Order

Michigan Supreme Court
Lansing, Michigan

September 8, 2022

Bridget M. McCormack,
Chief Justice

164760 & (3)(4)(6)(7)(14)(16)(19)(20)(21)(22)(26)(27)

Brian K. Zahra
David F. Viviano
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh
Elizabeth M. Welch,
Justices

REPRODUCTIVE FREEDOM FOR ALL, PETER BEVIER, and JIM LEDERER,
Plaintiffs,
v SC: 164760

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

and

CITIZENS TO SUPPORT MI WOMEN AND CHILDREN,
Intervening Defendant.
_____/

On order of the Court, the motions for immediate consideration, to expedite, to intervene, for leave to file omnibus response, and to file briefs amicus curiae are GRANTED. The complaint for mandamus relief is considered, and relief is GRANTED. We direct the Board of State Canvassers (the Board) to certify the Reproductive Freedom For All (RFFA) 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 is in regard to whether there is sufficient space between certain words of the text of the proposed amendment. MCL 168.482(3) requires only that "[t]he full text of the amendment so proposed must follow the summary and be printed in 8-point type." The "full text" of the amendment is present: regardless of the existence or extent of the spacing, all of the words remain and they remain in the same order, and it is not disputed that they are printed in 8-point type. In this case, the meaning of the words has not changed by the alleged insufficient spacing between them. Assuming that the challengers' objection to the spacing represents a challenge to the "form" of the petition that the Board properly considered, the petition has fulfilled all statutory form requirements, and 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 RFFA 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 concur with the order granting mandamus and ordering that the Board of State Canvassers certify the petition at issue for the ballot. The statute governing the form of the petition is designed to ensure that anyone signing a petition understands what they are signing.[1] That's why MCL 168.482 requires that a petition state, in 14-point boldface type, whether it is an "INITIATIVE PETITION AMENDMENT TO THE CONSTITUTION," or "INITIATION OF LEGISLATION," or "REFERENDUM OF LEGISLATION PROPOSED BY INITIATIVE PETITION." And it is why the statute requires a summary of not more than 100 words of the proposed amendment or question proposed. And it is also why the type size for the summary (12 point) and the full text (8 point) of the amendment are specified; smaller than 8-point type would be difficult for many to read. Each requirement promotes transparency and comprehension. None is designed to be an obstacle without a purpose.

Including the full text of the proposal serves that goal too: any signer curious after reading the summary can read the "full text" to be very confident about what exactly they are signing.

Seven hundred fifty three thousand and seven hundred fifty nine Michiganders signed this proposal—more than have ever signed any proposal in Michigan's history. The challengers have not produced a single signer who claims to have been confused by

[1] While I accept the assumption in the Court's order that the challengers' argument is arguably a challenge to the "form and content" of the petition, I believe there is good reason to question whether this is the appropriate standard, and if so whether the challengers' argument is truly such a challenge. First, although 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. Second, assuming that the board is statutorily authorized to make judgments about the "content" of a petition, I question how that authority can be reconciled with the idea that the board acts in a ministerial capacity and lacks discretionary authority to adjudicate legal disputes. See *McQuade v Furgason*, 91 Mich 438, 440 (1892) (describing canvassing boards' duties as "purely ministerial and clerical").

the limited-spacing sections in the full text portion of the proposal. Yet two members of the Board of State Canvassers would prevent the people of Michigan from voting on the proposal because they believe that the decreased spacing makes the text no longer "[t]he full text." That is, even though there is no dispute that every word appears and appears legibly and in the correct order, and there is no evidence that anyone was confused about the text, two members of the Board of State Canvassers with the power to do so would keep the petition from the voters for what they purport to be a technical violation of the statute. They would disenfranchise millions of Michiganders not because they believe the many thousands of Michiganders who signed the proposal were confused by it, but because they think they have identified a technicality that allows them to do so, a game of gotcha gone very bad.

What a sad marker of the times.

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

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[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 *Promote the Vote 2022 v Bd of State Canvassers*, ___ Mich ___ (September 8, 2022) (Docket No. 164755) (BERNSTEIN, J., concurring).

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 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.[4] Accordingly, I join this Court's decision to grant mandamus relief.[5]

ZAHRA, J. (*dissenting*).

I dissent from the relief granted in the majority order, without first hearing oral arguments on an emergency basis to address whether the statutory term "full text" includes the spaces between words and, to the extent it does, the quantity of spacing that must be absent before a text may be deemed something less than the "full text" as that term is used in MCL 168.482(3).[6]

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[4] Justice ZAHRA notes that, while my long-standing position on election matters "has populist appeal, it ignores the requirements of our election law[.]" But our state Constitution opens with the reminder that "[a]ll political power is inherent in the people." Const 1963, art 1, § 1. I do not believe it inappropriate to keep the people of the state of Michigan in mind in any election matter that comes before us. Moreover, that the majority of this Court *disagrees* with the legal conclusions drawn by the dissents does not mean that we are ignoring the requirements of our election law.

[5] Justice ZAHRA notes that, as a wordsmith and a member of this Court, he finds it "an unremarkable proposition that spaces between words matter." As a blind person who is also a wordsmith and a member of this Court, I find it unremarkable to note that the lack of visual spacing has never mattered much to me.

[6] As thoughtfully presented by Justice VIVIANO, the absence of spacing between words is no small matter. The absence of such spacing not only delays the visual processing of

The question before this Court is not simply whether to allow a vote on this question of vital importance to Michiganders, a question that has not only captured the attention of the vast majority of the of Michigan residents, but also people across the nation. It is always a serious matter when the electorate considers amending our state Constitution. The stakes are raised higher when the subject matter of the amendment squarely addresses a matter that has been at the center of public debate for more than 50 years. But intense interest in the question presented does not change the law dictating the rules addressing the exercise of direct democracy. Our system for allowing citizens to access the ballot through the exercise of direct democracy is an elaborate one, which requires the collection of signatures on petitions that must display in exacting detail the provisions of the Constitution that will be affected along with the full text of the provisions to be added or deleted from the Constitution. Further, once the requisite number of petition signatures are gathered, they must be submitted to the Bureau of Elections for review before being submitted to the Board of State Canvassers for certification. If a majority of the Board of State Canvassers does not certify the proposal, the measure will not be placed on the ballot without legal intervention and the issuance of a writ of mandamus.

