**STATE OF MICHIGAN**
**IN THE SUPREME COURT**

**REPRODUCTIVE FREEDOM FOR ALL**, a Michigan ballot question committee, **PETER BEVIER**, an individual, and **JIM LEDERER**, an individual,

Plaintiffs,

v.

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

Defendants.

Supreme Court No. 164760

/

**BRIEF OF PROPOSED *AMICI CURIAE* LEAGUE OF WOMEN VOTERS OF MICHIGAN, AMERICAN ASSOCIATION OF UNIVERSITY WOMEN, COALITION OF LABOR UNION WOMEN, FEMS FOR CHANGE, FEMS FOR DEMOCRACY, GRAY PANTHERS, HINDU AMERICAN FEDERATION, JEWS FOR SECULAR DEMOCRACY, MICHIGAN INTERFAITH REPRODUCTIVE JUSTICE COALITION, MICHIGAN PAY EQUITY NETWORK, MICHIGAN UNITARIAN UNIVERSALIST SOCIAL JUSTICE NETWORK, MICHIGAN UNITED, NATIONAL COUNCIL OF JEWISH WOMEN MICHIGAN, RAISE THE WAGE MICHIGAN, RED WINE & BLUE, RESTAURANT OPPORTUNITY CENTER MICHIGAN, SOCIETY FOR HUMANISTIC JUDAISM, UNITED CHURCH OF CHRIST, VOTING ACCESS FOR ALL COALITION, AND WHOSOEVER MINISTRY UCC IN SUPPORT OF PLAINTIFFS' COMPLAINT FOR IMMEDIATE MANDAMUS RELIEF**

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## INTERESTS OF *AMICI CURIAE*[1]

The League of Women Voters of Michigan ("League") is a nonpartisan community-based statewide organization with headquarters in Lansing, Michigan. The League was formed in April 1919 after women gained suffrage in November 1918. The League is affiliated with the League of Women Voters of the United States, which was founded in 1920. The League encourages its members and the people of Michigan to exercise their right to vote and to participate in all aspects of the democratic process, as protected by the federal Constitution, the Michigan Constitution, and the federal and state laws. The mission of the League is to empower voters and defend democracy by promoting political responsibility through informed and active participating in government and to act on selected governmental issues. The League fully supports the rights of direct democracy set forth in the Michigan Constitution.

The American Association of University Women of Michigan ("AAUW") is the Michigan chapter of a national, nonpartisan organization founded in 1884 to promote equity and education for women and girls. The AAUW's mission is to advance gender equity for women and girls through research, education, and advocacy. Its Public Policy Priorities statement, adopted every two years on a national basis by an all-member vote, supports an individual's right to self-determination in reproductive health decisions, universal access to quality, affordable health care, and comprehensive family planning services.

The Coalition of Labor Union Women ("CLUW"), Metro Detroit Chapter provides a voice for women in their unions and at the ballot box.

Fems For Change is a 501(c)(3) organization which focuses on voter registration, voter engagement, voter rights, and voter education.

Fems For Democracy is a 501(c)(4) organization based in Michigan that focuses on empowering people (women in particular) to find their voice and come together as a community to make positive change. It stands for every woman's right to choose, sensible gun violence prevention, supporting immigrants, the LGBTQ+ community, social justice and equity, affordable and easy access to health care, protecting the environment, and access to affordable and quality education for all.

[1] No counsel for a party authored this brief in whole or in part, and no counsel for a party or a party made a monetary contribution intended to fund the preparation or submission of this brief.

Gray Panthers of Metro Detroit is an intergenerational social justice organization, founded in 1978, with members in Wayne, Oakland, and Macomb Counties. It advocates for a range of social justice issues, including peace, environmental justice, reproductive justice, economic justice, and gun violence prevention.

The Hindu American Foundation engages in advocacy, interfaith work, community relations, and education, including championing reproductive freedom.

Jews For A Secular Democracy ("JFASD") is a pluralistic initiative for Jews of any, or no, denomination, and friends and family members, who are deeply concerned about the growing influence of religious fundamentalism on government policy-making. It is a 501(c)(3) organization that works to educate, advocate, and mobilize the Jewish community into action on issues of religion-state separation.

