EXHIBIT 3

Exhibit 3

Authorities Concerning Constitutionality of MCL 168.482(3)

Carman implicitly rejected a constitutional challenge to section 482(3)

In *Carman v Hare*, 384 Mich 443; 185 NW2d 1 (1971), the Supreme Court considered a post-election challenge to the validity of Proposal C of 1970 (the Parochiaid Amendment). Before the election, Proposal C had been challenged on the basis that the petition circulated in its support failed to republish an altered section of the existing constitution. The Court of Appeals, in *Carman v Hare*, 26 Mich App 403; 182 NW2d 563 (1970), held that there was no failure to republish and allowed the proposal to go on the ballot; the Supreme Court denied leave to appeal and Proposal C was ultimately submitted to and adopted by the voters. See 384 Mich 751.

In a post-election challenge made on the same grounds, the Supreme Court—on further review—stated that "the … omission doubtless *would have* arrested the initiation and enjoined submission of the mentioned proposal" had the Court taken the case during the pre-election period. 384 Mich at 449 (emphasis added). It made this determination even though the plaintiffs in Carman asserted in their complaint that MCL 168.482's republication requirement was unconstitutional. See 26 Mich App at 408. The Supreme Court's post-election determination concerning the Proposal C petition—i.e. that its failure to republish altered sections should have kept Proposal C off the ballot—thus implicitly rejected the previously raised constitutionality argument as well.

Further, like the Court in *Protect Our Jobs*, which called the petition republication requirement constitutionally "invited," the Court in *Carman* called the requirement "constitutionally beckoned," again citing Const 1963, art 12, § 2's provision that a "petition shall be in the form … as prescribed by law." 384 Mich at 448. It explained that the purpose "of the salient requirement of the statute [section 482(3)]" was "to inform the Petition-signer, should he sign, of" the effect "an initiated proposal will have on an existing constitutional provision (or provisions) should the proposal receive electoral approval." *Id*. at 454. The Court called this method of dissemination "wholesome and desirable." *Id*.

Massey was a post-election challenge, which applies different standards

VNP cites *Carman* as well as *Massey v Sec'y of State*, 457 Mich 410, 414-415; 579 NW2d 862 (1998), to suggest that petition defects arising under section 482(3) can be cured by republication of abrogated sections on the ballot. That is, it cites those authorities to support the proposition that "[o]ther decisions of our Supreme Court have suggested that a failure to identify provisions to be altered or abrogated may be remedied by corrective action directed by judicial decree before the election." (VNP Br., p. 35.) This, however, is yet another instance of VNP failing to properly characterize authority. The "corrective action" referenced was not the Secretary of State's subsequent satisfaction of the *ballot* republication requirement (as distinguished from the *petition* republication requirement) as VNP suggests, but instead, the courts' enjoining submission of the question to the voters altogether.

Carman and *Massey* were both *post-election* challenges—something VNP fails to bring to the Court's attention in its Brief. To suggest that either decision supported relaxing the mandatory requirement of section 482(3) in a *pre-election* challenge is a plain misreading of those decisions. The burdens of persuasion concerning invalidation of a ballot initiative shift dramatically post-

election—a defect that would prevent a question from reaching the ballot pre-election is viewed "through different eyeglasses once the electors have voted affirmatively." *Carman*, 384 Mich at 455; see also *Massey*, 457 Mich at 415. As the Supreme Court explained in 2012 in *Stand Up*: "while this Court has recognized application of the substantial compliance doctrine to mandatory petition requirements post-election, it has not recently sanctioned application of substantial compliance to nonconforming petitions before an election." 492 Mich at 606-607.

VNP's arguments failed to apprise the Court of this important contextual history. VNP thus failed to accurately explain the holdings in *Carman* and *Massey* concerning the appropriate "corrective action" to remedy a defective petition. In a pre-election challenge like that at issue here, a petition's failure to republish abrogated sections has but one remedy: rejection of the petition. That is the appropriate remedy here, and the Court should thus order the Secretary and Board to reject the VNP Proposal.

Ferency* was receded from by *Consumers Power

In its limited discussion of the constitutional right of initiative—and background discussion of principles concerning the Legislature's role in regulating initiative rights—*Ferency* relied on the Supreme Court's 1923 decision in *Hamilton v Sec'y of State*, 211 Mich 541; 191 NW 829 (1923), in which the Court found the initiative rights under the 1908 Constitution to be self-executing and to invite little or no legislative embellishment. Six years after *Ferency*—in 1986—the Michigan Supreme Court powerfully receded from *Ferency's* reliance on *Hamilton* when it upheld the constitutionality of MCL 168.472a's 180-day signature requirement in *Consumers Power Co v Att'y Gen*, 426 Mich 1; 392 NW2d 513 (1986).

VNP does not cite or discuss *Consumers Power Co*., but the Court there expressly rejected the non-binding framing of initiative rights being self-executing that was made by the Court in *Ferency*. It explained that *Hamilton* was decided under the 1908 Constitution, and further that: "[t]he Constitution of 1963, unlike that of 1908, does summon legislative aid in the area of the form of these petitions as well as in the areas of circulation and signing." 426 Mich at 9 (emphasis added). Thus, a 180-day signature freshness requirement (as was at issue in *Consumers Power*), though not included in the Constitution and though burdening the right of the people to propose initiatives, was found to be constitutional. So too must it be with the regulation of form now at issue here—i.e., the republication of abrogated sections under MCL 168.482(3).