# Order

**Michigan Supreme Court**
**Lansing, Michigan**

September 8, 2022



164755 & (7)(8)(14)(15)(16)(17)

PROMOTE THE VOTE 2022,
Plaintiff,

v SC: 164755

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

and

DEFEND YOUR VOTE,
Intervening Defendant.

_____/

On order of the Court, the motions for immediate consideration, to intervene, to file a reply, and of Voters Not Politicians to file a brief amicus curiae are GRANTED. The complaint for mandamus and declaratory relief is considered, and relief is GRANTED. We direct the Board of State Canvassers (the Board) to certify the Promote the Vote petition as sufficient for placement on the November 8 general election ballot by September 9, 2022.

The Board's duty with respect to petitions is "limited to determining the sufficiency of a petition's form and content and whether there are sufficient signatures to warrant certification." *Stand Up for Democracy v Secretary of State*, 492 Mich 588, 618 (2012) (opinion by MARY BETH KELLY, J.). It is undisputed that there are sufficient signatures to warrant certification. The only challenge to the petition was that it failed to include all the constitutional provisions that would be abrogated by the proposed amendments, as is required by Const 1963, art 12, § 2 and MCL 168.482. See *Protect Our Jobs v Bd of State Canvassers*, 492 Mich 763 (2012). We disagree. Instead, we conclude that the proposed amendments would not abrogate any of the constitutional provisions identified by the challenger. The Board thus has a clear legal duty to certify the petition.

We further direct the Secretary of State (Secretary) to include the ballot statement for the Promote the Vote proposal drafted by the Director of Elections and approved by the Board when the Secretary certifies to county clerks the contents of the ballot for the November 8, 2022 general election.

MCCORMACK, C.J. (*concurring*).

I agree with the Court's decision to grant the complaint for mandamus and declaratory relief and order the Board of State Canvassers (the Board) to certify the Promote the Vote petition for the ballot. I write separately to address one issue that ought to be clear but apparently isn't—the Board's role in certifying petitions is very limited. The Board's duty is to determine whether a petition has sufficient signatures and whether its form complies with statutory requirements.[1]

There is no dispute about the signatures or form of this petition. Rather, the challengers believe that the petition violates Article 12, § 2 of the Michigan Constitution because its *substance* abrogates various provisions of the Constitution without publishing those provisions. This quintessential legal question is far outside the Board's legal role (and expertise). See, e.g., *Protect Our Jobs v Bd of State Canvassers*, 492 Mich 763, 776-784 (2012) (determining the meaning of "alter" and "abrogate" in Article 12, § 2).

The challengers have a forum in which to have this objection addressed: court. See MCL 600.4401(1); MCR 7.203(C)(2).

Absent an insufficient number of signatures or a petition form that doesn't comply with unambiguous statutory requirements, the Board lacks the authority to refuse to certify a petition. Because the challenger here alleged neither of those defects, the Board had a duty to certify the petition. See *Reproductive Freedom for All v Bd of State Canvassers*, ___ Mich ___ (September 8, 2022) (Docket No. 164760); *Mich Civil Rights Initiative v Bd of State Canvassers*, 268 Mich App 506, 520 (2005) ("Because there is no dispute that the form of the petition is proper or that there are sufficient signatures, we conclude that the board is obligated to certify the petition, and thus, breached its clear legal duty to certify the petition."). The Board's failure to do so seems to be disappointing evidence of the weakened state of our polity.

---

[1] While in *Stand Up for Democracy v Secretary of State*, 492 Mich 588, 618 (2012) (opinion by MARY BETH KELLY, J.), the lead opinion stated that "[t]he board's duty with respect to referendum petitions is limited to determining the sufficiency of a petition's form and content and whether there are sufficient signatures to warrant certification," the statutes cited for that proposition address only the Board's authority to approve the "form" and "sufficiency" of the petition. See *id*. at 601 n 23, 618 n 58 (citing various statutes). The statutes do not explicitly authorize the Board to make determinations about the "content" of the petition. So I question whether that statement from *Stand Up for Democracy* is correct. See *Reproductive Freedom for All v Bd of State Canvassers*, ___ Mich ___, ___ n 1 (September 8, 2022) (Docket No. 164760) (MCCORMACK, C.J., concurring).

