

**STATE OF MICHIGAN
IN THE SUPREME COURT**

AMERICANS FOR CITIZENS VOTING-
MICHIGAN and FRED SMITH,

Supreme Court No. _____

Plaintiffs,

v.

THE BOARD OF STATE CANVASSERS,
JOCELYN BENSON, in her official capacity
as Secretary of State, and JONATHAN
BRATER, in his official capacity as Director
of Elections,

Defendants.

**PLAINTIFFS AMERICANS FOR CITIZEN VOTING – MICHIGAN AND FRED
SMITH’S COMPLAINT FOR IMMEDIATE MANDAMUS RELIEF AND
DECLARATORY JUDGMENT AND MOTION FOR ORDER TO SHOW CAUSE
AND IMMEDIATE CONSIDERATION**

*****IMMEDIATE AND EXPEDITED CONSIDERATION REQUESTED BY
SEPTEMBER 1, 2026, *****

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COMPLAINT

There is no other civil action between these parties arising out of the same transaction or occurrence as alleged in this complaint pending in this Court, nor has any such action been previously filed and dismissed or transferred after having been assigned to a judge, nor do I know of any other civil action, now between these parties, arising out of the same transaction or occurrence as alleged in this complaint that is either pending or was previously filed and dismissed, transferred, or otherwise disposed of after having been assigned to a judge in this Court.

Americans for Citizens Voting – Michigan (ACVM) and Fred Smith, through counsel Bursch Law PLLC, Dickinson Wright, PLLC, and Doster Law Offices, PLLC, for its Original Action Complaint for Mandamus Relief against the Board of State Canvassers; Jocelyn Benson, in her official capacity as Secretary of State; and Jonathan Brater, in his official capacity as Director of Elections, state as follows:

INTRODUCTION

It's not every day that Michigan's bureaucracy violates state and federal law while disenfranchising more than 700,000 Michigan voters. But that's what happened this week. This Court should act immediately and restore those voters' voices.

Some 709,841 Michiganders exercised their First Amendment freedom of speech by signing ACVM's Petition to amend the Michigan Constitution to require proof of citizenship to vote in Michigan. ACVM submitted the signatures on March 4, 2026—more than four months ahead of the July 6, 2026 deadline. ACVM needed only 446,198 valid signatures for the measure to appear on the ballot.

The Board is tasked with canvassing petitions “to ascertain if the petitions have been signed by the requisite number of qualified and registered electors.” MCL 168.476. The Board claims to fulfill that duty by reviewing a 1,000-signature sample of all voters who signed a petition. Here,

that means Defendants reviewed a mere 0.1% of the more than 700,000 signatures contained in the Petition. Of that 1,000-signature sample, 629 needed to be accepted as valid.

On August 17, 2026, *some 5 1/2 months after submission*—equivalent to reviewing only six signatures per day during that period—the Bureau recognized 692 valid signatures before challenges, well above the 629-signature minimum. But after processing challenges by a political opposition group, the Bureau invalidated 80 more, leaving only 612 valid signatures. Nearly 100 signatures in all were thrown out because they allegedly did not match the voters' signature in the Secretary of State's digital Qualified Voter File, or QVF. Yet when ACVM protested and asked to see the QVF so it could respond, the Bureau refused and told ACVM it should find the signers whose signatures were invalidated and procure affidavits swearing to the authenticity of each signer's signature. So that's exactly what ACVM did.

At the conclusion of a meeting this past Monday, August 24, 2026, the Board met and concluded there was a three-signature deficiency. But ACVM presented *nine* affidavits from signers who swore it was their signature on the Petition—exactly the evidence the Bureau demanded. That should have resolved the matter. After all, each affidavit was a statement, made under oath and signed in front of a notary, swearing that the signatory was who he or she said they were and that the signature on the Petition was theirs. That's a legally binding statement.

Instead, the Board rejected all nine affidavits. To start, the Board said that four of the affiants' signatures did not match their signature in the QVF. But that was the whole point of providing affidavits. The QVF files can be decades old, and the digital files may no longer accurately reflect what a voter's current signature looks like. It's nonsensical (and illegal) to say that an affiant's *current oath* that a signature on the Petition was his or hers still doesn't count because of an old file that no one but election officials are allowed to view.

As for the other five affidavits, the Board said they were submitted too late for consideration under the Board's rule that "members of the public" submit information at least 48 hours before a Board meeting. That was unlawful many times over. The affidavits were submitted by ACVM, *not* members of the public, and the Board recognizes that a petition-sponsoring group is not a mere member of the public. The affidavits were also not mere information; they were testimony, and the Board routinely takes live testimony at its meetings. In addition, by running out the clock with their 5½-month review process, the Bureau and Board gave ACVM a mere five *days* to identify the individuals whose signatures were disregarded and obtain affidavits from them. That's a flagrant violation of ACVM's and the affiants' due-process rights. And consistent with the short time frames involved in proceedings like these, the Board has consistently accepted information from the public on the day of its meetings. Just not for ACVM.

Incredibly, the Board and the Bureau recognized on the record that *these affidavits were valid and would have cured the deficiency* had they been "timely" submitted. Yet the Board threw out the signatures anyway—plus two more based on information submitted at the meeting after ACVM was no longer allowed to make any further presentation or argument. That's rich.

By disregarding the very affidavits the Bureau directed ACVM to procure—and, thus, disregarding sworn testimony from nine Michigan voters that they signed the Petition--the Board violated Michigan law and the U.S. Constitution and disenfranchised hundreds of thousands of Michigan voters. Left uncorrected, the decision is an open invitation to future Boards to reject ballot measures for any arbitrary reason or no reason at all.

It cannot be the case that government officials demand proof of someone's identity, receive it, and then refuse to recognize that proof because those officials have a secret historical database that no one else is allowed to review or because those same officials were delinquent in their

processes and arbitrary in their rules. This Court should grant the writ and direct that the Petition be restored to the ballot.

PROCEDURAL AND FACTUAL HISTORY

A. In Michigan, the People have the Right to Amend their Constitution.

1. Our Constitution provides that “[a]ll political power is inherent in the people.” Const. 1963, art. 1, § 1.

2. Put another way, the people bestow power unto the branches of government—not the other way around. *Id.*

3. It is in that context that Article 12, Section 2 of the 1963 Michigan Constitution provides the People of the State of Michigan with the right to amend their Constitution. In full, it states as follows:

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.

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.

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 and caption shall be prepared by the person authorized by law, and 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.

If the proposed amendment is approved by a majority of the electors voting on the question, it shall become part of the constitution, and shall abrogate or amend existing provisions of the constitution at the end of 45 days after the date of the election at which it was approved. If two or more amendments approved by the electors at the same election conflict, that amendment receiving the highest affirmative vote shall prevail. [See Const 1963, art XII, § 2.]

4. As this Court held over 100 years ago, “[o]f the right of qualified voters of the state to propose amendments to the Constitution by petition it may be said, generally, that it can be interfered with neither by the Legislature, the courts, nor the officers charged with any duty in the premises.” *Scott v Secretary of State*, 202 Mich 629, 643; 168 NW 709 (1918).

5. Simply put, the People of Michigan may amend the Michigan Constitution by initiative petition. To be placed on the ballot, an initiative petition must receive a number of signatures equal to or exceeding 10% of the number of votes cast in the last Michigan gubernatorial election. In Michigan’s 2022 gubernatorial election, 4,461,980 voters cast ballots for a candidate for governor. Thus, the People of Michigan had a right to see (and vote yes, or no on) ACVM’s Petition if it received at least 446,198 or more registered-electors signatures.

B. The Board of State Canvassers’ Role in Petitions to Amend the Constitution.

6. The Board of State Canvassers is a bi-partisan constitutional board created by Article 2, Section 7 of the Michigan Constitution.

7. The Legislature has empowered the Board to enforce the Michigan Election Law’s technical requirements, *see* MCL 168.1 *et seq.*, relating to the circulation and form of petitions to amend the Michigan Constitution.

8. Under MCL 168.22d(2), “[t]hree members of the board of state canvassers constitute a quorum of the board. However, an action of the board of state canvassers shall only

be effective upon concurrence of at least 1 member of each major political party appointed to the board.”

9. Board members, as constitutional officers, must take the constitutional oath of office, which states:

All officers, legislative, executive and judicial, before entering upon the duties of their respective offices, shall take and subscribe the following oath or affirmation: I do solemnly swear (or affirm) that I will support the Constitution of the United States and the constitution of this state, and that I will faithfully discharge the duties of the office of according to the best of my ability. No other oath, affirmation, or any religious test shall be required as a qualification for any office or public trust. [Const 1963, art 11, § 1; *see also* MCL 168.22c (requiring Board members to take the constitutional oath of office prescribed in Section 1 of article XI of the state constitution of 1963).]

10. Taking this oath places on the Board no less solemn an obligation than the judiciary to consider the lawfulness and constitutionality of their every action. *See Lucas v Bd of Road Comm'rs*, 131 Mich App 642, 663; 348 NW2d 642 (1984) (noting Governor's obligation); *see also Rostker v Goldberg*, 453 US 57, 64, 101 S Ct 2646, 69 L Ed 2d 478 (1981) (same for Congresspersons).

11. Accordingly, Board members have a constitutional duty to ensure that their actions comport with both the United States Constitution and the Michigan Constitution.

12. The Board's duties and responsibilities are established by the Michigan Election law. *See e.g.*, MCL 168.22(2), MCL 168.841, and MCL 168.476.

13. Importantly, as Michigan courts have repeatedly recognized, the Board is of limited jurisdiction and can only exercise those duties provided to it by the Constitution or applicable Michigan law. *See Michigan Civil Rights Initiative v Bd of State Canvassers*, 268 Mich App 506, 515–20; 708 NW2d 139, 144–147 (2005) (recognizing that the Board has limited authority, which is vested only “by the Legislature, in statutes, or by the Constitution”); *Deleeuw v State Bd of*

Canvassers, 263 Mich App 497, 501; 688 NW2d 847, 850 (2004) (granting mandamus because the Board went beyond its specific statutory authority).

14. MCL 168.22(2) says that the Board “has the duties prescribed in section 841. The board of state canvassers shall perform other duties as prescribed in this act.” Those responsibilities include canvassing a petition. *See* MCL 168.476. The Board must determine whether a petition’s form “complies with the statutory requirements and whether there are sufficient signatures to warrant certification of the proposal.” *Citizens for Protection of Marriage v Bd of State Canvassers*, 263 Mich App 487, 492; 688 NW2d 538, 543 (2004).

