STATE OF MICHIGAN
IN THE SUPREME COURT

Appeal from the Court of Appeals
(Servitto, P.J., and Boonstra and Gadola, JJ.)

LEAGUE OF WOMEN VOTERS OF MICHIGAN, MICHIGANDERS FOR FAIR AND TRANSPARENT ELECTIONS, HENRY MAYERS, VALERIYA EPSHTEYN, and BARRY RUBIN,

Plaintiffs-Appellants,

v

SECRETARY OF STATE,

Defendant-Appellee.
_____/

MSC No. 160907

COA No. 350938

Trial Court No. 19-000084-MM

SENATE and HOUSE OF REPRESENTATIVES,

Plaintiffs-Appellants,

v

SECRETARY OF STATE,

Defendant-Appellee.
_____/

MSC No. 160908

COA No. 351073

Trial Court No. 19-000092-MZ

AMICUS CURIAE BRIEF
OF THE AMERICAN CIVIL LIBERTIES UNION OF MICHIGAN

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QUESTIONS PRESENTED

I. By placing a fifteen-percent cap on ballot proposal signatures per congressional district, does 2018 PA 608 violate (a) the Michigan Constitution because the signature thresholds of Const 1963, art 2, § 9, and Const 1963, art 12, § 2, are self-executing, and/or (b) the First Amendment to the United States Constitution and parallel provisions of the Michigan Constitution because it imposes an unjustified burden on political speech?

Amicus answers: Yes.

II. By requiring that paid petition circulators file a pre-circulation affidavit and check a disclosure box on the face of circulated petitions, does 2018 PA 608 violate the First Amendment to the United States Constitution and parallel provisions of the Michigan Constitution because it imposes an unjustified burden on political speech?

Amicus answers: Yes.

INTRODUCTION AND INTEREST OF AMICUS CURIAE[1]

This case involves the rights of Michigan electors, recognized in Const 1963, art 2, § 9, and Const 1963, art 12, § 2, to engage in direct democracy through the initiative, referendum, and constitutional amendment processes. The American Civil Liberties Union of Michigan ("ACLU") is the Michigan affiliate of a nationwide, nonpartisan organization with over a million members dedicated to protecting the rights guaranteed by the United States Constitution. The ACLU has long been committed to protecting the right to vote, the freedom to petition, ballot access, and other rights vital to a healthy and robust democracy. The ACLU provides direct representation and files amicus curiae briefs in cases involving civil rights that affect the democratic process, including the powers of direct democracy established by the Michigan Constitution. See, e.g., *In re Request for Advisory Opinion Regarding Constitutionality of 2018 PA 368 & 369*, 928 NW2d 911 (Mich, 2019); *Citizens Protecting Michigan's Constitution v Secretary of State*, 503 Mich 42; 921 NW2d 247 (2018); *Stand Up for Democracy v Secretary of State*, 492 Mich 588; 822 NW2d 159 (2012); *Socialist Workers Party v Secretary of State*, 412 Mich 571; 317 NW2d 1 (1982); *Moore v Johnson*, 2014 WL 4924409, unpublished opinion of the United States District Court for the Eastern District of Michigan, entered May 23, 2013 (Docket No. 14–11903).

The statute at issue in this case, 2018 PA 608, places significant burdens on voters who wish to participate in direct democracy campaigns, as well as on those who run those campaigns. The law also will likely disproportionately limit the voices of black voters who wish to place a proposition on the ballot. When the Attorney General was considering the constitutionality of the

[1] Pursuant to MCR 7.212(H)(3), amicus states that no counsel for a party authored this brief in whole or in part, nor did any such counsel or a party make a monetary contribution intended to fund the preparation or submission of this brief. No person other than amicus, its members, or its counsel made such a monetary contribution.

statute in early 2019, the ACLU submitted comments arguing that 2018 PA 608 violated the state constitutional provisions on direct democracy, and the state and federal constitutional guarantees of freedom of speech and expression. The ACLU's comments also argued that, because 2018 PA 608 disproportionately affects Michigan's black voters, it violates the federal Voting Rights Act. The ACLU now submits this brief to share with the Court its constitutional objections to the law.