A mandamus action is an extraordinary writ against a public office or officer compelling the undertaking of a ministerial duty. The plaintiff bears the burden of demonstrating entitlement to that extraordinary remedy.[7] Mandamus will issue only when the right asserted is "clear and specific."[8] "Mandamus will not lie to compel a public officer to perform a duty dependent upon disputed and doubtful facts but is designed to enforce a plain, positive duty [on behalf] of one who has a clear legal right to have it performed . . . ."[9]

The question before the Court would be easily resolved in favor of placing the measure on the ballot if Michigan were a "substantial compliance" state. As Justice VIVIANO observed, many states review the procedure for placement of ballot proposals for substantial compliance—whether the proponents of the proposal substantially complied with the rules and procedures to obtain access to the ballot. But Michigan is not a substantial-compliance state. Instead, for more than 100 years, Michigan has required strict compliance with the process mandated for the exercise of direct

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words, it also makes " 'lower frequency words disproportionately harder to identify . . . .' " *Post* at 18 (citation omitted).

[7] *Attorney General v Bd of State Canvassers*, 318 Mich App 242, 249 (2016).

[8] *McLeod v State Bd of Canvassers*, 304 Mich 120, 125 (1942), citing *Nat'l Bank of Detroit v State Land Office Bd*, 300 Mich 240 (1942).

[9] *McLeod*, 304 Mich at 125, citing *Toan v McGinn*, 271 Mich 28 (1935).

democracy.[10] Yet, the fact that Michigan is a "strict compliance" state does not dictate that the present proposal should be removed from the ballot. In my view, the question before the Court is not a binary one: whether all the letters of the words of the constitutional amendment are present and presented in the proper order or, instead, whether any spacing between words is missing. Instead, the question before the Court is more nuanced: whether the absence of spacing between numerous words of the proposed constitutional amendment quoted on the petition so affects the text of the proposed amendment as to render the language printed on the petition less than the "full text" as that term is used in MCL 168.482(3). This is a question worthy of development in oral argument.

But the Court, under the pressure to decide the question forthwith in order to ensure timely production of the ballots, has decided to grant mandamus without oral argument. While I would prefer to engage in oral argument before deciding this issue, pressed for a ruling, I must conclude that plaintiffs have not met their burden of establishing a clear legal right to a writ of mandamus. The sum and substance of plaintiffs' position is that spaces between words do not matter. But, as demonstrated in Justice VIVIANO's dissenting statement, there is a substantial legal question whether Reproductive Freedom for All presented the full text of its proposed amendment in its petition. As a wordsmith and a member of Michigan's court of last resort, a court that routinely scrutinizes in great detail the words used in statutes and constitutional provisions, I find it an unremarkable proposition that spaces between words matter. Words separated by spaces cease being words or become new words when the spaces between them are removed.

Justice BERNSTEIN advocates that all doubt should be resolved in favor of allowing the people to vote. While this position certainly has populist appeal, it ignores the requirements of our election law, which is predisposed against granting ballot access where the Board of State Canvassers fails to grant certification. This is because the only remedy for a denial of ballot certification by the Board of State Canvassers is the issuance of a writ of mandamus. And, as previously stated, mandamus will only issue where the party seeking relief shows, among other things, it has a clear legal right to performance of the specific duty sought and the defendant has a clear legal duty to perform that duty.[11] Accordingly, where there is any colorable legal argument against

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[10] See *Scott v Secretary of State*, 202 Mich 629 (1918); *Leininger v Secretary of State*, 316 Mich 644 (1947); *Kuhn v Dep't of Treasury*, 384 Mich 378, 385 (1971); *Stand Up for Democracy v Secretary of State*, 492 Mich 588, 594 (2012) (opinion by MARY BETH KELLY, J.).

[11] *Johnson v Bd of State Canvassers*, ___ Mich App ___, ___; ___ NW2d ___ (June 1, 2022) (Docket No. 361564); slip op at 6, citing *Rental Props Owners Ass'n of Kent Co v Kent Co Treasurer*, 308 Mich App 498, 518 (2014).

certification by the Board of State Canvassers, mandamus will not issue. "It is a basic principle of law that in mandamus proceedings no court has the right to substitute its own discretion for the discretion of the . . . officers [assigned to discharge the duty in question]."[12]

Here, the Board of State Canvassers had ample reason to deny certification. Plaintiff Reproductive Freedom for All had obtained precertification of the form and content of its petition in support of the proposed constitutional amendment. The petition that was approved by the Bureau of Elections is different from the printed petition circulated and signed by more than 700,000 voters. Spacing between many words present on the preapproved petition is noticeably absent from the petition circulated by Reproductive Freedom for All, resulting in numerous long passages of letters that are clearly distracting from the proposal as a whole and in some instances exceedingly difficult to decipher into the discrete words that make up this proposal. The problem with these petitions is clearly evident upon casual review and must have been evident to the proponents of this petition drive. Rather than correct the deficiency with the petition by securing a petition that conformed precisely to the petition that received approval from the Bureau of Elections, Reproductive Freedom for All ignored the defect in the petition and forged on with the collection of signatures. The only thing more difficult to discern than the disputed portions of the text of the amendment is why the proponents of the amendment proceeded to circulate a petition that plainly did not conform to the form and content of the petition preapproved by the Bureau of Elections.[13]

Although I would have preferred to engage in oral argument before being pressed into rendering a decision on this matter, for the reasons stated above I conclude that plaintiffs have failed to meet the high burden of showing a clear legal right to have this proposed constitutional amendment placed on the general-election ballot. This conclusion is not a statement regarding the substance of the proposed amendment, but rather a statement about the presentation of the proposal and my doubts that the form and content of the petition comply with Michigan law.

I understand my colleagues' desire to decide this question forthwith without the benefit of oral argument, given the very short time that exists between the filing of this action for mandamus and the date the finalized ballot must be forwarded to printers for statewide production. The Board of State Canvassers deadlocked on the certification question on August 31, 2022. The action for mandamus was filed on September 1, 2022, and the Court was informed that a decision must be issued by September 8. This short time frame was truncated even more by the Labor Day holiday. Further, the instant

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[12] *Nelson v Wayne Co*, 289 Mich 284, 296 (1939) (quotation marks and citation omitted).

[13] Proceeding in this manner was a great gamble, but one that paid off, as a majority of the Court has seen fit to place this proposed amendment on the general-election ballot.

action does not stand alone. Two other actions for mandamus were filed on or about September 1, 2022, that demanded action on or before September 8: *Anderson v Bd of State Canvassers* (Docket No. 164747) and *Promote the Vote 2022 v Bd of State Canvassers* (Docket No. 164755). A third preexisting action involving ballot access also requires quick resolution: *Davis v Highland Park City Clerk* (Docket No. 164564). Ten briefs from litigants and amici curiae were filed in this matter, which, with exhibits and appendices, produced in excess of 1500 pages of materials submitted for consideration by the Court. Briefs in the other election matters were also substantial, albeit less voluminous.

