even include
20 the Attorney General representation in that, too.

21 MR. BRATER: Not in my tenure. I don't --

22 MS. BRADSHAW: I know not in yours.

23 MR. FRACASSI: Can I -- can I clarify? When you
24 say "this issue," you mean the alter and abrogation issue
25 specifically?

1 MS. BRADSHAW: Yes. After signatures have been
2 collected.

3 MR. FRACASSI: I can -- I know alter and
4 abrogation has come up.

5 MS. BRADSHAW: I remember that, --

6 MR. FRACASSI: Yeah. That's -- I mean --

7 MS. BRADSHAW: -- but I can't remember if it was
8 before or after signatures were collected.

9 MR. FRACASSI: I don't know off the top of my head
10 to be honest.

11 MR. BRATER: We'll try to research that quickly if
12 we can.

13 MR. FRACASSI: Yeah.

14 MR. GRILL: If I could? It has. There was a
15 case, it was Protect My Jobs -- or Protect Our Jobs versus
16 Board of State Canvassers. It was a Supreme Court case in
17 2012.

18 MS. BRADSHAW: Before I was on the Board.

19 MR. GRILL: It was before you were on the Board.

20 MS. BRADSHAW: It was before I was on the Board.

21 MR. DAUNT: I was -- I was going to say I believe
22 I saw somewhere in some of the materials that this -- this
23 had come up before which is my -- my issue, my struggle on,
24 you know, form versus substance, I think I -- I tend to
25 think this is -- this is a form issue. Then, okay, squaring

1 with previous form approval, are -- what is kind of
2 precedent? What has been done previously when things have
3 been noticed after that initial form approval is provided?
4 I sympathize with the argument on you've noticed something,
5 you should address it. I just want to make sure that
6 it's -- we're not just being made up on the fly.

7 MR. JONATHAN KOCH: So I understand that. I
8 think, you know, without having an encyclope- -- encyclopedic
9 knowledge of Michigan case law on all things, I do know that
10 if the Board hasn't voted to certify whether it's
11 deadlocked, three-one or if there hasn't been a vote on
12 decision on this revocation, I don't know that you would
13 have the mandamus remedy provided by MCL 168.479, so you
14 wouldn't have kind of the legal hook for us to start
15 fighting it out in court until that decision had been made.
16 And I know that at -- in at least some of the case law
17 involving alter and abrogate, especially the 2012 Project
18 Your Jobs case, I believe that decision, it -- it -- it had
19 been certified which means it was after signatures. I don't
20 know when it was raised, but it was at least decided and the
21 challenge was filed after that date.

22 MR. DAUNT: And was that -- was that brought based
23 on a deadlock or was that the Board certified but the
24 opponents or whomever ultimately decided, "oh, you know
25 what? We think we have a solid legal argument here, we're

1 going to bring it anyways"? How -- how does that play out?

2 MR. JONATHAN KOCH: So Protect Our Jobs involved I
3 think three or four petitions. So I believe the one that,
4 where they -- where they submit it had been al- -- it had
5 alternate --

6 MR. DAUNT: It was casinos, wasn't it?

7 MR. JONATHAN KOCH: I think so. It was casino
8 liquor licenses. Regard- -- it was a -- it was a provision
9 that had been altered and abrogated and I believe the Board
10 had voted to -- that it had declared it insufficient. There
11 had been a -- I don't know what the vote was, but I don't
12 believe it --

13 MR. DAUNT: Because of signatures or the alter and
14 abrogation?

15 MR. JONATHAN KOCH: I believe it was because of
16 alter and abrogate, but, I mean, that's --

17 MR. DAUNT: Okay.

18 MS. BRADSHAW: Mr. Chair, may I ask if we can -- I
19 know you're an attorney, but I also would like to ask our
20 Attorney General representation on the table of what that
21 proceeding looked like, too. If that's okay?

22 MR. GRILL: Sure. The Protect Our Jobs issue
23 specifically was a ballot question committee that brought an
24 action in the Court of Appeals seeking a writ of mandamus
25 directing the Board of State Canvassers and the Director of

1 Elections to place on the 2012 general election ballot its
2 proposal for amendments to the constitution. That provided
3 for, among other things, various collective bargaining
4 rights. The Board had approved the form of the petition and
5 the director had in that case found that there were valid --
6 set valid signatures to qualify the petition, but the Board
7 in that case deadlocked on whether the petition should be
8 placed on the ballot. Then after that, there was an action
9 for mandamus brought which ultimately concluded with the
10 court's determination. There was a lengthy opinion
11 ultimately concluding with roughly five paragraphs
12 determining what was or was not altering and abrogating
13 leading to I believe affirming the judgment of the Court of
14 Appeals, granting relief on the complaint of mandamus in
15 that case to place the proposed constitutional amendments on
16 the general election ballot.

17 MR. JONATHAN KOCH: One of them was not, though.
18 I think there was three petitions and two of them were put
19 on and one of them was not, and it was the one that was not
20 was the -- was the one that abrogated without republishing.

21 MS. GUREWITZ: I'm sorry. Can you --

22 MR. JONATHAN KOCH: Sorry.

23 MS. GUREWITZ: -- get closer to the microphone?

24 MR. JONATHAN KOCH: Sorry.

25 MR. GRILL: Yeah, but that's --

1 MR. JONATHAN KOCH: I know that, like -- sorry. I
2 don't mean to be confrontational, but I think that in the
3 holding of the case, the last paragraph, it affirms with
4 respect to one aspect of it which would not be -- which
5 would be keeping a petition off the ballot.

6 MR. GRILL: According what -- I'm reading from the
7 court's opinion here.

8 "Accordingly, in Protect Our Jobs we affirm the
9 judgment of the Court of Appeals granting relief on the
10 complaint of mandamus. In Michigan Alliance for
11 Prosperity and The People Should Decide, we grant
12 relief on the complaints for mandamus in part, and
13 direct the -- direct the Board of State Canvassers, the
14 Secretary of State, and the Director of Elections to
15 proceed as necessary to place the proposed
16 constitutional amendments on the November 2012 ballot.
17 We deny relief in all other respects. In Citizens for
18 More Michigan Jobs we dismiss the complaint for
19 mandamus filed in the Court of Appeals and deny relief
20 in all other respects."

21 But the conclusion of the court here, you know,
22 with the five paragraphs laying out the alter and abrogate
23 language is still -- that applies to all.

24 MR. DAUNT: So thank you. There's obviously a ton
25 of stuff that we read. I guess I'm -- I'm trying to

1 understand because it's my understanding that one of
2 those -- and I believe it was casinos, something to do with
3 casinos, was deadlocked because of an alter and abrogation
4 and was not allowed to proceed. But what you're saying
5 seems to contradict my understanding of that. So I'm -- I'm
6 looking for clarity on that.

7 MR. GRILL: I guess I'm not sure I -- how can I
8 clarify?

9 MR. DAUNT: Well, the -- it was liquor licenses, I
10 believe, and that some kind of power was given to the
11 casinos related to liquor license, but the constitution only
12 gives it to certain, --

13 MS. GUREWITZ: Liquor Control Commission?

14 MR. DAUNT: -- to the Liquor Control Commission.
15 And so because of that, that was an abrogation that was not
16 properly addressed which would mean if the court ruled that,
17 then the casino issue wasn't allowed to move forward.

18 UNIDENTIFIED SPEAKER: Correct.

19 MR. DAUNT: But it -- what you said is that they
20 were all allowed to move forward and I'm --

21 MR. JONATHAN KOCH: But it was the last part where
22 the complaint for --

23 MR. DAUNT: I'm not an attorney so I'm getting
24 lost in the legal language, so --

25 MR. JONATHAN KOCH: Sorry.

1 MR. GRILL: Well, in fairness I think that kind of
2 underscores what Director Brater was saying. Is that there
3 is a part of this that veers into legal determinations of
4 whether or not what effect this proposal would have if
5 adopted and how would it interact with other constitutional
6 provisions. I suppose the thing to keep in mind, I think
7 the other probably worth mentioning is the Court of Appeals
8 decisions in the Citizens for Protection of Marriage versus
9 Board of State Canvassers which was from 2004. There were
10 subsequent cases as well. But the significant part of the
11 holding held the Board's authority and duties with regard to
12 proposed constitutional amendments are limited to
13 determining whether the form of the petition complies with
14 the statutory requirements and whether there are sufficient
15 signatures to warrant certification of the proposal. In
16 that case, the court held that it was error for the Board to
17 consider either the merits of the proposal or the lawfulness
18 of the proposal. Also noting in that case the court said
19 that well establis- -- it is well established that a
20 substantive challenge to the subject matter of the petition
21 is not right for review until after the law is enacted.

22 MR. DAUNT: Thank you.

23 MR. HOUSKAMP: Can I ask a question? Listen, I'm
24 the newcomer here. Okay? You guys have all done this
25 before.

1 MS. BRADSHAW: I think I'm the only one. Sorry,
2 Richard.

3 MS. GUREWITZ: We're all rookies here.

4 MR. HOUSKAMP: We're all new -- we're all new --

5 MR. DAUNT: Relatively fresh Board.

6 MR. HOUSKAMP: If I'm just hearing all the
7 legalese put aside, what I'm hearing you say is the form of
8 this petition, form, whoever blessed it in March or whenever
9 or May or June, the form of the petition doesn't rise,
10 doesn't meet the standard that the Michigan law calls for;
11 is that correct?

12 MR. JONATHAN KOCH: Yes. That is -- that is our
13 position.

14 MR. HOUSKAMP: I mean, it doesn't get any simpler.

15 MR. JONATHAN KOCH: Correct.

16 MR. HOUSKAMP: And it doesn't meet that standard
17 because there were pieces that were omitted that a simple
18 review of it back whenever --

19 MR. JONATHAN KOCH: Yes.

20 UNIDENTIFIED SPEAKER: Uh-huh; yes.

21 MR. HOUSKAMP: -- okay, would have called out and
22 said, "hey, this alters or this changes or this voids or
23 abrogates Article 2, Section 2," --

24 MR. JONATHAN KOCH: Yes.

25 MR. HOUSKAMP: -- whatever the case might be. And

1 so those pieces were left out which means also that in spite
2 of the fact that there's thousands, hundreds of thousands of
3 signatures, in effect hundreds of thousands of signatures
4 signed something that wasn't a legal petition.

5 MR. JONATHAN KOCH: Yes. And, I mean, and --
6 and -- so -- so to break that out --

7 MR. HOUSKAMP: That was a yes or no question.

8 MR. JONATHAN KOCH: Yes. I'm a lawyer. Sorry. I
9 have to make everything complicated.

10 MR. HOUSKAMP: It's when you guys start going
11 beyond yes and no that I get confused here.

12 MR. JONATHAN KOCH: Yes, you're right.

13 MR. HOUSKAMP: That would be correct.

14 MR. JONATHAN KOCH: If there are any other
15 questions?

16 MS. BRADSHAW: Not for me.

17 MR. DAUNT: No. Mary Ellen?

18 MS. GUREWITZ: No.

19 MR. DAUNT: Okay.

20 MR. JONATHAN KOCH: Thank you.

21 MR. DAUNT: Thank you, sir. With that, bring up
22 Mr. Trebilcock on behalf of the sponsors and supporters of
23 this, and we'll give you the initial five with the
24 understanding that you'll probably need to go a little
25 longer in questions, so please do just state name, who

1 you're with and we'll go from there.

2 CHRIS TREBILCOCK

3 MR. CHRIS TREBILCOCK: Good -- I guess we're
4 afternoon, aren't we?

5 MS. BRADSHAW: We're afternoon.

6 MR. DAUNT: Yup.

7 MR. CHRIS TREBILCOCK: Yeah, jeez. Good
8 afternoon. Good to see you all again. Member Houskamp,
9 nice to meet you. Welcome to the party. And thank you for
10 your opening statement, Chair Daunt. I think they were dead
11 on, although you're not much of a warmup act for us
12 attorneys. Thank you.

13 Compared to recent petition challenges this Board
14 has reviewed and will yet review today, this challenge is as
15 narrow as it is deep. Mr. Koch doesn't challenge the fact
16 that PTV submitted over half a million valid signatures.
17 Doesn't assert that PTV employed fraudulent circulators. He
18 doesn't argue that a union bug contains too small a font
19 size or there is some other issue with the form. His sole
20 and singular argument is that PTV did not list five sections
21 of the constitution that would be completely unchanged if
22 this proposal was passed and there is no other error in the
23 petition sheets. That's it. No more, no less. And I think
24 Member Houskamp summed it up and said it is pretty simple.
25 You're saying that these five provisions are abrogated and

1 they should have been listed.

2 What he fails to mention and I'm -- and he's
3 hoping you all forget and I think we've touched on are two
4 cornerstone principles that this Board must follow. The
5 Bureau and the Board have already approved this petition as
6 to form. And while Mr. Koch wasn't here challenging it
7 because apparently he didn't have a client willing to pay
8 him at that point, Mr. Avers did and he full -- and he had
9 got his actual full rate, Chair Daunt, because he was here
10 on Secure MI Vote and they submitted challenges and yet they
11 did not bring up alter or abrogate at that time. And let's
12 be clear, there's two standards. There's alter or abrogate.
13 They're not even saying anything has been altered. Altered
14 is a more nuanced argument in that it could modify or it
15 shifted and it should be listed. They're saying it
16 abrogated which is a complete evisceration, to quote Mr.
17 Koch's old boss Justice Zara, not exactly a bastion of
18 progressive or liberal jurisprudence, says it has to be
19 completely eviscerated. I don't think anybody reading this
20 provision and gives it a fair -- this proposal and giving it
21 a fair reading would ever think that those provisions are
22 eviscerated and rendered completely inoperable. But those
23 changes weren't made back in February when this petition was
24 approved as to form by this Board by a 4-0 vote. Now is not
25 the time to go back and revisit what was already done. Over

1 half a million voters, Michigan voters, have supported this
2 proposal as approved by this Board and it's time for this to
3 be certified for the ballot.

4 Second, the Michigan Supreme Court has cautioned
5 that these ballot -- that ballot committees are not required
6 to get prior judicial determination as to whether a
7 provision is abrogated or not. That is not the requirement
8 that ballot committees are held to, but that is just exactly
9 what Defend Your Vote is arguing for. To weigh in to these
10 issues at the level of complication and detail requires a
11 constitutional lawyer and you've heard the various debate
12 and not everybody understanding what this court said or this
13 quote said. This -- those are judicial determinations as
14 stated by Director Brater. It is not your job to carry
15 Defend Your Vote's water. The duty of this Board as quoted
16 in the case by the Attorney General in 2002, is to make sure
17 the form of this petition substantially complies with the
18 requirements of Section 482 and has submitted sufficient,
19 valid signatures under the constitution supporting the
20 people's right to put these types of proposals on the
21 ballot. They have done that. You've heard from the
22 volunteers who have been before you. They have done that.
23 The Board's duty is to certify this petition.

24 Now, assuming you decide to delve into and address
25 any of the substance of whether things were actually

1 abrogated, applying standards of the Supreme Court which a
2 court would be doing, I think the issues are actually
3 relatively simple and straightforward which is lucky because
4 as you know I'm a simple Yooper with a public education, not
5 some big private school in the Flint area, you know.

6 So it's -- I was amazed to learn from reading the
7 challenge that we had erased election day from the
8 constitution had I known, or that your jobs are going to be
9 a lot easier because we've eliminated the power of the
10 people to bring any statutory or constitutional initiatives
11 forward -- going forward. I was amazed because those things
12 are not in there. If it sounds absurd, it's because it is
13 absurd. Those things aren't in the proposal. Give it a
14 read. Not before any of these arguments were made did any
15 single person think that we were getting rid of election
16 day? Come on. Or that we're eliminating ballot proposals
17 in this state going forward? Come on. Give me a break. It
18 sounds absurd and it is absurd.

19 Simply put, the challenge did not even argue much
20 less establish that the five provisions they cite would be
21 rendered wholly inoperative. That's a quote from Mr. Koch's
22 old boss, Justice Zara, in Protect My Jobs. "Wholly
23 inoperative." And, quote, "Change that would essentially
24 eviscerate an existing petition." He focused in apparently
25 because that's the best argument he has on the

1 constitutional -- the provision in the constitution, Article
2 2, Section 2, that grants the permissive authority to the
3 legislature to deny incompetent individuals and felons from
4 being qualified voters. All you have to do is read our
5 proposal. The only changes that are in there are for
6 qualified voters. We don't touch the right of who is a
7 qualified voter. The argument of DYV ignores the
8 introductory clause of that provision that was cited where
9 it says "qualified voters." You can't read that out of the
10 proposal. I'm sorry. Even your middle school English
11 teacher would agree with me on that, Chair Daunt.

12 MR. DAUNT: High school, but you've got a good
13 memory.

14 MR. CHRIS TREBILCOCK: High school, you know.
15 That -- that's just how simple -- how simple it is. You
16 know, I don't -- I don't think I need to go through every
17 single point. We've submitted it. I trust that you've read
18 it. If you have questions, I'm happy to answer them. But I
19 think you're all wise enough and experienced enough to see
20 through this misinformation that was put forward and make
21 the courageous vote because we all know it's time to make
22 courageous steps sometime and now is the time to take these
23 courageous steps, look at the form and follow your duties
24 without any measure of what the substance of these proposals
25 contain.

1 So we would respectfully request that you make a
2 motion to certify this proposal for the ballot and that you
3 affirm -- affirmatively vote in favor of that proposal or
4 that motion. Thank you.

5 MR. DAUNT: Thank you, Chris.

6 MR. CHRIS TREBILCOCK: Any questions?

7 MR. DAUNT: Questions?

8 MS. GUREWITZ: Yeah, I have a question. Director
9 Brater has said in the staff report that the challenge
10 raises legal questions. Do you think -- do you contend or
11 understand that this Board -- let me back up a minute.
12 Member Houskamp and Member Daunt and Member Gurewitz are all
13 new to this, relatively new to this Board and have not
14 addressed these complicated issues before. But I think we
15 do understand that we are not a court and that we cannot
16 make -- we cannot decide questions of law. Is alter and
17 abrogate, whether provisions in the Promote the Vote
18 initiative, whether they alter and abrogate existing
19 provisions, is that a question of law?

20 MR. CHRIS TREBILCOCK: Absolutely and the Supreme
21 Court has stated that. It's a question of law and requires
22 constitutional lawyers which, you know, it's a pretty high
23 standard and I think one that the statutes and the
24 constitution don't vest in this Board. And I don't view
25 alter and abrogate any different than the challenges that

1 are put up about single object or whether a proposal is a
2 complete rewrite to the constitution. The courts have been
3 very, very clear in those instances the time to challenge --
4 make those challenges is after the people have voted on it.
5 That is no different than right now. They should be
6 approved and any of those such challenges should be brought
7 up after the people vote. Let the people vote.

8 MR. HOUSKAMP: Can I ask a question again? I'm
9 coming at it from not being an attorney.

10 MR. CHRIS TREBILCOCK: Bless you.

11 MR. HOUSKAMP: I read your -- I read your
12 response -- yeah, well. I read your -- I read your response
13 and I read the challenge and I read them not only once, but
14 a couple times. I have to tell you it was well written, but
15 I did fall asleep the second time. If I'm understanding
16 this correctly, a big part of your argument is, is that we
17 aren't attorneys and therefore we shouldn't be making legal
18 decisions about -- or legal opinions about whether it's
19 abrogated or not and that that's really the province of the
20 court, probably the Supreme Court. If this -- if this
21 committee sends this -- sends this proposal out and doesn't
22 let it go to the ballot, what happens then? Does it then go
23 in front of the court and the court then makes this
24 decision? What happens if we -- what happens if we say,
25 yeah?