ARGUMENT

I. 2018 PA 608's Geographic Distribution Requirement Is Unconstitutional.

By requiring that no more than 15 percent of petition signatures come from any one congressional district, 2018 PA 608 violates both the Michigan Constitution and the United States Constitution. It does so in two respects.

First, the geographic distribution requirement imposes impermissible burdens on the state constitutional provisions that establish the people's power to engage in direct democracy. Those provisions are self-executing. Under well-settled law, the Legislature is forbidden from curtailing, or imposing undue burdens on, the rights or powers granted by self-executing constitutional provisions. Indeed, this Court has enforced that very principle in a case involving the constitutional provision governing referendum petitions—one of the constitutional provisions implicated by 2018 PA 608. See *Wolverine Golf Club v Hare*, 384 Mich 461, 466; 185 NW2d 392 (1971).

Second, the geographic distribution requirement imposes significant costs on direct democracy campaigns without a sufficient justification. It thus infringes the rights under the First Amendment and parallel provisions of the Michigan Constitution of both voters and those who carry out direct democracy campaigns.

The Court of Appeals thus was correct to invalidate the 15-percent geographic distribution requirement.

A. The 15-Percent Cap Impermissibly Adds a Geographic Distribution Requirement to the Self-Executing Signature Thresholds in the Michigan Constitution.

1. The Constitutional Provisions Imposing Signature Thresholds for Direct Democracy Petitions Are Self-Executing.

The Michigan Constitution reserves to the people the power of initiative and referendum, Const 1963, art 2, § 9, as well as the power to propose constitutional amendments, Const 1963, art 12, § 2. These powers provide an essential tool for democracy, by providing a means for the people to bypass an unresponsive legislature. They "assure the citizenry of a gun-behind-the-door to be taken up on those occasions when the legislature itself does not respond to popular demands." *Kuhn v Dep't of Treasury*, 384 Mich 378, 385 n 10; 183 NW2d 796 (1971) (internal quotation marks omitted). The "adoption of the initiative power, along with other tools of direct democracy, 'reflected the popular distrust of the Legislative branch of our state government.'" *Citizens Protecting Michigan's Constitution v Secretary of State*, 503 Mich 42; 921 NW2d 247 (2018), quoting *Woodland v Michigan Citizens Lobby*, 423 Mich 188, 218; 378 NW2d 337 (1985). Because of the important function these powers play in our constitutional scheme, the Michigan Supreme Court has held that "constitutional provisions by which the people reserve to themselves a direct legislative voice ought to be liberally construed." *Kuhn*, 384 Mich at 385.

The Constitution provides specific signature thresholds for the people to invoke the powers of direct democracy. "To invoke the initiative or referendum, petitions signed by a number of registered electors, not less than eight percent for initiative and five percent for referendum of the total vote cast for all candidates for governor at the last preceding general election at which a governor was elected shall be required." Const 1963, art 2, § 9. And petitions for constitutional amendments must "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." Const 1963, art 12, § 2. These provisions contain no requirement of geographic distribution. All registered voters, regardless of where in the state they live, have an equal right to sign ballot-measure petitions and have their signatures count toward the constitutional thresholds.

This Court has squarely held that the petition procedures in Const 1963, art 2, § 9, for initiatives and referenda are "self-executing." *Wolverine Golf Club*, 384 Mich at 466. The same result necessarily follows for the petition proceedings in Const 1963, art 12, § 2, for constitutional amendments.