Thus, I again renew my call to for the Legislature to amend our election laws to require certification by the Board of State Canvassers at least six weeks before the affected ballot must be finalized. See *Johnson v Bd of State Canvassers*, ___ Mich ___, ___; 974 NW2d 235, 236 (2022) (ZAHRA, J., concurring); *Promote the Vote 2022 v Bd of Canvassers*, ____ Mich ___ (September 8, 2022) (Docket No. 164755) (order issued simultaneously with the instant order) (ZAHRA, J., dissenting). Such a time frame would allow this Court and the litigants adequate time to develop legal arguments for and against ballot access, the opportunity for those arguments to be argued in court, and time for thoughtful deliberation by this Court regarding the legal questions presented before issuing a written opinion resolving the dispute. Over the past decade, ballot-access litigation has become commonplace in general-election years.[14] The time in which this Court is called upon to act in such cases is woefully insufficient and dramatically impedes our ability to give full and complete consideration to the weighty and important questions that typically accompany these challenges. The people deserve the full

[14] *Anderson v Bd of State Canvassers*, ___ Mich ___ (September 7, 2022) (Docket No. 164747); *Cavanagh v Bd of State Canvassers*, ___ Mich ___; 974 NW2d 549 (2022); *Brandenburg v Bd of State Canvassers*, ___ Mich ___; 974 NW2d 552 (2022); *Turner v Secretary of State*, ___ Mich ___; 974 NW2d 551 (2022); *Rocha v Secretary of State*, ___ Mich ___; 974 NW2d 822 (2022); *Craig v Bd of State Canvassers*, ___ Mich ___; 974 NW2d 240 (2022); *Johnson v Bd of State Canvassers*, ___ Mich ___; 974 NW2d 235 (2022); *Markey v Secretary of State*, ___ Mich ___; 974 NW2d 255 (2022); *Raise the Wage MI v Bd of State Canvassers*, 509 Mich ___; 970 NW2d 677 (2022); *Comm to Ban Fracking in Mich v Bd of State Canvassers*, 505 Mich 1137 (2020); *Citizens Protecting Michigan's Constitution v Secretary of State*, 503 Mich 42 (2018); *Mich Comprehensive Cannabis Law Reform Comm v Secretary of State*, 500 Mich 858 (2016); *People Should Decide v Bd of State Canvassers*, 820 NW2d 165 (Mich, 2012); *Mich Alliance for Prosperity v Bd of State Canvassers*, 820 NW2d 166 (Mich, 2012); *Protect Our Jobs v Bd of State Canvassers*, ___ Mich ___; 820 NW2d 167 (Mich, 2012); *Protect Our Jobs v Bd of State Canvassers*, 492 Mich 763 (2012); *Citizens for More Mich Jobs v Secretary of State*, 820 NW2d 166 (Mich, 2012).

consideration and deliberation that this Court traditionally affords to matters of great significance to Michigan. I call upon the Legislature to correct this deficiency forthwith.

VIVIANO, J. (*dissenting*).

This case raises a rather prosaic question with momentous consequences: do spaces between words matter? Plaintiff Reproductive Freedom for All[15] circulated to the voters a petition proposing a constitutional amendment that would create a right to abortion. The Board of State Canvassers failed to approve the petition, deadlocking on whether it met the requirements to be certified for the November ballot. Plaintiffs now seek a writ of mandamus that would order the board to certify the petition. Mandamus is available only if, among other things, an individual or entity has a clear legal duty to undertake a ministerial act. *Taxpayers for Mich Constitutional Gov't v Michigan*, 508 Mich 48, 82 (2021).

Both by constitutional mandate and statutory law, plaintiff, as the proponent of the petition, was required to place the "full text" of the amendment on the petition. Const 1963, art 12, § 2; MCL 168.482(3). The petition that plaintiff circulated, however, lacked any discernable spaces between the words in the core provisions of the amendment.[16] The specific legal question presented is whether these petitions, with the key words jammed together, contain the "full text" of the amendment. I conclude that they do not. The "full text" requirement means just that: the full text. The language on the petitions is not the full text that plaintiff seeks to insert into the Constitution, as the latter language contains the spacing the former lacks. The petition therefore has failed to meet the legal

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[15] The two other plaintiffs in this case were individuals who signed the petition circulated by Reproductive Freedom for All. For ease of reference, the singular "plaintiff" will refer only to the latter.

[16] Plaintiffs contend that there are spaces because the printer put them there, even though they are not visible. In fact, it has provided an affidavit from the printer averring that "[w]hile spaces [were] included in both the Electronic Proof and the Printed Proof between each of the [relevant words] . . . , on the Printed Proof the spacing between those words and the words appear closer together as a result of word spacing settings applied [by] Adobe InDesign when preparing the Electronic Proof." In other words, there were spaces there, but the spacing settings were such that the spaces were not visible to the naked eye. Although the electronic formatting error may explain why this occurred, for purposes of evaluating a written legal text, a space that cannot be discerned on the page is no space at all. And of course, the printer's electronic version of petition showing some sort of coded signal for "space" was not what was submitted to the petition signers. Indeed, MCL 168.482(3) requires that the "full text of the amendment" "be printed" on the petition, removing any doubt that it is what is actually printed on the petition that ultimately matters.

prerequisites for being placed on the ballot, and a writ of mandamus should not be issued. I therefore dissent from the Court's order today ordering the petition to be certified for the ballot.

At the outset, it is important to emphasize the proper judicial role in cases like this one:

> [W]e do not consider whether the proposed amendment at issue represents good or bad public policy. Instead, we must determine whether the amendment meets all the relevant constitutional requirements. There may be an "overarching right" to the initiative petition, "but only in accordance with the standards of the constitution; otherwise, there is an 'overarching right' to have public policy determined by a majority of the people's democratically elected representatives." In particular, we have stated that the "right [of electors to propose amendments] is to be exercised in a certain way and according to certain conditions, the limitations upon its exercise, like the reservation of the right itself, being found in the Constitution." [*Citizens Protecting Michigan's Constitution v Secretary of State*, 503 Mich 42, 60 (2018) (citations omitted).]

And it is especially important in cases of intense public interest "that in construing constitutions, courts have nothing to do with the argument *ab inconvenienti*, and should not 'bend the Constitution to suit the law of the hour.' " 1 Cooley, Constitutional Limitations, 72 n 2 (2d ed), quoting *Greencastle Twp v Black*, 5 Ind 557, 565 (1854), overruled in part by *Robinson v Schenck*, 102 Ind 307 (1885).[17] No matter the popularity of a proposal, then, when the conditions for placement of an initiative before the ballot are met, it must be certified as sufficient for placement on the ballot, see *Citizens*, 503 Mich at 55, and just the same, when those conditions are not met, the amendment may not be placed before the voters for their approval.[18]

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[17] See also Constitutional Limitations, p 72 n 2 (" 'It is highly probable that inconveniences will result from following the Constitution as it is written. But that consideration can have no force with me. It is not for us, but for those who made the instrument, to supply its defects. If the legislature or the courts may take that office upon themselves, or if, under color of construction, or upon any other specious ground, they may depart from that which is plainly declared, the people may well despair of ever being able to set any boundary to the powers of the government. Written constitutions will be more than useless. . . . I have never yielded to considerations of expediency in expounding it [i.e., the fundamental law]. There is always some plausible reason for latitudinarian constructions . . . .' "), quoting *Oakley v Aspinwall*, 3 NY 547, 568 (1850).