The Michigan Interfaith Reproductive Justice Coalition ("MIRJC") is a coalition of religious groups seeking and advocating for reproductive justice for women.

The Michigan Pay Equity Network has sought equal pay and pay equity for women in the workplace since 1986.

The Michigan Unitarian Universalist Social Justice Network ("MUUSJN") is a statewide network of Unitarian Universalists from 24 congregations who work for justice with activist friends and other faith communities. MUUSJN believes that all women should have the right to reproductive freedom that allows them to choose whether or not to have an abortion. It also believes that the right of all Michigan residents to vote should be fully protected in the Michigan Constitution.

Michigan United organizes to build the power our communities need to win the justice they deserve. It works for an equitable and sustainable world that reflects values of economic and racial justice. It believes each individual has the right to achieve their full human potential and to live in dignity. It believes in the power of democracy and non-violence.

The National Council of Jewish Women ("NCJW") is a national 501(c)(3) organization whose mission is to improve the lives of women, children, and families. Its members circulated RFFA petitions, helped file those petitions, and spoke at the Board of Canvassers meeting about certification and the ballot summary.

Raise the Wage Michigan is a ballot question committee which has filed petition signatures to, among other things, raise the minimum wage to $15/hour. As a ballot question committee, it supports access to the ballot through the initiative process.

Red Wine and Blue is a grassroots network of suburban women assisting women to successfully organize in their communities and across the country. It supports placing the RFFA proposal on the ballot so that voters will have the opportunity to vote on it.

The Restaurant Opportunities Center of Michigan ("ROC") was founded in 2008 and consists of thousands of restaurant workers, High Road employees, and engaged consumers statewide, who are united together to improve the restaurant workers' lives by building worker power and uniting workers of various backgrounds around shared goals and values. To this end, ROC has gathered the input of thousands of restaurant workers to create the Restaurant Worker Bill of Rights, which holds as two of its five tenets the right to healthcare and bodily autonomy, and the right to greater participation in governance. There are over 300,000 restaurant workers in Michigan, nearly 60 percent are women. These workers are nearly three times as likely to live in poverty as the general workforce, and have less access to health care. ROC thus has an interest in supporting RFFA to ensure restaurant workers have full access to healthcare, including the right to reproductive freedom.

The Society for Humanistic Judaism ("SHJ") is the community-organizing arm of a movement that combines a humanistic philosophy of life with Judaism as the cultural and historic experience of the Jewish people. SHJ inspires, organizes, and advocates for secular individuals and congregations to celebrate Jewish identity and culture independent of supernatural authority.

The United Church of Christ has a long history of supporting reproductive choice pre-dating *Roe v Wade*.

Voting Access for All Coalition ("VAAC") is a statewide, non-profit, non-partisan coalition of justice-impacted rights advocates and organizations. It is a grassroots organization committed to helping people directly impacted by the justice system find their voice and sense of belonging, power, and leadership in Michigan through voting. It collaborates with women and men across the state to support people registering and voting.

Whosoever Ministry UCC is the oldest and largest African American LGBTQ Church in Detroit and Grosse Pointe Farms, Michigan. Founded in 1996, Whosoever Ministry's Mission has been to provide a "safe place" for gay, lesbian, and transgender Christians to worship.

## INTRODUCTION

> "This Court has a tradition of jealously guarding against *legislative and administrative* encroachments on the people's right to propose laws and constitutional amendments through the petition process."
>
> – Michigan Supreme Court[2]

> "[The Board of Canvassers is] not a constitutional law body and they keep acting as if they are . . . . These board members are not competent to make calls on legal issues. That's not what they're there for. That's not their training and nobody has an expectation they are," [Thomas] added. "It becomes the legal politics of if-I-can-block-the-issue-then-the-proponents-have-to-go-to-court even thought they've done all they need to do—no matter how ridiculous the claim." . . . Thomas hopes the Supreme Court places both Reproductive Freedom and Promote the Vote on the November ballot, and he also hopes the court's opinion will "give good direction to the Board of Canvassers what their real role is," which does not include abrogation or readability.
>
> – Retired Elections Director Chris Thomas[3]

