



MICHIGAN FAIR ELECTIONS INSTITUTE
Non-partisan election integrity research and education

Treatment of Americans for Citizen Voting – Michigan (ACVM) Ballot Petition



Prepared for referral to
Michigan House of Representatives Select Committee
on the Rules and Procedures of the Board of State Canvassers and the Bureau of Elections

October 15, 2026

This report follows the evidentiary-tiering approach used in MFEI’s “Michigan Election Issues 2020 and Ripple Effects” report (Aug. 20, 2026).

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Election Integrity Oversight Team

This report presents educational investigative research on election administration, administrative law, and federal civil rights compliance. Michigan Fair Elections Institute is a 501(c)(3) educational organization that does not support or oppose candidates for public office.

October 15, 2026

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FOREWORD



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For over four years, contributors to the Michigan Fair Elections Institute have engaged in research efforts to examine election administration, transparency, and to uphold governmental accountability in Michigan. This report reflects MFEI's mission as a nonpartisan educational organization dedicated to evidence-based analysis of election processes and public institutions.

Specifically, MFEI herein examines the treatment of a ballot petition submitted by Americans for Citizen Voting-Michigan (ACVM). ACVM submitted 709,841 signatures, but the petition did not reach the November 2026 ballot after a review of 1,000 sampled signatures raised concerns about signature mismatches between the petition and those stored in Michigan's voter database (the QVF). ACVM supporters were given mere days to fix any problems after the petition had sat pending for nearly six months. The Board of State Canvassers then deadlocked 2:2 on a sufficiency vote, and both the U.S. and Michigan Supreme

Courts declined to intervene.

Rather than advancing a single theory, MFEI relates how and why ACVM's petition failed through four lines of inquiry and analytical argument. These four lines—counts—examine issues of due process, disparate treatment between the ACVM petition and other ballot-petition initiatives, reliability of statistical sampling, and examinations of court majority and dissenting opinions. MFEI reaches conclusions on each count but invites readers to perform their own analysis.

Readers will find the report distinguishes between established facts and findings of unresolved questions. It presents evidence, legal authorities, research, and competing viewpoints, but does not claim to provide the final word or assert wrongdoing. MFEI acknowledges it is an organization of volunteer citizens and lacks many investigative tools available to governmental entities.

Consequently, many questions raised in these pages can only be fully answered by authorities with access beyond those available to private citizens and nonprofit organizations.

This report should be viewed not as an end, but as a beginning. The issues MFEI identifies here are sufficiently significant to warrant review and independent examination by policymakers, investigators, legal scholars, and those empowered to obtain information unavailable to the report authors. Where the evidence supports inquiry, those entrusted with investigative and legal authority should determine what additional facts exist and whether any corrective, legislative, administrative, or legal action is appropriate.

A healthy constitutional system depends upon public confidence that government processes are administered fairly, consistently, and transparently. The issues presented are an opportunity to erode or to bolster such confidence. It is in a constructive spirit, and with respect for the institutions responsible that MFEI submits this report for consideration.

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EXECUTIVE SUMMARY

Americans for Citizen Voting-Michigan (ACVM) submitted 709,841 signatures in support of a proposed citizenship-verification amendment, 59.1 percent more signatures than the threshold of 446,198-signatures. The proposal nevertheless will not reach the November 3, 2026, ballot. This report examines the process that culminated in this result.

The Bureau of Elections took 166 days to issue its review of the signatures. Once that report disclosed the Bureau's rejection determinations, about five calendar days remained before the Board's 48-hour submission cutoff for the sponsor to respond. When the sponsor did what election officials told it to do, which was locate the affected voters and obtain notarized affidavits, the state measured that response against a QVF record it had not disclosed. On staff's retained working total, which includes four signatures whose treatment the Board never resolved, the petition fell three signatures short of the sample threshold, a margin within the Bureau's own stated 2.5% margin of error. That sampling uncertainty does not by itself establish that the petition was sufficient.

The Bureau's own manual publishes the standard for judging signatures, and it favors signers. A petition signature need not "perfectly match" the one on file, a signature with "redeeming qualities" should be treated as valid, and "[s]light dissimilarities should be resolved in favor of the voter whenever possible." The manual also says signatures found invalid are reviewed a second time by another staff member. The staff report placed 94 sampled entries in its category for signatures that were omitted or did not "sufficiently agree" with the signature on file and does not say whether each received that second review or how the redeeming-qualities test was applied.

ACVM could not see the QVF record to which the standard was applied, and the manual describes no process for curing a rejected signature, although the Bureau described one to ACVM in writing three days after its report (Petition Manual at 30, 34, and its App. B at 36; see Count 1, Part II.B).

This report is the Michigan Fair Elections Institute's request that the Michigan House Select Committee on the Rules and Procedures of the Board of State Canvassers and the Bureau of Elections (the Select Committee) examine what happened. This is not a request to take MFEI's word for it. The House Select Committee, which carries subpoena power, is well positioned to obtain directly what this report has done its best to reconstruct from public records, including the Bureau's internal deliberations, the 1,000-signature sample size and its randomness, the sampling software's actual design, the Board's 2023 votes adopting the single-stage sampling procedure, the transparency of the process, the reasons for its choice of a 90 percent confidence level and a fixed cutoff with no second-stage sample, and sworn testimony from the officials who made these decisions.

The report states where it relies on a primary source such as a court order, a Bureau staff report, the Bureau's own governing manual, or a certified transcript. Statements drawn from news coverage or a party's own account are labeled as attributed. Material factual assertions and conclusions are labeled by their source, from established fact to MFEI's own reasoning.

The present record strongly supports two principal questions warranting investigation: 1) Did the Bureau's delay deprive ACVM of a meaningful opportunity to respond? 2) Did the Board apply its procedures for late submissions and tie signatures to ACVM consistently with its treatment of comparable ballot petitions?

The report presents additional concerns involving access to evidence, statistical safeguards, processing time, and institutional independence for further examination rather than as established violations.

The petition did not reach the ballot after a review that took more than five months and relied on an affidavit-cure process not described in the Bureau's published petition manual. During the Board's deliberations, Bureau officials from the Michigan Department of State (MDOS) sat with the Board at the dais and took part directly. Count 2 examines that role, including how staff's working count treated tied votes on individual signatures.

MFEI does not conclude that this was a deliberate scheme to keep a disfavored petition off the ballot. Rather, the organization contends that a process meant to give the people of Michigan a fair hearing on their own constitution did not give this petition equally fair treatment.

The record reviewed here does not prove intent, and this report is careful throughout to say so where the evidence does not go further. At the end of each Count a Works Cited section provides reference sources and hyperlinks.

MFEI concludes that the House Select Committee, which exists precisely to examine the Bureau's and Board's rules and procedures, would be justified to ask two harder questions directly: 1) Is what happened to this petition a one-time failure, or is it a repeatable method that could be used against any future petition the Bureau or Board disfavors? 2) If issues or wrongdoing occurred, what are the appropriate remedies?

REQUESTS FOR RECORDS AND TESTIMONY

Most of what remains open in this report may be answered only with records and testimony MFEI cannot compel. The requests below are grouped by recipient. The counts that examine the issues throughout the following pages are noted in parentheses.

House Select Committee: Records

- The Bureau's working tally of each individual signature determination and Board vote at the August 24, 2026, hearing, none of which appears in the Board's minutes, including the coding history needed to verify or correct the reconstruction in Appendix C. The certified transcript of that hearing is now public as Exhibit I in U.S. Sup. Ct. No. 26A275 (Counts 1, 2, and 4; Appendix A.3).
- The Bureau's internal communications, staffing records, and processing logs for the ACVM review from March 4 through August 17, 2026, and the Bureau's and Board's scheduling records for the August 24 hearing, including whether an earlier staff report would have produced a later hearing date or more time to gather affidavits (Counts 1 and 2).
- The digitized QVF signatures and staff comparison notes for the 94 entries coded as omitted or non-matching signatures, for review under seal or in camera, and any internal guidance on whether confidential review was considered (Count 1).
- Records showing whether each of the 94 entries coded as omitted or non-matching signatures received the second staff review that the Bureau's manual requires, and how the manual's redeeming-qualities standard was applied to each (Count 1).
- The monthly petition-status updates that the Bureau's manual says it will post after final submission, as posted for ACVM's petition (Counts 1 and 2).
- Board records for the six prior meetings at which ACVM reports the Board accepted day-of submissions, and any prior instance in which the Board applied R 168.846 of the Board's procedural rules to a petition sponsor (Count 2).
- Records showing who directed the cancellation of the September 4, 2026, meeting, and when the cancellation notice was posted relative to the Michigan Supreme Court's September 3 order (Count 4).
- Any written advice from the Attorney General's office on the effect of 2-2 votes on individual signatures, beyond the oral answer given at the hearing (Aug. 24, 2026, Tr. 252) (Count 2).

- The sampling-software vendor's identity and contract, documentation of the program's randomization method and target error rate, the Rehmann report, the Bureau's records on eliminating the two-stage sample, the Board's October 2023 approval materials, and the QVF petition-module final report for the ACVM sample, which the published Sampling Procedure says is available through FOIA (Count 3).

House Select Committee: Testimony

- Director of Elections Jonathan Brater, on the reasons for the 166-day timeline, the authority for his role at the August 24 hearing, and the September 4 cancellation (Counts 1, 2, and 4).
- Members of the Board of State Canvassers, on the basis for applying R 168.846 to the sponsor's affidavits, for deferring ACVM's ballot wording on August 24, and on their 2023 votes adopting the single-stage sampling procedure (Counts 2, 3, and 4).

I. ISSUES SUMMARY

Between March 4, 2026, and September 3, 2026, the Michigan Bureau of Elections (“the Bureau”) and the Michigan Board of State Canvassers (“the Board”) administered the signature-sufficiency review of a citizen-initiated constitutional amendment petition sponsored by Americans for Citizen Voting – Michigan (“ACVM”) in a manner that, MFEI concludes, raises substantial concerns under the Fourteenth Amendment and Michigan’s own constitution and election law. This report explores whether ACVM and the signers of the petition’s 709,841 submitted signatures received a fair and legally authorized process.

ACVM submitted 709,841 signatures on March 4, 2026, which was 263,643 more than the 446,198 required (a 59.1% surplus) and more than four months before the statutory filing deadline. Michiganders for Money Out of Politics (MMOP), an initiated-law petition filed nearly three months later, was processed and certified in 58 days. The Bureau took 166 days to release its staff report on ACVM’s petition (August 17), and the Board took up the petition on August 24, 173 days after submission. It then deadlocked 2-2 on certification.

At the hearing, staff’s retained working total stood at 626 valid signatures in the 1,000-signature sample, three short of the 629 required. That total included four signatures whose treatment the Board never resolved. The three-signature gap is 0.3 percentage points of the sample, smaller than the Bureau’s stated margin of error of ± 2.5 percentage points. That illustrates sampling uncertainty; it does not establish legal sufficiency.

Justice Kavanaugh denied ACVM’s application to the U.S. Supreme Court for an injunction pending appeal on September 3, 2026, without stated reasons; the Michigan Supreme Court denied mandamus the same day on the ground that the challenged Board action was discretionary, while separate opinions addressed aspects of ACVM’s constitutional arguments. Neither court intervened to place the petition on the November 2026 ballot.

[ESTABLISHED FACT] September 3 mattered because of a separate, harder statutory deadline the following day. Even a same-day certification would still have required the Board to approve the petition’s 100-word ballot statement and the Secretary of State to certify it to county clerks by September 4, 2026 (MCL 168.32(2); MCL 168.480). Missing that date forecloses a measure from the ballot regardless of the underlying signature count.

Federal Law Context

The Fourteenth Amendment due process and equal protection theories in Counts 1 and 2 are, on their face, the kind of claim ordinarily vindicated through private civil litigation under [42 U.S.C. § 1983](#). MFEI presents them here as context for the Select Committee’s inquiry into whether Michigan’s petition-review process is vulnerable to disfavoring select future petitions.

[ATTRIBUTED CLAIM] The Michigan House of Representatives voted to create the Select Committee on the Rules and Procedures of the Board of State Canvassers and the Bureau of Elections in late August 2026, in direct response to the ACVM decision. Its members are Rep. Mike Harris (R-Waterford), chair; Rep. Bryan Posthumus (R-Rockford), majority vice chair; Rep. Denise Mentzer (D-Mt. Clemens), minority vice chair; Rep. Ann Bollin (R-Brighton); Rep. Rachelle Smit (R-Shelbyville); Rep. Jason Woolford (R-Howell); and Rep. Mai Xiong (D-Warren) (House Resolution 350 of 2026, Michigan House Select Committee: Rules and Procedures of the State Board of Canvassers and the Bureau of Elections, August 26, 2026)

This report examines that course of conduct across four counts with labels that identify the source of each statement: Established Fact (documented in a primary record), Attributed Claim (a party’s or commenter’s assertion, reported as theirs), Court Holding (what a court decided), Separate Opinion (a concurrence or dissent, which is not the court’s holding), and MFEI’s own reasoning, labeled Legal Argument or MFEI Conclusion. The labels describe where a statement comes from, not how confident MFEI is in it. They build on the framework MFEI used in its prior [Michigan Election Issues 2020 and Ripple Effects](#) report. Each count identifies the evidence behind each claim and the questions that remain open.