1 MR. CHRIS TREBILCOCK: So let me say a few things.
2 First, I'll have to use your tip and read my briefs to my
3 kids to get them to sleep. It takes more than a couple
4 readings, I think. Second, the -- if this Board does not
5 vote and perform its clear legal duties as required under
6 the constitution, then as the proponents to get this on the
7 ballot we would have to go to the Supreme Court and file a
8 writ of mandamus and a complaint for declaratory action and
9 require them -- require -- ask the Supreme Court to direct
10 you to do your clear, legal duty. So that's the short
11 answer. I think the longer answer is, is that I think the
12 courts have been clear in terms of what issues should be
13 brought up after a vote of the people and that goes to the
14 substance and that includes things like title and object,
15 alter and abrogate, is it a signif- -- it is a complete
16 rewrite of the constitution or not? And so those things
17 come up after a vote of the people, not here. I think the
18 Attorney General (sic) Mr. Grill provided this -- this Board
19 absolutely great legal advice as I -- as I would always
20 expect which is quoting the Supreme Court from 2002, the
21 Board's duties to certify the proposal after determining
22 whether the form of the petition substantially complies with
23 statutory requirements and whether the proposal has
24 sufficient signatures in support. In this case you can look
25 at the four corners and there's other cases that say the

1 Board's duties and authority is restricted to the four
2 corners of the document, reviewing signatures submitted,
3 things of that nature. If you look at the four corners of
4 the petition form, which you already did once and if you
5 choose to do it again, it substantially complies. It's
6 three pages of provisions that include provisions that would
7 be altered or abrogated. So to sit here today and somehow
8 suggest that this petition does not substantially comply
9 with the form as required under the Michigan Election Law?
10 I mean, the arguments put forward are kind of absurd. We're
11 getting rid of election day? Mr. Houskamp, if you read that
12 petition, did you -- do you agree or do you think it got rid
13 of election day?

14 MR. HOUSKAMP: The problem is I read the petition
15 and I also read your challenge or responses. Part of the
16 problem is, is that part of what the challenger is saying
17 here is if you read it, it really makes sense. And maybe
18 not the election day issue as much as some of the issues of
19 any ballot brought up or anything that the citizens do or
20 anything that the legislature does is -- is -- is -- is --
21 is impugned here.

22 MR. CHRIS TREBILCOCK: I guess --

23 MR. HOUSKAMP: I hear what you're saying about,
24 well, we push it on the ballot and then worry about it
25 later, but that -- that doesn't seem to be -- I mean, that's

1 not a solution in anything else we would do in life; right?

2 MR. CHRIS TREBILCOCK: I'm not -- I don't think
3 there's anything other in life. I think we're restricted to
4 what the confines of this Board --

5 MR. HOUSKAMP: So -- so if we -- if we believe
6 that there's a problem with the form of this petition, what
7 I hear you saying is ignore it.

8 MR. CHRIS TREBILCOCK: No, not at all. That's
9 absolutely wrong. What I'm saying is that this Board, one,
10 has already reviewed the form. You want to talk about due
11 process and ignoring things, there was a chance for
12 proponent, for people who challenged this ballot initiative
13 to appear for this -- appear before this body in February
14 and make arguments why the form of our petition was
15 insufficient. Mr. Doster was here, Mr. Avers was here, Mr.
16 Koch may have been here and some of them spoke out against
17 it and challenged the form. This Board listened to those
18 concerns and voted 4-0 to approve the form of the petition.
19 They didn't bring up any abrogate problems then as they
20 could have and they didn't. Separate and apart from that, I
21 am not saying ignore it. What I'm saying is that the
22 Board's duty is to look at the four corners of the document
23 and determine whether or not it substantially complies. So
24 if this Board can sit here today and look at the form as it
25 did in February and say the proposal lists provisions that

1 are altered or abrogated which it does, then it complies
2 with the form. What Mr. Koch is arguing for is that you sit
3 as a judge and jury to then make a judicial determination as
4 Director Brater said over whether something is abrogated.
5 And I'm saying that is outside the confines of this Board.
6 But let's say you're even right, Mr. Houskamp, that it is
7 your duty. Apply the standard. Go ahead. It's -- it's --
8 it's obvious. Look at it just like you said. You go, well,
9 maybe not. You're not getting rid of election day. Look at
10 the arguments that they have on all the ones. They're just
11 as silly as election day. To say that you inserted
12 fundamental right to vote into the constitution that somehow
13 eliminates now the power of the people to bring other
14 constitutional amendments?

15 MR. HOUSKAMP: Here -- here's the problem that I
16 have and I should have just brought that up first. When I
17 read through this and I read through the challenge and I
18 look at the articles and the sections of the constitution
19 that the challenge is saying should have been in the
20 proposal to make it square. If I take those and I put them
21 into your proposal and I read it that way, your proposal
22 makes perfect sense. But if I take those articles out, the
23 argument that the challenger is making has a little more
24 weight to it. So then I come back and I say, okay, so
25 really what's happening is are -- you're missing --

1 you're -- there were some pieces that were not in the
2 proposal and that's the question I'm asking. Is -- is --
3 is -- does that -- does that -- does that invalidate the
4 form of the proposal?

5 MR. CHRIS TREBILCOCK: I think it's the Supreme
6 Court made a decision that there were provisions that were
7 abrogated that were not. That's their, the role of the
8 Supreme Court, not this Board. I would say second that
9 there are not provisions that were abrogated. I think the
10 proposal was clear and the form was already approved that we
11 listed the provisions that were ab- -- that would be
12 abrogated, if at all, by the proposal. I guess I keep going
13 back to and, you know, respectfully you're glossing over and
14 saying all five -- you're telling me that all five of the
15 challenges they say should have been listed as abrogated?
16 That they think that our proposal, we should have said we've
17 abrogated election day? If our proposal is changed, we're
18 no longer going to have that election day in this
19 constitution, that's what they're arguing.

20 MR. HOUSKAMP: What I'm saying is --

21 MR. CHRIS TREBILCOCK: That's what they argued,
22 though.

23 MR. HOUSKAMP: -- what I'm saying is, is when I
24 add -- when I add the missing articles and sections to your
25 proposal, your proposal sounds absolutely perfect. When

1 those are not there, --

2 MR. CHRIS TREBILCOCK: To quote Mr. Daunt at the
3 last hearing in February, he called the petition form
4 "beautiful." It was in the quote.

5 MR. DAUNT: I don't remember that.

6 MR. CHRIS TREBILCOCK: Maybe it was the summary.
7 You said the summary was beautiful. Maybe that's what it
8 was.

9 MR. DAUNT: Probably the sum- -- yes. Because I
10 probably wrote some of it, so -- or suggested some of it.

11 MS. BRADSHAW: I think that's --

12 MR. CHRIS TREBILCOCK: You know what? Following
13 your high school English teacher I think you did. I think
14 it was brilliant. But I -- I think the requirement, again,
15 what -- Mr. Houskamp, I think what you're -- you're
16 suggesting is that there is a -- that there is a standard
17 which the Supreme Court has directed is not the standard,
18 that you have to get a judicial determination now prior to
19 this Board approving anything, whether or not something was
20 abrogated. And, again, you know, abrogation means total
21 evisceration. If you're sitting here today telling me that
22 you believe this proposal, which over 600,000 Michigan
23 voters supported, over 500,000 valid signatures as
24 determined by the Board, that they signed something that got
25 rid of election day? Really?

1 MR. DAUNT: Can I -- I think -- there are four
2 things I think I want to address and if -- if I may. And
3 then it's a little after 1:00. I had said 12:00 -- if we go
4 past 12:30 for lunch. So I think we're going to try to wrap
5 this, this portion up and then break for lunch so that we
6 can get -- I enjoy going back and forth with you. I do
7 think I would be remiss if I didn't point out that I think
8 you are slightly misrepresenting the issue of the election
9 day. As I read it, what they're arguing is that it would
10 get rid of the single day election day requirement and make
11 it multiple days.

12 MR. CHRIS TREBILCOCK: Can we not vote -- can we
13 not vote early now? I've cast my -- I cast my vote three
14 days before the election.

15 MR. DAUNT: I'm -- and I'm -- I'm not -- I haven't
16 paid much attention to that argument. I just think that the
17 way you're phrasing it comes across is that they're saying
18 it would just get rid of election day, we wouldn't have
19 elections anymore and that's -- that's kind of what you've
20 been saying. So I don't think that is correct.

21 MS. GUREWITZ: I think it is.

22 MR. DAUNT: On three -- the three other points.
23 You've mentioned "substantial compliance." Is it not
24 "strict compliance"? Those are different terms; correct?

25 MR. CHRIS TREBILCOCK: Correct; correct.

1 MR. DAUNT: Okay. So I wanted to clarify that.
2 The issue of timing on this, I in previous meetings have
3 stated displeasure with things being brought up somewhat
4 late. I believe it was related to the word "the." It was
5 annoying, it was frustrating, but also important points were
6 made that, well, you know what, this was discovered before
7 anything had been done, before decisions had been made, it's
8 our duty to address them. So I think that though
9 frustrating, we should strive to get it right. And then the
10 issue of the previous approval to form with the Board then
11 determining that there was an abrogation issue which they
12 thought was form or certain members thought was form, that
13 was part of that case in '12. And I have in slight text
14 here -- and I'm not saying Mr. Grill is misleading at all.
15 I just -- and this is why I was confused. It says, "The
16 Board of Canvassers" -- this is from the Court of Appeals
17 case.

18 MR. CHRIS TREBILCOCK: Can I -- can I just ask who
19 sent that to you?

20 MR. DAUNT: Sure. Mr. Avers did.

21 MR. CHRIS TREBILCOCK: Okay. Mr. Avers in the
22 audience sent that to you. Okay.

23 MR. DAUNT: "The Board of Canvassers had
24 previously approved the form of the petition and the
25 Director of Elections found that there were sufficient

1 valid signatures to qualify the proposal. However, the
2 Board of Canvassers subsequently deadlocked on whether
3 the petition should be placed on the ballot with two
4 members voting to place the proposal on the ballot and
5 two members voting not to place the proposal on the
6 ballot. Under the statute the proposal therefore did
7 not qualify for the ballot."

8 And so that -- that was my recollection of what I
9 had read about that specific form issue was raised after
10 initial form approval had been given. Because I don't --
11 like I said, I don't want to be just making things up on the
12 fly. There needs to be a conflict and some evidence
13 pointing to a conflict which I think that provides. So I --
14 I wanted to state I knew I wasn't crazy thinking that that
15 had been an issue as well as the issue of timing, that
16 though frustrating, I think it's up to us to address it when
17 it is brought to our attention.

18 MR. CHRIS TREBILCOCK: Right. And I do find it
19 ironic that Mr. Avers who spoke out in February and spoke to
20 the form issues in February, didn't bring or raise that
21 issue in February.

22 MR. DAUNT: And just like the issue with the word
23 "the," it is frustrating that things are not brought up.
24 But when they are noticed and we haven't made a decision, I
25 think it's important that they are addressed.

1 MR. CHRIS TREBILCOCK: But --

2 MR. DAUNT: We probably disagree on that, but --

3 MR. CHRIS TREBILCOCK: I think there's a
4 difference because ballots weren't about to go in the mail.

5 MR. DAUNT: Well, it -- Mary Ellen?

6 MS. GUREWITZ: I do note that Mr. Koch's challenge
7 did say that the election day provision was rendered wholly
8 inoperative, was totally abrogated. So, and what he has
9 also said is that four other provisions of the constitution
10 are wholly abrogated. That the ability to -- and I think
11 he's wrong when you say that. I think he's wrong, but I'm
12 basing that on my legal analysis of this issue of how I put
13 together the proposal and what is already in the
14 constitution. So it's hard because I think that's not our
15 role to put together the various pieces of the constitution
16 with regard to this alter and abrogate. So it's -- it's
17 complicated and we are -- sort of complicated I think
18 between form and content. And I -- we recognize that it's
19 our obligation to determine whether the form is correct, but
20 we are not supposed to be, we don't have the statutory
21 responsibility or right to engage too much with the content
22 of the proposal. And I think what -- in the guise of
23 supposedly challenging the failure to alter and abrogate, I
24 think what the challenger is doing here is asking us to
25 engage in a lot of interpretation of the provision which I

1 don't think we -- which I believe we are not supposed to be
2 doing. I don't know if I'm clear on that.

3 MR. DAUNT: Which, and that -- that was an
4 important piece for me of understanding precedent, how had
5 that been addressed in the past. And on the election day
6 issue, I -- what -- what I'm saying -- I'm rejecting that
7 argument, number one. I just -- I don't think it provides,
8 you know, they --

9 MR. CHRIS TREBILCOCK: So you agree with me?

10 MR. DAUNT: I'm not going to say that.

11 MR. CHRIS TREBILCOCK: Come on.

12 MR. DAUNT: But I think the way you're phrasing it
13 to me seemed like you were -- you were making it sound as
14 though they were saying "election day is over. We're no
15 longer going to have any more -- we're not going to vote
16 anymore." But I under --

17 MR. CHRIS TREBILCOCK: So -- so the constitution
18 says by -- by -- the text of the constitution says the
19 election day shall be -- what? -- the first Tuesday in
20 November.

21 MS. BRADSHAW: After the first Monday.

22 MR. DAUNT: After the first Monday.

23 MR. CHRIS TREBILCOCK: After the first Monday,
24 yeah. After the first Monday.

25 MS. BRADSHAW: First full week.

1 MR. CHRIS TREBILCOCK: Abrogate means totally
2 eliminate and make it inoperative which would mean that day
3 goes away. So what other way to read that argument than to
4 say we're eliminating election day?

5 MR. DAUNT: You were referencing it as though it
6 was elections all together. That's how I interpret it and
7 that's why I wanted to push back against it. That's --

8 MR. CHRIS TREBILCOCK: I thought I was saying --
9 I'm pretty sure I said we're getting rid of election day. I
10 think that's what I've said repeatedly. But --

11 MR. HOUSKAMP: But there were more. There were
12 five items in there.

13 MS. GUREWITZ: Right.

14 MR. CHRIS TREBILCOCK: Yeah. And I think each one
15 of them are just as absurd as that. I mean, they led with
16 that which you have to assume is their strongest one and
17 then they didn't even bring up the rest. They go with --
18 they go with that we're totally rendering inoperative the
19 legislature's authority under Article 2, Section 2, which
20 goes to qualifications. Which if you read Article 1 --
21 Article 2, Section 1, says here are the qualifications and
22 as prescribed -- accept as otherwise prescribed in the
23 constitution. That "otherwise prescribed by" means it's
24 subject to Article 2, Section 2. So that's a qualification.
25 We don't touch qualifications. We say qualified electors in

1 the proposal. You follow?

2 MR. HOUSKAMP: I do follow.

3 MR. CHRIS TREBILCOCK: Okay. So that's why even
4 if you -- even if -- even if you're in the camp of look, we
5 can -- we can sit in the shoes of the Supreme Court or we
6 can make judicial determinations on abrogate, apply the
7 standard. I welcome you to. Because if you apply the
8 standard, their five challenges, you give them a read and,
9 like I said, a simple Yooper like me can read it. There is
10 no way that these provisions are rendered wholly inoperative
11 or are completely eviscerated which means essentially
12 written out of our constitution by this proposal. This
13 should be a non-issue. Okay? They didn't come here
14 challenging whether or not we got enough signatures. They
15 didn't -- they're not challenging that it's unclear where
16 there was some other error, the union bug font wasn't the
17 right size, you know. Abrogate. That we completely
18 eliminated sections of our constitution, five of them, and
19 failed to list them. I think you can tell from this debate
20 whether or not something's eviscerated. I think that by
21 very definition shows that these things hadn't been
22 eviscerated. Smart, intelligent people can have honest
23 disagreements about whether that has been abrogated or not.
24 And if that's the case, something has not been clearly
25 eviscerated under the standard set by the Supreme Court.

1 So for those reasons, the form complies with the
2 statute. We have submitted tens of thousands and more
3 qualified voter signatures in support of this proposal. Let
4 the people vote on this proposal.

5 MR. BRATER: If I could just ask if the AG's
6 office would like to further clarify the process just
7 because there's been so much back and forth on it?

8 MR. GRILL: Under the Protect Our Jobs decision
9 which has been quoted extensively today already, the first
10 part of it would be what is the meaning of alter or
11 abrogate? And the court's conclusion on that reads as
12 follows:

13 "An existing provision is only 'altered or
14 abrogated if the proposed amendment would add to,
15 delete from, or change the existing wording of the
16 provision, or would render it wholly inoperative.'"

17 At the end of the opinion the court also provides
18 some examples of when something is or is not altered or
19 abrogated. Noting in one of the -- in the -- I'll just read
20 all five.

21 "When the existing language of a constitutional
22 provision would be altered or abrogated by the proposed
23 amendment, republication of the existing provision is
24 required. The language of the amendment" -- number
25 two. "The language of the amendment itself, rather

1 than how the proponents or opponents of the amendment
2 characterize its meaning, controls whether an existing
3 provision would be altered or abrogated by the proposed
4 amendment." Number three, "When the existing language
5 of a constitutional provision would not be altered, but
6 the proposed amendment would render the entire
7 provision or some discrete component of the provision
8 wholly inoperative, abrogation would occur and
9 republication of the existing language is required."
10 Number four, "When the existing language would not be
11 altered or abrogated, but the proposed amendment would
12 only have an effect on the existing language, and the
13 new and existing provisions can be harmoniously
14 construed, republication of the existing provision is
15 not required." And number five, "When the existing
16 language would not be altered or abrogated, but the
17 proposed amendment would only have an effect on the
18 existing language, thereby requiring that the new and
19 existing provisions be interpreted together,
20 republication of the existing provision is not
21 required."

22 MR. DAUNT: Thank you, sir. Other questions?

23 MR. CHRIS TREBILCOCK: Hopefully that's not where
24 any of you fell asleep while reading my challenge because I
25 restated that.

1 MR. HOUSKAMP: No. I stayed awake for that.

2 MR. CHRIS TREBILCOCK: Because I restated that.

3 MR. HOUSKAMP: It was late at night, though.

4 MR. CHRIS TREBILCOCK: Were you awake for that
5 part?

6 MR. HOUSKAMP: Out of deference to you it was very
7 late at night.

8 MR. CHRIS TREBILCOCK: All right. All right.

9 MR. HOUSKAMP: If you had put pictures in, that
10 would have --

11 MS. BRADSHAW: Illustrations. Mr. Chair, I do not
12 have any further questions.

13 MR. DAUNT: Okay.

14 MS. GUREWITZ: I don't have any further questions
15 of Mr. Trebilcock.

16 MR. JONATHAN KOCH: May I have a quick rebuttal?

17 MR. DAUNT: Two minutes, yes.

18 JONATHAN KOCH

19 MR. JONATHAN KOCH: The purpose of the alter and
20 abrogate and republication requirement is, quote, "to advise
21 the elector as to the purpose of the proposed amendment and
22 what provisions of the constitutional law it modifies or
23 supplants." That is not something that can be dealt with
24 after the election. That is something that has to be dealt
25 with now. It is part of the form of the petition required

1 by statute, MCL 168.482(3). The statute says "shall." That
2 is mandatory which means it is subject to strict compliance,
3 not substantial compliance.

4 The other examples of challenges that can be
5 raised afterwards, single object are not form challenges.
6 They are substantive challenges. Alter and abrogate is not
7 saying that it's a good idea or a bad idea to do what the
8 petition does. It's saying that they -- the form of the
9 petition does not include the list of constitutional
10 provisions that would be altered or abrogated. And just to
11 reiterate in Protect Our Jobs, there was a petition filed,
12 it was approved as to form, the Board subsequently
13 deadlocked. There was enough signatures, the Board
14 deadlocked and that was the complaint for mandamus that was
15 dismissed which means the courts rejected the challenge and
16 allowed -- or upheld the Board's non-action and did not
17 force it to be on the ballot.

18 MR. DAUNT: Okay. Thank you.

19 MR. CHRIS TREBILCOCK: Thirty seconds? I note
20 your patience, 30 seconds.

21 MR. DAUNT: I got a 12-year-old daughter. I got
22 lots of patience.

23 MS. GUREWITZ: Somebody always have to have the
24 last word.

25 CHRIS TREBILCOCK

1 MR. CHRIS TREBILCOCK: Mine's 13. Oh, my
2 goodness. I just -- I wanted to go back and just clarify or
3 make a fuller response to Mr. Houskamp on what could happen
4 in terms of -- and I mentioned that if the Board deadlocks,
5 that we could go to court or vote no. We could go to court
6 to put it on. Well, I just wanted to clarify that if the
7 Board votes to approve and certify it for the ballot, Mr.
8 Koch and his client could go to court and say that, no, you
9 were wrong. It shouldn't have been certified. So I just
10 wanted to clarify that point as well.

11 MR. HOUSKAMP: Since you're clarifying, can I ask
12 you to clarify one more piece of that? If this -- if this
13 ended up in front of the Supreme Court to address this
14 issue, whether it was form, whether it wasn't form, whether
15 it abrogated, whether it didn't, if this were heard by the
16 Supreme Court right now to answer this question, would they
17 in fact weigh in on whether these -- on whether these were
18 abrogations, whether these were -- how -- how far down the
19 road do they go?