15. What’s more, 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 Sec’y of State*, 492 Mich 588, 618; 822 NW2d 159, 174 (2012); *see also Citizens for Protection of Marriage*, 263 Mich App at 492 (citing *Ferency v. Sec’y of State*, 409 Mich 569; *Council About Parochiaid v Sec’y of State*, 403 Mich 396; 279 NW2d 1 (1978); *Leininger v Sec’y of State*, 316 Mich 644; 26 NW2d 348 (1947)).

16. The Board is aided in carrying out its canvassing duties by staff at the Bureau of Elections under the supervision of the Director of Elections. MCL 168.32(1).

17. Stated differently, while the Bureau assists the Board in its work, only the Board determines whether the petition has enough valid signatures and whether the petition is in the proper form to be placed on the ballot.

18. The Board’s 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 Alger*, 316 Mich 644, 655–656, 26 NW2d 348, 354 (1947); *see also Gillis v Bd of State Canvassers*, 453 Mich 881; 554 NW2d 9 (1996); *Automobile Club of Michigan Comm for Lower Rates Now v Sec’y of*

State, 195 Mich App 613, 624; 491 NW2d 269, 275 (1992) (“[T]he Board of State Canvassers possesses the authority to consider questions of form.”). In performing its function, the Board may not look beyond the four corners of the petition. *Michigan Civil Rights Initiative*, 268 Mich App at 519–520.

19. The process used by the Board to determine the sufficiency of a petition is laid out in guidance promulgated by the Secretary of State. See e.g., *Sampling Procedure for Canvassing Petitions*, Bureau of Elections (Nov 2023) [Sampling Procedure for Canvassing Petitions](#) (attached as **Exhibit A**); *Petition Manual: Statewide Initiative, Referendum, and Constitutional Amendment Petitions*, Secretary of State (July 31, 2025), [FDC FC MAN 1: Ballot Proposal Petition Manual](#) (attached as **Exhibit B**).

20. Pursuant to Article XII, § 2 of the Michigan Constitution, a petition must be placed on the ballot if it was “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.” Mich Const 1963, Art XII, § 2.

21. The Board must by law consider the sufficiency of a petition to amend the constitution, and it does so by considering the validity and number of signatures in support of a petition to amend the constitution. But it is not currently the Board’s practice to consider every signature from every voter who signs a petition.

22. As now-Secretary of State Jocelyn Benson noted nearly 20 years ago, the Board’s failure to review every signature is disturbing because it does not “entail an examination of all signatures submitted.” See *Election Fraud and the Initiative Process*, JF Benson, 34 Fordham Urb. L.J. 889, 922 (2007). Then-professor Benson recognized that if in doubt, the Board should “require that *all* signatories be contacted in order to verify that they supported the petition.” *Id.* (emphasis

added). Indeed, then-professor Benson excoriated the offices of Secretaries of State who hid behind “numerical analysis” rather than going beyond the numbers to consider the actual voters. *See id.* at 921-924. The Board does not follow then-professor, now-Secretary of State Jocelyn Benson’s advice. Instead, it limits its review to a mere 1,000 randomly selected signatures. And, based on the actions it took on August 24, 2026, the Board has little regard for actual voters.

23. Per the Secretary’s guidance, Bureau of Election staff use a computer program to “identify randomly selected signatures/sheets to review for signature validity,” through which it randomly draws 1,000 signatures when considering the sufficiency of a constitutional amendment. *See Sampling Procedure for Canvassing Petitions*, Bureau of Elections (Nov 2023) at 2 [Sampling Procedure for Canvassing Petitions](#) (Ex A).

24. After the computer program selects 1,000 signatures for review, Bureau of Election staff review the signatures to ascertain their validity.

25. The Bureau of Elections examines the 1,000-signature sample to determine, *inter alia*, whether “the signature on the petition sheet matches the signature contained in the [Qualified Voter File].” *Id.* at 3.

26. The QVF is a database maintained by the Secretary of State that contains the signature and identifying information of many registered voters in Michigan. It does not contain the signature of every registered voter, as some registered voters’ signatures are kept on file with local clerks’ offices.

27. If a voter’s signature on a petition does not match the voters’ signature in the QVF, the signature is deemed invalid.

28. If a sufficient percentage of the 1,000 signatures are valid such that, extrapolated to the whole, the petition would have sufficient signatures, the Bureau recommends to the Board that the Board certify the petition for the ballot.

29. It is the Board that certifies petitions to the ballot, not the Bureau.

C. The Secretary of State's role with respect to Petitions.

30. The Legislature has delegated the task of conducting proper elections to the Secretary of State, an elected Executive-branch officer, and the head of the Department of State. *See* Const 1963, art 2, § 4, art 5, §§ 3, 9. Section 21 of the Michigan Election Law makes the Secretary the “chief election officer” with “supervisory control over local election officials in the performance of their duties under the provisions of this act.” *See* MCL 168.21.

31. But the Secretary of State's duties with respect to initiative petitions is limited. *Citizens Protecting Michigan's Constitution v. Sec'y of State*, 280 Mich App 273, 286 (2008).

32. The Secretary acts as the filing official to receive petitions for referendum, initiative, and constitutional amendment. MCL 168.471.

33. The first task attendant to the Secretary's office is to “immediately” notify the Board upon the filing of any petition. MCL 168.475(1).

34. Thereafter, if the Board certifies the sufficiency of the petition and approves the statement of purpose, the Secretary certifies the statement of purpose to the counties, MCL 168.648, and communicates the ballot wording to the media, counties, and local precincts. MCL 168.477(1), MCL 168.480.

D. The Director of Elections' Role with respect to Petitions.

35. The Director of Elections is appointed by the Secretary of State and supervises the Bureau of Elections. MCL 168.32(1), MCL 168.34.

36. The Director of Elections is “vested with the powers and shall perform the duties of the secretary of state under . . . her supervision, with respect to the supervision and administration of the election laws.” MCL 168.32(1).

37. As “a nonmember secretary of the state board of canvassers,” the Director of Elections supervises the Bureau as it assists the Board in canvassing petitions, like the Proposal here. *Id.*

38. The Director of Elections is also responsible for preparing ballot language for proposals with the approval of the Board. MCL 168.32(2).

E. The Petition Sponsored by Americans for Citizen Voting – Michigan

39. Pursuant to Article 12, § 2 of the Michigan Constitution, Plaintiff ACVM sponsored a Petition to amend the Michigan Constitution to, *inter alia*, add protections for citizen-only voting, voter-roll verification, and photo ID requirements.

40. Pursuant to Article XII, § 2 of the Michigan Constitution, ACVM’s Petition would be placed on the Michigan ballot for the November 3, 2026, general election if it was “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.” Mich Const 1963, Art XII, § 2.

41. In Michigan’s 2022 gubernatorial election, 4,461,980 voters cast ballots for a candidate for governor.

42. Thus, ACVM’s Petition needed 446,198 registered-electors signatures to be placed on the ballot.

43. ACVM gathered 709,841 signatures in support of the Petition, more than 250,000 signatures *more* than required.

44. ACVM submitted the signatures on March 4, 2026—more than four months ahead of the July 6, 2026 deadline to submit signatures for review. *Americans for Citizens Voting submits 750,000 signatures for voter ID ballot proposal*, CBSnews.com (March 6, 2026) <https://www.cbsnews.com/detroit/news/americans-for-citizens-voting-750000-signatures-voter-id-ballot-proposal/> (attached as **Exhibit C**).

45. The Bureau of Elections thus had 169 days to review the sufficiency of the signatures in support of ACVM's petition.

46. Despite the abundance of time, the Bureau of Elections waited nearly four months to review the signatures in support of ACVM's petition—hence the time pressure now presented in this suit. Indeed, the Bureau reviewed only, on average, about 6 signatures a day.

47. After this long, inexplicable delay, the Bureau of Elections randomly drew 1,000 of the 709,841 signatures and determined that 62.9% of the total number of signatures would have to be valid for 446,198 of the total number of signatures to be valid ($.629 \times 709,841 = 446.489$). In other words, if 629 or more of the 1,000 randomly drawn signatures were valid, there was a statistical probability that there were sufficient signatures to place ACVM's Petition on the ballot.

48. After both the initial review by Bureau staff and the staff's processing of challenges, the Bureau concluded that 612 of 1,000 sample signatures were valid—i.e., the Petition was 17 signatures short. *See* August 17, 2026, Staff Report (Attached as **Exhibit D**). But, of the 388 signatures it threw out, the Bureau threw 94 out as “invalid” based on its determination that the signature of the voter on the Petition “d[id] not sufficiently agree with the signature on file”—i.e., the voters' digitized signature in the QVF.

49. Because ACVM's Petition needed only 629 signatures and had 612 otherwise valid signatures (according to the Bureau), the tossing out of 94 based on an alleged mismatch between

the voters' signature on the Petition and the voters' signature in the Qualified Voter File was dispositive of the Petition's fate. Put differently, if 94 signatures had not been rejected because they allegedly did not match the voters' signature on the Qualified Voter File, the Petition would have had sufficient signatures to be placed on the ballot.

50. ACVM responded to the tossing out of 94 signatures. *See* August 20, 2026 Demand Letter (Attached as **Exhibit E**). ACVM sent a demand letter to the Board of State Canvassers that explained: "The conclusion in the Bureau's Staff Report that ACVM's petition sample contained [94] signatures that were invalid . . . was presumably the result of the Bureau staff comparing those [94] petition signatures against the corresponding digitized signature records contained in the QVF." *Id.* at 2. It detailed that "ACVM has reason to believe that the Bureau's conclusion is incorrect, and that many (if not all) of the [94] allegedly invalid signatures are, in fact, valid and genuine." *Id.* ACVM explained that the Bureau refused ACVM access to the QVF, and "without access to the QVF, ACVM cannot meaningfully challenge the Bureau's assertion that the signatures on the petition do not match the digitized signature in the QVF[.]"

51. ACVM further explained that denying it the opportunity to compare the 94 signatures that allegedly mismatched against the corresponding digitized signature records was a denial of its due process rights under the Michigan and U.S. Constitutions. Indeed, while the U.S. Constitution and Michigan's Constitution guarantee "notice and an opportunity to be heard in a meaningful time and manner," *Id.* at 3 (citation omitted), that opportunity to be heard "in a meaningful time and manner" was denied by ACVM's inability to access the QVF at all. ACVM explained that it has a due process right to "the chance to know and respond to the evidence" brought against it; *i.e.*, the 94 signatures.

52. ACVM acknowledged the privacy concerns around the QVF signatures and suggested use of *in camera* or some other confidential method of review for the purpose of alleviating those privacy concerns. *See id.* at 3-4.