Note on transcripts. Where this report cites an official, certified transcript, it says so. For several meetings or parts of meetings, MFEI did not have an official transcript it could review. For those, MFEI used working transcripts built from the recordings’ YouTube captions. It matched names and motions to the signed minutes. Citations in the form “hearing video at 1:02:03” refer to those working transcripts, not to an official record. Where MFEI could compare a working transcript with an official or certified one, as with the August 31, 2022, sufficiency and wording items, the quotations matched. If an official transcript is found to differ from MFEI’s, MFEI may revise this report to conform to it.

A. The Four Counts at a Glance

Count and concern	Role	Supporting evidence	Open question	Request
1. Delay and the opportunity to respond	Principal allegation	166 days from filing to staff report; five days to the 48-hour cutoff; QVF signatures never shown to ACVM; the affidavit cure measured against the same record.	What work occurred during the 166 days, and why the response window was so short.	Bureau processing and scheduling records; confidential review of the QVF comparisons; Assessment of the due-process concern.
2. Different procedures for Michiganders for Money Out of Politics (MMOP) petition and ACVM petition	Principal allegation	July: late material heard and a tie left a signature unchanged. August: late affidavits refused, and counsel advised that a tie leaves a staff-approved signature invalid.	Which rule governed a sponsor's affidavits, and whether the Bureau sought the Attorney General guidance described on July 24.	The Board's explanation; records of the six prior meetings; any written Attorney General guidance.
3. The sampling decision rule	Supporting: policy and methodology	626 of 1,000 against 629 needed; an interval of about 60.1% to 65.1%; no second-stage procedure for close results; MFEI has not located public disclosure of the vendor or randomization documentation; the Board adopted the single-stage procedure by vote in 2023	Why the Board adopted this decision rule in 2023 and what error risks it accepts.	Vendor contract and randomization documentation; the Rehmann report; independent statistical review; testimony from the Board members who voted on the procedure.
4. Judicial review	Supporting: judicial context	The Michigan Supreme Court denied mandamus as discretionary; the justices split on due process and remedy; in 2022 the Court ordered the deadlocked petitions certified nine days after the Board's deadlocks, and the Board complied the next day.	Whether the statutory timeline leaves room for meaningful review.	Legislation responsive to Justice Hood's timing concern.

COMMON CHRONOLOGY AND UNDISPUTED NUMERICAL RECORD

The dates and figures below recur across multiple counts of this report. They are collected here once, as an undisputed reference, so that each count may incorporate them without restating the underlying sourcing each time. Sourcing for each item appears in the count where it is first substantively discussed.

Timeline

Date	Event
March 4, 2026	ACVM files 709,841 signatures, more than four months before the statutory filing deadline.
May 27, 2026	MMOP files its initiated-law petition (the comparison petition in Count 2).
July 24, 2026	The Board certifies MMOP 3-1. The Bureau separately releases ACVM's 1,000-signature sample to the public.
August 17, 2026	The Bureau issues its ACVM staff report, 166 days after filing, recommending insufficiency.
August 20, 2026	ACVM demands QVF access; the Bureau denies the request the same day.
August 21, 2026	ACVM responds to the staff report, including Erich Speckin's handwriting analysis.
August 23, 2026	The Bureau issues a supplemental staff report addressing ACVM's affidavits.
August 24, 2026	The Board holds its certification hearing. Two certification motions each fail 2-2. The Board unanimously and conditionally designates the measure Proposal 2026-02.
August 26, 2026	Michigan House votes to form a Select Committee: Rules and Procedures of the State Board of Canvassers and the Bureau of Elections
September 3, 2026	The Michigan Supreme Court denies ACVM's mandamus complaint; Justice Kavanaugh denies ACVM's U.S. Supreme Court application the same day.
September 4, 2026	Statutory deadline for finalizing ballot summary language and certifying to county clerks.

Key Numbers

Figure	Value
Signatures required	446,198
Signatures ACVM submitted	709,841 of the required threshold of 446,198. That's 263,643 (+59.1%) more signatures than the law requires.
Bureau of Elections' sample size	1,000 signatures (about 0.14% of the 709,841 signatures)
Validity rate required	62.9% (629 of 1,000)
Staff report initial valid count	612
Staff's retained working total after rehabilitation	626 (3 short of 629); includes four signatures on which the Board of State Canvassers deadlocked)
Affidavits submitted / accepted	23 submitted, 14 accepted, 9 rejected (figures from the Michigan Supreme Court's order; the certified transcript counts differently; see Appendix C.3)
Bureau's stated margin of error	±2.5% at a 90% confidence level
Days from ACVM filing to Board hearing	173
Days from MMOP filing to certification	58
Days from ACVM staff report to hearing	7 (166-day delay preceded it)

Scenario	Working total
Staff's retained count at the end of the hearing	626
Add the five affidavits excluded as untimely	631
Add the five affidavits and remove PTVA's two late-challenged duplicates	629 (threshold: 629)

[ESTABLISHED FACT] These are conditional calculations staff gave at the hearing, not an entitlement to certification. Each total keeps four signatures that staff found valid but on which the Board deadlocked. The Board's counsel advised that a signature on which the Board deadlocks is not valid, because the Board has made no determination that it is valid. That would lower the figures to 622, 627, and 625. The Board never resolved whether a deadlocked signature counts as valid or invalid (Aug. 24, 2026, Tr. 248:8–24; 252:16–24; 260:4–22).

COUNT 1: The Bureau Took 166 Days to Report a Problem, Then Gave ACVM Five Days to Fix It

I. Issue and Significance

The Michigan Bureau of Elections (“the Bureau”) took 166 days, from March 4, 2026, to August 17, 2026, to issue its staff report on the petition of Americans for Citizen Voting – Michigan (ACVM). Once that report disclosed the Bureau’s rejection determinations, approximately five calendar days remained before the Michigan Board of State Canvassers’ (“the Board”) 48-hour submission cutoff for the August 24 hearing. The Bureau’s published manual (*Petition Manual: Statewide Initiative, Referendum, and Constitutional Amendment Petitions*, July 2025) never described the affidavit cure process. The Bureau first described it to ACVM in writing, for these rejections, on August 20, three days after the staff report. Affidavits were not new to the process: ACVM had submitted circulator affidavits in its earlier response to PTVA’s challenge. The concern is the absence of a published, complete cure procedure, including its deadline and the standard applied to the affidavit itself. The Bureau’s July 24 release of the sample allowed challenges and responses, but staff’s own invalidity determinations, including the 94 flagged signatures, were published in the August 17 staff report.

The Bureau and the Board administered the signature-sufficiency review of this citizen-initiated constitutional amendment petition in a manner that raises two related but distinct due-process concerns. This count presents them separately and states how far the record supports each.

First, once staff’s determinations were disclosed, ACVM had about five days to obtain notarized affidavits for 94 flagged signatures, after 166 days that left little time for a second sample, a continuance, or judicial review. Second, the Bureau used an undisclosed QVF record both to reject signatures and to evaluate affidavit cures. MFEI presents that as a policy question for the House Select Committee.

II. Relevant Facts

A. The Petition and the Statutory Threshold

[ESTABLISHED FACT] ACVM filed its initiative petition, under Article XII, §2 of the Michigan Constitution, to amend Article II of the Constitution on March 4, 2026, submitting 709,841 signatures, 59.1% more than the required threshold of 446,198 (calculated as 10% of the vote cast for governor in 2022).

[ESTABLISHED FACT] The Bureau does not review all submitted signatures. It draws a random 1,000-signature sample and requires a 62.9% validity rate (629 of 1,000) for a recommendation of sufficiency. The Board votes on the sampling procedures, and it changed them in 2023, replacing the former two-stage procedure with a single-stage sample (Count 3; *Petition Manual* at 29; *Staff Report* at 4 n.8).

[ESTABLISHED FACT] The Board’s minutes for the August 24, 2026, meeting confirm the precise roll call on both certification motions. Vice Chair Gurewitz moved, supported by Cummings, to accept the staff recommendation and find the petition insufficient; Cummings and Gurewitz voted Aye, Cordes and Houskamp voted No, and the motion failed. Cordes then moved, supported by Houskamp, to reject the staff recommendation and find the petition sufficient; Cordes and Houskamp voted Aye, Cummings and Gurewitz voted No, and that motion also failed. Despite both motions failing, the Board then voted unanimously (Cordes moved, Gurewitz supported; all four members voting Aye) to conditionally designate the ACVM measure as Proposal 2026-02 on the November 3, 2026, general election ballot, in the event the courts ruled it to be placed on the ballot.

[ESTABLISHED FACT] The Bureau did not release its Staff Report until August 17, 2026, 166 days or roughly 5½ months after ACVM’s March 4 filing. The statute requires release only two business days before the Board meets ([MCL 168.476\(3\)](#)); the Bureau released the report seven days before the August 24 meeting.

[ESTABLISHED FACT] The manual says that, after final submission, the Bureau will post monthly status updates in six stages: signatures submitted; petition universe processed and sample pulled; sample processed; staff report in preparation; staff review final; and Board action (Petition Manual at 29).

B. The 94-Signature QVF Rejection and ACVM’s Demand for Access

[ESTABLISHED FACT] The staff report classified 94 sampled entries as invalid under its category for a signature that “is omitted or does not sufficiently agree with the signature on file”: 92 in staff’s initial review and two more through accepted challenges (Staff Report at 1, 5). Those determinations were made by Bureau staff rather than trained forensic document examiners. The category alone does not show how many of the 94 involved an actual comparison to the QVF signature and how many involved an omitted signature; signature-level records are needed to answer those questions. This report refers to them as the 94 flagged signatures.

[ESTABLISHED FACT] The Bureau’s manual publishes its signature-verification standard. A petition signature need not “perfectly match” the signature on file. If there are “redeeming qualities,” the filing official “should treat the signature as valid.” A signature is “questionable only if it differs in significant and obvious respects,” and “[s]light dissimilarities should be resolved in favor of the voter whenever possible” (Petition Manual at 34 and its App. B at 36). The manual also says signatures found invalid “are reviewed a second time by another BOE staff member” (id. at 30). The staff report does not state whether each of the 94 signatures received that second review or how the redeeming-qualities test was applied.

[LEGAL ARGUMENT] The standard is therefore published, not undisclosed. What ACVM could not see was the QVF record the standard was applied to, and what the manual does not describe is any process for curing a rejected signature. The manual’s direction to resolve slight

dissimilarities in the voter’s favor makes the 94 flagged signatures a fair subject for the Select Committee’s questions about how the standard was applied.

[ESTABLISHED FACT] Erich Speckin, an independent forensic handwriting examiner, prepared a written report (Exhibit A to ACVM’s August 21, 2026, response to the staff report) analyzing several signatures the Bureau had rejected on date-illegibility grounds. His report, covering signers Herbel, Hull, Bunyea, Lee, Lynk, Bethea, Givhan, and Strockis, offered his expert opinion that in each case the handwritten date was legible and that Bureau staff had misread it. Speckin also testified live at the August 24 hearing and submitted his written report as part of the record before the Board made its determination.

[LEGAL ARGUMENT] Speckin’s written report concluded that specific handwritten dates the Bureau found illegible or invalid were in fact legible and correctly written, using comparative stroke analysis against other numerals the same signer wrote elsewhere on the petition. Those are questions about whether handwritten dates were legible, not about whether signatures matched the QVF.

Speckin’s evidence therefore supports a narrower point. Lay staff readings of handwritten dates were contested by an expert and, on some sheets, by Board members themselves, and ties left the staff reading in place. It does not bear on the 94 flagged signatures, where ACVM could not compare against the QVF signatures the Bureau withheld (Section II.B). The argument that a notarized affidavit should outweigh a lay QVF comparison rests on the affidavit record described below, not on Speckin’s testimony.

[ESTABLISHED FACT] The certified transcript shows what Speckin addressed and how the Board handled it. He testified about numerals in handwritten dates, a corrected month and day, one comparison of a date numeral to the number in the voter’s address, and one duplicate-signature question. He did not address the 94 signature-to-QVF comparisons (Aug. 24, 2026, Tr. 63:5–66:20). The Board then considered the date disputes sheet by sheet. It sided with the Bureau unanimously on some and divided 2-2 on others, including Sheet 92553 (the address comparison) and Sheet 117169 (id. at 174:13–175:6, 176:9–179:16). On the duplicate, the Bureau reversed its earlier acceptance after the challenger’s rebuttal, and the Board agreed with the revised determination (id. at 201:6–203:20).

[LEGAL ARGUMENT] ACVM’s original complaint also raises a theory that Michigan law presumes petition signatures valid and puts the burden of proving invalidity on the challenger, or on the Board. MFEI traced the cited authorities. They state the rule only in passing, and neither MCL 168.476 nor the Board’s rules says who bears the burden (Appendix D.3). The statute’s text supports a narrower argument, set out below.

[ESTABLISHED FACT] MCL 168.476(1) provides that the QVF “shall be used” to verify the registration of petition signers and, where it contains digitized signatures, the genuineness of their signatures. It attaches rebuttable presumptions of invalidity to two registration facts: that the

elector was not registered on the date of signing, and that the elector was not registered in the city or township shown on the petition. It attaches no presumption to a signature mismatch. If the Board cannot verify genuineness from the QVF, it may have local clerks check the registration records.

[ESTABLISHED FACT] At the August 24 hearing, ACVM’s counsel argued that, under this structure, a signature a reviewer believes does not match “is not even presumed invalid under the statute” (Aug. 24, 2026, Tr. 46:18–48:11). Counsel for the challenger, Promote the Vote Action, argued the opposite: that ACVM’s affidavits “did not rebut the presumption that the signatures were invalid” (id. at 75:20–25). Director Brater described a third practice. When staff cannot verify a signature in time, he said, “we give the benefit of the doubt” and recommend it as valid (id. at 237:16–24).

