

STATE OF MICHIGAN
IN THE SUPREME COURT

RAISE THE WAGE MI,

Case No.

Plaintiff,

v

BOARD OF STATE CANVASSERS,

Defendant.

_____/

GOODMAN ACKER, P.C.
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_____/

VERIFIED COMPLAINT FOR MANDAMUS

EXPEDITED CONSIDERATION REQUESTED

ORAL ARGUMENT REQUESTED

There is no other pending or resolved civil action arising out
of the transaction or occurrence alleged in the complaint.

/s/ Mark Brewer

Mark Brewer

Plaintiff Raise the Wage MI for its Verified Complaint for Mandamus against the Board of State Canvassers (“BOSC”) states as follows:

INTRODUCTION

1. The Board of State Canvassers is at it again. On October 20, 2023, the BOSC failed to perform its ministerial duty to certify Raise the Wage MI’s petition for the ballot. By a vote of 2–2, the BOSC refused to certify a petition for which it had previously unanimously approved both the summary and form, and which the nonpartisan, professional staff of the Bureau of Elections had determined collected sufficient signatures.

PARTIES AND JURISDICTION

2. Plaintiff Raise the Wage MI is a registered ballot question committee under the Michigan Campaign Finance Act and the sponsor of an initiative petition to, among other things, raise the minimum wage (Exhibit 1). It is aggrieved by the determination made by the Defendant Board of State Canvassers on October 20, 2023, not to certify its petition.

3. Defendant BOSC is a constitutional body responsible for, *inter alia*, canvassing and validating signatures on constitutional amendment, statutory initiative, and referendum petitions, MCL 168.476.

4. This Court has jurisdiction over Raise the Wage MI’s mandamus complaint under MCL 168.479(2) and MCR 7.303(B)(6).

FACTUAL ALLEGATIONS

Raise the Wage MI’s Petition Summary Is Prepared and Approved

5. In order to preempt challenges to a petition summary as misleading or deceptive, the Michigan Election Law provides a mechanism for a summary to be prepared by the Director of Elections and approved by the BOSC before a petition is circulated:

(1) A person who circulates a petition . . . may, before circulating any petition, submit the summary of the purpose of the proposed amendment or question proposed . . . to the board of state canvassers for approval as to the content of the summary. The board of state canvassers must issue an approval or rejection of the content of the summary not more than 30 days after the summary is submitted. . . .

(2) If a person submits the summary of the purpose of the proposed amendment or question proposed as provided in subsection (1), all of the following apply:

(a) The summary of the purpose of the proposed amendment or question proposed must be prepared by the director of elections, with the approval of the board of state canvassers.

MCL 168.482b(1), (2)(a).

6. If the summary is approved by the BOSC, no challenge may thereafter be made that it is misleading or deceptive:

The board of state canvassers *may not consider* a challenge to the sufficiency of a submitted petition on the basis of the summary being misleading or deceptive if that summary was approved before circulation of the petition.

MCL 168.482b(1) (emphasis added). This language is absolute and permits of no exceptions.

7. Raise the Wage MI used this process. On December 22, 2021, Raise the Wage MI submitted a proposed summary. The Director of Elections prepared a summary that was reviewed by the BOSC at its meeting on January 19, 2022, where there was ample opportunity for public input and comment. The summary was unanimously approved by the BOSC that day. *See* Board of State Canvassers, Meeting Minutes (January 19, 2022), available at <https://www.michigan.gov/sos/-/media/Project/Websites/sos/BSC-Meeting-Minutes/Jan-19-2022-BSC-Meeting-Minutes.pdf?rev=18c5c028324545b2b6721e7ceeda2bf7&hash=76070B5A61DBB0F0A5797F8E42DFB241>.