A constitutional provision is self-executing when it can be implemented without additional legislation. In *Thompson v Vaughan*, 192 Mich 512, 520; 159 NW 65 (1916), the Court held that the referendum provision of the 1908 Constitution was self-executing, because "[t]here is nothing in its language to indicate that it was to remain in abeyance until given life by legislative enactment." Quoting Justice Cooley's treatise, the Court adopted the following principle: "'A constitutional provision may be said to be self-executing, if it supplies a sufficient rule, by means of which the right given may be enjoyed and protected, or the duty imposed may be enforced, and it is not self-executing when it merely indicates principles, without laying down rules by means of which those principles may be given the force of law.'" *Id.*, quoting Cooley & Lane, Constitutional Limitations (7th ed), p 121. Even if some additional legislation might be useful "in aid of the constitutional provision," *id.*, requirements directly imposed by that provision remain self-executing.

As the Court held in *Wolverine Golf Club*, 384 Mich at 466, the requirements imposed on initiative and referendum petitions by Const 1963, art 2, § 9 can be implemented without additional legislation and are thus self-executing. See also *Wolverine Golf Club v Hare*, 24 Mich App 711,

727; 180 NW2d 820 (1970) (opinion of Lesinski, C.J.) ("The convention comment, which may properly be considered when attempting to discover the intent of the framers, expressly states that the provisions of art. 2, § 9 are self-executing."), aff'd 384 Mich 461; 185 NW2d 392 (1971). So too can the signature requirements for constitutional amendments in Const 1963, art 12, § 2. These provisions establish specific signature thresholds, which supply a sufficient rule for enforcing the rights they grant to voters. They do not "merely indicate[] principles, without laying down rules by means of which those principles may be given the force of law." *Thompson*, 192 Mich at 520 (internal quotation marks omitted).

To be sure, the constitutional provisions governing direct democracy petitions specifically grant *some* powers to the legislature. See Const 1963, art 2, § 9 ("The legislature shall implement the provisions of this section."); Const 1963, art. 12, § 2 (petition for constitutional amendment "shall be in the form, and shall be signed and circulated in such manner, as prescribed by law"). But these grants of power do not undermine the conclusion that the petition requirements are self-executing. Indeed, this Court has specifically rejected such an argument. See *Wolverine Golf Club*, 384 Mich at 466 (concluding that Const 1963, art 2, § 9's "constitutional procedure is self-executing," notwithstanding the grant to the legislature of the power to implement that section). The point of a self-executing provision is not to deny the legislature the power to carry out its requirements; the point is "to cloak the provision with the necessary characteristics to render its express provisions free from legislative encroachment. *And this is so irrespective of the implementing provision contained therein.*" *Wolverine Golf Club*, 24 Mich App at 728–729 (opinion of Lesinski, C.J.) (emphasis added).

2. The 15-Percent Cap Imposes Impermissible Burdens on Voters' Exercise of the Constitutional Powers of Direct Democracy.

Because the point of making a provision self-executing is to limit legislative encroachment, the Legislature is forbidden to "'impose additional obligations on a self-executing constitutional provision.'" *Wolverine Golf Club*, 384 Mich at 466, quoting *Wolverine Golf Club*, 24 Mich App at 725 (opinion of Lesinski, C.J.). See also *Soutar v St Clair Co Election Comm*, 334 Mich 258, 265; 54 NW2d 425 (1952) ("Insofar as the steps required to obtain the printing of the name of a candidate for nomination for a judicial office on the non-partisan primary ballot are concerned, the language of the Constitution is self-executing. *Obligations other than those so imposed may not be added.*") (emphasis added). Although the Legislature may enact "'legislation *supplementary* to self-executing constitutional provisions,'" it may not enact laws that undermine those provisions: "'the right guaranteed shall not be curtailed or any undue burdens placed thereon.'" *Wolverine Golf Club*, 384 Mich at 466 (emphasis added), quoting *Hamilton v Deland*, 227 Mich 111, 125; 198 NW 843 (1924).