[LEGAL ARGUMENT] The three positions describe three different rules, and the statute does not choose among them. Its text supports ACVM’s reading: where the Legislature wanted a QVF finding to invalidate a signature, it said so, and it made even that a rebuttable presumption. The Director’s practice for signatures staff cannot verify also leans toward validity. But the Bureau treated the 94 flagged mismatches as invalid unless ACVM rehabilitated them. The question for the Select Committee is what rule the Bureau applies when its comparison is inconclusive, and whether it applies the same rule to every petition. MFEI has found no decision applying any burden or presumption to a Board canvass under MCL 168.476 (Appendix D.3).

[ESTABLISHED FACT] On August 20, 2026, ACVM’s counsel sent the Board a letter captioned “Demand for Records Related to 92 Signatures Deemed ‘Invalid,’” seeking access to the digitized QVF signature records compared to the 92 petition signatures that the staff report’s first table listed as invalid because the signature was omitted or did not sufficiently agree with the signature on file. ACVM offered to review the records in camera under a protective order or confidentiality agreement, or in any other limited or confidential way the Board found acceptable, so long as ACVM and its counsel could see them, and ACVM counsel asked for a response within 24 hours (ACVM Letter, Aug. 20, 2026, at 1, 3–4 (Ex. D, ACVM Emergency Application, No. 26A275)). The Bureau’s reply noted that the staff report identifies 94 such signatures, 92 in a table on page 1 and two in a table on page 5 (Brater Letter, Aug. 20, 2026, n.1 (Ex. E, same)).

[ESTABLISHED FACT] Justice Zahra’s dissent quotes the August 24 hearing exchange over signer Thomas Doughty’s affidavit directly. This exchange is worth reproducing because it shows the Board’s own members acknowledging a signature’s genuineness on the record before voting to exclude it anyway.

Chair Houskamp stated that “all four of us agree that the signature matches.”

The Vice Chair Mary Ellen Gurewitz confirmed the signature “matches the voter” and “is a valid signature,” with the only remaining question being “whether it was submitted on time ... [w]ithin

the 48-hour rule[.]” When asked whether the rejection ground was “the 48-hour procedural rule, primarily,” the Vice Chair answered, “That’s correct.”

Board member Paul Cordes then added: “I agree the procedure is important, but I don’t necessarily know that it trumps someone who is confirming that they put their name on these petitions” (MSC Order, Zahra, J., dissenting in part, at 9).

[LEGAL ARGUMENT] This is not the first time the Bureau’s QVF signature-comparison practice has been challenged on due-process grounds. In 2018, Promote the Vote sued Michigan’s Secretary of State, three Board members, and the Bureau’s then-director over what it called “standardless and arbitrary signature comparison practices” (Promote the Vote v. Johnson, No. 2:18-cv-12692 (E.D. Mich., filed Aug. 28, 2018)). The Board voted unanimously to certify the petition on September 6, 2018, and the case was voluntarily dismissed in November 2018 with no ruling on the merits. The prior sequence shows that a similar due-process theory was previously raised in litigation but not adjudicated on the merits. The episode is summarized in Appendix D.1.

[ESTABLISHED FACT] Two sitting Board members previously took part in advocacy on petition disputes: the Vice Chair, as an attorney of record in the 2018 Promote the Vote case, and Member Cummings, who is thanked in a 2022 amicus brief. The facts are in Appendix D.2. MFEI draws no conclusion from them about either member’s votes on August 24, 2026.

[ESTABLISHED FACT] The Bureau, through Director Brater, denied the request the same day, citing [MCL 168.509gg\(1\)\(f\)](#) and 18 U.S.C. §2721(a)(1)–(2) (the Driver’s Privacy Protection Act) as mandatory, non-permissive bars on disclosure, including disclosure under protective order or in camera.

[LEGAL ARGUMENT] This refusal rested on statutes that bar release of the digitized signatures stored in the QVF, including signatures obtained through driver’s-license transactions and signatures that local clerks transmit to the QVF (MCL 168.509gg(1)(f); MCL 168.509hh), and that protect driver’s-license records from misuse. These statutes were not designed to insulate an election administrator’s own signature-comparison determination from adversarial testing by the party whose constitutional rights turn on that determination. Whether [MCL 168.509gg\(1\)\(f\)](#) and the Driver’s Privacy Protection Act (DPPA) 2024 U.S. Code Title 18 in fact foreclose any confidential review mechanism (in camera, redacted comparison, or third-party forensic examiner review under seal) is a question the Bureau’s response did not meaningfully engage beyond citing the statutes’ text.

C. The Bureau’s Proposed Cure, the Five-Day Window, and the Circularity Question

[ESTABLISHED FACT] In the same August 20 letter denying QVF access, the Bureau proposed a single alternative: ACVM could contact signers whose signatures were flagged and

obtain a notarized affidavit “providing a signature that sufficiently agrees with the voter’s signature in QVF.”

[ESTABLISHED FACT] Because the Bureau’s staff report did not issue until August 17 and the Board’s 48-hour submission deadline fell before the August 24 hearing, ACVM had five days to identify and contact affected voters and then obtain notarized affidavits. By the August 24 hearing, ACVM had obtained 23 affidavits from flagged signers; five of them reached the Board after the 48-hour cutoff. The Bureau’s Supplemental Staff Report (Aug. 23, 2026) recommended accepting 10 of the 16 then-submitted affidavits. The Board ultimately accepted 14 of 23, rejecting 9, at the August 24 hearing. Appendix C identifies those affidavit determinations and reconciles every addition and deduction from the initial 612 to staff’s retained working total of 626.

[ESTABLISHED FACT] The manual’s challenge process gives challengers 10 business days after the Bureau releases the sample, asks for rebuttals “as soon as possible,” and accepts material at a Board meeting only if it arrives 48 hours before (Petition Manual at 27–28). It sets no response period for signatures that staff itself finds invalid.

[ATTRIBUTED CLAIM] According to MFEI’s notes of the House Select Committee’s October 14, 2026, hearing, Director Brater testified: “There is no established timeline for rebuttals to challenges.”

[ESTABLISHED FACT] Four of the nine rejected affidavits were rejected because the signature on the affidavit itself (sworn, notarized, and executed after a notary confirmed the affiant’s identity against government-issued photo identification) was compared against the same withheld QVF record and found not to “sufficiently agree.” No affidavit was submitted for the remaining 71 flagged entries. The public record does not establish whether ACVM attempted to contact those signers or why affidavits were not obtained.

[LEGAL ARGUMENT] The record documents that no affidavit was submitted for 71 of the 94 flagged entries. It does not show why. MFEI infers that the five-day window was a principal reason, and ACVM can confirm or correct that inference.

[ESTABLISHED FACT] The State’s SCOTUS response brief offers a direct rebuttal to the delay argument that this count must address. The State notes that [MCL 168.476\(3\)](#) only requires the Bureau to release its staff report two business days before the Board meets, and that the Bureau in fact released ACVM’s report seven days before the August 24 meeting, “giving ACVM three more business days than required” (State’s SCOTUS Response Br. at 28).

The State further argues the 48-hour submission deadline was fixed and would have applied “at the exact same time” regardless of when the staff report issued: “[i]f the staff report was issued a month earlier, ACVM would not have had an extra month to gather affidavits (nor would challengers have an extra month to challenge signatures deemed valid)” (id. at 28–29). On this

reading, the five-day cure window is a product of the fixed 48-hour rule in the Board's administrative rules (R 168.846) interacting with the report's issuance date, not an extra burden singled out for ACVM.

[LEGAL ARGUMENT] MFEI's response is that the State's argument is partly right and should be conceded where it is. If an earlier staff report had simply meant an earlier hearing, the five-day cure window might have been no longer. The record does not show when the Board would have met had the report issued sooner.

The delay still matters for two reasons the State's argument does not reach. First, the five-day window was a product of how the final week was scheduled, not a statutory necessity. The statute sets only a two-business-day floor for the report. It describes nothing about a cure period, and the September 4 deadline, which the delay brought within days, left little room to schedule the hearing later.

Second, by pushing the report to August 17, the delay left little room for the safeguards that depend on time: a second or larger sample for a close result (Count 3), a continuance to consider late-arriving affidavits, and judicial review with enough time to act before September 4 (Count 4). Whether an earlier report would have produced more cure time is a question the House Select Committee can answer from the Bureau's and Board's scheduling records.

The State's rebuttal is a serious argument that narrows this count, but MFEI does not read it as fully answering the delay claim.

[LEGAL ARGUMENT] The State separately argues that ACVM's request for relief was itself selective, asking the Select Committee to note this critique directly: ACVM's SCOTUS application asked the courts to reverse only the nine determinations that went against it while leaving undisturbed every determination that favored it, which the State characterizes as asking the court to let ACVM "keep all its gains while disputing only its losses" (State's SCOTUS Response Br. at 38–39).

This is a fair institutional point about the scope of ACVM's own requested remedy, and MFEI notes it does not undermine the underlying due-process and equal-protection theories this report advances.

[ESTABLISHED FACT] State Senator Ruth Johnson, a former Michigan Secretary of State, published an August 31, 2026, Detroit News opinion column quoting specific exchanges from the August 24 hearing. She recounts Director Brater asking Vice Chair Gurewitz about one affidavit, "So you're not going to make a decision on that one?"

Gurewitz replied, "I think the signature matches, but whether it should be counted ... I think we should decide later."

Chair Houskamp then remarked, “So you’re going to hold the voter hostage is what I hear you saying.”

In a separate exchange Johnson quotes Brater as recommending counting another signature. Both Republican members agreed. Member Cummings (D) answered, “No.”

When Chair Houskamp asked again whether another signature should be counted, Cummings again said, “No.” She did not believe it should (Aug. 24, 2026, Tr. 148:21–149:2).

[ESTABLISHED FACT] The certified hearing transcript confirms these exchanges as Senator Johnson reported them (Aug. 24, 2026, Tr. 122:22–123:21). It also records the Vice Chair’s stated reason: because the Board had rejected some of the challenger’s submissions as untimely, she believed consistency required the same treatment of the sponsor’s late affidavit, and she answered the Chair by saying she was “holding the challenger hostage” (id. at 123:10–24).

Senator Johnson (R) states in the same column that she personally supports the ballot proposal at issue, and describes the Board’s motives as “orchestrated,” “weaponization,” and “cheating.” As confirmed by the transcript, the quoted exchanges corroborate the pattern documented above of individual Board members declining to resolve a signature they and the Bureau had already found genuine.

[ESTABLISHED FACT] ACVM issued a public statement the evening of August 24, 2026, stating that “Bureau of Elections staff and all four members of the Board [acknowledged] on the record that these individuals are registered voters and that the signatures on their affidavits match the signatures contained in the Qualified Voter File” for the five affidavits ultimately rejected as untimely. ACVM announced its intent to seek relief in the Michigan Supreme Court.

The statement’s characterization of the Board’s Democrat members as acting in a “partisan” and “brazen[ly] disenfranchising” manner is ACVM’s advocacy framing. However, the underlying factual claim that all four members agreed these five signatures matched and were registered is consistent with the hearing exchange previously documented in this count, and the certified transcript confirms that Director Brater stated, “we all think the signature matches on all five,” and each member agreed (Aug. 24, 2026, Tr. 152:1–22).

[ESTABLISHED FACT] Public comment at the August 24 hearing was taken at the end of the agenda, after the vote, and limited to five minutes in total and five total speakers (one minute per speaker). MFEI leaders Dee Davey and Douglas Basberg described the agenda item in written comments (see Appendix A). The Board took public comment the same way at its July 24, 2026, meeting: after the sufficiency vote, at one minute per speaker (July 24, 2026, Tr. 287:6–14), so MFEI does not treat the format as unique to ACVM.

[ESTABLISHED FACT] The Board’s own notices and recordings show that the order and length of public comment vary with the chair. The Department of State’s 2018 meeting notice

placed comment at the end of the meeting, at three minutes per speaker. The notice for the August 31, 2022, meeting listed public comment first, and Chair Daunt took it first, at 60 seconds per speaker (two minutes for speakers addressing both proposals), swearing in the speakers and allowing some leeway.

The official transcript's index lists 63 members of the public, who spoke over about two and a half hours before the Board turned to its other business (Aug. 31, 2022, Bd. Tr. at 2–5 (index); Aug. 31, 2022, hearing video at 0:52–1:34, 3:17–3:33, 8:00–8:16, 1:28:37–1:28:46, 2:33:10). When a speaker objected that he had been told three minutes, Director Brater explained that three minutes is typical, but the chair may modify the time in either direction (id. at 16:56–17:13). Member Bradshaw told the room that the Board had no promulgated rules (id. at 182:5–11). The Board took public comment first again on September 9, 2022 (Sept. 9, 2022, hearing video at 0:46–1:27).

[ESTABLISHED FACT] In 2026 the practice moved. The February 23 and March 20, 2026, agendas listed public comment first. On July 24 and August 24 the Board took it last, and the August 24 agenda listed it eighth, after the 100-word summary and before other business. That agenda stated that the order of the agenda and time for public comment are “at the discretion of the chairperson of the Board,” and the Department’s February 27, 2026, announcement of the 2026 schedule said the same, citing the Board’s administrative rules.