[18] The Chief Justice thinks it "a sad marker of the time" that two members of the board did not place this on the ballot based on "a technical violation of the statute." But is difficult to square this observation with the board's duty to determine the sufficiency of

Turning to the case at hand, amendments proposed by petition are governed by Const 1963, art 12, § 2. That provision states, in relevant part: "Amendments may be proposed to this constitution by petition of the registered electors of this state. Every petition shall include the full text of the proposed amendment, and be signed by" a certain number of registered electors. In addition, MCL 168.482(3) provides that a summary of the amendment must appear on the amendment and that "[t]he full text of the amendment so proposed must follow the summary and be printed in 8-point type." Nothing in the constitutional or statutory texts expressly mentions word spacing. Thus, the question is whether the "full text" requirement encompasses the spacing of the amendment, such that the word spacing of at least the core parts of the amendment must appear on the petition in the same manner as it is intended to appear in the Constitution if ratified.[19] Unsurprisingly, our caselaw does not directly answer this question, and it appears that courts in other jurisdictions also have not addressed word-spacing issues on petitions.

The starting point of the analysis is the language "full text." This term—and the larger phrase of which it is a part—originates from the 1908 Constitution. See Const 1908, art 17, § 2, as amended ("Every [petition proposing a constitutional amendment] shall include the full text of the amendment so proposed, and be signed by" a certain number of electors.). At the time, "full" was relevantly defined as "[c]omplete ; entire" or "[n]ot wanting in *any part* or essential quality[.]" *Webster's New International Dictionary of the English Language* (1930 reprint of 1909 edition) (emphasis added); see also *Webster's Collegiate Dictionary* (1916) (defining "full" as, among other things, "[c]omplete ; entire"). "Text" was defined relevantly as:

> **1.** A composition on which a note or commentary is written ; *the original words of an author*, in distinction from a paraphrase, annotation, or commentary. . . . **5. a** The main body of matter on a printed or written page, as distinguished from notes, etc. . . . [*Webster's Collegiate Dictionary* (1916).]

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the petition's form in order to ensure that it "meets all the relevant constitutional requirements." *Citizens*, 503 Mich at 60. Moreover, the substantial-compliance regime that the Chief Justice seems to envision is, as will be discussed, simply not our law. Finally, although the Chief Justice uses incendiary rhetoric, it would seem beyond cavil that a voter is not disenfranchised when he or she is prevented from voting on a petition that does not meet the constitutional requirements (that were themselves adopted by the voters).

[19] Scalia & Garner, *Reading Law: The Interpretation of Legal Texts* (St. Paul: Thomson/West, 2012), p 93 ("Nothing is to be added to what the text states or reasonably implies[.]") (boldface omitted).

When this language was again ratified in the 1963 Constitution, the definition of "text" was largely the same:

> 1. the actual or original words of an author, as distinguished from notes, commentary paraphrase, translation, etc.
>
> 2. the main body or substance of a book or manuscript, as distinguished from headings, marginal notes, etc.
>
> 3. the actual structure of words in a piece of writing or printing; wording. [*Webster's New Twentieth Century Dictionary of the English Language*, Unabridged Edition (1977).]

The ordinary meaning of "full text," then, is the entire or complete body or structure of the original words of an author. In this context, the original words are those of the amendment itself. We cannot stop the interpretation here, however, because this Court and many others have examined full-text requirements and provided useful guidance in giving this language meaning. In *Scott v Secretary of State*, 202 Mich 629 (1918), we examined the identical full-text requirement under our 1908 Constitution. In that case, the petition sought to add a new section to the Constitution that would simply revive a statute that had previously been repealed. *Id*. at 629, 645. But the language of the statute was not placed on the petition. Examining whether this rendered the petition invalid as not containing the "full text" of the amendment, we first explained that ascertaining whether the petition contained the full text of the amendment "involves the exercise of no discretion, the performance of none but a ministerial duty." *Id*. at 644. It was plain to the Court that the failure to include the language of the former statute was fatal to the petition. *Id*. at 646.

We further elaborated on the proper approach to the full-text requirement in *Leininger v Secretary of State*, 316 Mich 644 (1947). There, the initiative was for passage of a statute proposed by petition, but the petition lacked the title to the law. As with constitutional amendments, such initiative petitions needed to contain the proposed law " '*in full*.' " *Id*. at 647, quoting Const 1908, art 5, § 1. Proponents suggested that the title could be added to the ballot to be reviewed when people voted on the measure. In rejecting this argument, we affirmed that the full-text requirement had to be followed to the letter:

> The suggestion overlooks the requirements of article 5, § 1, that each section of the petition, when filed, shall contain a copy of the title of the proposed measure, and that the petition shall set forth the proposed measure in full. These requirements are mandatory. Full compliance is a

> prerequisite to transmittal of the measure to the legislature and submission thereof to the people. [*Id*. at 650.][20]

We have similarly and more recently affirmed that the petition-form requirements in MCL 168.482 must be applied as written and thus, substantial compliance—"the doctrine . . . whereby technical deficiencies are resolved in favor of certification" of the petition—with the requirements is insufficient. *Stand Up for Democracy v Secretary of State*, 492 Mich 588, 594 (2012) (opinion by MARY BETH KELLY, J.).

In *Leininger*, we also rejected an argument that plaintiffs here make in support of the petition: that the full-text challenge to the petition goes to its substance and, as such, the entity charged with reviewing the petition could not reject it simply because review is limited to the sufficiency of the signatures and the form of the petition.[21] While the underlying constitutionality of an initiative law is not to be reviewed before its ratification (and thus is not a reason to decline certification of the initiative to the voters), see *Hamilton v Secretary of State*, 212 Mich 31, 34-35 (1920), *Leininger* explained that it is a different question altogether "whether the petition, in form, meets the constitutional requirements so as to qualify it for transmittal" to the people for a vote, *Leininger*, 316 Mich at 651. Accordingly, because the question was properly before the Court and the lack of a title clearly violated the full-text requirement, the petition in *Leininger* could not be submitted to the voters. *Id*. at 656.[22]

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[20] See also *Kuhn v Dep't of Treasury*, 384 Mich 378, 385 (1971) (characterizing *Scott* and *Leininger* as requiring strict compliance with the constitutional text).

