
In the Supreme Court of the United States

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AMERICANS FOR CITIZEN VOTING – MICHIGAN and FRED SMITH
Applicants,

v.

MICHIGAN BOARD OF STATE CANVASSERS, SECRETARY OF STATE JOCELYN BENSON,
and DIRECTOR OF ELECTIONS JONATHAN BRATER,
Respondents.

To The Honorable Brett M. Kavanaugh, Associate Justice of the United States
and Circuit Justice for the Sixth Circuit

**APPLICATION FOR AN EMERGENCY INJUNCTION
PENDING APPEAL BY SEPTEMBER 3, 2026**

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PARTIES TO THE PROCEEDING

The Applicants are Americans for Citizen Voting – Michigan (ACVM) and Fred Smith; they were the plaintiffs/petitioners below.

The Respondents are the Michigan Board of State Canvassers, Michigan Secretary of State Jocelyn Benson, and Michigan Director of Elections Jonathan Brater; they were the defendants/respondents below.

LIST OF ALL PROCEEDINGS

After the Michigan Board of State Canvassers refused to certify a petition for Michigan's November 3, 2026 election despite the petition garnering more than 700,000 signatures and needing only 446,198, Applicants ACVM and Fred Smith sought a writ of mandamus from the Michigan Supreme Court in Case No. 170595, *Americans for Citizen Voting – Michigan and Fred Smith v. Board of State Canvassers, et al.* But the Michigan Supreme Court constructively denied the request for a writ of mandamus by failing to act timely.

DECISIONS BELOW

At the Michigan Board of State Canvassers meeting held on August 24, 2026, the Michigan Board of State Canvassers deadlocked 2-2 on whether the ACVM initiative petition to amend the Michigan Constitution was supported by enough signatures to appear on the Michigan ballot in the November 3, 2026, General Election. Because a majority of the Michigan Board of State Canvassers did not find the ACVM initiative petition was supported by a sufficient number of signatures, the initiative petition is *not* certified to appear on the Michigan ballot in the November 3, 2026, General Election.

Applicants ACVM and Fred Smith sought a writ of mandamus from the Michigan Supreme Court in Case No. 170595, *Americans for Citizen Voting – Michigan and Fred Smith v. Board of State Canvassers, et al.* But the Michigan Supreme Court constructively denied the request for a writ of mandamus by failing to act timely.

JURISDICTION

This Court has jurisdiction pursuant to 28 U.S.C. 1257(a), and this Court may issue a writ of injunction pursuant to 28 U.S.C. 1651. Although Applicants sought relief in the Michigan Supreme Court on August 27, 2026, from the adverse decision of the Michigan Board of Canvassers, that court did not act in a timely fashion, constructively denying relief. *A. A. R. P. v. Trump*, 605 U.S. 91, 94 (2025) (a lower court’s inaction in the face of extreme urgency and a high risk of ‘serious, perhaps irreparable,’ consequences may have the effect of refusing an injunction.” (quoting 16 C. Wright, A. Miller, & E. Cooper, *Federal Practice and Procedure* § 3924.1, pp. 174, 180–181 (3d ed. 2012))).

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To The Honorable Brett M. Kavanaugh, Associate Justice, Circuit Justice for the Sixth Circuit:

The Michigan Board of Canvassers disenfranchised more than 700,000 Michigan citizens when—after a 5½ month delay—it voted on Monday, August 24, 2026, to keep a petition off Michigan’s November 3, 2026 ballot. Applicants filed for relief with the Michigan Supreme Court promptly on Thursday, August 27, 2026, as Michigan law directs. But as of this filing, that court has done nothing—not even to request a response from Respondents. That’s a problem, because under Michigan law, the ballot for this fall’s election must be settled no later than this Friday, September 4, 2026. With Respondent Michigan Board of Canvassers scheduled to meet at 10:00 am on September 4th to finalize the ballot, Applications respectfully request that this Court enter an injunction no later than Thursday, September 3, 2026, ordering Respondents to place the petition on the ballot and restore the voices of the voters.

Some 709,841 Michiganders exercised their First Amendment freedom of speech by signing Applicant Americans for Citizen Voting Michigan’s (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.

Respondent the Michigan Board of State Canvassers is tasked with canvassing petitions “to ascertain if the petitions have been signed by the requisite number of qualified and registered electors.” Mich. Comp. Laws § 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 the Board reviewed a mere 0.1% of the more than 700,000

signatures contained in the Petition. And of that 1,000-signature sample, 629 needed to be accepted as valid.

On August 17, 2026, *some 5½ months after ACVM submitted its signed petitions*—equivalent to reviewing only six signatures per day during that period—the Michigan Bureau of Elections, led by Respondent Michigan Secretary of State Jocelyn Benson and Respondent Michigan Director of Elections Jonathan Brater (collectively, “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.

Respondents threw out nearly 100 signatures in all because the signatures allegedly did not match the voters’ signature in the Michigan Secretary of State’s digital Qualified Voter File, or QVF. Yet when ACVM protested and asked to see the comparator signatures from the QVF so that it could adequately respond and participate in the Bureau’s review process, the Bureau refused and told ACVM it should find the voters whose signatures were invalidated and procure affidavits swearing to the authenticity of each of those voter’s signatures. So that’s exactly what ACVM did.

