

STATE OF MICHIGAN
IN THE COURT OF APPEALS

CITIZENS PROTECTING MICHIGAN'S
CONSTITUTION, JOSEPH SPYKE AND
JEANNE DAUNT,

Plaintiffs,

v

SECRETARY OF STATE AND MICHIGAN
BOARD OF STATE CANVASSERS,

Michigan Court of Appeals
No. 343517

Defendants/Cross-Defendants,
and

VOTERS NOT POLITICIANS BALLOT
COMMITTEE, d/b/a VOTERS NOT
POLITICIANS, COUNT MI VOTE, a
Michigan Non-Profit Corporation, d/b/a
VOTERS NOT POLITICIANS, KATHRYN A.
FAHEY, WILLIAM R. BOBIER and DAVIA C.
DOWNEY,

Intervening Defendants/Cross-Plaintiffs,
_____ /

**BRIEF OF THE SECRETARY OF STATE AND BOARD OF CANVASSERS
IN RESPONSE TO COMPLAINT FOR MANDAMUS**

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COUNTER-STATEMENT OF JURISDICTION

This Court has original jurisdiction to entertain an action for “mandamus against a state officer.” MCR 7.203(C)(2), citing MCL 600.4401. Defendant Secretary of State is a “state officer,” see Const 1963, art 5, § 3; MCL 168.21, for purposes of mandamus relief. *Protect MI Constitution v Secretary of State*, 297 Mich App 553 (2012). Defendant Board of State Canvassers is a constitutionally-created board, Const 1963, art 2, § 7; MCL 168.22, and also subject to mandamus relief. *Citizens Protecting Michigan’s Constitution v Secretary of State*, 280 Mich App 273 (2008). The Michigan Election Law, MCL 168.1, *et seq.*, also provides that a person aggrieved by a decision of the Board of State Canvassers may seek mandamus relief or other appropriate relief. MCL 168.479. Therefore, this case is within the Court’s jurisdiction.

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COUNTER-STATEMENT OF QUESTION PRESENTED

1. While the Board of Canvassers ultimately has a legal duty to make a declaration regarding the sufficiency of Voters Not Politicians’ petition, Plaintiffs raise a threshold legal question as to the petition’s sufficiency, the resolution of which lies outside the scope of the Board’s constitutional and statutory duties. Absent resolution of the legal question, it is unclear whether the Board has a duty to certify VNP’s petition as sufficient or insufficient. Under these circumstances, are Plaintiffs’ entitled to a writ of mandamus?

Defendants’ answer: Did not answer.

Intervening Defendants’ answer: No.

Plaintiffs’ answer: Yes.

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CONSTITUTIONAL PROVISIONS & STATUTES INVOLVED

Const 1963, art 12, § 2 provides, 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 registered electors of the state equal in number to at least 10 percent of the total vote cast for all candidates for governor at the last preceding general election at which a governor was elected. Such petitions shall be filed with the person authorized by law to receive the same at least 120 days before the election at which the proposed amendment is to be voted upon. Any such petition shall be in the form, and shall be signed and circulated in such manner, as prescribed by law. The person authorized by law to receive such petition shall upon its receipt determine, as provided by law, the validity and sufficiency of the signatures on the petition, and make an official announcement thereof at least 60 days prior to the election at which the proposed amendment is to be voted upon.

Submission of proposal; publication

Any amendment proposed by such petition shall be submitted, not less than 120 days after it was filed, to the electors at the next general election. *Such proposed amendment, 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.* Copies of such publication shall be posted in each polling place and furnished to news media as provided by law. . . . [Emphasis added.]

Const 1963, art 12, § 3 provides:

At the general election to be held in the year 1978, and in each 16th year thereafter and at such times as may be provided by law, the question of a general revision of the constitution shall be submitted to the electors of the state. If a majority of the electors voting on the question decide in favor of a convention for such purpose, at an election to be held not later than six months after the proposal was certified as approved, the electors of each representative district as then organized shall elect one delegate and the electors of each senatorial district as then organized shall elect one delegate at a partisan election. The delegates so elected shall convene at the seat of government on the first Tuesday in October next succeeding such election or at an earlier date if provided by law.