[21] At the time of *Leininger*, the Secretary of State reviewed the form of petitions and sufficiency of the signatures. See *id*. at 647-648. Now, the Board of State Canvassers is tasked with " '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) (citation omitted).

[22] Other courts have likewise stated that a "full text" challenge does not go to the substantive legality of an amendment but to the form of the petition, opining that disregard of such prerequisites would be "revolutionary." See *Moore v Brown*, 350 Mo 256, 263 (1942) ("[I]t is fundamental that the people, themselves, are bound by their own Constitution, 1 Cooley on Constitutional Limitations (8 Ed.), p. 81. Where they have provided therein a method for amending it, they must conform to that procedure. Any other course would be *revolutionary*, the cases have said. And whether the prescribed procedure is being followed is a matter for judicial determination when the organic law permits such inquiry while the legislation is in process.") (citations omitted); *Larkin v Gronna*, 69 ND 234, 242 (1939) ("[T]he people themselves must follow the constitutional method prescribed [for amending their constitution]. To do otherwise would be revolutionary. . . . The people, in creating this government, were competent to

These cases establish the principles that the "full text" requirement must be fully complied with and that a challenge based on that requirement can properly be considered by the board and this Court.[23] Yet we have never precisely defined the scope of the requirement.[24] There is, however, over a century of caselaw from across the country examining the meaning and function of this requirement and other similar requirements. These cases help explain the role served by the "full text" requirement in the context of initiative petitions.[25]

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and did disable themselves from saying whether their Constitution should be changed otherwise than in a particular manner.").

[23] By leaving open the possibility that this is not a challenge to the petition's form and content, the majority ignores our binding precedent in *Leininger*.

[24] In one brief order, we indicated that an unspecified "inaccuracy" in a petition—which we hinted was an "omission" of text—was nevertheless "sufficiently accurate to comply with" MCL 168.482(3)'s requirement that the full text be provided. *Council About Parochiaid v Secretary of State*, 403 Mich 396, 397 (1978). Our order is too cursory to make sense of for purposes of the present case. We did not adequately describe the facts at hand, let alone attempt to interpret or apply the term "full text." Moreover, the order has been characterized as requiring only substantial compliance, which is a doctrine this Court has since rejected. See *Citizens for Protection of Marriage v Bd of State Canvassers*, 263 Mich App 487, 492 (2004) (citing *Council About Parochiaid* for the proposition that "[t]he [Board of State Canvassers'] authority and duties with regard to proposed constitutional amendments are limited to determining whether the form of the petition *substantially* complies with the statutory requirements and whether there are sufficient signatures to warrant certification of the proposal").

[25] In requiring compliance with the text of the law in this area, we have eschewed the doctrine of substantial compliance. Many other states have not, however, and under that doctrine typographical errors in petitions are commonly held not to prevent certification as long as the error does not cause the petition to become inaccurate or the integrity of the petition process to be impaired. See, e.g., *Costa v Superior Court*, 37 Cal 4th 986, 1012 (2006) (under a substantial-compliance regime, noting that the key question is whether the "departure from a statutory requirement has been found to pose a realistic threat to the accuracy and integrity of the process—for example, by misleading the potential signers of an initiative petition regarding a significant feature of the proposed measure"). In many of these states, the substantial-compliance rule arises from their constitution or statutory law. See, e.g., *Oklahoma's Children, Our Future, Inc v Coburn*, 421 P3d 867, 878 (Okla, 2018) (discussing statutory provision establishing the sufficiency of substantial compliance with the required petition form); *Stickler v Ashcroft*, 539 SW3d 702, 710 (Mo Ct App, 2017) (same). This might be good policy, but until the people of Michigan or the Legislature sees fit to create a similar rule in Michigan, we must apply legal texts as written and have no power to excuse violations of them.

Courts have long observed that the function and aim of the term "full text" is apparent from its words.[26] As the Ohio Supreme Court said of this requirement a century ago, "There is no possible misunderstanding of these provisions. The constitution requires that every voter shall have laid before him in as complete and effective a manner as 'may be reasonably possible' the proposal upon which he is to vote." *State ex rel Greenlund v Fulton*, 99 Ohio St 168, 181 (1919) (citation omitted). In other words, a requirement that the "full text" be given to the voter means that the *entire* text must be provided in a manner that effectively conveys the complete proposed amendment. This in turn means that the *exact* text of the amendment must appear on the petition. Addressing constitutional language identical to ours, the Oregon Supreme Court has held that "[t]he full-text requirement of our constitution means exactly what it says. The petition must carry the exact language of the proposed measure." *Schnell v Appling*, 238 Or 202, 205 (1964). Construing the term "full text," the high court in Massachusetts stated,

> The matter to be submitted to the people for their approval or rejection is the proposed law in the precise terms in which it is stated in the petition. It is the proposed law in these precise terms that will become law if adopted. The purpose of the provision requiring the Secretary to send to each voter the "full text" of a proposed law that is to be submitted to the people is to afford to every voter opportunity "to know before the day of election the terms of every measure on which he is to vote." The words 'full text,' as used in the constitutional provisions, refer to the precise terms of a proposed measure and nothing more. [*Opinion of the Justices to the Senate and House of Representatives*, 309 Mass 555, 559-560 (1941) (citation omitted).]

The Missouri Supreme Court has similarly construed a requirement that a "full and correct copy" of the text be attached to an initiative petition. *Moore v Brown*, 350 Mo 256, 262 (1942). Discussing a previous case, the court stated the law was that

> the full text of the *desired* amendment must be shown, thereby requiring a disclosure of what sections of the Constitution were to be amended, so the signers of the petitions might understand what they were signing. . . . [T]he measure must show not merely its *pre*text but its authentic text, as where we refer to the text of the Scriptures. [*Id*. at 265.]

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[26] See generally *People v Wood*, 506 Mich 114, 146 (2020) (VIVIANO, J., dissenting) ("A proper contextual analysis in this case includes consideration of statutory purpose 'in its concrete manifestations as deduced from close reading of the text.' "), citing *Reading Law*, p 20; see also *Reading Law*, p 20 ("The evident purpose of what a text seeks to achieve is an essential element of context that gives meaning to words.").

