



STATE OF MICHIGAN
BUREAU OF ELECTIONS
LANSING

August 26, 2022

**AMENDED STAFF REPORT¹:
REPRODUCTIVE FREEDOM FOR ALL**

SPONSOR: Reproductive Freedom for All (RFFA)

DATE OF FILING: July 11, 2022

NUMBER OF VALID SIGNATURES REQUIRED: 425,059 signatures²

TOTAL FILING: 752,288 signatures³ on 152,799 sheets

	Signatures	Sheets
Total number of signatures filed	752,288	152,799
Signatures identified as invalid	16,849	4,805
<i>Less:</i>		
Torn, mutilated, or damaged petition sheet	761	138
Missing information in the circulator certificate (e.g. circulator did not date the petition sheet)	4,188	763
Failure of out-of-state circulator to check box accepting Michigan jurisdiction	877	179
Failure to identify whether the circulator was paid or unpaid	2,686	577
Signature errors (all signatures crossed out, no signature, out of state signer)	49	55
Invalid county names (e.g. city entered instead of county, no county name and sheet circulated in multiple counties)	2,540	1,160
Jurisdiction errors (no city in county by name given by signer, jurisdiction name given by signer does not align with address, no street address or rural route given)	961	833

¹ The staff report has been amended to clarify court precedent as described in note 6 and correct a typo in note 7.

² [Mich. Const. Art. XII § 2](#) (Petitions proposing constitutional amendments must be “signed by registered electors of the state equal in number to at least 10 percent of the total vote cast for all candidates for governor at the last preceding general election at which a governor was elected.”)

³ The total number of signatures filed represents a cushion of 77.0% over the minimum number required. Once wholly invalid sheets were excluded from the universe, the sponsor needed to attain a signature validity rate of at least 61.2% for staff to recommend immediate certification of the petition (i.e., 314/513), or an 54.6% validity rate to land in the “sample more signatures” range (i.e., 280/513). The validity rate found in this sample is 81.1% (416/513).

Date errors (no date given by signer, date of birth entered, or date given by signer is later than circulator’s date of signing)	2,945	813
Submitted to the wrong drive (sheets submitted were for another initiative drive)	1,842	287
Total “universe” of potentially valid signatures remaining after face review	735,439	147,994

SAMPLING PROCEDURE:

On February 7, 1980, the Board of State Canvassers (Board) adopted a sampling procedure for canvassing petitions seeking an initiative, referendum, or state constitutional amendment. That procedure consists of a “face review” of petition sheets, followed by a random sample of a representative portion of the universe of signatures. Signatures in the samples are examined to confirm that the signatory is a person registered to vote in Michigan, that the signature on the petition sheet matches the signature contained in the Qualified Voter File (QVF), and that the entry does not contain another fatal defect (for instance, a jurisdiction, date, or address error). The number of signatures confirmed to be valid out of the sampled signatures determines whether staff recommends or rejects the subject of the petition for certification. In rare instances, the number of valid signatures falls into a span between the acceptance and rejection thresholds, triggering a second, larger signature sample to increase the precision of the sample and the accuracy of the results.

Two petitions seeking to amend the state constitution were filed on July 11, 2022. In order to meet the constitutional and statutory deadline for the Board to determine the sufficiency of both 2022 petitions, staff processed the petitions simultaneously. BOE staff and temporary assistants under BOE supervision expended approximately 4,000 person-hours reviewing both petitions. A detailed description of the procedure adopted by the Board and the specific process employed by staff can be found in the resources that have been posted on the Board’s [website](#).

Based on RFFA’s universe of 735,439 face valid signatures, the statistical methodology required the following numbers of valid signatures out of the 513⁴ sampled in order to trigger the following results.

<u>Number of valid signatures</u>	<u>Formula result</u>
314 or more	Certify
280-313	Sample more signatures
279 or fewer	Deny certification

⁴ When initially released, staff erroneously included one sheet in the sample where the sampled signature was crossed out. Staff later removed this line from the sample as the line contained no information and should not have been included in the sample. Accordingly, the sample was reduced by one.