53. The Bureau of Elections responded to ACVM's demand letter just a few hours later. *See* Bureau Letter, August 20, 2026 (Attached as **Exhibit F**). The Bureau denied ACVM permission to see the QVF signatures of the 94 stricken voters—even *in camera* or with other privacy protections—meaning that neither ACVM nor the voters themselves could review the reason for the voters' signature on the petition being stricken. But the Bureau explained “there are still options that may be utilized to rehabilitate a signature. For example, you may contact the voters who have signed the petition and ask them to sign an affidavit detailing the page that was signed, indicating that they were the one who signed, and providing a signature that sufficiently agrees with the voter's signature in QVF.” *Id.* at 2.

54. Unable to review the 94 signatures or compare them to the digitized signatures in the QVF, ACVM contacted the stricken signers and obtained 23 affidavits in approximately 48 hours. Each affidavit explained that the affiant had reviewed their signature on the Petition and confirmed that it was their own signature. Each affidavit was sworn and notarized.

55. A valid affidavit is a document that is: (1) a written or printed declaration or statement of facts; (2) made voluntarily; and (3) confirmed by the oath or affirmation of the party making it, taken before a person having authority to administer such oath or affirmation. *See Holmes v Capital Medical Center*, 242 Mich App 703, 711 (2000); *citing People v Sloan*, 450 Mich. 160, 177, n 8, 538 NW2d 380 (1995); Black's Law Dictionary (7th ed).

56. “In all the courts of this state the certificate of a notary public, under his hand and seal of office, of official acts done by him as such notary, shall be received as presumptive evidence

of the facts contained in such certificate.” *Dodson v Imperial Motors, Inc*, 295 F2d 609, 614 (1961). Indeed, “[i]ndependent of statute, Michigan, consistent with general law, holds that a notary’s certification . . . raises a presumption of the truth of the facts recited in such acknowledgment.” *Id.* (collecting cases from the Michigan Supreme Court).

57. In *June v School Dist No 11, Southfield Tp*, 283 Mich 533 (1938), this Court explained that an affidavit is “a written or printed declaration or statement of facts, made voluntarily, and confirmed by the oath or affirmation of the party making it, taken before an officer having authority to administer such oath.” *Id.* at 537. This Court detailed that an affidavit is distinct from a mere oath to tell the truth in that “an affidavit consists of statement of fact, which is sworn to as the truth, while an oath is a pledge.” *Id.* at 538. An affidavit is, therefore, more constricting and severe than an oath given before testifying because an oath-giver must thereafter testify truthfully, while the affidavit is itself the testimony—the affidavit is in and of itself a “statement of fact, which is sworn to as the truth.” *Id.*

58. Pursuant to MCL 55.285, the Michigan Law on Notarial Acts, a notary public may only notarize a record “if a notary public has satisfactory evidence that an individual is the individual whose signature is on a record.” To that end, a notary has “satisfactory evidence “if that individual is . . . [i]dentified on the basis of a current license, identification card, or record issued by a federal or state government that contains the individual’s photograph and signature.” MCL 55.285(6)(b).

59. ACVM presented the 23 affidavits to the Board of State Canvassers on a rolling basis. The last of the affidavits were presented to the Board of State Canvassers before it voted on the sufficiency or insufficiency of the number of signatures in support of ACVM’s Petition. Put differently, the Board had affidavits from 23 voters averring under oath and before a notary that

their signature, which the Bureau of Elections had recommended tossing out, was validly placed on the Petition in front of it. By a 2-2 partisan vote, the Board chose to accept only 14 of the 23 affidavits presented to it—meaning it rejected the other nine affidavits—leaving ACVM three signatures short of qualifying its Petition for the ballot. Fourteen Accepted Affidavits attached as **Exhibit G**.

60. The Board rejected the nine affidavits for two reasons.

61. First, it rejected four affidavits—two by unanimous vote, one by a 3-to-1 vote, and one by deadlocking 2-2—because it determined that the voters’ signature on the affidavits did not match the voters’ signatures in the QVF. Four Affidavits attached as **Exhibit H**. The Board declined to recognize the notary publics’ notarizations as sufficient proof of the signers’ identities, and, thus, the genuineness of their petition signatures—regardless whether the signature on the affidavit matched the signature of the QVF, despite the requirements of the Michigan Law on Notarial Acts, and despite the Board’s written instructions to ACVM just days prior. *See Ex E*, Bureau Letter, August 20, 2026.

62. Second, the Board’s two Democrat members rejected five affidavits—all by 2-2 deadlock—because it found them untimely submitted to the Board. attached as **Exhibit I**. This was astonishing. The Board was presented with the sworn, notarized affidavits of five voters who, under penalty of perjury, averred that their signature was wrongly thrown out. And the Board ignored them because it took AVCM a full week to procure the affidavits after the Bureau took more than five months to disqualify the signatures. Incredibly, the Board and the Bureau recognized on the record that *the affidavits were valid and would have cured the deficiency had*

they been “timely.” See August 24, 2026 Rough Hearing Transcript at Page 104-153 (Member Cummings: “Well, I agree that the signature matches.”) (Attached as **Exhibit J**).¹

63. It is true that the Board has had a rule since May 12, 2025, requiring that “members of the public” must submit materials to the Board at least 48 hours before a meeting. See Rule 168.846.

64. But owing to the rush of election disputes, the Board routinely allows materials to be submitted the day of a meeting if justice requires it. For example:

65. During the Board’s August 17, 2026 meeting, in response to an inquiry from a member of the Board, the sponsor of a candidate petition provided—without objection from any other member of the Board—emails to the Board for the first time, including one she had received the night before the meeting.²

66. During the Board’s July 24 meeting, the counsel for the sponsor of an initiative submitted—without objection from any member of the Board—a handout purporting to rebut the challenger’s objections to the Staff Report, and referenced the handout several times throughout the hearing, again without objection. See **Exhibit K**, July 24, 2026, Hearing Transcript, pp. 246, 267, 269; *id.* at 262 (“I direct you to Page 8 of the handout that I passed out this morning...”).

67. During the Board’s May 28, 2026, meeting, the sponsor of a candidate nominating petition provided—without objection from any member of the Board—materials to the Board,

¹ Plaintiff ACVM has included a rough transcript in its Appendix. The reporter has told ACVM that a final copy of the transcript will be available Friday, August 28, 2026. ACVM will file the final transcript immediately after it receives it from the reporter.

² Michigan Department of State, Board of State Canvassers, 48:47 – 52:07, available at <https://www.youtube.com/live/lfrk6s0GSeg?si=3j3-SwctOOIGh3sF> (last accessed August 27, 2026)

including a detailed analysis of the chain of custody and timeline for signature review, for the first time.³

68. At the Board's August 22, 2025 meeting, the counsel for the sponsor of an initiative petition provided to the Board for the first time—without objection—a handout containing suggested petition summary language.⁴

69. At the Board's July 31, 2025 meeting, a member of the public provided to the Board for the first time—without objection—a handout containing suggested petition summary language.⁵

70. Thus, the Board routinely accepts materials from both petition sponsors, challengers, and members of the Public. Nevertheless, the Board failed to accept the nine affidavits from Michigan voters in which they testified, via sworn statement verified by a notary public, that they signed the Petition and that the disputed signature was, in fact, genuine.

71. Ultimately, the Board found the ACVM Petition was supported by 626 signatures, a mere *three* signatures short of the required 629, because it rejected the nine affidavits from voters. *See* August 24, 2026 Rough Hearing Transcript at Page 304 (Director Brater: “So either way, our recommendation at this point would be that you have 626 valid signature”) (**Exhibit J**).

72. Had just three of those nine affidavits been accepted by the Board, then it would have had no choice but to certify ACVM's Petition for the November general election ballot.

73. This suit is about those nine affidavits and the Michigan voters who signed them.

³ Michigan Department of State, Board of State Canvassers, 5.28.26 at 09:00 – 12:00, available at <https://www.youtube.com/live/U1hS5qNJXg8?si=Emswwt-ILh6SlcKw> (last accessed August 27, 2026).

⁴ Michigan Department of State, Board of State Canvassers, 8.22.25 at 16:05-16:15, available at https://youtu.be/TmS_fjZFflk?si=tckky5DVBmQNmQPL (last accessed August 27, 2026).

⁵ Michigan Department of State, Board of State Canvassers, 7.31.25 at 5:00-5:15, available at <https://youtu.be/6j2kRn458RI?si=9VhoyKT9ZNalWx7q> (last accessed August 27, 2026).

PARTIES, JURISDICTION, AND VENUE

74. Plaintiff ACVM is a duly formed ballot question committee registered pursuant to the Michigan Campaign Finance Act, MCL 169.201, *et seq.* Its registered address is 1254 Woodbridge, St. Clair Shores, MI 48082. ACVM sponsored and organized the Petition to amend the Michigan Constitution to protect all Americans' right to cast an effective ballot by strengthening protections against non-citizens voting.

75. Plaintiff Fred Smith is one of the nine Michigan voters whose affidavit was rejected. Fred is a resident of Livingston County, Michigan, in the village of Fowlerville. He is a registered elector in Michigan. Fred signed ACVM's Petition on November 13, 2025. When Fred's signature was thrown out, he signed and had notarized an affidavit "to assist in defending my First Amendment rights against any challenge or opposition that may be raised regarding my signature[.]" Fred Smith Affidavit (Attached as **Ex H**). He averred that "if called to testify" he "could and would," and he confirmed, under oath, that "[t]he printed name that appears next to my name is my true and genuine signature." To remove all doubt, Fred averred: "I signed this petition by printing my name." Nevertheless, the Board rejected Fred's affidavit on August 24, 2026, deeming it "untimely." Indeed, the Board rejected Fred's affidavit *even after determining that it was a valid affidavit that proved that he had signed ACVM's Petition on November 13, 2025*. Fred now sues in his capacity as a Michigan resident and registered voter. He sues to protect his rights to Due Process and Equal Protection under the law, and to force, via a writ of mandamus, the Board to respect his constitutional rights.

76. Defendant Board is a public body created by Const 1963, art 2, § 7. The Board is tasked with, among other things, canvassing initiative petitions to amend the constitution "to ascertain if the petitions have been signed by the requisite number of qualified and registered electors." MCL 168.476(1).

77. Defendant Secretary Benson is Michigan's Secretary of State. The Secretary of State is a publicly elected position created by the 1963 Michigan Constitution. *See* 1963 Const, art 5, §§ 3, 21. Secretary Benson is sued in her official capacity and only to the extent her participation in this case is necessary for relief granted by the Court.

78. Defendant Director Brater is Michigan's Director of Elections and is vested with the authority to administer Michigan's election laws under the supervision of the Secretary of State. Director Brater is sued in his official capacity and only to the extent his participation in this case is necessary for relief granted by the Court.

79. This Court has discretionary jurisdiction "as provided by the constitution or by law." MCR 7.303(B)(6); *see also* MCR 3.305(A)(1)–(2) (noting that a statute or rule may allow mandamus actions in "another court" besides circuit courts and the Court of Appeals).