Or, finally, as Justice Morris of the Supreme Court of North Dakota put it:

> The reason for this requirement is obvious. . . . The average voter does not have conveniently at hand the text of the Constitution or the statutes of this state; if, therefore, he is to have an opportunity to know fully and intelligently what he is doing when he signs or declines to sign a petition, or votes on a proposed amendment, it is only if the full text of the proposed amendment to the Constitution be inserted in the petition, and embodied in the publicity pamphlet sent him, that he will be able to do so. Before he votes, if the proponents of the measure faithfully do their duty, he will have an opportunity to read a ballot title that fairly and briefly represents the measure proposed, or if he desire, he may read the full text of the amendment. [*Larkin v Gronna*, 69 ND 234, 253 (1939) (Morris, J., dissenting).[27]]

The upshot of these and other cases is that the full-text requirement mandates the text be presented in the way it will appear in the constitution such that the petition signers can interpret what they are signing.[28] In this regard, there is a substantial overlap between the full-text requirement and the similar requirement contained in some other states' laws that require petitions to include the "exact copy" of the proposed measure. The Oklahoma Supreme Court, which requires strict compliance with its state's "exact copy" requirement, has held that a petition that lacked section numbering in the text but contained "all the substantive language of the bill" was invalid. *Oklahoma's Children, Our Future, Inc v Coburn*, 421 P3d 867, 878 (Okla, 2018). Explaining its conclusion, the court observed that the lack of section numbers left readers with "no easy method of locating" the portion of the relevant law that was already repealed. *Id*. at 881.

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[27] The majority did not address the purpose or meaning of the requirement, having determined that the court did not possess the power to review whether the constitutional requirement had been met after the election was held. Justice Morris went on to say that a related requirement that voters be sent a "copy" of the measure "can only mean the entire measure, the full text of the measure." *Id*. at 255.

[28] See also *Walmsley v Todd*, 2012 Ark 370, p 8 (2012) ("We have previously discussed the attachment mandate [i.e., the requirement that a "full and correct copy" of the measure be attached to the petition] and have explained that its purpose is to inform voters of what they are signing before they sign it."); *Kerr v Bradbury*, 193 Or App 304, 318 (2004) (noting that " '[f]ull text' provisions are not uncommon" and "[t]heir general purposes are fairly well-established," namely, facilitating understanding of the proposed measure so that voters can make an intelligent decision); *Mervyn's v Reyes*, 69 Cal App 4th 93, 99 (1998) ("The purpose of the full text requirement is to provide sufficient information so that registered voters can intelligently evaluate whether to sign the initiative petition and to avoid confusion.").

Continuing, the court stated that "[w]ithout the section numbers present, any internal navigation of the bill at issue becomes excessively cumbersome." *Id.*

In a slightly different context—concerning an "exact copy" requirement allowing use of "exact copies" of a petition developed by the Secretary of State—Massachusetts's highest court has explained that this requirement is an important part of the balance struck by direct-democracy provisions, which allow the people to participate directly in proposing and making laws but are hedged by "safeguards against abuse of those means . . . ." *Hurst v State Ballot Law Comm*, 427 Mass 825, 828 (1998). For that reason, the court elsewhere concluded that "[e]xact copy means exact copy. The statute does not permit any alterations of forms, whether by copying machine, petition circulator, or petition signer." *Walsh v Secretary of the Commonwealth*, 430 Mass 103, 108 (1999) (citation omitted). The requirement therefore extended not just to those errors that might mislead signers but to any alterations; the court declined to establish a standard of case-by-case review to determine the source and effect of the alteration. *Id*. at 107-108. This rule, however, did not extend to disqualify a petition where printed information was photocopied "upside down at the bottom of the back of the papers," as readers would easily be able to invert the paper to read it. *Robinson v State Ballot Law Comm*, 432 Mass 145, 151 (2000).

In light of the common definitions of "full text" and the relevant caselaw exploring this language, it is evident that the "full text" of an amendment must be the entire or complete set of words of the amendment itself, such that the petition readily conveys to the reader what the actual language of the amendment will be if passed. The "full text" requirement functions to ensure that readers of the petition do not have to overcome obstacles to interpret it or guess at what the amendment might be once it becomes law. "The law," after all, "is a profession of words," and "[t]o be of any use, the language of the law (as any other language) must not only express but convey thought." Mellinkoff, *The Language of the Law* (Boston: Little, Brown and Company, 1963), p vii.

Without analysis or citation of legal authority, the majority order summarily concludes that a "full text" exists when all the words of the amendment appear in the correct order on the page. These may be essential ingredients of the "full text," and they may, at least in some circumstances, be sufficient to prevent the text from being undecipherable. But they certainly do not represent all that is required for text to meaningfully communicate to the reader. For well over a thousand years, we have conveyed thought and meaning by using spaces between words. See Saenger, *Space Between Words: The Origins of Silent Reading* (Stanford: Stanford University Press, 1997), p 32. It was not always so. Ancient text employed *scriptura continua*, in which words were uninterrupted by word spaces. *Id*. at 9. But the objectives of reading in ancient times were different, with the focus being on memorization useful to an oral rather than a text-based culture. See generally *id*. at 6-8. Even so, writers would "aid[] the reader in the task of grasping letters for syllable recognition . . . by regularly placing

relatively more space between letters than is customary for medieval or modern handwritten and printed text." *Id*. at 8. By the seventh century, writings from the British Isles began to consistently employ spacing or other symbols to mark the boundaries of words. *Id*. at 32. This system was regnant across all of western Europe by the thirteenth century. *Id*. at 256.

There were good reasons for including spaces in text. As the leading scholar on this topic has observed, "in Western scripts, spatial organization is a *determinative* element in the effect of different transcription systems on the cognitive processes required for lexical access and hence on the propensity to read orally or silently." *Id*. at 5 (emphasis added). This is confirmed by numerous experiments demonstrating "that the total suppression or partial obfuscation of spatial boundaries between words increases [for adults] the duration of the cognitive activity necessary for reading, which in turn produces physiological reactions associated with vocal and sub-vocal activity." *Id*. When word spaces are removed, readers experience "tunnel vision." *Id*. at 6. The span at which "preliminary details of words or letters can be recognized" is reduced, as is "the broader field within which only the grossest characteristics of signs, words, and spatial arrangement can be perceived." *Id*. This significantly affects reading ability, as "[o]nly scripts that provide a consistently broad eye-voice span to oral readers can sustain rapid, silent reading as we know it." *Id*.; see also Paterson & Jordan, *Effects of Increased Letter Spacing on Word Identification and Eye Guidance During Reading*, 38 Memory & Cognition 502, 502 (2010) (noting studies showing "that spaces between words in text are of considerable importance in the reading of English and that interword spaces may help readers by aiding processes involved in word identification and eye guidance"). The problems with unspaced texts go beyond simple delays in the visual processing of words: studies have shown that the lack of spaces interferes with the actual identification of words. *Id*. at 502-503 (noting a study arguing "that if removing the spaces between words increased the size of the word frequency effect, by making lower frequency words disproportionately harder to identify, this would show that the removal of interword spacing interfered with word identification, rather than interfering only with a more superficial level of visual processing" and noting that the study "indicat[ed] that the absence of interword spaces interfered with actual word identification"); see also *id*. at 503 (noting other studies demonstrating the importance of interword spacing).