20 MR. CHRIS TREBILCOCK: Well, if I could predict
21 what our Supreme Court was doing, I could triple my hourly
22 rate for sure.

23 MR. HOUSKAMP: Okay. So that's -- that's --
24 that's -- so I'm asking you a question that's not a --

25 MR. CHRIS TREBILCOCK: But generally -- generally

1 they would weigh in on whether or not there was a clear,
2 legal duty for -- for this Board to certify or not. They
3 could very easily punt and say "no, we're not going to get
4 into whether or not Mr. Koch is right or wrong on that until
5 the people vote." They could kick it then and then there
6 would be another lawsuit. So, again, I don't -- like I
7 said, if I could predict what our Supreme Court was going to
8 do I could charge a heck of a lot more.

9 MR. HOUSKAMP: Well, thanks for answering that,
10 though.

11 MR. CHRIS TREBILCOCK: Yeah. Thank you.

12 MR. DAUNT: Jonathan, you want -- you want 15
13 seconds or -- no. Dammit. I'm kidding.

14 MR. JONATHAN KOCH: I clerked for Justice Viviano,
15 not Justice Zara.

16 MR. DAUNT: All right. Thank you. I would -- are
17 there other questions or --

18 MS. BRADSHAW: No.

19 MR. DAUNT: Okay. I guess it would be time for a
20 motion of some sort.

21 MS. GUREWITZ: I would like some further
22 discussion and not questions to the advocates. But I
23 thought that the challenge was creative that Mr. Koch was
24 desperately trying to find something where he could argue
25 that the proposal abrogated provisions. And it seemed to

1 me, as it does to Mr. Trebilcock, pretty silly in fact to
2 suggest that the ability to -- of the citizens to initiate
3 constitutional amendments is abrogated by this proposal, or
4 that election day is totally removed, or that the
5 legislative powers of the County Boards of Supervisors are
6 eliminated, abrogated, totally inoperative. A, they don't
7 have any. But if they had any, this would not preclude them
8 from exercising whatever powers they have. And so what I'm
9 saying is that I think that the legal argument, if I were
10 called upon as a Michigan Supreme Court justice, if I were
11 called upon to say whether the alter and abrogation argument
12 is valid, I would say it's not but I don't think that's for
13 us. I think that what we're supposed to be doing is saying
14 are there sufficient chall- -- sufficient number of
15 signatures and on that question I think we know the answer.
16 Whether the alter and abrogation argument is -- it's a legal
17 argument, as Director Brater has said, and it's not one for
18 us to address, nor is it one that would preclude us from
19 saying that there are a sufficient number of signatures.

20 MR. DAUNT: So I -- thank you. I think I disagree
21 with some of that in the terms of -- well, where I agree is
22 the signatures are -- they have enough signatures. That's
23 not at issue. That's not the only thing we're asked to
24 address. The staff has done remarkable work looking through
25 these in a timely fashion. Ultimately looking back at past

1 practice of this Board, despite form approval being given,
2 when something is brought to the attention that is a form
3 issue, this Board has disagreed among themselves, the court
4 has taken it up, and the court has not said you can't deal
5 with this. That "this is not a form issue, you should not
6 deal with it." That to me is enough to take seriously this
7 issue of alter or abrogation because if it is addressing an
8 issue that the public is supposed to be voting on, that they
9 will be voting on, if it is not clear what they are voting
10 on, that is a detriment to the voters of the state. That to
11 me is an important issue and I will -- I really hope that
12 the Court can provide some clarity on the issue of form and
13 when it can be addressed as well as this for sure or for
14 sure not being a form issue. Because it's not pleasant to
15 sit up here and have arguments thrown at you and you have to
16 make a determination on which one are you going to believe.
17 Ultimately I think if there is a question of what is before
18 the voters, they should know that before it is placed before
19 them.

20 MS. BRADSHAW: Chairman Daunt?

21 MR. DAUNT: Yes.

22 MS. BRADSHAW: And I know that you have said that
23 the Court would -- should make that determination and you
24 and I were both on this Board when this petition came before
25 us and I know that you want to have answers and solutions

1 for this, but I do feel that there are a lot of questions
2 even for the four of us on this Board and there are a lot of
3 questions out here that I feel are more legal questions that
4 should be -- we should be given -- that would allow for a
5 judge to basically -- and may I also remind everyone that we
6 do not have promulgated rules for this Board. I'm sorry. I
7 had to put it in there again. We -- we went to get them,
8 and then we were deadlocked on getting promulgated rules for
9 this Board. Myself and my previous democrat voted to move
10 to go to those rules and the former chair and the previous
11 member decided no.

12 With that, though, I feel that it is a legal
13 question. I am not a lawyer. I know we have one on the
14 Board, but I am not a lawyer. So I will make the move -- I
15 move that the Board of State Canvassers accept the staff
16 recommendation to -- and find the petition submitted by
17 Promote the Vote 2022 sufficient.

18 MR. DAUNT: We have a motion. Do we have support?

19 MS. GUREWITZ: Support.

20 MR. DAUNT: Okay. We have a motion, we have
21 support. Are -- is there further discussion on this?

22 MR. HOUSKAMP: I just -- I have just one
23 closing -- closing piece on the discussion. I still have
24 this fundamental problem. We've got all these signatures,
25 but I have this fundamental problem that what we -- what we

1 got the signatures on, what we presented to them and what we
2 told them was the story was not the full story. There were
3 pieces that were missing. You know, again, I'm not an
4 attorney and so I really truly am not. I keep telling you
5 guys that. But I -- but I'm really good at doing partial
6 stories. I do them with my wife all the time. If I want to
7 do something and I'm clever, I -- I -- I am very selective
8 about what part of the story. The more important it is, the
9 more selective. And I have that -- I have that same feeling
10 that that's part of what's been put to the people signing
11 this petition and I'm not hearing anything that's telling me
12 that that wasn't the case. I -- but I --

13 MS. GUREWITZ: Yeah. One -- I don't think that
14 the petitioner, the sponsors, have any reason to hide
15 anything.

16 MR. HOUSKAMP: No, I don't think it was
17 deliberate.

18 MS. GUREWITZ: No. But -- no. But they have no
19 way, in fact, they need to look through and I know they did
20 with a number of very, very good constitutional lawyers, to
21 see how is -- and that's what any petition sponsor does
22 because it's important to say these are the other provisions
23 that are affect -- that are affected by this, that are
24 either altered or abrogated, that is totally eliminated. So
25 that is something that is done in advance. What we are

1 doing here -- what we're asked to do today, I think, is to
2 determine whether it's sufficient. If in fact we did
3 determine that there are sufficient numbers -- that the
4 petition is sufficient based upon the number of signatures
5 and if we decided as well that there was a legal issue which
6 we're not going to address, as Mr. Trebilcock said, if there
7 are people who believe or ballot question -- ballot opposers
8 who want to take this to the Court, they could do it
9 tomorrow. And before the people were called upon to vote,
10 the Supreme Court would make a decision about that. So what
11 is presented to the electorate before it is presented, that
12 alter or abrogate issue could be decided if it were a
13 serious issue. I don't think it is, but it would be
14 decided. You would not be presenting to the electorate a
15 proposal which had implications or effects of which they
16 were unaware.

17 MR. HOUSKAMP: Okay.

18 MR. DAUNT: Okay. Discussion? Okay. I guess
19 that would mean we have a motion, we have support, it would
20 be time for a vote. And all those in favor of the motion as
21 stated say "aye."

22 MS. BRADSHAW: Aye.

23 MS. GUREWITZ: Aye.

24 MR. DAUNT: All those opposed? Aye.

25 MR. HOUSKAMP: You say "aye" for opposed?

1 MR. DAUNT: Or nay.

2 MR. HOUSKAMP: We do "nay" for opposed?

3 MR. DAUNT: Nay. Nay for opposed.

4 MR. HOUSKAMP: I would vote nay.

5 MR. DAUNT: Nay. We deadlock at 2-2.

6 (Whereupon motion denied at 1:34 p.m.)

7 MR. DAUNT: I do want to state I do not believe
8 that it was deliberate, but I believe that the importance of
9 people knowing what is before them is worthy of decision
10 before it gets to them. So I -- if -- yeah; yeah. Would,
11 again, ask folks not to -- not to demonstrate, to applaud.
12 You've done a good job of that thus far mostly. I do have a
13 question before we recess for lunch. Because I think I
14 speak for myself and Board Member Housman (sic), abide by
15 whatever it is the Court's decide. That's not at issue.
16 Should we proceed with the assignment of number and
17 consideration of the 100-word summary so that that is taken
18 care of when the Court completes its action or should we
19 hold on that?

20 MR. BRATER: I would recommend that we do that
21 because the Court, if the Court does overturn this Board,
22 they may give the Board very little time to implement that.
23 And so as much as the Board can get off its plate before
24 that happens, I think the Board should do.

25 MR. DAUNT: Okay. Thank you, sir. Then in that

1 case I would like us to take up numbers -- number five at --
2 number five agenda item, assignment of the number
3 designation for the constitutional amendment sponsored by
4 Promote the Vote 2022, and then we can break for lunch and
5 address the rest of the items.

6 MS. BRADSHAW: Chairman Daunt, if it's okay if I
7 make the motion?

8 MR. DAUNT: Yup.

9 MS. BRADSHAW: I don't think we need to have a
10 discussion about this one.

11 MR. DAUNT: Yeah, I think that --

12 MS. BRADSHAW: We've done this one before. And
13 just so everyone understands, we do have to make a motion to
14 designate what this would be on the ballot. So I move that
15 the Board of State Canvassers designate that the
16 constitutional amendment submitted by Promote the Vote 2022
17 as proposal 2022 -- 22-2, sorry, on November 8th, 2022
18 general election ballot.

19 MR. HOUSKAMP: I'll second it.

20 MR. DAUNT: We have a motion and support. Any
21 discussion? All those in favor of the motion signify by
22 saying "aye."

23 ALL: Aye.

24 MR. DAUNT: Any opposed? Motion carries 4-0.

25 (Whereupon motion passed at 1:36 p.m.)

1 MR. DAUNT: What is the Board's pleasure on taking
2 the 100-word issue now or doing lunch?

3 MS. BRADSHAW: Lunch.

4 MR. DAUNT: Okay. We are at recess until 2:00
5 o'clock.

6 (Off the record)

7 MR. DAUNT: I'm going to go ahead and call this
8 meeting back to order at 2:28 p.m. Thank you everybody for
9 your continued patience. I'm going to move forward with
10 agenda item number six which is the consideration of the
11 100-word summary of purpose for the constitutional amendment
12 sponsored by Promote the Vote 2022. And I think it would be
13 important, there may be some question as to why we're moving
14 forward with these couple of steps given the deadlock on the
15 certification and Director Brater can speak to that very
16 ably so we'll turn it over to him and then discuss the issue
17 of the 100 words.

18 MR. BRATER: Thank you, Chair Daunt. So, yeah,
19 the staff's recommendation and the Board's plan at this
20 point is to go ahead and proceed with the ballot numbering
21 and ballot wording for this and the next constitutional
22 amendment regardless of where the Board lands on
23 certification there for a couple of reasons. One, there's
24 no doubt a lawsuit is being drafted currently already if not
25 very soon regarding what the Board just did. At that point

1 the Supreme Court likely will either say the Board's
2 decision not to certify by a 2-2 vote was correct in which
3 case the Board wouldn't have to do anything, or they would
4 say the Board's decision was incorrect and the Board has to
5 put it on the ballot. That decision could come close to,
6 hopefully before, but close to the date of September 9th
7 which is the deadline by which ballot contents have to be
8 added to the ballot and that may leave the Board very little
9 time to reconvene and effectuate any order that the Court
10 makes. So by getting these steps out of the way now, there
11 will be less for the Board to do if it, in fact, has to do
12 anything on September 9th.

13 The other thing that is at play here is that the
14 counties need to have their ballots ready to go. So as soon
15 as the ballots contents get finalized on September 9th, that
16 starts a too short, but constitutionally and statutorily
17 mandated period of 15 days between when the contents are
18 finalized and when ballots need to be proofed, reviewed by
19 candidates, printed, distributed to jurisdictions and tested
20 so they can be ready for our military and overseas voters by
21 the 45th day before the election.

22 And so in advance of that, the counties are
23 already starting to lay out their ballot proofs to see what
24 the ballot will look like. And so giving them as much
25 information as possible at this point in terms of how these

1 constitutional amendments will appear if they do appear,
2 will put them in a better position regardless of what the
3 Court does between now and September 9th. So with that --
4 with that in mind, we'll get all these steps out of the way
5 now and then what actually appears on the ballot will be up
6 to the Court in the case of the Promote the Vote one and
7 then up to the Board and the Court in the case of the
8 Reproductive Freedom for All one.

9 MR. DAUNT: Thank you.

10 MR. BRATER: Should I go ahead with the --

11 MR. DAUNT: Yeah. Go ahead and just roll right
12 into the next part.

13 MR. BRATER: Okay. Okay. So with that said, this
14 is the -- this concerns the 100-word statement of purpose
15 for the proposed constitutional amendment sponsored by
16 Promote the Vote 2022. The election law in the constitution
17 provides that the Director of Elections drafts and the Board
18 of State Canvassers approves a 100-word summary that will go
19 on the ballot itself to accompany constitutional amendment
20 provisions that are put before the voters. We also have
21 to -- I also have to present to you a caption that will
22 summarize even more succinctly what this proposal is about
23 and what the voters will also see if this appears on their
24 ballot.

25 I will just note that there is no obligation for

1 the Board -- for myself or for the Board to use the exact
2 same language as the Board used for the face of the
3 petition, but what I presented to you is very, very similar
4 to that and I'll explain what's different and why. And we
5 did receive many public comments about what should go on
6 this summary.

7 So I'll start by reading the caption which the
8 caption I'm presenting which is new. This is not something
9 that the Board has previously considered. Would be,

10 "A proposal to authorize additional absentee
11 voting provisions, early in-person voting, and
12 donations to fund elections: and add current legal
13 requirements for voter identification and post-election
14 audits and canvasses to the Michigan Constitution."

15 I'll just note that in putting this together I did
16 look at the caption for Promote the Vote 1, which was the
17 one that was on in 2020 -- 2018, 2018-3. That used a
18 similar structure to this where it was also a very lengthy
19 and complex set of changes to the constitution that would
20 affect a lot of provisions of the Election Law. And to try
21 to save -- to try to keep this as succinct as possible, I
22 kept the description very high level. And those sections
23 that are basically codifying current law are noted as
24 putting things that are already in statute basically into
25 the constitution and that's what -- what my predecessor,

1 Director Williams, did for the other proposal in 2018 and
2 what the Board approved at that time.

3 And then moving on to the 100-word summary, it
4 reads as follows:

5 "This proposed constitutional amendment would:
6 Recognize fundamental right to vote without harassing
7 conduct; Require military or overseas ballots be
8 counted if postmarked by election day; Provide voter
9 right to verify identity with photo ID or signed
10 statement; Provide voter right to single application to
11 vote absentee in all elections; Require state-funded
12 absentee-ballot drop boxes, and postage for absentee
13 applications and ballots; Provide that only election
14 officials may conduct post-election audits; Require 9
15 days of early in-person voting; Allow donations to fund
16 elections, which must be disclosed; Require canvass
17 boards certify election results based only on the
18 official records of votes cast. Should this proposal
19 be adopted? Yes. No."

20 It's exactly 100 words and the difference between
21 this and the one that was on the petition is that I have
22 condensed "require state-funded absentee-ballot drop boxes,
23 and postage for absentee ballot -- absentee applications and
24 ballots" into one bullet point. We saved a couple of words
25 there. Whereas in the -- on the petition summary they're

1 broken out as separate clauses. That was necessary because
2 the first five words "this proposed constitutional amendment
3 would" were longer than the petition summary which said
4 "constitutional amendment to." So I had to save two words
5 somewhere, and that seemed to be the most efficient way to
6 do it keeping with what I think is a fair and impartial
7 summary that's also very similar to what the Board already
8 approved.

9 MR. DAUNT: Okay. Thank you very much. I would
10 assume there are -- there are discussion and questions on
11 this? I do have -- one question that comes to mind for
12 me -- and I apologize if you addressed this. I was trying
13 to put my stuff together while you were speaking earlier,
14 Director Brater. If part of the reason for the -- for the
15 deadlock was the issue of potential abrogation of a section,
16 that could have bearing on what the proposal does, would
17 there be an opportunity to address that at the meeting?
18 Let's say the Court decides yes, it does, but it's not a --
19 you know, for whatever reason it does abrogate that but it
20 isn't enough to keep it off the ballot, come back, do we
21 have a -- are we set in stone on what we're doing here if
22 there was a need to address because the court's decision
23 altered some of the potential impact of the amendment?

24 MR. BRATER: I think certainly if the Court
25 instructed the Board with regard to anything regarding the

1 summary, that could be addressed on the 9th. I will say
2 that -- or whenever we come back, probably the 9th if that
3 ends up being when we would be reconvening. Sorry. My
4 mic's not on. I'll say that again. If the Court -- if the
5 Court orders the Board to change anything with regard to the
6 summary, I think that would be something the Board could
7 certainly do. I will say that I think the issue of other
8 sections that need -- you know, need to be noted as altered
9 or abrogated is probably a little different from how to best
10 summarize what this does in 100 words because I think to the
11 extent we're talking about what this proposal will put in
12 the constitution and what would be affected, I think those
13 discussions in my opinion have already kind of been
14 reflected in what I drafted and what the Board discussed
15 last time and then what the Board will discuss today. But
16 certainly I think that if the Court instructs the Board,
17 then the Board can of course reconvene and fulfill what the
18 Court instructs it to do.

19 MR. DAUNT: Thank you. I do have for this issue,
20 for number six, I've got a couple of folks who would like to
21 speak. Make sure I get them correct here. Looks like
22 the -- it would be Chris Trebilcock for number six on the
23 100 words. Do not have anything from challengers indicating
24 desire to speak, so take it away.

25 CHRIS TREBILCOCK

1 MR. CHRIS TREBILCOCK: Thank you. Good afternoon.
2 Good to see everyone again. You know, Chair Daunt, as we
3 talked earlier you're fond of following the lessons of your
4 high school English teacher and for me it was my varsity
5 basketball coach --

6 MR. DAUNT: Mic.

7 MR. CHRIS TREBILCOCK: Steve, you got a hand here?

8 MR. DAUNT: There you go.

9 MS. BRADSHAW: There you go. It's red.

10 MR. CHRIS TREBILCOCK: All right. There we go.

11 You know, for me it was my varsity basketball coach who
12 followed the KISS principle and told me to follow that all
13 the time: Keep It Simple Stupid. So let me do that.

14 We do not object and accept the summary presented
15 by the director. You know, the Board spent a lot of time
16 refining it back in February. Chair Daunt, I think Member
17 Gurewitz both added language to it and modify it, and we
18 don't think there's an intent or a need to reinvent the
19 wheel now. I would note that, you know, the proposal was
20 clear enough back in February that we were able to agree on
21 a summary of what it did and did not do and so I'm glad to
22 see that there's agreement that we can -- we can still do
23 that.

24 We do have a few comments that I just want to add
25 on the caption piece of it that I think are worthwhile and

1 can improve the current caption that was presented. Just a
2 quick side bar is -- and we stated this in our presentation,
3 is we do think that a caption -- and the plain meaning of a
4 caption is something that should be short and simple and not
5 just a further distilled version of what the caption is.
6 But practically speaking and, you know, we understand that
7 the director, as is his right, decided to do a longer -- a
8 little bit longer than a sentence and that certainly I think
9 been the tradition of a lot of ballot proposals. But we
10 think going forward we'd encourage the Bureau and the Board
11 to take a look at doing shorter captions. I think the
12 current constitution uses very short, concise captions for
13 the provisions and all the articles and everything and so
14 we'd encourage the Board to take a look at that. We
15 proposed one if the Board is so inclined. We proposed one
16 that we think is acceptable and meets the standards of being
17 in plain English and not providing, not being biased one way
18 or the other against the proposal, but accurately
19 summarizing it in plain ordinary English. So we would -- if
20 the Board decides to go that way, we certainly would
21 encourage them to adopt that.