The 15-percent cap curtails and places undue burdens on voters' power of direct democracy under the Michigan Constitution. That requirement does not merely supplement the Constitution's signature thresholds. It does not set forth the procedures by which the rules in the Constitution shall be enforced. Cf. *Durant v Dep't of Educ*, 186 Mich App 83, 98; 463 NW2d 461 (1990) (legislature's adoption of a statute of limitations did not "curtail or place undue burdens on a taxpayer's exercise of rights granted by the Headlee Amendment"). Nor does it otherwise ensure that the signature thresholds set forth in the Constitution are satisfied. Rather, as the Court of Appeals held, the cap "clearly and unequivocally provides an *additional* requirement in the form of an obligation to limit signatures from specific geographic locations." *League of Women Voters*

of Michigan v Secretary of State, __ Mich App __; __ NW2d __ (2020) (Docket Nos. 350938, 351073), slip op at 11 (emphasis in original).

2018 PA 608 imposes a new substantive rule of geographic distribution. Groups of voters who seek to place a proposition on the ballot now must satisfy not just the signature thresholds in Const 1963, art 2, § 9, and Const 1963, art 12, § 2. They must also satisfy the separate requirement that no more than 15 percent of the required signatures may come from any congressional district.

This additional substantive requirement will impose significant burdens on initiative, referendum, and constitutional amendment campaigns. Those campaigns must now devote resources to monitoring the number of signatures they are gathering on a district-by-district basis. They must also work to overcome the fact that voters often do not know the congressional districts in which they live—a lack of knowledge that is exacerbated by the irregular shape of congressional district lines in Michigan's most densely-populated areas. See *League of Women Voters*, *supra*, slip op at 14 (noting the "unrebutted" affidavits "detailing the myriad increased time and cost burdens imposed by the 15% geographic requirement").

The 15-percent cap will also burden individual voters, who will be deprived of the power to have their signature counted in support of a ballot proposition if too many other voters from their congressional district have already signed. And although racial-disenfranchisement issues are not presently before the Court, it bears emphasis that 2018 PA 608's burdens will disproportionately fall on black voters. An absolute majority of Michigan's black voters are concentrated in just two of the state's 14 congressional districts: Congressional District 13 (CD13) and Congressional District 14 (CD14). See United States Census Bureau, *Citizen Voting-Age Population: Michigan* <http://bit.ly/38552T7> (accessed February 25, 2020). As soon as "too many" voters have signed petitions in CD13 and CD14, every voter in those districts—which

include over half of the state's black residents—will be barred from having their signatures counted.

The burdens imposed by 2018 PA 608 are at least as great as the burden the Court held to be unconstitutional in *Wolverine Golf Club*, *supra*. That case involved a statute that required petitions for voter-initiated legislation to be filed at least ten days before the start of a legislative session. Although the statute merely affected the *timing* of the exercise of the right to initiative, the Court nonetheless held the law to impose an unconstitutional burden on the self-executing guarantees of Const 1963, art 2, § 9. *Wolverine Golf Club*, 384 Mich at 466–467. Here, the statute does not merely affect the timing of the exercise of the rights to direct democracy; it imposes a new geographic signature requirement that will place significant burdens on every effort to exercise those rights. And it does so despite the lack of any provision in the Constitution that suggests that the power to place a proposition on the ballot may depend on where a voter lives.

To justify these burdens, the sponsors of 2018 PA 608 argued that the 15-percent cap would ensure that measures have a geographically diverse base of support before they are placed on the ballot. As the Court of Appeals held, however, "participating in the voting process is a *right* held by the *people*—not an obligation to be forced upon them by some means." *League of Women Voters*, *supra*, slip op at 12–13. And the Constitution provides no basis for "potentially excluding some [voters] from the petition process" in order to demand the participation of voters who live elsewhere. *Id.* at 13.