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Convention officers, rules, membership, personnel, publications

The convention shall choose its own officers, determine the rules of its proceedings and judge the qualifications, elections and returns of its members. To fill a vacancy in the office of any delegate, the governor shall appoint a qualified resident of the same district who shall be a member of the same party as the delegate vacating the office. The convention shall have power to appoint such officers, employees and assistants as it deems necessary and to fix their compensation; to provide for the printing and distribution of its documents, journals and proceedings; to explain and disseminate information about the proposed constitution and to complete the business of the convention in an orderly manner. Each delegate shall receive for his services compensation provided by law.

Submission of proposed constitution or amendment

No proposed constitution or amendment adopted by such convention shall be submitted to the electors for approval as hereinafter provided unless by the assent of a majority of all the delegates elected to and serving in the convention, with the names and vote of those voting entered in the journal. Any proposed constitution or amendments adopted by such convention shall be submitted to the qualified electors in the manner and at the time provided by such convention not less than 90 days after final adjournment of the convention. Upon the approval of such constitution or amendments by a majority of the qualified electors voting thereon the constitution or amendments shall take effect as provided by the convention.

MCL 168.476 provides, in relevant part:

- (1) Upon receiving notification of the filing of the petitions, the board of state canvassers shall canvass the petitions to ascertain if the petitions have been signed by the requisite number of qualified and registered electors. . . .
- (2) The board of state canvassers may hold hearings upon any complaints filed or for any purpose considered necessary by the board to conduct investigations of the petitions. To conduct a hearing, the board may issue subpoenas and administer oaths. The board may also adjourn from time to time awaiting receipt of returns from investigations that are being made or for other necessary purposes, but shall complete the canvass at least 2 months before the election at which the proposal is to be submitted.

(3) At least 2 business days before the board of state canvassers meets to make a final determination on challenges to and sufficiency of a petition, the bureau of elections shall make public its staff report concerning disposition of challenges filed against the petition. Beginning with the receipt of any document from local election officials pursuant to subsection (1), the board of state canvassers shall make that document available to petitioners and challengers on a daily basis.

MCL 168.477 provides, in relevant part:

(1) The board of state canvassers shall make an official declaration of the sufficiency or insufficiency of a petition under this chapter at least 2 months before the election at which the proposal is to be submitted. If the board of state canvassers declares that the petition is sufficient, the secretary of state shall send copies of the statement of purpose of the proposal as approved by the board of state canvassers to the several daily and weekly newspapers published in this state, with the request that the newspapers give as wide publicity as possible to the proposed amendment or other question. Publication of any matter by any newspaper under this section shall be without expense or cost to the state of Michigan. . . .

MCL 168.482 provides, in relevant part:

- (1) Each petition under this section shall be 8- ½ inches by 14 inches in size.
- (2) If the measure to be submitted proposes a constitutional amendment . . . the heading of each part of the petition shall be prepared in the following form and printed in capital letters in 14-point boldfaced type:

INITIATIVE PETITION

AMENDMENT TO THE CONSTITUTION

* * *

(3) The full text of the amendment so proposed shall follow and be printed in 8-point type. *If the proposal would alter or abrogate an existing provision of the constitution, the petition shall so state and the provisions to be altered or abrogated shall be inserted, preceded by the words:*

“Provisions of existing constitution altered or abrogated by the proposal if adopted.”

(4) The following statement shall appear beneath the petition heading:

“We, the undersigned qualified and registered electors, [_____] city
(strike 1) residents in the township of _____ in the county of _____, state of Michigan, respectively petition for (amendment to constitution)”

(5) The following warning shall be printed in 12-point type immediately above the place for signatures, on each part of the petition:

WARNING

A person who knowingly signs this petition more than once, signs a name other than his or her own, signs when not a qualified and registered elector, or sets opposite his or her signature on a petition, a date other than the actual date the signature was affixed, is violating the provisions of the Michigan election law.

(6) The remainder of the petition form shall be as provided following the warning to electors signing the petition in section 544c(1). In addition, the petition shall comply with the requirements of section 544c(2). [Emphasis added.]