At the conclusion of the Board’s meeting on Monday, August 24, 2026, there was a three-signature deficiency. See **Exhibit A**, August 24, 2026, Transcript, p. 304 (DIRECTOR BRATER: “So either way, our recommendation at this point would be that you have 626 valid signature[s].”). But ACVM presented *nine* affidavits from voters who *swore under penalty of perjury* that it was *their* signature on the Petition—exactly the evidence the Board 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 voter reviewed the petition sheet with their signature on it in question, that the voter was who he or she said they were, and that the signature on the Petition was theirs. That's a legally binding statement that carries the same legal weight as speaking under oath inside a courtroom

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. Indeed, the QVF files can be decades old, which means the digital files may no longer accurately reflect what a voter's current signature looks like. It's nonsensical (and illegal) to disregard an affiant's *current oath* that a signature on the Petition was his or hers based on an old file that no one but election officials are allowed to view.

Consider this decision against the backdrop of our well-settled due-process and equal-protection principles. If the Bureau and the Board invalidate a signature because it doesn't match the QVF file, they say a petition sponsor can't see the comparator signature in the QVF file but can procure affidavits from the signatories to prove they are who they say they are. But if the *affidavit* signatures don't match the signature in the QVF file—the data the petition sponsor is prohibited from viewing—then the Bureau and the Board will *still* disregard the signatures. That treats the historical record of someone's signature with more legal validity than their actual signature, made today, under oath and with identification in front of a notary. That's as nonsensical as it is unconstitutional.

But it gets worse. 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, too, 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. Nor were the affidavits mere information; they were the legal equivalent of direct, in-person testimony on the issue before the Board, and the Board routinely takes live testimony at its meetings.

In addition, by running out the clock with their 5½-month review process—recall that while ACVM submitted the signatures on March 4, 2026, more than four months ahead of the deadline of July 6, 2026, the Bureau waited until August 17, 2026, to issue its Report regarding the petitions—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. Moreover, consistent with the short time frames involved in proceedings like these, the Board has consistently accepted information from petition challengers, petition sponsors, and members of the public *on the day of its meetings*. Yet inconsistent with its prior and recent practices, it declined to do so for ACVM.

Importantly, the Board and the Bureau recognized on the record that *these affidavits were valid and would have cured the signature deficiency* had they been "timely" submitted. Yet the Board threw out the signatures anyway, disenfranchising these nine Michigan voters who affirmatively took part in the political process not once, but twice, in defense of their core First Amendment freedom of speech.

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 not just the nine affiants but the hundreds of thousands of Michigan voters that also signed ACVM’s petition. 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.

On August 27, 2026, at approximately 2:45 p.m., Applicants ACVM and Fred Smith—a registered Michigan voter who signed the initiative petition to place the proposed amendment on the ballot but had his signature (and affidavit) rejected—sought a writ of mandamus from the Michigan Supreme Court to require the Board to accept the nine affiants’ affidavits and to certify ACVM’s petition to appear on the November 3, 2026, General Election ballot. This is the process that Michigan law directs when the Board rejects a ballot petition.

Applicants require an expeditious determination of this issue because Michigan ballots are finalized on or around September 4, 2026 (though Respondent Secretary of State Jocelyn Benson refuses to specify the “drop dead date” by which ballots must be finalized). Despite the need for extreme haste—a common need in election cases—the Michigan Supreme Court has done absolutely nothing as of this filing, not even to direct Respondents to respond. That inaction is a constructive denial of relief and defies Michigan law which mandates 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.” Mich. Comp. Laws § 168.479(2).

Accordingly, Applicants move this court to issue an injunction pending appeal no later than September 3, 2026, that orders Respondents to place ACVM’s petition on the November 3, 2026 ballot.

FACTUAL AND PROCEDURAL BACKGROUND

Applicants

Applicant ACVM is a duly formed ballot question committee registered under the Michigan Campaign Finance Act, Mich. Comp. Laws § 169.201, *et seq.* ACVM sponsored and organized a Petition to amend the Michigan Constitution to protect all Americans’ right to cast an effective ballot by strengthening protections against non-citizens voting.

Applicant Fred Smith is one of the nine Michigan voters whose affidavit regarding his signature on the Petition 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 (**Exhibit B**). There, he averred that “if called to testify” he “could and would,” confirm, 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.”

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 sought relief from the Michigan Supreme Court and now seeks it here, too, to protect his rights to Due Process and Equal Protection under the law.

The Petition and its signatures

Pursuant to Article 12, § 2 of the Michigan Constitution, 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. Under 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." Const 1963, Art XII, § 2.

In Michigan's 2022 gubernatorial election, 4,461,980 voters cast ballots for a candidate for governor. As a result, ACVM's Petition needed 446,198 registered-electior signatures to be placed on the ballot. ACVM gathered 709,841 signatures—almost 60% more than required—in support of the Petition, and it submitted the signatures on March 4, 2026—more than four months ahead of the July 6, 2026, deadline to submit signatures for review.¹

¹ *Americans for Citizens Voting submits 750,000 signatures for voter ID ballot proposal*, CBSnews.com (March 6, 2026), available at <https://www.cbsnews.com/detroit/news/americans-for-citizens-voting-750000-signatures-voter-id-ballot-proposal/> (last accessed August 30, 2026).

Five and a half months later, and after the initial review by Bureau staff, the Bureau concluded there were 692 valid signatures in the sample, well more than the 629 required; but after the staff's processing of challenges from those opposing the petition, the Bureau concluded that only 612 of 1,000 sample signatures were valid—*i.e.*, the Board concluded the Petition was 17 signatures short. August 17, 2026, Staff Report (**Exhibit C**). Of the 393 signatures it threw out, the Bureau said 94 were “invalid” based on its layman's 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.

Because ACVM's Petition needed only 629 signatures and had 612 otherwise valid signatures, the rejection of 94 signatures based on an alleged mismatch between the voters' signature on the Petition and the voters' signature in the QVF was dispositive of the Petition's fate. But for these rejections, the Petition would have had many more valid signatures than necessary to be placed on the ballot.