22 Now that said, if we're going with and working
23 with the director's version, we do have a few points and if
24 I may, I would like to present the Board with an alternative
25 caption to the one presented and I've got it in writing so

1 you can actually look at it. I think that might be helpful.

2 MR. DAUNT: Come on up.

3 MR. CHRIS TREBILCOCK: All right. The caption
4 before you, it includes what I think were just two omissions
5 that somehow were not included in the -- in the director's
6 version. And the first is that this provision starts with
7 "approval to amend the state constitution." The current
8 version of the director's does not start that way which is
9 different than the proposal you approved last week and is
10 also different than the language presented for the next
11 proposal you're going to consider.

12 And so keeping that consistent on the ballot when
13 voters are reading, assuming, you know, all these -- or if
14 these three all get on the ballot like I think should
15 happen, that consistency with how these constitutional
16 amendments read I think is important and would be helpful
17 for voters. And so that I think maybe was just an oversight
18 or an omission. But to keep it consistent, have them start
19 the same way.

20 And then second, as you heard from a lot of folks
21 this morning and what we debated earlier, this is talking
22 about the fundamental right to vote. And in that caption
23 currently, the fundamental right to vote is not mentioned
24 and it should be mentioned first in the list which is first
25 in the summary, it's the corn- -- one of the cornerstones of

1 the proposal and I think it was just perhaps, you know,
2 trying to keep things short an omission that we think needs
3 to be included.

4 A couple other quick points about this version.
5 It contains 47 words which is just 14 more than the 33 in
6 the director's proposed one. So those are two -- two
7 omissions, I think, that were just more oversights than
8 anything.

9 What I do think -- there's two other things that I
10 think would also help improve the clarity and provide much
11 needed clarification. Once again, the summary includes a
12 reference to military ballots and we think that that should
13 be included in the summary and the caption as well. This is
14 a new right that is a cornerstone of this proposal for the
15 men and women who so bravely serve our country. And the
16 failure to include that in the caption I think is just a
17 misstatement and it needs to be included. It's an important
18 part and should be in the caption. And finally, we believe
19 inserting one word, "disclose" before "donations," that's
20 what the summary states and requires and it makes sure
21 voters are informed that this isn't dark money or anything
22 else nefarious such as that.

23 So those are the only differences, really, between
24 what the director proposed and what we inserted is the
25 word -- going in reverse -- the word "disclosed," including

1 the reference to military ballots, then including
2 "fundamental right to vote" and just really bringing where
3 the director concluded with amendment -- "a proposal to
4 amend the constitution," moving that up front. So with
5 that, I'm happy to take any questions, but I think it's
6 pretty self-explanatory. Yes, sir.

7 MR. HOUSKAMP: We do well with questions.
8 Question for you on your words "and disclosure of donations
9 to fund elections." Isn't that a little bit -- it's not
10 really what your proposal says. Your proposal is adding the
11 ability to have third parties donate to elections.
12 That's -- Mr. Brater's got it in as add --

13 MR. CHRIS TREBILCOCK: It says require, though.
14 If you looked at the beginning of that sentence, the word
15 "require" modifies require "disclosure of donations to fund
16 elections."

17 MR. HOUSKAMP: Require. Okay. Again, you
18 know, --

19 MR. CHRIS TREBILCOCK: So the proposal requires
20 the disclosure of donations to fund elections.

21 MR. HOUSKAMP: Right.

22 MR. CHRIS TREBILCOCK: Currently you can fund
23 elections with donations. This is making sure that in our
24 constitution that any such donations are required to be
25 disclosed. And so it's important that in the caption,

1 because it's in the substance of the proposal, that the
2 caption reflects that the donations are the key, are
3 disclosed.

4 MR. HOUSKAMP: Okay. All right.

5 MR. DAUNT: In my mind I'm going to start with a
6 slight agreement.

7 MR. CHRIS TREBILCOCK: There we go. See, now
8 we're getting somewhere.

9 MR. DAUNT: And then proceed to disappoint. I do
10 agree on the consistency issue of "a proposal to amend the
11 state constitution." I think we can -- I think that would
12 make sense to add that in unless there -- unless, Director
13 Brater, there was some reason it was left out. And then the
14 rest, I think these are all things that are addressed in the
15 following text and I -- I don't see much reason to kind of
16 re-litigate what we -- the majority of us, aside from Mr.
17 Houskamp who was not on the Board at the time, have agreed
18 to as pretty fair language. Go ahead.

19 MR. BRATER: If I could just weigh in on a couple
20 of these? So this format in terms of the way proposed
21 constitution amendment is listed, that was done differently
22 intentionally. And this is the same thing that happened in
23 2018. So proposal 2018-2 which is about the redistricting
24 commission, that -- the caption on that read "a proposed
25 constitutional amendment to establish commission of

1 citizens" to do all the stuff they did. And then proposal
2 2018-3 as was drafted said,

3 "a proposal to authorize automatic voter
4 registra- -- automatic election day voter registration,
5 no reason absentee voting and straight ticket voting
6 and add current legal requirements for military and
7 overseas voting and post-election audits to the
8 Michigan constitution."

9 So I believe that -- I wasn't around, but I
10 believe the reason it was structured that way was because of
11 the element of it that was -- that was noting that some of
12 these things are in law but being added to the constitution
13 and that was the most word economical and for the purposes
14 of the ballot, space -- inches on the ballot economical was
15 to put that at the end rather the beginning. So it was
16 intentionally structured differently. I do acknowledge that
17 it creates a lack of uniformity in terms of how voters are
18 seeing that this is a constitutional amendment in terms of
19 at the beginning or the end of the caption. But I think
20 that it's the best approach to save space and that's why I
21 did it that way.

22 In terms of the note about the military ballots,
23 in the proposed caption that is -- that is summarized as
24 part of add absentee -- provisions for absentee voting. The
25 change in question are to how ballots that are for military

1 and overseas civilians are treated. And that -- a lot of
2 that stems from the federal law called the Uniform Overseas
3 Civilians Absentee Voting Act. So that -- that federal law,
4 UOCAVA, is about how military and overseas civilians can
5 vote absentee. I do think all things being equal it is
6 helpful to clarify, and the summary does clarify, the
7 100-word summary, that there are different provisions if you
8 are military or overseas versus if you're a domestic,
9 non-military absentee voter. But for purposes of the
10 caption which does need to be more concise, I think that the
11 most efficient way to do it was just to put them under the
12 umbrella of absentee voting provisions. So those are, you
13 know, just in response to those questions raised. That's
14 why it's structured the way it is.

15 MR. DAUNT: Thank you, sir. Were you --

16 MR. CHRIS TREBILCOCK: I'm good.

17 MR. DAUNT: Okay. Good. Thank you.

18 MR. CHRIS TREBILCOCK: If you want, I --

19 MR. DAUNT: No; no; no. Steve, get his mic. Any
20 other --

21 MS. GUREWITZ: Yeah. I agree with you, Member
22 Daunt, that it should be parallel construction. So it
23 should say "a proposal to amend the constitution" rather
24 than just "a proposal to authorize." But I -- I have real
25 trouble with the length of the summary because what we have

1 done is summarize the summary and that doesn't make a lot of
2 sense to me. So I think that a caption should be a couple
3 of words. I did -- Mr. Trebilcock mentioned the
4 constitution and I looked at the way it labels provisions
5 and it's very efficient, a couple of words at most. So I
6 would -- I decided what I would do if I were Director
7 Brater, I would call it, "A proposal to amend Article 2 of
8 the constitution to add provisions regarding elections."
9 And then, you know, a person sees that and then they say,
10 "oh, what are they adding?" And they go down and they read
11 the summary which we worked so hard on. So I don't see any
12 reason to work hard on a summary of the summary.

13 MR. DAUNT: Amen.

14 MS. BRADSHAW: Sorry. At times we have kind of
15 used that caption to come to a consensus on this Board as to
16 what was left off on the summary. But I think in this case
17 we worked very hard to get the summary to where it is so I
18 agree with Mary Ellen and I agree with you, Chairman Daunt,
19 that a little bit shorter might be a better idea on this
20 one. And honestly, like, in my role, in my time here,
21 that -- that caption has been used to kind of defuse issues
22 of the summary and putting that in the caption. I think the
23 last time -- I believe it was the -- the mineral rights. It
24 was actually a joint house resolution. I think they were --
25 I'm trying to remember that meeting. I think there were

1 certain things that we didn't get in the summary so we put
2 it into the caption to kind of alleviate a deadlock here and
3 that was coming from the legislature, so -- I agree that
4 shorter is sometimes better.

5 MR. DAUNT: And -- and you kind -- that's what you
6 kind of alluded to at the very beginning; correct?

7 MR. CHRIS TREBILCOCK: Yeah.

8 MR. DAUNT: Okay.

9 MR. CHRIS TREBILCOCK: That we -- you know, it
10 goes with my KISS principle; right, you know?

11 MR. DAUNT: Yup.

12 MR. CHRIS TREBILCOCK: And it gives less fodder
13 for guys like me or men and women like me to come and argue
14 with you over certain words. So I do think simple is
15 better. I don't have any real grounds to disagree with what
16 Member Gurewitz proposed as a short caption if that's the
17 Board's desire. We presented an alternative in our -- in
18 our submission. So I think either one would be fine if
19 that's the direction the Board wants to go. Otherwise, you
20 know, I've stated sort of what minor revisions we do to the
21 director's piece.

22 MR. BRATER: Well, I would -- I would be delighted
23 to use a shorter caption. Our county clerks and local
24 clerks definitely would prefer that, I'm sure, because it
25 gives them more space on the ballot when they're laying

1 things out. So the length and descriptive elements of it
2 were based on the most recent round from 2018, but certainly
3 it has been done other ways in the not too distance past.
4 So shorter is great as far as I'm concerned.

5 MR. DAUNT: Let it be noted that there is wide
6 agreement on this issue.

7 MR. BRATER: Yeah.

8 MR. DAUNT: So in that instance, Member Houskamp,
9 any --

10 MR. HOUSKAMP: No.

11 MR. DAUNT: So appropriate steps of adding that --
12 replacing what you had with what Member Gurewitz has and
13 then approval?

14 MR. BRATER: Yeah.

15 MS. BRADSHAW: Should we --

16 MR. BRATER: Could we hear that again? I'm sorry.
17 What the -- oh, you've got it? Proposal to amend -- so
18 this -- so, again, the suggestion was, "The proposal to
19 amend Article 2 of the constitution to add provisions
20 regarding elections." That strikes me as simple and
21 accurate. I think -- I just want to verify that Article 2,
22 is that the only one being amended? I know there's a
23 separate discussion of alteration and abrogation. But I
24 just want to verify that this doesn't amend anything else,
25 any other article.

1 MR. CHRIS TREBILCOCK: It should be the only
2 article. Yeah, Article 2, Sections 1 and 7.

3 MR. BRATER: Yeah. I mean, so that seems very
4 workable. We can just -- all we need to do is print it out
5 and bring it back before the Board; right?

6 MR. FRACASSI: Uh-huh (affirmative).

7 MR. BRATER: Yeah.

8 MS. BRADSHAW: Mr. Chair, can we take a short
9 recess to allow the Bureau to do their work?

10 MR. DAUNT: Yes. We will recess until 2:55.
11 Amended, we'll give them to 3:00 o'clock.

12 (Off the record)

13 MR. DAUNT: I'll call this meeting back to order
14 at 3:07 p.m. And Director Brater, --

15 MR. BRATER: Yes.

16 MR. DAUNT: -- why don't you walk us through what
17 you and Mr. Fracassi did and we will take it from there.

18 MR. BRATER: Yeah; sure. So apologies if this is,
19 like, picking out shades of paints at the hardware store,
20 but I do have a couple of options for you. So we were
21 looking at examples from the 2012 ballot to look for a
22 reference for when we just do the shorter version and we
23 noticed that with those ones, it typically just said "a
24 proposal to amend the state constitution." So just for the
25 sake of options, the one that was suggested previously would

1 be -- which we have before you is, "A proposal to amend
2 Article 2 of the constitution to add provisions regarding
3 elections." A second option would be, "A proposal to amend
4 Article 2 of the state constitution to add provisions
5 regarding elections." So the same thing, but "state
6 constitution." And a third option would be, "A proposal to
7 amend the state constitution to add provisions regarding
8 elections." I would be comfortable with any of these. I
9 think the one that just references "the state constitution"
10 is probably the simplest and more consistent with what was
11 done ten years ago. But I would be happy to present any of
12 these if the Board has a preference.

13 MR. DAUNT: Thank you, sir. You want to talk. Go
14 ahead, sir.

15 MR. CHRIS TREBILCOCK: No. I was waiting to
16 respond to questions.

17 MR. DAUNT: Does anybody have questions or want to
18 discuss? I personally am very comfortable with the shortest
19 and the simplest, "A proposal to amend the state
20 constitution to add provisions regarding elections." I
21 think that gets to what we've all talked about.

22 MS. BRADSHAW: I am also in favor of the shortest
23 one.

24 MS. GUREWITZ: That's fine with me.

25 MR. HOUSKAMP: Should we make it a motion?

1 MR. BRATER: Yeah. So I'll just -- just to
2 clarify -- oh, I'm sorry. I'll just read it into the record
3 just to clarify what the Board is, is approving. So I
4 think -- do I just need to read the new caption? I don't
5 have to read the whole thing in, do I?

6 MR. FRACASSI: I think that's right.

7 MR. BRATER: Okay. So --

8 MR. DAUNT: Mr. --

9 MR. BRATER: -- what I'm proposing -- oh.

10 MR. DAUNT: Well, I'm going to --

11 MR. BRATER: Oh, go ahead. Sorry.

12 MR. DAUNT: -- to the better judgment.

13 MR. CHRIS TREBILCOCK: I just want -- you're
14 talking "A proposal to amend the state constitution to add
15 provisions regarding elections" is the most simple?

16 MR. DAUNT: Yes, sir; yup.

17 MR. CHRIS TREBILCOCK: Your high school English
18 teacher would be proud. Yes, we agree.

19 MR. DAUNT: Thank you. All right. Awesome. Mr.
20 Brater?

21 MR. BRATER: So what I'm proposing, presenting to
22 the Board is the same 100-word summary I read off previously
23 but with the caption being, "A proposal to amend the state
24 constitution to add provisions regarding elections."

25 MR. DAUNT: I believe -- I believe we would --

1 MR. BRATER: If someone wants to make a motion,
2 yeah.

3 MR. DAUNT: -- entertain a motion at this time.

4 MS. BRADSHAW: All right. I seem to be the makers
5 today. I move that the Board of State Canvassers approve
6 the statement of purpose prepared and submitted on August
7 31st, 2022, by Director of Election for proposal at this
8 time 22-2 on November 8th, 2022, general election ballot.

9 MR. HOUSKAMP: I'll second.

10 MR. DAUNT: All right. We have a motion, we have
11 a second. Any further discussion? Seeing none, take a
12 vote. All those in favor of the motion signify by saying
13 "aye."

14 ALL: Aye.

15 MR. DAUNT: Any opposed? Motion carries four to
16 zero.

17 (Whereupon motion passed at 3:10 p.m.)

18 MR. DAUNT: That would appear to take care of the
19 Promote the Vote issues before us. And thank you again,
20 everybody for your commitment and time and patience.

21 We will now move on to agenda item number seven,
22 consideration of the sufficiency of the initiative petition
23 submitted by Reproductive Freedom for All. Mr. Brater,
24 would you please give us a synopsis of what we're dealing
25 with here and your -- what your report says?

1 MR. BRATER: Thank you, Chair Daunt. So this was
2 the second citizen initiative constitutional amendment that
3 we received from Reproductive Freedom for All. This one
4 was -- actually, this one was from Reproductive Freedom for
5 All. It was also submitted on July 11th, 2022, and as with
6 the other one, it required 425,059 valid signatures. The
7 total filing consisted of 752,288 signatures on 152,799
8 sheets. As with the other constitutional amendment
9 petition, we followed the same procedure whereby we first
10 did a face review to eliminate any sheets that were wholly
11 invalid because of errors that affected the whole sheet and
12 then proceeded to sort, count, stamp the petitions and drew
13 a sample from which we projected the validity rate and
14 the -- or projected the number of estimated total signatures
15 based on the validity rate of the sample. We did identify
16 during face review that there were 16,849 signatures on
17 4,805 sheets that were invalid. So that left our universe
18 of potentially valid signatures remaining at 735,439
19 signatures on 147,994 sheets. So still well over the --
20 they still -- still had a large cushion over the minimum
21 number that were required. In this -- in this instance the
22 sample size was 513 signatures and out of those 513 they
23 needed at least 314 to be valid in order for us to project
24 that they would have enough total valid signatures and
25 recommend certification. We did not have any disputes about

1 the universe or challenges filed regarding individual
2 signatures here, so it was limited to our review. And we
3 determined that the sample contained 416 valid signatures
4 which projects to a total estimated number of 596,379 valid
5 signatures. And, again, as with the other petition, because
6 of the large margin over the minimum, the confidence level
7 under the statistical model is 100 percent.

8 So as with the other petition, we did not receive
9 a challenge regarding individual signatures, but instead
10 there was a challenge that was filed by Citizens Who Support
11 Michigan Women and Children, and that challenge was based on
12 the spacing of the text of the constitutional amendment
13 which you of course heard about today.

14 So the challenge states essentially that the --
15 that the petition should be rejected because of spacing
16 issues in the text that render it unreadable or jibberish
17 because of the lack of differences between spaces in some
18 places between words, those being similar to the spaces
19 between letters. We reviewed this challenge. In our view
20 this is a challenge to the substance of the petition rather
21 than the form of the petition. The Michigan Election Law,
22 again, Section 482 as we discussed with the prior provision,
23 it does contain statutory required elements for the form of
24 the petition which the Board has to verify are present for
25 sheets to be valid. There isn't anything in that section

1 that goes to the substance of the text within the
2 constitutional amendment and the spacing between letters.
3 There is a provision that specifies a type face size that
4 the balance of the petition including the text of the
5 constitutional amendment has to be in, but it does not give
6 us any basis to evaluate what would be an acceptable level
7 of spacing between letters.

8 So based on that, we -- we think this -- this
9 challenge is about the form of the language or, sorry, the
10 substance of the language that would go in the petition
11 rather than the form of the petition as complies with
12 saturated elements and therefore we're not weighing in on
13 the legal- -- the sort of legal merits of that argument as
14 it pertains to the substance of the petition. And we are
15 recommending based on our review of the signatures involved
16 that the staff have determined that the Board approve
17 certification of this -- of this petition.

18 MR. DAUNT: Thank you, Director Brater. Any
19 questions or comments for the director before we go to
20 witnesses? Go ahead. Jeannette?

21 MS. BRADSHAW: Thank you, Mr. Chairman. Director
22 Brater, this petition before us, as I kind of preliminarily
23 recited the last, our last petition we were looking at, this
24 came before this Board twice; correct?

25 MR. BRATER: Yes. Is that correct?

1 MR. FRACASSI: Yes.

2 MR. BRATER: It did.

3 MS. BRADSHAW: And there are no challenges to the
4 signatures of this petition; correct?

5 MR. BRATER: Correct. There are not challenges to
6 individual signatures.

7 MS. BRADSHAW: Thank you.

8 MR. DAUNT: Are there other questions? Seeing
9 none, I would like to bring up Eric Doster on behalf of the
10 challengers. Mr. Doster, welcome back. We will kind of
11 keep to what the loose requirements of time of, you know,
12 around five minutes, please. But if you are, you know,
13 continuing to make points related to your arguments --

14 MR. ERIC DOSTER: I'll take a third of the time of
15 Mr. Trebilcock.

16 MR. DAUNT: That's not helpful.

17 MR. ERIC DOSTER: No, it isn't.

18 MS. BRADSHAW: Are we timing you? Is that what
19 we're doing?

20 MR. DAUNT: Mr. Doster, if you would just kindly
21 state your name and who you're here on behalf of?

22 MR. ERIC DOSTER: Yes. I was going to say good
23 morning, but good afternoon, Mr. Chairman, members of the
24 Board. Eric Doster on behalf of Citizens to Support MI
25 Women and Children.

1 ERIC DOSTER

2 MR. ERIC DOSTER: I have passed out for the Board
3 and the court reporter a couple things, a few exhibits I
4 want to refer to and also the supplement, a hard copy of the
5 supplement that we filed on Monday.

6 My comments this afternoon are divided into
7 essentially three parts. First, how we got here today,
8 second what our challenge is and what our challenge is not,
9 third, how this Board's past practice requires petitions to
10 have actual words.

