

**STATE OF MICHIGAN  
MICHIGAN COURT OF APPEALS**

CITIZENS PROTECTING MICHIGAN'S  
CONSTITUTION, JOSEPH SPYKE, and  
JEANNE DAUNT,

Case No. \_\_\_\_\_

Plaintiffs,

v.

SECRETARY OF STATE, and  
MICHIGAN BOARD OF  
STATE CANVASSERS,

Defendant.

\_\_\_\_\_ /

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**COMPLAINT FOR MANDAMUS  
(Original Action)**

**Oral Argument Requested**

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## INTRODUCTION

1. This is an original action for a writ of mandamus directing Defendant Secretary of State (“Secretary”) and Board of State Canvassers (“Board”) to reject an initiative petition (“Petition”). The Petition seeks to place before Michigan voters at the 2018 General Election a proposal to amend the Michigan Constitution of 1963 (“Constitution”).

2. The Petition is supported by and was circulated by a ballot question committee known as Voters Not Politicians (“VNP”); the contents of the Petition are hereinafter referred to as the “VNP Proposal.”

3. Plaintiffs are individual voters and a ballot question committee called Citizens Protecting Michigan’s Constitution (“CPMC”); each opposes and would be aggrieved by approval of the VNP Proposal.

4. The VNP Proposal, if approved by voters, would delete, add, or amend language in eleven sections across three articles of the Constitution, effecting sweeping changes to all three branches of state government as well as the electoral process itself.

5. The VNP Proposal has multiple purposes, but includes among these the creation, in the legislative branch but outside of the legislature’s control, of a redistricting commission to be comprised of persons without recent political experience.

6. The VNP Proposal would eliminate the current framework whereby the lines of electoral districts for the Michigan House, Michigan Senate, and United States Congressional delegation are drawn by the Legislature. Instead, it would transfer authority over the drawing of district lines exclusively to the new commission.

7. The VNP Proposal would also, among other things, compel the commission to depart from the long-standing requirement that voting districts avoid breaking county and

municipal lines to the extent practicable—an anti-gerrymandering requirement present in every version of the Constitution since 1835—and instead would establish new criteria for the drawing of districts including protecting “communities of interest” and enhancing “political fairness,” without defining such terms.

8. The VNP Proposal impacts in varying degrees each of the three branches of government, upsets the framework by which the People’s representatives are chosen, and establishes new powers and limitations for redistricting commission members that are unlike those governing other state officials.

9. The VNP Proposal alters or abrogates a multitude of existing Constitutional provisions, but the Petition failed to apprise voters of several abrogated provisions as required by state law.

10. Plaintiffs seek a writ of mandamus requiring the Secretary and Board to reject the Petition and directing them to take no further action to place the VNP Proposal on the 2018 General Election ballot for two reasons:

- a. The VNP Proposal is too broad in scope and works revisions of such significance to the fundamental operation of state government that it cannot be accomplished through an initiated amendment; instead, it constitutes a general revision which can only be accomplished by the calling of a constitutional convention; and
- b. The Petition, as circulated, fails as required by law to republish—and thus to advise persons signing the Petition—of each of the sections of the existing Constitution that would be abrogated if the VNP Proposal is approved.

#### **PARTIES**

11. Plaintiff CPMC is a ballot question committee organized for the purpose, among

others, of opposing the VNP Proposal.

12. Plaintiff Joseph Spyke is an Ingham County resident and voter who will be aggrieved if the VNP Proposal is adopted because the VNP Proposal would abridge his rights of initiative and referendum with respect to redistricting plans adopted for the State of Michigan. He will further be aggrieved because he has recently been a paid employee of a political candidate, and is thus ineligible to serve on the redistricting commission.

13. Plaintiff Jeanne Daunt is a Genesee County resident and voter who will be aggrieved if the VNP Proposal is adopted because the VNP Proposal, if approved, would preclude her from serving on the redistricting commission merely because she is the parent of a person otherwise disqualified from serving on the commission.