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INTRODUCTION

On December 18, 2017, Voters Not Politicians (VNP) filed a petition with the Secretary of State for the purpose of initiating an amendment to the Michigan Constitution under Const 1963, art 12, § 2.

Under MCL 168.476(1) and 168.477(1), the Board of State Canvassers (Board) has a duty to certify as sufficient or insufficient the petition filed by VNP. Before the Board could carry out its duties, Citizens Protecting Michigan's Constitution (CPMC) filed the instant complaint for mandamus against the Secretary of State and the Board, requesting that this Court order Defendants to reject VNP's petition and not place the petition on the November 2018 General Election ballot. CPMC contends that the petition is defective because it constitutes an improper revision of the Constitution that can only be accomplished through the process outlined in article 12, § 3 of the Constitution, and not by amendment under article 12, § 2. CPMC also argues that the petition fails to set forth provisions of the Constitution that would be altered or abrogated by the amendment as required by article 12, § 2 and MCL 168.482. These are legal questions the resolution of which lie outside the purview of the Secretary of State and the Board.

The Board acknowledges that it has a legal duty to issue an official declaration of the sufficiency or insufficiency of VNP's petition. The Board will comply with any order this Court issues regarding the legal sufficiency of the petition.

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COUNTER-STATEMENT OF FACTS AND PROCEEDINGS

Voters Not Politicians (VNP) is a registered ballot question committee.¹ In June 2017, VNP submitted its initiative petition to amend the constitution to the Bureau of Elections (Bureau) for an initial review, and ultimately submitted a revised draft of the petition to the Bureau on August 14, 2017. After some discussion, the Board approved the form of VNP's petition during a meeting held August 17, 2017. (Ex. 1, Excerpts of 8/17/17 Trans., pp 14-46). The Board, by motion, approved the petition:

[W]ith the understanding that the Board's approval does not extend to: One, the substance of the proposal which appears on the petition. Two, the substance of the summary of the proposal which appears on the signature side of the petition. Three, the manner in which the proposal language is affixed to the petition. Or, four, whether the petition properly characterizes those provisions of the Constitution that have been altered or abrogated. [*Id.*, p 43.]

The motion passed unanimously. *Id.*, pp 43-46. Thereafter, VNP began circulating its petition.²

To gain access to the ballot, VNP was required to submit 315,654 valid signatures of registered voters. See Const 1963, art 12, § 2.³ On December 18, 2017, VNP filed its petition with the Secretary of State. MCL 168.471.⁴ Upon

¹ See VNP's electronic campaign filings at, <https://cfrsearch.nictusa.com/committees/518049>.

² A sample of VNP's petition is posted on the Secretary of State's website, https://www.michigan.gov/documents/sos/Voters_Not_Pol_p_598255_7.pdf.

³ See Instructions for Initiative & Referendum Petitions, p 4, https://www.michigan.gov/documents/sos/Ini_Ref_Pet_Website_339487_7.pdf.

⁴ See State of Michigan Statewide Ballot Proposals, p 3, https://www.michigan.gov/documents/sos/Bal_Prop_Status_560960_7.pdf.

filing, the Board was required to canvass the petition to determine whether the petition appeared in the proper form and whether there are sufficient valid signatures. MCL 168.476(1). The Board's canvass is accomplished with the assistance of the Bureau acting as staff for the Board, this includes a random sampling of petition signatures to predict the number of valid and genuine signatures. Copies of the sampled signatures from VNP's petition were made available to the public on April 12, 2018, and a deadline for challenging signatures was set for April 26, 2018. MCL 168.476(2).⁵

On April 25, 2018, Plaintiff Citizens Protecting Michigan's Constitution (CPMC), also a ballot question committee,⁶ filed the instant complaint for mandamus against the Secretary of State and the Board, contending that because VNP's proposal is, in effect, an attempt to generally revise the Constitution, the Board has a duty to declare the petition insufficient. The complaint also contends that the petition fails to set forth provisions of the Constitution that would be altered or abrogated by the amendment as required by article 12, § 2 and MCL 168.482. The next day, "as a precautionary measure," CPMC submitted a challenge

⁵ See State of Michigan Statewide Ballot Proposals, p 3, https://www.michigan.gov/documents/sos/Bal_Prop_Status_560960_7.pdf. A person or entity may submit a "complaint" regarding a petition to the Board. MCL 168.476(1)-(2). This process is generally referred to as the "challenge" process. A person submits a complaint or "challenge" to the petition by filing it with the Bureau of Elections. The Bureau of Elections reviews and processes the challenge, and then prepares a staff report with the Bureau's results for the Board's review.