SIGNATURE SAMPLE:

Total number of sampled signatures	513
Total number of signatures determined to be invalid <i>Less:</i>	97
Signer not registered to vote	60
No address given	3
No city or township in county known by name given by signer	5
Street address given is outside city or township listed	4
More than one jurisdiction listed	1
No signature given	3
Incomplete signature	2
Signer dated after circulator date	3
Signer dated before first date authorized	2
Miscellaneous (signature did not match qualified voter file)	14
Total number of possibly valid signatures in sample before challenge was processed	416

SPONSOR SUBMISSION:

On August 22, 2022, RFFA submitted supplemental materials to staff. RFFA attempted to match every sampled voter to a voter within the qualified voter file. While most of the submission overlapped with staff’s original calls, staff reversed its initial call on five of the sampled signatures based upon the supplemental materials submitted by RFFA.

CHALLENGE:

On August 18, 2022, Citizens to Support MI Women and Children (Citizens) submitted a challenge to the form of the petition. The challenge did not call individual signatures into question but instead challenged the entirety of the drive. Citizens argued that the Board should reject the petition because minimal spacing throughout the text of the constitutional amendment language within the substance of the petition resulted in series of words being condensed into long, nonsensical letter combinations. Citizens argued that a petition cannot insert nonexistent words into the Constitution.

REPRODUCTIVE FREEDOM FOR ALL’S RESPONSE TO CHALLENGE:

RFFA responded, arguing that the challenge did not question the validity of any individual signatures or any of the mandatory elements that must compose the petition’s form, but rather relied on a challenge to the substance of the petition, a determination that is beyond the purview of the Board.

In response to Citizens’ allegations that the minimal spacing renders the petition unreadable and the words “gibberish,” RFFA provides an affidavit from the printer of the petition, stating that

spaces are included in the full text of the proposed constitutional amendment. Moreover, RFFA states that people can read and understand the proposed amendment notwithstanding any issues with word spacing, and those who signed the petition understood it.

STAFF EVALUATION OF CHALLENGE:

On March 7, 2022, RFFA submitted a petition form for a constitutional amendment for consideration at the Board’s March 23, 2022 meeting. At that meeting, the Board provided conditional approval of the form, provided that an extraneous “the” be removed from language appearing on the face of the petition. Specifically, the Board conditionally approved the form “provided sponsors remove the definite article ‘the’ prior to the word ‘constitution’ in the ‘we, the undersigned’ sentence prior to circulation with the understanding that the Board’s approval does not extend to, one, the substance of the proposal which appears on the petition or, two, the manner in which the proposal language is affixed to the petition.”⁵

The proposed Article 1, section 28(3) within the substance of the petition from the March 7th submission is included below:

(3) THE STATE SHALL NOT PENALIZE, PROSECUTE, OR OTHERWISE TAKE ADVERSE ACTION AGAINST AN INDIVIDUAL BASED ON THEIR ACTUAL, POTENTIAL, PERCEIVED, OR ALLEGED PREGNANCY OUTCOMES, INCLUDING BUT NOT LIMITED TO MISCARRIAGE, STILLBIRTH, OR ABORTION. NOR SHALL THE STATE PENALIZE, PROSECUTE, OR OTHERWISE TAKE ADVERSE ACTION AGAINST SOMEONE FOR AIDING OR ASSISTING A PREGNANT INDIVIDUAL IN EXERCISING THEIR RIGHT TO REPRODUCTIVE FREEDOM WITH THEIR VOLUNTARY CONSENT.

On March 30, 2022, RFFA re-submitted the petition to the Bureau of Elections, this time for circulation. 168.483a. While the petition included the changes to the face of the petition specified in the conditional approval, it also revised the spacing between words in the substance of the petition; the version of the petition with this spacing was not presented to the Board.