14. Defendant Secretary is Michigan's chief election officer. MCL 168.21. She has overall responsibility for the preparation of the ballot and the submission of ballot questions. She is also the official with whom a petition calling for a constitutional amendment must be filed, and she is charged with certifying the placement of the proposed constitutional amendment on the ballot. Const 1963, art 12, § 2; MCL 168.471; and MCL 168.480.

15. Defendant Board is a state board established pursuant to Const 1963, art 2, § 7. The Board is responsible for, among other things, determining the sufficiency of signatures submitted in support of a petition to amend the Constitution. MCL 168.476(1).

### **JURISDICTION**

16. This Court has jurisdiction pursuant to MCL 600.4401 (mandamus against state officials), MCR 7.203(C)(2) (mandamus against a state officer), and MCR 7.206(B) (original actions for mandamus).

## ADMINISTRATIVE HISTORY

17. A copy of the Petition is attached as Exhibit 1.
18. On December 18, 2017, the Secretary accepted the Petition for filing.
19. The Secretary sent an official notification of the filing of the Petition to the Board pursuant to MCL 168.475, thereby invoking the procedures whereby the sufficiency of the Petition will be determined. Const 1963, art 12, § 2; MCL 168.476.
20. On April 12, 2018, the Board announced the release of a sample of signatures collected in support of the Petition, and announced an April 26, 2018 deadline for challenging the sampled signatures.
21. Plaintiffs do not believe the Board to be empowered to review substantive issues concerning the sufficiency of language included in a petition;<sup>1</sup> nonetheless, out of an abundance of caution in the event this Court disagrees, a *pro forma* protest setting forth the arguments made in Count II of this Complaint will be made to the Board before the expiration of the challenge period on April 26, 2018.
22. Before filing this action, on April 18, 2018, Plaintiff CPMC contacted the Secretary and advised her that the VNP Proposal could not lawfully be presented to the voters because it is

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<sup>1</sup> In its August 17, 2017 meeting to informally review the VNP Proposal petition, the Board expressly disclaimed that it was approving the petition or that it found that the petition satisfied substantive requirements (including the republication of abrogated provisions of the existing constitution as required by state law). See Minutes of the August 17, 2017 Meeting of the Board, pp. 2-3 (“[T]he Board’s approval does not extend to: (1) The substance of the proposal which appears on the petition; or (2) The substance of the summary of the proposal which appears on the signature side of the petition; or (3) The manner in which the proposal language is affixed to the petition; or (4) Whether the petition properly characterizes those provisions of the Constitution that are altered or abrogated if the proposal is adopted.”)

Available at [http://www.michigan.gov/documents/sos/min081717\\_601285\\_7.pdf](http://www.michigan.gov/documents/sos/min081717_601285_7.pdf) (last visited 4/18/18).

ineligible for inclusion on the ballot. Plaintiff requested that the Secretary not place the VNP Proposal on the ballot. (See Exhibit 2.)

23. The Secretary did not respond prior to the filing of this Complaint.

### **COUNT I – MANDAMUS**

#### **INELIGIBILITY OF GENERAL REVISION FOR INITIATIVE PROCESS**

24. Plaintiffs re-allege and incorporate the above paragraphs as if fully set forth in this Count.

25. The Constitution permits an “amendment” to be proposed by petition and approved by vote of the electors; it provides that a “revision” of the Constitution, however, must occur through a constitutional convention, with subsequent voter approval of changes proposed by such a convention. Const 1963, art 12, §§ 2, 3.

26. Unlike an “amendment,” a “revision” cannot be proposed by a mere petition. *Citizens Protecting Michigan’s Constitution v Sec’y*, 280 Mich App 273, 277; 761 NW2d 210 (2008).

27. An “amendment” is a “correction of detail” and is narrow in scope; conversely, a revision is a “fundamental change.” *Id.* at 276.