BERNSTEIN, J. (*concurring*).

I acknowledge, as I must, that mandamus is an extraordinary remedy. I vote to grant mandamus relief today because of my consistent belief in the importance of elections in our representative democracy.[2] Throughout the years, I have voted to grant relief in a number of election cases. *Rocha v Secretary of State*, ___ Mich ___; 974 NW2d 822 (2022) (VIVIANO, J., dissenting) (joining Justice VIVIANO's dissenting statement that would grant the plaintiff's request for mandamus relief to be placed on the August 2022 primary ballot); *Raise the Wage MI v Bd of State Canvassers*, 509 Mich ___, ___; 970 NW2d 677, 678 (2022) (BERNSTEIN, J., concurring in part and dissenting in part) ("I believe it is clear that a union label on an initiative petition is not subject to type-size requirements as set forth in MCL 168.482."); *Attorney General v Bd of State Canvassers*, 500 Mich 907, 914 (2016) (BERNSTEIN, J., dissenting) ("I would reverse the Court of Appeals rather than order expedited oral argument, as I believe that the Court of Appeals clearly erred. I write to further explain why I believe that appellant Jill Stein has met the statutory requirements for a recount.").[3] In numerous other cases where the legal issue before us was less clear-cut, I have voted for either further consideration or oral argument, given my strong interest in making sure we get these cases right. See *Johnson v Bd of State Canvassers*, ___ Mich ___, ___; 974 NW2d 235, 239 (2022) (BERNSTEIN, J., dissenting) ("Because I believe this case presents significant legal issues worth further consideration, I would order full briefing in this case and hold oral argument next week to ensure that the interests of Michigan voters are fully considered."); *Markey v Secretary of State*, ___ Mich ___; 974 NW2d 255 (2022) (would have ordered oral argument); *Craig v Bd of State Canvassers*, ___ Mich ___; 974 NW2d 240 (2022) (would have granted the bypass and ordered oral argument); *Cavanagh v Bd of State Canvassers*, ___ Mich ___; 974 NW2d 549 (2022) (would have ordered oral argument); *Davis v Highland Park City Clerk*, ___ Mich ___; 974 NW2d 550 (2022) (WELCH, J., dissenting) (joining Justice WELCH's dissenting statement that would have found the legal issues worthy of further consideration); *League of Women Voters of Mich v Secretary of State*, 506 Mich 886, 887-888 (2020) (BERNSTEIN, J., dissenting) ("Because absentee ballots will undoubtedly play a significant role in the upcoming general election, I would hold oral argument in this case ahead of that election in order to ensure that the interests of Michigan voters are thoroughly examined and considered before votes are

---

[2] " 'A share in the sovereignty of the state, which is exercised by the citizens at large, in voting at elections is one of the most important rights of the subject, and in a republic ought to stand foremost in the estimation of the law.' " *Attorney General v Bd of State Canvassers*, 500 Mich 907, 916 n 3 (2016) (BERNSTEIN, J., dissenting), quoting Hamilton, *Second Letter from Phocion* (April 1784), as published in *The Papers of Alexander Hamilton Volume III: 1782–1786*, Syrett & Cooke, eds (New York: Columbia University Press, 1962), pp 544-545.

[3] My vote in this case is consistent with my vote and my separate statement in *Reproductive Freedom for All v Bd of State Canvassers*, ___ Mich ___ (September 8, 2022) (Docket No. 164760) (BERNSTEIN, J., concurring).

tallied, in order to avoid any potential disruption to the election process. The people of Michigan deserve nothing less."). I believe that my long-expressed interest in letting the people of Michigan make their own decisions at the ballot box speaks for itself. Accordingly, I join this Court's decision to grant mandamus relief.

WELCH, J. (*concurring*).