⁶ See CPMC's electronic campaign filings at, <https://cfrsearch.nictusa.com/committees/514208>.

to VNP's petition to the Board, attaching the complaint for mandamus and requesting that the Board "take no further action on the VNP Proposal at this time, and await a determination from the Court of Appeals with respect to its complaint for mandamus." (Ex. 2, CPMC Challenge w/o attachments). VNP submitted a response to CPMC's challenge on May 3, 2018, contending that the challenge raised only legal questions outside the jurisdiction of the Board. (Ex. 3, VNP Response).

On May 10, 2018, VNP and related persons moved to intervene as Defendants in the complaint for mandamus. This Court granted intervention by order dated May 11, 2018, and also set forth a briefing schedule. Along with the motion to intervene, VNP filed a cross-claim for mandamus relief against Defendants Secretary of State and the Board contending, opposite to CPMC, that the Board has a duty to certify VNP's petition as sufficient⁷

By law, the Board must complete its canvass of VNP's petition and declare the petition sufficient or insufficient at least two months before the November 2018 General Election. Const 1963, art 12, § 2, MCL 168.476(2), 168.477(1). Here, the deadline is September 6, 2018. While the Board has not yet met, it has noticed a meeting to be held May 24, 2018, at 10:00 a.m. to consider VNP's petition. (Ex. 4, Notice). Also, the Bureau of Elections, as it is required to do, see MCL 168.476(2), has released its staff report in a timely manner. This report recommends that the Board certify VNP's petition. (Ex. 5, VNP Staff Report).

⁷ Concurrent with the instant filing, Defendants filed an answer to VNP's cross claim for mandamus relief and a brief in response. That brief simply adopts and incorporates the arguments set forth herein.

STANDARD OF REVIEW

Although courts have held that mandamus is the appropriate remedy for a party seeking to compel action by election officials, see, e.g., *Wolverine Golf Club v Secretary of State*, 24 Mich App 711 (1970), aff'd 384 Mich 461 (1971); *Automobile Club of Mich Committee for Lower Rates Now v Secretary of State (On Remand)*, 195 Mich App 613 (1992), a writ of mandamus remains an extraordinary remedy and will only be issued where: “(1) the party seeking the writ has a clear legal right to performance of the specific duty sought, (2) the defendant has the clear legal duty to perform the act requested, (3) the act is ministerial, and (4) no other remedy exists that might achieve the same result.” *Citizens Protecting Michigan’s Constitution v Sec’y of State*, 280 Mich App 273, 284 (2008), citing *Tuggle v Dep’t of State Police*, 269 Mich App 657, 668 (2005). The specific act sought to be compelled must be of a ministerial nature, which is prescribed and defined by law with such precision and certainty as to leave nothing to the exercise of discretion or judgment. *Citizens Protecting Michigan’s Constitution*, 280 Mich App at 286. “The burden of showing entitlement to the extraordinary remedy of a writ of mandamus is on the plaintiff.” *White-Bey v Dept of Corrections*, 239 Mich App 221, 223 (1999).

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ARGUMENT

I. The Board of Canvassers does not have a position on the question whether Plaintiffs are entitled to a writ of mandamus.

While the Board ultimately has a legal duty to make a declaration as to the sufficiency of VNP's petition, at this time it is unclear whether the Board has a duty to declare that petition sufficient or insufficient.