ACVM responded to the tossing out of those 94 signatures three days later, on August 20, 2026. August 20, 2026, Demand Letter (**Exhibit D**). Specifically, 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. “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 it did not have access to the signatures in 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[.]” *Id.* 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 U.S. Constitution. Indeed, while the U.S. Constitution guarantees “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 to ACVM because Respondents would not let ACVM access—or even see—the comparator signatures in the QVF. ACVM explained that it had a due-process right to “the chance to know and respond to the evidence” brought against it, *i.e.*, the 94 comparator signatures. *Id.*

ACVM even acknowledged the privacy concerns around the QVF signatures and suggested use of *in camera* review or some other confidential method for the purpose of alleviating those privacy concerns. *Id.* at 3-4. Put another way, ACVM was not requesting copies of the signatures, it merely requested an opportunity to see the comparator signatures for the sake of transparency and an opportunity to refute the Bureau’s non-expert conclusions that the signatures do not match.

The Bureau of Elections responded to ACVM’s demand letter just a few hours later. *See* Bureau Letter, August 20, 2026. 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 added, “[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.* at 2. “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 (emphasis added).

So that’s exactly what ACVM did. ACVM contacted the stricken signers and obtained 23 affidavits in a mere 48 hours. Each affidavit explained that the affiant-voter had reviewed their signature on the Petition and confirmed that it was indeed their own signature. Each affidavit was sworn and notarized.

“An affidavit is defined by Bouvier as a ‘statement or declaration reduced to writing and sworn to or affirmed before some officer who has authority to administer an oath or affirmation.’” *In re Cent. Stamping & Mfg. Co.*, 77 F. Supp. 331, 332 (E.D. Mich. 1948). “[A]n affidavit consists of statement of fact, which is sworn to as the truth.” *Id.* When analyzing Michigan’s affidavit laws, the U.S. Court of Appeals for the Sixth Circuit has held: “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 F.2d 609, 614 (CA6 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).

Further, under Mich. Comp. Laws § 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.” Mich. Comp. Laws § 55.285(6)(b).

Proceedings before the Board of State Canvassers

Due to the press of time and the difficulty of securing affidavits from individuals known only by their name and address, ACVM presented 23 affidavits to the Board 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. Indeed, the Board reviewed, discussed, and voted on whether to accept these affidavits. Inexplicably, the Board chose to accept only 14 of the 23 affidavits presented to it, rejecting the other nine.

The Board gave two reasons for these rejections. First, it rejected four affidavits—two by unanimous vote, one by majority vote, and one by deadlocking 2-2—because the Board felt that the voters’ signature on the affidavits *still* did not match the voters’ signatures in the QVF. 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 of whether the signature on the affidavit matched the signature in the QVF—despite the requirements of the Michigan Law on Notarial Acts, and despite the Board's written representations to ACVM just days prior. Bureau Letter, August 20, 2026 (**Exhibit E**).

Second, the Board rejected five affidavits—all by 2-2 deadlock (two Republican members voting to accept, two Democrat members voting to reject)—because it found them untimely as they were submitted to the Board less than 48 hours before the Board's meeting. This is astonishing on multiple levels. 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 yet it ignored them. The Board applied the rule to materials submitted by a “member of the public,” which ACVM is not. And it did so in a manner inconsistent with its prior practice; the Board routinely accepts in-person testimony at its meetings, but here it refused to consider written testimony. What's more, the Board gave ACVM only five days to obtain these affidavits after the Bureau and the Board together took *5½ months* to process the 1,000-signature sample. And the Board ignored its own history of repeatedly accepting information submitted contemporaneously with a Board meeting. Worse, the Board and the Bureau recognized, on the record, that the affidavits were valid *and would have cured the deficiency* had they been “timely.”

Based on these unlawful rejections of the nine affidavits, the Board found the ACVM Petition was supported by only 626 signatures, a mere three short of the required 629. See **Exhibit A**, p. 304. Had the Board accepted just three of those nine

affidavits (or five of those affidavits but not disallowed an extra two signatures without giving ACVM any process at all), then it would have legally bound to certify ACVM's Petition for the November general election ballot.

ARGUMENT

An injunction pending appellate review is warranted when the applicant demonstrates it is “likely to prevail, that denying . . . relief would lead to irreparable injury, and that granting relief would not harm the public interest.” *Roman Cath. Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 66 (2020) (per curiam) (citing *Winter v. 10 Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)). The Court also has discretion to issue an injunction “based on all the circumstances of the case,” without its order “be[ing] construed as an expression of the Court’s views on the merits” of the underlying claim. *Little Sisters of the Poor Home for the Aged v. Sebelius*, 571 U.S. 1171 (2014). A Circuit Justice or the full Court may also grant injunctive relief “[i]f there is a ‘significant possibility’ that the Court would. . .” grant certiorari “. . . and reverse, and if there is a likelihood that irreparable injury will result if relief is not granted.” *Am. Trucking Ass’n, Inc. v. Gray*, 483 U.S. 1306, 1308 (1987) (Blackmun, J., in chambers) (considering whether there is a “fair prospect” of reversal).

A. This Court should issue an injunction against Respondents without waiting for a Michigan Supreme Court decision because there isn’t time.

Nearly 50 years ago, Justice Powell, sitting as Circuit Judge for the Fifth Circuit, lamented: “As often happens (and for reasons that rarely are explained) emergency applications with respect to elections reach us on the eve of the weekend before the election.” *Moore v. Brown*, 448 U.S. 1335, 1341 (1980). In *Moore*, the

applicant sought emergency relief less than five full days—including the Labor Day weekend—before a primary election. This case is like *Moore* because Applicants also seek urgent relief in less than five full days; but it is unlike *Moore* because Applicants have an explanation for the extreme urgency of their request.