For decades, this Court has been the guardian of the people's direct democracy rights, protecting the right to petition for constitutional amendments, statutory initiative, and referenda against legislative and Board of State Canvassers' ("Board") efforts to thwart them.[4]

More than 750,000 Michigan voters now come to the Court seeking to protect their constitutional right to place the RFFA constitutional amendment on the ballot after the Board has once again exceeded its narrow statutory authority and failed to perform its ministerial duty to place the Plaintiffs' proposed constitutional amendment on the ballot.

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[2] *Ferency v Secretary of State*, 409 Mich 569, 601; 297 NW2d 544 (1980) (emphasis in original).
[3] MIRS, "Experts Say Supremes Should Reject Challenges To Promote the Vote, Reproductive Freedom Initiatives," at 2–3 (September 2, 2022).
[4] *See, e g, Raise the Wage MI v Bd of Canvassers*, ___ Mich ___; 970 NW2d 677 (2022) (declaring that a union label is allowed on an initiative petition after the Board deadlocked 2–2 on approving the form of such a petition); *League of Women Voters of Mich v Secretary of State*, 508 Mich 520; 975 NW2d 840 (2022) (striking down portions of a law making signature collection more difficult); *Citizens Protecting Mich's Const v Secretary of State*, 503 Mich 42; 921 NW2d 247 (2018); *Stand Up for Democracy v Secretary of State*, 492 Mich 588; 822 NW2d 159 (2012) (ordering the Board to place a referendum on the ballot after the Board deadlocked on so doing; *Ferency*, *supra*; *Mich Farm Bureau v Secretary of State*, 379 Mich 387; 151 NW2d 797 (1967) (*per curiam*) (allowing a referendum petition to be filed).

*Amici Curiae* urge the Court to grant Plaintiffs' request for mandamus relief and order the recalcitrant Board to place Plaintiff RFFA's proposal on the ballot.

## I. THE BOARD EXCEEDED ITS AUTHORITY WHEN IT CONSIDERED THE CHALLENGE AS TO SPACING BETWEEN THE WORDS OF THE PROPOSAL.

The Board of State Canvassers was created by command of the State Constitution. However, other than its composition, the Constitution left its limited duties entirely up to the Legislature:

> A board of state canvassers of four members shall be established by law. No candidate for an office to be canvassed nor any inspector of elections shall be eligible to serve as a member of a board of canvassers. A majority of any board of canvassers shall not be composed of members of the same political party.

Const 1963, art 2, § 7. *See, e g, Mich Civil Rights Initiative v Bd of State Canvassers*, 268 Mich App 506, 515–20; 708 NW2d 139 (2005) (Board has limited authority, vested only "by the Legislature, in statutes, or by the Constitution"); *Citizens for Protection of Marriage v Bd of State Canvassers*, 263 Mich App 487, 493; 688 NW2d 538 (2004) ("We further conclude that the Board erred in considering the merits of the proposal. Not only did the Board have no authority to consider the lawfulness of the proposal, but it is also well established that a substantive challenge to the subject matter of a petition is not ripe for review until after the law is enacted."); *Deleeuw v State Bd of Canvassers*, 263 Mich App 497, 501; 688 NW2d 847 (2004) (Board improperly exceeded its statutory authority).

At this stage of the constitutional amendment petition process, the Board's duties are limited by statute to determining the sufficiency of a petition's form and whether there are sufficient signatures to warrant certification. *Citizens for Protection of Marriage*, 263 Mich App at 492 (*citing Ferency v Secretary of State*, 409 Mich 569; 297 NW2d 544 (1980); *Council About Parochiaid v Secretary of State*, 403 Mich 396; 279 NW2d 1 (1978); and *Leininger v Secretary of State*, 316 Mich 644; 26 NW2d 348 (1947)).