80. MCL 600.217(3) gives this Court the "jurisdiction and power to issue, hear, and determine writs of . . . mandamus."

81. MCL 168.479 governs the review of a challenge to a Board decision and provides as follows:

(1) Notwithstanding any other law to the contrary and subject to subsection (2), any person who feels aggrieved by any determination made by the board of state canvassers may have the determination reviewed by mandamus or other appropriate remedy in the supreme court.

(2) If a person feels aggrieved by any determination made by the board of state canvassers regarding the sufficiency or insufficiency of an initiative petition, the person must file a legal challenge to the board's determination in the supreme court within 7 business days after the date of the official declaration of the sufficiency or insufficiency of the initiative petition or not later than 60 days before the election at which the proposal is to be submitted, whichever occurs first. Any legal challenge to the official declaration of the sufficiency or insufficiency of an initiative petition has the highest priority and shall be advanced on the supreme court docket so as to provide for the earliest possible disposition.

82. MCL 168.479(1)-(2) “provides the method of review for those persons aggrieved by any determination of the State Board of Canvassers.” *Beechnau v Austin*, 42 Mich App 328, 330, 201 NW2d 699, 701 (1972). See *Graziano v Brater*, 342 Mich App 358, 363; 994 NW2d 521 (2022) (“The stated purpose of MCL 168.479 is to have our Supreme Court decide any legal challenge to the sufficiency or insufficiency of an initiative petition as promptly as possible.” (citations omitted)).

83. For the same reason, venue is proper in this Court. See *Comm to Ban Fracking in Michigan v Bd of State Canvassers*, 335 Mich App 384, 396, 966 NW2d 742, 749 (2021) (“MCL 168.479(2) is clear that any person challenging the determination made by defendant regarding sufficiency or insufficiency of an initiative petition is required to file a timely legal challenge in the Michigan Supreme Court.”).

COUNT I – MANDAMUS

84. Plaintiffs incorporate the allegations in the foregoing paragraphs as if fully stated herein.

85. “Mandamus is the appropriate remedy for a party seeking to compel action by election officials.” *Citizens Protecting Michigan’s Constitution v Secretary of State*, 280 Mich App 273, 283; 761 NW2d 210 (2008), *aff’d in part, lv den*, 482 Mich 960 (2008); *Protecting Mich Taxpayers v Board of State Canvassers*, 324 Mich App 240, 244; 919 NW2d 677 (2018) (“Mandamus is the proper remedy for a party aggrieved by an election official’s inaction”).

86. Thus, when the Board deadlocks or otherwise refuses to certify a petition despite the petition having sufficient signatures, the proper remedy is a writ of mandamus ordering the Board to certify the petition. *Wojcinski v State Bd of Canvassers*, 347 Mich 573, 578; 81 NW2d 390 (1957) (Granting writ of mandamus directing the State Board of Canvassers to “revoke its

‘determination of insufficiency’” and instead certify a candidate by “mak[ing] an official declaration of the sufficiency of the nominating petitions filed by the plaintiff.”)

87. A party seeking mandamus must show four elements: “(1) the plaintiff has a clear legal right to the performance of the duty sought to be compelled, (2) the defendant has a clear legal duty to perform such act, (3) the act is ministerial in nature such that it involves no discretion or judgment, and (4) the plaintiff has no other adequate legal or equitable remedy.” *Wilcoxon v City of Detroit Election Com’n*, 301 Mich App 619, 632-633; 838 NW2d 183 (2013) (citations omitted); *Deleeuw v State Bd of Canvassers*, 263 Mich App 496, 500; 693 NW2d 179 (2004).

88. In determining whether to grant mandamus, this Court’s “task is to decide whether the Board of State Canvassers has a clear legal duty to certify the petition,” a question it considers “independently of the decisions reached by the Bureau of Elections or the Board of State Canvassers.” *Protecting Mich Taxpayers v Board of State Canvassers*, 324 Mich App 240, 244; 919 NW2d 677 (2018).

89. “A clear legal right is a right ‘clearly founded in, or granted by, law; a right which is inferable as a matter of law from uncontroverted facts regardless of the difficulty of the legal question to be decided.’” *Attorney General v Board of State Canvassers*, 318 Mich App 242, 249; 896 NW2d 485 (2016), quoting *Rental Props. Owners Ass’n*, 308 Mich.App. at 519, 866 N.W.2d 817 (quotation marks and citation omitted).

90. To obtain a writ of mandamus compelling the Board to certify an initiative petition, a petitioner must demonstrate that the Board has a clear legal duty to act. In *Beachnau v Austin*, the court held that a mandamus action requires the plaintiff to demonstrate a violation of a clear legal duty on the part of the defendants, and that MCL 168.479 provides the method of review for persons aggrieved by any determination of the Board. 42 Mich App 328 (1972).

91. The Board’s sole duty regarding qualifying petitions is to determine whether the signatures are valid, including whether they are signatures of registered voters and whether there are sufficient valid signatures to certify the petitions. *Deleeuw v State Bd of Canvassers*, 263 Mich App 497 (2004).

92. Importantly, “signatures on petitions are presumed valid and the burden is on the challenger to the signatures”—or the Board—“to prove by clear, convincing, and competent evidence that the signatures are invalid.” *Johnson v Board of State Canvassers*, 341 Mich App 671, 685; 991 NW2d 840 (2022). This is because “[i]t has long been recognized that handwriting similarity is so much a matter of opinion and so indefinite that generally it may not be acted upon in canvassing petitions.” *Jaffee v Allen*, 87 Mich App 281, 285; 274 NW2d 38 (1978) (“[S]ignatures appearing on petitions filed with the Secretary of State for initiative and referendum are presumed valid, and the burden is on the protestant to establish their invalidity by clear, convincing and competent evidence.”); *Thompson v Vaughan*, 192 Mich 512, 527; 159 NW 65 (1916) (same); *People ex rel Wright v Kelly*, 294 Mich 503, 518; 293 NW 865 (1940) (same). To combat the inherent uncertainty of comparing signatures, Michigan’s appellate courts have long held that “that “signatures appearing on petitions filed with the Secretary of State” are “presumed valid, and the burden is on the protestant to establish their invalidity by clear, convincing and competent evidence.” *Jaffee v Allen*, 87 Mich App 281, 285; 274 NW2d 38 (1978); *Farm Bureau Mut Ins Co of Mich v Com’r of Ins*, 204 Mich App 361, 365-368; 514 NW2d 547 (1994) (citations omitted) adopting *Jaffee*’s holding that “[S]ignatures appearing on petitions filed with the Secretary of State for initiative and referendum are presumed valid, and the burden is on the protestant to establish their invalidity by clear, convincing and competent evidence.”); *Grosse Pointe Farms Fire Fighters Assoc v Grosse Point Farms City Clerk*, 11 Mich App 112, 118; 157 NW2d 695

(1968) (“[P]etitions in proper form are presumed to be valid and to have been completed in accordance with the circulator’s affidavit” unless there is a showing of “sufficient magnitude tending to rebut this presumption.”); 22 Mich. Civ. Jur. Statutes § 302 (“Signatures appearing on petitions filed with Secretary of State...are presumed valid, and the burden is on the challenger to establish their invalidity by clear, convincing and competent evidence.”); 42 Am. Jur. 2d Initiative and Referendum § 34 (“Signatures on [a] petition may be presumed to be valid, and in such a case, the challenger may have the burden of overcoming that presumption.”).

93. Here, the Board breached its clear legal duty to certify the ballot initiative in two distinct but dispositive ways. First, the Board breached a clear legal duty by refusing to count signatures the Board admitted were valid simply because supporting affidavits arrived after the Board’s arbitrary 48-hour deadline. Second, the Board breached a clear legal duty by rejecting timely affidavits and their associated signatures because, in the Board’s view, the signatures on the affidavits did not match those contained within the QVF. Neither provides a valid basis to reject sworn evidence establishing that the rejected signatures were valid and both establish that a writ should lie in this case.

The five affidavits received within 48 hours of the Board’s hearing.

94. As noted above, five Michigan voters whose petition signatures the Bureau of Elections recommended striking as allegedly non-matching submitted sworn and notarized affidavits attesting that they had signed the Petition and that the stricken signatures were in fact their own.

95. The Board did not find those affidavits defective in form, defective in substance, or wanting in authentication. To the contrary, the Board (and the Bureau) acknowledged on the record that the affidavits were valid and that they would have cured the claimed signature deficiency had

they been received earlier. See Tr at 124, 136-37. The Board nonetheless deadlocked over whether to count them.

96. The two Democrat Board members who voted against accepting the five affidavits explained that they did so for only one reason: the affidavits were delivered too late, after the 48-hour submission deadline imposed by the Board's promulgated procedures, Mich Admin Code R 168.846.

97. On its face, that rule only applies to materials submitted by "members of the public." And the Board's rules differentiate between the "sponsor" of a petition (who is a "party to the hearing") under Rules 168.841 and 168.844—who are entitled to notice of the hearing and have the ability to appear "by counsel"—and "members of the public" who wish to "address the board." See Rules 168.845 and 168.846. Thus, by its own terms, the 48-hour rule contained in Rule 168.846 *does* not apply to ACVM as a petition sponsor.

98. Had the Board correctly followed its rules, it would have accepted the five affidavits.

99. Further, the Board's failure to accept the five affidavits received within 48 hours of the Board's meeting ignores the reality that those five affidavits are categorically different than other "materials" submitted to the Board.

100. Each affidavit submitted by ACVM constitutes sworn testimony that the affiant signed the petition, that their signature is genuine, and (because it is notarized) that the affiant is, in fact, who they say they are.

101. That is, the five affidavits received within 48 hours of the Board's meeting are sworn testimony from five Michigan voters—whose identity was verified by a notary—that they in fact signed ACVM's Petition and that their allegedly invalid signature is, in fact, genuine.

102. The Board would not have rejected sworn, in-person testimony from a voter who appeared at the hearing and testified *in person* regarding the validity of their signature. Indeed, at the August 24, 2026 hearing, the Board accepted another affidavit based on in-person testimony from the notary public who notarized it. *See* August 24, 2026, Rough Hearing Transcript at Page 132-134.

103. But, by failing to accept the five affidavits submitted within 48 hours of the Board's meeting, that's exactly what happened.

104. This was also inconsistent with the Board's past practice. As noted above, although the Board promulgated a rule requiring that "members of the public" to submit materials to the Board at least 48 hours before a meeting, the Board routinely allows materials to be submitted the day of a meeting if justice (or convenience) requires it and, in fact, has done so multiple times since Rule 168.846 was promulgated in May 2025. *See infra* at ¶¶ 64-70.