On March 4, 2026—more than four months ahead of the July 6, 2026, deadline—ACVM submitted more than 700,000 signatures for Respondents’ review. Respondent the Bureau did not issue its initial determination that ACVM was short on signatures until *more than 5 1/2 months later*, on August 17, 2026. To be clear, Respondent the Bureau did not review all 700,000 signatures; Respondent only reviewed 1,000. This means it reviewed, on average, only six signatures a day.

One week later, on August 24, 2026, the Board deadlocked on whether ACVM’s petition had sufficient signatures to be placed on the ballot, meaning the Petition was not certified for the ballot. August 24 is significant because it is exactly *eleven days* before Michigan ballots must be finalized; Respondent Secretary of State Jocelyn Benson won’t confirm the exact deadline to finalize ballots—she keeps that information to herself—but September 4, 2026, is Counsel for ACVM’s best guess based on decades of Michigan Election Law experience and practice. Indeed, in Michigan the statutory deadline for delivering finalized and printed absentee ballots to local clerks and to mail ballots to military or overseas voters is September 19, 2026. Mich. Comp. Laws § 168.759a; Mich. Comp. Laws § 168.714. The urgency of Applicants’ request for injunctive relief can thus be laid at Respondents’ doorstep—it is Respondents, not Applicants, who wasted 5½ months.

Regrettably the Michigan Supreme Court has not acted, constructively denying Applicants' claim for relief and leaving them no choice but to ask this Court for emergency relief. To be sure, the Michigan Supreme Court has previously recognized in other cases the "extreme time constraints" presented by election cases. *See, e.g., Scott v. Director of Elections*, 490 Mich. 888, 889; 804 N.W.2d 119 (2011); *Gracey v. Grosse Point Farms Clerk*, 182 Mich. App. 193, 196-196; 452 N.W.2d 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."). But that court has shown no urgency here.

At about 4:40 p.m. on August 24, 2026, the Board deadlocked 2-2 on whether to place ACVM's Petition on the ballot. Pursuant to state law, a deadlock means the ballot question proposed by the petition will *not* be placed on the ballot. Mich. Comp. Laws § 168.22d(2). Applicants filed an original action for a writ of mandamus relief, a brief in support, a motion for an order to show cause, and a motion for immediate consideration at approximately 2:45 p.m. on August 27, 2026. Exhibit F. Applicants stated in bold capital letters on the face of every paper it filed with the Michigan Supreme Court: *****IMMEDIATE AND EXPEDITED CONSIDERATION REQUESTED BY SEPTEMBER 1, 2026*****. Further, Applicants asked the Michigan Supreme Court to "[m]andate briefing be completed with enough time for this Court to issue its ruling by Tuesday, September 1" and that it "[d]irect 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.” Original Complaint for Mandamus Relief at ¶ 232 (attached as Exhibit F). Respondents were e-served with Applicants’ papers the moment they were filed. Applicants then took the additional step of emailing the papers to Respondents—cc’ing the Michigan Supreme Court Clerk’s office—at 2:50 p.m. on August 27. Exhibit G. Applicants then physically served copies of the papers on Respondents at about 3:18 p.m., August 27.

Besides expressing the urgency of the matter in its papers, serving Respondents three different ways, and notifying the court in writing multiple times of the urgency of the matter, counsel for Applicants called the Michigan Supreme Court Clerks’ office at approximately 9:37 a.m., 2:57 p.m., 4:09 p.m., 4:24 p.m., and 4:35 p.m. on August 27, 2026, and at approximately 10:25 a.m., 3:31 p.m., and 4:15 p.m. on August 28, 2026. Each time counsel for Applicants spoke with the Michigan Supreme Court Clerks’ office, they reiterated the same message: Applicants needed urgent, expedited relief by September 1 so that it could exhaust any appellate remedies with this Court before the September 4 deadline.

But the Michigan Supreme Court did nothing. It did not act on August 27, 28, 29, 30, or today as of the filing of this Emergency Application for an Injunction Pending Appeal. This, even though Michigan law expressly mandates 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.” Mich. Comp. Laws § 168.479(2). The Michigan Supreme Court has thus constructively denied Applicants’ request for a writ of mandamus.

Just as this Court is familiar with the crushing time constraints of election cases, so too is it familiar with the need to—in some circumstances—issue injunctive relief without waiting for fulsome lower court consideration. For example, in *A. A. R. P. v. Trump*, 605 U.S. 91 (2025), this Court held that a lower court’s “inaction in the face of extreme urgency and a high risk of ‘serious, perhaps irreparable,’ consequences may have the effect of refusing an injunction.” *Id.* at 94 (quoting 16 C. Wright, A. Miller, & E. Cooper, *Federal Practice and Procedure* § 3924.1, pp. 174, 180–181 (3d ed. 2012)). There, this Court granted injunctive relief because “the District Court’s inaction—not for 42 minutes but for 14 hours and 28 minutes—had the practical effect of refusing an injunction[.]” *Id.*

That’s the case here too. The Michigan Supreme Court’s delay has burned nearly half of the 11 days Respondents’ dereliction left Applicants to seek appellate review. The Michigan Supreme Court’s delay has “had the practical effect of refusing an injunction[.]” so Applicants respectfully ask this Court to consider this Emergency Application for an Injunction Pending Appeal.

B. Applicants are likely to succeed on the merits.

Respondents violated Applicants’ constitutional rights in at least three ways—once by denying Applicants the right to due process guaranteed to them by the Fourteenth Amendment, once by denying Applicant Fred Smith—and eight other Michigan voters—equal protection of the law, as guaranteed to them by the Fourteenth Amendment—and once more by denying Applicant ACVM the equal protection of the law.

