No. 21-1129

United States Court of Appeals for the Sixth Circuit

Mike Kowall, Roger Kahn, Paul Opsommer, Joseph Haveman, David E. Nathan, Scott Dianda, Clark Harder, Mary Valentine, Douglas Spade, and Mark Meadows,

Plaintiffs-Appellants,

v.

Jocelyn Benson, in her official capacity as Secretary of State,

Defendant-Appellee.

On Appeal from the United States District Court
for the Western District of Michigan
Case No. 1:19-cv-985
The Honorable Janet T. Neff

Brief of Plaintiffs-Appellants Mike Kowall, et al.

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CORPORATE DISCLOSURE STATEMENT

Pursuant to the Federal Rules of Appellate Procedure and 6th Cir. R. 26.1, counsel for Appellants certify that no party to this appeal is a subsidiary or affiliate of a publicly owned corporation, and no publicly owned corporation that is not a party to this appeal has a financial interest in the outcome. Appellants are 10 individuals.

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STATEMENT IN SUPPORT OF ORAL ARGUMENT

Plaintiffs-Appellants are 10 former members of the Michigan Legislature—Democrat and Republican—who, with one exception, are now barred from running for their prior offices due to the term limits in Michigan's Constitution. Those term limits—the shortest in the nation and paired with a lifetime ban—violate Plaintiffs' federal constitutional rights. They filed this lawsuit seeking declaratory relief and a permanent injunction prohibiting Defendant, the Michigan Secretary of State, from enforcing Mich. Const. 1963 art. IV, § 54. Such an injunction would allow Plaintiffs to again appear on the ballot for the Michigan House of Representatives and Michigan Senate.

This case presents important constitutional questions addressing, among other things, whether Michigan's harsh term-limit prohibition violates their First and Fourteenth Amendments by interfering with Plaintiffs' ability to (1) run for office and appear on the ballot, and (2) vote for candidates who have substantial legislative experience. And this appeal requires this Court to carefully parse U.S. Supreme Court precedent regarding the rights of candidates to have meaningful ballot access—the issue presented here—from precedent regarding the rights of voters to choose their candidates of choice—the issue presented and decided (albeit incorrectly) in *Citizens for Legislative Choice v. Miller*, 144 F.3d 916 (6th Cir. 1998). Because the case implicates important constitutional liberties and presents nuanced disputes, oral argument will assist the Court.

STATEMENT OF JURISDICTION

Plaintiffs' amended complaint raises federal questions under the U.S. Constitution and 42 U.S.C. § 1983. 1st Am. V. Compl. ("Compl.") ¶ 1, R.5, PageID.35. The district court exercised original jurisdiction under 28 U.S.C. §§ 1331 (federal question jurisdiction) and 1343 (civil rights jurisdiction). *Id.* ¶ 22.

Appellate jurisdiction exists under 28 U.S.C. § 1291. On January 20, 2021, the district court granted Defendants-Appellees' motion to dismiss. Order, R.34, PageID.336. The same day, it rendered judgment disposing of Plaintiffs' claims. Judgment, R.35, PageID.353. On February 3, 2021, Plaintiffs filed a timely notice of appeal. Notice of Appeal, R.36, PageID.354.

STATEMENT OF ISSUES

1. Whether Michigan's lifetime term limits—the shortest and harshest in the nation—violate Plaintiffs' First and Fourteenth Amendment rights.

2. Whether the proposal that resulted in Michigan's lifetime term limits—Proposal B—violated the Title-Object Clause in Michigan's Constitution.

3. Whether Proposal B misled Michigan voters, in violation of Article XII, § 2 of Michigan's Constitution, by making them believe they were voting for state and federal term limits when in fact they were voting for only state term limits.

INTRODUCTION

Plaintiffs Mike Kowall, Roger Kahn, Scott Dianda, Clark Harder, Joseph Haveman, David E. Nathan, Paul Opsommer, Douglas Spade, Mark Meadows, and Mary Valentine are Democrat and Republican former members of the Michigan Legislature who, with one exception (Rep. Valentine), are now barred from running for their prior offices forever due to Michigan's lifetime term limits. Those term limits—the shortest in the nation and paired with a lifetime ban—violate Plaintiffs' federal constitutional rights and ensure a legislative body lacking experience.

Contrary to the district court's conclusion, this Court's decision in *Citizens for Legislative Choice v. Miller*, 144 F.3d 916 (1998), does not control this case. *Miller* upheld Michigan's term limits in a challenge brought by voters and voters' rights groups. And though Plaintiffs do sue in their capacity as voters, they concede *Miller*'s applicability to them as voters and preserve the issue of *Miller*'s correctness for en banc or Supreme Court review. Instead, Plaintiffs press their First and Fourteenth Amendment and other claims as *candidates* who have been permanently barred from the ballot. And unlike cases that have upheld states laws governing procedural aspects of ballot access, Michigan's term limits "involve measures that exclude candidates from the ballot without reference to the candidates' support in the electoral process." *U.S. Terms Limits, Inc. v. Thornton*, 514 U.S. 779, 835 (1995).

Such exclusion is forbidden unless the State satisfies strict scrutiny—or near-strict scrutiny under the *Anderson-Burdick* framework (if that test applies to a challenge to a state law that does not involve electoral processes and procedure). Because a lifetime ban paired with the shortest terms in the nation does not satisfy strict or near-strict, *Anderson-Burdick* scrutiny, Michigan's term limits are unconstitutional and must be enjoined.

Michigan's lifetime term limits also fail for two additional reasons. The ballot proposal that created the term-limit scheme abridges the Title-Object Clause in Michigan's Constitution. And, in conjunction with the Savings Clause in Michigan's Constitution, the ballot that added lifetime term limits to Michigan's Constitution—Proposal B—misled voters by making them believe they were voting for state *and* federal term limits when in fact they were voting only for state term limits.

For all these reasons, and those explained in more detail below, Plaintiffs respectfully request that this Court reverse and remand for entry of summary judgment in favor of Plaintiffs and a permanent injunction prohibiting Michigan from enforcing its draconian term-limits law. Doing so will not prohibit Michigan from adopting any term-limits proposal going forward. Instead, such an injunction will open the door to a meaningful conversation about how term limits have—and have not—worked in Michigan, and the adoption of a valid term-limits regime, one that is more in line with what other states have adopted.

STATEMENT OF THE CASE

I. Plaintiffs and their distinguished public-service records

Mike Kowall served in the Michigan House of Representatives from 1999 through 2002, then served two terms in Michigan's Senate, including as the Senate Majority Floor Leader, until being term-limited at the end of 2019. Kowall Decl. ¶¶ 1–2, 4–5, R.25-1, PgID.195-196. But for Michigan's lifetime term limits, Senator Kowall would run for his old seat and vote for candidates with significant experience because he believes that reduced legislator experience and the corresponding increase in power among lobbyists has been harmful to Michigan government. *Id.* ¶¶ 22–23, PgID.199-200.

Roger Kahn served two terms in Michigan's Senate until being term-limited at the end of 2014. Kahn Decl. ¶¶ 3–4, R.25-1, PgID.203. He served in numerous leadership roles, including Appropriations Committee Chair. *Id.* ¶ 14, PgID.206-207. But for Michigan's lifetime term limits, Senator Kahn would run for his old seat and vote for candidates with significant experience because he believes that diminished legislative experience increases the power of lobbyists and career bureaucrats. *Id.* ¶¶ 24–26, PgID.210-211.

Scott Dianda served three terms in Michigan's House until being term-limited at the end of 2019. Dianda Decl. ¶ 2, R.25-1, PgID.213. He was a champion for his constituents. *Id.* ¶¶ 3-6, PgID.213. But for Michigan's lifetime term limits, Representative Dianda would vote for experienced candidates, run for his old seat, and use his experience to

help overcome bureaucratic barriers that have become painfully apparent during the COVID-19 pandemic. *Id.* ¶ 10, PgID.214.

Clark Harder served four terms in Michigan's House and was a member of the first group of term-limited legislators. Harder Decl. ¶ 2, R.25-1, PgID.216-217. He sponsored legislation that became the cornerstone of Proposal A for school-funding reform, and legislation that increased the state gasoline tax to expand investment in Michigan's roads. *Id.* ¶ 10, PgID.218. Absent limits, he would run for his seat again and vote for other experienced candidates to reduce bureaucrat and lobbyist power. *Id.* ¶¶ 22–24, PgID.221-222.

Joseph Haveman served three terms in Michigan's house and was term-limited at the end of 2014, just as he hit his legislative stride. Haveman Decl. ¶¶ 1–2, R.25-1, PgID.223-224. He served as Vice Chair and Chair of the House Appropriations Committee and also advanced criminal-justice reform. *Id.* ¶¶ 3, 5, PgID.224. He would vote for experienced candidates and again run for his seat if term limits were lifted because term limits have hobbled the Legislature's ability to represent constituents. *Id.* ¶¶ 16–17, PgID.228-229.

David E. Nathan served three terms in the Michigan House until being term-limited at the end of 2015. Nathan Decl. ¶ 2, R.25-1, PgID.230. He served in various leadership roles, including as Chair of the House Subcommittee on academic Emergencies. *Id.* ¶¶ 3–5, PgID.230-231. But for Michigan's lifetime term limits, Representative Nathan

would run for his old seat and vote for candidates with significant experience because he believes that reduced legislator experience and the corresponding increase in power among lobbyists has been harmful to Michigan government. *Id.* ¶¶ 13–15, PgID.233-234.