On July 24, 2026, the Chair told the room that public comment was “toward the tail of the agenda” (July 24, 2026, Tr. 5:17–6:4), and the Board began taking it at 4:30 p.m., at one minute per speaker (id. at 287:6–14). On August 24, the Chair opened by saying the Board would take public comment at the end, “as we’ve done in the last couple meetings” (Aug. 24, 2026, Tr. 4:10–14). Later that day, he set the 100-word summary aside and told the room there would be “very little time for public comment” (id. at 264:14–17). An attendee observed that “a lot of people left,” and the Chair agreed (id. at 264:20–25). The Chair told the first speaker he would be cut off after a minute, and the Director reminded the room that full remarks could be submitted in writing (id. at 265:5–7, 266:13–14). Five members of the public spoke before the Chair closed comment and adjourned at 4:55 p.m. (id. at 265:2–271:12).

[LEGAL ARGUMENT] The one-minute limit therefore predates 2026. What differs is the combination of placement and time: the Board put comment first and gave it hours in 2022 and put it last and gave it minutes on August 24. The question for the Select Committee is how the chair’s discretion was exercised when the meeting’s business ran long. The Board’s own rule, R 168.845, provides that each person who wishes to do so is to be given a reasonable opportunity to address the board on an agenda item. It directs the chairperson to allocate a specific agenda time for public comment and to impose only reasonable time limits. Page-and-line cites in this section are to official or certified transcripts. The 2022 video times come from MFEI’s caption-based working transcripts, which were matched to the signed minutes. The public-comment pages of the August 31, 2022, transcript (pages 6 to 118) were not available to MFEI, and MFEI

did not have an official transcript of the September 9, 2022, meeting (Note on Transcripts on page 13 of this report).

[ESTABLISHED FACT] The certified transcript shows that the four signatures staff found valid but on which the Board deadlocked is different from the four affidavits discussed above and in Justice Zahra’s opinion, which staff rejected because the affidavit’s own signature did not match the QVF. Director Brater described “four signatures where staff recommended considering them valid” on which the Board had deadlocked. Brater called the effect of the tie “a question for the board,” and said it was not his place to give legal advice (Aug. 24, 2026, Tr. 248:14–24; 249:13–251:24).

At the Vice Chair’s request, Assistant Attorney General Erik Grill then advised that when the Board deadlocks on a signature staff found valid, “in the absence of the determination of validity, the signature is not valid” (id. at 252:2–25). Staff left the four in its 626 working counts because the answer did not change the outcome once the five affidavits were excluded (id. at 260:4–14).

[LEGAL ARGUMENT] The two groups of four do not conflict with the State’s brief. Counsel’s advice matters, however. Under it, every 2-2 tie on a signature counted against the petition, a point Count 2, Section II.E, takes up. The outcome of a tie also depended on how the question was put. Had the motion instead asked, “Does the Board accept the staff report’s recommendation on this signature?” would a 2-2 vote have left the signature in place as valid and the Bureau’s written recommendation unadopted?

[ESTABLISHED FACT] The Bureau’s own governing procedural document, the Petition Manual (July 2025, 48 pages), does not describe at any point the signer-rehabilitation affidavit process. The manual’s only references to an “affidavit” concern the unrelated Printer’s Affidavit (Section III.R and Appendix H), which addresses a printer’s compliance with type-size requirements.

A petition sponsor reading the Bureau’s own published manual in advance would have no way to learn that signature rehabilitation by affidavit was available, what its deadline would be, that the affidavit itself would be measured against the same QVF record that produced the original rejection, or that access to the QVF signature would be prohibited to petition advocates.

[ESTABLISHED FACT] For balance, the record also contains direct, on-the-record pushback against the theories this count advances. Promote the Vote Action’s (PTVA) counsel Mark Brewer told the Board the petition drive had been “very sloppy...from the very beginning” and that the staff had produced two reports recommending insufficiency “based on strict compliance with those legal requirements.” (Aug. 24, 2026, Tr. 40:16–19, 41:21–22.) (For a related disclosure concerning Mr. Brewer, see Appendix B.)

III. Governing Authority and Competing Explanations

A. The Delay Claim

[LEGAL ARGUMENT] The delay claim rests on undisputed timing: 166 days elapsed between ACVM’s March 4 filing and the Bureau’s August 17 staff report, after which ACVM had five days to obtain notarized affidavits for 94 flagged signatures, and little time remained before the September 4 deadline for a second sample, a continuance, or judicial review.

This claim does not require resolving whether the QVF-comparison requirement itself is sound, or distinguishing *Taxpayers United*, because no comparable delay was at issue in that case. This claim turns solely on whether a five-day window was constitutionally adequate or legally authorized given the cure process the Bureau itself chose to offer.

[ESTABLISHED FACT] The staff report gives one operational reason for slower processing. It states that ACVM’s sponsors often crossed out signatures with crayon, which left wax buildup on the scanners that slowed scanning and caused occasional stray marks on petition sheets, and it recommends that the petition manual advise sponsors not to use crayon (ACV Staff Report (Aug. 17, 2026) at 2 n.2).

[LEGAL ARGUMENT] The record does not say how much of the 166 days this accounts for or when scanning began. The Bureau’s processing logs, which this report asks the Select Committee to obtain, would show whether scanning problems were a material part of the timeline.

[LEGAL ARGUMENT] Procedural due process requires, at minimum, “notice and an opportunity to be heard ‘at a meaningful time and in a meaningful manner.’” The “essence of due process” is that a person facing a serious deprivation receive notice of the case against them and “an opportunity to meet it.” (*Mathews v. Eldridge*, 424 U.S. 319, 333, 348 (1976), quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965).)

B. The QVF-Secrecy Policy Question

[LEGAL ARGUMENT] The affidavit-cure process appears nowhere in the Bureau’s own published manual, so its absence adds a distinct notice problem to the delay problem discussed above. Even a sponsor with unlimited time to respond could not have learned of, or planned around, a cure mechanism the Bureau’s own governing document does not disclose. Due process ordinarily contemplates that the procedures an agency will apply are knowable in advance, not improvised and explained to a party only after its petition has already been found deficient.

[LEGAL ARGUMENT] Where a state actor deprives a person of a protected interest, the constitutional question is not whether a deprivation occurred. The question is “what process the State provided, and whether it was constitutionally adequate” (*Zinermon v. Burch*, 494 U.S. 113, 126 (1990)). The existence of some post-deprivation remedy (here, mandamus in the Michigan Supreme Court) does not automatically cure a pre-deprivation process that itself failed to give the affected party a meaningful chance to contest the government’s evidence.

[LEGAL ARGUMENT] The circulation and signing of an initiative petition is “core political speech” entitled to First Amendment protection (*Meyer v. Grant*, 486 U.S. 414, 421–22 (1988)), distinguishing this context from ordinary administrative benefit determinations.

[LEGAL ARGUMENT] The 48-hour window to challenge should not have also included the window to respond. The two were lumped together, such that last minute challenges precluded the petitioners’ opportunity to respond. This combined deadline rests not on statute but on the Board’s own administrative rules. [Rule R 168.846 itself, along with R 168.841 and R 168.844](#) discussed in Count 2, were promulgated per the rules’ own authority line under [MCL 24.233](#), part of the [Michigan Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.201](#) et seq. (“Michigan APA”).

See MFEI’s April 2026 report, [Compromised Checkpoints: Restoring Independence in Michigan’s Election Oversight](#) for MFEI’s broader analysis of Michigan’s rulemaking process.

The federal Administrative Procedure Act, 5 U.S.C. § 551 et seq., does not apply to a state board. Any APA-based argument here rests on the Michigan APA. The question arises as to whether the Board’s petition-sufficiency proceeding qualifies as a “contested case” under [MCL 24.203\(3\)](#) (“a proceeding ... in which a determination of the legal rights, duties, or privileges of a named party is required by law to be made by an agency after an opportunity for an evidentiary hearing”). If so, this would trigger the Michigan APA’s Chapter 4 contested-case procedures ([MCL 24.271](#) et seq.) in addition to the Board’s own rules.

MFEI has not found a case squarely deciding this question and flags it as a potentially significant, unresolved conflict of law. Separately, [Michigan Constitution 1963, Art. I, § 3](#) (“The people have the right peaceably to assemble, to consult for the common good, to instruct their representatives and to petition the government for redress of grievances”) supplies a state-constitutional right-to-petition hook distinct from, and additional to, the [Art. II, § 9](#) and [Art. XII, § 2](#) direct-democracy provisions relied upon elsewhere in this report.

[LEGAL ARGUMENT] MFEI presents the QVF-secrecy-and-circular-cure critique to the Select Committee as an invitation to examine the policy and structural adequacy of the affidavit-cure process, not as an already-adjudicated constitutional violation. This follows Justice Hood’s own conclusion (Count 4) that the timing and structure of [MCL 168.476](#), unamended since 2005, is fundamentally a matter for legislative correction. Justice Welch’s opinion in the same order cites *Taxpayers United*, a 1993 Sixth Circuit decision, for the contrary view that ACVM received all the process it was due (Count 4).

[ESTABLISHED FACT] The Initiative and Referendum Institute (IRI), a national nonpartisan nonprofit filed an amicus brief with the U.S. Supreme Court on September 3, 2026. The brief, which states IRI has “no stake in the outcome of the underlying policy question,” argues that Michigan’s conduct is “not an isolated dispute about one petition in one state.” The brief cites

comparable signature-rejection disputes in North Dakota ([Hendrix v. Jaeger, 2022 ND 168](#)) and Arizona ([Leach v. Hobbs, 250 Ariz. 572 \(2021\)](#); [Stanwitz v. Reagan, 245 Ariz. 344 \(2018\)](#)).

IRI cites research finding that state lawmakers have proposed restrictions on the initiative process at a steady rate since 1955 (John G. Matsusaka, *Direct Democracy Backsliding, 1955–2024*, 6 J. Pol. Institutions & Pol. Econ. 249 (2025)). It warns that a non-transparent signature comparison followed by a “cure” subject to the same undisclosed comparison “provides a template that other jurisdictions’ election administrators may adopt or already employ.” MFEI cites the brief as persuasive, non-binding support that this count’s concerns are not unique to Michigan.

IV. MFEI’s Conclusion and Its Limits

[LEGAL ARGUMENT] Applying *Zinerman v. Burch*, 494 U.S. 113, 125 (1990), the relevant question is not merely whether ACVM eventually received some process. The question is whether the process the Bureau actually provided (e.g., the demand for QVF access met with a categorical refusal, followed by a cure mechanism subject to the same undisclosed record) was constitutionally adequate to the deprivation at stake: the exclusion of a citizen-sponsored constitutional amendment, supported by 709,841 signatures, from the ballot.

[LEGAL ARGUMENT] The Bureau’s position (adopted in its SCOTUS Response) is that Michigan’s mandamus process before the Michigan Supreme Court supplies adequate post-deprivation review, citing *Schmitt v. LaRose*, 933 F.3d 628, 642 (6th Cir. 2019), for the proposition that state mandamus can satisfy due process.

That authority is not squarely on point here for two reasons developed further in Count 4 (Michigan Supreme Court consistency). First, *Schmitt* did not involve review compressed against a fixed ballot-certification deadline, a timing problem Justice Hood described as sometimes making timely relief “functionally impossible” (Count 4). Second, an adequate post-deprivation remedy does not retroactively cure a pre-deprivation process that denied a party access to the government’s evidence when, as ACVM argues, no structural barrier prevented some form of confidential disclosure. The separate argument that the sampling requirement itself lacks a statutory basis is addressed in Count 3.

[MFEI CONCLUSION] The present record raises a substantial procedural due-process concern warranting investigation: a state actor that takes 166 days to report a deficiency and then, once the deficiency is disclosed, leaves about five days to cure it presents a serious question whether ACVM received notice and an opportunity to be heard in a meaningful timeframe, regardless of how any other question in this count is resolved. It appears no court has yet adjudicated this specific theory, and it is not addressed, let alone foreclosed, by *Taxpayers United*.

On the broader QVF-secrecy/circular-cure architecture, MFEI presents this to the Legislature’s Select Committee as a policy question rather than a settled violation, for two reasons the

Michigan Supreme Court’s own September 3 order illustrates. First, Justice Zahra’s dissent argues the Bureau’s approach discounted sworn, notarized affidavits, evidence he characterizes as more probative than an undisclosed digital file, by subordinating them to comparison against that same file.

Zahra’s dissent separately suggests, at footnote 17 of his opinion, that [MCL 168.476](#) may not even authorize comparing affidavit signatures to the QVF in the first place since the statute “says nothing regarding the determination of the validity of affidavit signatures” (n.17, at 13). If correct, the Bureau’s practice of doing so anyway would exceed its statutory authority.

Second, and in the same order, Justice Welch disputes this reading directly, and cites *Taxpayers United* for the position that Michigan’s scheme already affords all constitutionally due process. Justice Hood’s footnote 4 separately doubts whether a remand-style remedy is even available following a mandamus denial. MFEI treats Zahra’s reasoning, on both the affidavit-superiority point and the statutory-authority point, as persuasive, non-binding authority, and treats Welch’s competing citation and Hood’s remedy concern as open questions for counsel to resolve rather than obstacles this report may have omitted.