11 My client is not the sponsor of this petition.
12 The sponsor is Reproductive Freedom for All. And it is the
13 sponsor that bears the burden of establishing that its
14 proposal qualifies to be put before the voters. And
15 according to the Michigan Supreme Court, and I quote,
16 "Entitlement to be placed on the ballot requires a showing
17 of actual compliance with the law," end of quote. In its
18 brief filed -- or its response filed yesterday afternoon,
19 the sponsor admits that it has the burden of proof and this
20 burden of proof means that the sponsor of the petition must
21 demonstrate to this Board that its petition's form complies
22 with law.

23 On March 23, this Board conditionally approved the
24 sponsor's petition as to form in an effort to assist the
25 sponsor to meet its burden. This is a common and accepted

1 practice of this Board. And the form of the petition
2 approved by this Board was the March 7th version which I
3 have provided to you as Exhibit 1. As you will notice,
4 there are actual words in the full text of the sponsor's
5 proposed amendment. But the form of the petition filed by
6 the sponsor on March 30, and which is the petition before
7 you now, is not the same petition that this Board saw and
8 approved at its March 23 meeting. Please see Exhibit 2. As
9 you will notice, there are at least a dozen places where
10 actual words do not appear in the full text of the sponsor's
11 proposed amendment. It cannot be overemphasized that this
12 is the very first time that this Board is reviewing this
13 particular form of the sponsor's petition. And the question
14 becomes would this Board have approved the form of this
15 unapproved petition at its March 23 meeting or at any time?

16 Now, I know that the sponsor says over and over
17 that this petition was signed over by 700,000 people and
18 that means that the form must be okay. Well, over nine
19 million people in this state either refused to sign or
20 didn't sign this petition. So if numbers matter here, the
21 simple math says that the form is not okay. But these
22 numbers are irrelevant to today's discussion as, again, the
23 question is would this Board have approved the form of this
24 unapproved petition before you today at the March 23 meeting
25 or any time?

1 And our form challenge here is very simple. The
2 constitution and the Michigan Election Law both require that
3 the petition set forth to quote, "full text of the proposed
4 amendment," end of quote. And that's from Section 482 of
5 the Election Law. We cite numerous Michigan cases in our
6 challenge and refer to common dictionary definitions and
7 they all lead to the same conclusion. The bottom line is
8 that the full text of the proposed amendment must be actual
9 words. And since the unapproved petition before you right
10 now for the very first time uses collections of letters
11 which are not actual words, this is not the full text of the
12 proposal. It cannot be. It contains nonsense passages and
13 nonsense cannot be put into the Michigan constitution. And
14 because the petition before you right now does not conform
15 to the form requirements under Michigan law, Michigan law
16 imposes a duty on this Board not to certify the sponsor's
17 petition. The reason that the sponsor of this petition has
18 yet to provide this Board with any example of the Board
19 approving the form of any petition with these types of
20 errors is because no such sample exists. It's hard to meet
21 a burden of proof when you don't provide any proof.

22 Instead, in response to our challenge, the sponsor
23 charges that because we are challenging the form of the
24 petition as it relates to the full text of the actual
25 proposed amendment, that this somehow means that we are

1 attacking the substance of the proposal. The Board in its
2 staff report also appears to suggest this as well. But case
3 after case, including every case cited by the Bureau in its
4 staff report and by the sponsor indicates that a challenge
5 to the substance of proposed amendment means either a
6 challenge to the merits or to the constitutionality of
7 proposed amendment. Our challenge raises none of these many
8 legal challenges that may be raised should the proposed
9 amendment be adopted such as its violation of, you know,
10 federal constitutional rights and equal protection, due
11 process, or any other substantive constitutional challenge.

12 I refer this Board to Section 482(3) which
13 indicates that, quote, "the full text of the amendment so
14 proposed must follow the summary and be printed in eight
15 point type," end of quote. If it is correct that any form
16 challenge to the proposed amendment were automatically a
17 substantive constitutional challenge, then this Board would
18 have no ability to enforce the form requirement that the
19 full text must be written in eight point type. This is just
20 simply incorrect.

21 Our challenge is a for- -- is a form challenge
22 which this Board has a clear legal duty to enforce. What
23 deserves special mention here is that all of these form
24 requirements have is their purpose to make these petitions
25 more understandable to the voters signing these petitions.

1 Whether that form requirement is the full text requirement
2 or one of the various font requirements, the goal here is to
3 make the content as understandable as possible. Please know
4 that the Bureau staff report, the March 7 version of this
5 petition that's set forth in Exhibit 1, and the sponsor's
6 two responses to our challenge, each had spaces in between
7 actual words. Actions do speak louder than words.

8 As we point out in our challenge and in our
9 supplement filed with this Board, it is simply contrary to
10 the form requirements to allow this type of confusion in the
11 petition process. Although the sponsor argues that there is
12 not a specific space requirement, there is also not a
13 specific requirement that a petition must be in English, but
14 this Board has never approved a petition's form that wasn't
15 in English. There's also no specific requirement that a
16 petition not have an extra "L" in the proposed amendment,
17 and yet last September as we set forth more detail in our
18 challenge that we've already filed, this Board unanimously
19 rejected a petition form with respect to the Secure MI Vote
20 petition for having these capital "L" typos in it. All we
21 ask here is that the Board consistently treat this petition
22 as it did the Secure MI Vote petition and refuse to approve
23 the form of the petition with mistakes, errors or typos.

24 The sponsor also argues that despite the
25 petition's errors, that voters could understand the full

1 text of the proposed amendment. In our supplement, we
2 provide the academic research that when there are no spaces
3 between words, the reader loses the ability to comprehend
4 what they are reading or they simply skip the gibberish. In
5 its response to our supplement on this point, the sponsor
6 said nothing. In attempt to counter the printer's affidavit
7 that we filed with our challenge which looked at the present
8 petition by means of a high resolution scan and found no
9 spaces between words in the proposed amendment, the sponsor
10 also provides its own affidavit that indicates that based on
11 its printer's electronic file, which led to the printer
12 version now before this Board, there really are spaces here.
13 The sponsor here is really telling you "believe us, not your
14 lying eyes." And this is the same sponsor that stated on
15 pages 9 and 10 of its response, and I quote,

16 "Finally, for any of the mem- -- for any member of
17 the public that was legitimately confused - WAC does
18 not identify a single signer of the petition that was -
19 the full text of the proposed amendment is available
20 online for review," end of quote.

21 The fatal admission here is what they are now
22 admitting is the, quote, "full text of the proposed
23 amendment." And I have provided this online document to the
24 Board as Exhibit 3. This is what they're saying is
25 available online for review. Significantly this document

1 available online that they say is the, quote, "full text of
2 the proposed amendment," end of quote, uses actual words and
3 looks exactly like the form of the condition -- of the
4 petition conditionally approved by this Board on March 23.
5 Again, this is not the petition before you today. What more
6 can I say here? This fatal admission says it all.

7 And another point about this full text that the
8 sponsor says is available online. The sponsor represents to
9 the Board or at least suggests that this Exhibit 3 was
10 available for legitimately confused signers. However, by
11 going on something called web.archive.org -- and I've given
12 that to you as Exhibit 4 -- you can see that as of August 9,
13 well after these petitions were filed on July 11, this full
14 text did not yet exist on their web site.

15 But returning to the Board's duty -- the Board's
16 duty as to form. This Board has consistently invalidated
17 the entire petition for incomplete words, whether or not the
18 reader could decipher the meaning. For example, when one of
19 my former clients, Michigan Values Life, circulated
20 petitions in 2019, we found petitions with some of the words
21 were missing letters because they were folded and sometimes
22 folded paper rips. The Bureau threw out entire petitions
23 because of a missing letter and its determination stood. I
24 do have an example of this that I provided to you as Exhibit
25 5, where there was a letter missing from a single word and

1 the Bureau threw out the entire petition. But -- but this
2 is consistent with established Bureau practice. And
3 according to page 5 of the Bureau's guidance on this topic
4 regarding other fatal defects that render an entire petition
5 valid, and I quote, "damaged, mutilated or torn petition
6 sheets where any of the mandatory elements are illegible or
7 omitted." The Bureau did the same analysis with respect to
8 this petition because the sponsor used Sharpie markers that
9 bled through the paper to, you know, up and they covered up
10 a letter or two in the back pages of the petition. Even if
11 the reader could arguably decipher what the actual word was,
12 the entire petition was invalidated. Again, if actual
13 words, actual complete words, were not required for
14 petitions, then the Bureau and this Board would never
15 invalidate a petition for having a missing letter within a
16 word. But as we point out in our challenge, in our
17 supplement filed with this Board, actual words are required
18 to meet the full text requirement of the form requirements
19 of the Michigan Election Law.

20 MR. DAUNT: Mr. Doster, if I may, I -- I -- you're
21 wrapping up?

22 MR. ERIC DOSTER: I'm going to wrap up. I
23 promise.

24 MR. DAUNT: Okay. Thank you.

25 MR. ERIC DOSTER: And that's not a Chris

1 Trebilcock promise. I'll promise. Okay. And this actual
2 word requirement is what we hear from members of the Board
3 who consistently indicate the petitions are, quote, "legal
4 documents." Legal documents require actual words. So do
5 petitions.

6 So, accordingly, on behalf of Citizens to Support
7 MI Women and Children, those citizens who wish their voices
8 to be heard and those whose voices cannot be heard, we
9 respectfully request that the Board perform its clear legal
10 duty and reject the form of the petition currently before
11 you which is before you for the very first time, call these
12 typos, errors, mistakes or whatever, this jibberish now
13 before this Board does not satisfy the full text requirement
14 under law. And this Board has never approved, never
15 approved a petition with these types of typos and errors.

16 Thank you for your time and I'm happy to answer
17 any questions the Board may have.

18 MR. DAUNT: Are there questions for Mr. Doster?
19 Okay. Do you have one? Go ahead.

20 MR. HOUSKAMP: Well, I have a question about
21 the -- about the -- the web site.

22 MR. ERIC DOSTER: Yes, sir.

23 MR. HOUSKAMP: You put a piece in with web
24 archives and you put the copy of the site in your Exhibit 3.
25 Is that the copy that's there now?

1 MR. ERIC DOSTER: Oh, yeah, I was trying to hurry
2 and rush through this.

3 MR. HOUSKAMP: No, you're okay. But, I mean, what
4 you put in here is just --

5 MR. ERIC DOSTER: Yeah, but what -- but if you
6 look at -- if you look at Exhibit 3, that's --

7 MR. HOUSKAMP: This is what's there today?

8 MR. ERIC DOSTER: -- that's what's there today,
9 right now. That's what -- and that's what the sponsor said
10 was available for people that were legitimately confused.

11 MR. HOUSKAMP: So they could have gone and looked
12 at it any time after -- after the --

13 MR. ERIC DOSTER: Right. But you see -- thank
14 you. Thank you, Mr. Houskamp. What -- because I went
15 through this very quickly. If you look at this webx or web
16 archive -- web.archives.org, it archives and as of August
17 9 -- and the August 9 date is kind of highlighted up in the
18 top of the document. You see that where -- you see these
19 questions marks. You go to the sixth question mark and it
20 says, "preliminary injunction regarding 1931 law." That's
21 what was there on -- as of -- on August 9. But if you look
22 at the -- you tick through Exhibit 3, you notice that that
23 now says, today it says, "What does the proposed amendment
24 say?" So they -- at some point they swapped that out.

25 MR. HOUSKAMP: So prior to August 9 --

1 MR. ERIC DOSTER: But as of August 9, it was not
2 there.

3 MR. HOUSKAMP: So during the time that the
4 petitions were being -- the signatures were being gathered,
5 the actual content of the site was "preliminary injunction
6 regarding 1931 law"?

7 MR. ERIC DOSTER: Correct. According to
8 web.archive.org, yes.

9 MR. HOUSKAMP: So no one could go to the web site
10 and look at the full text?

11 MR. ERIC DOSTER: Not at that time, no. Today
12 they can --

13 MR. HOUSKAMP: They can now.

14 MR. ERIC DOSTER: -- because I gave that to you --
15 today they can because I gave that to you as Exhibit 3, but
16 not then.

17 MS. BRADSHAW: Mr. Chair?

18 MR. DAUNT: So your argument is that this is --
19 this is defective or fatal two times, one because it's an
20 admission that it's the full text versus what they actually
21 circulated and --

22 MR. ERIC DOSTER: Correct.

23 MR. DAUNT: -- that it was not there while the
24 circulation was occurring?

25 MR. ERIC DOSTER: Yeah, that's --

1 MR. DAUNT: Okay.

2 MR. ERIC DOSTER: -- yeah. Because they use that
3 in their response as, "hey, if anyone was legitimately
4 confused, they could have gone on the web site." Well, I'm
5 saying according to archive -- whatever that web site is,
6 web.archive.org, it wasn't yet there as of August 9.

7 MR. DAUNT: Okay.

8 MR. ERIC DOSTER: Okay? But, again, that's --
9 that's the fatal admission here because they're saying
10 here's the full text of the amendment and we're saying that
11 what Exhibit 2 or what's before the Board today isn't the
12 full text of the amendment because it doesn't contain actual
13 words. But what they gave this Board back on March 23 did
14 have actual words and their web site which they says is the
15 full text, that's got actual words. So that's our form
16 argument.

17 MR. DAUNT: Okay.

18 MS. BRADSHAW: My question --

19 MR. DAUNT: Jeannette?

20 MS. BRADSHAW: -- actually is to Director Brater,
21 but it's to the point that Doster's bringing up about
22 posting of petitions. Director Brater or to Mr. Fracassi,
23 when was this petition posted on the Michigan Secretary of
24 State web site which all petitions are posted so that
25 individuals can read them?

1 MR. BRATER: The version that was circulated would
2 have been posted after they submitted their copy of the
3 petition to us pre-circulation which they have to do under
4 Section 43(a) of the Election Law, and that happened
5 sometime soon after March 30th, I believe, but that was the
6 version that was circulated that was posted online.

7 MR. DAUNT: So that -- so that would be after our
8 meeting where we approved what's listed as the 23rd; am I --

9 MR. BRATER: Yeah.

10 MR. DAUNT: Okay.

11 MR. BRATER: And I can -- I can clarify the
12 timeline a little bit because that was -- it was in the
13 staff report, but I didn't mention it when I was presenting
14 the summary of it. So this petition came before the Board
15 to get preliminary approval as to form. The Board provided
16 conditional approval as to preliminary approval with the
17 condition that they would take that "the" that was on the
18 face, the actual face of the petition, that they would fix
19 that, yeah. And they did fix that.

20 MR. DAUNT: There was a un- -- sorry. There was a
21 union bug issue, too; right?

22 MS. BRADSHAW: That was the first time.

23 MR. DAUNT: Okay.

24 MR. BRATER: Yeah; yeah. But in correcting the
25 "the" that was on the front, that -- they also submitted a

1 version, that version that had the spacing issues that are
2 in dispute which are different from what the Board had
3 before them previously which didn't have the spacing issues.
4 So, yes, this version with this, these letters and this
5 spacing was not what accompanied the version of the petition
6 that was presented to the Board. Staff's view is that
7 the -- the -- that it's still a challenge that would not be
8 within the Board's purview under form because it's still
9 going to how the text is arranged in the substance of the
10 petition and not something like type face which is specified
11 in the -- in the statute. The other thing I would just note
12 is that there's also a difference in terms of, like, if a
13 letter is missing. You know, we kick a -- if we kick a
14 sheet because there's a whiteout or a tear or something and
15 one of these letters is missing, that's because in that case
16 the full text of the petition is not there because it's
17 missing a letter. So in my view that's a distinction. But
18 it is -- but just to clarify, the version that was -- that
19 accompanied the -- the version that the Board conditionally
20 approved as to form previously did not have the space issues
21 on it.

22 MR. DAUNT: Thank you. Other questions? Okay.
23 Thank you, Mr. Doster.

24 MR. ERIC DOSTER: Thank you. Thank you for the
25 opportunity.

1 MR. DAUNT: We have for the sponsors Olivia Flower
2 and Steve Liedel. And if you could both just when you get
3 there -- I don't think either one of you have been up here
4 yet today, so if you wanted to spell your name for our
5 wonderful court reporter and who you're here on behalf of,
6 and then we'll give you time to respond?

7 MS. OLIVIA FLOWER: Thank you. Olivia Flower,
8 O-l-i-v-i-a F-l-o-w-e-r.

9 MR. STEVEN LIEDEL: And Steve Liedel, S-t-e-v-e,
10 last name L-i-e-d-e-l with Dykema representing Reproductive
11 Freedom for All.

12 MR. DAUNT: Okay. Thank you. Floor is yours.

13 OLIVIA FLOWER

14 MS. OLIVIA FLOWER: Good afternoon. We appear
15 today like Steve just mentioned on behalf of Reproductive
16 Freedom for All which was supported by over 750,000
17 Michiganders, signed by Michiganders from every county in
18 our great state, who have each put pen to paper to declare
19 that they want to restore the protections of Roe in
20 Michigan.

21 Their overwhelming message is that this proposed
22 constitutional amendment is needed to ensure that Michigan
23 women have the freedom to make highly personal decisions
24 about abortion themselves instead of having politicians
25 decide for them. Your staff at the Elections Bureau has

1 worked hard on your behalf. They've done good work and
2 determined that the petition submitted by Reproductive
3 Freedom for All includes sufficient signatures consistent
4 with the constitutional requirements. Accordingly, the
5 director and his team at the Bureau recommended that the
6 constitutional amendment proposed by Reproductive Freedom
7 for All, be certified and placed on the ballot. We agree
8 and urge you as the Board to approve their recommendation.

9 We've heard from a lot of people today and we urge
10 you not to be distracted from the task at hand. As affirmed
11 last year by the Supreme Court in Unlock Michigan, you have
12 only two duties and they're the two duties that Chairman
13 Daunt mentioned at the beginning of this meeting. The staff
14 first determined whether the petition includes sufficient
15 signatures. The staff report prepared for you clearly
16 indicated -- indicates that it does and not a single party
17 contests the sufficiency of the signatures, not a single
18 signature in over 750,000. Second, you must determine
19 whether the petition has all the requirements relating to
20 the form of petition mandated by the legislature. You
21 previously did so on March 33rd -- 23rd, rather, and page 4
22 of the staff report confirms the petition complies with all
23 statutory requirements.

24 Courts have repeatedly indicated that the Board
25 has no authority to impose new requirements or consider

1 anything else outside of what the legislature has provided.
2 This is consistent with the guidance from the Bureau which
3 confirms in the staff report has no legal authority to
4 otherwise act on the contents, text or substance of a
5 proposed constitutional amendment. If any doubt remains,
6 the Court has also spoken to this. We remind you that the
7 right to amend the Michigan constitution has been reserved
8 as a fundamental right of the people of Michigan. It must
9 not be restricted or interfered with by the Board, the
10 legislature or even the judiciary. Our courts have been
11 clear on that right. When in doubt, reserve all of those
12 doubts in favor of the exercise of the right to amend the
13 constitution. This means you must ignore the challenges and
14 their fabricated criteria intended to distract this Board.
15 While (inaudible) Board can legally consider, affidavits
16 confirm the spaces actually do exist between the words and
17 that's consistent with the version that we provided the
18 Board on the 30th of March.

19 More importantly more than 750,000 people had an
20 opportunity to read and understand this proposal. Not a
21 single person who signed this petition came up here today
22 and said that they could not understand it. They did, and
23 they signed it in record numbers. Persons who couldn't
24 understand it, had a remedy as counselor for -- as Counselor
25 Doster reminded us. There was plenty of people that didn't,

1 but the constitution requires an affirmative number of
2 signers. If something they didn't understand what the
3 proposal means, the Court can provide guidance after
4 adoption but this is not the Court's job right now. Under
5 our constitution, the voters decide. We urge you to finish
6 the job today so that the voters can do theirs. And we
7 would be happy to answer questions, but I believe Steve is
8 going to address the challenge.