A. The Secretary's role in the initiative petition process is limited.

CPMC has sued the Secretary of State, but the role of the Secretary with respect to the acceptance of initiative petitions for the general election ballot is limited. *Citizens Protecting Michigan's Constitution v Sec'y of State*, 280 Mich App 273, 286 (2008), *aff'd in result*, 482 Mich 960 (2008). The Secretary of State prescribes the format of petitions that will be circulated countywide. The Secretary then acts as the filing official to receive petitions for referendum, initiative, and constitutional amendment. The first task attendant to the Secretary's office is to "immediately" notify the Board, by first-class mail, upon the filing of any signed petition. *Id.* (citing MCL 168.475 (1)). The action of notifying the Board is solely a ministerial function that does not allow the exercise of discretion to determine whether the constitutional prerequisites are met. At that juncture, absent a court order, there is no clear legal duty imposed on the Secretary of State to take any further action with respect to an initiative petition. If the Board certifies the sufficiency of the petition and approves the statement of purpose, the Secretary then certifies the ballot statement of purpose to the locals, MCL 168.648, and communicates the ballot wording to the media. MCL 168.477(2); MCL 168.480.

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B. The role of the Board of Canvassers is also limited, and it has yet to meet in this matter.

The Board is a constitutional board created by Const 1963, art 2, § 7, and its duties and responsibilities are established by law. See MCL 168.22(2) and MCL 168.841. The Legislature has empowered the Board to enforce the technical requirements set forth in the Michigan Election Law, 168.1, *et seq.*, relating to the circulation and form of various petitions, including petitions to amend the Constitution.

This Court has explained that the Board’s authority with respect to petitions to amend the constitution is limited to that entrusted the Board by statute or Constitution:

The Board comes within the definition of an “agency” in the Administrative Procedures Act. An agency has no inherent power. Any authority it may have is vested by the Legislature, in statutes, or by the Constitution. [*Citizens for Protection of Marriage v Bd of State Canvassers*, 263 Mich App 487, 493 (2004) (emphasis added; internal citations omitted) .]

And with respect to petitions, generally the Board’s “duty . . . 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 Sec’y of State*, 492 Mich 588, 618 (2012).

These duties are ministerial in nature, and in reviewing a petition the Board may not examine questions regarding the merits or substance of a proposal. *Leininger v Secretary of State*, 316 Mich 644, 655-656 (1947). See also *Gillis v Bd of State Canvassers*, 453 Mich 881 (1996); *Automobile Club of Michigan Committee for Lower Rates Now v Secretary of State (On Remand)*, 195 Mich App 613, 624 (1992)

("[T]he Board of State Canvassers possesses the authority to consider questions of form."). And in performing its function, the Board may not look beyond the four corners of the petition. *Michigan Civil Rights Initiative v Bd of State Canvassers*, 268 Mich App 506, 519-520 (2005).

With respect to the Board's duties, the Michigan Constitution provides:

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 registered electors of the state equal in number to at least 10 percent of the total vote cast for all candidates for governor at the last preceding general election at which a governor was elected. . . . Any such petition shall be in the form, and shall be signed and circulated in such manner, as prescribed by law. *The person authorized by law to receive such petition shall upon its receipt determine, as provided by law, the validity and sufficiency of the signatures on the petition, and make an official announcement thereof at least 60 days prior to the election at which the proposed amendment is to be voted upon.* [Const 1963, art 12, § 2 (emphasis added).]

The "person authorized by law" in art 12, § 2 is the Board of Canvassers.

MCL 168.474. The Legislature implemented art 12, § 2 in part in MCL 168.476, which 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 and registered electors.*" (Emphasis added). Finally, MCL 168.477(1) provides that "[t]he board of state canvassers shall make an official declaration of the sufficiency or insufficiency of a petition under this chapter at least 2 months before the election at which the proposal is to be submitted."

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The Board's duties with respect to VNP's petition is two-fold. First, under MCL 168.476(1), the Board must canvass the petition to ascertain if the petition has been signed by the requisite number of qualified and registered voters. Second, under MCL 168.477(1), the Board "*shall* make an official declaration of the sufficiency or insufficiency of a petition under this chapter at least 2 months before the election at which the proposal is to be submitted." MCL 168.477(1) (emphasis added). The determination regarding the "sufficiency" of a petition includes whether the form of the petition complies with the relevant technical requirements.⁸ Essentially, the Board determines whether the petition has enough valid signatures, and whether the petition is in the proper form.