105. Nevertheless, in contrast to this routine practice, the Board failed to accept the nine affidavits from Michigan voters in which they testified, via sworn statement verified by a notary public, that they signed the Petition and that the disputed signature was, in fact, genuine.

106. The Board did so despite conceding that the affidavits *were authentic and would have rehabilitated the subject signatures if they were received earlier*. An affidavit is defined as "a written or printed declaration or statement of facts, made voluntarily, and confirmed by the oath or affirmation of the party making it, taken before an officer having authority to administer such oath." *June v School Dist No 11, Southfield Twp*, 283 Mich 533, 537 (1938); accord *Holmes v Michigan Capital Med Ctr*, 242 Mich App 703, 711 (2000).

107. Each of the five affidavits was sworn before a notary public, whose certificate is "received as presumptive evidence of the facts contained in such certificate." *Dodson v Imperial*

Motors, Inc., 295 F2d 609, 614 (CA 6, 1961) (collecting Michigan authority). And each stated that the signature the Bureau had questioned was, in fact, the affiant's own. An affidavit is not a promise to testify later; it "is itself the testimony," a "statement of fact, which is sworn to as the truth." *June*, 283 Mich at 538.

108. The Board did not dispute any of this. It accepted fourteen materially identical affidavits from fourteen materially identical affiants. As to the five at issue, the Board confirmed on the record that the affidavits were valid and would have cured the deficiency.

109. Regarding the Doughty affidavit, the Chair stated that "all four of us agree that the signature matches." **Ex F**, 8.24.26 Hrg Tr at 124. The Chair then confirmed with the Vice Chair that the signature "matches the voter," that "that is a valid signature," and that the only remaining question was "whether it was submitted on time . . . [w]ithin the 48-hour rule." Tr at 136. Asked whether the ground for rejection was "the 48-hour procedural rule, primarily," the Vice Chair answered: "That's correct." Tr at 136-37. Member Cordes then squarely addressed the issue. "I agree the procedure is important, but I don't necessarily know that it trumps someone who is confirming that they put their name on these petitions." Tr at 126.

110. Faced with the five affidavits, the Board confronted no contested question of fact, no credibility determination, and no evidentiary conflict requiring judgment. There was no question that the affidavits—and, thus, the five signatures—were genuine, so no judgment was required.

111. Instead, the Board was confronted only with arithmetic. Adding five admittedly valid signatures to a running total is "an act in which the law prescribes and defines the duty to be performed with such precision and certainty as to leave nothing to the exercise of discretion or

judgment.” *Hillsdale Co Senior Servs, Inc v Hillsdale Co*, 494 Mich 46, 58 n 11 (2013) (quotation marks omitted).

112. This Court has said as much for over a century—once the Board has the relevant numbers before it, making the canvass and certifying the result is a “statutory ministerial duty.” *Withey v Bd of State Canvassers*, 194 Mich 564, 567 (1917).

113. The bottom line is that the Board’s duty to canvass a petition “to ascertain if the petitions have been signed by the requisite number of qualified and registered electors” comes from the Legislature. MCL 168.476(1). So, regardless what Rule 168.846 says, the statute governs. See *West Bloomfield Hosp v Certificate of Need Bd*, 208 Mich App 393 (1995), rev’d on other grounds 452 Mich 515 (1996); *Mich Charitable Gaming Ass’n v Michigan*, 310 Mich App 584, 593 (2015). A rule the Board wrote for its own convenience cannot authorize the Board to refuse to count a signature that it admits is valid.

114. So the Board had a clear legal duty to accept the five affidavits and count the five signatures that they rehabilitated.

The QVF Affidavits

115. Four affidavits were rejected on a different and even more troubling ground.

116. With respect to these four affiants, the Board did not doubt that the affiants existed, that they were registered electors, or that they had appeared before a notary public and confirmed that the allegedly invalid petition signatures were their own.

117. A majority of the Board rejected the sworn testimony contained in three of these affidavit—the Board deadlocked with respect to the fourth—because, in the view of a majority of its members, the signature on the affidavit did not sufficiently resemble the signature stored in the QVF.

118. In other words, the Board disregarded sworn testimony from a Michigan voter that had been authenticated by a notary public under Michigan law and chose to rely instead on its own lay comparison of handwriting samples in a historical database.

119. The Michigan Law on Notarial Acts, MCL 55.261 et seq., prescribes exactly how the identity of a person signing a sworn affidavit is to be established. A notary public may not perform a notarial act with respect to a record unless the signer appears before the notary and the notary either personally knows the signer or is presented with satisfactory evidence of the signer's identity. MCL 55.285; MCL 55.285(6).

120. The Legislature thus made a deliberate choice about who authenticates sworn statements and specifically chose commissioned public officers, applying a statutorily defined standard while in the physical presence of the signer. And there are evidentiary consequences to that choice. A notarial certificate is "received as presumptive evidence of the facts contained in such certificate," and "[i]ndependent of statute, Michigan, consistent with general law, holds that a notary's certification . . . raises a presumption of the truth of the facts recited in such acknowledgment." *Dodson v Imperial Motors, Inc*, 295 F2d 609, 614 (CA 6, 1961) (collecting Michigan Supreme Court authority).

121. Indeed, a document accompanied by a certificate of acknowledgment lawfully executed by a notary public is self-authenticating and requires no extrinsic evidence of authenticity. MRE 902(8).

122. All the affidavits presented to the Board—including the four that were rejected because the signature on the affidavit apparently didn't match the corresponding signature in the QVF—therefore arrived carrying a legal presumption that the facts were as stated therein. That is,

the four affidavits constitute “presumptive evidence” that the subject signatures were in fact valid and genuine. *Dodson v Imperial Motors, Inc*, 295 F2d 609, 614 (1961).

123. Of course, that presumption may be rebutted by evidence. But the Board received none. No testimony that a signature was forged, no handwriting experts, no affiant disclaimed his or her affidavit, and no notary’s certificate was challenged or otherwise accused containing a false certification.

124. To the contrary, the Board’s sole basis for setting aside four sworn affidavits was a visual inspection by its members comparing an inked signature to a digitized image in the QVF that may have been captured decades earlier, under different circumstances, at a different age, with a different instrument. That’s not evidence sufficient to overcome the statutory presumption provided by MCL 55.285.

125. Again, the Board’s charge is very narrow. It is tasked with determining whether the petition was signed by the requisite number of qualified and registered electors by comparing the signatures on the petition sheets to those contained within the QVF. But there is no authority, and the Board cited none, that directs or even permits the Board to run the same comparison against a notarized affidavit and to reject an affidavit if the Board determines that the affidavit signature does not match the QVF. The law on this point is clear. “The qualified voter file shall be used to determine the genuineness *of a signature on a petition.*” MCL 168.552(13) (emphasis added). The law says nothing about a signature on an affidavit, and there is nothing authorizing the Board to reject or otherwise disregard sworn testimony based on a comparison to the QVF.

126. Accordingly, when the Board declared a notarized affidavit unreliable because of its own signature comparison, it ran afoul of MCL 55.285 and violated its clear legal duty to count the signatures confirmed by the notarized affidavits at issue. That exceeded the scope of the

Board's canvass, which 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, 619 (2012).

127. So the Board had a clear legal duty to accept all nine affidavits and count the nine signatures they rehabilitated. And, because counting those nine signatures would mean that the Petition would have at least 631 signatures—more than the 629 signatures required for certification—the Bureau had a clear legal duty to certify the Petition.

128. Because the Board refused to consider or count signatures confirmed by sworn affidavits, and disregarded binding law on notarial acts, the Board violated its clear legal duty to count the 9 signatures and, thus, certify the Petition for inclusion on the November ballot.

129. Mandamus is therefore warranted.

COUNT II – VIOLATION OF DUE PROCESS AND EQUITABLE ESTOPPEL

ACVM is entitled to Due Process.

130. Plaintiffs incorporate the allegations in the foregoing paragraphs as if fully stated herein.

131. The Due Process and Equal Protection Clause of the Fourteenth Amendment to the United States Constitution state:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. [US Const, Am XIV.]

132. The Due Process Clause of the Michigan Constitution says: "No person shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law." Const 1963, art 1, § 17. It further guarantees "[t]he right of

all individuals, firms, corporations and voluntary associations to fair and just treatment in the course of...investigations and hearings shall not be infringed. Const 1963, Art I, § 17.

133. Both the Michigan and federal due-process clauses require that the government provide citizens with notice and an opportunity to be heard before it deprives those citizens of life, liberty, and property. Further, the more than 700,000 voters who signed the Petition have a First Amendment right to have their voices heard and signatures counted. *Socialist Workers Party v. Secretary of State*, 412 Mich. 571, 588, 317 N.W.2d 1 (1982) (The “expression of political preference ... [is] the bedrock of self-governance.”); *Norman v Reed*, 502 US 279, 288; 112 S Ct 698; 116 L Ed 2d 711 (1992) (recognizing the “the constitutional interest of like-minded voters to gather in pursuit of common political ends, thus enlarging the opportunities of all voters to express their own political preferences.”); *League of Women Voters of Michigan v Secretary of State*, 508 Mich 520, 553; 975 NW2d 840 (2022), quoting *Meyer v. Grant*, 486 U.S. 414, 421-422, 108 S.Ct. 1886, 100 L.Ed.2d 425 (1988) (“Petition circulation is protected by the First Amendment because it is ‘core political speech’ that ‘involves both the expression of a desire for political change and a discussion of the merits of the proposed change.’”).

134. In civil matters such as the proceedings before the Board, “due process requires notice and an opportunity to be heard in a meaningful time and manner, and by an impartial decision maker.” *Spranger v City of Warren*, 308 Mich App 477, 483; 865 NW2d 52 (2014); see also *Hieber v Oakland County, Michigan*, 136 F4th 308, 321 (CA 6, 2025) (citations omitted) (“Procedural due process requires notice and an opportunity to be heard at a meaningful time and in a meaningful manner.”).

135. Specifically, a party has a meaningful opportunity to be heard if they have “the chance to know and respond to the evidence.” *Cummings v Wayne Co.*, 210 Mich App 249, 253;

533 NW2d 13 (1995); see also *Hieber v Oakland County, Michigan*, 136 F4th 308, 322 (CA 6, 2025) (citations omitted) (a “critical element” of due process is “an opportunity to respond to the evidence”).

136. The right to vote is protected in more than the initial allocation of the franchise because equal protection applies to the manner of its exercise as well. See *Bush v Gore*, 531 US 98, 110; 121 S Ct 525; 148 L Ed 2d 388 (2000).