Paul Opsommer served three terms in the Michigan House before being term-limited at the end of 2013. Opsommer Decl. ¶ 1, R.25-1, PgID.235. He served as Chair of the House Transportation Committee and streamlined Act 51, the primary funding mechanism for Michigan transportation infrastructure. *Id.* ¶¶ 2–3, PgID.235-236. But for term limits, Representative Opsommer would run for his seat again and support other experienced legislators as well. *Id.* ¶¶ 26–27, PgID.243-244. In fact, when he first ran for office, his preference was to re-elect his term-limited predecessor because experience is so vital to the Legislature as an institution and to our republican form of government. *Id.* ¶¶ 28–29, PgID.244.

Douglas Spade served three terms in the Michigan House until being term-limited in 2005. Spade Decl., ¶ 2, R.25-1, PgID.246. Representative Spade jointly established the first Disability Caucus, which was both bipartisan and bicameral. *Id.* ¶¶ 3–4, PgID.246-247. But for Michigan's lifetime term limits, Representative Spade would run for his old seat and vote for candidates with significant experience because reduced legislator experience and the increase in lobbyist power has been harmful. *Id.* ¶¶ 11–13, PgID.249.

Mark Meadows served three terms in the Michigan House until being term-limited in 2012. Meadows Decl., ¶ 2, R.25-1, PgID.250. Representative Meadows chaired a special committee to address retiree healthcare and served as the Assistant Minority Leader. *Id.* ¶¶ 7, 9, PgID.251, 252. But for Michigan's lifetime term limits, he would run for his old seat and vote for candidates with significant experience because he believes that reduced legislator experience and the corresponding increase in power among lobbyists has been harmful to Michigan government. *Id.* ¶¶ 17–20, PgID.254-255.

Mary Valentine served two terms in the Michigan house. Valentine Decl. ¶ 2, R.25-1, PgID.257. She worked on legislation that led to the ban on smoking in Michigan's restaurants, introduced a law to allow more foster children to attend school in their home district, and helped students come to Lansing to advocate for the Michigan Promise scholarship program. *Id.* ¶¶ 3–6, PgID.257-258. She believes term limits have been destructive to the Legislature, and if term limits were invalidated, she would favor candidates with experience to minimize the power of lobbyists and bureaucrats. *Id.* ¶¶ 11–12, PgID.260.

II. Article IV, § 54 of the Michigan Constitution

In the 1992 general election, Proposal B, titled "A Proposal To Restrict/Limit The Number Of Times A Person Can Be Elected To Congressional, State Executive And State Legislative Office," was approved by Michigan voters.[1] As a result, the Michigan Constitution was amended to impose term limits on individuals holding congressional office—limiting United States Senators to two, six-year terms in a 24-year period and United States Representatives to three, two-year terms in a 12-year period. The amendment also placed lifetime bans on those holding state legislative office—limiting state representatives to three, two-year terms (a total of six years) and state senators to two, four-year terms (a total of eight years), and on several state executive offices. Mich. Const. art. IV, § 54.

Three years after Proposal B was passed, the United States Supreme Court in *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779 (1995), held that states cannot impose restrictions on those seeking or holding Congressional office that are greater than those provided for in the United States Constitution. This resulted in the provisions restricting the number of terms an individual could serve as a U.S. Senator or Representative from Michigan in Mich. Const. art. IV, § 54 being invalidated. After *Thornton*, only lifetime term limits on state

[1] The full text of Proposal B as it appeared on the 1992 ballot is set forth in *Citizens for Legislative Choice v. Miller*, 993 F. Supp. 1041, 1042-43 (E.D. Mich. 1998).

legislative and executive offices remained in effect in Michigan.

Of the 15 states that impose term limits on state legislators, Michigan's scheme is easily the harshest and most restrictive. For example, nine of the 15 states impose only consecutive term limits on legislators rather than lifetime limits, like Michigan. *Id. The Term-Limited States*, http://www.ncsl.org/research/about-state-legislatures/chart-of-term-limits-states.aspx. As for the six states that impose lifetime limits, Michigan allows the fewest number of years for which an elected representative may serve. *Id.* And while Plaintiffs have differing opinions as to what the *best* term-limit regime might be, all agree that Michigan's limitations have not worked as intended and have resulted in numerous deleterious effects, as described below.

III. The deleterious effects of term limits generally

Because Michigan's lifetime ban and shortest-in-the-nation term limits are not the least restrictive or narrowest means to accomplish the ends that term limits purportedly advance, this Court need not decide whether Michigan's current term-limit system represents good policy. But it is helpful background to understand how term limits have delivered on their promises and impacted legislative institutions.

The most comprehensive survey of term limits' effects was a 50-state survey published in 2006. Carey, Niemi, Powell, and Moncrief, *The Effects of Term Limits on State Legislatures: A New Survey of the 50 States*, Legislative Studies Quarterly, XXXI, 1, February 2006

[hereinafter "*Survey of the 50 States*"]. The study authors "conducted the only survey of legislators in all 50 states aimed at assessing the impact of term limits on state legislative representation." *Id.* at 105.

On a 50-state basis, term limits have not delivered their promised benefits. Term limits did not produce any significant difference in elected-legislator demographics. There has been no statistically significant increase in racial and ethnic minority representation. *Survey of the 50 States*, p. 114. *Id.* There are no significant differences in political ideology. *Id.* While there are more women serving in state legislators today, that is a function of more women running for office and winning generally; researchers "are unable to attribute any part of this change to the extraordinary opening up of legislative seats that occurred as term limits took effect." *Id.* at 115. And, contrary to the expectation of a "new breed" of amateur politician, term limits *increase* professional politicians. *Id.* at 116–17.

Term limits did change some legislator behaviors, but not in ways that term-limit proponents promised. Non-lame-duck legislators are campaigning and fund-raising *more* than their non-term-limited counterparts. *Id.* at 118. Legislators in term-limit states "report spending less time keeping touch with constituents than do those in" non-term-limited states. *Id.* "Legislators in term-limited chambers engage in *less* constituent service than do those who do not face limits." *Id.* at 119 (emphasis added). Term limits "have also been shown to decrease

lawmakers' efforts to develop and advance policies, reduce their willingness to show up for roll-call votes, and discourage creation of the bipartisan coalitions and relationships within the chamber that are often desired by term limit supporters." Casey Burgat, *The Case Against Congressional Term Limits*, R Street Shorts No. 72 (July 2019), p. 2.[2] And term-limited lawmakers "tend to increase spending and borrowing levels since they cannot be punished electorally." *Id.*[3]

Institutionally, the results are to be expected. After term limits, "the surge in gubernatorial influence is substantial." *Survey of the 50 States*, p. 124. What's more, "[t]erm limits clearly increase the power of the executive branch [i.e., "bureaucrats/civil servants"] relative to the legislature," a "product of the removal of long-term incumbents rather than of changing incentives that arise of putting term limits on the books." *Id.* at 125. This shift in power is not offset by legislative staff; survey data indicated "no shift toward greater staff influence in term-limited chambers." *Id.* at 124. And while legislators themselves may not see an increase in lobbyist influence, the lobbyists themselves certainly do. Lobbyists voice a "strong consensus . . . that term limits have caused

[2] Citing Gerald C. Wright, *Do term limits affect legislative roll call voting? Representation, polarization, and participation*, State Politics and Policy Quarterly 7:3 (2006), pp. 256–80; Majorie Sarbaugh-Thompson et al., *Democracy among strangers: Term limits' effects on relationships between state legislators in Michigan*, State Politics and Policy Quarterly 6:4 (2006), pp. 384–409; and Karl T. Kurtz et al. eds., *Institutional Change in American Politics: The case of term limits* (University of Michigan Press, 2009).

[3] Citing Abbie H. Erier, *Legislative term limits and state spending*," Public Choice 133:3-4 (2001), pp. 479–94

the state political influence structure to shift away from the legislature and toward the governor, administrative agencies, and interest groups." Burgat, *The Case Against Congressional Term Limits*, p. 2.[4]

Simply put, "[t]erm limits weaken the legislative branch relative to the executive. . . . The roots of this effect appear to reach into the legislatures themselves, where the two institutional actors generally regarded as best able to coordinate collective action among legislators—majority party leaders and committee chairs—are debilitated by term limits." *Survey of the 50 States*, pp. 129–30. And term limits' "long-term effects on legislative policy innovation and bargaining strength relative to other actors . . . are negative." *Id.* at 130.

IV. The deleterious effects of term limits in Michigan

As for Michigan, it cannot be disputed that lifetime term limits have sucked legislative experience out of the Legislature. In 2014, Michigan's term limits forced 34 lawmakers from office with a combined 248 *years* of experience, including the Senator Majority Leader, Senate Minority leader, and House Speaker. *Term limit turnover: Michigan losing 248 years of legislative experience this year*, MLive (Dec. 31, 2014), available at http://www.mlive.com/lansing-news/index/ssf/2014/12/term-limit_turnover_michigan_1.html. Similarly, in 2019, term limits forced

[4] Citing Gary Moncrief and Joel A. Thompson, *On the outside looking in: lobbyists' perspectives on the effects of state legislative term limits*, State Politics & Policy Quarterly 1:4 (2001), p. 394.

out nearly 70% of state senators and more than 20% of state representatives. *Mass turnover fuels push for Mich. term limit reform*, The Detroit News (Oct. 3, 2017), available at https://www.detroitnews.com/story/news/politics/2017/10/03/michigan-chamber-term-limits-reform/106253436. Where do they go? Nearly one-quarter end up either registering as lobbyists or working as consultants or paid advocates. Kusnetz, *Revolving Door Swings Freely in America's Statehouses*, The Center for Public Integrity (May 19, 2014) (summarizing a *Detroit Free Press* investigation that tracked the careers of 291 Michigan officials elected from 1992-2004).