[MFEI CONCLUSION] The documented fact is the five-day response window. The reasons for the preceding 166 days are not yet adequately explained or justified. Whether the resulting process was constitutionally adequate is the legal question. At the hearing itself, Board members acknowledged that at least one disputed signature matched the QVF yet excluded it on grounds of timeliness. The Michigan Supreme Court disposed of the case on mandamus grounds; only separate opinions addressed the delay or the secrecy of the comparison record as due-process questions. Neither concern depends on resolving the other.

V. Requested Action

- That authorities evaluate whether the five-day response window, together with the 166-day delay that left little room for any other safeguard before the ballot deadline, deprived ACVM of a constitutionally adequate opportunity to respond before the Board’s certification hearing.
- That authorities examine whether Bureau staff applied the manual’s published signature-verification standard, including the redeeming-qualities test and the second staff review, to each of the 94 flagged signatures, and whether comparisons that decide whether a petition qualifies should also receive expert review.
- That the authorities examine, as a policy matter, whether Michigan’s affidavit-cure process for flagged petition signatures should be codified with express standards and minimum response windows, addressing the absence of a statutory floor that Justice Hood identified in his concurrence (Mich. Sup. Ct. Order, SC 170595 (Sept. 3, 2026) (Hood, J., concurring, at 6)) and Justice Welch’s observation that the Legislature can

amend the statute to require consideration of voter affidavits (Drissman, 35 NW3d at 357 (Welch, J., concurring), discussed in Count 4), rather than left to Bureau discretion under time pressure of the Bureau's own making.

- That the House Select Committee obtain and review the Bureau's internal guidance, if any, on whether in camera or protective-order review of QVF signatures was ever considered and rejected, and if so, on what legal basis beyond the bare statutory citations given to ACVM.
- That the House Select Committee obtain the Bureau's and Board's scheduling records for the ACVM review and the August 24 hearing, to determine whether an earlier staff report would have produced a later hearing date or more time to gather affidavits.
- That any legislative response to the House Select Committee's inquiry consider whether [MCL 168.509gg\(1\)\(f\)](#) should be amended, and whether an exception in the federal Driver's Privacy Protection Act (18 U.S.C. § 2721(b)) already permits, a confidential, court-supervised comparison mechanism in future petition disputes, and whether [MCL 168.476](#) should set a minimum cure-response window independent of the Bureau's own reporting timeline, and an established timeline for rebuttals to challenges.
- That the House Select Committee, in the course of its investigation of the Bureau's and Board's rules, policies, and procedures, recommend that a signer's sworn, notarized affidavit be treated as presumptively sufficient proof of identity for petition-signature purposes, taking precedence over a staff signature comparison to the QVF, unless the Board makes a specific, individualized finding that the affidavit itself is not genuine. This follows from the circularity problem described in Part II.C and from Justice Zahra's reasoning in the Court's September 3 order.
- That the House Select Committee's recommendations address the practices this count and Count 2 identify, since they concern the Bureau's and Board's own rules and procedures and are squarely within the Committee's stated purpose.
- That the House Select Committee ask the Board how the chair's discretion over the placement and length of public comment was exercised on July 24 and August 24, 2026, and consider whether R 168.845 should guarantee a minimum comment period when a meeting's business runs long.
- That the House Select Committee ask the Bureau to state in writing what presumption it applies to a petition signature it cannot verify, and whether it applies the same rule to every petition, given that MCL 168.476(1) attaches rebuttable presumptions of invalidity only to registration facts.

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https://www.youtube.com/watch?v=Akbd_x0Q2zY MFEI used the video’s captions as a working transcript, matched names and motions to the signed minutes, and did not check the wording against the audio. MFEI has requested official transcripts under FOIA and may revise this report if they differ.

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Count 1: 166 Days, Then Five

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COUNT 2: The Board Handled MMOP and ACVM Differently on Timing, Late Submissions, and Tied Signatures

I. Issue and Significance

Issue Summary: A later-filed ballot petition, MMOP, was certified in 58 days; ACVM waited 173 days and deadlocked. The two hearings also differed in how the Board handled late submissions and tied votes on individual signatures. Some differences have explanations on the record; others do not.

The Bureau processed the Michiganders for Money Out of Politics (“MMOP”) initiated-law petition, filed May 27, 2026, to a certified 3-1 Board vote by July 24, 2026, roughly 58 days after the petition’s submission to the SOS. ACVM’s constitutional-amendment petition, filed nearly three months earlier on March 4, 2026, took 166 days to reach a staff report and 173 days to reach a Board vote, which deadlocked.

This count examines three procedural comparisons between the two petitions: processing time (Section II.B), submission deadlines and the exceptions the Board allowed (Section II.C), and the treatment of 2-2 votes on individual signatures (Section II.D). Section II.A sets out ACVM’s separate comparison of coding standards, and Section II.E addresses the Bureau’s role at the August 24 hearing.

II. Relevant Facts

[ESTABLISHED FACT] ACVM filed its constitutional-amendment petition on March 4, 2026. MMOP filed its initiated-law petition with exactly 561,282 signatures on May 27, 2026 (the last day allowed by statute) against a required threshold of 356,958 valid signatures (8% of the 2022 gubernatorial vote, versus the 10% (446,198) threshold that applies to constitutional amendments like ACVM’s). These precise figures are drawn from the Bureau’s own July 17, 2026, MMOP staff report, obtained directly.

[ESTABLISHED FACT] On March 20, 2026, MFEI member Jeffery Schaeper told the Board during public comment, on behalf of MFEI, that ACVM’s petition had been submitted on March 4, four months before the due date, and that MFEI had heard of discussion about not processing it. He urged the Board to “[u]se this time now to process this petition” and “to have a firm plan and timeline to ensure that this petition appears on the ballot in November 2026” (Mar. 20, 2026, hearing video at 14:18–16:05).

Director Brater answered that he had “no idea where that is coming from” and that the Bureau would process the petition “as is our statutory responsibility” (id. at 18:36–18:52).

Member Cummings (D) responded that the statement was “insulting,” that it was “a very serious allegation.” She said Schaeper should be “more careful about statements you make” (id. at 19:40, 20:13, 20:23–20:31).

A. ACVM’s Own Comparison: The Same Coding Standards, Applied Differently

[ATTRIBUTED CLAIM] ACVM’s August 21, 2026, response to the staff report (prepared by co-counsel Sean Dutton) makes a substantially more specific disparate-treatment argument than the timeline comparison above. It argues the Bureau applied different standards to identical categories of technical defect between ACVM’s petition and MMOP’s, reviewed by the same staff within roughly the same period. On damage/missing-element coding (DMG/MRE), ACVM cites specific MMOP petition sheets with tears, smudges, and stains that the Bureau found valid because no single letter was completely obscured, then identifies ACVM petition sheets with comparably minor smudging (a partial ink mark on one letter of “SELECTION,” a stray mark on the “B” of “BE”) that the Bureau coded invalid under the same DMG/MRE standard.

[ATTRIBUTED CLAIM] On circulator-township coding, ACVM cites the Bureau’s own prior application of *Wickman v. Norway Township Clerk*, No. 367743 (Mich. Ct. App. July 18, 2024) (published) to five MMOP circulators who listed a place name that was both a village and a township (Armada, Calumet, Parma, Suttons Bay, Grass Lake), treated as compliant because each named an actual civil township. ACVM contrasts this with two ACVM circulators who listed St. Charles and Metamora Township, both likewise genuine Michigan civil townships, whose signatures the staff report nonetheless coded invalid, citing *Wickman*.

[COURT HOLDING] *Wickman v. Norway Township Clerk* affirmed the denial of mandamus where the clerk had struck eight petition sheets whose circulators gave an address in the village of Vulcan without identifying their city or township, and three sheets whose circulators gave an Iron Mountain address without identifying Breitung Township. The court held that the sheets did not strictly comply with MCL 168.544c(1)’s requirement that a circulator identify a city or township of residence (No. 367743, slip op. at 2, 7). The case concerned a referendum petition, and the requirement reaches it through cross-references in the Election Law (id. at 1 n.1).

[ESTABLISHED FACT] The Bureau’s manual (July 2025), issued a year after *Wickman*, does not mention the case or expressly list a circulator’s failure to identify a city or township. Its circulator-certificate defects include a residence address that is “omitted, incomplete” (Petition Manual at 30), and its rules for signers treat the name of a village or unincorporated place as a valid entry (id. at 32–33). The staff report accepted 15 of PTVA’s 45 *Wickman* challenges to ACVM’s circulators, rejected 6, and found that 24 overlapped with other determinations (Staff Report at 7).

[LEGAL ARGUMENT] Whether staff applied the same rule to MMOP and ACVM circulators turns on sheet-level coding records that MFEI does not have. The manual gives no published rule against which to test either petition. The Select Committee can ask the Bureau for the rule it applied and for the coding of the circulators ACVM identified.

[LEGAL ARGUMENT] MFEI treats this comparison as ACVM’s own characterization, prepared by its litigation counsel to support certification. MFEI has not verified each underlying petition sheet against the Bureau’s files and has not located the Bureau’s or Board’s specific response to this argument, if any exists in the record. If accurate, however, this is a materially stronger version of this count’s disparate-treatment theory than the timeline comparison alone. It alleges the same coding rule was applied to reach opposite results on comparable facts, for the same two petitions this count already compares on timing. MFEI recommends the House Select Committee request the Bureau’s own file on each cited petition sheet (both the MMOP examples ACVM cites as the accepted standard and the ACVM examples it argues were wrongly rejected) to independently verify or refute this claim.

B. Processing Time and the MMOP Hearing

[ESTABLISHED FACT] Director Brater explained the Bureau’s processing order in his own words at the March 20, 2026, Board meeting: “[W]e process the candidate petitions first, then the initiated law petitions, then the constitutional amendment petitions so that we can handle this very labor-intensive and time-consuming process to make sure that we are doing it carefully, that those that wish to challenge signatures can do so, that we have time to respond to that challenge, that the sponsors of the petitions can respond to those challenges as well, that we can put together the best report that we possibly can to the board so that the board then, who ultimately decides these things, can make those decisions” (State’s SCOTUS Response Br. at 9, quoting Mar. 20, 2026, Board Mtg. Tr. at 24; see Mar. 20, 2026, hearing video at 22:02–22:34). The stated reason for the order itself is that initiated-law petitions carry an earlier statutory deadline (the legislature’s 40-session-day review window) than constitutional amendments.

[ESTABLISHED FACT] Michigan law also sets an earlier canvass deadline for initiative petitions than for constitutional amendments. MCL 168.477(1) directs the Board to make its official declaration on an initiative petition no later than 100 days before the election, which for November 3, 2026, fell in late July; MMOP was certified on July 24. For a constitutional amendment, MCL 168.476(2) and 168.477(1) require the canvass to be completed at least two months before the election. (Subsection 477(1) was amended by 2018 PA 608; the compiler’s note identifies only that act’s 15% geographic cap as held unconstitutional, in *League of Women Voters v. Secretary of State*, 508 Mich 520 (2022).)

[LEGAL ARGUMENT] This statutory sequence is a neutral explanation for processing MMOP before ACVM. It does not by itself explain why ACVM’s staff report followed MMOP’s

certification by more than three weeks, or the gap between Director Brater’s early-June estimate and the August 17 report.

[ESTABLISHED FACT] At the same March 20 meeting, Director Brater said the Bureau had “a window at the beginning of June” to begin processing ACVM’s petition, which he said would be “well ahead of when it’s needed to be done,” and that the plan could slip only if a significant number of initiated-law petitions arrived first (Mar. 20, 2026, hearing video at 24:33–25:14). The Bureau issued its staff report on August 17, more than ten weeks after the early-June start Mr. Brater described, and 166 days after the petition was filed. The Board voted on August 24, 173 days after.

[ESTABLISHED FACT] The Bureau’s July 17, 2026, staff report specifically recommended certification of MMOP, finding 657 valid signatures against a 636-signature threshold (63.6% validity rate), a 21-signature cushion before the Board’s own hearing-day deliberations, and an estimated 368,762 valid signatures statewide at the same 90% confidence level and $\pm 2.5\%$ margin of error the Bureau applied to ACVM’s petition, a surplus of 11,804 over the 356,958 threshold.

[ESTABLISHED FACT] The Bureau reviewed a comparable constitutional-amendment petition much faster in 2022. Promote the Vote 2022 (Proposal 22-2) filed 664,029 signatures on July 11, 2022, against 425,059 required. The Bureau issued its staff report on August 25, 2022, 45 days after filing, reporting an estimated 507,780 valid signatures, based on a random sample of 568, and recommending certification.

The Board voted on August 31, 2022, 51 days after filing (Aug. 31, 2022, Bd. Tr. at 130:17–132:16; Bureau of Elections, Staff Report: Promote the Vote 2022 (Aug. 25, 2022); House Fiscal Agency, Ballot Proposal 2 of 2022; Promote the Vote 2022 v. Board of State Canvassers, Mich. Sup. Ct. No. 164755, Compl.).

ACVM filed 709,841 signatures and waited 166 days for its staff report and 173 days for a Board vote. (Justice Zahra’s dissent in the Court’s September 3, 2026, order counts a 168-day delay; this report counts 166 days, from March 4 to the August 17 staff report.)

[LEGAL ARGUMENT] This comparison raises a question; it does not answer one. The 2022 petition was filed on the filing deadline, so the ballot calendar fixed the pace. The 2022 review covered a random sample of 568 signatures, while the 2026 review covered 1,000 under the 2023 redesign (Count 3). And ACVM’s review included a signature-level challenge and rehabilitation process that the 2022 petition did not face. The 2022 challenge went to the petition’s form and content, and no one challenged individual signatures (Aug. 31, 2022, Bd. Tr. at 132:17–19, 210:8–9; Count 4). Even so, a 45-day review of a petition with more than 660,000 signatures shows what the Bureau has done when a deadline required it.