137. Thus, after granting the right to vote on equal terms, a government may not, by later arbitrary and disparate treatment, value one person’s vote over that of another. See, e.g., *Harper v Virginia Bd of Elections*, 383 US 663, 665; 86 S Ct 1079; 16 L Ed 2d 169 (1966). Further, “the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise.” *Reynolds v Sims*, 377 US 533, 555; 84 S Ct 1362; 12 L Ed 2d 506 (1964).

138. The U.S. Supreme Court has recognized that “the importance of First Amendment protections is ‘at its zenith’” in the context of voters engaging in political speech such as signing or circulating initiative petitions. *Meyer v Grant*, 486 US 414, 425; 108 S Ct 1886; 100 L Ed 2d 425 (1988) (citations omitted). Thus, that Court has rejected the notion that, because “the power of the initiative is a state-created right,” states are “free to impose limitations on the exercise of that right.” *Id.* at 424.

139. Along the same lines, the Sixth Circuit has recognized that “although the right to an initiative is not guaranteed by the federal Constitution, once an initiative procedure is created, [a] state may not place restrictions on the exercise of the initiative that unduly burden First Amendment rights.” *Taxpayers United for Assessment Cuts v Austin*, 994 F.2d 291, 295 (6th Cir. 1993). It further concluded that “the principle stated in *Meyer*...that a state that adopts an initiative

procedure violates the federal Constitution if it unduly restricts the First Amendment rights of its citizens who support the initiative” applies to the “methods used to validate and invalidate signatures of voters to an initiative petition.” *Id.* Thus, if a state “create[s] an initiative procedure,” it “cannot place restrictions on its use that violate the federal Constitution.” *Id.*

140. As noted, Michigan creates a process for amending its state constitution via initiative petition. Article XII, § 2 of Michigan’s Constitution allows for state constitutional amendments to be “proposed...by petition of the registered electors of this state” and mandates that “[t]he 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.”

141. Once the State of Michigan created a process by which to amend its constitution, the State—including Defendants—cannot place restrictions on its use that violate the federal or State constitutions.

142. Both the federal and State constitutions prohibit the Board from treating an adequate number of petition signatures submitted on a proper form in an arbitrary and disparate manner, or in canvassing ACVM’s petitions in a manner that denies it (and the voters who signed its petition) due process of law.

Defendants violated ACVM’s due process rights by refusing to provide the digitized signature records from the QVF used to invalidate signatures on ACVM’s petitions.

143. By refusing to certify the Petition even though the total number of valid signatures—i.e., the number determined to be valid by the Bureau and Board, in combination with the nine uncounted signatures verified by affidavit—exceeded the threshold for certification, the Board violated the due process rights of both ACVM (as the sponsor of the petition) and the voters who signed its petition.

144. Defendants also violated ACVM's due-process rights by refusing to allow it to review the digitized signature records contained in the QVF that the Board and Bureau used to invalidate signatures on ACVM's petition.

145. As noted, in its Staff Report, the Bureau concluded that 94 signatures in the 1000-signature sample were "invalid" because the "signature is omitted or does not sufficiently agree with the signature on file." *Id.*

146. According to guidance issued by the Bureau of Elections, a signature is invalid if there are no "redeeming qualities in the petition signature as compared to the signature on file." Ballot Proposal Petition Manual, p. 34 (July 2025), available at <https://www.michigan.gov/sos/-/media/Project/Websites/sos/Elections/Ballot-Access/FDC-FC-MAN-1-Ballot-Proposal-Petition-Manual.pdf>. Redeeming qualities "may include but are not limited to similar distinctive flourishes [as well as] more matching features than nonmatching features." *Id.* p. 34; see also Mich Admin R 168.23 (defining the "redeeming qualities" standard for absent voter ballot signature comparison).

147. At the Board's August 24, 2026 meeting, it was made clear that, as required by MCL 168.476(1), the Bureau's conclusion regarding the alleged invalidity of those 94 signatures was the result of the Bureau staff visually comparing those 94 petition signatures against the corresponding digitized signature records contained in the QVF.

148. But the Bureau's Staff Report does not include images of the digitized signature records contained in the QVF that would allow ACVM to evaluate, respond to, and rebut the Bureau's conclusions. Nor has the Board or Bureau allowed ACVM to see the 94 digitized signature records in any other format.

149. Instead, the Board rejected ACVM's request to view the signature with sufficient protections against public disclosure of the signature records by, for example, an *in camera* review of the records or review by attorneys pursuant to a protective order. **Ex E**, ACVM Demand Letter.

150. By refusing to allow ACVM to view the digitized signature records in the QVF—even in limited, non-public, confidential fashion—the Board deprived ACVM of any opportunity whatsoever, let alone a *meaningful* opportunity, to evaluate, respond to, or contest the Bureau's conclusions that the 94 signatures do not match the signatures on file because they lack “redeeming qualities.” Without access to the associated digitized signature records—i.e., without an opportunity to see or respond to the evidence used to invalidate the signatures on its petition—ACVM cannot perform anything like the visual comparison presumably used by the Bureau staff to render its conclusion that the 94 signatures were invalid.

151. Due Process requires more.

Defendants violated ACVM's due-process rights by refusing to provide the digitized signature records from the QVF used to invalidate signatures on ACVM's petitions.

152. The Board rejected ACVM's request for limited, confidential access to the digitized signature records in the QVF corresponding to the 94 invalidated based on a Michigan statute exempting “digitized signature[s]” in the QVF from FOIA and a federal statute prohibiting public disclosure of motor vehicle records (including digitized signatures).

153. In the Board's view, “releasing these signatures or allowing ACVM to view the signatures *in camera*—even under a confidentiality agreement or protective order—would violate both state and federal law.” **Ex E**, BOSC Response to ACVM Demand Letter, p. 1-2. The Board further claimed that, “[w]hile ACVM may not be able to obtain the signature from the QVF, there are still options that may be utilized to rehabilitate a signature.” *Id.*

154. Specifically, the Board affirmed that ACVM “may contact the voters who have signed the petition and ask them to sign an affidavit detailing the page that was signed, indicating that they were the one who signed, and providing a signature that sufficiently agrees with the voter’s signature in QVF.” *Id.*

155. But the Board rendered their proposed alternative method of rehabilitating allegedly non-matching signatures—providing affidavits from affected signers—illusory in two ways.

156. First, the Bureau unreasonably delayed reviewing ACVM’s petitions from the get-go.

157. ACVM turned in its petitions with more than 700,000 signatures on March 4, 2026.⁶ The Bureau then inexplicably waited 166 days to produce its staff report containing its conclusions regarding the 1,000 signatures contained in the “sample.” **Ex D**, August 17, 2026 Bureau Staff Report.

158. That means the Bureau staff averaged examining a mere six signatures per day.

159. The Bureau’s decision to wait 166 days to throw out the 94 allegedly non-matching signatures meant that ACVM had a mere five days to: (1) identify and contact the 94 affected voters; (2) confirm that they signed ACVM’s petition; and (3) produce and obtain an affidavit rehabilitating the signature.

160. Despite the Bureau’s slow-walk of its staff report, ACVM was able to contact 23 voters whose petition signature—according to the Bureau, at least—did not match the digitized

⁶ Solis, *Citizens-only voting ballot group to turn in 750k signatures to state, well ahead of deadline*, Michigan Advance (March 4, 2026), available at <https://michiganadvance.com/2026/03/04/citizens-only-voting-ballot-group-to-turn-in-750k-signatures-to-state-well-ahead-of-deadline/>.

signature records in the QVF and obtain affidavits from those voters confirming that they signed ACVM's petitions and that their signature was in fact genuine.

161. That herculean effort should not detract from the reality that the Bureau's decision to wait more than five months to produce its staff report—and, by doing so, *leaving ACVM with a mere 5 days to rehabilitate signatures*—deprived ACVM of a “meaningful” opportunity to rebut the Bureau's conclusion with respect to the remaining 71 voters whose signature was stricken for allegedly not matching the corresponding signature in the QVF.

162. Accordingly, even if the Board's proposed mechanism for rehabilitating allegedly invalid signatures—obtaining affidavits from the affected voters—is a valid alternative to viewing signatures in the QVF (it is not), the Bureau's 166-day delay in publishing the staff report still deprived ACVM of its right to a “meaningful” opportunity to know and respond to the evidence used to strike signatures from its petitions.

163. The Board's proposed alternative to allowing ACVM to compare signatures also violates due process for the same reason as the Bureau's invalidation of allegedly non-matching signatures: it depends on comparing signatures to the QVF that ACVM is not allowed to view.

164. A notarized affidavit constitutes sworn testimony under penalty of perjury, verified by a notary public who, before notarizing the document, confirmed that the individual signing the affidavit is, in fact, who they claimed to be based on government ID. MCL 55.285(6)(b); *June v School Dist No 11, Southfield Tp*, 283 Mich 533 (1938).

165. Here, after receiving the rehabilitative affidavits from ACVM, Defendants failed to treat those affidavits as “presumptive evidence” of the facts contained in the affidavits—i.e., that the signatories of the affidavits had, in fact, signed ACVM's petitions. *Dodson v Imperial Motors, Inc*, 295 F2d 609, 614 (1961). Instead, Defendants subjected the affidavits to the same inquiry as

the original petition signatures. That is, Defendants compared the signature on each affidavit to the corresponding signature in the QVF. The Board rejected four of the affidavits—and, thus, invalidated signatures on ACVM’s petitions—based on their subjective conclusion that the signature on the affidavit did not match the QVF.

166. The process of comparing the affidavit signatures to the QVF signatures violates due process for several reasons.

167. First, it reviews (and invalidates) signatures on ACVM’s petitions based on evidence from the QVF that ACVM cannot meaningfully respond to at all. That is, just like ACVM cannot meaningfully rebut Defendants’ conclusion that signatures on its petitions do not match the corresponding signature in the QVF, ACVM also meaningfully cannot rebut Defendants’ conclusion that the signatures on the submitted affidavits do not match the corresponding signature in the QVF. Either way, signatures were invalidated based on evidence that ACVM cannot know or to which ACVM was deprived of a meaningful opportunity to respond. Once again, that falls short of the due process required by the Michigan and federal constitutions.

168. Second, the Board’s reasoning is fatally circular. According to the Board, ACVM doesn’t need access to the QVF signatures because it can rehabilitate petition signatures by obtaining affidavits from the affected voters. But, by subjecting signatures on affidavits to comparison with the digitized signature records in the QVF, the Board negates the value of providing petition sponsors with an alternative to QVF comparison. Put differently, the Board denied ACVM a meaningful opportunity to rebut the unknown evidence against it (digitized signatures in QVF) by subjecting the submitted affidavits to the same unknown evidence against it.

169. The Board’s decision to subject the affidavits to QVF comparison ignores the reality of what each affidavit submitted by ACVM constitutes—sworn testimony that the affiant signed the petition, that their signature is genuine, and (because it is notarized) that the affiant is, in fact, who they say they are—in lieu of yet another visual comparison.