This environment has consequences. First, term limits incentivize politically-ambitious legislators to use their short legislative experience as a kind of springboard to another office—which intensifies, not diminishes, their focus on reelection-centric efforts. Marjorie Sarbaugh-Thompson & Lyke Thompson, *Implementing Term Limits: The Case of the Michigan Legislature* (2017), pp. 277-278 [hereinafter, "*Thompson*"]. Indeed, after the imposition of term limits, politically-ambitious legislators spent more time on reelection-centric efforts—like procuring pork for their districts—and less time on actually legislating, like studying legislation, developing new legislation, and building coalitions across party lines. *Id.* at 277. Actual legislation was found to be most commonly within the purview of experienced or veteran legislators. *Id.* at 314.

Likewise, freshmen legislators not only spend less time post term limits building bipartisan coalitions, but less time building coalitions within their own parties. *Id.* at 283. That lack of institutional knowledge and coalition building among inexperienced legislators means that legislators often turn to external, rather than internal, sources for information when voting on policy: lobbyists and special interest groups. *Id.* at 447. As one authority explains:

> The big change in the [Michigan] Senate is the rising importance (a 24% increase) of organized groups and lobbyists as trusted sources during floor votes. Nearly twice the proportion of post-term-limits senators turns to organized groups and lobbyists as their most important source compared to the proportion rating colleagues most important. Organized groups and lobbyists displace local sources as the most important ones for post-term-limits senators . . . .
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> Lost access for local sources is noteworthy because term limits proponents claimed that with limits on their tenure elected officials would be more closely tied to their constituents and their districts. We find no evidence of this—indeed, the changes we find are often in the opposite direction. The consulting patterns that evolve in the Senate after term limits often attenuate the ties that term limits advocates wanted to cultivate (local sources) and strengthen the ones they wanted to sever (organized groups and lobbyists). That this occurs at the expense of local sources and of colleagues demonstrates a shift in access and influence for key actors in Michigan's policy-making process. [*Id.* at pp. 478-479, 492-493].

Nor do term limits promote diversity or fresh ideas. Instead, term limits have increased a kind of dynastic representation—where term-limited incumbents' relatives seek to capitalize on name recognition—

and recruitment of particular candidates. For example, in 2016 alone, *13* races involved a spouse, sibling, or other relative of a current candidate—and that was in addition to the *16* other seats already held by a former incumbent's family member. Jack Lessenberry, *Our system of term limits in Michigan is an utter failure*, Michigan Radio (May 10, 2016), *available at* http://michiganradio.org/post/ our-system-term-limits-michigan-utter-failure. Likewise, recruiting particular candidates—including family and staff members of incumbents—significantly *increased* after the imposition of term limits. *Thompson*, p. 134. And the kind of candidates recruited by party incumbents is significant. For example, after the imposition of term limits, the Michigan Democratic Party increased its candidate recruiting efforts, and those efforts targeted white men significantly more than women and people of color, when compared to recruiting efforts pre-term-limits. *Thompson*, pp. 138-140.

In sum, at every level, term limits have proved a "failed social experiment." *Michigan Term limits a "failed social experiment*," The Detroit News (April 18, 2017), available at http://www.detroitnews.com/ story/news/politics/2017/04/18/meekhof-mich-term-limits-failed-social-experiment/100599820/.

V. Plaintiffs' personal experience with term limits' harms

Plaintiffs have witnessed term limits' adverse effects and more firsthand. Lifetime term limits have led to decreased social interaction, coalition-building, and collegiality among legislators. Harder Decl.

¶¶ 15–17, R.25-1, PgID.219-220; Kowall Decl. ¶¶ 19–21, R.25-1, PgID.199. They have also resulted in legislators with less real-world experience. Haveman Decl. ¶ 11, R.25-1, PgID.226-227. The general absence of subject-matter knowledge and the niceties of legislative procedural rules has resulted in poor legislation, the failure to pass needed legislation, and the loss of millions of federal dollars. Valentine Decl. ¶¶ 9–10, R.25-1, PgID.259-260; Harder Decl. ¶¶ 18–19, R.25-1, PgID.220; Kahn Decl. ¶ 17, R.25-1, PgID.207-208; Opsommer Decl. ¶¶ 21–22, R.25-1, PgID.242; Haveman Decl. ¶¶ 6–8, R.25-1, PgID.224-225; Meadows Decl. ¶ 13, R.25-1, PgID.253; Kowall Decl. ¶¶ 15, 18, R.25-1, PgID.198-199; Spade Decl. ¶¶ 9–10, R.25-1, PgID.248. Term limits have lowered the quality of representation for the "little things" on which constituents often depend. Kahn Decl. ¶¶ 8–13, R.25-1, PgID.204-206; Spade Decl. ¶¶ 6–7, R.25-1, PgID.247-248. And they have made it very difficult to address thorny, complex issues, given that it takes eight to ten years to study and build consensus around meaningful change in a system that prohibits officeholders from serving more than six years in the House. Opsommer Decl. ¶¶ 14–15, R.25-1, PgID.240; Kowall Decl. ¶¶ 16–18, R.25-1, PgID.198-199; Meadows Decl. ¶¶ 14–15, R.25-1, PgID.253-254. Perhaps this is why, after decades of trying, the Legislature has been unable to create a permanent fix for funding Michigan's transportation infrastructure, which currently ranks last in the nation and may soon require a multi-billion dollar loan that will

burden future Michiganders. Opsommer Decl. ¶¶ 17–20, R.25-1, PgID.240-242.

The lack of institutional memory is particularly costly in times of crisis. It would certainly be beneficial to have some of the legislators who worked through budget shortfalls during the Great Recession in the chambers today to deal with the estimated $1-3 billion shortfall that will be caused by the COVID-19 pandemic. Kahn Decl. ¶¶ 18-20, R.25-1, PgID.208-209. And the loss of legislator knowledge has contributed to the State's failures in dealing with applications for unemployment and other public benefits during the COVID-19 crisis. Dianda Decl. ¶¶ 10(a)–(b), R.25-1, PgID.214.

Lacking that experience, legislators must turn to lobbyists, career bureaucrats, and staff on policy issues. Kahn Decl. ¶ 21, R.25-1, PgID.209; Dianda Decl ¶ 11, R.25-1, PgID.214; Opsommer Decl. ¶ 24, R.25-1, PgID.243; Haveman Decl. ¶ 9, R.25-1, PgID.226; Kowall Decl. ¶¶ 11–14, R.25-1, PgID.197-198; Nathan Decl. ¶¶ 9–10, R.25-1, PgID.232; Meadows Decl. ¶¶ 10–11, R.25-1, PgID.252; Nathan Decl. ¶¶ 9–10, R.25-1, PgID.232. Career bureaucrats can just "wait out" legislators with whom they disagree on policy issues. Opsommer Decl. ¶ 23, R.25-1, PgID.242-243; Meadows Decl. ¶ 12, R.25-1, PgID.252-253. Following policy recommendations for unelected, career policy staff does not always result in the best policy choices for constituents. Haveman Decl ¶ 9, R.25-1, PgID.226. And a symbiotic relationship between legislators and

lobbyists fits the lobbyists' interests rather than the interests of Michiganders and is inconsistent with a republican form of government. Harder Decl. ¶¶ 20–21, R.25-1, PgID.221; Kahn Decl. ¶ 21, R.25-1, PgID.209; Kowall Decl. ¶ 14, R.25-1, PgID.197-198. In one instance, doing the lobbyists' bidding cost taxpayers more than $100 million over a 20-year period. Dianda Decl. ¶ 12, R.25-1, PgID.214.

The impact of lifetime term limits has been to shift legislator thinking to short-term consequences of their policy decisions rather than the long-term ramifications, many of which may not manifest themselves until years after a legislator has been termed-out. Haveman Decl. ¶ 12, R.25-1, PgID.227. Lifetime term limits have also forced legislators to settle for less satisfactory public policy because there simply isn't time to craft and pass a better bill. *Id.* ¶ 13–14, PgID.227-228.

Overall, lifetime term limits have been destructive to the functioning of the Michigan Legislature. Valentine Decl. ¶ 11, R.25-1, PgID.260. As the most recent expert analysis concludes, (1) "[l]egislative term limits in Michigan have failed to achieve the stated goals proponents espoused of ridding government of career politicians, increasing diversity among elected officials, and making elections more competitive," (2) "officials spend more time on activities that can be viewed as electioneering," and term limits "have weakened the legislature vis-à-vis the executive branch," and (3) the "chief problem" is "the fact that among the 15 states with term limits, Michigan has the

shortest and strictest limits." Drs. Marjorie Sarbaugh-Thompson and Lyke Thompson, *Evaluating the Effects of Term Limits on the Michigan Legislature*, Citizens Research Council of Michigan Report 401, p. iii (May 2018).

VI. Proceedings

Plaintiffs filed their Complaint on November 20, 2019, and their First Amendment Complaint on December 11, 2019, seeking to permanently enjoin Defendants from enforcing Michigan's unconstitutional term-limits regime. R.5, PgID.34. The parties filed cross-motions for summary judgment, and on January 20, 2021, the district court entered its opinion and order denying Plaintiffs' motion and granting Defendant's motion. 1/20/21 Op., R.34, PgID.336.

With respect to Counts I and II, Plaintiffs' First and Fourteenth Amendment claims, the district court's analysis began and ended with this Court's decision upholding Michigan's term-limits regime in *Citizens for Legislative Choice v. Miller*, 144 F.3d 916, 921–22 (6th Cir. 1998). 1/20/01 Op. 4–10, R.34, PgID.339–45. Although *Miller* involved a claim by voters and non-profit corporations asserting the right to vote for the candidate of their choice, and this case involves Plaintiffs denied a right to ballot access, the district court concluded that distinction "does nothing to change the *Anderson-Burdick* review of any alleged burden on the right to associate that is implicated by candidate qualifications." *Id.* at 9, PgID.344.