8. No one ever appealed the BOSC's approval of the summary.

9. No one ever sought reconsideration of the BOSC’s approval of the summary.

10. In reliance on the BOSC’s approval, that approved summary was used on Raise the Wage MI’s petitions.

Raise the Wage MI’s Petition Form Is Reviewed and Approved

11. To assist ballot proposal sponsors in avoiding disqualification due to defects in their petition forms, the BOSC has also established a process for reviewing and approving the form of ballot proposal petitions before they are circulated. *See* Department of State, Bureau of Elections, *Sponsoring a Statewide Initiative, Referendum or Constitutional Amendment Petition* (February 2022), pp 9–10, available at https://www.michigan.gov/-/media/Project/Websites/sos/08delrio/Initiative_and_Referendum_Petition_Instructions_201920_061119.pdf?rev=298aaf6a87224081a047796dc17a9d07.

12. The Bureau of Elections (“BOE”) and BOSC urge ballot proposal sponsors to submit their petitions for approval as to form:

E. Optional Pre-Circulation “Approval as To Form” Process

Sponsors of petitions to initiate legislation, amend the constitution, or invoke the right of referendum are urged to submit a proof copy of the petition to the Board of State Canvassers for approval as to form prior to the circulation of the petition.

Best Practice: Although Michigan election law does not require the sponsor of a statewide proposal petition to seek pre-approval of the petition form, *such approval greatly reduces the risk that signatures collected on the form will be ruled invalid due to formatting defects.*

Id (emphasis added).

13. Virtually all ballot proposal sponsors take advantage of this process in order to minimize the risk that, after a petition drive spends millions of dollars to collect hundreds of thousands of signatures, all of that investment will be wasted due to an avoidable defect in the

petition form.

14. Raise the Wage MI used this process. On February 9, 2022, Raise the Wage MI submitted its petition for routine approval as to form at the BOSC meeting on February 11, 2022.

15. At the meeting on February 11, 2022, BOE staff reported that they had reviewed the petition, concluded that its form conformed to Michigan law, and recommended that the form be approved.

16. An opponent of the petition, Michigan Opportunity, opposed approval as to form, objecting, *inter alia*, to the union label on the petition because its text was not in 8-point type.

17. Two members of the BOSC stated that they were refusing to approve the petition form on the basis of this objection to the size of the text contained within the union label.

18. As a result, the BOSC deadlocked 2–2 on the motion to approve the petition form, meaning that the BOSC determined that the petition form was not approved.

19. Based on a complaint filed by Raise the Wage MI, this Court promptly overruled the BOSC on the union label issue on March 21, 2022. *Raise the Wage MI v Bd of State Canvassers*, 509 Mich 876; 970 NW2d 677 (2022).

20. On March 10, 2022, Raise the Wage MI submitted a petition proof with a revised union logo. *See* Exhibit 1 (petition proof date-stamped March 10, 2022).

21. In the wake of this Court’s decision in *Raise the Wage MI*, the BOSC met on March 23, 2022, and unanimously approved the form of the petition submitted by Raise the Wage MI on March 10, 2022. *See* Board of State Canvassers, Meeting Minutes (March 23, 2022), available at <https://www.michigan.gov/sos/-/media/Project/Websites/sos/BSC-Meeting-Minutes/Signed-03-23-2022-Meeting-Minutes.pdf?rev=527a925174c241d290d707340a078918&hash=C0E121360E1F4417C6E43AF389771F26>.

22. The BOSC decision of March 23, 2022, approving the form of the petition, was never appealed.

23. No one ever sought reconsideration of the BOSC's decision on March 23, 2022, approving the form of the petition.

24. In reliance on the BOSC approval of its petition form, Raise the Wage MI used the BOSC-approved form for its petition.

*Raise the Wage MI Circulates Its Petition, and Collects and Files
Nearly 570,000 Signatures*

25. With an approved summary and petition form in hand, Raise the Wage MI began collecting signatures.

26. Raise the Wage MI's proposal to raise the minimum wage to \$15/hour, index it for inflation, and apply it to tipped workers was very popular.

27. After only five months of collecting signatures, Raise the Wage MI filed 567,934 signatures on July 26, 2022. *See* Exhibit 2.