I write separately to explain why I voted in favor of ordering the Board of State Canvassers (the Board) to certify the Promote the Vote petition. The Board's duty with respect to petitions is " 'limited to determining the sufficiency of a petition's form and content and whether there are sufficient signatures to warrant certification.' " *Unlock Mich v Bd of State Canvassers*, 507 Mich 1015, 1015 (2021), quoting *Stand Up for Democracy v Secretary of State*, 492 Mich 588, 618 (2012) (opinion by MARY BETH KELLY, J.). The Board preliminarily approved the form and content of the petition prior to circulation in February 2022, and that preliminary approval was not challenged in court. It is undisputed that there are sufficient signatures to warrant certification. In a postcirculation challenge to the petition before the Board, as well as before this Court, Defend Your Vote argued that the petition would abrogate Const 1963, art 2, §§ 2, 5, and 9; Const 1963, art 6, § 5; and Const 1963, art 7, § 8, and that the petition failed to republish these provisions as required by Const 1963, art 12, § 2 and MCL 168.482. Therefore, according to Defend Your Vote, the Board has a clear legal duty to withhold certification of the petition. I disagree. The proposed amendments will not abrogate any of the constitutional provisions identified by the challenger explicitly or by implication.[4]

[4] While the Court does not decide the issue today, like Chief Justice MCCORMACK, I question whether the Board has legal authority to consider and resolve republication challenges as a part of its duty to review the form of the petition under the Michigan Election Law, MCL 168.1 *et seq*. See *Citizens Protecting Michigan's Constitution v Secretary of State*, 324 Mich App 561, 585 (2018) ("The Board's duty is to certify the proposal after determining whether the form of the petition substantially complies with statutory requirements and whether the proposal has sufficient signatures in support."). In *Protect Our Jobs v Bd of State Canvassers*, 492 Mich 763, 778 (2012), this Court held that "petition supporters must fully comply with the requirement that the petition republish any existing constitutional provision that the proposed amendment, if adopted, would alter or abrogate." See also Const 1963, art 12, § 2; MCL 168.482(3). But while this Court's authority to resolve legal disputes concerning alleged republication defects is clear, the scope of the Board's authority to withhold certification because of an alleged republication defect is debatable. Const 1963, art 12, § 2 contains a republication requirement, but it does not mention the Board, and Const 1963, art 12, § 2 describes the role of the "person authorized by law" to receive a petition proposing a constitutional amendment but does not mention the republication requirement. While MCL 168.482(3) provides that republication of existing provisions of the Constitution that the proposal would "alter or abrogate" is required, MCL 168.476(1) merely provides that "[u]pon receiving notification of the filing of the petitions, the board of state canvassers shall canvass the petitions to ascertain if the petitions have been signed by the requisite number of qualified

"[A]n amendment only abrogates an existing provision when it renders that provision wholly inoperative." *Protect Our Jobs v Bd of State Canvassers*, 492 Mich 763, 773 (2012). "An existing constitutional provision is rendered wholly inoperative if the proposed amendment would make the existing provision a nullity or if it would be impossible for the amendment to be harmonized with the existing provision when the two provisions are considered together." *Id*. at 783 (citation omitted). "Because any amendment might have an effect on existing provisions, the 'abrogation' standard makes clear that republication is only triggered by a change that would essentially eviscerate an existing provision." *Id*. at 782. "[W]hen the existing provision would likely continue to exist as it did preamendment, although it might be affected or supplemented in some fashion by the proposed amendment, no abrogation occurs." *Id*. at 783. "On the other hand, a proposed amendment more likely renders an existing provision inoperative if the existing provision creates a mandatory requirement or uses language providing an exclusive power or authority because any change to such a provision would tend to negate the specifically conferred constitutional requirement." *Id*. The amendments proposed by the Promote the Vote petition can be harmonized with existing constitutional provisions, and thus, the proposed amendments do not abrogate Const 1963, art 2, §§ 2, 5, and 9; Const 1963, art 6, § 5; or Const 1963, art 7, § 8.