Addressing Count III, the district court held that Plaintiffs' Guarantee Clause claim was not justiciable, and that Michigan's term-limits regime did not violate the Guarantee Clause in any event. 1/20/01 Op. 10-12, R.34, PgID.345–47.

The district court rejected Plaintiffs' Count IV—asserting a violation of the Michigan Constitution's Title-Object Clause—not because the claim lacked merit, but because the court concluded that the Clause applied only to Michigan statutory amendments, not constitutional amendments. 1/20/21 Op. 12–13, PgID.347–48.

Finally, the district court held that Plaintiffs' savings-clause argument, in Count V, failed because Michigan voters were not "misled" by the ballot language. 1/20/21 Op. 13–16, PgID.348-51. In so holding, the court distinguished the analogous and contrary ruling of the Nebraska Supreme Court in *Duggan v. Beermann*, 544 N.W.2d 68 (Neb. 1996). *Id.* at 14, 16, PgID.349, 351.

STANDARD OF REVIEW

At the summary judgment stage, this Court ordinarily reviews the evidence in the light most favorable to the nonmoving party. But where the parties filed cross-motions for summary judgment, the Court evaluates each party's motion on its own merits, taking care in each instance to draw all reasonable inferences against the party whose motion is under consideration. *Black v. Pension Benefit Guaranty Corporation*, 983 F.3d 858, 862 (6th Cir. 2020). In all other respects, this Court reviews the district court's grant of summary judgment de novo to determine whether there are any disputes of material fact such that one party is entitled to judgment as a matter of law. *Id.* (cleaned up); *accord, e.g.*, *Graveline v. Benson*, __ F.3d __, 2021 WL 1165186, at *6 (6th Cir. Mar. 29, 2021).

This Court likewise reviews the district court's analysis of state law de novo. *Troutman v. Louisville Metro Dep't of Corrections* 979 F.3d 472, 482 (6th Cir. 2020) (citing *Rawe v. Liberty Mut. Fire Ins. Co.*, 462 F.3d 521, 526 (6th Cir. 2006)). In applying state law, this court follows the law of the state as announced by that state's supreme court. *Miles v. Kohli & Kaliher Assocs.*, 917 F.2d 235, 241 (6th Cir. 1990). "Where the state supreme court has not spoken, our task is to discern, from all available sources, how that court would respond if confronted with the issue." *Id.*

SUMMARY OF THE ARGUMENT

The Supreme Court traditionally applies strict scrutiny to state election laws that restrict ballot access. The *Anderson-Burdick* balancing analysis, while helpful for evaluating laws that regulate election processes, is inapplicable to a law that targets political candidates solely because of their experience—just as it would be inapplicable to a state law that prohibited a candidate from running for office if she attended a private religious school, supported gun safety, or had a professional background as a doctor or accountant. Yet even under *Anderson-Burdick*, this Court applies what amounts to strict scrutiny where, as here, state laws prohibit a candidate from accessing a ballot by targeting a particular class of candidates for exclusion. *Graveline v. Benson*, __ F.3d __, 2021 WL 1165186, at *6-14 (6th Cir. Mar. 29, 2021).

Either way, the applicable test requires the State to prove that "there was no less restrictive means by which they could achieve their important interests." *Graveline*, 2021 WL 1165186, at *13 (quoting *Lawrence v. Blackwell*, 430 F.3d 368, 375 (6th Cir. 2005)) (cleaned up). And there is no question that Michigan's term-limits regime is not the least restrictive means of achieving any of the State's purported interests. Michigan's restrictions on experienced candidates are the shortest and harshest in the nation. We know less restrictive means could achieve the State's interests because those means have been tried successfully in other states.

The proposal that led to Michigan's adoption of its lifetime term limits ban—Proposal B—is also invalid for two additional reasons.

First, Michigan's Constitution includes a Title-Object Clause that requires all laws to embrace a single subject and prohibits them from changing Michigan's constitutional structure. The district court held that the Clause applies only to legislation enacted by the Legislature, not citizen-proposed ballot initiatives. But the Michigan Supreme Court held the exact opposite in *Leininger v. Alger*, 316 Mich. 644, 648; 26 N.W.2d 348 (1947), and that decision binds the federal courts.

The Title-Object Clause requires the invalidation of Proposal B. The proposal modified Michigan's Constitution without referencing the primary provision it was changing, Article 4, Section 7, contrary to *Protect Our Jobs v. Bd. of State Canvassers*, 492 Mich. 763, 781–82; 822 N.W.2d 534 (2012). And the proposal changed Michigan's constitutional structure, and only a Constitutional Convention can do that. *Citizens Protecting Michigan's Constitution v. Secretary of State*, 503 Mich. 42, 921 N.W.2d 247 (2018).

Second, Proposal B misled voters into thinking they were voting for state and federal term limits when in fact, due to a Supreme Court decision, those voters were creating only state limits. The Nebraska Supreme Court struck down that state's term limits in indistinguishable circumstances. *Duggan v. Beermann*, 249 Neb. 411 (1996). This Court should follow *Duggan* and do the same here.

ARGUMENT

I. Michigan's term-limits regime, the shortest and harshest in the nation, violates Plaintiffs' First and Fourteenth Amendment rights.

A. This Court should apply strict scrutiny when evaluating Michigan's lifetime ballot bar.

The right to run for public office is one of the definitive forms of political expression in our country, and it implicates two fundamental freedoms: individual expression and freedom of association. When an individual seeks to become a candidate, her expressive activity has two dimensions: (1) urging that her views be the views of the elected public official, and (2) as spokeswoman for a political party or independent voters at large.

Candidacy opens a plethora of communicative possibilities unavailable to those who write letters to the editor, protest, or post political thoughts on social media. A candidate is likely to be asked to discuss her views on tv and radio, or for newspaper or online publication. She will be invited to speak to groups or participate in public debates from which other speakers are excluded. And she can raise money to communicate her ideas in broadcast, print, and online media. Ballot access restricts these types of political speech. *Illinois State Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 186 (1979) ("[A]n election campaign is a means of disseminating ideas as well as attaining political office . . . . Overbroad restrictions on ballot access jeopardize this form of political expression.").

Recognizing these principles, the Supreme Court has struck down numerous ballot-access restrictions in response to First and Fourteenth Amendment challenges. *E.g., Williams v. Rhodes*, 393 U.S. 23 (1968) (invalidating Ohio rule that required minor political parties to obtain a certain number of signatures to access the ballot); *Bullock v. Carter*, 405 U.S. 134 (1972) (invalidating a Texas ballot access fee); *Lubin v. Panish*, 415 U.S. 709 (1974) (invalidating California ballot access fee); *Illinois State Bd.*, 440 U.S. 173 (invalidating Illinois law requiring third parties to obtain 25,000 signatures before appearing on the ballot); *Anderson v. Celebrezze*, 460 U.S. 780 (1983) (invalidating Ohio early-filing deadline for independent candidates). *But see Storer v. Brown*, 415 U.S. 724 (1974) (upholding California's one-year disaffiliation requirement); *Burdick v. Takushi*, 504 U.S. 428 (1992) (upholding Hawaii prohibition on write-in voting).

Early on, the Supreme Court subjected ballot-access requirements to strict scrutiny, i.e., requiring the government to demonstrate a "compelling interest" and to regulate in a manner that is "the least restrictive means" of furthering that interest. *E.g.*, *Williams*, 393 U.S. at 31–33 ("The State has here failed to show any 'compelling interest' which justifies imposing such heavy burdens"); *Illinois State Bd.*, 440 U.S. at 186 ("The signature requirements . . . are plainly not the least restrictive means of protecting the State's [compelling] objectives."); *Lubin*, 415 U.S. at 717 (requirement was "extraordinarily ill-fitted to" advancing state's

purported goal; "other means to protect those valid interests are available"). Later, the Court announced a sliding scale that ranged from something just shy of strict scrutiny—"narrowly drawn to advance a state interest of compelling importance"—to a more "flexible analysis, one that weighs a law's burden on the plaintiff against the state's purported interest and chosen means of pursuing it. *Daunt v. Benson*, 956 F.3d 396, 408–09 (6th Cir. 2020) (quoting *Burdick*, 504 U.S. at 434, and citing *Ohio Democratic Party v. Husted*, 834 F.3d 620, 627 (6th Cir. 2016)). So, how to reconcile these lines of precedent?

The Supreme Court provided answers in *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779 (1995), a case that invalidated Arkansas' term limits on Congressional candidates. *Thornton* raised issues under the Qualifications Clause of the U.S. Constitution, and the Court appropriately rested its holding primarily on an analysis of that Clause. But in so doing, the Court shed considerable light on its ballot-access line of cases, concluding that there was nothing in that line that could save the Arkansas term limits. *Id.* at 834–35.

Specifically, Arkansas justified its Congressional term limits as a permissible exercise of its power under the U.S. Constitution's Elections Clause to regulate the "Times, Places, and Manner" of federal elections. *Thornton*, 514 U.S. at 832 (citing U.S. Const., Art. 1 § 4 cl.1.) In rejecting Arkansas' position, the Court looked at *Storer*, *Burdick*, and other ballot-access decisions and distinguished them as cases involving laws that

"regulated election *procedures* and did not even arguably impose any substantive qualification rendering a class of potential candidates ineligible for ballot position." *Id.* at 835. Such procedural regulations "served the state interest in protecting the integrity and regularity of the election process, an interest independent of any attempt to evade the constitutional prohibition against the imposition of additional qualifications for service." *Id.*

These cases also "did not involve *measures that exclude candidates from the ballot without reference to the candidates' support in the electoral process*." *Thornton*, 514 U.S. at 835 (emphasis added). Accordingly, said the Court, its cases "upholding state regulations of elections procedures thus provide little support for the contention that a state-imposed ballot access is constitutional when it is undertaken for the twin goals of *disadvantaging a particular class of candidates* and evading the dictates of the Qualifications Clauses." *Id.* (emphasis added).