If the people had wanted to include a geographic-diversity requirement for ballot-measure petitions, they would have included it in the 1963 Constitution. As the Court of Appeals noted, the Constitutional Convention in fact considered such a requirement, but they did not adopt one. See

id. at 14. "Thus, it is manifest that the people specifically and deliberately chose not to add a geographic requirement to the Constitution." *Id.*

The burden imposed by 2018 PA 608 is thus necessarily "undue," because it aims at an object that the Constitution does not empower the legislature to achieve. Cf. *Durant*, 186 Mich App at 98–99 (statute of limitations for enforcing Headlee Amendment, which imposed no new substantive obligation, was constitutional because it helped to "fulfill the purpose of the amendment" by providing a structure to ensure that Headlee Amendment rights were promptly asserted).

The Michigan Constitution's imposition of specific statewide signature thresholds for direct democracy petitions contrasts sharply with its treatment of nominating petitions for statewide office. The Constitution does not impose any requirements for nominating governors and senators; it simply gives the Legislature the power to "enact laws to regulate the time, place and manner of all nominations and elections." Const 1963, art 2, § 4(2). Pursuant to that provision, the Legislature has adopted modest geographic distribution requirements on gubernatorial and senatorial nominating petitions. See MCL 168.53 (governor) (requiring signatures of 100 registered voters from at least half of the congressional districts in the state); MCL 168.93 (senator) (same requirement). For direct democracy petitions, by contrast, the Constitution specifies the signatures that are necessary to obtain access to the ballot. That express procedure does not incorporate a geographic distribution requirement. The Legislature may not burden the people's constitutional power by adding such a requirement.

As Chief Judge Lesinski explained in his opinion for the Court of Appeals in *Wolverine Golf Club*, 24 Mich App at 728, this is a context that requires especial vigilance to ensure that the legislature is not encroaching on constitutional guarantees. The people added the rights of

initiative, referendum, and voter-initiated constitutional amendment so that they could express their democratic will in the face of legislatures that were unresponsive or captured by special interests. To allow a statute to burden direct democracy by adding requirements beyond those in the Constitution would be to allow the fox to guard the henhouse—to enable the Legislature to defeat the democratic safety valve that was expressly intended to put a check on the Legislature itself. See *Woodland*, 423 Mich at 215 (initiative power "is a reservation of legislative authority which serves as a limitation on the powers of the Legislature" and "is constitutionally protected from government infringement once invoked"). The 15-percent cap stifles the people's exercise of their constitutional power of direct democracy It thus violates the Michigan Constitution.

B. The 15-Percent Cap Violates the First Amendment to the United States Constitution and Parallel Provisions of the Michigan Constitution.

The U.S. Supreme Court has held that "[t]he circulation of an initiative petition" is "core political speech," because it "involves both the expression of a desire for political change and a discussion of the merits of the proposed change." *Meyer v Grant*, 486 US 414, 421–422; 108 S Ct 1886; 100 L Ed 2d 425 (1988). A voter's signature on such a petition, too, is political speech. See *Doe v Reed*, 561 US 186, 194–195; 130 S Ct 2811; 177 L Ed 2d 493 (2010). As a result, the petition-circulation process is "an area in which the importance of First Amendment protections is 'at its zenith.'" *Meyer*, 486 US at 425. Limitations on that process are "subject to exacting scrutiny." *Id.* at 420.

The 15-percent cap does not survive that scrutiny, as it will impose significant costs on direct democracy campaigns without a close connection to a strong state interest. See *Citizens for Tax Reform v Deters*, 518 F3d 375, 388 (CA 6, 2008) (burden imposed on petition circulators without sufficient justification violates the First Amendment). The cap thus violates the First Amendment. It also violates the equivalent provisions of the Michigan Constitution. See

Woodland, 423 Mich at 215 ("The individual right to solicit signatures to qualify an initiative petition is protected by the rights of free expression, assembly, and petition, guaranteed in sections 3 and 5 of article 1, 'The Declaration of Rights.'").