Given an ordinary amount of time, Applicants would likely succeed on the merits of all three of its claims. Here, however, due to Respondents' disregard of their clear legal duty for 5½ months, there isn't an ordinary amount of time—there are only four days. Under these circumstances, a likelihood of success on any one of Applicants' three arguments is sufficient to grant an injunction ordering Respondents to take all necessary steps to place ACVM's Petition on the ballot. Once voters' right to vote on Applicants' petition is secured, the merits of Applicants arguments can then be litigated on an ordinary timeline.

1. Respondents denied Applicants due process.

In its Staff Report, the Bureau concluded that 94 signatures in the 1,000-signature sample were “invalid” because the “signature is omitted or does not sufficiently agree with the signature on file.” August 17, 2026, Bureau Staff Report (**Exhibit C**).

According to guidance issued by the Bureau, a signature is invalid only 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).

At the Board's August 24, 2026, meeting, the Bureau made clear that, as required by Mich. Comp. Laws § 168.476(1), its conclusion regarding the alleged invalidity of those 94 signatures was the result of the Bureau staff (none of whom are handwriting experts) visually comparing those 94 petition signatures against the corresponding digitized signature records contained in the QVF. But the Bureau's Staff Report includes *no images* of the QVF digitized signature records that would allow ACVM to evaluate, respond to, and rebut the Bureau's conclusions. Nor did the Board or Bureau allow ACVM to see the 94 digitized signature records in any other format.

The Board even rejected ACVM's request for limited, confidential review of the digitized signature records in the QVF corresponding to the 94 disputed signatures 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). Yes, as odd as it sounds, the Bureau rejected Applicants' request to view *voters'* signatures based on a *motor vehicle records* privacy statute. The Michigan Secretary of State apparently uses the QVF as a resource to fulfill both her election duties and her motor vehicle licensing duties. 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." BOSC Response to ACVM Demand Letter, p. 1-2 (**Exhibit D**).

The Board further affirmed 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.* Specifically, the Board assured ACVM that it could “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.*

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

First, the Bureau unreasonably delayed reviewing ACVM’s petitions. ACVM turned in its petitions with more than 700,000 signatures on March 4, 2026.² The Bureau then inexplicably waited more than 5½ months to produce its staff report containing its conclusions regarding the 1,000 signatures contained in the “sample.” August 17, 2026, Bureau Staff Report (**Exhibit C**). That means that on average, the Bureau staff examined a mere six signatures per day. And that inexplicable delay meant ACVM had a mere five days to: (1) identify and contact the 94 affected voters; (2) confirm that the voters signed ACVM’s petition; and (3) produce and obtain an affidavit rehabilitating the signature. That’s the sum of the process Respondents afforded Applicants.

Despite the Bureau’s decision to slow-walk its staff report, ACVM was still able to contact 23 voters whose petition signature—according to the Bureau, at least—did not match the digitized signature records in the QVF; and ACVM was able to obtain

² 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/>.

affidavits from all those voters confirming that they signed ACVM's petitions and that their signature was genuine. ACVM's herculean effort to obtain 23 affidavits should not detract from the reality that the Bureau's delay left ACVM with a mere five days to rehabilitate signatures, depriving ACVM of a "meaningful" opportunity to rebut the Bureau's conclusion with respect to the remaining 71 voters whose signatures were stricken for allegedly not matching the corresponding signature in the QVF.

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 (as explained below, it is not), the Bureau's 168-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. The Constitution does not permit decisionmakers to render determinations based on "secret" evidence that interested parties cannot review, and certainly not to strike down the Free Speech of more than 700,000 voters. The Board of State Canvassers should not be allowed to operate as a star chamber, unbound to basic standards of due process and fair dealing.

The Board's proposed alternative to allowing ACVM to compare signatures—having ACVM provide affidavits from voters—also violates due process for the same reason as the Bureau's invalidation of allegedly non-matching signatures: it (ironically) depends on comparing signatures to the same QVF signatures that neither ACVM nor anyone else is permitted to view.

One of the earliest and most direct federal definitions of the use of affidavits comes from a U.S. District Court for the Eastern District of Michigan. *See In re Cent. Stamping & Mfg. Co.*, 77 F. Supp. 331 (E.D. Mich. 1948). There, the district court found: “An affidavit is defined by Bouvier as a ‘statement or declaration reduced to writing and sworn to or affirmed before some officer who has authority to administer an oath or affirmation.’” *Id.* at 332. The district court then noted that Black’s Law Dictionary, and the Michigan Supreme Court, defined an affidavit in the same manner: “an affidavit consists of statement of fact, which is sworn to as the truth.” *Id.* (citing *June v. Sch. Dist. No. 11, Southfield Twp.*, 283 Mich. 533, 538, 278 N.W. 676, 677 (1938)) (Black’s Law Dictionary, 2d Ed.). Michigan’s Legislature codified this definition in 2003, establishing that 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. Mich. Comp. Laws § 55.285(6)(b). The process of comparing *affidavit* signatures to QVF signatures—and then rejecting affidavit signatures because they don’t match the QVF signatures—violates due process for several obvious reasons.

First, the Board reviewed and invalidated signatures on voters’ affidavits (not just ACVM’s petitions) based on evidence from the QVF to which ACVM could not meaningfully respond. Just like ACVM could not meaningfully rebut Respondents’ conclusion that signatures on ACVM’s petition did not match the voters’ corresponding signatures in the QVF, so ACVM also cannot meaningfully rebut Respondents’ conclusion that the signatures on the submitted affidavits do not match

the voters' corresponding signatures in the QVF. Either way, voters' signatures were invalidated based on evidence that ACVM is not permitted to see and to which ACVM was deprived of a meaningful opportunity to respond. That falls short of the due process required by the federal constitution.