9 STEVEN LIEDEL

10 MR. STEVEN LIEDEL: Yup. Just a couple additional
11 comments based on some of the additional information you've
12 got today. We've heard a lot of talk about the full text
13 and the full text is important. In our republican
14 government, the plain text of language used by the
15 legislature is what's most important. Focusing on the full
16 text of a proposal is, but when you consider the text of the
17 proposal and the full text of the Reproductive Freedom for
18 All proposal, is included in the petition, you need to look
19 to the text of the legislature. What does the legislature
20 say? Your director has already informed you. The only
21 mandatory element under the statute relating to the language
22 that appears in the text of the proposed constitutional
23 amendment is that it must be in eight point font and it is.
24 We hear a lot of distortion about, you know, you should look
25 at other things or that this Board has never approved the

1 form as circulated. The director indicated earlier today
2 there is no statutory provision for approval to form. It's
3 an optional process that the director and the Board offer as
4 a courtesy. And so there is no requirement that the full
5 text of a proposal be submitted or approved and there's no
6 requirement for the Board to review the actual form of the
7 proposed amendment itself. That's the voter's exercising
8 their reserved constitutional power.

9 One last note on the web site just to clarify. We
10 didn't indicate that the proposed constitutional amendment
11 was available on the RFFA web site in our response to Mr.
12 Doster's challenge. That's a distortion. That's wrong. We
13 said that it was now available. We also pointed in that
14 same challenge that the full text as circulated was
15 available to anyone, for anyone to look at, on the Bureau of
16 Elections web site at all times when the petition was being
17 circulated. So just inaccurate to say that for some reason
18 that the petition was not available. The full text on the
19 web site represents the text of the proposal as it would
20 appear in the constitution if this proposal were approved by
21 voters. As submitted to you the text includes spaces
22 between the letters. The word, all full words are there.
23 The full text of the proposal is there. In four lines there
24 is -- there are differences in lines, in word spacing, but
25 the Board doesn't regulate word spacing. The legislature

1 has not delegated any authority to this executive branch
2 Board, and nor does the Board have any authority to adopt
3 standards on its own. So as your staff/director has
4 indicated, the form of this petition fully complies and we
5 believe the duty based on both that and the number of
6 signatures submitted requires this Board under the prior
7 precedent of the court to certify this proposal as valid.
8 Happy to answer any questions.

9 MR. DAUNT: Questions? I have -- I have one right
10 now. It is -- it is accurate or inaccurate that what we
11 approved at our meeting did not look like what you
12 circulated or what was circulated? That is accurate or
13 inaccurate?

14 MR. STEVEN LIEDEL: The -- what the Board approved
15 is not the content of the proposal itself. So everything
16 that you have authority to approve and you did approve is on
17 the petition. The text is identical. The only difference
18 is the word spacing in four lines, but that's not something
19 that the Board approves or considers. There's no statutory
20 provision for that.

21 MR. DAUNT: I think it's very important to point
22 out from my perspective -- and I don't dare to speak for the
23 rest of the people on this Board -- if what was circulated
24 had come to us for review, it would not have received
25 approval because of the severe defect in the spacing and in

1 the form of the language as it was laid out. I think
2 there's ample history of our work on this Board to reject
3 things because of issues exactly like that. So I have
4 trouble understanding why we should let this one go. It's a
5 tragedy that it happened.

6 MR. STEVEN LIEDEL: I think that's -- I think
7 that's what was --

8 MR. DAUNT: But it happened.

9 MR. STEVEN LIEDEL: -- yeah, I think that's well
10 understood. But if the campaign had never come before the
11 Board, the situation would be the same and the statute does
12 not require the Board to approve. So, and there is no
13 statutory basis to reject a petition based on word spacing
14 in the proposed amendment itself. The -- and so that's why.
15 The only legal requirement is that you file with the
16 Department of State a copy of the actual petition circulated
17 before you circulate it. And as your staff report
18 indicates, all provisions of the law were complied with.
19 You may prefer, it may be your preference, you know, that
20 you would prefer to see things formatted in a different way.
21 In a republican form of government where you're exercising
22 delegated powers, if you believe in strict construction and
23 implementing to text to statutes, your preferences are not a
24 matter for consideration of the Board. What is a matter for
25 consideration as a matter of law is are these mandatory

1 elements enacted by law, by the legislature which you have
2 taken an oath to faithfully execute, been complied with?
3 And your staff tells you have, we submit you have. And the
4 question is given the status of the law enacted by the
5 legislature and the duty it imposes on you and the oath you
6 have taken, do you have an obligation based on the statutory
7 requirements, regardless of what you think of the content of
8 the proposal, how it's presented, the law indicates and your
9 staff has recommended that this proposal be submitted to the
10 voters and the voters decide the question.

11 MR. DAUNT: And I deeply respect the work of the
12 staff and Director Brater. They've been nothing but
13 straightforward and helpful. It's not unprecedented that we
14 disagree with what the staff says on certain things. And
15 what I think is important, content aside, I worked very hard
16 months ago with people to make sure that we could find 100
17 words that were -- could -- all sides could get on, we could
18 get a vote and not have a delay and have that go to court.
19 Content is not the issue here for me. I want us to be
20 consistent with how we treat these things. And this is a
21 egregious error of the form in the way this is laid out and
22 so I just want to make sure that I'm clear on that. Sir, if
23 you want to state anything else, but it looks like --

24 MS. BRADSHAW: No.

25 MR. DAUNT: No? Okay.

1 MS. BRADSHAW: No.

2 MR. HOUSKAMP: I have just a question for you.

3 You -- you've obviously put an enormous amount of money, an
4 incredible amount of organization, a ton of people power
5 into collecting these signatures and making this a reality
6 and you've done a great job collecting signatures. How is
7 it that no one -- and it had to be multiple people that this
8 passed through their hands -- how is it that nobody caught
9 what you were putting on these petitions? I mean, we all --
10 we all come from different areas of life and certainly, sir,
11 you have probably done direct mail pieces in your law firm
12 before. If you put 80 letters together and decided to
13 create, I mean, unless you were doing a Mary Poppins with
14 Supercalifragilisticexpialidocious --

15 MR. STEVEN LIEDEL: Right.

16 MR. HOUSKAMP: And I suspect that even Rogers &
17 Hammerstein had spaces that may have been in there
18 originally. But how did you get this past all of your
19 proofers?

20 MR. STEVEN LIEDEL: You know, I think that that
21 isn't the question for you, the Board, respectfully, for you
22 as members today as why would people sign it? They had the
23 opportunity to read and sign it and an unprecedented
24 number -- an unprecedented number in Michigan were able to
25 read and understand it notwithstanding --

1 MR. HOUSKAMP: And not one of those people raised
2 a question?

3 MR. STEVEN LIEDEL: No.

4 MR. HOUSKAMP: Nobody brought that up to you? No
5 one -- not in 900,000 people?

6 MR. STEVEN LIEDEL: No, not aware of anyone
7 indicating that there was an issue with the formatting of
8 the text by anyone who signed the petition.

9 MR. HOUSKAMP: Not even in passing? No one said
10 to you, "wow, this really doesn't make sense"?

11 MR. STEVEN LIEDEL: No; no.

12 MR. HOUSKAMP: So -- so the -- so a significant
13 population in Michigan recogni- -- doesn't even recognize
14 that there's missing spaces?

15 MR. STEVEN LIEDEL: No. I think -- if they
16 recognized the spacing is less than optimal, they can still
17 read it. You need to look no further than the name plates
18 in front of you today. You have one which has very broad
19 spacing between the letters and a sera font. Mr. Daunt has
20 a slightly smaller font than Member Gurewitz. Member
21 Bradshaw is in all caps and it's scrunched together and
22 there's minimal spacing between Jeannette and Bradshaw.

23 MR. HOUSKAMP: We took your PDF. As a matter of
24 fact, I read your affidavits --

25 MR. STEVEN LIEDEL: Yeah.

1 MR. HOUSKAMP: -- from your printer that said she
2 is in design and this was just a matter of she -- it just
3 happened.

4 MR. STEVEN LIEDEL: Yeah.

5 MR. HOUSKAMP: Okay. And that there really were
6 spaces even though they were invisible. So I took your PDF.
7 And first I tried to open it in Acrobat Pro.

8 MR. STEVEN LIEDEL: Yeah.

9 MR. HOUSKAMP: Of course Acrobat Pro doesn't
10 recognize any spaces because it's an image. Then I blew it
11 up and then I blew it up on my laptop, couldn't find any
12 difference between -- space between letters and no spaces.
13 Then we blew it up on a monitor about the size of the one on
14 the wall and there was still no spaces, not even little
15 teeny ones that might have been ignored. So there's no
16 spaces.

17 MR. STEVEN LIEDEL: Well, you have an affidavit
18 from the person who prepared that says there is, and
19 prepared under oath. And I also can say take the -- take
20 the electronic version of the petition that was filed with
21 the director of elections on March 30th, copy and paste the
22 text from that petition into any other software and the
23 spaces are there. And so is it accurate to say the spaces
24 are there? Absolutely. What is the issue? A word spacing
25 issue. You have an affidavit, it's issued under oath by the

1 person who produced the petition indicating that. Is the
2 full text of the petition there? Absolutely. The full text
3 is complete. There's not a single letter missing. Every
4 word is there. Every word presented in prior versions of
5 this petition to the Board is there. I mean, I'll note this
6 is not with any proposed constitutional amendment the format
7 in which you see a petition in which it's ultimately going
8 to read in the constitution itself. Petitions typically are
9 formatted in all capital letters because they show, indicate
10 changes in the constitution. That doesn't mean they then
11 become all capital provisions of our constitution.
12 Typically petitions don't indent the paragraph. Right? But
13 when it's put into our constitution, paragraphs are
14 indented. That's a deviation not at all in the text,
15 content or words, but in the format. Oftentimes the
16 formatting of the petition language as printed by the
17 Secretary of State and posted in every election polling
18 place differs from the formatting of the text printed on the
19 petition itself. It may be one thing to be concerned.
20 Could it have been done differently? Absolutely. But the
21 question is, one, what does the law require? And does the
22 law require it to be spaced in any particular manner? The
23 answer to that is no, and there's clearly variation in word
24 spacing even amongst the four lines where while the line
25 spacing is not optimal, you can see variation in line space.

1 So in terms of what's before you, you have your
2 staff recommended and we are counsel for the proponents of
3 this and we remind you that the substance of whatever
4 someone's proposed is for them under the constitution. They
5 are exercising their reserved constitutional rights. The
6 courts have said no one can interfere with what they
7 propose, be it judiciary, the legislature, except unless the
8 legislature passes a specific requirement. Well, there is
9 no specific requirement passed by the legislature with
10 regard to the petition before you that has not been complied
11 with. You have no specific provision cited to you by
12 anyone, including the challenger, that says the text as it
13 appears complies with the plain language requirements
14 enacted by the legislature. If there was, we wouldn't be
15 before you today because it would be noncompliant. But
16 there is no provision of the Michigan Election Law or the
17 constitution that provides for any authority to regulate the
18 content, spacing, the formatting beyond being in an eight
19 point font of the actual proposed constitutional amendment
20 because we so respect as a republican government the
21 reserved power of the people to exercise free from
22 interference of government their power, reserve power to
23 amend the constitution.

24 MR. DAUNT: Jeannette?

25 MS. BRADSHAW: Mr. Chair, it actually wasn't even

1 a question to -- I was actually going to make a statement
2 about we -- you had said off the rules -- set out rules
3 beginning of this meeting for everyone to be respectful.

4 MR. DAUNT: Yes.

5 MS. BRADSHAW: And I hope that we can continue
6 that respectfulness as individuals are speaking, even if it
7 is not the viewpoint that you agree with. There have I'm
8 noticing -- I'm --

9 MR. DAUNT: I was -- I was going -- I was actually
10 going to address that, so thank you.

11 MS. BRADSHAW: Thank you. I just -- I wanted to
12 make sure that we did address that.

13 MR. DAUNT: It's like a long car ride with your
14 kids. People have been really good. Let's keep it up.
15 There's just a little bit longer. And so, yeah, thank you.
16 I was going to address that.

17 You know, for me, I'll just be very
18 straightforward on this. This is a much clearer cut issue
19 at hand here than the previous one in terms of what is form
20 and has it failed. We did not approve what was circulated.
21 We simply did not. All of us have said repeatedly that this
22 is a le- -- these are legal documents. You would not sign a
23 mortgage that had this type of mistake in it. You wouldn't
24 turn in a term paper that had this kind of mistake. And if
25 you did, you would likely get knocked down for it. The

1 point being we have rejected language for these exact same
2 reasons and it's a form issue because it's how it looks,
3 it's what's before the people, it's what is their
4 understanding of it. I -- I was genuinely hopeful that
5 these issues with the amount of signatures that they would
6 come before us, we would deal with the signatures.
7 Unfortunately mistakes were made by the people who put these
8 forward. I intend to apply the same standards to everything
9 that comes before us. There have been multiple petitions
10 that have come before us that don't have these problems,
11 there will likely be many that come before us that also do
12 not. Those that do will get the same kind of treatment from
13 me. I -- I did not approve the form of this as it was
14 circulated and I wouldn't approve it now. I don't know how
15 much more clear to be. I'm sorry.

16 MS. GUREWITZ: I agree with you that this is much
17 clearer than the previous case because here all we're
18 talking about is content and we have no authority to address
19 or complain or challenge the content of the petition.
20 Everyone who spoke earlier today spoke about the content.
21 They were able to understand the content. I can -- while
22 the words are compressed, I think it's easy to read and
23 700-some thousand people obviously also found it easy to
24 read whether the words were compressed or spaced more
25 completely. So we -- we simply have no authority to reject

1 this petition based upon challenges to the content of the
2 petition. The form is something different. This is -- but
3 we're not talking about a form challenge here however Mr.
4 Doster wants to characterize it. We're talking about a
5 challenge to the content and that is not within our purview.
6 As Mr. Liedel has said, all -- the full text of the petition
7 is there. Obviously people can read it. I can read it and
8 700-some thousand people could read it. I don't think
9 there's any confusion. But confusion, if people were
10 confused, that's not for us to be concerned about. The full
11 text is there and I think we have no choice but to certify.

12 MR. DAUNT: Thank you. I'll just politely but
13 strongly disagree on the issue of content form. It is -- it
14 is in my mind exactly the same as the issue with Secure MI
15 Vote months ago, almost a year ago, I think. Where the "L"
16 had been substituted for semicolons. It was obvious what
17 had happened. It was obviously a mistake, it was a typo, it
18 was a grammatical issue. It was something that interfered
19 with what people saw. We made them come back and fix it. I
20 am insistent on being consistent.

21 MS. BRADSHAW: Chairman Daunt, it was -- it was
22 more than just the L's, there was other things on that. But
23 that is not the petition that we have in front of us.
24 Because if I remember right, that was Chairman Shinkle's
25 also thing. If it was just the "L's," that would have been

1 one thing but it was more than that, on that petition. But
2 that's not the petition we are talking about today.

3 I agree. I can sense this already that we are
4 going to disagree on this. This -- both of these -- this
5 petition was approved on condition the first time with
6 removal of the union bug. The second time when the word
7 "the" was brought in front of us which was not brought in
8 front of us the first time. So here we are the third time
9 and now it is another thing. Now, I understand this.
10 I'm -- I'm -- I am trying to think of the time how long I've
11 been on this Board of has there -- spacing has ever come in
12 front of us. I think it was, but it was when it was an
13 approval to form before the petition even went anywhere
14 because they had used a condensed font and they tried to
15 basically put everything they could in a condensed -- I
16 think it was an eight point font and you could not read it.
17 There was no spaces at all. So if you would take the
18 petition, there was no spacing. It wouldn't -- it wasn't a
19 line. The entire petition was completely condensed and
20 typed and you couldn't even see where the paragraphs were.
21 But for this, it's been here twice with conditional
22 approvals only three to one. I was a no vote because I
23 don't do conditional approvals.

24 MR. DAUNT: You may have a point, but --

25 MS. BRADSHAW: I do. But on this, you know, I

1 feel that our role is clear and that is that the subject for
2 us today is the suffic- -- suffic- -- I can't. It's late.
3 Yeah, it's 4:00. Our role is do they have enough signatures
4 to be put on the ballot which is exactly how I feel about
5 the previous. They have enough signatures to be put on the
6 ballot. Any of these questions are going to have to be
7 handled in Court. So you -- you kind of know where we are
8 going today.

9 MR. BRATER: If I can just clarify on the issue of
10 the Secure MI Vote petition? So the other -- with the
11 Secure MI Vote petition, there was an issue with the
12 printer's affidavit. So they had the name of the ballot
13 proposal incorrect so that was an issue. It's also true
14 that the L's were noticed and discussed. You know, in
15 staff's view -- and this is -- it's complicated by the fact
16 that the approval as to form that happens at the beginning
17 is not a statutory procedure, it's a procedure that the
18 Board does as a courtesy. So we don't have strict,
19 statutory requirements that govern, you know, what the Board
20 is doing there. But the staff does present this as approval
21 as to form with the understanding it does not extend to the
22 substance of the petition. I understand there's an
23 argument -- so meaning even if there were problems in the
24 substance, the text of the amendment other than the eight
25 point font issue, that that's not what the Board is

1 approving when it does conditional approval as to form. But
2 it is also the case that the Board or staff will sometimes
3 notice things in the substance that we will flag for
4 petitioner. So that's I think likely where the -- some of
5 the confusion stems from. But in staff's view, just to
6 reiterate, I've already said this, but, you know, our view
7 is that the form issues are limited to the statutory
8 elements which are the things on the face of the petition in
9 eight point typeface text in the substantive petition.

10 MR. DAUNT: Thank you. And Mary Ellen, you were
11 going to say something, too.

12 MS. GUREWITZ: Yeah. As I recall, the motion that
13 was made was approval as to form with the understanding that
14 that did not extend to the content of the petition. That is
15 what we regularly say when we are approving as to form and
16 this is content, this is not form.

17 MR. STEVEN LIEDEL: Mr. Chair, if I may?

18 MR. DAUNT: Yes.

19 MR. STEVEN LIEDEL: Your approval did extend to
20 the eight point font which is still before you in the
21 petition before you today. And I think this is
22 distinguishable from the prior proposal you've been
23 referencing. In there, we're not talking about Board action
24 and you had actual characters that deviate. There's no typo
25 here. There is no misplace or misspelled word. There is a

1 spacing issue as attested, under oath, to this Board by the
2 person who produced it. And so the only question is do you
3 possess the statutory authority to disprove this petition on
4 a form requirement that is not addressed in any way under
5 the Michigan Election Law, that being the spacing? If you
6 do this, you are setting a precedent that you can disapprove
7 petitions for made up reasons without any basis in the
8 statute. That's not faithful to the text of the Michigan
9 Election Law, enacted -- you know, enacted by folks that sit
10 here some Tuesdays, Wednesdays and Thursdays throughout the
11 year. Right?

12 MR. DAUNT: Just not right now.

13 MR. STEVEN LIEDEL: And if you're committed to the
14 rule of law and to the plain text of language as enacted by
15 the legislature, I would suggest you have an obligation to
16 ask yourself. What exactly does the legislature permit me
17 to regulate? Because there's nothing here that's at issue
18 other than the spacing between words on four lines. And I
19 would urge you to look long and hard and you will not find
20 any precedent or any text in the statute as confirmed by
21 your staff that you have any authority to regulate,
22 question, fail to approve a proposal based on word spacing
23 in the content of a proposed constitutional amendment.

24 MR. DAUNT: Thank you, sir. Mr. Doster, it would
25 appear as though he would like to make a quick rebuttal, but

1 I -- I want to make sure we finish up with the witnesses --

2 MS. BRADSHAW: My question isn't for Mr. -- well,
3 sorry. It's actually for Director Brater, but --

4 MR. DAUNT: Okay. Are there other questions for
5 Mr. Liedel or Ms. Flower?

6 MR. HOUSKAMP: I -- I still dis- -- I disagree
7 with you when you say that there's no typos. Missing spaces
8 are typos. Period.

9 MR. STEVEN LIEDEL: Perhaps we can, you know,
10 agree to disagree, Member Houskamp.

11 MR. HOUSKAMP: We can. We can agree to disagree,
12 but --

13 MR. STEVEN LIEDEL: But, you know, our view as
14 backed up by the affidavit is that the spacing is there. In
15 four lines it's less than optimal, but, again, the spaces
16 are there. There's variation in word spacing that you can
17 see just by looking at the printed petition itself.

18 MR. DAUNT: If there are no other questions, we'll
19 politely, kindly dismiss the witnesses. Mr. Doster, when
20 they do, please feel free to take a seat. But, Jeannette,
21 you said you had a question for Director Brater?