MFEI asks the Select Committee to obtain the Bureau’s 2022 and 2026 processing and staffing records to learn how much of ACVM’s 166 days reflects workload and how much reflects queue order.

Justice Hood’s concurrence in the Michigan Supreme Court’s September 3, 2026, order makes a related point: the Bureau “may have months to review petitions” while litigants have only days, and he suggested the Legislature require the staff report within two months of submission or at least one month before the Secretary of State’s ballot-notice deadline (Mich. Sup. Ct. Order, SC 170595 (Sept. 3, 2026) (Hood, J., concurring, at 6)).

[ESTABLISHED FACT] On July 21, 2026 (three days before the hearing) counsel for challengers Protect MI Free Speech and James Holcomb (Gary P. Gordon of Dykema Gossett PLLC, with Eric E. Doster as co-counsel) submitted a 25-page letter arguing the staff report erroneously validated at least 41 signatures, leaving MMOP with no more than 616 valid signatures, 20 fewer than the 636 required. The letter argued, among other things, that the sample undercounted duplicate and multiple-signer errors and that duplicate signature sheets had been double-scanned into the petition universe.

[ESTABLISHED FACT] MMOP’s own response to PMFS’s challenge, detailed in the Bureau’s staff report, mirrors ACVM’s rehabilitation strategy: facing PMFS’s allegations of round-robin circulator forgery against 49 petition sheets, MMOP conducted its own canvass between July 12–13, 2026, contacted the 49 signers in question, and obtained confirmation from 14 of them (via affidavit) that their handwriting and signatures were genuine.

MMOP submitted these affidavits, along with staff affidavits and circulator “crew sheets,” to rehabilitate a total of 391 signatures. The Bureau’s staff also independently investigated and rejected a specific forgery allegation against one circulator (Benjamin Schall), determining he had two legitimate signature styles both matching his registration record in the QVF. Both petitions, in other words, relied on the same basic tool, signer or circulator affidavits confirming authenticity, to answer challenges to their signatures, and Bureau staff engaged with both in comparable factual depth.

[ESTABLISHED FACT] Eric E. Doster, co-counsel for the challengers seeking to keep MMOP off the ballot, also served as counsel for ACVM in its own petition fight before the Board and the Michigan Supreme Court. MFEI notes the factual overlap in the small set of election-law attorneys active across both matters.

[ESTABLISHED FACT] The PMFS/Holcomb challenge letter separately complained that MMOP’s own review timeline was compressed and prejudicial: MMOP filed on the last statutory day (May 27), the Bureau did not release the full petition universe to challengers until June 24 (nearly a month later) and the July 10 challenge deadline and July 2 document-access

date both fell adjacent to federal holidays. This is substantially the same category of complaint (Bureau-caused timeline compression prejudicing the party opposing certification) that Justice Zahra and MFEI volunteer Mark Vaeth raised regarding ACVM's petition. The difference here is that the same issue was raised here by the party seeking to keep a petition off the ballot rather than the party seeking to place the ballot petition on it.

[ESTABLISHED FACT] The certified transcript further documents that the Bureau itself caused a separate, distinct access delay for MMOP's challengers. Bureau staff explained that its digital-sampling process let it produce a staff report seven days before the Board meeting, but that pulling the underlying physical sheets took longer. Only about 150 to 160 of the sampled sheets were available before the challenge deadline. The rest were produced on a rolling basis.

In addition, while preparing for the Board meeting, Bureau staff discovered roughly 200 additional physical sheets from the sample had not been retrieved at all. The Bureau notified the challenger, the sponsor, the chair, and the vice chair, and worked through the prior evening to retrieve them. Director Brater specifically asked the Board to hear both sides on the resulting late-discovered information before voting.

[ESTABLISHED FACT] The transcript also documents an outcome-driven practice for rehabilitation review that the Board applied to MMOP. Because MMOP remained above the certification threshold even after the challenger's accepted objections, Bureau staff did not process MMOP's own 204-signature rebuttal response. PMFS's counsel, the challenging party, stated on the record that this was consistent with the Board's established, previously applied practice of not expending staff resources on rehabilitation review that would not change the outcome.

[ESTABLISHED FACT] On July 24, 2026, the Board of State Canvassers voted 3-1 to certify MMOP's petition as sufficient, following a challenge hearing described as "a morning full of opening arguments" and a "line-by-line examination" of contested signatures. Republican member Paul Cordes cast the lone dissenting vote against certification, meaning the MMOP vote did not divide along strict party lines, unlike the ACVM vote.

[ESTABLISHED FACT] The certified transcript records the roll call by name: Vice Chair Gurewitz moved to accept the staff recommendation, Member Cummings seconded, and Gurewitz, Cummings, and Chair Houskamp each voted Aye; Cordes voted No, explaining on the record that he did not have confidence the required number of valid signatures had actually been met, notwithstanding his acceptance that the Board's process had been correctly followed.

[ESTABLISHED FACT] At ACVM's own August 24 hearing, Republican Board member Paul Cordes directly compared the two petitions on the record, stating: "My math says that we would have a greater buffer than on that one [MMOP]... I'm not saying this was done well, obviously,

but we would have more than that one did, and during that back and forth that we did a month ago, we went through bureau approved signatures and removed a fair amount of them.”

ACVM’s counsel, Eric Doster, made the same comparison in his own remarks to the Board: “We’re just asking for the same treatment as MMOP.” This is a Board member’s own contemporaneous comparison, not solely ACVM’s characterization (Michigan Advance, Aug. 24, 2026).

[ESTABLISHED FACT] The Board’s final, as-certified tally for MMOP was 645 valid signatures in the 1,000-signature sample, 9 above the 636-signature acceptance threshold (July 24, 2026, Tr. 275:1–276:18). The Michigan Chamber of Commerce, which represents PMFS, described this as “the slimmest margin by which an issue has been certified by the BSC in modern history.” The Board’s review of PMFS’s July 21 challenge reduced the count from 657 to 645 (12 of the 41 signatures PMFS argued should be struck), not enough to bring MMOP below the threshold. The Board does not certify a single exact signature count for the entire filing; it relies on the sample result and the extrapolated estimate to determine sufficiency.

[ESTABLISHED FACT] On August 4, 2026, PMFS and James Holcomb filed suit asking the Michigan Supreme Court to reverse the Board’s certification of MMOP, arguing the Bureau used a faulty formula to set the 636-signature threshold and that the correct figure should have been 661, which would have left MMOP short even after the Board’s own count. PMFS also argued, consistent with its July 21 letter, that the certified result fell within the sample’s margin of error.

[ESTABLISHED FACT] On September 3, 2026, the same day the Michigan Supreme Court denied ACVM’s mandamus complaint (Count 4), the Court also denied PMFS and Holcomb’s challenge to MMOP’s certification, in an order reported as three sentences long, stating it was “not persuaded that it should grant the requested relief,” language matching the boilerplate mandamus standard used in the ACVM order.

[ESTABLISHED FACT] The transcript of the July 24, 2026, MMOP hearing (filed as Plaintiffs’ Appendix to PMFS’s Michigan Supreme Court case) records the Board debating the exact margin-of-error question at issue in Count 3. Member Cummings asked on the record: “when I subtract the 2.5 from 65.7, it does go below the validity level of 63.6,” the identical arithmetic Zahra and Vaeth later applied to ACVM’s numbers.

Director Brater responded that “confidence interval and margin of error are talking about two different things” and that “the board, in my view, accepted that uncertainty when it adopted random sampling.”

Vice Chair Gurewitz then articulated the standard the Board applied: “we determined that it was 636. We didn’t say it was 636 plus or minus 25. It’s a validity rate” and “it is not 636 plus or

minus 25. It's 636. And if we've gotten, if we have more than that, then I think then I would move to certify."

PMFS's own counsel, Olivia Flower, argued the opposite position on the record: "close enough is not good enough here" and "we don't believe that MMOP has proven to you that they have enough signatures to appear on the ballot." The Board voted 3-1 to certify.

[LEGAL ARGUMENT] Under that reading, Gurewitz's fixed-threshold standard, applied consistently, explains the different outcomes on its own terms: MMOP's count (645) exceeded its threshold (636), while ACVM's (626) fell below its threshold (629). The comparison that matters is not the cutoff itself but how disputed signatures were resolved before the count reached it, which Sections II.C and II.D address.

[LEGAL ARGUMENT] ACVM's SCOTUS reply brief argues that the substantive difference between the two petitions, MMOP bars campaign contributions by state contractors while continuing to allow union contributions. The ACVM counsel's advocacy suggests that the processing-order justification does not fully explain the disparity in speed, and it states "such political favoritism colors all the machinations below."

C. Submission Deadlines and Exceptions

[ESTABLISHED FACT] The Board's procedural rules contain two 48-hour provisions. R 168.846 provides in full: "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." [R 168.844\(3\)](#) separately provides that a party served with notice of a hearing, which under R 168.844(1)(a) includes "[t]he sponsor ... of an initiative or referendum petition," "may file a written argument with the board and with the other parties ... at least 48 hours before the date of the hearing."

[ESTABLISHED FACT] ACVM's affidavits for five flagged signatures, including Applicant Fred Smith's, reached the Board after the 48-hour cutoff. Director Brater described their status at the hearing: the Bureau never received an electronic copy of one affidavit, which the sponsor said it had sent; it received an electronic copy of Smith's that it could not read; and it received the paper originals of both, and the remaining three affidavits, only that day (Aug. 24, 2026, Tr. 152:1–10). All four members agreed the five signatures matched (*id.* at 152:11–22).

Per ACVM's Supreme Court filing, Chair Houskamp and Member Cordes voted to accept the affidavits and Vice Chair Gurewitz and Member Cummings voted against, a 2-2 deadlock that left them uncounated. The Board's response brief in the U.S. Supreme Court confirms it applied [R 168.846](#) to exclude them.

[LEGAL ARGUMENT] Applying the same logic, were the motion put forth in reverse to reject the signatures, would a 2:2 vote have accepted them by default?

[ESTABLISHED FACT] The Board heard and answered the sponsor’s objection. ACVM’s counsel, Eric Doster, read R 168.846 aloud, argued that it applies to “members of the public” and not to a party, and cited a handout submitted at MMOP’s July 24 hearing (id. at 57:1–58:25). Member Cummings answered that the MMOP situation was “very different,” because that material “wasn’t anything new” and had not been processed before the meeting, while ACVM’s had been (id. at 59:5–14), and that the Board had “not let Mr. Brewer,” PTVA’s counsel, “file anything else after 10:00” a.m. (id. at 57:12–14). The Vice Chair separately explained her position as consistent with the Board’s rejection of the challenger’s untimely submissions (id. at 123:10–24).

[ESTABLISHED FACT] At MMOP’s hearing a month earlier, Director Brater acknowledged the 48-hour cutoff but told the Board, “I encourage the board to hear what each side has to say about this information that they just learned about yesterday” (July 24, 2026, Tr. 53:21–25). That material resulted from the Bureau’s own failure to retrieve about 200 original sample sheets, which it produced to both the challenger and the sponsor the day before the hearing (id. at 53:8–19).

[ATTRIBUTED CLAIM] ACVM’s Supreme Court emergency application lists six prior Board meetings at which, it says, the Board accepted day-of or same-morning submissions without objection: May 28, July 24, and August 17, 2026 (sponsors or their counsel), and June 27, July 31, and August 22, 2025 (challengers, sponsors, or members of the public) (Emergency App. at 31–33). These are ACVM’s characterizations.

[LEGAL ARGUMENT] The record does not support saying the Board gave no reason. Two members explained their position: consistency with the Board’s refusal of the challenger’s late filings, and Member Cummings’s view that MMOP’s July material was not new evidence. Those explanations leave open narrower issues. First, which provision governed a sponsor’s curative affidavits: R 168.846, which by its terms addresses members of the public, or [R 168.844\(3\)](#), which gives a noticed party a 48-hour path for written argument. Party status alone does not exempt a sponsor from every deadline, but no member identified which rule applied or why.

Second, why the Board heard late material in July, when a Bureau error produced it, but not in August, when one of the sponsor’s affidavits had arrived electronically in unreadable form. Both are questions the Board has not answered on the record. According to MFEI’s notes, Director Brater testified to the House Select Committee on October 14, 2026, that “[t]here is no established timeline for rebuttals to challenges,” which leaves the 48-hour cutoff as the only fixed deadline for rebuttals (Count 1, Part II.C).

D. Individual-Signature Deadlocks

[ESTABLISHED FACT] At MMOP’s July 24 hearing, when the Board split 2-2 on a challenged duplicate, Chair Houskamp stated, “we can’t change it if we’re deadlocked. Whatever the status is, stays,” and the Vice Chair confirmed that “the board’s determination stands, unless we disagree” (July 24, 2026, Tr. 133:17–134:1). Director Brater suggested noting the deadlock and moving on (id. at 134:18–24). At the end of the hearing, with MMOP at 645 against the required 636 and one deadlock and one hold unresolved, he advised that the Board need not decide them because they did not affect sufficiency, and said the Bureau could “talk to the, you know, AG’s office and make a recommendation for the board going forward” (id. at 275:1–276:18). That approach was stated and provisionally followed. It was not adopted as a formal ruling.