In conducting this review, the Board is empowered to "hold hearings upon any complaints filed or for any purpose considered necessary by the board to conduct investigations of the petitions." MCL 168.476(2). However, this investigatory power has been confined to the Board's duties of determining whether there are sufficient signatures, and whether the petition is in proper form. See *Michigan Civil Rights Initiative v Board of State Canvassers*, 268 Mich App 506, 516 (2005). In this case, there is no challenge as to whether the petition has

⁸ The statutes actually provide for the Board's review of the petitions after they have been circulated and signatures obtained. See MCL 168.475; 168.476; 168.477. But as noted above, for many years the Board has provided the service of allowing persons or organizations circulating petitions to come before the Board and obtain pre-approval as to the form of their petitions before they are circulated. VNP took advantage of this service.

sufficient valid signatures, but rather whether the petition appears in the proper form.

The preparation and circulation of initiative petitions to amend the Constitution is provided by law. Under MCL 168.482(1) and (2), a petition must be printed on 8 ½ x 14 inch paper, and the “heading” of “INITIATIVE PETITION AMENDMENT TO THE CONSTITUTION” must appear on each part of the petition and “shall be . . . printed in capital letters in 14-point boldfaced type.”

Under subsection 482(3):

The full text of the amendment so proposed shall follow and be printed in 8-point type. *If the proposal would alter or abrogate an existing provision of the constitution, the petition shall so state and the provisions to be altered or abrogated shall be inserted, preceded by the words:*

“Provisions of existing constitution altered or abrogated by the proposal if adopted.” [Emphasis added.]⁹

The petition must then include a statement by the electors and a warning to the electors regarding the consequences of signing a petition more than once, or signing another individual’s name, etc. MCL 168.482(4) and (5). “The remainder of the petition form shall be as provided following the warning . . . in section 544c(1),” and “shall comply with the requirements of section 544c(2).” MCL 168.482(6).

⁹ Const 1963, art 12, § 2 similarly requires that:

Any amendment proposed by such petition shall be submitted, not less than 120 days after it was filed, to the electors at the next general election. Such proposed amendment, *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. . . . [Emphasis added.]

Sections 544c(1) and (2) impose additional formatting requirements relating to information required from electors and the certificate of the circulator. MCL 168.544c(1)-(2). The Secretary of State has prescribed the format of petitions, MCL 168.544d, and VNP utilized that format.¹⁰

The Board has not yet met to complete the canvass, address CPMC’s challenge, or vote upon the sufficiency of VNP’s petition. Ordinarily, the Board would object to a request for mandamus relief where the legal duties owed are unclear.¹¹ The Board, however, is aware of precedent from this Court and the Michigan Supreme Court determining that “threshold” legal questions affecting ballot eligibility may be considered in the mandamus context, with the decision on the legal question resolving the legal duty of the Board. See, e.g., *Protect Our Jobs v Board of State Canvassers*, 492 Mich 763, 791-792 (2012); *Michigan United Conservation Clubs v Secretary of State*, 463 Mich 1009 (2001); *Citizens Protecting Michigan’s Constitution*, 280 Mich App at 285-291.

While the appellate courts have addressed an argument that a proposal to amend the Constitution was defective because it constituted an improper general

¹⁰ See Secretary of State’s instructions and prescribed format for initiative and referendum petitions http://www.michigan.gov/documents/sos/Ini_Ref_Pet_Website_339487_7.pdf.

¹¹ The Secretary of State, however, objects to an order of mandamus as to her since the only duty she has remaining is to certify the ballot to the counties by September 7, 2018. MCL 168.480. This act would come after any certification by the Board of Canvassers, and the Secretary will act in accordance with the declaration made by the Board pursuant to this Court’s order. There is no need to compel her to perform her duty through an order of mandamus.

revision under Const 1963, art 12, § 3, these decisions do not address the Board's role as a ministerial body.