170. Because the affidavit is sworn testimony, the Board was required to accept it as-is, absent some other evidence impeaching the *substance* of the affidavit.

171. The four affidavits rejected (or, at least, not accepted) by the Board because the signature on the affidavit allegedly did not match the signature on the QVF are proof positive that Defendants violated the due-process rights of not only ACVM, but also the four Michigan voters who expressed their First Amendment rights by signing both the petition and an affidavit but still didn’t have their signature counted. They should have been accepted by the Board.

If the Board hadn’t violated ACVM’s due-process rights, the Petition would have been certified.

172. Consistent with constitutional principles of due process and equal protection, Defendants had a clear legal duty to, at a minimum, provide ACVM with “notice and an opportunity to be heard in a meaningful time and manner.” *Spranger v City of Warren*, 308 Mich App 477, 483; 865 NW2d 52 (2014). Defendants also had a clear legal duty to provide ACVM with a “hearing to allow [it] the chance to know and respond to the evidence.” *Cummings v Wayne Co*, 210 Mich App 249, 253; 533 NW2d 13 (1995).

173. Absent Defendants’ violation of ACVM’s due process rights—i.e., had it given ACVM a meaningful opportunity to compare the 94 disputed signatures against the QVF and/or accepted all nine disputed affidavits, including the affidavits stricken because it did not match the QVF, as well as the two signatures that the Bureau deemed were a match but on which the Board deadlocked—ACVM would have had, at minimum, 633 valid signatures, more than the 629

required for the Board to certify that the Petition satisfied the signature requirements of the Michigan Election Law. Therefore, the Board had a clear legal duty to certify the Petition for the November general election ballot and breached that duty by failing to do so.

**COUNT III – VIOLATION OF THE EQUAL PROTECTION CLAUSE
OF THE U.S. CONSTITUTION AND THE MICHIGAN CONSTITUTION**

Legal Framework.

174. Plaintiffs incorporate the allegations in the foregoing paragraphs as if fully stated herein.

175. Under the Fourteenth Amendment to the U.S. Constitution, a State may not “deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV.

176. The Michigan Supreme Court has noted: “the scope of the equal protection guarantee afforded by our state constitution is coextensive with its federal counterpart.” *Gora v City of Ferndale*, 456 Mich 704, 576 NW2d 141 (1998).

177. Voters’ right to equal protection of the laws in the exercise of the franchise is fundamental. *See Bush v Gore*, 531 US 98, 104, 121 S Ct 525, 529 (2000) (“the right to vote as the legislature has prescribed is fundamental”). “[O]ne source of its fundamental nature lies in the equal weight accorded to each vote and the equal dignity owed to each voter.” *Id.* Thus, and as the United States Supreme Court held in *Bush v Gore*, the importance of equal protection of the right to vote does not arise from the source of the right to vote—*i.e.*, whether that right arises from the federal constitution, state constitutions, or federal or state statutory law—but rather from the “equal weight accorded to each vote and the equal dignity owed to each voter.” *Id.* When States give unequal weight or dignity to voters’ exercise of the franchise, they violate the Fourteenth Amendment.

178. Indeed, “[t]he right to vote is protected in more than the initial allocation of the franchise. Equal protection applies as well *to the manner of its exercise*. Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person’s vote over that of another.” *Id.* at 104–05 (citation omitted) (emphasis added).

179. To be clear, “[w]hen a State exercises power wholly within the domain of state interest, it is insulated from federal judicial review. But such insulation is not carried over when state power is used as an instrument for circumventing a federally protected right.” *Reynolds v Sims*, 377 US 533, 566, 84 S Ct 1362, 1384 (1964) (quotation omitted). Further, “[t]o the extent that a citizen’s right to vote is debased, he is that much less a citizen.” *Id.*

180. Accordingly, the discarding of a citizens’ vote is—at its heart—a violation of that citizen’s right to equal protection of the laws. States cannot escape the Fourteenth Amendment’s reach by declaring a matter wholly within the domain of state interest.

181. There is no distinction—at least as far as Equal Protection Clause protections—between voters’ right to cast a vote on a ballot and voters’ right to sign a petition. In *Green v City of Tucson*, 340 F3d 891 (2003), the Ninth Circuit held that “signatures on a petition” “are the constitutional equivalent of votes” and are thus protected by the Equal Protection Clause. *See id.* at 897-898. “Because the [petition signatures] are analytically like votes, and are a substitute for them, legally they must be treated as votes.” *Id.*

182. In *Lemons v Bradbury*, 538 F3d 1098 (2008), the Ninth Circuit again considered whether a state’s rules regarding “verifying referendum petition signatures” were sufficiently uniform, or whether they violated the equal protection rights of voters that were established in *Bush v Gore*. *See id.* at 11105-1106. In *Lemons*, the Ninth Circuit emphasized the constitutional requirement that analyzing the validity of a petition signature must be uniform, because only

uniformity “has ‘sufficient guarantees of equal treatment.’” *Id.* at 1106. The Ninth Circuit had no hesitation in applying the “one man, one vote” of *Bush v Gore* to signatures on a petition. In the Ninth Circuit’s view, uniform review of petition signatures was the baseline protection guaranteed by the Equal Protection Clause. *Id.* at 1107.

183. Michigan’s Constitution grants every registered voter the right to propose amendments to the Constitution by petition. Mich Const Art XII, § 2.

184. A petition to amend the Michigan Constitution must “be signed by registered electors of the state.” Mich Const Art XII, § 2.

185. When considering the People’s exercise of their direct-democracy power to initiate laws, this Court has used the “democracy principle” to guide its analysis. See *Mothering Just. v. Att’y Gen.*, 515 Mich 328, 348, 29 NW3d 346, 356, *opinion clarified*, 515 Mich 920, 10 NW3d 845 (2024). This Court has held that “[w]ith respect to constitutional interpretation, where, as here, ‘the people reserve to themselves a direct legislative voice,’ this Court must ‘liberally construe[]’ such provisions in favor of the people.” *Id.* at 347. Specifically, this Court succinctly described this construction in favor of direct democracy “the democracy principle.” *Id.*

186. This Court explained: “The democracy principle is a helpful tool to analyze our laws—especially those statutes and constitutional provisions that implicate elections and direct democracy.” *Id.* at 348, n 7. “The democracy principle,” this Court continued, “can . . . shed new light on the relationship between representative and direct democracy, and it recognizes that ‘democracy’ itself is core to our Constitution and must inform the lens we use to interpret laws.” *Id.* (quoting *The Democracy Principle in State Constitutions*, 119 Mich L Rev 859, 923 (2021)).

187. In *League of Women Voters of Michigan v Sec’y of State*, 508 Mich 520, 975 NW2d 840 (2022), this Court considered the constitutionality of a statute that, *inter alia*, limited the

People's exercise of their power to initiate legislation and constitutional amendments by requiring that no more than 15% of the signatures in support of a petition to initiate legislation or constitutional amendments come from the same congressional district. This Court struck down the law as unconstitutional, finding that the cap on the percentage of signatures that may come from each district disenfranchised voters. Thus, there is no question that the rights that are part and parcel to exercising the franchise apply in the context of signing petitions, too.

188. Indeed, as this Court held just four years ago, the Legislature's attempt to limit what percentage of signatures could come from a single district "would effectively ensure that some voters' signatures would be rendered void merely because they were obtained after the 15% cap for that district had been reached, something that voters are unlikely to know when signing a petition." *Id.* at 542. This Court continued, reasoning that "[s]uch disenfranchisement would weigh most heavily on those residing in more densely populated parts of the state, and it would run directly contrary to the clear intention that nothing more than a minimum number of signatures from the statewide population is necessary to propose changes to Michigan's laws." *Id.* (emphasis added).

The Defendants' Actions denied Nine Michigan Voters' right to the Equal Protection of the Laws.

189. Here, more than 700,000 registered voters signed ACVM's petition to amend the Michigan Constitution.

190. As required by MCL 168.476, the Board met to "canvass the petition[]" to ascertain if the petition[] ha[d] been signed by the requisite number of qualified and registered electors."

191. As a part of its process, and as required by MCL 168.476 and the Secretary of State's guidance, the Board compared the signatures of 1,000 voters against those voters' signatures in the Qualified Voter File.

192. The Board found that 94 voters' signatures did not sufficiently match the voters' signature in the Qualified Voter File, and so could not be counted.

193. Twenty-three of the 94 voters whose votes were not counted submitted signed, sworn, notarized affidavits to the Board that averred under penalty of perjury that the signature on the Petition that the Board had found did not sufficiently match the voters' signature in the Qualified Voter File was their signature.

194. The Board accepted only fourteen of the twenty-three voters' affidavits, finding that they sufficiently proved the voters' identity.

195. The Board refused to accept nine of the twenty-three voters' affidavits.

196. The Board rejected three of the nine affidavits because, in the opinion of a majority of the Board, the voters' signature on the affidavit did not sufficiently match the voters' signature in the QVF. The Board deadlocked on one more of the nine affidavits over whether the voters' signature on the affidavit sufficiently matched the voters' signature in the QVF.

197. For all four of those affidavits VF, the Board ignored that the affidavits were sworn, signed, *and notarized*.

198. The Board rejected five more of the nine affidavits because, even though the Board received the affidavits before voting on whether to reject or accept voters' signatures, the Board held the affidavits had not arrived in a timely fashion because the five affidavits were not produced 48 hours before the Board's August 26, 2025 meeting. See Rule 168.846 ("Members of *the public* shall submit material to the board at least 48 hours before the relevant board meeting. The board shall not consider material received after the 48-hour deadline.") (emphasis added). Significantly, the Board did not address the Bureau's inexplicable decision to wait more than five months to

issue its Staff Report, which left ACVM with a mere five days to obtain rehabilitative affidavits before the 48-hour deadline.

199. On record, each member of the Board acknowledged that the five affidavits were unrefuted evidence that sufficiently identified the voters who signed the Petition. The Board reviewed each of the five affidavits closely.

200. Nonetheless, the Board refused to consider the affidavits, and it refused to hold that the five voters who submitted affidavits had sufficiently proven their identity such that their signatures on the Petition should count.

201. Nine Michigan voters who produced affidavits were denied equal protection of the law—their votes weren't counted, when other, similarly situated votes were.

202. Nine Michigan voters who exercised their First Amendment rights by signing the petition just like more than 700,000 other voters and just like the 94 voters who, like the nine, had their signatures challenged.

203. Nine Michigan voters, just like fourteen other voters, took extraordinary steps to cure perceived deficiencies with their ballots by executing sworn, notarized affidavits.