The geographic distribution requirement will impose significant burdens. In districts in which a petition exceeds the 15-percent cap, the signatures of voters will be invalidated—and their speech will therefore be squelched. See *Doe*, 561 US at 194–195. Even when a direct democracy campaign does not exceed the cap in any district, the requirement will effectively impose a tax on its operations. Campaigns will now be forced to continuously monitor their signature gathering on a district-by-district basis to ensure that they do not exceed the cap in any district. This will necessarily increase the costs of pursuing a ballot initiative, which will limit the ability of ballot-measure campaigns to get their message out. "By making speech more costly, the State is virtually guaranteeing that there will be less of it." *Citizens for Tax Reform*, 518 F3d at 388.

The requirement also imposes a burden at the moment at which a petition circulator obtains a voter's signature. Under 2018 PA 608, petitions must now use separate sheets for each congressional district. See MCL 168.482(4). Before obtaining a signature, the circulator must first ascertain the congressional district in which the voter lives. Many voters cannot reliably identify the congressional district in which they live. If a circulator has a smartphone, it will take time to look up that information. Many voters will find the process too much of a bother and will walk away without signing. And the time spent looking up one voter's address is time that a circulator cannot use to speak to another voter. These effects burden protected speech, because they "limit the size of the audience of the petition" and as a result "lower the likelihood that a measure will qualify for the statewide ballot." *Citizens for Tax Reform*, 518 F3d at 383.

That burden is not justified by a sufficiently strong state interest. The sponsors of 2018 PA 608 argued that the statute was needed to ensure that ballot measures have a sufficiently strong base of support across the state before being placed on the ballot. But Michigan already has one of the highest signature thresholds in the Nation for direct democracy petitions. See Nat'l Conf of State Legislators, *Signature Requirements for Initiative Proposals* (2014), <https://goo.gl/YWCjXp> (accessed February 25, 2020). In the most recent gubernatorial election, 4,250,585 votes were cast. The Michigan Constitution requires ballot-measure campaigns to submit a number of signatures equivalent to 10% of that number to qualify a constitutional amendment for the ballot, 8% to qualify an initiative, and 5% to qualify a referendum. See Const 1963, art 2, § 9; Const 1963,. art. 12, § 2. Proponents must thus gather over 425,000 signatures to qualify a constitutional amendment for the ballot, over 340,000 to qualify an initiative, and approximately 215,000 to qualify a referendum. To obtain so many signatures, proponents will, as a practical matter, be required to gather support from multiple areas of the state. Because the state has other means of achieving its interest, the geographic distribution requirement imposes costs without "sufficient cause." *Buckley v Am Const Law Found, Inc*, 525 US 182, 200; 119 S Ct 636; 142 L Ed 2d 599 (1999). It therefore violates the First Amendment and the parallel provisions of the Michigan Constitution.

II. 2018 PA 608's Check-Box and Affidavit Requirements Are Unconstitutional.

2018 PA 608 also imposes a series of new limitations on paid petition circulators. The statute requires every petition sheet to include a statement indicating whether the circulator was paid or a volunteer, MCL 168.482(7). If a circulator checks the wrong box, all of the signatures on the sheet will be treated as invalid. See MCL 168.482a(4). The statute also requires any paid

circulator, "before circulating any petition," to "file a signed affidavit with the secretary of state that indicates he or she is a paid signature gatherer." MCL 168.482a(1).

These provisions violate the First Amendment and the parallel provisions of the Michigan Constitution. As the U.S. Supreme Court has recognized, paid circulators are often the most effective and efficient way of gathering signatures for ballot measures, and "[t]he First Amendment protects [campaigns'] right not only to advocate their cause but also to select what they believe to be the most effective means for so doing." *Meyer*, 486 US at 424. States thus are forbidden to ban paid petition circulators, see *id.* at 428, or to impose undue burdens on paid circulators, see *Buckley*, 525 US at 204 (invalidating requirement that campaigns file reports containing the names of their paid circulators and the amount paid to each); *Citizens for Tax Reform*, 518 F3d at 388 (invalidating ban on per-signature method of payment for circulators).