The proposed amendments' requirement that in-person voting be permitted nine days before election day and that results not be generated or released before 8:00 p.m. on election day would not render Const 1963, art 2, § 5 inoperative. Election day would remain the first Tuesday after the first Monday in November, and election results would not be released until after the close of the polls on election day. The expansion of early in-person voting days in Michigan has no more of an effect on the Election Day Clause than the preexisting practice of early voting by mail. See Const 1963, art 2, § 4. Accordingly, the proposed and existing constitutional provisions can be harmonized.

The proposed amendments would also create an explicit right to vote held by persons who are "elector[s] qualified to vote in Michigan," and it would prohibit the enactment or enforcement of laws that have the "intent or effect of denying, abridging, interfering with, or unreasonably burdening the fundamental right to vote." (Capitalization altered.) The proposed amendments will limit the substance of statutory laws that can be proposed and adopted by the people pursuant to Const 1963, art 2, § 9 as well as local laws that can be enacted by the governing bodies of counties under Const 1963, art 7, § 8. But

---

and registered electors." Moreover, our caselaw demonstrates, and the parties concede, that whether a proposed amendment would abrogate an existing constitutional provision frequently requires legal analysis and often will not be readily apparent from the face of a petition. I acknowledge that in *Stand Up for Democracy v Secretary of State*, 492 Mich 588 (2012), and in some other decisions cited by Justice ZAHRA, the Court has suggested that the Board has some authority to review the *content* of a petition. But as the Chief Justice points out, the statutory and constitutional authority for these statements is questionable.

the ability to propose or enact laws through those constitutional mechanisms would continue to exist and operate as it did preamendment.[5] Likewise, the proposed amendments' creation of a cause of action for the violation of the right to vote that must be filed in the circuit court of the county in which a plaintiff resides will affect some aspects of this Court's rulemaking authority, but the Court would retain its authority to establish rules of practice and procedure for the courts under Const 1963, art 6, § 5.

The final abrogation challenge concerns Const 1963, art 2, § 2, which provides that "[t]he legislature may by law exclude people from voting because of mental incompetence or commitment to a jail or penal institution." The proposed amendments would explicitly enshrine certain voting rights that will be held by "[e]very citizen of the Unites States who is an elector qualified to vote in Michigan," and these rights would be created by adding new subsections to Const 1963, art 2, § 4. Under Const 1963, art 2, § 1, "[e]very citizen of the United States who has attained the age of 21 years,[6] who has resided in this state six months, and who meets the requirements of local residence provided by law, shall be an elector and qualified to vote in any election *except as otherwise provided in this constitution*." (Emphasis added.) Thus, Article 2, § 1 expressly acknowledges that who is qualified to be an elector in Michigan can be limited by other provisions of the Constitution, and Article 2, § 2 expressly grants the Legislature permissive authority to enact statutes imposing such limitations as to mentally incompetent or incarcerated individuals.[7] Nothing about that authority has changed with the proposed amendments. While the proposed amendments of Article 2, § 4(1)(a) might affect the manner in which the Legislature may exercise the permissive authority granted by Article 2, § 2, it does not implicitly or explicitly forbid the Legislature from enacting a statute under the authority expressly

---

[5] Const 1963, art 2, § 9 currently states that "[t]he power of initiative extends only to laws which the legislature may enact under this constitution." In other words, any constitutional limitations imposed on the Legislature's lawmaking authority automatically apply to the initiative power. The self-executing language in Article 2, § 9 provides a built-in mechanism to harmonize this part of the Constitution with any new lawmaking limitations that the proposed amendments would impose on the Legislature. Relevant to this case, the Promote the Vote petition republished Article 4, § 1, thus acknowledging the proposed new limitations on the Legislature's lawmaking authority.

[6] But see US Const, Am XXVI, § 1, which provides, "The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age."