Placed in historical context, then,

> [t]he importance of word separation by space is unquestionable, for it freed the intellectual faculties of the reader, permitting all texts to be read silently, that is, with eyes alone. As a consequence, even readers of modest intellectual capacity could read more swiftly, and they could understand an increasing number of inherently more difficult texts. Word separation also allowed for an immediate oral reading of texts, which eliminated the need

> for the arduous process of the ancient *praelectio*.[29] Word separation, by altering the neurophysiological process of reading, simplified the act of reading, enabling both the medieval and modern reader to receive silently and simultaneously the text and encoded information that facilitates both comprehension and oral performance. [*Space Between Words*, p 13.]

See also *id*. at 17 (noting that word-separation and word-ordering conventions "had the similar and complementary physiological effect of enhancing the medieval reader's ability to comprehend written text rapidly and silently by facilitating lexical access"). No doubt this is why, today, spacing is a constitutive element of the definition of "word": "A unit of language . . . that functions as a principal carrier of meaning" and that "is separated from other such units by spaces in writing . . . ." *Random House Webster's College Dictionary* (2001).[30] And all works on style and grammar appear to either prescribe or assume that words will receive separate spacing. See, e.g., Garner, *The Redbook: A Manual on Legal Style* (3d ed), § 4.12, p 94 (prescribing "one space between words and one space after punctuation marks (including colons and periods)") (boldface omitted).

This makes sense. If spacing truly were irrelevant to text, then presumably all the letters of an amendment could be placed on top of each other, in the space for a single character. Or consider how a request for the "full text" of some document is used in everyday speech. If, for example, an employer asked a subordinate for the "full text" of the most recent report, and received in response a version without spaces between words,

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[29] The *praelectio* was the initial preparation of reading a text in which a person "had to read orally, aloud or in a muffled voice, because overt physical pronunciation aided the reader to retain phonemes [i.e., distinct units of sound] of ambiguous meaning." *Space Between Words*, p 8. "Oral activity helped the reader to hold in short-term memory the fraction of a word or phrase that already had been decoded phonetically while the cognitive task of" recognizing words, which is "necessary for understanding the sense of the initial fragment, proceeded through decoding of a subsequent section of text." *Id*.

[30] The point of the dictionary definition of "word" is not to suggest that words *invariably* require spaces. Words are used in a variety of contexts, some of which, such as social media, dispense with spaces. Rather, the critical interpretive inquiry is how the language of a legal text is ordinarily used, in light of any caselaw bearing on that meaning. See generally *TOMRA of North America, Inc v Dep't of Treasury*, 505 Mich 333, 339 (2020) ("In every case requiring statutory interpretation, we seek to discern the ordinary meaning of the language in the context of the statute as a whole."). Here, as described above, the term "full text" encapsulates the common concept of words. Thus, amicus curiae Neal Goldfarb's observation that some dictionaries define words as "normally," "typically," or "ordinarily" separated by spaces actually serves to support the conclusion that the meaning conveyed by "full text" requires words separated by spaces.

the subordinate would likely be reprimanded. And this Court would not look kindly on an attorney who submitted his or her brief without word spacing.

Spacing thus facilitates reading and comprehension, and it has been used for over a thousand years.[31] As such, it is not only a component of text, but a critical one, especially in the present context. The language of the law can be hard enough to parse even when it is perfectly reproduced. Where, as here, the core lines are riddled with dozens of spacing errors, the task of reading and comprehension becomes "excessively cumbersome." *Oklahoma's Children*, 421 P3d at 881. Potential petition signers often receive the form to sign from a circulator while walking down the street or into a store—hardly ideal locations to parse legal text, let alone text without word spacing. But, as the literature above shows, even if the petition here was received in a manner allowing for quiet contemplation, the errors significantly impeded the capacity for reading and comprehending the key lines and thus implicated the very function of the "full text" requirement.

Such a situation must be taken seriously, as it is "[a] necessary assumption of the petition process . . . that the signer has undertaken to read and understand the petition." *Mich Civil Rights Initiative v Bd of State Canvassers*, 475 Mich 903, 904 (2006) (MARKMAN, J., concurring). As the North Dakota Supreme Court has observed, "The people are presumed to know what they want, to have understood the proposition submitted to them in all of its implications, and by their approval vote to have determined that this amendment is for the public good and expresses the free opinion of a sovereign people." *Larkin*, 69 ND at 241-242. But this requires that the necessary prerequisites have been followed. *Id*. And the prerequisite here—disclosure on the petition of the "full text"—operates to ensure that electors have the opportunity to read and understand the proposition being presented. To effectuate this, the Constitution and statutes require the electors to be given the actual text that will make its way into the Constitution.

That was not accomplished here. Consider what the reader viewed when presented with the petition:

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[31] Amicus Goldfarb discusses this history and the lack of spacing in some foreign languages to make the point that words without spaces *can* be understood. But once again, this misses the task before the Court: determining whether the phrase "full text" as used in the Constitution and applicable statute requires word spacing. That is, does the ordinary understanding of this phrase, in light of relevant caselaw, encompass spaces? The fact that our language has used such spaces in almost all contexts for such a long period of history, and that these spaces make possible rapid reading comprehension, strongly supports the conclusion that word spaces are part of the ordinary meaning of "full text."

The full text of the proposal amending Article I to add Section 28 is as follows:

ARTICLE 1, SECTION 28 RIGHT TO REPRODUCTIVE FREEDOM

(1) EVERY INDIVIDUAL HAS A FUNDAMENTAL RIGHT TO REPRODUCTIVE FREEDOM, WHICH ENTAILS THE RIGHT TO MAKE AND EFFECTUATE DECISIONS ABOUT ALL MATTERS RELATING TO PREGNANCY, INCLUDING BUT NOT LIMITED TO PRENATAL CARE, CHILDBIRTH, POSTPARTUM CARE, CONTRACEPTION, STERILIZATION, ABORTION CARE, MISCARRIAGE MANAGEMENT, AND INFERTILITY CARE.

AN INDIVIDUAL'S RIGHT TO REPRODUCTIVE FREEDOM SHALL NOT BE DENIED, BURDENED, NOR INFRINGED UPON UNLESS JUSTIFIED BY A COMPELLING STATE INTEREST ACHIEVED BY THE LEAST RESTRICTIVE MEANS.

NOTWITHSTANDING THE ABOVE, THE STATE MAY REGULATE THE PROVISION OF ABORTION CARE AFTER FETAL VIABILITY, PROVIDED THAT IN NO CIRCUMSTANCE SHALL THE STATE PROHIBIT AN ABORTION THAT, IN THE PROFESSIONAL JUDGMENT OF AN ATTENDING HEALTH CARE PROFESSIONAL, IS MEDICALLY INDICATED TO PROTECT THE LIFE OR PHYSICAL OR MENTAL HEALTH OF THE PREGNANT INDIVIDUAL.