It has long been held that these limited duties are entirely ministerial and that the Board has no authority or jurisdiction to decide questions about the substance of a proposal. *Leininger*, 316 Mich at 655–56; *see also Citizens Protecting Mich's Const v Secretary of State*, 324 Mich App 561, 585; 922 NW2d 404, *aff'd*, 503 Mich 42; 921 NW2d 247 (2018) ("[B]ecause the determinations of whether a proposal is a general revision or an amendment to the Constitution

and whether a proposal serves more than a single purpose require judgment, they are not ministerial tasks to be performed by the Secretary or the Board."); *Citizens for Protection of Marriage*, 263 Mich App 487.[5]

Nowhere is the Board expressly statutorily authorized to examine the content of the proposed constitutional amendment, be that its words, spacing, or anything else. Those matters are beyond its explicit statutory authority and duties. Thus, the Board had no authority or jurisdiction to even entertain a challenge to the proposal's spacing between words, let alone decide it.

## II. THE CLAIM OF A "DEFECT" IN THE PROPOSED CONSTITUTIONAL AMENDMENT IS MERITLESS.

Even if the Board had jurisdiction over the alleged "defect"—and it did not—that claim is wrong for several reasons, and provides no reason to keep RFFA off the ballot.

### A. There Are No Express Kerning, Word Spacing, Sentence Spacing, Clarity, or Readability Requirements For Michigan Constitutional Amendments.

The election law has detailed requirements for the *form* of a petition proposing a constitutional amendment—paper size, type size, capitalization, spelling, bolding, text, and contents. *See* MCL 168.482. However, beyond the requirement that the text of the proposed constitutional amendment be in 8-point type, *see* MCL 168.482(3), there is no other express statutory requirement for the text of the amendment, including kerning, spacing between words, sentence spacing, clarity, or readability.

The Legislature certainly knows how to impose kerning, spacing, readability, and/or clarity requirements because it has done so in many laws. *See, e g,* MCL 286.251 (notices "shall be printed in clear readable type"); 257.244(8) (license plate readability); 289.6143 ("words . . . shall be readable"); 289.6152 ("readable notice"); 324.6519 ("readable signs"); 333.20194(2) ("easily readable type"); 429.353 (consumer labels shall be "readable"); 500.2112 (notice must be of "sufficient clarity"); 500.2213d(3) (prescription in formation must be "readable");

[5] The challengers' reliance on an unpublished order of the Court of Appeals in *Mich Campaign for New Drug Policies v Bd of State Canvassers*, unpublished opinion of the Court of Appeals, issued September 6, 2002 (Docket No. 243506), is misplaced. Not only is that unpublished order not binding, *see* MCR 7.215(C), but it was based on the failure of a constitutional amendment petition to publish a constitutional provision it replaced. It is irrelevant to the issues here.

559.137(3) ("reasonable clarity" required in a deed); 560.132(c) (plats must be "plainly readable"); 691.1666(2) (contract warning must be in "clearly readable print").

In the election law arena, the Legislature has imposed clarity requirements on city charters, *see* MCL 117.23, and recall petitions, *see* MCL 168.951a, .952, .952b, and .961. But it has imposed no such requirement on initiative petitions at all, including the text of proposed constitutional amendments.

The statutory construction principle of *expressio unius est exclusion alterius* ("the expression of one thing implies the exclusion of others") applies to Michigan statutes. *See, e g, Bronner v City of Detroit*, 507 Mich 158, 173 & n 11; 968 NW2d 310 (2021). Under that principle, the absence of a kerning, spacing, clarity, or readability requirement for the text of a proposed constitutional amendment from the lengthy list of statutory requirements for a petition demonstrates that there are no such requirements. *See, e g, Bronner*, 507 Mich at 158; *Raise the Wage MI*, ___ Mich at ___ (VIVIANO, J, concurring and dissenting in part) (applying *expressio unius* in analyzing initiative law); *Protecting Mich Taxpayers v Bd of State Canvassers*, 324 Mich App 240, 249 & n 4; 919 NW2d 677 (2018) (applying *expressio unius* to Michigan petition law); *Taylor v Currie*, 277 Mich App 85, 95–96; 743 NW2d 571 (2007), *lv den*, 483 Mich 907; 762 NW2d 169 (2009) (applying *expressio unius* to Michigan election law).