[7] This is the only constitutional language that gives the Legislature its current authority to exclude incarcerated individuals from the ballot box, as it has done through MCL 168.492a. Otherwise, such an action would likely be an unconstitutional imposition of additional qualifications on who can vote that go beyond what is permitted under Const 1963, art 2, § 1.

granted to it by Article 2, § 2. The existing and proposed constitutional provisions can exist and operate in harmony, and thus no abrogation will occur.[8]

The proposed constitutional amendments will not, if adopted, abrogate any existing constitutional provisions that the challenger claims should have been republished. Therefore, the Board has a clear legal duty to certify the petition for presentation to the electorate.

I respectfully concur in the Court's judgment.

ZAHRA, J. (*dissenting*).

I dissent from the conclusion of the majority order that the Board of State Canvassers has a clear legal duty to certify the petition for presentation to the electorate. The constitutional amendment proposed by plaintiff seeks to amend the Michigan Constitution to expressly prohibit the Legislature from enacting a law that would deny qualified electors the fundamental right to vote.[9] Const 1963, art 2, § 1 sets forth four criteria that must be satisfied for a person to be a qualified "elector,"[10] "except as otherwise provided in [the Michigan] constitution."[11] Article 2, § 2 provides otherwise; it states that "[t]he legislature may by law exclude persons from voting because of mental incompetence or commitment to a jail or penal institution." In other words, that provision allows the Legislature to exclude certain individuals from voting even if they meet the eligibility criteria for being an "elector" set forth in Const 1963, art 2, § 1.[12]

---

[8] While existing statutes that were previously enacted pursuant to Article 2, § 2 might require modification to remain constitutionally enforceable if voters approve the amendments set forth in the petition, this consideration is irrelevant to the abrogation analysis.

[9] See Proposed Amendment, art 2, § 4(1)(a).

[10] By "qualified elector," I mean a person who is "an elector and qualified to vote in any election." Const 1963, art 2, § 1; see also MCL 168.10 ("[T]he term 'qualified elector', as used in this act, means a person who possesses the qualifications of an elector as prescribed in section 1 of article II of the state constitution of 1963 and who has resided in the city or township 30 days.").

[11] A person must: (1) be a citizen of the United States, (2) be at least 18 years of age, (3) have resided in Michigan six months, and (4) meet the requirements of local residence provided by law. Const 1963, art 2, § 1; US Const, Am XXVI, § 1.

[12] It is worth noting that the Legislature has enacted a law providing that a person who has been convicted and sentenced to a term of incarceration "shall not vote, offer to vote, attempt to vote, or be permitted to vote at an election while confined." MCL 168.758b. See also MCL 168.492a ("An individual who is confined in a jail after being convicted and sentenced is not eligible to register to vote.").

The proposed amendment of Article 2, § 4 provides that qualified electors in Michigan, i.e., individuals who meet the eligibility criteria in Article 2, § 1, shall have certain rights, including the "fundamental right to vote." It expressly provides[13] that:

> THE FUNDAMENTAL RIGHT TO VOTE, INCLUDING BUT NOT LIMITED TO ~~T~~the right, once registered, to vote a secret ballot in all elections. NO PERSON SHALL: (1) ENACT OR USE ANY LAW, RULE, REGULATION, QUALIFICATION, PREREQUISITE, STANDARD, PRACTICE, OR PROCEDURE; (2) ENGAGE IN ANY HARASSING, THREATENING, OR INTIMIDATING CONDUCT; OR (3) USE ANY MEANS WHATSOEVER, ANY OF WHICH HAS THE INTENT OR EFFECT OF DENYING, ABRIDGING, INTERFERING WITH, OR UNREASONABLY BURDENING THE FUNDAMENTAL RIGHT TO VOTE.[14]

The challengers assert that this latter provision conflicts with Article 2, § 2's grant of authority to exclude persons from voting because of mental incompetence or incarceration. Further, challengers highlight that Article 12, § 2 of Michigan's Constitution requires that proposed amendments, like in this case, state the "existing provisions of the constitution which would be altered or abrogated thereby, and the question as it shall appear on the ballot shall be published in full as provided by law." "The purpose of the provision is to definitely advise the elector as to the purpose of the proposed amendment and what provision of the constitutional law it modified or supplanted."[15] Accordingly, the challengers reason that because the proposed amendment of Article 2, § 4 conflicts with Article 2, § 2's grant of authority, and because Article 2, § 2 was not published in the petition, the Board of State Canvassers properly declined to certify the petition for presentation to the electorate.[16]

---

[13] Proposed additions to the Constitution are capitalized; proposed deletions are stricken.