28. Michigan employs a two-prong test to determine whether a proposed change is an amendment or a revision: the test includes a quantitative component and a qualitative component. *Id.* at 298.

29. The VNP Proposal is a revision because it is quantitatively large, and because it makes significant qualitative changes to the core structures of state government.

30. The VNP Proposal would add approximately 3,375 words to and strike approximately 1,459 words in the Constitution; it would add 22 new subsections to article 4, § 6

of the Constitution, and delete or amend language in an additional 10 sections across three articles.

31. The VNP Proposal would, among many others, make the following fundamental changes to the structures of state government as they exist in the current Constitution:

- a. The VNP Proposal creates a 13 member “independent” redistricting commission in the legislative branch and transfers to it *all lawmaking powers over redistricting* of the Legislature and the Michigan congressional delegation. (Ex. 1, VNP Proposal, art 4, § 6(1).)
- b. Even though established in the legislative branch, the commission is vested with “exclusive” control over redistricting and is not subject to the control of the Legislature. (Ex. 1, VNP Proposal, art 4, § 6(22).)
- c. The Legislature is stripped of control over commission appropriations and budgeting measures; the proposal mandates that the commission shall receive a minimum of an amount equal to 25% of the Department of State’s annual budget—more if the commission alone determines it needs more. Further, the State is required to indemnify commission members for costs incurred even if the Legislature does not approve funds to do so, which is directly contrary to Const 1963, art 7, § 17. (Ex. 1, VNP Proposal, art 4, § 6(5).)
- d. The VNP Proposal precludes legislative oversight, and the powers of the secretary of state are vastly expanded by placing that official in charge of the redistricting commission and the selection of redistricting commission members. (And because commission members are required to have no recent political experience, they will be susceptible to the influence of the partisan-elected secretary of state). (Ex. 1, VNP Proposal, art 4, § 6(2).)

- e. Commission members are accountable to no one but themselves and cannot be removed by the governor under Const 1963, art 5, § 10, or disciplined by the Civil Service Commission. (Ex. 1, VNP Proposal, art 5, § 2.)
- f. The governor is stripped of all budgeting control over the commission; the governor has no power to order expenditure reductions under Const 1963, art 5, § 20 as he or she can for other agencies. (*Id.*)
- g. The commission is vested with exclusive control over procuring, contracting, and hiring staff, consultants, and lawyers. (Ex. 1, VNP Proposal, art 4, § 6(4).)
- h. Commission members are guaranteed a salary equal to 25% of the governor's salary, and that amount may not be changed by any other body including the Legislature or the Civil Service Commission. (Ex. 1, VNP Proposal, art 4, § 6(5).)
- i. The VNP Proposal vests original jurisdiction in the Michigan Supreme Court to review redistricting plans for compliance with state and federal constitutional requirements but strips the Supreme Court and the judiciary of the power to fashion a remedy if a plan is found defective; the only allowable action is to return the plan to the commission. (Ex. 1, VNP Proposal, art 4, § 6(19).)
- j. The VNP Proposal dispenses with the current requirement that districts be drawn along county and municipal boundaries to the extent possible, a requirement that has been in every Michigan constitution since 1835. (Ex. 1, VNP Proposal, art 4, § 6(13).)
- k. The VNP Proposal also dispenses with the current mandatory requirement that districts be compact. (*Id.*)
- l. Existing *mandatory* redistricting criteria (*i.e.*, the requirement that districts follow



county and municipal boundaries) are scrapped and replaced with a laundry list (in descending order of priority) of *non-mandatory* criteria beginning with “Districts shall reflect the state’s diverse population and communities of interest” which is no standard at all. “Reasonable” compactness is last on the list and “consideration of county, city, and township boundaries” is second to the last. (*Id.*)