22 MS. BRADSHAW: Yeah. I do. Sorry.

23 MR. DAUNT: Thank you.

24 MS. BRADSHAW: We went to paperless so I have to
25 help sometimes. No. Director Brater, how many petitions do

1 we have currently that are being circulated that did not
2 come in front of this Board for an approval so far?

3 MR. BRATER: Currently being circulated I think --
4 I don't know what's actually out there right now.

5 MS. BRADSHAW: I believe it's one, don't we?

6 MR. FRACASSI: So I don't know if it's currently
7 being circulated, but what I can say is that there is one
8 petition that was -- that did a 483(a) filing that did not
9 come for approval as to form or approval as to the 100-word
10 summary.

11 MR. DAUNT: That was an -- that was an election
12 related one, wasn't it? One of the kind of offshoots of
13 certain things?

14 MR. FRACASSI: Correct.

15 MR. BRATER: Yeah.

16 MR. DAUNT: Yeah. Thank you.

17 MR. BRATER: And if -- if I -- we did find the
18 motion just for reference if it's helpful when the Board did
19 the conditional approval last time. The motion was,

20 "I move that the board conditionally approve the
21 form of the constitutional amendment submitted by RFA
22 provided sponsors remove the definite article the prior
23 to the word constitution in we the undersigned sentence
24 prior to circulation with the understanding that the
25 board's approval does not extend to (1) The substance

1 of the proposal which appears on the petition, or (2)
2 The manner in which the proposal language is affixed to
3 the petition."

4 MR. DAUNT: Thank you. Mr. Doster, brief
5 rebuttal?

6 MR. ERIC DOSTER: Thank you. I'll just -- thank
7 you. It'll be brief. I'm just trying to get some semblance
8 of equal time here if I can.

9 ERIC DOSTER

10 MR. ERIC DOSTER: But just a few very quick
11 points. The fact that it is an absolutely incorrect that
12 this is anywhere remotely close to a substantive challenge
13 to the form of the petition. I mean, the cases -- again, we
14 cited them in our supplement. The cases that were cited in
15 the staff report talk about this form versus substantive
16 challenge and substantive challenge are challenges on the
17 merits of the proposal. We're not challenging the merits of
18 the proposal. The substantive challenges are constitutional
19 challenges: equal protection, due process, whatever,
20 whatever. We're not -- we're talking about form, we're
21 talking about text.

22 And -- and I -- and I want to -- although I
23 absolutely respect my friends from Dykema, I got to admit
24 they're a heck of a lot easier to follow than that young
25 Miss Kauffman this morning. And Miss Kauffman, you know,

1 said it best about the words that go into our constitution
2 and may have been the most eloquent speaker that's been here
3 today. But one thing that Mr. Liedel says that you don't
4 have any -- there's nothing -- there's nothing in statute
5 that says that you have any authority on this issue. But I
6 said it in my challenge, I said it in our supplement
7 challenge, and I said it again here just, well, an hour ago
8 now that the statutory requirement that imposes the clear,
9 legal duty for this Board to reject -- reject the form of
10 this petition comes from Section 482(3) and I quote, "The
11 full text of the amendment so proposed must follow the
12 summary and be printed in eight point type." That is a
13 clear legal duty that this Board has to follow. Now, all
14 due respect to chairman or Director Brater, he said, well,
15 and I -- he said, well, you know, if it's dealing with the
16 full text of the amendment, you can only reg- -- or deals
17 with the actual proposal -- he's only reading half the
18 statute. He's saying you can only regulate the eight point
19 type part of it, but he for- -- but that kind of analysis to
20 say you don't have any authority fully ignores the first
21 part of that sentence, quote, "The full text of the
22 amendment so proposed must follow the summary." So if you
23 can regulate the eight point type part, you can also
24 regulate and you have a duty to regulate what's the full
25 text. And -- and I don't know how clearer to explain it,

1 but text requires words.

2 And in our challenge, we just went to the simple
3 dictionary definition of text and it consists of, and I
4 quote, "the original words of something written or printed
5 as opposed to a paraphrased translation -- as opposed to a
6 paraphrase, translation, revision or condensation," end of
7 quote. And that's a simple dictionary definition of the
8 word "text." This isn't the full text that is before you
9 today. They admit in their -- in their Exhibit 3 the what's
10 available on the web site what they now say is the full text
11 which has actual words. The version of the petition that
12 was before you on March 23 had actual words.

13 So, again, I promised to be brief and I'll just
14 leave one last point. The fact is that they have provided
15 you zero examples, no examples that gave you any precedent
16 where these types of errors, typos, mistakes, call them what
17 you will, have ever been, ever been accepted by this Board
18 and the reason is they do not exist. So thank you and,
19 again, we ask that you perform your clear, legal duty and
20 reject the form of this petition. Thank you very much for
21 your time.

22 MR. DAUNT: Thank you, sir. Okay. Well, what
23 would be the Board's pleasure at this point?

24 MS. GUREWITZ: I will make a motion. I move that
25 the Board of State Canvassers accept the staff

1 recommendation and find the petition submitted by
2 Reproductive Freedom for All sufficient.

3 MS. BRADSHAW: Support.

4 MR. DAUNT: Okay. We have a motion and support.
5 Will there be any further discussion on this matter? Seeing
6 none I will move for a vote. Those in favor of the motion
7 signify by saying "aye."

8 MS. BRADSHAW: Aye.

9 MS. GUREWITZ: Aye.

10 MR. DAUNT: Those opposed signify by saying "nay."

11 MR. DAUNT: Nay.

12 MR. HOUSKAMP: Nay.

13 MR. DAUNT: Deadlock, Jeannette predicted, two to
14 two.

15 (Whereupon motion failed at 4:14 p.m.)

16 MR. BRATER: Just Board Member Houskamp voted
17 "nay," just to clarify?

18 MR. DAUNT: Correct; yes.

19 MS. BRADSHAW: Got to be a little bit louder,
20 Richard.

21 MR. BRATER: We didn't hear.

22 MR. HOUSKAMP: Nay.

23 MS. BRADSHAW: Thank you.

24 MR. DAUNT: All right.

25 MS. BRADSHAW: Or we'll have to go back to the

1 roll call votes.

2 MR. DAUNT: As this -- as with the previous issue
3 Promote the Vote, I think there is probably a desire to move
4 forward on agendas eight -- items eight and nine on the
5 assignment of number and the 100 words so that we can get
6 those issues handled. I think Jonathan's explanation from
7 earlier would suffice. That being said, I think we can move
8 through number eight relatively quickly with an obvious
9 caveat that will be addressed in terms of what happens if
10 the Court rules that the Promote the Vote issue should not
11 go on the ballot in that number of 22-2. So I see no
12 witnesses seeking to speak on number eight, so looks -- Mr.
13 Houskamp is going --

14 MR. HOUSKAMP: You want me to make a -- this
15 motion? This is the revised motion that, Adam, you handed
16 me?

17 MR. FRACASSI: Correct.

18 MR. HOUSKAMP: I say I move the Board
19 conditionally designate the constitutional amendment
20 submitted by Reproductive Freedom for All as Proposal 22-3
21 on the November 8th, 2022, general election ballot. I
22 further move that in the event the proposal submitted by
23 Promote the Vote does not appear on the November ballot,
24 that this proposal be designated as Proposal 22-2. Does
25 that make sense?

1 MS. GUREWITZ: Support.

2 MR. DAUNT: Okay. We have a motion and we have
3 support. Do we have discussion?

4 MS. BRADSHAW: I have discussion. Normally I am a
5 no vote on conditional votes, but I am a no vote on
6 conditional votes when it comes to approval to form because
7 I feel that those have to come back in front of us. This is
8 a motion when we're just talking about designation. So I
9 will be a vote in the affirmative for this motion. I just
10 wanted to give an explanation before our vote or I could
11 have done it afterwards.

12 MR. DAUNT: No. Either was fine. Thank you.

13 MS. BRADSHAW: Uh-huh (affirmative).

14 MR. DAUNT: All right. Any further discussion?
15 Seeing none, all those in favor of the motion please signify
16 by saying "aye."

17 ALL: Aye.

18 MR. DAUNT: Any opposed? Motion carries 4-0.

19 (Whereupon motion passed at 4:16 p.m.)

20 MR. DAUNT: Moving on, agenda item number nine,
21 the consideration of the 100-word summary of purpose for the
22 constitutional amendment sponsored by Reproductive Freedom
23 for All. I will turn this over to Director Brater once
24 again for his synopsis of what he put together and why, and
25 then we do have a couple of folks who wish to speak on this

1 item. Director Brater?

2 MR. BRATER: Thank you, Chair Daunt. So as with
3 the prior issue involving Promote the Vote, the Election Law
4 and constitution provide for the director of elections to
5 propose a draft summary of the provision that constitutes
6 what will appear on the ballot along with a caption and the
7 Board to approve those things. The summary, 100-word
8 summary, in fact 94-word summary that accompanies this is
9 the same as what the Board approved for the petition summary
10 with the exception of the changing of the proposed
11 constitutional amendment language. The caption, again, is
12 new. That's not something the Board has approved before.
13 And as with the other one I attempted to at a very high
14 level go through what this amendment does, although with the
15 newly recognized consensus regarding brevity, I'm certainly
16 open to a shorter caption if the Board can agree on
17 something and I can propose a couple ideas there. But --
18 but what I have for you to start with -- and I know that we
19 have comments on this -- the caption would be,

20 "A proposal to amend the state constitution to
21 establish new individual right to reproductive freedom,
22 including right to make all decisions about pregnancy;
23 allow state to prohibit abortion in some cases; and
24 forbid prosecution of individuals exercising
25 established right."

1 And then the full text would be 94 word count of
2 the summary, I should say, would be:

3 "This proposed constitutional amendment would:
4 Establish new individual right to reproductive freedom,
5 including right to make and carry out all decisions
6 about pregnancy, such as prenatal care, childbirth,
7 postpartum care, contraception, sterilization,
8 abortion, miscarriage management, and infertility;
9 Allow state to prohibit abortion after fetal viability,
10 unless needed to protect a patient's life or physical
11 or mental health; Forbid state discrimination in
12 enforcement of this right; prohibit prosecution of an
13 individual, or a person helping a pregnant individual,
14 for exercising rights established by this amendment;
15 Invalidate all state laws that conflict with this
16 amendment. Should this proposal be adopted? Yes.
17 No."

18 And that is 94 words.

19 MR. DAUNT: Thank you, Director Brater. I do have
20 cards for Mr. Doster as the challenger on this issue has
21 requested to speak on item number nine. Come on up. Yup.

22 MR. ERIC DOSTER: Actually, I think in this case
23 it'd make more sense if Mr. Liedel spoke first, but --

24 MR. DAUNT: I just can't get it right today.

25 MR. ERIC DOSTER: Yeah, that's okay. But I'll

1 go -- I'll speak. Eric Doster on behalf of Citizens for MI
2 Women and Children. Doster, D-o-s-t-e-r.

3 ERIC DOSTER

4 MR. ERIC DOSTER: I think that Director Brater has
5 done a pretty good job of encapsulating the hours that we
6 spent to come up with the petition summary. Three of you
7 were here. I don't know if Mr. Liedel was here for another
8 proposal, but Mr. Brewer was representing his client at that
9 time. And I think that, again, Director Brater
10 encapsulated, you know, pretty much the petition summary
11 language. And the only -- the only point that I would make
12 was one of the hot button issues of negotiation with this
13 group was Mr. Brewer -- and I don't think Mr. Liedel knows
14 this -- but Mr. Brewer was actually the one that wanted to
15 have in the petition summary a reference to invalidate the
16 1931 state criminal abortion ban. And I've got copies of
17 his comments if you -- if you -- if that matters, if you
18 doubt me that that's what he wanted. So what that caused me
19 to do was start listing off all these other invalidating
20 state laws. And the compromise, if you'll recall from last
21 January, was, okay, we weren't going to mention this law,
22 this law, this law, this law, this law. We were just going
23 to say invalidate all state laws that conflict with this
24 amendment. And that was the compromise after hour or two
25 hour, I can't remember, 90 pages of transcript.

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1 So I think that given that compromise was pretty
2 significant with the deliberations of this Board, my only
3 suggestion for consistency and, again, in keeping with the
4 spirit of the negotiations that happened, you know, on the
5 petition summary was -- is that in the caption we also add a
6 phrase about invalidating all state laws that conflict with
7 this amendment. And then with respect to that phrase that's
8 kind of nestled in, in the bottom of the third bullet point
9 there that doesn't -- that has no relationship with anything
10 else in the third bullet point, just make it a fourth bullet
11 point and that's it. Again, I commend Director Brater for
12 his efforts here to bring this before the Board. Thank you.

13 MR. DAUNT: Thank you. Mr. Liedel and I do have
14 also in addition to Steve, Bonsitu Kitaba-Gaviglio.

15 MS. BONISITU KITABA-GAVIGLIO: You got it.

16 MR. DAUNT: All right. And if you having not been
17 up here previously wouldn't mind spelling that out for the
18 court reporter, that would be helpful.

19 MS. BONISITU KITABA-GAVIGLIO: Sure. Thank you.
20 Bonsitu Kitaba-Gaviglio --

21 MS. BRADSHAW: You'll have to hit the button.

22 MR. DAUNT: Oh, hit it again.

23 MS. BRADSHAW: You almost -- there it is. There
24 it is.

25 MR. DAUNT: There you go.

1 MS. BONBITU KITABA-GAVIGLIO: Okay. I'll get it
2 right. Bonsitu Kitaba-Gaviglio, B-o-n-s-i-t-u K-i-t-a-b-a
3 hyphen G-a-v-i-g-l-i-o.

4 MR. DAUNT: Thank you.

5 STEVEN LIEDEL

6 MR. STEVEN LIEDEL: I thank you again, Chairman
7 Daunt. We just want to briefly address similar to Mr.
8 Doster -- we're certainly aware of the negotiations that
9 occurred before, but we also note that the Attorney General
10 has indicated that ballot language adopted for purposes of a
11 petition summary is not binding and the Board is not
12 required to use that. A couple quick things. One -- or
13 two. I want to make sure Chris Trebilcock is -- does not
14 get credit for shorter captions. I think I was the one who
15 first proposed that to the -- to the Board in a submission a
16 few days before Mr. Trebilcock. So I'll remind him of that
17 regularly.

18 MR. DAUNT: I'll happily give it to you over him.

19 MR. STEVEN LIEDEL: Great. And look, it's
20 certainly less things for lawyers to argue over, whether
21 you're paid by the word or by the hour. So I think it's a
22 good development. We would encourage that here. In fact,
23 we proposed a brief caption. We think that's the term the
24 legislature has used. And if you're a instructionist, plain
25 text type of person, caption means basically just the

1 heading. Our proposed -- I think we -- we said we can -- we
2 can do that -- name that caption in five words, "A
3 constitutional amendment for reproductive freedom." Is that
4 five or six? Something like that we think would be
5 advisable here as well if the Board is so inclined.

6 Beyond that I think a couple things. A couple
7 items in the caption, we -- with the changes in front of
8 you. We think it's important to remind voters that what
9 this proposal is about and it's a -- it's mainly about
10 abortion and we have no problem. We think it better informs
11 a voter if you're going to have a longer caption to add the
12 words "and abortion" after "pregnancy" in the second line.
13 We think that -- well, we agree that the director has done a
14 good job with the summary. The word "regulate" is probably
15 more accurate than "prohibit." Regulate is the word that's
16 actually used in the proposal itself. And, you know, we can
17 regulate alcohol, you know, which we do. And alcohol is
18 still available, but it's not available in certain
19 circumstances or we can prohibit it which we did in the
20 past, prohibition. And so I think there's a significant
21 difference between prohibit and regulate and giving that the
22 proposed amendment actually used the word "regulate," we
23 think that's a better summary of the actual text of the
24 proposal itself. The third of the four changes would be
25 medically. The current language prepared by the director

1 indicates, you know, "unless needed to protect a patient's
2 life" and so forth. The constitution is much clearer about
3 what that need would be. It's not just any need. It has to
4 be a medical need. So it has to be a medical necessity. So
5 we think it better informs the voter of the content to add
6 one word, "medically." That still keeps you under the
7 100-word limit.

8 And then I just will note -- and I understand the
9 discussions that occurred before. I don't -- in my view
10 it's not -- not fully informative to voters to say that the
11 constitutional amendment itself invalidates all laws. And
12 while it may with the actions by executive branch officials
13 and the judiciary effectively, you know, invalidate the 1931
14 law. What it actually does is prevent enforcement. And
15 that's the case, you know, with the 1931 law right now. It
16 hasn't been invalidated by the courts. Its enforcement has
17 been prevented by judicial action, and the action of
18 executive branch officials unwilling to enforce it. And so
19 it's a quibble, but I do think it's something that, you
20 know, we want to bring to the attention to the Board and the
21 public in that the constitutional amendment itself cannot on
22 its own invalidate other laws. It requires either action by
23 an administrative official, a prosecutor, or other executive
24 branch official to choose how to or not implement some or
25 all of the law, and/or action by the judiciary or changes in

1 the law by the legislature. And so with that, have I
2 covered everything?

3 MS. BONBITU KITABA-GAVIGLIO: Yes.

4 MR. STEVEN LIEDEL: So we'd be happy to answer any
5 questions and happy to discuss with you a shorter caption or
6 even with Mr. Doster any changes as well if that would be
7 helpful to the Board.

8 MR. DAUNT: Okay. Thank you. Are there thoughts
9 or questions from the Board? I guess I'll take the
10 prerogative as chair just to say kind of, again, I like the
11 idea of shorter and sweeter. I think what Director Brater
12 has put together in the summary language is nicely done. If
13 we were to follow what we did on the previous issue, it
14 would say something like "a proposal to amend the state
15 constitution -- constitution to add provisions regarding
16 abortions." I know that's not going to be what people want
17 probably on either side, so we can't do it that succinctly.
18 But it -- it does appear that they're hashing some things
19 out, so --

20 MS. BRADSHAW: There -- there might be some
21 agreement.

22 MR. BRATER: Well, that's -- oh, I'm sorry.

23 MS. BRADSHAW: That's okay. I wanted to ask
24 Chairman Daunt. You know, we worked really hard to get this
25 summary. How are you feeling about moving or adding the

1 words "medically," "regulate" and the prevents that prevent
2 enforcement to --

3 MS. GUREWITZ: Can we do one at a time?

4 MS. BRADSHAW: Yeah. No, I'm just -- I'm just
5 general and then we'll -- then we can go one at a time, yes.

6 MR. DAUNT: So if I may suggest we take a
7 five-minute break and let them have a discussion and let me
8 utilize the restroom, that will be fantastic.

9 MR. STEVEN LIEDEL: We may have something that may
10 facilitate --

11 MS. BRADSHAW: I think that Chairman Daunt needs
12 to use the restroom.

13 MR. DAUNT: Yeah. We're going to -- we're going
14 to take a break for five minutes. We're going to recess for
15 five minutes and come back at 4:35.

16 (Off the record)

17 MR. DAUNT: In that instance, then we will call
18 this meeting back to order at 4:45. And it looks like
19 there's -- both of you would like to come up and I -- please
20 feel free to do so. Let us know what you've got in mind and
21 we'll hopefully wrap this up.

22 MR. STEVEN LIEDEL: Eric, if you want to go ahead
23 and we'll just play in if there's --

24 ERIC DOSTER

25 MR. ERIC DOSTER: Oh, sure. Yeah; absolutely.

1 Listen -- members of the Board, Eric Doster here on behalf
2 of Citizens Supporting MI Women and Children. Working from
3 Mr. Liedel's draft, that's probably the easiest way to start
4 here. We're -- we would agree to his caption. We would
5 also agree to his, on the second bullet point where he said
6 "regulate" instead of "prohibit," adding the word
7 "medically." And then the third bullet point that starts
8 with "forbid state discrimination," what we'd like to do is
9 to take that phrase at the end where it says -- he put
10 "prevent enforcement" -- let me read that. So in other
11 words, the third bullet point would end at the word
12 "amendment." So, "for exercising rights established by this
13 amendment;" add a fourth bullet point that reads,
14 "Invalidate state laws conflicting with this amendment." Is
15 that what you had, Steve?

16 MR. STEVEN LIEDEL: That works.

17 MS. BONBITU KITABA-GAVIGLIO: Yes.

18 MR. ERIC DOSTER: Okay.

19 MR. HOUSKAMP: Invalidate all or invalidate --

20 MS. BRADSHAW: Invalidate state laws.

21 MR. ERIC DOSTER: Invalidate state laws
22 conflicting with this amendment. That's a separate and
23 fourth bullet point.