The Court of Appeals correctly concluded that the check-box provisions interfere with the speech of paid signature gatherers by requiring them "to make revelations to potential petition signers at the same time the circulators are delivering their political message and at a time 'when reaction to the circulator's message is immediate and may be the most intense, emotional, and unreasoned[.]'" *League of Women Voters*, *supra*, slip op at 18, quoting *Buckley*, 525 US at 199. As the court explained, "the circulators' right to be free of potential 'heat of the moment' harassment and to protect their privacy regarding their status as either a paid circulator or a volunteer, as well as the sponsors' right to have circulators engage in discourse with voters, outweigh the state's generally stated interests in transparency and accountability." *Id.*

There is an additional reason why the check-box provisions violate the constitutional protections of free expression. By requiring that petition sheets include a statement indicating whether the circulator was paid or a volunteer, MCL 168.482(7), those provisions impose new

administrative costs on campaigns that use a mix of professional and volunteer signature-gatherers. Such campaigns must now incur expenses to ensure that each circulator has checked the correct box on each petition sheet. If they get it wrong, the penalty will be severe: All of the signatures on the sheet will be invalidated, even if they are unique signatures of registered Michigan voters. The speech of voters will thus be silenced based on an administrative error by a campaign.

The requirement that paid circulators file an affidavit with the Secretary of State before collecting signatures will impose even more significant burdens. If the managers of a ballot-measure campaign determine, as the time approaches for turning in their petitions, that they will fall short without a major new push to gather signatures, they will want to move quickly to hire additional circulators to accomplish the task. But the requirement of a prior-filed affidavit will prevent those circulators from beginning work immediately. The campaign may thus lose precious time in reaching voters. "The timeliness of political speech is particularly important" under the First Amendment. *Elrod v Burns*, 427 US 347, 374 n 29; 96 S Ct 2673; 49 L Ed 2d 547 (1976) (plurality opinion).

Although it is not difficult to file an affidavit with the Secretary of State, that is not enough to save the prior-filing requirement. In *Buckley*, *supra*, the U.S. Supreme Court invalidated Colorado's requirement that petition circulators be registered voters. The Court concluded that the restriction burdened First Amendment rights by "decreas[ing] the pool of potential circulators." *Buckley*, 525 US at 194. Although it may have been "'exceptionally easy to register to vote,'" *id.* at 195 (quoting the state's brief), the Court found that irrelevant to the constitutional question: "The ease with which qualified voters may register to vote, however, does not lift the burden on speech at petition circulation time." *Id.* at 195. Here, the prior-filed affidavit requirement in 2018 PA 608 creates the same First Amendment problem.

As the Court of Appeals correctly concluded, "[g]iven the fact that the affidavit must be submitted before signatures may be collected, and that it applies only to paid signature gatherers, it can be seen as imposing a significant burden on the right of political speech protected by the First Amendment." *League of Women Voters, supra*, slip op at 20. And that burden lacks sufficient justification. Any interest that might be served by the affidavit requirement would be just as well served by general "information from sponsors of a petition" without requiring the filing of a separate "affidavit relating to [each] individual circulator's status." *Id.* And even if separate affidavits are necessary, any relevant interest would be satisfied by requiring those affidavits to be filed at the time the circulators turn in their sheets of signed petitions, rather than before they begin collecting signatures. See *Buckley*, 525 US at 196, 198–199 (Colorado's requirement that signature gatherer file an affidavit along with the completed petitions is adequate to serve state interests in avoiding fraud and informing voters about the use of paid circulators). The burdens imposed by the affidavit requirement thus violate the First Amendment to the United States Constitution and parallel provisions of the Michigan Constitution.

CONCLUSION

For the foregoing reasons, this Court should affirm the judgment of the Court of Appeals.

Respectfully submitted,

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