- m. The VNP Proposal’s other new criteria may be impossible or nearly impossible to implement: “Districts shall not provide a disproportionate advantage to any political party” as determined by undefined “accepted measures of political fairness” of which there are none that have been recognized by the courts. Similarly, the VNP Proposal directs that districts shall not “favor or disfavor” incumbents without providing a clue as to what that actually means. (*Id.*)
  - n. The VNP Proposal eliminates the right of the people to nullify a redistricting plan by referendum or to repeal or modify a plan by citizens’ initiative.
32. The VNP Proposal sets forth a revision—not an amendment—to the Constitution, and as such, it is ineligible for submission to the voters as a ballot initiative at the 2018 General Election.
33. Any action by the Board or Secretary to include the VNP Proposal on the 2018 General Election ballot is not allowed by the Constitution.
34. The Board and Secretary have a duty not to place the VNP Proposal on the 2018 General Election ballot.
35. Plaintiffs have a clear legal right to the proper discharge by the Board and Secretary of their duty to reject the Petition.
36. Plaintiffs have no other adequate remedy.

## COUNT II – MANDAMUS

### FAILURE TO REPUBLISH ABROGATED SECTIONS

37. Plaintiffs re-allege and incorporate the above paragraphs as if fully set forth in this Count.

38. Pursuant to section 482 of the Michigan Election Law, if a proposal to amend the Constitution “would alter or abrogate an existing provision of the constitution, the petition shall so state and the provisions to be altered or abrogated shall be inserted ....” MCL 168.482(3).

39. The failure of a petition to set forth each and every abrogated provision of the Constitution renders the proposal contained in the petition ineligible for placement on the ballot. *Protect Our Jobs v Bd of State Canvassers*, 492 Mich 763, 791-792; 822 NW2d 534 (2012).

40. The VNP Proposal abrogates language in at least four existing sections of the Constitution, but fails to republish these same sections as required by law:

- a. The Proposal abrogates and fails to republish article 6, § 13 of the existing Constitution, which section confers *exclusive* original jurisdiction in all matters on the Circuit Courts except as prohibited by law. The Proposal creates original jurisdiction over redistricting matters instead in the Supreme Court.
- b. The Proposal abrogates and fails to republish article 1, § 5 of the existing Constitution, which section guarantees freedom of speech on all subjects. The Proposal instead restricts the speech of commission members, staff, attorneys and consultants on all redistricting matters.
- c. The Proposal abrogates and fails to republish article 9, § 17 of the existing Constitution, which section prohibits the payment of money out of the state treasury except in pursuance of appropriations made by law. The Proposal instead mandates

indemnification of redistricting commissioners even if the legislature does not appropriate sufficient funds.

- d. The Proposal abrogates and fails to republish article 11, § 1 of the existing Constitution, which section sets forth the exclusive oath that may be required of public officers and specifies that no other oath shall be required as a qualification for any public office or public trust. The Proposal instead mandates an oath to be given by applicants seeking to hold office as redistricting commissioners regarding the applicants' political affiliation.

41. Any action by the Board or Secretary to include the VNP Proposal on the 2018 General Election ballot is not allowed by the Constitution.

42. The Board and Secretary have a duty not to place the VNP Proposal on the 2018 General Election ballot.

43. Plaintiffs have a clear legal right to the proper discharge by the Board and Secretary of their duty to reject the Petition.

44. Plaintiffs have no other adequate remedy.

### **REQUEST FOR ORAL ARGUMENT**

Plaintiffs request oral argument.

### **RELIEF REQUESTED**

WHEREFORE, Plaintiffs respectfully request that this Honorable Court:

- A. Determine, after plenary review, that the VNP Proposal is not ballot eligible and thereafter issue a writ of mandamus to the Board and Secretary directing them to reject the Petition and further directing them not to place the VNP Proposal on the ballot;

B. Grant exceptional issuance of this Court's judgment, pursuant to MCR 7.215(F)(2);  
and

C. Grant Plaintiffs such other and further relief as is equitable and just.

Respectfully submitted,

DICKINSON WRIGHT PLLC

Dated: April 25, 2018

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