Thornton obviously does not require this Court to hold that lifetime term limits on state legislators are invalid. But it does require recognition that such limits "disadvantag[e] a particular class of candidates" by excluding them from the ballot "without reference to the candidates' support in the electoral process." 514 U.S. at 835. This recognition means lifetime term limits are far closer to ballot access fees, to which the Supreme Court has consistently applied strict scrutiny (*e.g.*, *Bullock*; *Lubin*), than to laws that impose time deadlines, regulate write-in ballot

procedures, or specify a minimum number of required signatures. When paired with the substantial impingement on candidate expression and association rights that term limits entail, the Supreme Court's precedents counsel strongly in favor of applying strict scrutiny here.

B. *Anderson-Burdick*'s balancing analysis does not apply here.

The district court below accepted Secretary Benson's invitation to instead apply the *Anderson-Burdick* "flexible" framework for evaluating Michigan's term-limits regime. 1/20/21 Op. 6–7, R.34, PgID.341–32 (relying on *Anderson v. Celebrezze*, 460 U.S. 780 (1983), and *Burdick v. Takushi*, 504 U.S. 428 (1992)). As the Supreme Court explained in *Burdick*, the rigorousness of a court's inquiry into the validity of a state election standard "depends upon the extent to which a challenged regulation burdens First and Fourteenth Amendment rights." 504 U.S. at 434. When such rights are subjected to "severe" restriction, the state law must be "narrowly drawn to advance a state interest of compelling importance." *Id.* (quoting *Norman v. Reed*, 502 U.S. 279, 289 (1992)). Conversely, when a law imposes only "'reasonable, nondiscriminatory restrictions' upon the First and Fourteenth Amendment right of voters, 'the State's important regulatory interests are generally sufficient to justify' the restrictions." *Id.* (quoting *Anderson*, 460 U.S. at 788). Though some courts characterize the former test as "strict scrutiny," *e.g.*,

Graveline v. Benson, 430 F. Supp. 3d. 297, 315 (E.D. Mich. 2019),[5] there is arguably a modest difference. (A "narrowly drawn" law is not necessarily the "least restrictive" necessary to advance a compelling state interest). Either way, the burden on the State is high.

In *Citizens for Legislative Choice v. Miller*, this Court applied the *Anderson-Burdick* sliding scale and concluded that the severity of lifetime term limits' burden on *voters* was small. A "voter has no right to vote for a specific candidate or even a particular class of candidates." 144 F.3d at 921 (citations omitted). And Michigan voters can still "vote for experience" despite term limits. *Id.* at 922 ("For the legislature, they can vote for former city council [members], legislative aides, and many other candidates with political experience. Indeed, [voters] may elect anyone who has served less than three terms in the state house." *Id.* But for two reasons, a different analysis applies here.

First, the *Anderson-Burdick* test is calibrated to the regulation of election *processes*, not candidate *qualifications*. For example, *Anderson* involved an early-filing deadline on Ohio for independent candidates, 460 U.S. at 782; *Burdick* was a challenge to Hawaii's prohibition on write-in voting. 504 U.S. at 430. That is why this Court has consistently followed the Supreme Court's lead and used the *Anderson-Burdick* sliding scale

[5] The *Graveline* court concluded that Michigan's laws severely impacted rights because (1) the laws had the effect of excluding all independent candidates for Attorney General, (2) there were no alternative means to appear as an independent Attorney General candidate, and (3) the restrictions operated "as a mechanism to exclude certain classes of candidates from the electoral process." 430 F. Supp. 3d at 310–14 (quoting *Libertarian Party of Ohio v. Blackwell*, 462 F.3d 579, (6th Cir. 2006)).

where a state's election procedures are at stake, whether that be the imposition of minimum signature requirements, *e.g.*, *Green Party of Tennessee v. Hargett*, 791 F.3d 684 (6th Cir. 2015), early-voting regulations, *e.g.*, *Obama for Am. v. Husted*, 697 F.3d 423, 430 (6th Cir. 2012), or a prohibition on straight-ticket voting, *e.g.*, *Mich. State A. Philip Randolph Inst. v. Johnson*, 833 F.3d 656, 662 (6th Cir. 2016). *Miller* implicitly recognized this distinction—even while applying the *Anderson-Burdick* framework to a claim brought by voters rather than candidates—acknowledging that term limits "implicate a different, and in some respects a far more important interest" than laws governing election processes: "the State's power to prescribe qualifications for its officeholders." *Miller*, 144 F.3d at 924 (citation omitted).

If Michigan prohibited a candidate from running for office if she attended a private religious school, supported gun safety, or had a professional background as a doctor or accountant, no one would even suggest that such prohibitions—all based on candidate qualifications—should be analyzed through the lens of *Anderson-Burdick*. The same should be true of a prohibition that excludes candidates for life from a legislative chamber once they obtain six or eight years of experience working there.

Excluding *Miller*, this Court has never, to Plaintiffs' knowledge, applied *Anderson-Burdick* outside the election-*processes* context in a published opinion. And *Miller* was itself decided as a voter case, not a ballot-access case. The Court should make that point here, or, if necessary, consider this case en banc to do so.

Second, the Supreme Court's decision in *Thornton* makes clear that a different analysis is appropriate for candidates. Lifetime term limits have the effect of "disadvantaging a particular class of candidates," 514 U.S. at 835—term-limited former legislators like Plaintiffs. What's more, term limits do so in a way that *Thornton* explicitly condemned: "exclud[ing] candidates from the ballot without reference to the candidates' support in the electoral process." *Id.* This burden is far more severe on Plaintiffs than ballot-access restrictions "seeking to assure that elections are operated equitably and efficiently," *Burdick*, 504 U.S. at 433, or "protect[ing] the integrity and reliability of the electoral process itself," *Anderson*, 460 U.S. at 788, n.9.The burden is also much heavier than that imposed by laws like minimum-signature or residency requirements, regulations that ensure a candidate's level of support and political engagement, respectively; lifetime term limits bar candidates from appearing on the ballot *because* they engaged the political process and solicited considerable support when they did so.

Lifetime term limits impose a severe restriction on candidates in an additional way. By their very nature, "lifetime" limits do not provide

alternative routes for term-limited candidates to run for their former seats. *Compare with Clements v. Fashing*, 457 U.S. 957 (1982) (upholding Texas law that prohibited justices of the peace from running for the state legislature if it meant cutting short their service; in concluding the law was not a significant barrier to candidacy, the Supreme Court emphasized the short-term nature of the two-year restriction). Although Plaintiffs may run for other offices, Michigan law precludes them from running for the chamber of the Legislature in which they previously served not just a few years, but forever.

The district court agreed with Secretary Benson that "the fact that Plaintiffs seek to be candidates does nothing to change the *Anderson-Burdick* review of any alleged burden on the right that is implicated by candidate qualifications." 1/20/21 Op. 9, R.34, PgID.344. But that conclusion runs contrary to the way this Court has applied *Anderson-Burdick* in other cases, including *Miller*. When a state enacts prohibitions that preclude ballot access to candidates based on who they are or what they have done, the constitutional implications are far more serious than when the state enacts neutral laws that merely regulate election procedures. Accordingly, this Court should apply strict scrutiny.

C. Michigan's term limits fail strict scrutiny.

Plaintiffs do not contest that Michigan has a sovereign right to structure its own government. *Daunt*, 956 F.3d at 409 (citing *Miller*, 144 F.3d at 923). But when applying strict scrutiny, simply invoking a

sovereign interest in structuring political institutions is insufficient to uphold a restriction that prevents certain individuals from accessing the ballot for life. Otherwise, a state constitutional amendment that prohibits candidates of a certain race from ever appearing on the ballot would be immune from federal constitutional scrutiny. Constitutional rights cannot be abridged by popular vote. *Lucas v. Forty-Fourth General Assembly*, 377 U.S. 713, 736–37 (1964).

So, the State must articulate other interests that lifetime term limits advance. Plaintiffs will anticipate and address some of these interests in the next section, analyzing them under the *Anderson-Burdick* narrow tailoring test. For now, it is sufficient to say that no matter the interest, or how compelling any particular interest might be, a lifetime ban paired with a six-year limit in the Michigan House and an eight-year limit in the Michigan Senate is not the "least restrictive" means necessary to advance those goals. Of the 15 states that impose term limits, nine of them do not include a lifetime ban. And none of the other 14 have term lengths as short as Michigan. (In California, after initially approving a term-limits regime identical to Michigan's, voters sensibly amended the plan later, to extend the term.) Michigan is the outlier in every respect.

Though the Supreme Court has not yet had a chance to consider the validity of term limits for state officeholders, its analysis in the campaign-finance arena is instructive. The Supreme Court has long said

that contribution limits implicate the First Amendment, though it has never declared that *all* such limits are unconstitutional. *E.g.*, *Buckley v. Valeo*, 424 U.S. 1 (1976) (per curiam); *Randall v. Sorrell*, 548 U.S. 230 (2006). Instead, the Court asks whether particular contribution limits "are too low and too strict to survive First Amendment scrutiny." *Randall*, 548 U.S. at 248. "At some point the constitutional risks to the democratic electoral process become too great." *Id.*

This was the case in *Randall*. There, the Court evaluated Vermont's contribution limits, which were "lowest in the Nation." 548 U.S. at 250. The Court held that the limits were "too restrictive" and burdened associational and expressive rights without "any special justification that might warrant a contribution limit so low or so restrictive." *Id.* at 253, 261. Even while recognizing "the legitimate need for constitutional leeway in respect to legislative line-drawing," the law "nonetheless [went] too far" and could not be severed from the remainder of the Act: the limits "burden[ed] First Amendment interests in a manner that is disproportionate to the public purposes they were enacted to advance." *Id.* at 262.