Second, the Board's reasoning is fatally circular. According to the Board, ACVM did not need access to the digitized signatures in the QVF because it could rehabilitate petition signatures by obtaining affidavits from affected voters. It said so in writing just days before the meeting at which the Board rejected the affidavits. But by subjecting signatures on affidavits to comparison with the digitized signature records in the QVF, the Board negated 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 standard. The Board's proposed solution suffered from the same malady it claimed to cure.

Third, the Board's decision to subject the affidavits to QVF comparison ignored the fundamental reality of what an affidavit is—and has been—for nearly a century in Michigan and federal law. Each voter 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. Subjecting the validity of affidavit to the Board's visual comparison negates the very purpose of the affidavit. Because the affidavit is sworn testimony, the Board was *required* to accept it absent some other "clear, positive and credible evidence in

opposition,” *Vriesman*, 9 Mich App at 106, that sufficiently impeached the *substance* of the affidavit. And no such evidence was introduced.

The four affidavits rejected by the Board because the signature on the affidavit allegedly did not match the signature on the QVF are proof positive that Respondents violated the due process rights of ACVM and the four Michigan voters who expressed their First Amendment rights by signing both the petition and then re-expressed their First Amendment rights by signing an affidavit.

By refusing to timely act, the Michigan Supreme Court has allowed the Board’s decision to reject voters’ free-speech rights. To be sure, Applicant Fred Smith expressed his First Amendment right by signing the petition, re-expressed it by signing an affidavit, re-re-expressed it by bringing an original action in the Michigan Supreme Court, and now re-re-re-expresses it by coming here. *Four times* Applicant Fred Smith has sought to be heard and has been denied the right.

Much can be said about the scope of the Fourteenth Amendment right to due process. Much need not be said, here, however, because Respondents denied Applicants *all* process. This alone is reason enough for this Court to grant an injunction directing Respondents to place ACVM’s petition on the ballot for the November 3, 2026 General Election.

2. Respondents denied nine Michigan voters—to include Applicant Fred Smith—equal protection of the law.

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.

Voters' right to equal protection of the laws in the exercise of the franchise is fundamental. *See Bush v. Gore*, 531 U.S. 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, 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.

Importantly, "[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). Put another way, 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.* Likewise, 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. In the Ninth Circuit's view, uniform review of petition signatures was the baseline protection guaranteed by the Equal Protection Clause. *Id.* at 1107.

Here, more than 700,000 registered voters signed ACVM's petition to amend the Michigan Constitution. As required by Mich. Comp. Laws § 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." As a part of its process, and as required by Mich. Comp. Laws § 168.476 and the Michigan Secretary of State's guidance, the Board compared the signatures of 1,000 voters against those voters' signatures in the QVF.

The Board found that 94 voters' signatures did not sufficiently match the voters' signature in the QVF and so could not be counted. Twenty-three of the 94 voters whose signatures were not counted submitted signed, sworn, and notarized affidavits to the Board that declared under penalty of perjury that the signature on the Petition that the Board had found did not sufficiently match the voters' signature in the QVF was indeed their signature. The Board accepted only 14 of the 23 voters' affidavits, finding that they sufficiently proved the voters' identity. But the Board then refused to accept nine of the 23 voters' affidavits. The Board rejected four of the

nine affidavits because the voters' affidavit signature allegedly did not sufficiently match the voters' signature in the QVF. As explained, the Board ignored the very nature of an affidavit—that it is sworn, signed, and notarized by a notary public who has confirmed the identity of the signer.

The Board also rejected five of the nine affidavits because ACVM did not produce them before the Board's self-imposed deadline of 48 hours before the Board's meeting on August 26, 2026. *See Mich. Admin. Code R. § 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."). The Board thus applied two different standards. On the one hand, 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, while on the other hand, the Board rejected affidavits because they failed to meet an incredibly stringent timeline.

Worse, a Board majority acknowledged, on record, that those five affidavits were unrefuted evidence that sufficiently identified the voters who signed the Petition. Indeed, the Board reviewed each of the five affidavits closely and discussed them at length. Thus, the 48-hour rule was clearly not a bar to *reviewing* the affidavits—because the Board did just that—but it was apparently only a bar to *accepting* them.

In sum, nine Michigan voters who produced affidavits were denied equal protection of the law—their signatures weren't counted, when other, similarly situated signatures were. This means the Board disregarded the rights of 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.

Nine Michigan voters, just like 14 other voters, took extraordinary steps to re-express their First Amendment rights by curing perceived deficiencies with their signatures on the petition by executing sworn, notarized affidavits. Nine Michigan voters submitted affidavits, just like 14 other voters, to prove their identity, to express their First Amendment rights, and to ensure that their signature on the Petition was counted.

But nine voters who submitted affidavits were treated differently than the other 14 affidavits. Indeed, rather than accepting the affidavits of the nine voters, the Board *rejected* them (three were rejected outright by a Board majority, and six were rejected by a 2-2 deadlock).

By arbitrarily and disparately accepting 14 voter affidavits while simultaneously rejecting nine voter affidavits, the Board denied nine Michigan voters equal protection of the laws. By arbitrarily and disparately accepting 14 voter affidavits while simultaneously rejecting nine voter affidavits, the Board deprived nine voters of their right to vote. 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. The Board's naked animus towards these nine voters is reason enough for this Court to grant an injunction directing Respondents to place ACVM's petition on the ballot for the November 3, 2026, General Election.

3. Respondents denied Applicant ACVM equal protection of the law.

The Board's actions also denied ACVM equal protection under the law by subjecting it to different application of the rules than other petitions to amend the Michigan Constitution.