*The Raise the Wage MI Petition Signatures Are Reviewed and the Bureau
of Elections Staff Recommends Certification*

28. The BOE staff conducted its standard review of the petition signatures. Michigan Opportunity filed challenges, to which Raise the Wage MI responded.

29. After reviewing the signatures and considering the challenges and responses, the nonpartisan, professional staff at the BOE recommended certification of Raise the Wage MI's petition. *See* Exhibit 2.

The BOSC Meets and Fails to Certify

30. On October 20, 2023, the BOSC met to consider the BOE staff recommendation to certify the petition.

31. After listening to objections from Michigan Opportunity and Raise the Wage MI's responses, a motion was made to certify. That motion failed 2–2.

**COUNT I: MANDAMUS – THE BOARD OF STATE CANVASSERS
SHOULD BE ORDERED TO CERTIFY THE PETITION**

32. Plaintiff incorporates the previous paragraphs as if fully set forth herein.

33. A writ of mandamus is issued by a court to compel public officers to perform a clear legal duty. *Jones v Dep't of Corrections*, 468 Mich 646, 658; 664 NW2d 717 (2003) (*en banc*). “Mandamus is the appropriate remedy for a party seeking to compel action by election officials.” *Attorney General v Bd of State Canvassers*, 318 Mich App 242, 248; 896 NW2d 485 (2016) (*per curiam*) (internal quotation marks and citation omitted).

34. To be entitled to a writ of mandamus, a plaintiff must show that: “(1) the plaintiff has a clear, legal right to performance of the specific duty sought, (2) the defendant has a clear legal duty to perform, (3) the act is ministerial, and (4) no other adequate legal or equitable remedy exists that might achieve the same result.” *Rental Props Owners Ass'n of Kent Co v Kent Co Treasurer*, 308 Mich App 498, 518; 866 NW2d 817 (2014) (*per curiam*).

35. Defendant has a clear legal and ministerial duty grounded in statutory law and the numerous precedents of this Court to certify the Raise the Wage MI petition. *See, e.g., Reproductive Freedom for All v Bd of State Canvassers*, 510 Mich 894, 894–895; 978 NW2d 854 (2022) (where the form of a petition is sufficient and there are enough signatures, “the Board . . . has a clear legal duty to certify the petition”); *Unlock Mich v Bd of State Canvassers*, 507 Mich 1015, 1015; 961 NW2d 211 (2021) (where the Board previously approved the form of the petition and there are sufficient signatures, “the Board has a clear legal duty to certify the petition”); *Citizens for Protection of Marriage v Bd of State Canvassers*, 263 Mich App 487, 493; 688 NW2d 538 (2004) (*per curiam*) (“[T]he Board approved the form of the petition and

there is no dispute that there are sufficient signatures. . . . [T]he Board was obligated to certify the petition.”).

36. Under all of these authorities, Raise the Wage MI has a clear legal right to have its petition certified. *See id.*

37. The BOSC’s duties are ministerial and nondiscretionary under all of these authorities. *See id.*

38. Raise the Wage MI has no other adequate legal or equitable remedy that might achieve the same results as certification, and mandamus is the proper remedy to obtain certification.

MANDAMUS SHOULD ISSUE AS SOON AS POSSIBLE

39. Plaintiff incorporates the previous paragraphs as if fully set forth herein.

40. Election matters must be expedited. *See* MCR 7.213(C)(4); *see also* *Scott v Mich Dir of Elections*, 490 Mich 888, 888; 804 NW2d 119 (2011); *Ferency v Secretary of State*, 409 Mich 569, 599–600; 297 NW2d 544 (1980) (*per curiam*).

CONCLUSION AND RELIEF SOUGHT

For these reasons, Plaintiff asks that the Court:

1. Grant this complaint for mandamus;
2. Order the Board of State Canvassers to certify the petition of Raise the Wage MI;
3. Award Raise the Wage MI its costs pursuant to MCL 600.4431; and
4. Grant such other relief as necessary or appropriate.

Respectfully submitted,

/s/ Mark Brewer

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