204. Nine Michigan voters submitted affidavits, just like fourteen other voters, to prove their identity and to ensure that their signature on the Petition was counted.

205. But nine voters who submitted affidavits were treated differently than the other fourteen affidavits. Indeed, rather than accepting the affidavits of the nine voters, the Board *rejected* them (three were rejected outright by a majority of the Board, and six were rejected by a 2-2 deadlock).

206. By arbitrarily and disparately accepting fourteen voter affidavits while simultaneously rejecting nine voter affidavits, the Board denied the nine equal protection of the laws.

207. By arbitrarily and disparately accepting fourteen voter affidavits while simultaneously rejecting nine voter affidavits, the Board deprived nine voters of their right to vote.

208. Indeed, the Board's rejection of the nine voters disenfranchised those nine voters and "value[d] one person's vote over that of another." *Bush v. Gore*, 531 US at 104–05.

Defendants' Actions denied ACVM's right to the Equal Protection of the Laws.

209. The Board's actions also denied ACVM equal protection under the law by subjecting them to different rules than other petitions.

210. Under Michigan law, there is a deadline by which a challenger to a Petition's sufficiency must submit a challenge. See *Challenge deadline established for constitutional amendment sponsored by Americans for Citizen Voting – Michigan*, Michigan Board of State Canvassers (July 24, 2026) [Board of State Canvassers Americans for Citizen Voting Challenge Deadline](#).

211. In their guidance, the Board states, in bold, in a notice titled "Challenge deadline established for constitutional amendment sponsored by Americans for Citizen Voting – Michigan" that **"the deadline to submit challenges to this petition will elapse at 5:00 p.m. on August 7, 2026."** (emphasis in original). The Board's instruction in this case accords with the Board's generally applicable rules. In its guidance "Sampling Procedure for Canvassing Petitions," the Bureau of Elections states: "Under the Board's current practice, challenges are due 10 business days after the release of the sample and rebuttals are due as soon as possible after challenges are

received.” *Sampling Procedure for Canvassing Petitions*, Bureau of Elections at 3 (Nov 2023) [Sampling Procedure for Canvassing Petitions](#).

212. The Board’s notice is in accord with the Secretary’s description of the procedure of the Board. In the Secretary’s guidance, titled “Petition Manual: Statewide Initiative, Referendum, and Constitutional Amendment Petitions” (July 31, 2025) [FDC FC MAN 1: Ballot Proposal Petition Manual](#), the Secretary instructs “Under the current practice of the Board of State Canvassers, challenges are due 10 business days after the release of the sample.” The Secretary’s guidance continues: “[A] challenge **must be received no later than 5 p.m. on the date of the deadline, irrespective of postmark.**” *Id.* at 27-28. (emphasis in original). In this case, the Petition’s signature sample was released to the public on July 24, 2026, meaning that challenges were due no later than “5:00 p.m. on August 7, 2026.” *Challenge deadline established for constitutional amendment sponsored by Americans for Citizen Voting – Michigan*, Michigan Board of State Canvassers (July 24, 2026) [Board of State Canvassers Americans for Citizen Voting Challenge Deadline](#).

213. In *Callahan v. Board of State Canvassers*, 650 NW2d 656 (Mich. 2022), this Court held that challenges filed after the Board of State Canvassers’ deadline may not be considered by the Board.

214. Despite the clear, long-established rule that late-filed challenges may not be considered, the Board here considered two challenges to the sufficiency of signatures on the ACVM Petition. Ultimately, the Board deadlocked on whether to accept the two challenges, but their deadlock, 2-2, on the challenges means that the challenged signatures are deemed invalid.

215. Here, the Board did not certify the validity of two signatures on the Petition based on arguments raised in a late-filed challenge, yet simultaneously the Board refused to consider five

affidavits curing alleged deficiencies with voters' signatures because the affidavits were allegedly untimely.

216. The Board treated ACVM and the voters who signed ACVM's petition differently than it treated the Challengers. The Board's actions cross from unequal treatment under the law into naked animus towards the ACVM Petition. Indeed, as the Board would have it, a voter who submitted a signed, sworn, notarized affidavit cannot cure an allegedly deficient signature, but a challenge may challenge—and strike—a voters' signature on the very day of ballot certification.

217. So the ACVM Petition did not receive equal treatment. The Board rejected the validity of two signatures based on a late-filed challenge, but it rejected five voters' efforts to rehabilitate their allegedly defective signatures because those efforts were ostensibly untimely. That is the definition of arbitrary and disparate treatment. *See Bush v Gore*, 531 US 98, 104-105; 121 S Ct 525, 529 (2000).

MOTION FOR ORDER TO SHOW CAUSE AND FOR IMMEDIATE CONSIDERATION

218. Plaintiffs incorporate the allegations in the foregoing paragraphs as if fully stated herein.

219. MCR 3.305(C) says: "On ex parte motion and a showing of the necessity for immediate action, the court may issue an order to show cause."

220. Importantly, this "motion may be made in the complaint." *Id.* And "[t]he facts on which the court shall determine the existence of a necessity for immediate action are those stated in the *ex parte* motion." *Gogebic County Clerk v Gogebic County Bd of Com'rs*, 102 Mich App 251; 301 NW2d 491 (1980).

221. “An order to show cause will be granted” where “the public interests require the immediate disposition of the case, and forbid the delay of awaiting an opportunity to apply to the...court.” *Loranger v Navarre*, 97 Mich 615, 616; 58 NW 47 (1893).

222. The Court should immediately adjudicate the merits of this case on an expedited basis because it involves the constitutional rights of voters and ACVM.

223. Further, any delay would deprive ACVM of the opportunity to have its Proposal appear on the November 2026 General Election Ballot. Ballots must be finalized at least 60 days prior to the election. *See* MCL 168.32; MCL 168.474a; MCL 168.480. The printing and mailing of absentee ballots must be accomplished by September 4, 2026. County clerks must also deliver absent voter ballots for the November General Election to local clerks by September 4, 2026, *see* MCL 168.714, in time for local clerks to issue absent voter ballots to military and overseas voters in compliance with state and federal law and to issue absent voter ballots to all other registered voters by mail and in person beginning the 40th day before the November General Election. *See* Const art 2, § 4. Significant work on ballot proofing and preparation must take place before that.

224. ACVM also wishes to educate voters about the Proposal’s merits, but it cannot do so until it knows whether the Proposal will appear on the ballot.

225. This Court has repeatedly said that election-related cases must be considered on an expedited basis because of the “extreme time constraints” they can involve. *See, e.g., Scott v Director of Elections*, 490 Mich 888, 889; 804 NW2d 119 (2011); *see also Gracey v Grosse Point Farms Clerk*, 182 Mich App 193, 196-196; 452 NW2d 471 (1989) (acknowledging that “[c]onstraints of time...are characteristic of election cases,” and holding that “[g]iven the necessity that ballots be printed in time...it is traditional in these election cases for the courts to rule peremptorily.”).

226. Along the same lines, MCL 168.479(2), under which this mandamus action is being brought, says that “[a]ny legal challenge to the official declaration of the sufficiency or insufficiency of an initiative petition has the highest priority and shall be advanced on the supreme court docket so as to provide for the earliest possible disposition.”

227. The statutory deadline for delivering absentee ballots to local clerks and to mail ballots to military or overseas voters is September 19, 2026. MCL 168.759a; MCL 168.714. To meet that deadline for mailing the ballots, the relevant government bodies must be able to print, proof, and approve ballots with the proper list of candidates and initiatives before that date.

228. Defendant Director Brater has previously represented that it takes two weeks to proof and print ballots. Thus Plaintiffs estimate that all September 5 is the deadline by which all proceedings must be completed.

229. If this Court disagrees with the allegations in this complaint and declines to grant mandamus relief, due process requires that Plaintiffs be given sufficient time to exercise and perfect their right of appellate review of this Court’s decision by pursuing relief in the Supreme Court of the United States on an emergency basis. This takes time as well.

230. The extreme time constraints imposed by the relevant statutory deadlines—to say nothing of the practical realities of producing completed ballots in a few short weeks—demonstrates the “necessity for immediate action” necessary for this Court to issue an order to show cause in the immediate future and to impose an abbreviated briefing schedule. See MCR 3.305(C).

231. Without such immediate action, Plaintiffs will suffer irreparable injury because the Petition will not be certified for the November ballot.

232. Therefore, pursuant to MCR 3.305(C), ACVM respectfully requests that this Court order Defendants to show cause why a writ of mandamus should not issue and to order that responding briefs be filed within the time frame necessary such that the Court can issue a decision by September 1, 2026. ACVM further asks that the Court's order:

- a. Mandate briefing be completed with enough time for this Court to issue its ruling by Tuesday, September 1, 2022, so that ACVM (or any other party) has time to perfect its appellate rights in time for Defendants to comply with their statutory obligations regarding ballot distribution.
- b. Direct Defendants to articulate as soon as possible the latest possible date on which they can initiate the ballot proofing and printing process while still complying with their obligations under state and federal law.

CONCLUSION

WHEREFORE, Plaintiffs respectfully request that this Court order the following relief:

- A. Grant ACVM's Motion for an order to Show Cause and for Immediate Consideration, given the necessity for immediate action occasioned by the extreme time constraints imposed by the election and ballot-printing process;
- B. Issue a writ of mandamus on or before September 1, 2026 directing Defendants to take all necessary actions to certify the Petition for placement on the November 2026 General Election Ballot.
- C. Remand this matter to the Defendant Board for immediate entry of an official declaration by the Defendant Board of State Canvassers on or before September 4, 2026 that ACVM's Petition is sufficient and for certification of the Petition by Defendant Michigan Secretary of State Jocelyn Benson, and for any other act

requisite to ensuring that ACVM's Petition appears on the November general election ballot.

- D. Directing the Secretary of State and Director of Elections to take any and all necessary action to certify the Proposal and place it on the November 2026 General;
- E. Grant any other relief it deems just and equitable.
- F. Alternatively, ACVM requests that the Court directed that the Petition be placed on the ballot while reserving the question of its propriety to be litigated on a more ordinary timeline.

Respectfully submitted,

Dated: August 27, 2026

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CERTIFICATE OF SERVICE

The undersigned certifies that on August 27, 2026, the foregoing document PLAINTIFF AMERICANS FOR CITIZEN VOTING – MICHIGAN’S AND FRED SMITH’S COMPLAINT FOR IMMEDIATE MANDAMUS RELIEF AND DECLARATORY JUDGMENT AND MOTION FOR ORDER TO SHOW CAUSE AND IMMEDIATE CONSIDERATION was electronically filed with the Clerk of the Court using the electronic filing system, and was served on all Defendants via personal service at the below addresses and email addresses and upon their usual attorneys at their below email addresses:

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