The same paragraph, from the March 30th submission, is included below:

(3) THE STATE SHALL NOT PENALIZE, PROSECUTE, OR OTHERWISE TAKE ADVERSE ACTION AGAINST AN INDIVIDUAL BASED ON THEIR ACTUAL, POTENTIAL, PERCEIVED, OR ALLEGED PREGNANCY OUTCOMES, INCLUDING BUT NOT LIMITED TO MISCARRIAGE, STILLBIRTH, OR ABORTION. NOR SHALL THE STATE PENALIZE, PROSECUTE, OR OTHERWISE TAKE ADVERSE ACTION AGAINST SOMEONE FOR AIDING OR ASSISTING A PREGNANT INDIVIDUAL IN EXERCISING THEIR RIGHT TO REPRODUCTIVE FREEDOM WITH THEIR VOLUNTARY CONSENT.

The Michigan Constitution of 1963 requires that the “petition shall include the full text of the proposed amendment” and that it be “in the form, and shall be signed and circulated in such manner, as prescribed by law.” Const 1963, art 6, § 2.

The RFFA petition includes the same letters, arranged in the same order, as the petition conditionally approved at the March 23rd Board meeting, accounting for the removal of the word “the” which was the subject of the conditional approval. Certain portions of the petition have smaller spaces between words; the spacing between words in some instances appears similar to the spacing between letters within words. The Michigan Election Law is silent on the amount of space that must be between letters and words in a petition. Section 482 sets strict requirements for the size of the petition sheet and the various font sizes for the headings, the 100-word summary, and the full text of the amendment. MCL 168.482. It does not provide requirements as

⁵ Transcript, 3/23/22 Board of State Canvassers meeting at pg. 52.

to spacing or “kerning”—the term for adjusting the space between characters in proportional font.

Staff makes no recommendation as to the merits of these legal arguments as they pertain to the substance of the petition. Courts in Michigan have found that the board’s duty is limited to determining whether the form of the petition complies with the statutory requirements and whether there are sufficient signatures to warrant certification of the proposal. *Citizens for Prot of Marriage v Bd of State Canvassers*, 263 Mich App 487, 492 (2004), citing *Ferency v Secretary of State*, 409 Mich 569 (1980); *Council About Parochiaid v Secretary of State*, 403 Mich 396 (1978); *Leininger v Secretary of State*, 316 Mich 644 (1947). The duties of the Board of State Canvassers are “purely ministerial and clerical.” *McLeod v State Bd of Canvassers*, 304 Mich 120 (1942).⁶

FINAL RESULT OF SIGNATURE SAMPLE:

<u>Number of valid signatures</u>	<u>Formula result</u>	<u>Sample result</u>
314 or more	Certify	416
280-313	Sample more signatures	
279 or fewer	Deny certification	

ESTIMATED NUMBER OF VALID SIGNATURES FOR PETITION:

Based on the results of the random sample, it is estimated that the petition contains 596,379 valid signatures (at a confidence level of 100%),⁷ 146,228 signatures more than the minimum threshold for certification and 196,404 more than the point at which the petition would be denied certification.

STAFF RECOMMENDATION: Staff recommends that the Board approve certification of this petition.

Note that while the information provided in this staff report is current as of this writing, additional information may be submitted by the petition sponsor or challenger after the date of publication.

This staff report is being published on August 26, 2022, at least two business days prior to the August 31, 2022 meeting at which the Board of State Canvassers will consider the sufficiency of the Reproductive Freedom for All petition in accordance with MCL 168.476(3) (“At least 2 business days before the board of state canvassers meets to make a final determination on challenges to and sufficiency of a petition, the bureau of elections shall make public its staff report concerning disposition of challenges filed against the petition.”).

⁶ When these cases were decided, under established precedent the Board’s authority was to “determine whether the form of the petition substantially complies with the statutory requirement.” Since 2012, strict compliance is the standard. *Stand Up For Democracy v Sec’y of State*, 492 Mich 588 (2012). At issue here is not whether the form of the petition must strictly or substantially comply with the Election Law (it must strictly comply) but whether the Board may consider challenges to the *substance* of the petition. *Ferency*’s holding that the Board’s authority does not include challenges to the substance of the petition’s language was not overruled by *Stand Up For Democracy*.

⁷ The formula result confidence level is 1.0000, meaning there is a 100% chance that the petition contains sufficient signatures. In other words, there is a 100% statistical probability that certification is the correct result.