[14] It is hard to imagine a more expansive prohibition: "person" is defined very broadly; the prohibitions are stated very expansively; both intended and unintended effects are covered by the prohibition; and the impact on the right can be minimal (i.e., the right cannot be "INTERFER[ED] WITH, OR UNREASONABLY BURDEN[ED]").

[15] *Massey v Secretary of State*, 457 Mich 410, 417 (1998) (quotation marks and citation omitted).

[16] Chief Justice MCCORMACK asserts that "[t]he Board's duty is to determine whether a petition has sufficient signatures and whether its form complies with statutory requirements" and questions the Court's decision in *Stand Up for Democracy v Secretary of State*, 492 Mich 588, 618 (2012) (opinion by MARY BETH KELLY, J.), in which the lead opinion stated that "[t]he board's duty with respect to referendum petitions is limited to determining the sufficiency of

In response, plaintiff argues that since only qualified electors have the fundamental right to vote, enactment of a law excluding certain persons from voting simply means that "such persons would not be qualified to vote in Michigan," and thus, "they would not be entitled to 'the fundamental right to vote.' " The flaws in this argument are apparent. It is hard to think of a more wholesale deprivation of a right than excluding a person from the class of persons entitled to claim that right in the first place. It would be quite a stretch to conclude that the Legislature can enact a law that strips a person of the status needed to exercise a right without "DENYING, ABRIDGING, [or] INTERFERING WITH" that right.[17] Simply stated, while Article 2, § 2 allows the Legislature to exclude certain qualified electors from voting, the proposed constitutional amendment would prohibit the Legislature from doing just that. These two provisions simply cannot be read harmoniously. The adoption of proposed Article 2, § 4(1)(a) would render Article 2, § 2 wholly inoperative. Accordingly, the text of Article 2, § 2 was required to be published in plaintiff's petition.

Article 2, § 1, which provides, "Every citizen of the United States who has attained the age of [majority], who has resided in this state six months, and who meets the requirements of local residence provided by law, shall be an elector and qualified to vote in any election *except as otherwise provided in this constitution*," does not save plaintiff's claim. (Emphasis added.) If the proposed amendment is adopted, the Constitution would both provide that the Legislature may prohibit prisoners and those who are mentally incompetent from voting and that the Legislature may not enact any "QUALIFICATION" that "HAS THE INTENT OR EFFECT OF DENYING, ABRIDGING, INTERFERING WITH, OR UNREASONABLY BURDENING THE FUNDAMENTAL RIGHT TO VOTE." In other words, the Constitution would contain inconsistent provisions, meaning the proposed constitutional amendment would render the existing constitutional provision, Article 2, § 2, wholly inoperable.

---

a petition's form and content and whether there are sufficient signatures to warrant certification." However, the Chief Justice is mistaken and conveniently ignores additional caselaw in which the Court has considered abrogation, i.e., the content of a petition. *Citizens Protecting Michigan's Constitution v Secretary of State*, 503 Mich 42 (2018); *Protect Our Jobs v Bd of State Canvassers*, 492 Mich 763 (2012); *Mich Alliance for Prosperity v Bd of State Canvassers*, 492 Mich 763 (2012); *Citizens for More Mich Jobs v Secretary of State*, 492 Mich 763 (2012); *The People Should Decide v Bd of State Canvassers*, 492 Mich 763 (2012).

[17] Indeed, one can glean from the enacted text of the laws referenced in note 12 of this statement that the Legislature passed them with the intent of depriving certain incarcerated persons of the right to vote. Thus, the laws would appear to violate the intent element of the prohibition in the proposed amendment as well.