Thus, there is no express basis in Michigan election law to challenge the spacing between the words, clarity, or readability of the text of a proposed constitutional amendment in a petition.

### B. The Board And Michigan Court of Appeals Have Rejected Challenges To Direct Democracy Petitions Based on Claimed "Gibberish" And "Nonsensical Or Indecipherable Characters."

Not only did the Board have no jurisdiction or statutory authority to reject the RFFA petition on the bases of kerning, spacing, clarity, or readability, but its action was inconsistent with its own prior treatment of such issues, a treatment affirmed by the Court of Appeals.

In 2020, a recall petition was filed against Governor Whitmer. Among its duties the Board is charged with determining the clarity and factuality of a recall petition. MCL 168.951a. That petition was challenged under those standards by Whitmer because it allegedly contained "nonsensical or indecipherable characters," subsequently described by the Court of Appeals as

"gibberish." The Board unanimously rejected that challenge, a decision upheld by the Court of Appeals. As described by that Court:

> The salient feature of this appeal is that the Governor asserts that some nonsensical or indecipherable characters appear within the petition language: "The Petition, as submitted, only states that Governor Whitmer 'issued Executive Order 2020.' What follows is a series of indiscernible ellipses/dots followed by a quote[.]" The Governor follows this assertion with a graphic representing a detail of her reproduction of the petition, featuring what appears to be a random array of gray dots separating "Gretchen Whitmer issued Executive Order 2020-" and "'A nursing home.'" . . .
>
> *It appears that the gibberish of which the Governor complains is but an occasional irregularity bound up with the processing of electronic documents.* . . .
>
> We conclude that although the Governor relied on the appearance of a string of nonsensical characters to support her challenge to the clarity of the petition language, the Governor's hasty conclusion about *this word-processing irregularity does not compel reading the petition as featuring some gibberish in place of several normal characters* that appear the rest of the time.

*Whitmer v Bd of Canvassers*, ___ Mich App ___; 2021 Mich App LEXIS 3365, *21–22; 2021 WL 2171162 (2021) (emphasis added), *lv den*, 508 Mich 980; 966 NW2d 21 (2021).

The same is true here. If there is a cognizable "defect" in the petitions creating alleged "gibberish"—and there is not—it is only an "occasional irregularity bound up with processing of electronic documents." That is not remotely enough to deny the fundamental state constitutional right of 750,000 Michigan voters who signed the RFFA petition to have their proposal placed on the ballot for an up or down vote by Michigan's voters. *See, e g, Ferency*, 409 Mich at 602 (direct democracy provisions "'ought to be liberally construed' and their exercise should be facilitated rather than restricted"); *League of Women Voters*, 508 Mich at 549–50 (initiative process may not be "unduly burdened").

### C. The Michigan Constitution Contains An Amendment With Omitted Text, An Error Which Was Corrected Instead Of Leading To The Amendment Being Stricken.

Just as the federal constitution contains typographical errors, *see* US Const, art I, § 10 ("its" misspelled as "it's"), which are not deemed fatal to its provisions, so, too, does the Michigan

Constitution contain an amendment *part of whose text was completely omitted*. The answer to that omission was not the draconian remedy the challengers' approach would embrace—striking the amendment from the constitution—but simply correcting it.

In 1978, the Legislature proposed an amendment to Article 1, § 15 of the State Constitution. The language certified by the Board omitted an entire sentence of the constitutional amendment, a sentence related to its effective date. That sentence was also omitted from all state publicity about the proposal and from printed versions of the proposal posted in every polling place.

The proposal was adopted by the voters. By the challengers' draconian logic, the omission of an entire sentence should have invalidated the entire proposal, but it did not. Instead, common sense prevailed and the Attorney General issued an opinion establishing an effective date. *See* OAG No 5533 (1979).