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.

In its 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 instructions regarding the timing of challenges accords with the Board's generally applicable rules. In its guidance titled "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.

The Board's notice also accords 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—again, with emphasis in the original: “[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). Here, 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.

It has long been the law in Michigan that the ten-day challenge deadline is strict. *See Callahan v. Board of State Canvassers*, 650 NW2d 656 (Mich. 2022) (holding challenges filed after the Board of State Canvassers’ deadline may *not* be considered by the Board). 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 that were submitted on August 21, 2026, some 14 days after the challenge deadline. Ultimately, the Board deadlocked on whether to accept the two challenges, but their 2-2 deadlock on the challenges means that the signatures challenged are deemed invalid. Mich. Comp. Laws § 168.22d(2) (“Three 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.”).

Here, the Board did not certify the validity of two signatures on the Petition based on arguments raised in a late-filed challenge, yet the Board refused simultaneously to consider five affidavits curing alleged deficiencies with voters' signatures because the affidavits were allegedly untimely. Put another way, the Board's actions mean that challenges may be untimely, but voters re-expressing their First Amendment rights must be "timely" according to a rule that does not even apply to testimony.

Setting aside the naked inconsistency evidenced by the Board's acceptance of late challenges and its refusal to consider same-day affidavits, the Board's historical practice matters a great deal here. Indeed, despite its 48-hours rule, the Board has often allowed materials to be submitted *at a Board meeting* numerous times. For example:

1. Board of State Canvassers meeting dated July 24, 2026.

On the day of the hearing, Michael Brady, counsel for the sponsor of an initiative petition, submitted (without objection) a comprehensive document to rebut the challenger's objections to the Staff Report. According to Mr. Brady: "I direct you to Page 8 of the handout *that I passed out this morning....*" Transcript, Page 262 (emphasis added). Throughout the hearing, Mr. Brady made repeated references to this handout: Transcript, Pages 246, 267, 269.

2. Board of State Canvassers meeting dated August 17, 2026.

Meeting proceedings available at: [Board of State Canvassers, 8.17.26](#)

At the 52:00 mark, a sponsor of a candidate petition provided (without objection) emails to the Board for the first time.

At the 1:06 mark, counsel making comments on ballot summary language provided (without objection) suggested ballot language to the Board for the first time.

3. Board of State Canvassers meeting dated May 28, 2026.

Meeting proceedings available at: [Board of State Canvassers, 5.28.26](#)

At the 9:00 mark, a sponsor of a candidate petition provided (without objection) a detailed analysis to the Board for the first time.

4. Board of State Canvassers meeting dated August 22, 2025.

Meeting proceedings available at: [Board of State Canvassers, 8.22.25](#)

At the 16:10 mark, Michael Brady, counsel for the sponsor of an initiative petition, provided (without objection) suggested petition summary language to the Board for the first time. (“I have a handout with these proposed edits if I may present them”)

At the 38:00 mark, counsel for the challenger of an initiative petition, provided (without objection) suggested petition summary language to the Board for the first time.

5. Board of State Canvassers meeting dated July 31, 2025.

Meeting proceedings available at: [Board of State Canvassers, 7.31.25](#)

At the 6:00 mark, a member of the public speaking with respect to a proposed constitutional amendment provided (without objection) suggested petition summary language to the Board for the first time.

6. Board of State Canvassers meeting dated June 27, 2025.

Meeting proceedings available at: [Board of State Canvassers, 6.27.25](#)

At the 6:34:20 mark, counsel for the challenger of a constitutional amendment petition, provided (without objection) suggested petition summary language to the Board for the first time.

Historically, then, the Board’s “strict” 48-hour rule does not apply to testimony or materials other than new challenges—which makes sense. Untimely challenges raise due process issues, which is why the Board has reason to reject them. Voters “untimely” expressing their First Amendment rights can only be a good thing—it can only be voters engaging with the electoral process *more* by stepping forward to correct the mistaken conclusions of election officials that violate those voters’ rights based on

their wrongful finding that a voter is not who they say they are, or that the voter did not exercise their rights even though they did indeed do so. And voters who seek to cure perceived deficiencies with their signatures acting “untimely” raises no due process concerns because the curing process doesn’t raise a new issue—definitionally, it is only a response to an issue already raised, or, to go a step further, a cure to an election official’s mistake.

Nevertheless, the Board treated ACVM and the voters who signed ACVM’s Petition differently than it treated the Challengers. The Board’s actions crossed over from unequal treatment under the law into naked animus towards the ACVM Petition. As the Board would have it, a voter who submitted a signed, sworn, notarized affidavit cannot cure an allegedly deficient signature, but a challenger may challenge—and strike—a voters’ signature on the very day of ballot certification. Challengers’ right to silence voters is stronger than voters’ right to speak.

All this shows that the ACVM Petition did not receive equal treatment. The Board rejected the validity of two signatures by accepting a significantly late-filed challenge (raising due-process concerns), but it simultaneously rejected five voters’ efforts to rehabilitate their allegedly defective signatures before the close of the Board’s hearing because those efforts were ostensibly untimely. That is the definition of arbitrary and disparate treatment. *See Bush v. Gore*, 531 U.S. 98, 104-105; 121 S. Ct. 525, 529 (2000). Indeed, that is the definition of giving “[un]equal weight accorded to each vote” and “[un]equal dignity . . . to each voter.” *Id.* The Board’s denial of equal protection of the law to ACVM is reason enough, standing alone, for this Court to grant an injunction.