Further, preapproval of the petition by the Board of State Canvassers does not bar a challenge to the form or content of plaintiff's petition at this stage of the process. In *Protect Our Jobs v Bd of State Canvassers*,[18] the challenged petition forms were also preapproved, challenges were made to the form and content of the petitions after signatures were collected and submitted for approval and the Board of State Canvassers deadlocked regarding certification. This Court reviewed the substantive challenges and refused to issue a mandamus order with regard to one proposed constitutional amendment that would have abrogated another provision of the Constitution. In other words, the fact that the petitions were preapproved by the Board did not prevent this Court from later (after signatures were collected) addressing whether the petition forms violated the abrogation provision. Our order in *Unlock Mich v Bd of State Canvassers*,[19] simply does not support the notion that the Board of State Canvassers' approval of a petition bars legal challenges made after signatures have been collected. The predominant challenge in that case did not involve the petition's form. Instead, the predominant argument was that the signature-gathering process was riddled with fraud. This Court noted that the Board of State Canvassers had approved the form, the Bureau of Elections had determined that there were sufficient valid signatures, and Board of State Canvassers had rejected a motion to investigate the collection of the signatures, and thus the Board of State Canvassers had a duty to certify the petition.[20]

Finally, I renew my call to the Legislature to amend our state election laws to provide more time between the certification of candidates and policy questions to be placed on the general election ballot and the date by which the ballot must be finalized and sent for production. As I stated in *Johnson v Bd of State Canvassers*:

> Election-law cases have very concrete deadlines that are necessary to facilitate the printing and distribution of ballots. The current process provides very little time between decisions of the Board of State Canvassers and the date ballots must be finalized for printing. In the

---

[18] *Protect Our Jobs v Bd of State Canvassers*, 492 Mich 763 (2012).

[19] *Unlock Mich v Bd of State Canvassers*, 507 Mich 1015 (2021).

[20] *Id.* Although some challenges regarding the form were made, after the Board of State Canvassers preapproved the form and content of the petition, the challenger immediately sued the Board of State Canvassers, asserting that the Board of State Canvassers should not have approved the form and substance of Unlock Michigan's petition. The Court of Appeals dismissed that complaint, and this Court denied the subsequent application for leave to appeal. *Keep Mich Safe v Bd of State Canvassers*, unpublished order of the Court of Appeals, entered August 17, 2020 (Docket No. 354188), lv den 506 Mich 915 (2020). In the instant case, nobody filed an action after the Board preapproved plaintiff's petition, and thus this is the first opportunity this Court has had to review the form of plaintiff's petition.

> present case, there were only eight days between the vote of the Board of State Canvassers and the date a disposition was needed from this Court. These cases can present substantial and complex questions of law, which generally require extensive briefing and cannot properly be resolved in a matter of days. . . . The people of Michigan deserve thoughtful, cogent, and well-reasoned decisions from this Court. The Legislature should amend the Michigan Election Law[21] to ensure that the judicial system has ample time to meaningfully review such matters, which are vitally important to the people of Michigan.[22]

This year is not an anomaly. In the past decade, the people of Michigan have increasingly exercised their right to direct democracy through proposals to enact legislation and amend our Constitution. With each such proposal there are unique and complex legal challenges that require in-depth development and thoughtful review by this Court. Legislation to provide this Court at least six weeks between the certification of the ballot by the Board of State Canvassers and the date by which the ballot must be finalized should be enacted before the 2024 primary and general elections.

Because Article 2, § 2 would be abrogated by the proposed amendment and it was not republished in the petition, plaintiff's proposal cannot be placed on the ballot as a matter of law. Because the Board of State Canvassers does not have a clear legal duty to certify the proposal for the ballot, plaintiff is not entitled to mandamus relief. Accordingly, I dissent.

VIVIANO, J., joins the statement of ZAHRA, J.

---

[21] MCL 168.1 *et seq*.

[22] *Johnson v Bd of State Canvassers*, ___ Mich ___, ___; 974 NW2d 235, 236 (2022) (ZAHRA, J., concurring).