So, too, here. If an entire sentence can be omitted from a constitutional amendment, yet its adoption be unquestioned, the claimed omission of spaces between words in a proposed constitutional amendment should not invalidate the amendment either. As in 1978, common sense should prevail here, the spacing changed if necessary, and the proposed amendment placed on the ballot.

### D. This Court Has Allowed A "Sufficiently Accurate" Petition To Be Placed On The Ballot.

In 1978, a state constitutional amendment was proposed by petition to prohibit the use of property taxes for school operating expenses and to establish a voucher system for the financing of student education. In *Council Against Parochiaid*, the petitions were attacked on several bases, including the inaccuracy of a sentence in the state constitution as set forth in the petition. *See* 403 Mich at 396. This Court held that:

> Considering the nature of the omission and the full text of the petition, we conclude that the petition was sufficiently accurate to comply with statutory requirements.

*Id* at 397. The Court allowed the proposal to be placed on the ballot.

The same principle applies here. The minor nature of the alleged defect—a dispute over whether the spacing between words is sufficient—when considered in the full context of the entire

petition, including the summary of the proposal, renders this petition sufficiently accurate to comply with statutory requirements.

**E. This Court And The Legislature Allow the Type Of Non-Material "Defect" Alleged Here To Be Corrected.**

In *LeRoux v Secretary of State*, 465 Mich 594; 640 NW2d 849 (2002), this Court was asked to strike down a statute because the Legislature had omitted language from the bill it enacted, language subsequently added by the Secretary of the Senate before the Governor signed the bill. The omitted language was a reference to census tracts in a redistricting bill. This Court held that the addition of the omitted language was a non-material change to the bill which conformed to legislative intent was therefore constitutional. *Id* at 859–60. This Court characterized these non-material changes as simply correcting clerical errors, corrections allowed by the State Constitution. *Id*; *see also, e g, Common Council of City of Jackson v Harrington*, 160 Mich 550, 554; 125 NW 383 (1910) (clerical and typographical errors in a statute can be corrected by interpretation); *Bd of Control of Mich State Prison at Jackson v Auditor Gen*, 149 Mich 386, 388; 112 NW 1017 (1907) (clerical mistake in bill does not invalidate it).

The principle of *LeRoux* should be applied here. If the addition of substantive language to a bill post-enactment was the non-material correction of a clerical error with no constitutional import, then the mere adjustment of spacing between words in a proposed constitutional amendment does not violate the State Constitution either. If anything, the claimed lack of spacing is an easily correctable non-material clerical "error."

Similar to *LeRoux*, the Joint Rules of the Legislature allow the Secretary of the Senate and Clerk of the House to "correct obvious technical errors" in enacted legislation:

> In addition, the Secretary of the Senate and Clerk of the House of Representatives, as the case may be, shall correct obvious technical errors in the enrolled bill or resolution, including adjusting totals, misspellings, the omission or redundancy of grammatical articles, cross-references, punctuation, updating bill or resolution titles, capitalization, citation formats, and plural or singular word forms.

Joint Rule 12 of the House of Representatives and Senate. Under this authority, those administrative officials would simply and routinely adjust the spacing in a piece of legislation or *legislatively-originated constitutional amendment* if that were necessary.

Finally, the Legislature has also provided a post-election method to adjust the spacing in an adopted constitutional amendment. The Legislative Service Bureau, the official compiler of all state laws, can add any necessary spacing between words as part of its duties. *See* MCL 4.1110, 8.8(2), (4).

Thus, despite the apocalyptic rhetoric of the challengers that "errors" will be inserted into the State Constitution if the proposal passes, no such thing will occur because all of these commonsense remedies are available.

## CONCLUSION AND RELIEF SOUGHT

For the reasons stated, *Amici Curiae* ask the Court to grant Plaintiffs' request for mandamus relief and order the Board to place Plaintiff RFFA's constitutional amendment on the ballot.

Respectfully submitted,

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Dated: September 6, 2022

**Certificate of Compliance**

I certify that this brief complies with the word volume limitation set forth in MCR 7.212(B)(1) and with the format requirements of MCR 7.212(B)(5). I am relying on the word count of the word-processing system used to produce this document. The word count is 4,820.

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