C. Applicants will be irreparably harmed absent an injunction.

Federal courts have recognized, time and again, that denial of access to the ballot is an irreparable harm. *E.g.*, *Barr v. Galvin*, 584 F. Supp. 2d 316, 321 (D. Mass. 2008) (“The plaintiffs will undoubtedly suffer irreparable harm if this injunction is denied . . . No damages or other legal remedy can compensate for a missed election.”); *Libertarian Party of Ohio v. Brunner*, 567 F. Supp. 2d 1006, 1014 (S.D. Ohio 2008) (“The irreparable harm to Libertarian Party and its candidates is denial of access to the ballot.”); *McInerney v. Wrightson*, 421 F. Supp. 726, 729 (D. Del. 1976) (“the immediate threat to the plaintiff is that his name will not appear on the general election ballot. There is no adequate remedy at law to compensate the plaintiff for this injury should he prevail in the final judgment”); *Summers v. Smart*, 65 F. Supp. 3d 556, 561 (N.D. Ill. 2014) (“It is self-evident that an otherwise qualified candidate would suffer irreparable harm if wrongfully deprived of the opportunity to appear on an election ballot[.]”); *Valenti v. Mitchell*, 790 F. Supp. 534, 547 (E.D. Pa. 1992) (“defendants argue that a hopeful candidate’s being denied access to the ballot is not harm, irreparable or otherwise . . . the caselaw and common sense lead me to conclude the exact opposite.”); *Duke v. Connell*, 790 F. Supp. 50, 52–53 (D.R.I.1992) (finding irreparable harm where, if a motion for a preliminary injunction were denied, ballots would be printed without the name of a major party candidate in the Rhode Island primary); *Strahan v. Frazier*, 156 F.Supp.2d 80, 93–94 (D. Mass. 2001), quoting *Batchelder v. Allied Stores International, Inc.*, 388 Mass. 83, 91, 445 N.E.2d 590 (1983) (“Ballot access is of fundamental importance in our form of government because through the ballot the people can control their government.”).

In fact, the issue isn't even close. Denial of access to the ballot is so obviously an irreparable harm that federal courts rarely even linger on this element of a motion for an injunction. *See e.g., id.*

Applicants respectfully ask this Court to hold that, like so many lower federal courts have found before and as is demanded by common sense, denial of access to the ballot is a harm irreparable by any post-election remedy.

D. The public interest and balance of harms weigh heavily in favor of granting injunctive relief.

Federal courts have also repeatedly found that the public interest weighs heavily in favor of giving voters the option to vote for a candidate or measure by placing the candidate or measure on the ballot. *E.g., Barr*, 584 F. Supp. 2d at 321 (finding public interest in favor of having nominees on the ballot); *Libertarian Party of Ohio*, 567 F. Supp. 2d at 1014-15 (same); *McInerney*, 421 F. Supp. at 730 (same); *Valenti*, 790 F. Supp. at 547 (“the public interest is served by ensuring that access to the government, through access to the ballot, is open to all.”).

In *Reclaim Idaho v. Little*, 469 F. Supp. 3d 988 (D. Idaho 2020), a district court noted that the public interest favored allowing the proponent of an initiative to place the initiative on the ballot “because the public itself would be the final arbiter of whether the initiative is passed into law.” *Id.* at 1002. This same thought—that the public interest militates in favor of allowing the public to exercise the franchise—was expressed by another district court in *People Not Politicians Oregon v. Clarno*, 472 F. Supp. 3d 890 (D. Or. 2020), which found that “the public interest leans in favor of granting injunctive relieve because such a remedy protects Plaintiffs’ ability to place their initiative on the November 2020 ballot. The Court finds it worth noting that

Oregon’s voters will be the ones who ultimately decide whether Plaintiffs initiative will be enacted.” *Id.* at 899. Here too, the public interest weighs in favor of placing ACVM’s petition on the ballot.

One more point on this: If the Court issues an injunction requiring Appellees to place ACVM’s initiative petition on the ballot, that decision *can’t* cause permanent harm. Consider the three possible scenarios:

(1) if ACVM’s petition is placed on the ballot and is voted down, then ACVM’s case is over—the voters didn’t want what ACVM was selling, so it doesn’t matter if ACVM should have been on the ballot in the first place.

(2) if ACVM’s petition is placed on the ballot and is adopted by the voters, then the parties will have the opportunity to litigate the merits of the petition’s placement on the ballot on an ordinary litigation schedule and, if ACVM is successful, the People of Michigan’s votes will be effectuated.

(3) if ACVM’s petition is kept off the ballot, then the People of Michigan will never have a chance to vote on the petition regardless of whether ACVM’s arguments are meritorious—and the damage to ACVM, to Fred Smith, and to the voters of Michigan will be irreparable and final.

On balance, the public interest thus weighs strongly in favor of enjoining Respondents from keeping ACVM’s petition off the ballot. For this reason, Applicants request an injunction that directs the Board, Michigan Secretary of State, and Michigan Director of Elections to take all steps necessary to place ACVM’s petition on the November 3, 2026, General Election ballot.

* * *

If Respondents’ decision to keep ACVM’s Petition off the ballot stands, then Michigan voters will never have a chance to vote on the petition, regardless of whether it should or should not have been placed on the ballot. On the other hand, if

ACVM's Petition is placed on the ballot and ACVM's arguments ultimately fail there will be no harm. The choice is thus between irreparable harm and no harm at all. As explained, that's why federal courts overwhelmingly decide to grant injunctive relief in situations like this. Appellants ACVM and Fred Smith respectfully request that the Court issue an injunction pending appeal that requires Respondents to take all steps necessary to place ACVM's initiative Petition on the ballot without delay.

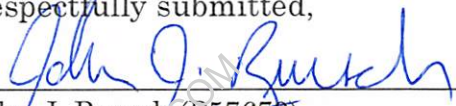
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