[ESTABLISHED FACT] At ACVM’s August 24 hearing, the Board deadlocked on four signatures staff had found valid. Director Brater called the effect of the tie “a question for the board,” and Assistant Attorney General Erik Grill, asked by the Vice Chair, said that “as far as we are aware, this question has not arisen before,” and advised, “in the limited amount of time” available, that a tie leaves such a signature without a determination of validity and therefore not valid (Aug. 24, 2026, Tr. 249:13–253:2). Mr. Grill and Assistant Attorney General Heather Meingast are both listed as counsel for the State at the July 24 hearing (July 24, 2026, Tr. 2:8–10).

[LEGAL ARGUMENT] The two hearings therefore reflect different stated approaches to the same question, a month apart. In July, a tie left a signature’s status unchanged; in August, the Board’s counsel advised that a tie leaves a staff-approved signature invalid and described the question as new. The August transcript does not identify any guidance obtained in the intervening month. The difference did not change either petition’s outcome, but under the August reading every tie counts against a petition, since a rejected signature stays rejected and an accepted one loses its validity (see Section II.E below). The Select Committee may wish to ask whether the Bureau sought the guidance described on July 24 and why the question was presented in August as one that had not arisen. Appendix C separately identifies tied votes involving staff-rejected signatures and the four staff-valid entries retained in the 626 working count.

E. The Bureau’s Role at the Hearing

[ESTABLISHED FACT] Director of Elections Jonathan Brater and Deputy Director Adam Fracassi sat with the Board at the dais during the August 24 hearing. The Director is the Board’s secretary by statute, a nonmember position with no vote (MCL 168.32(1)), and presenting the staff report and answering members’ questions is part of that role.

[LEGAL ARGUMENT] Seating alone does not show that staff influenced the Board’s decisions. As a matter of practice, MFEI suggests that staff present from a separate table, so that the independence of the bipartisan constitutional Board is visible to the public.

[LEGAL ARGUMENT] The Director’s role as the Board’s secretary gives him no vote and no authority to decide any question before the Board; the Board’s four members decide. The August 24 record shows the Board acting on that independence rather than adopting staff recommendations. It overruled staff on two signatures, Stennis and Main, and deadlocked on others (Appendix C; Aug. 24, 2026, Tr. 154:11–155:5). The Board also votes on the sampling procedures the Bureau applies, and it changed them in 2023 (Count 3).

[ESTABLISHED FACT] The tie question is more substantive. Staff’s working count treated each 2-2 tie on a signature as leaving the staff determination in place, although the Board’s counsel had advised that a tie leaves a staff-approved signature without a determination of validity (Aug. 24, 2026, Tr. 252:16–24; 260:4–14). Under that working count, every tie left the staff recommendation as the outcome in the total the Board voted on.

[LEGAL ARGUMENT] Staff gave a practical reason for leaving the question open: the answer did not change the outcome once the five affidavits were excluded (Aug. 24, 2026, Tr. 260:4–14). What remains unresolved is the governing rule. Whether staff’s treatment followed from MCL 168.22d(2), reflected an established Board practice, or was a provisional accounting choice is not settled by the record. The Select Committee should obtain the legal basis for that treatment and determine whether the Board adopted it.

[ESTABLISHED FACT] In another context, the Board’s own published record treats a 2-2 tie on an approval motion as no approval. Its list of recall petitions filed from 2019 to 2026 records several reasons for recall as “Rejected, 2-2” (Bd. of State Canvassers, Reasons for Recall Filed with the Board of State Canvassers: 2019–2026).

[LEGAL ARGUMENT] That practice is consistent with MCL 168.22d(2), which makes a Board action effective only with the concurrence of at least one member of each major political party, and with counsel’s August 24 advice. The analogy is limited, because approving recall language is a different determination from deciding whether a staff-validated signature remains valid. It is relevant to which rule the Board actually follows.

[ESTABLISHED FACT] A pending rule would widen the staff role. Proposed R 168.55(2) in Rule Set 2025-63-ST, still pending as of October 12, 2026, would let the Board authorize Bureau staff “to complete duties assigned to the board of state canvassers,” without limiting which duties. Pure Integrity Michigan Elections, MFEI’s affiliated 501(c)(4), objected in May 2026 and asked that the rule exclude final or substantive Board action. The Board’s existing rules already define “secretary of the board” to include the Director’s designee (R 168.841(1)(f)).

III. Governing Authority and Competing Explanations

[LEGAL ARGUMENT] A facially neutral processing rule (candidates, then initiated laws, then constitutional amendments) can still support an equal-protection or selective-treatment claim if its application, in practice, tracks the substantive political valence of the petitions being processed rather than the neutral criterion it claims to follow.

[LEGAL ARGUMENT] The submission-deadline and tie-vote comparisons rest on rational-basis review. The Sixth Circuit has held that signing an initiative petition does not implicate the fundamental right to vote (*Taxpayers United for Assessment Cuts v. Austin*, 994 F.2d 291, 293 (6th Cir. 1993)), and the Fourth, Eighth, and Tenth Circuits agree; the Ninth Circuit treats petition signatures as the equivalent of votes and requires uniform verification (*Green v. City of Tucson*, 340 F.3d 891 (9th Cir. 2003); *Lemons v. Bradbury*, 538 F.3d 1098 (9th Cir. 2008)).

Under rational-basis review, a challenger must show that no conceivable legitimate basis supports the difference, and the government need not have articulated that basis at the time. The record contains stated reasons for the deadline decision and none, so far, for the change in the tie-vote rule. MFEI therefore presents the unexplained change as a question for the Select Committee.

IV. MFEI's Conclusion and Its Limits

[MFEI CONCLUSION] MFEI concludes that the timing disparity between ACVM and MMOP is real and independently verified: roughly 58 days from filing to certification for MMOP against 173 days from filing to a deadlocked vote for ACVM. That gap is only partially explained by the Bureau's stated processing-order rule. The rule explains why MMOP was reviewed first. ACVM's staff report issued August 17, about three weeks after MMOP's July 24 certification, which is consistent with the stated queue; the open question is the overall 166-day period from ACVM's March 4 filing, including what work was done on ACVM's petition before MMOP was filed.

MFEI's conclusion is therefore narrower than ACVM counsel's "political favoritism" framing. The Board's votes also follow a pattern across years. On August 31, 2022, and again on August 24, 2026, the two Democrat members voted to accept the staff recommendation and the two Republican members did not, although staff recommended certification in 2022 and against it in 2026. Vice Chair Gurewitz and Chair Houskamp (a member in 2022) sat on the Board both years and voted the same way on the staff recommendation each time (Aug. 31, 2022, Bd. Tr. at 184:18–185:5; Aug. 31, 2022, Minutes; Aug. 24, 2026, Minutes (signed Sept. 25, 2026)). On the procedural steps that followed, the 2022 Board voted 4-0 each time, and Mr. Houskamp moved or supported three of the four numbering and wording motions (Aug. 31, 2022, Bd. Tr. at 186:6–25, 208:4–17, 253:14–254:19, 274:3–21).

MFEI's conclusion is further qualified by the discovery that MMOP's own review process was not a clean, uncontested success story. It too faced a serious, well-documented, last-minute challenge (the July 21 PMFS/Doster letter) disputing whether it had cleared the statutory threshold at all, and its own challengers separately complained of Bureau-caused timeline compression.

The distinguishing facts are therefore narrower than a general claim that the two petitions were treated unequally. The comparison involves three separate questions, each with a different evidentiary status:

Processing time: a documented disparity that the Bureau's workload and scheduling records are needed to explain.

Late evidence: different treatment, with a stated explanation in MMOP's case, where the late material resulted from the Bureau's own retrieval error.

Tied votes: different stated approaches a month apart, but the record does not show that the difference changed either petition's outcome, and the Board never adopted counsel's August advice as a ruling.

MMOP's count finished above its threshold and ACVM's count finished below. The record does not explain why the Board handled the specific procedural questions examined in Sections II.C and II.D differently.

This narrative is complicated further by the fact that on September 3, 2026, the Michigan Supreme Court declined to disturb the Board's decision in either direction on the same day: it denied ACVM's request to force certification (Count 4) and, in a separate mirror-image case, denied PMFS's request to force MMOP's decertification, both times on the discretionary-act/mandamus doctrine discussed in Count 4. Whatever disparity exists in how the Bureau and Board handled the two petitions, the Michigan Supreme Court's own posture toward both outcomes, once each reached the Court, appears consistent.

MFEI does not read that procedural consistency as proof of evenhandedness as the term might suggest, however. As Count 4 discusses, the Court broke two comparable Board deadlocks in favor of certification within nine days in 2022 (Proposals 2 and 3), while in 2026 it left ACVM's deadlock in place and preserved MMOP's certification on the same day. The 2022 disputes concerned the form and content of the petitions rather than individual signature determinations (Count 4), so the comparison does not by itself show a change in standard.

The doctrine applied in 2026 was internally consistent between the two 2026 cases. In 2022 Bureau staff had recommended certification, and the Court wrote that the signatures were

undisputed. In 2026 staff recommended against certification and the dispute concerned individual signatures (Count 4).

Stated plainly: the processing-time disparity itself is established. Whether it resulted from neutral administrative differences, prioritization rules, workload considerations, or differential treatment cannot be determined from the current public record. That unresolved question is what this count asks the Select Committee to investigate.

Two procedural differences also lack a reconciled explanation on the record. At MMOP's hearing, the Director encouraged the Board to hear late material produced because of a Bureau error; at ACVM's, two members declined to consider the sponsor's late affidavits, for reasons they stated but that do not settle which rule governed. In July the Board stated that a tie leaves a signature's status unchanged, while in August its counsel advised that a tie leaves a staff-approved signature invalid and described the question as new. Neither difference changed MMOP's outcome, and neither establishes intent. However, both warrant explanation.

V. Requested Action

- That the House Select Committee request the Bureau's internal staffing and scheduling records for the period between the MMOP certification (July 24) and the ACVM staff report (August 17) to determine whether the three-week gap reflects the stated processing queue or an independent delay specific to ACVM.
- That the House Select Committee ask the Board which rule governed a sponsor's curative affidavits, [R 168.846](#) or [R 168.844\(3\)](#), and why late material was heard at MMOP's July 24 hearing but not at ACVM's August 24 hearing.
- That the House Select Committee obtain the Board's records for the six prior meetings ACVM identified (June 27, July 31, and August 22, 2025; May 28, July 24, and August 17, 2026) to verify whether day-of submissions were accepted without objection.
- That the House Select Committee ask whether the Bureau sought the Attorney General guidance on tied signature votes that Director Brater described on July 24, 2026, and why the question was presented to the Board on August 24 as one that had not arisen before.
- That any rule clarification specify which submission deadline applies to a sponsor's curative evidence and how a 2-2 vote on an individual signature is to be treated.
- That the House Select Committee ask Director Brater what legal basis governed the working count's treatment of tied signatures after the Board's counsel advised otherwise, and whether the Board adopted it.
- That the House Select Committee ask the Department of State to narrow proposed R 168.55(2) before adoption to exclude final or substantive Board action, and consider

legislation stating which Board duties Bureau staff may perform and how a tie vote on an individual signature is treated.

VI. Works Cited (Count 2)

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- Gordon, Gary P. (Dykema Gossett PLLC), and Eric E. Doster, co-counsel. Letter to the Board of State Canvassers Re: Response to Staff Report Issued July 17, 2026, Regarding the Sufficiency of the Michiganders for Money Out of Politics Petition. July 21, 2026. Copy held by MFEI (25 pages); MFEI has not found a public posting. Referred to at the July 24, 2026, hearing as “our July 21 filing” (Tr. 59:5–6).
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House Fiscal Agency. Ballot Proposal 2 of 2022: “Promote the Vote” Petition (Proposal 22-2), complete to Oct. 13, 2022.

https://www.house.mi.gov/hfa/PDF/Alpha/Ballot_Proposal_2_of_2022.pdf

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[https://www.supremecourt.gov/DocketPDF/26/26A275/422769/20260902121336561_26A275 ACVM Response A.pdf](https://www.supremecourt.gov/DocketPDF/26/26A275/422769/20260902121336561_26A275%20ACVM%20Response%20A.pdf)

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Michigan Board of State Canvassers. Meeting Minutes, August 31, 2022 (signed and approved Sept. 9, 2022). <https://www.michigan.gov/sos/-/media/Project/Websites/sos/BSC-Meeting-Minutes/2022/Aug-31-2022-BSC-Meeting-Minutes.pdf?rev=61f1d4bcc0f643bc91c2411a96752e84&hash=91714F6EFFC422364866361085782BE2>

Michigan Board of State Canvassers. Meeting Transcript. Mar. 20, 2026. Excerpt quoted in the State’s SCOTUS Response Br. at 9; MFEI has not obtained the official transcript and cites its caption-based working transcript of the meeting video (uncertified; not checked against the audio):

https://www.youtube.com/watch?v=Iv_LghSrJ0s&list=PLeyRQ8IgEZlbt7qj2VzcP4CJC-1uqmsT2&index=8

Michigan Board of State Canvassers. Minutes, Meeting of August 24, 2026 (signed).

<https://www.michigan.gov/sos/-/media/Project/Websites/sos/BSC-Meeting-Minutes/2026/August-24-2026-BSC-Signed-Minutes.pdf?rev=935146ad933a42af9a0084a9c4506f69&hash=9156CA0A6173601F3F3D65692C82A261>

Michigan Board of State Canvassers. Procedures, R 168.841–846 (promulgated under 1969 PA 306, MCL 24.233; eff. May 12, 2025).