The Court should reach the same conclusion here. Michigan's lifetime term limits severely burden Plaintiffs' First and Fourteenth Amendment rights. And while there are certainly public purposes that may warrant some constraint on a candidate's unfettered right to run for office, those interests can be adequately served by more reasonable

restrictions, as shown in every single other state that has adopted a term-limits proposal. (Significantly, Plaintiffs do not challenge *all* term limits, only Michigan's harshest, strictest-in-the-nation limits.) For this reason alone, Michigan's lifetime term limits are unconstitutional, and Plaintiffs are entitled to summary judgment.

D. At minimum, the Court should apply the highest end of *Anderson-Burdick*'s sliding scale.

Under *Anderson-Burdick*, this Court's analysis begins "by assessing the character and magnitude of the asserted injury that Plaintiffs allege." *Graveline v. Benson*, __ F.3d __, 2021 WL 1165186, at *6 (6th Cir. Mar. 29, 2021). *Graveline* involved a candidate who tried and failed to satisfy Michigan's requirement that an independent, statewide candidate for attorney general gather 30,000 signatures, geographically distributed across the State, and submit them to the Secretary of State by mid-July, far in advance of when Michigan's two largest political parties hold their state nominating conventions to determine their candidates for attorney general. Although *Graveline* involved an election process—not a substantive candidate restriction like race or having too much experience—the candidate, like Plaintiffs here, invoked "the right of individuals to associate for the advance of political beliefs." *Id.* (quoting *Williams v. Rhodes*, 393 U.S. 23, 30 (1968)).

In determining the magnitude of that asserted injury, this Court explained that the "rights of political association and free speech occupy a [ ] hallowed place in the constitutional pantheon." *Id.* (quoting

Libertarian Party of Ohio v. Blackwell, 462 F.3d 579, 585 (6th Cir. 2006)). And this Court admonished that "when a candidate wishes to appear as one party's standard-bearer and voters want to exercise their constitutional right to cast a ballot for this candidate, the Supreme Court has viewed state-imposed restrictions on this fundamental process with great skepticism." *Id.* (quoting *Libertarian Party of Ohio*, 462 F.3d at 588)). Reviewing the considerable obstacles that prevent an independent attorney-general candidate from obtaining ballot access in Michigan, this Court concluded that Michigan's law "impose[d] a severe burden" on them. *Id.* at *9. And this imposed a concomitant "severe burden on Plaintiffs' associational and voting rights." *Id.* at *11. Accordingly, the Court reviewed Michigan's election laws under "strict scrutiny," *id.* at *12, and it affirmed a district-court injunction that lowered the minimum signature requirement from 30,000 to 12,000. *Id.* at *14.

Here, Plaintiffs' rights are burdened at least as heavily as the plaintiff candidate in *Graveline*. Plaintiffs, too, assert a right to associate for the advancement of political beliefs and wish to appear as their party's standard-bearer. But the burden Michigan imposes on them is much more severe than merely collecting 30,000 signatures before an early deadline. Once they serve six years in the Michigan House, or eight years in the Michigan Senate, they face a lifetime ban from that chamber and may never appear on the ballot for their previous position again. If the signature-gathering requirements imposed a "severe burden" on

Graveline's "associational and voting rights," __ F.3d __, 2021 WL 1165186, at *11, then certainly Michigan's term-limit regime—the harshest and strictest in the nation—imposes a severe burden on Plaintiffs' associational and voting rights as well.[6] Accordingly, even under *Anderson-Burdick*, this Court should apply "strict scrutiny" or something very close to it. *Graveline*, 2021 WL 1165186, at *12.

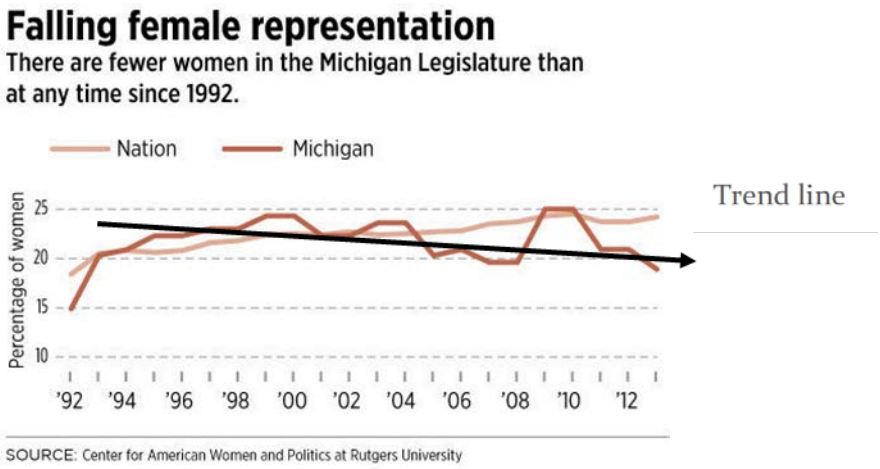
E. Michigan's term limits fail *Anderson-Burdick*'s narrow-tailoring requirement.

Just like under strict scrutiny, an *Anderson-Burdick* narrow-tailoring analysis shows that Michigan's lifetime term limits are unconstitutional. Again, it is not enough for the State to simply invoke its authority as sovereign to structure itself politically. The State must identify specific interests and show that a lifetime ban paired with the shortest legislative terms in the nation is "narrowly tailored" to advance each of those interests. Even if all agree that "the challenged provisions serve compelling interests," "under strict-scrutiny review, Defendants are 'obligated to demonstrate that there was no less restrictive means by which they could achieve their important interests.'" *Graveline*, 2021 WL 1165186, at *13 (quoting *Lawrence v. Blackwell*, 430 F.3d 368, 375 (6th Cir. 2005)) (cleaned up). The State cannot do so.

[6] The First Amended Complaint alleges unconstitutional infringement of Plaintiffs' rights as voters as well as their rights as candidates. First Am. Compl. ¶¶ 52, 66, 73, 84, 91, 97, 103, 108, 113, 120, 133, R.5, PgID.13–14, 16, 17–18, 20, 21–22, 23, 24, 25, 27. Plaintiffs recognize that *Miller* controls this claim but preserve the right to argue that *Miller* was wrongly decided, either en banc or in a petition for certiorari.

Michigan's term limits are not narrowly tailored to prevent political careerism or the advantages of incumbency. All the research on Michigan's system, noted above, demonstrates that Michigan's term-limit system *increased* political careerism. And a term-limits scheme that allows a legislator to sit out a cycle or two and then run again, as most term-limits states allow, is a more narrowly tailored way to decrease incumbency advantages. In other words, even if the State could prove that a ban on incumbents seeking re-election is a necessity—a proposition that flies in the face of the many incumbents nationwide who fall to unknown challengers—the State cannot show that such a ban must be permanent when so many other states with term limits have successfully advanced the exact some interests without a lifetime ban.

Michigan's term limits are also not narrowly tailored to increase diverse representation. As the research shows, term limits do not have such an effect, presumably because successful female and minority candidates are almost immediately removed never allowed to run for their position again. Indeed, until the most recent election cycle, the percentage of Michigan women legislators had been on a downward decline (after an initial uptick in the immediate aftermath of the switch to term limits), even as women nationally more frequently ran for and obtained legislative offices:



Term limits have hardly created an environment where new individuals with fresh ideas can thrive. As shown in the research and Plaintiffs' practical experience, a six-year House term combined with a lifetime ban causes fresh ideas to die before a legislator can acquire enough knowledge and traction to see those ideas become law. A lifetime ban with longer terms, or the current terms paired with the ability to sit out and come back, would be far likelier to advance this interest while also placing a lesser burden on candidates' constitutional rights.

In sum, Michigan's term limits compared to those of other states is akin to imposing a 40-year age limit when other states say 70 or 75 years will do. *But see Bates v. Jones*, 131 F.3d 843, 847 (9th Cir. 1997) (comparing California's old regime to age limits). No matter how one views the State's asserted interests in light of the burden on *voters*, *see Miller*, 144 F.3d at 920–24, Michigan's harshest, strictest-in-the-nation term limits regime is not narrowly drawn to advance a compelling state interest such that the severe burden on term-limited *candidates* is excused.

II. Proposal B violated the Title-Object Clause in Michigan's Constitution.

A. Article IV, Section 24 applies equally to legislative and constitutional amendments.

This Court should also reject the district court's conclusion that "Plaintiffs' Title-Object clause claim is without merit" because the lower court ignored Michigan authority that Article IV, Section 24 of Michigan's Constitution applies to ballot initiatives to amend the constitution equally as it does to legislation.

Article 12, § 2 of Michigan's 1963 Constitution allows for constitutional amendments via initiative petition circulated and submitted by voters. Without any analysis to distinguish the cases cited by Plaintiffs, including *Leininger v. Alger*, 316 Mich. 644; 26 N.W.2d 348 (1947), the district court adopted the Defendant's sweeping statement that "no Michigan court has ever held that the Title-Object clause applies to amendments to the Michigan Constitution, whether proposed by the Legislature or by the people through petition, as here."