24 MS. BRADSHAW: I think Director Brater has
25 something to say.

1 MR. DAUNT: Mr. -- Director Brater, please.

2 MR. BRATER: Yeah. So all that is agreeable to me
3 with one exception which is the changing the second bullet
4 point to say "allow state to regulate abortion after fetal
5 viability unless medically needed to protect a patient's
6 life or physical or mental health." Medically, I don't --
7 that's fine. But when you change that -- when you remove
8 the word "prohibit" and substitute it with "regulate," it
9 makes it sound as if the state cannot regulate abortion when
10 it is medically needed to protect a patient's life or
11 physical or mental health when in fact it can, it just can't
12 prohibit it. So what the constitutional amendment says is
13 that literally, the state may regulate the provision of
14 abortion care after fetal viability provided that in no
15 circumstance shall the state prohibit an abortion that in
16 the professional judgment of an attending health care
17 professional is medically indicated to protect the life or
18 physical or mental health of the pregnant individual. In
19 those circumstances when it's needed, the state can still
20 regulate it, but it can't prohibit it. So I don't believe
21 this is accurate if you just swap out the word "prohibit"
22 with "regulate." And we actually did have this discussion
23 when we were talking about the petition summary at the
24 previous meeting. So the word "regulate" can be in there,
25 but if that's the case, then there needs to be an adjustment

1 made on the back end that says something like "allow state
2 to regulate abortion af-" -- you know, maybe "allow state to
3 regulate abortion after fetal viability but not prohibit it
4 if medically needed," or something like that. You need
5 to -- you need to reflect what the clause actually does. I
6 mean, I guess I would propose, "allow state to regulate
7 abortion after fetal viability but not prohibit it where
8 medically needed to protect a patient's life or physical and
9 mental health."

10 MR. STEVEN LIEDEL: I think Mr. Doster and I are
11 going to discuss a briefer version to keep us within, you
12 know, 100 words the best we can unless after "fetal
13 viability but not prohibit unless medically needed." Just
14 add three words, but not -- but we -- we're going to need to
15 discuss that.

16 MR. BRATER: But not prohibit where --

17 MS. GUREWITZ: But not -- if medically needed.

18 MR. BRATER: -- but not prohibit -- oh, if --
19 yeah, that would, yeah.

20 MS. GUREWITZ: Not prohibit if medically needed.

21 MR. STEVEN LIEDEL: So after viability but not
22 prohibit would be added -- subject to discussion -- unless
23 medically needed.

24 MS. GUREWITZ: No.

25 MR. DAUNT: If they're --

1 MR. BRATER: "Allow state to regulate abortion
2 after fetal" --

3 MS. GUREWITZ: Not prohibit it if medically
4 needed.

5 MR. BRATER: -- yeah. "Allow state to regulate
6 abortion after fetal viability but not prohibit if medically
7 needed."

8 MS. BRADSHAW: Yes. That's right.

9 MR. DAUNT: "If" instead of "unless."

10 MS. BRADSHAW: Right.

11 MR. STEVEN LIEDEL: Sure.

12 MR. ERIC DOSTER: But the rest of it we can leave
13 in there; right?

14 MR. STEVEN LIEDEL: Yes.

15 MR. ERIC DOSTER: "But not prohibit if medically
16 needed to protect the patient's life or physical and mental
17 health"?

18 MS. GUREWITZ: Right.

19 MS. BRADSHAW: Right.

20 MR. DAUNT: Okay.

21 MR. BRATER: Did that take us over?

22 MR. FRACASSI: I don't know. Why don't you and I
23 figure it out. Take a break for a second. We'll figure it
24 out and then we'll type it up, distribute.

25 MR. BRATER: Okay. We're going to type it up.

1 MR. DAUNT: We will recess for five minutes.

2 (Off the record)

3 MR. DAUNT: I will call us back to order at 4:56.

4 And we've got four minutes and then I think the sergeants
5 come in and start sweeping us away. So it looks like there
6 has been some discussion and hopefully agreement. Director
7 Brater?

8 MR. BRATER: Yeah. I'm just going to read what
9 I've drafted. Caption,

10 "A proposal to amend the state constitution to
11 establish new individual right to reproductive freedom,
12 including right to make all decisions about pregnancy
13 and abortion; allow state to regulate abortion in some
14 cases; and forbid prosecution of individuals exercising
15 established right.

16 The proposed constitutional amendment would:
17 Establish new individual right to reproductive freedom,
18 including right to make and carry out all decisions
19 about pregnancy, such as prenatal care, childbirth,
20 postpartum care, contraception, sterilization,
21 abortion, miscarriage management, and infertility;
22 Allow state to regulate abortion after fetal viability
23 but not prohibit if medically needed" -- sorry. I'm
24 going to start that over. "Allow state to regulate
25 abortion after fetal viability but not prohibit if

1 medically needed to protect a patient's life or
2 physical or mental health; Forbid state discrimination
3 in enforcement of this right; prohibit prosecution of
4 an individual, or a person helping a pregnant
5 individual, for exercising rights established by this
6 amendment." And then new bullet point, "Invalidate
7 state laws conflicting with this amendment. Should
8 this proposal be adopted? Yes. No." 95 words.

9 MR. DAUNT: Okay. Thank you, Director Brater.
10 Counsel for each side, are we in agreement that we have
11 something?

12 MR. STEVEN LIEDEL: Reproductive Freedom for All
13 is prepared to accept the director's proposed language.

14 MR. DAUNT: Thank you.

15 MR. ERIC DOSTER: Citizens Supporting MI Women and
16 Children are okay with the language with one exception, or
17 actually two exceptions. To go back to Director Brater's
18 language about "prohibit" in the caption and then his second
19 bullet point, you know, "prohibit abortion after fetal
20 viability, unless medically needed." Yeah, the word
21 "medically" is fine, so I hope that makes sense. So we're
22 okay with what Director Brater just said. The word
23 "prohibit" comes back in the caption, in the second bullet
24 point "prohibit" instead of "regulate," and then the word
25 "medically" leave it -- just leave -- this is Mr. Liedel's

1 initial language for the second bullet point minus the word
2 "prohibit" versus "regulate." So we're only talking about
3 just a couple words. Oh, thank you. Was that as clear as
4 mud?

5 MR. DAUNT: Yes. I am -- I am confused as to what
6 the --

7 MR. ERIC DOSTER: Here, I'll --

8 MS. GUREWITZ: What could a final version be in
9 the next two minutes?

10 MS. BONBITU KITABA-GAVIGLIO: And just to clarify
11 there for in the second bullet point there's two types of
12 actions happening. There's regulation after fetal viability
13 and then prohibiting abortion if medically needed to protect
14 the life or physical and mental health of the patient. And
15 so those two concepts are being reflected in the director's
16 new proposed language.

17 MR. DAUNT: I -- I --

18 MR. BRATER: I agree with that.

19 MR. DAUNT: Yeah. I think that what was read by
20 Director Brater matches the back and forth we had with both
21 sides. I'm -- and I'm -- really I'm lost as to what your --

22 MR. ERIC DOSTER: Let me -- three changes from
23 what Director Brater just said.

24 MR. DAUNT: Before -- before I let you go any
25 further, are the changes that he is suggesting okay with

1 you?

2 MR. STEVEN LIEDEL: (Shaking head negatively)

3 MS. BONISITU KITABA-GAVIGLIO: No.

4 MR. DAUNT: Okay. Then -- then -- did you have
5 something to add, Jeannette?

6 MS. BRADSHAW: We have one minute.

7 MR. DAUNT: I am -- I have no problem with what
8 was laid out by Director Brater. I think it matches the
9 intent of both sides. I fail to see what -- what would need
10 to be changed. Mr. Houskamp?

11 MR. HOUSKAMP: I -- I'm not the -- I'm not an
12 attorney.

13 MS. GUREWITZ: I thought we were going to do a
14 short caption.

15 MS. BRADSHAW: That's what I thought we were
16 doing. I thought that was the conversation was the short
17 caption, not to the summary.

18 MS. GUREWITZ: Short caption?

19 MR. BRATER: It was, but --

20 MR. STEVEN LIEDEL: Look the -- we'll get to that
21 next time. Apparently not this time. The two groups could
22 find consensus by adding words --

23 MR. HOUSKAMP: What was --

24 MR. STEVEN LIEDEL: -- as Member Brater
25 suggested -- or Member Bradshaw suggested.

1 MR. HOUSKAMP: What was your objection? What were
2 you looking to do?

3 MR. STEVEN LIEDEL: We, in terms of short caption,
4 "A proposed constitutional amendment for reproductive
5 freedom" or, you know, we -- we would also be fine with "a
6 proposed constitutional amendment regarding reproductive
7 freedom and abortion," whichever -- some -- some concept
8 similar to that.

9 MR. DAUNT: I think at this point we want as close
10 to agreement and acceptance from both sides as we can get.
11 I -- again, I'm -- I think what Director Brater read is very
12 fair from my perspective. It doesn't shorten things, but it
13 does address each side's concerns. I -- I would be
14 comfortable with a motion on that. Is there other thought
15 or discussion on that?

16 MR. BRATER: I don't know whether we have time or
17 not, but a short caption that would work for me would be, "A
18 proposal to amend the state constitution to establish new
19 individual right regarding decisions about pregnancy and
20 abortion."

21 MR. STEVEN LIEDEL: I don't think you would have
22 support from either side right now for that. I think we're,
23 you know, very close otherwise. But obviously we're more
24 comfortable with the director -- you know, we had agreed to
25 change some other words prior to the concerns raised by the

1 director. We'd leave it to the Board at this point to
2 decide in which direction to go.

3 MR. DAUNT: Okay. Thank you very much for both
4 sides for working on this. This --

5 MR. STEVEN LIEDEL: Thanks for all -- all your
6 time today.

7 MR. DAUNT: -- the beauty of government at work.
8 All right. So we have language that the director has read.
9 From the standpoint of a motion, are we -- should it be
10 re-read or --

11 MS. BRADSHAW: Okay. He -- I'm sorry.

12 MR. BRATER: I don't think it needs to be re-read.

13 MR. DAUNT: Okay.

14 MS. BRADSHAW: Are we -- are we going on the first
15 one that you read or the second one that you read?

16 MS. GUREWITZ: This (indicating).

17 MR. BRATER: I think the motion would be on the
18 revised caption and summary that I read a few minutes ago,
19 not on -- not with the proposed shortened caption. So it
20 would be the full -- the full caption and summary that I
21 just read together.

22 MS. BRADSHAW: So which incorporates the word
23 "regulate," is that the one that you were talking about,
24 Chairman?

25 MR. BRATER: Yes.

1 MR. DAUNT: Yes.

2 MS. GUREWITZ: Right.

3 MS. BRADSHAW: Okay. I -- sorry. I move that the
4 Board of State Canvassers -- oh, wrong one. I tried. Oh, I
5 have it. I move that the Board of State Canvassers approve
6 the statement of purpose prepared and submitted on August
7 31st, 2022, and read by the Director of Elections for
8 Proposal 22-3 on November 8th, 2022, general election
9 ballot. Do I need to --

10 MR. BRATER: I think that's fine.

11 MS. BRADSHAW: Okay.

12 MS. GUREWITZ: Second.

13 MR. DAUNT: Okay. We have a motion and support.
14 Do we have any discussion?

15 MR. HOUSKAMP: Nope.

16 MR. DAUNT: All right. Those in favor of the
17 motion signify by saying "aye."

18 ALL: Aye.

19 MR. DAUNT: Those opposed? Motion carries four to
20 zero.

21 (Whereupon motion passed at 5:04 p.m.)

22 MR. DAUNT: And I know there was one last item
23 that I probably need to do to be -- any other business
24 properly submitted to the Board that we need to discuss?

25 MR. BRATER: Not from my standpoint, no.

1 MR. DAUNT: Okay. All right.

2 MS. BRADSHAW: Mr. Chair, I'm okay with the update
3 on legal at our next proposed meeting.

4 MR. DAUNT: Okay. All right. Everybody, thank
5 you. This meeting is adjourned at 5:03.

6 (Proceedings concluded at 5:05 p.m.)

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<p>A</p> <p>A- 110:25</p> <p>A-l-d-r-e-d 64:14</p> <p>A-p-p-l-i-n-g 30:5</p> <p>A-p-r-i-l 108:5</p> <p>A-r-i 58:24</p> <p>a-r-o-n 111:1</p> <p>A-u-g-u-s-t-i-n-e 57:4</p> <p>A-v-e-r-s 47:20</p> <p>a.m 1:6 6:2</p> <p>Aaron 4:15 109:8 110:16,16,20,23 110:25,25 111:2,3 112:16,18,21</p> <p>ab- 165:11</p> <p>abandon 63:18</p> <p>abdominoplasty 102:3</p> <p>abide 185:14</p> <p>ability 78:21,21 92:5 99:22 110:10 140:21 170:10 180:2 198:11 216:18 218:3</p> <p>able 9:21 11:16 14:11 16:6 17:19 27:25 32:2 58:7,7 71:2,18 74:6 81:6 90:12 91:12,18 93:22 99:18 105:25 113:23 117:1,1,13,16 121:2,21 125:8 127:24 194:20 235:24 241:21</p> <p>ably 187:16</p> <p>abnormalities 71:14</p> <p>abominable 10:25</p> <p>abort 36:22 62:12 62:12,12</p> <p>aborted 17:20 98:1</p> <p>abortion 7:7,16,20 10:15 12:24 13:4 15:15 17:14 18:4 36:21,22,25 37:2 37:5,13,21,22,23 37:23 38:8 44:10 49:10 54:3 71:2 74:10 84:21,25 85:1,7,25 94:7,12 96:15,17 101:16</p>	<p>101:17 103:24 106:23 107:18 109:2 227:24 255:23 256:8,9 257:16 260:10,12 265:4,9,14,15 266:2,3,7 267:1,6 268:13,13,21,22 268:25 269:19 270:13 272:7,20</p> <p>abortions 33:1,2 71:5 82:24 111:25 111:25 114:25 262:16</p> <p>abridging 139:19</p> <p>abrogate 48:3 137:15,18,19,24 138:6,12,15,21 142:1 146:17 147:16 149:22 155:11,12 159:17 159:18,25 161:15 163:19 170:16,23 172:1 173:6,17 174:11 176:20 177:6 184:12 192:19</p> <p>abrogate's 139:4</p> <p>abrogated 48:8 132:23 133:2,6,8 138:14,24 140:20 141:15 142:1 147:9 148:20 154:25 155:16 156:7 157:1 160:19 162:7 164:1,4 165:7,9 165:12,15,17 166:20 170:8,10 173:23 174:14,19 174:22 175:3,11 175:16 177:10 178:15 179:25 180:3,6 183:24 193:9</p> <p>abrogates 152:23</p> <p>abrogating 148:12</p> <p>abrogation 143:18 144:24 145:4 147:14 150:3,15 166:20 168:11 175:8 180:11,16 181:7 192:15</p>	<p>204:23</p> <p>abrogations 178:18</p> <p>absentee 9:3,6,9,12 10:8,9 19:20 125:12,13 190:10 191:11,12,23,23 200:5,24,24 201:3 201:5,9,12</p> <p>absentee-ballot 191:12,22</p> <p>absolute 24:8</p> <p>absolutely 10:24 11:3 23:19,19 42:16 76:9 83:17 88:4 89:4 96:13 107:8 108:3 126:1 135:18 159:20 161:19 163:9 165:25 237:24 238:2,20 249:11 249:23 263:25</p> <p>absurd 24:7 157:12 157:13,18,18 162:10 172:15</p> <p>academic 86:11 218:2</p> <p>Academy 83:3</p> <p>accept 39:8 90:17 108:19 172:22 182:15 194:14 251:25 269:13</p> <p>acceptable 84:25 131:12 195:16 211:6</p> <p>acceptance 272:10</p> <p>accepted 213:25 251:17</p> <p>accepting 92:17</p> <p>access 93:19</p> <p>accident 43:22</p> <p>accommodation 18:10</p> <p>accompanied 226:5 226:19</p> <p>accompanies 255:8</p> <p>accompany 189:19</p> <p>account 20:7 80:19</p> <p>accountable 68:8,10</p> <p>accurate 63:22 132:11 204:21 232:10,12 237:23 260:15 265:21</p> <p>accurately 195:18</p>	<p>achieve 73:25</p> <p>acknowledge 42:10 200:16</p> <p>Acrobat 237:7,9</p> <p>act 6:10 56:16 79:2 98:3 103:25 154:11 201:3 229:4</p> <p>action 22:13 147:24 148:8 161:8 185:18 245:23 261:17,17,22,25</p> <p>actions 17:6 217:7 261:12 270:12</p> <p>actual 78:10,15 123:12 155:9 213:10,17 214:4 214:10 215:8,11 215:24 217:7 219:2 220:11,12 220:13,17 221:1,4 223:5 224:12,14 224:15 225:18 231:6 233:16 239:19 245:24 250:17 251:11,12 260:23</p> <p>actualize 141:9</p> <p>ADA 11:17</p> <p>Adam 1:11 18:22 123:21 144:15 253:15</p> <p>add 16:12 72:25 79:9 165:24,24 174:14 190:12 194:24 198:12 199:12 200:6,24 202:8 204:19 206:2,4,7,20 207:14,24 258:5 260:11 261:5 262:15 264:13 266:14 271:5</p> <p>added 58:2,3 65:8 67:20 92:3 188:8 194:17 200:12 266:22</p> <p>adding 198:10 202:10 204:11 262:25 264:6 271:22</p> <p>addition 10:24 258:14</p>	<p>additional 121:9 190:10 230:10,11</p> <p>additionally 35:12 121:12</p> <p>address 7:5 9:3,12 17:4 18:22 19:17 23:13 35:16 40:13 44:12 45:21,23 54:1 63:3 97:9 137:13,14 138:5 146:5 156:24 167:2 168:8 169:16 178:13 180:18,24 184:6 186:5 192:17,22 230:8 240:10,12 240:16 241:18 259:7 272:13</p> <p>addressed 54:5,14 124:3 150:16 159:14 169:25 171:5 181:13 192:12 193:1 199:14 246:4 253:9</p> <p>addresses 9:20 63:20 72:19</p> <p>addressing 53:24 54:10 91:22 181:7</p> <p>adhere 34:9 71:3</p> <p>adjoining 43:24</p> <p>adjourned 275:5</p> <p>adjustment 265:25</p> <p>administrative 261:23</p> <p>admission 218:21 219:6 223:20 224:9</p> <p>admit 47:10 249:23 251:9</p> <p>admits 213:19</p> <p>admitting 218:22</p> <p>ado 78:7</p> <p>adopt 195:21 232:2</p> <p>adopted 106:7 130:23 131:7 138:25 139:13,20 139:23 151:5 191:19 216:9 256:16 259:10 269:8</p> <p>adoption 38:2,4,7 230:4</p>
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Court of Appeals, State of Michigan

ORDER

Michigan Campaign for New Drug Policies v Bd of State Canvassers

Docket No. 243506

LC No. 00-000000

Patrick M. Meter
Presiding Judge

Richard Allen Griffin

Donald S. Owens
Judges

The Court orders that the motions for immediate consideration are GRANTED.

The motion to intervene is GRANTED.

The Court orders that the complaint for mandamus is DENIED. Pursuant to *Consumers Power v Attorney General*, 426 Mich 1; 392 NW2d 513 (1986), Const 1963, art 12, § 2 “does summon legislative aid in the area of the form of these petitions as well as in the areas of circulation and signing” because the constitution specifies that the “petition shall be in the form, and shall be signed and circulated in such manner, as prescribed by law.” MCL 168.477(1) authorizes the board to make a determination with regard to the “sufficiency or insufficiency of a petition under this chapter,” including a determination of the “sufficiency” of the petition’s compliance with MCL 168.482. There was no legal analysis necessary to conclude that the petition, on its face, purported to replace Const 1963, art 1, § 24, and did not publish the existing art 1, § 24, in violation of MCL 168.482(3). Although the proponents claim that it was never their intent to replace art 1, § 24, and that the numbering error can be remedied, they have not shown that they have a clear legal right to certification of a defective petition. Accordingly, mandamus is inappropriate.



 Presiding Judge



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

SEP 06 2002

Date



 Chief Clerk