In *Citizens Protecting Michigan's Constitution*, 280 Mich App 273, affirmed in part, 482 Mich 960 (2008), this Court concluded that the Reform Michigan Government Now petition was an improper attempt to generally revise the Constitution, rather than a permissible amendment under art 12, § 2. *Id.* at 305-307. Accordingly, the Court issued mandamus relief ordering the Secretary of State and the Board to reject the petition. *Id.* But on appeal, the Michigan Supreme Court affirmed only the result of the Court of Appeals' decision, not the rationale. 482 Mich 960. Significantly, these decisions examined the issue as a constitutional question, and not a question as to form for purposes of Board review.

With respect to the alter or abrogate argument, the Michigan Supreme Court reaffirmed in *Protect Our Jobs* that “an existing provision is only ‘altered or abrogated if the proposed amendment would add to, delete from, or change the existing wording of the provision, or would render it wholly inoperative.’” Furthermore, the phrase ‘the existing wording’ refers to the actual text of an existing constitutional provision.” 492 Mich at 781 (footnotes omitted). The Court thereafter elaborated further as to the meaning of the words “alter” and “abrogate.” *Id.* at 781-782. In approving VNP's petition as to form in August 2017, the Bureau and the Board were mindful of the Supreme Court's guidance in *Protect Our Jobs*. But ultimately the Board did not approve as to form that the form of VNP's petition identified all provisions of the Constitution that would be altered or abrogated by

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the amendment if passed. (Ex. 1, p 43-46). Ostensibly, the Board left that question for another day, and in fact, CPMC raised it in its April 25 challenge. However, by filing its complaint for mandamus before the Board acted, CPMC has placed this quasi-legal question as to form squarely before this Court.

C. Regarding the timing of this Court’s decision, the Board of Canvassers must complete its canvass two months in advance of the election.

As noted above, the Board must complete its canvass of VNP’s petition and declare the petition sufficient or insufficient by September 6, 2018. Const 1963, art 12, § 2, MCL 168.476(2), 168.477(1). The Secretary of State must thereafter certify the question to county clerks by September 7, 2018. MCL 168.480. Before the Secretary of State can certify the question, however, ballot language must be drafted and approved. The Michigan Constitution requires with respect to petitions to amend the Constitution that:

The ballot to be used in such election shall contain a statement of the purpose of the proposed amendment, expressed in not more than 100 words, exclusive of caption. Such statement of purpose . . . shall consist of a true and impartial statement of the purpose of the amendment in such language as shall create no prejudice for or against the proposed amendment.” [Const 1963, art 12 § 2.]

MCL 168.32(2) clarifies that the duty to prepare the statement of purpose lies with the Director of Elections,¹² and provides, in part:

The director of elections, with the approval of the state board of canvassers, shall prepare a statement for designation on the ballot in

¹² MCL 168.32(1) provides that “[t]he director of elections shall be vested with the powers and shall perform the duties of the secretary of state under his or her supervision, with respect to the supervision and administration of the election laws.”

not more than 100 words, exclusive of caption, of the purpose of any proposed amendment or question to be submitted to the electors as required under section 9 of article II, section 34 of article IV, or section 1 or 2 of article XII of the state constitution of 1963.

MCL 168.485, in turn, describes how the wording should be prepared.

Because the Director of Elections will require time to draft ballot language, and have that language approved by the Board, Defendants respectfully request that this Court issue its decision in this matter promptly, so that any subsequent appeals to the Michigan Supreme Court may be concluded by the middle of August. This timeframe will help ensure sufficient opportunity to draft language, which includes opportunities for public comment by interested persons. It is also possible that the ballot language itself will result in litigation, see, e.g., *Citizens for Protection of Marriage v Board of State Canvassers*, 263 Mich App 487 (2004), so an August deadline will help ensure that all processes can be completed in a timely matter should VNP's petition be declared sufficient.

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CONCLUSION AND RELIEF REQUESTED

The Board acknowledges that it has a legal duty to issue an official declaration of the sufficiency or insufficiency of Intervening Defendant VNP’s petition. The Board will abide by any order this Court issues regarding the sufficiency of the petition.

Respectfully submitted,

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