Contrary to the districts court's conclusion, under Michigan law, voter-approved acts such as Proposal B are on equal footing with legislation that has not been submitted to the people. *Advisory Opinion on Constitutionality of 1982 PA 47*, 418 Mich. 49; 340 N.W.2d 817 (1983); *Frey v. Director of Dept. of Social Services*, 162 Mich. App. 586; 413 N.W.2d 54 (voters' initiative legislation is not on superior footing with legislative acts voted by legislature), *aff'd* 429 Mich. 315; 414 N.W.2d 873 (1987). This equal footing requires that voter-initiated amendments to

the Michigan Constitution satisfy the requirements of Article 4, Section 24, the Title-Object Clause of the Michigan Constitution. Stated differently, a law which the Legislature cannot enact because it violates the constitution cannot otherwise be enacted by voter initiative. *Auto Club of Mich. Comm. for Lower Rates Now v. Secretary of State*, 195 Mich. App. 613, 624; 491 N.W.2d 269 (1992) (discussing *Leininger* and its progeny).

In *Leininger*, the Michigan Supreme Court expressly held that the Title-Object Clause appearing in Const 1908, art. 5, § 21 (now art. 4, § 24) applies to initiated laws. 316 Mich. at 648. No court in the last 70 years has limited the *Leininger* decision to exclude voter-initiated laws to amend the constitution, as opposed to laws to modify, change, or rescind existing statutes. And there is no reason to make such a distinction as the Title-Object Clause "ensures that legislators and the public receive proper notice of legislative content and prevents deceit and subterfuge." *Pohutski v. City of Allen Park*, 465 Mich. 675, 690; 641 N.W.2d 219 (2002); *Phinney v. Perlmutter*, 222 Mich. App. 513; 564 N.W.2d 532 (1997). These goals apply equally to initiatives to modify existing laws and to amend the constitution.[7]

[7] In addition to the common policy goals, the Michigan Legislature established the same standards for the forms of petitions both to amend the constitution and initiate legislation. *Consumers Power Co. v. Attorney General*, 426 Mich. 1; 392 N.W.2d 513 (1986) (holding that the plain language of MCL 168.472a applies to signatures on petitions both to amend the constitution and to initiate legislation).

B. "State term limits" modified a Michigan constitutional provision (Article 4, Section 7) without mentioning it and is a separate subject than "federal term limits."

Not only does Michigan's Title-Object Clause apply to constitutional amendments by initiative, the Clause invalidates Proposal B because the proposal sought to insert term limits into the constitution at the state *and* federal level. To date, no court has considered whether Proposal B violates Article 4, Section 24, and those that danced around peripheral issues did not have the benefit of the Michigan Supreme Court's clear standard established in *Citizens Protecting Michigan's Constitution ("CPMC") v. Secretary of State*, 503 Mich. 42, 921 N.W.2d 247 (2018), for evaluating when initiative amendments go too far.

Under Michigan law, three kinds of challenges may be brought pursuant to Article IV, Section 24: (1) a title-body challenge, in which a plaintiff alleges that the title of the act does not adequately express the content of the law; (2) a "multiple-object" challenge, in which the plaintiff alleges that an act contains subjects so diverse that they have no necessary connection; and (3) a change of purpose challenge. *Toth v. Callaghan*, 995 F.Supp.2d 774 (E.D. Mich. 2014); *Gillette Commercial Operations North America & Subsidiaries v. Dep't of Treasury*, 312 Mich. App. 394; 878 N.W.2d 891 (2015) (citations omitted).

Proposal B violates the Title-Object Clause in two, distinct ways. First, and most simply, Proposal B changed the fundamental structure of Michigan's form of government by adding new qualifications for state

legislators without mentioning the modification to Article 4, Section 7.[8] The Michigan Constitution strictly prohibits this. *Protect Our Jobs v. Bd. of State Canvassers*, 492 Mich. 763, 781–82; 822 N.W.2d 534 (2012) (amendments that add to, delete from, or change an existing constitutional provision must say so on the face of the proposal).

In addition, Proposal B sought to insert federal term limits into the Michigan Constitution, an object new to the 1963 Constitution which is factually and legally different from term limits for state legislators.[9] In other words, while Proposal B was carefully promoted as a single-object proposal to only limit the number of years a Michigan resident could serve in certain elected offices, the actual changes to the 1963 Constitution were multiple and diverse, such that Proposal B violated Article 24, Section 2.

This conclusion is reinforced by the Michigan Supreme Court's recent decision in *CPMC*. There, the Michigan Supreme Court explained that, "to be permissible, a voter-initiated amendment must propose changes that do not significantly alter or abolish the form or structure of the government in a manner equivalent to creating a new constitution."

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[8] *Massey v. Secretary of State*, 457 Mich. 410, 579 N.W.2d 862 (1998), is no longer controlling law as its disjointed analysis and conclusion that Proposal B did not modify or change the qualifications for state legislators is implicitly rejected by *CPMC* and at odds with the Supreme Court's analysis of the nearly identical qualification clause in the U.S. Constitution in *US Term Limits, Inc. v. Thornton*, 514 U.S. 779 (1995).

[9] *See Thornton,* 514 U.S. at 832-833 ("The Framers intended the Elections Clause to grant States authority to create procedural regulations, not to provide States with license to exclude classes of candidates from federal office).

CPMC, 503 Mich. at 54. According to the Supreme Court in *CPMC*:

> Our Constitution tells us what this basic difference is. The result of a constitutional convention called to consider a "general revision" is a "proposed constitution or amendments" adopted by the convention and proposed to the electors. The convention, then, can propose amendments to the existing Constitution or offer a new constitution. By contrast, if approved, a voter-initiated amendment under Article 12, § 2 "shall become part of the constitution, and shall abrogate or amend existing provisions of the constitution ...." Consequently, an amendment does not replace a constitution in full, but simply adds to or abrogates specific provisions in an existing constitution. Thus, the constitutional text distinguishes between amendments that can be made by petition and new "constitutions." Because only the convention has the power to propose a constitution, by logical implication an initiative amendment cannot do so. And since this limitation would be meaningless if it only required a new constitution to be labeled as an amendment, it follows that an initiative amendment cannot propose changes that are tantamount to the creation of a new constitution. [*Id*. at 76-77.]

"[T]he distinction between the Article 12, § 3 convention process and the Article 12, § 2 amendment process is that the former can produce a proposed constitution, while the latter *is limited to proposing less sweeping changes*." *Id*. at 79 (emphasis added). "A constitution, after all, is more than words on a page. Its most basic functions are to create the form and structure of government, define and limit the powers of government, and provide for the protection of rights and liberties. These are the basic threads of a constitution, and when they are removed, replaced, or radically rewoven, the whole tapestry of the constitution may

change." *Id.* at 80-81. "Therefore, changes that significantly alter or abolish the form or structure of our government, in a manner equivalent to creating a new constitution, are not amendments under Article 12, § 2." *Id.* at 81; *Protect Our Jobs v. Bd. of State Canvassers*, 492 Mich. 763, 772; 822 N.W.2d 534 (2012) ("This Court has consistently protected the right of the people to amend their Constitution in this way, while enforcing constitutional and statutory safeguards that the people placed on the exercise of that right.").

While it is true that since Proposal B passed, legislators have been facing lifetime bans on the number of terms they serve, "the current state of affairs is a deviation from what the voters chose when they ratified the 1963 Constitution." *Id.* at 96-97. In fact, whether to impose term-limits on legislature and statewide elected officials in Michigan was considered during the 1961-62 Constitutional Convention but was ultimately rejected. *See e.g.*, 1 Official Record, Constitutional Convention 1961, pp. 389-390 (Delegate Binkowski questioning General Eisenhower on the necessity of term limits in the new constitution). As recognized by this Court in *Miller*, 144 F.3d 916 (6th Cir. 1998):

> Term limits … implicate a different, and in some respects a far more important interest: the State's power to prescribe qualifications for its officeholders. As such, they involve the State's authority to structure its government. Through lifetime term limits, the State of Michigan, and the voters of Michigan … chose a different type of polity based on a different type of representative. [144 F.3d at 924 (internal citations omitted).]

Thus, Proposal B fundamentally altered the framework of Michigan's government as established by the 1963 Constitution which, under *CPMC*, required a Constitutional Convention as required by Article 12, Section 3.[10] Proposal B violates Mich. Const. 1963, art. IV, § 24, because it embraces more than a single-object and failed to express the object of the amendment in its title.[11] For these reasons, this Court should hold it unconstitutional.

III. Michigan voters were misled into voting for a different constitutional amendment.

The Michigan Constitution mandates that ballot language for a constitutional amendment "consist of a true and impartial statement of the purpose of the amendment in such language as shall create no prejudice for or against the proposed amendment." Mich. Const. 1963, art. XII, § 2 (emphasis added). When Michigan voters voted in favor of Proposal B, they did so in reliance on ballot language that was untrue because the language they voted on is materially different than what is in place today. This problem independently warrants reversal of the district court's ruling with respect to Count V of the Complaint.

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[10] *Citizens*, 280 Mich. App. at 277 ("[T]he Michigan Constitution clearly establishes separate methods for enacting an 'amendment' to, as compared to a 'general revision' of, the constitution.").

[11] In the alternative, for these same reasons, Proposal B served as a general revision to Michigan's constitution requiring the calling of a constitutional convention and violated Article 12, Section 3 of the Michigan Constitution. *See e.g., CPMC*, 503 Mich. 429.