(2) THE STATE SHALL NOT DISCRIMINATE IN THE PROTECTION OR ENFORCEMENT OF THIS FUNDAMENTAL RIGHT.

(3) THE STATE SHALL NOT PENALIZE, PROSECUTE, OR OTHERWISE TAKE ADVERSE ACTION AGAINST AN INDIVIDUAL BASED ON THEIR ACTUAL, POTENTIAL, PERCEIVED, OR ALLEGED PREGNANCY OUTCOMES, INCLUDING BUT NOT LIMITED TO MISCARRIAGE, STILLBIRTH, OR ABORTION. NOR SHALL THE STATE PENALIZE, PROSECUTE, OR OTHERWISE TAKE ADVERSE ACTION AGAINST SOMEONE FOR AIDING OR ASSISTING A PREGNANT INDIVIDUAL IN EXERCISING THEIR RIGHT TO REPRODUCTIVE FREEDOM WITH THEIR VOLUNTARY CONSENT.

(4) FOR THE PURPOSES OF THIS SECTION:

A STATE INTEREST IS "COMPELLING" ONLY IF IT IS FOR THE LIMITED PURPOSE OF PROTECTING THE HEALTH OF AN INDIVIDUAL SEEKING CARE, CONSISTENT WITH ACCEPTED CLINICAL STANDARDS OF PRACTICE AND EVIDENCE-BASED MEDICINE, AND DOES NOT INFRINGE ON THAT INDIVIDUAL'S AUTONOMOUS DECISION-MAKING.

"FETAL VIABILITY" MEANS: THE POINT IN PREGNANCY WHEN, IN THE PROFESSIONAL JUDGMENT OF AN ATTENDING HEALTH CARE PROFESSIONAL AND BASED ON THE PARTICULAR FACTS OF THE CASE, THERE IS A SIGNIFICANT LIKELIHOOD OF THE FETUS'S SUSTAINED SURVIVAL OUTSIDE THE UTERUS WITHOUT THE APPLICATION OF EXTRAORDINARY MEDICAL MEASURES.

(5) THIS SECTION SHALL BE SELF-EXECUTING. ANY PROVISION OF THIS SECTION HELD INVALID SHALL BE SEVERABLE FROM THE REMAINING PORTIONS OF THIS SECTION.

The lines of compressed letters include those that directly establish the very right to abortion that the petition seeks to write into the Constitution. This is not the actual full text that the petition would ratify because it fails to include the spaces that would appear in the amended Constitution. The failure to include the spaces presents the amendment in a manner difficult to read and comprehend. Thus, it may have the right words in the right order—as the majority here suggests—but the lack of critical word spaces renders the remaining text much more difficult to read and comprehend, and therefore something less than the "full text" required by the Constitution and statutes.

It is worth noting that the board has rejected petitions for containing typographical errors, and the courts have upheld those determinations. See, e.g., *Mich Campaign for New Drug Policies v Bd of State Canvassers*, unpublished order of the Court of Appeals, entered September 6, 2002 (Docket No. 243506) (holding that in addition to failing the republication requirement, a numbering error on a petition rendered it defective and thus the board properly declined to certify). This evidence of historical practice provides support for the conclusion that the type of errors at issue in this case render the petition insufficient. See *In re Certified Questions*, 506 Mich 332, 407 (2020) (VIVIANO, J., concurring in part and dissenting in part) (noting that the historical and practical construction of a legal text by relevant governmental actors can be a useful interpretive consideration).

Finally, it is worth considering the possible legal consequences of the majority order. The majority concludes, again in summary fashion, that the spacing error here has not changed the meaning of the amendment. But this conclusion would seem to rest on either a substantive review of the proposal of the sort that this Court has prohibited pre-election, see *Hamilton*, 212 Mich at 34-35, or more likely a substantial-compliance-type analysis, again of the sort we have rejected in this context, see *Stand Up for Democracy*,

492 Mich at 594 (opinion by MARY BETH KELLY, J.); *Leininger*, 316 Mich at 650. To the extent substantial compliance is relevant to the majority's analysis, the discussion above concerning the importance of word spacing demonstrates the seriousness of the error in the present case. I would, consequently, not find that the petition substantially complied with the law.

Even so, a substantial-compliance regime creates another wrinkle that the majority appears not to have considered. If the full-text requirement is subject to an analysis that asks whether the meaning has sufficiently changed or become ambiguous enough to potentially mislead, see, e.g., *Costa v Superior Court*, 37 Cal 4th 986, 1012 (2006), then presumably the determination of whether the full text is present involves at least some discretion. That is, a factual determination concerning the extent of the error and its probable effects must be made by the board. But if so, then it is hard to see how this decision can be characterized as ministerial and thus subject to mandamus. Or, if it is somehow subject to mandamus, then what level of deference would be owed to the board's factual determination concerning the extent and effects of the error? And what procedures would be employed to obtain an actual determination of the board, especially in cases of deadlock?[32] The majority's order here thus raises more questions about this area of the law than it answers.[33]

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[32] Cf. *Illinois Republican Party v State Bd of Elections of Illinois*, 294 Ill App 3d 915 (1998) ("Although we hold the Board's deadlock vote is reviewable by this court, we decline at this point to address the merits and enter findings on whether the complaints present justifiable grounds. We conclude better policy dictates that we remand to the Board for a statement of reasons by those members rejecting the recommendation of the hearing examiner and their general counsel. . . . . We concur with the views expressed by the federal courts for requiring the Board members to state of record the reasons for their vote: such practice facilitates meaningful judicial review of a deadlock decision, contributes to reasoned decision making, ensures reflection and an opportunity for self-correction, and enhances the predictability of commission decisions for future litigants."), aff'd in part and vacated in part 188 Ill 2d 70, 75 (1999) (affirming the remand but vacating the remainder of the opinion).

[33] In noting that the challengers here did not provide any affidavits from petition signers expressing confusion with the language, the Chief Justice appears to suggest that another factual matter might be relevant, i.e., that a petition's compliance with the full-text requirement can be measured by whether signers were, in fact, confused. It is not clear where this requirement would arise from, how much confusion would be enough, and how much discretion the board would have in making these determinations.

For these reasons, I would not order the Board of State Canvassers to certify the present petition for the November ballot. Contrary to the majority's conclusory assertion, the petition did not contain the "full text" of the amendment, and therefore the board acted properly in declining certification.[34] Accordingly, I dissent.

[34] I agree with Justice ZAHRA's earlier call for the Legislature to provide additional time for the courts to review and decide election-law cases. *Johnson v Bd of State Canvassers*, ___ Mich ___, ___; 974 NW2d 235, 236 (2022) (ZAHRA, J., concurring). These cases often involve important matters of first impression that warrant more time than the current statutory scheme allows. In the present case, for example, we have received hundreds of pages of materials mere days before the constitutional deadline.