A. The district court erred in its application and analysis of the applicable legal standards.

In its Opinion and Order, the district court relied on the absence of a specific statement about a savings clause in Proposal B's ballot language in concluding that voters were not "misled" about what they were voting on. R.34, PageID.351. The district court's reliance on this irrelevant fact misses the mark. The appropriate analysis should have been whether the language that voters considered when voting on Proposal B was true or untrue in light of the requirements set forth in Mich. Const. 1963, art. XII, § 2. This test applies regardless of whether there is a reference to a savings clause in the language of the petition, the ballot itself, the Michigan Constitution or elsewhere. Had the district court engaged in this analysis, it should have concluded that the savings clause violated Mich. Const. 1963, art. XII, § 2 because it resulted in an amendment to the Michigan Constitution that was ultimately different than what they voted on.

As the district court correctly identified, the ballot language that voters considered at the time was "A PROPOSAL TO RESTRICT/LIMIT THE NUMBER OF TIMES A PERSON CAN BE ELECTED TO CONGRESSIONAL, STATE EXECUTIVE *AND* STATE LEGISLATIVE OFFICE." R. 34, PageID.351 (emphasis added). Notably, the title of the ballot language used the conjunctive "and," indicating to voters that they were voting to enact a wholesale package of term limits for multiple offices. *OfficeMax, Inc. v. U.S.*, 428 F.3d 583, 589 (6th Cir. 2005)

("Reflecting these traditional assumptions about the meaning of the term, the Supreme Court has said that 'and' presumptively should be read in its 'ordinary' conjunctive sense unless the 'context' in which the term is used or 'other provisions of the statute' dictate a contrary interpretation."). The remaining ballot language also set forth the specific offices that the constitutional amendment would apply to and the corresponding term limit. It is without question that Michigan voters enacted Proposal B with the belief that there would be term limits on *Congressional offices*. This belief ended up being untrue after *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779 (1995), which held that states cannot impose qualifications for prospective members of the U.S. Congress stricter than those specified in the United States Constitution. In other words, voters approved a proposal that they believed included federal term limits, yet the actual amendment to Michigan's Constitution does not include those limits. And there is no evidence Michigan voters would have approved Proposal B without them.

Severing Proposal B's state limits from the federal limits renders the truthfulness requirement of Mich. Const. 1963, art. XII, § 2 meaningless and violates its core purpose. It is also in direct conflict with longstanding law affirming that ballot proposals must accurately convey what voters are being asked to decide. The effect of the Savings Clause on Proposal B directly undermines these controlling legal principles and violates Mich. Const. 1963, art. XII, § 2.

B. The district court should have reached a different result if it considered and applied the correct legal standard.

The right of Michigan citizens to engage in direct democracy by seeking amendments to the Michigan constitutional is subject to specific procedural requirements. *Citizens Protecting Michigan's Constitution v. Secretary of State*, 503 Mich. 42, 62 (2018). Among them is the requirement that "[e]very petition shall include the *full text of the proposed amendment*, and be signed by registered electors of the state equal in number to at least 10 percent of the total vote cast." *Id.* at 62, quoting Mich. Const. 1963, art. XII, § 2 (emphasis added, cleaned up). Likewise, ballot language for a constitutional amendment must "consist of a *true* and impartial statement of the *purpose of the amendment* in such language as shall create no prejudice for or against the proposed amendment." Mich. Const. 1963, art. XII, § 2 (emphasis added).

Setting forth the full text of the proposed constitutional amendment in ballot petitions serves the important purpose of providing full and complete information to the electorate, and courts are dutybound to protect the electorate when petition language is not truthful and accurate. The same is true with respect to language that appears on the ballots and is presented to the general electorate of the State. As the Michigan Supreme Court explained in *Protect Our Jobs*, it is the judiciary's role to "enforce the constitutional and statutory petition safeguards that exist to ensure that voters are adequately informed as they exercise their right to amend the Constitution." 492 Mich. at 781.

The need for this gatekeeper function is necessary because "the ordinary elector, not being a constitutional lawyer, would be confused rather than helped by a publication of all the other constitutional provisions which were or might be directly or only remotely, and possibly only contingently, affected by the proposed amendment." *Id.*

While *Protect our Jobs* analyzed whether certain proposed ballot initiatives abrogated or altered existing provisions of the Michigan Constitution, which would trigger specific publishing requirements (as noted above), the same principles and reasoning apply here. The typical voter who was asked to approve or reject Proposal B was not a constitutional lawyer. The typical voter would not recognize, understand, and consider that certain aspects of Proposal B could be construed as unconstitutional by a federal court, and that a Savings Clause in the Michigan Constitution could dramatically alter the effect of what they were voting for. When registered voters signed the petition to place Proposal B on the ballot and cast their ballots in that election, they did so with the understanding that Proposal B's passage would place term limits on *both* federal and state offices.

The Savings effect on Proposal B led to voters not being adequately informed that the effect of their vote was only to place term limits on *state* legislative offices. This serves as an independent basis to overturn Proposal B's passage. *Bailey v. Muskegon Co. Bd. of Comm'rs*, 122 Mich. App. 808, 826 (1983) ("Where the language employed by the Board of

State Canvassers to describe the purpose of a proposed amendment to the constitution contains omissions or defects likely to mislead voters, *the election must be voided and set aside*.") (emphasis added) (citations omitted).

Duggan v. Beermann, 249 Neb. 411 (1996), is illustrative and highly persuasive. There, voters passed an amendment to the Nebraska constitution placing term limits on federal, state and local office holders ("Measure # 408"). Measure # 408 included a savings clause which provided that "[i]f any of the provisions hereby adopted shall be held void for any reason, the remaining provisions shall continue in full force and effect." *Id.* at 418.

Following the Supreme Court's decision in *Thornton*, striking down state-imposed term limits upon congressional offices, opponents to the constitutional amendment sought to invalidate Measure # 408 in part, because state offices cannot "be severed from that portion pertaining to federal offices." *Id.* at 427. The Nebraska Supreme Court agreed. In doing so, the court explained that "[t]he Nebraska electorate voted for or against Measure # 408 in its entirety. We are now asked to guess whether the voters would have supported or opposed that portion of Measure # 408 which sought to impose term limits on state offices." *Id.* The court rightfully agreed that it could not do so, as "the Legislature is not involved. We are addressing constitutional amendments adopted by voter initiative rather than legislation. The intent of a majority of state

senators leaving a written record is far different from the intent of hundreds of thousands of individual voters." *Id.* at 428.

Duggan highlights the fundamental defect Savings Clauses have on citizen-led constitutional amendments. Michigan voters were required to consider Proposal B in its entirety. There is no data, empirical or otherwise, that the Court can consider in determining whether the surviving aspects of Proposal B effectuates the intent of voters. Holding that the surviving provisions of Proposal B satisfied the overall purpose of the ballot initiative would effectively require the Court to enter the minds of voters and determine: (1) if their votes were dependent on some or all aspects of Proposal B, (2) whether they would have voted differently knowing that federal term limits would not survive, and (3) any other relevant considerations that caused them to vote for or against Proposal B.

In its Opinion and Order, the district court cited *Ray v. Mortham*, 742 So.2d 1276, 1282 (Fla. 1999), for the proposition that *Duggan* was "factually and legally" distinguishable. This cursory rejection of *Duggan* and reliance on *Ray* was wrong.

The district court failed to engage in any meaningful analysis or articulate a compelling justification for why *Duggan*—a case that is seemingly on all fours with the present case—is inapplicable. Nor is there any basis to elevate the application of *Ray* over *Duggan* in the present case given the truthfulness mandate set forth in Mich. Const. 1963, art.

XII, § 2 and the plethora of case law setting forth the requirement that Michigan voters be adequately informed as to what they are voting on. When considering these important legal principles against the complete absence of evidence that Michigan voters would have passed Proposal B if it included only term limits on state legislative offices, this Court should reverse the district court and find that the Savings Clause renders Proposal B unconstitutional.

The effect of the Savings Clause on Proposal B also runs counter to sound public policy and the aforementioned intent of conveying truthful and accurate information to the electorate. By having the ability to rely on the Savings Clause as a fallback option, advocacy groups would be emboldened to include popular but unconstitutional policy provisions in otherwise constitutional proposals to gain enough support to make the ballot. Such a ruling would open the door for gamesmanship in the constitutional amendment process, cause confusion among voters, and otherwise undermines the Michigan Constitution's electoral safeguards.

CONCLUSION AND REQUESTED RELIEF

This Court should reverse and remand, directing that summary judgment be entered in favor of Plaintiffs and an injunction be entered prohibiting the enforcement of Article IV, Section 54 of Michigan's Constitution.

April 5, 2021

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RULE 32(G)(1) CERTIFICATE OF COMPLIANCE

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DESIGNATION OF RELEVANT DISTRICT COURT DOCUMENTS

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25-1	Declarations of Michael Kowall, Roger Kahn, Scott J. Dianda, Clark A. Harder, Joseph Haveman, David E. Nathan, Paul Opsommer, Douglas Spade, Mark Meadows, Mary Hostetler Valentine	195–260
27	Response to Motion for Summary Judgment and Motion for Summary Judgment in Favor of Defendant, July 9, 2020	263–281
29	Reply in Support of Plaintiffs' Motion for Summary Judgment and Brief Opposing Defendant's Motion for Summary Judgment, July 9, 2020	284–300
31	Surreply to Motion for Summary Judgment, July 9, 2020	303–313
33	Joint Statement of Material Facts, August 7, 2020	316–335
34	Opinion and Order Denying Plaintiffs' Motion for Summary Judgment and Granting Defendant's Motion for Summary Judgment, January 20, 2021	336–352
35	Judgment, January 20, 2021	353
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CERTIFICATE OF SERVICE

Under FED. R. APP. P. 31 and 6th Cir. R. 31, I hereby certify that on April 5, 2021, a digital copy of the brief was filed electronically with the Court using the its electronic filing system, which automatically sends an electronic notification to these attorneys of record:

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