<https://ars.apps.lara.state.mi.us/AdminCode/DownloadAdminCodeFile?FileName=R%20168.841%20to%20R%20168.846.pdf&ReturnHTML=True>

Michigan Board of State Canvassers. Public Meeting, August 24, 2026. Certified transcript (recorded by Rachelle Roberts, CER 9585; transcribed by Janeen Radtke, CER 7895; certified Aug. 26, 2026). Filed as Exhibit I to Response in Opposition, Americans for Citizen Voting–Michigan v. Board of State Canvassers, U.S. Sup. Ct. No. 26A275.

https://www.supremecourt.gov/DocketPDF/26/26A275/422769/20260902121518104_26A275%20Exhibits%20to%20Response%20Ex%20G%20-%20EXI.pdf

- Michigan Board of State Canvassers. Public Meeting, August 31, 2022. Official transcript (Network Reporting Corporation; Marcy A. Klingshirn, CER 6924), filed as the Board of State Canvassers' Appendix, Mich. Sup. Ct. No. 164760 (received Sept. 7, 2022). https://www.courts.michigan.gov/4a53b5/siteassets/case-documents/briefs/msc/2022-2023/164760/164760_25_02_apx_bd-state-canvassers.pdf MFEI cites pages 119 to 275. The public-comment pages (6 to 118) were not available to MFEI; for those, MFEI cites its caption-based working transcript of the meeting video (see the Note on Transcripts).
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COUNT 3: A Three-Signature Shortfall Inside the Bureau's Own Margin of Error

I. Issue and Significance

On staff's retained working sample, ACVM's result was close, 626 valid against a 629 cutoff, and the one-stage procedure the Board adopted in 2023 provided no second-stage review or other close-result safeguard.

Under the procedure the Board approved on October 20, 2023, the petition-canvassing sample is drawn with a custom-designed computer program that the Bureau said it was procuring from a vendor it would publicly disclose. MFEI has not located that disclosure. The staff report began at 612 valid signatures. After rehabilitation and Board review, staff's retained working total was 626 valid signatures in the 1,000-signature sample, three short of the 629 needed. This count uses that working total as its principal illustration. That total includes four signatures on which the Board deadlocked (see the Common Chronology). Treating those four as invalid would put the total at 622, seven short, which is still well inside the $\pm 2.5\%$ margin (about 25 signatures in a sample of 1,000).

This count rests on two separate points: (1) whether the Bureau's decision rule adequately handles close results, which can be assessed from the Bureau's own reported figures, and (2) a transparency question about the sampling vendor and its processes, which concerns the vendor's identity and the software's randomization and sample-sizing methods. That question remains open pending an MFEI FOIA request.

II. Relevant Facts

Reading This Count

In plain terms: This is the same idea as election polling. When a poll says "Candidate A leads by 3 points, but that's within the margin of error," it means the poll cannot reliably tell you who is actually ahead. The true number could be a few points higher or lower than what was measured. The Board's petition sample works the same way: it tested 1,000 signatures out of 709,841 and estimated the result, with a margin of error of about 2.5 percentage points at the 90 percent confidence level the Bureau chose. On staff's retained working total, ACVM's sample came out three signatures short of the 629-of-1,000 threshold (a total that includes four signatures whose treatment the Board never resolved), and that shortfall was smaller than the margin of error itself. In polling terms, the sample could not show, at the Bureau's own confidence level, that the petition fell short. The Bureau's published decision rule applies a fixed cutoff, so the result was treated as a denial. That uncertainty does not establish that the petition was sufficient; the question this count raises is whether a result this close should trigger additional review.

A. The Delay Made a Close Sample Result Uncorrectable

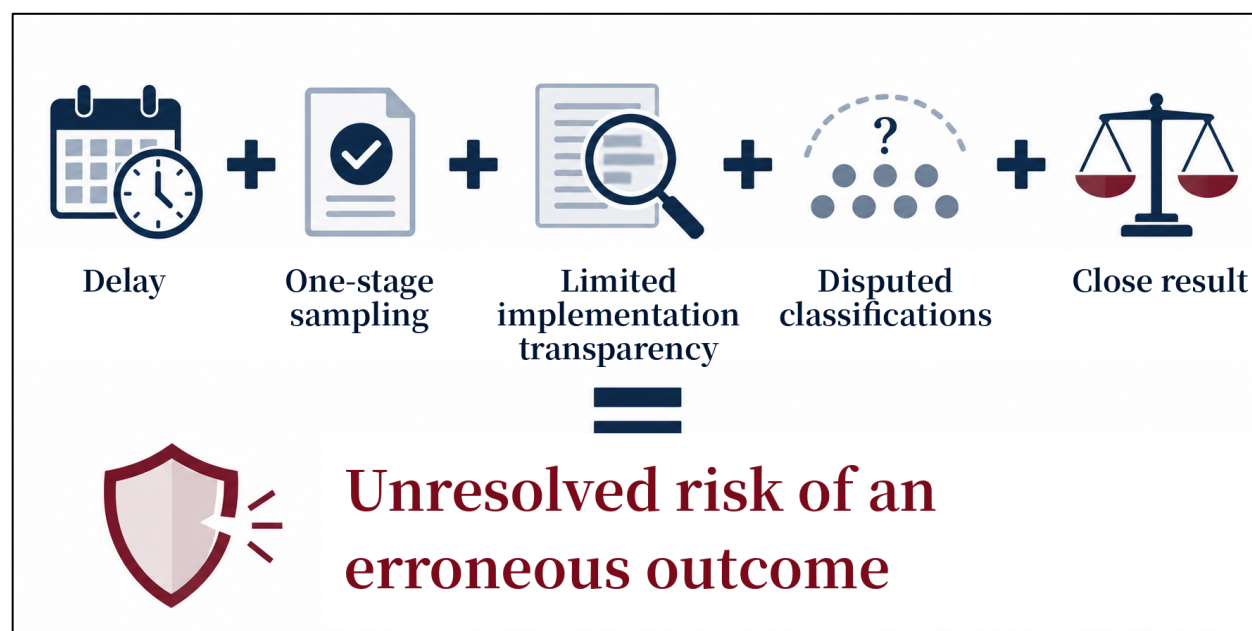
[LEGAL ARGUMENT] ACVM filed 709,841 signatures on March 4, 2026, more than four months before the statutory filing deadline. The Bureau did not release the staff report on the 1,000-signature sample until August 17, 166 days later. The Board then met on August 24, with the September 4 ballot-certification deadline only days away. That sequence matters for sampling policy.

A close sample result can be handled responsibly only if there is time for a confirmatory sample, a fuller review of disputed classifications, or meaningful judicial review. The 2023 conversion to a single-stage sample already eliminated the old “pull more” safety net for close calls. The 166-day delay then placed the remaining decision against the hard September 4 deadline.

The combination left little practical room to resolve a result that finished three signatures short on staff’s retained hearing-day working total, a result that fell inside the Bureau’s own stated margin of error at the 90% confidence level the Bureau chose.

This ties Count 3 to Count 1’s timeline without duplicating the due-process argument. The point here is narrower and more specific:

Delay + One-stage sampling + Limited implementation transparency + Disputed classifications + Close result = Unresolved risk of an erroneous outcome



B. Vaeth's Margin-of-Error Analysis

[ESTABLISHED FACT] Mark Vaeth, a Livonia resident and MFEI statistical analyst, submitted a written public comment to the Board of State Canvassers by email on August 19, 2026, five days before the August 24 hearing, addressing the Bureau's August 17, 2026, staff report. MFEI notes that Mr. Vaeth previously served as an audit supervisor for the U.S. Department of Defense. The comment itself does not state that credential.

[ESTABLISHED FACT] Vaeth's comment observes that the staff report's 1,000-signature sample produced a 61.2% validity rate (612 valid), against a required 62.9% (629 valid), a 17-signature shortfall, and that the Bureau extrapolated this to an estimated 434,423 valid signatures statewide (an estimated 11,775-signature shortfall) at a stated 90% confidence level and $\pm 2.5\%$ margin of error.

[MFEI CONCLUSION] On MFEI's calculation, applying the Bureau's own stated $\pm 2.5\%$ margin to the observed 61.2% validity rate produces a confidence interval of 58.7% to 63.7%, an interval that contains the 62.9% required validity rate (the 446,198-signature statutory threshold expressed as a share of the 709,841 signatures submitted).

[ESTABLISHED FACT] Vaeth's comment additionally notes that a 90% confidence level is less conservative than the more commonly used 95% standard, meaning the Bureau's own reported margin accepts a higher risk of error than a 95% level would, before any further scrutiny of the sample's execution.

[MFEI CONCLUSION] This 612-based interval reflects the staff report's figures at the time it issued, before rehabilitation and Board review moved the working total to 626. Using the Bureau's same 90% confidence level and $\pm 2.5\%$ margin of error, a 62.6% validity rate produces an interval of roughly 60.1% to 65.1%, which includes the 62.9% certification rate. A three-signature shortfall is smaller than the uncertainty the Bureau itself reports. This illustrates sampling uncertainty. It does not establish legal sufficiency. The policy question is whether a close result should trigger additional review under a published procedure.

[LEGAL ARGUMENT] As Vaeth frames it: a 17-signature shortfall in a 1,000-signature sample, when the Bureau's own margin of error is $\pm 2.5\%$, is "within ordinary sampling variability" and does not, on its own, support a conclusion of insufficiency to any meaningful statistical confidence. This is a contemporaneous statistical argument, filed with the Board on August 19, five days before the hearing and not after the fact.

Vaeth makes the same point Justice Zahra later made in his September 3 opinion (Count 4), that "a three-signature discrepancy in a 1,000-signature sample drawn from a 700,000-signature pool is well within the statistical margin of error for such a data set." Because Vaeth's comment was

in the record before the Board voted, the Board had this argument available to it at the time of its decision, not only in hindsight.

Two limits apply. An interval that contains the threshold shows sampling uncertainty. It does not establish that ACVM had enough valid signatures or that certification was legally required. And Vaeth’s alternative request for a “targeted expansion” focused on the categories that drove the largest reductions could resolve classification disputes, but its results could not simply be pooled with the random sample without a statistical design built for that purpose. A larger random sample is the option that would improve the estimate itself.

C. Sampling Error Is Not the Only Uncertainty

[ESTABLISHED FACT] The published $\pm 2.5\%$ margin describes random-sampling variability if each of the 1,000 classifications is treated as correct. It does not measure disagreement over individual signatures. The Board accepted 14 of 23 affidavits and rejected 9: five as untimely and four because the affidavit’s own signature did not match the QVF (Count 1).

[ESTABLISHED FACT] The numerical bridge from the August 17 staff report to staff’s retained hearing-day working total is $612 + 19 \text{ staff-accepted restorations} - 7 \text{ PTVA deductions} + 2 \text{ Board reversals} = 626$. The nineteen restorations comprised twelve affidavit rehabilitations and seven other corrections, and the two Board reversals concerned Stennis (sheet 48837) and Main (sheet 99503). The fourteen accepted affidavit rehabilitations therefore explain only part of the adjustment: seven other restorations and seven deductions offset each other. Appendix C identifies each change and separately records the unresolved votes that affect the alternative totals (Aug. 23 Supplemental Review at 1–3, 7–9; Aug. 24 Tr. 30:18–25, 87:20–88:11, 154:11–155:25, 248:4–24, 260:4–22).

As to the five untimely affidavits, Justice Zahra’s opinion, quoting the hearing, and ACVM’s same-day statement both report that all four Board members acknowledged the signatures matched, and the certified transcript confirms it (Aug. 24, 2026, Tr. 152:1–22). At the hearing, staff stated that counting those five would have produced 631 valid signatures if no other subtractions were applied, and exactly 629, the threshold, even if PTVA’s two late-challenged duplicates were also removed (id. at 248:8–13; 260:18–22).

Both figures include the four deadlocked signatures; if counsel’s advice controlled, they would be 627 and 625.

The Board also deadlocked on four signatures staff had found valid; its counsel advised that such ties leave a signature invalid, and the Board never resolved the question (id. at 248:14–24; 252:16–24).

[LEGAL ARGUMENT] Those unresolved classifications stack measurement uncertainty on top of sampling uncertainty. A larger sample addresses sampling variability; clearer adjudication and

evidentiary standards address disputed classifications. These issues make the 626 figure less stable than a clean binomial interval implies. Count 3 does not need to resolve each affidavit on the merits. It needs only to note that a result three signatures below the cutoff, with matching affidavits excluded on timeliness grounds and other signatures deadlocked, does not establish insufficiency at the Bureau's own confidence level.

D. The Sampling Vendor

[ESTABLISHED FACT] The Bureau's Sampling Procedure for Canvassing Petitions (updated November 2023; approved by the Board on October 20, 2023) states that the random signatures are selected "utilizing a custom-designed computer program," and that, as of that document's footnote 7, "the Bureau is engaged in the state procurement process to acquire this program, and the selected vendor will be publicly disclosed."

[ESTABLISHED FACT] After reviewing the sources identified in this report, MFEI has been unable to locate a public disclosure of the vendor's identity. Once the vendor's identity is disclosed, then the software algorithm should be made public, so the randomness of the signature evaluation process may be assessed and confirmed. Requests for documentation should include vendor contract(s) and any available documentation as to the software's randomization methodology.

E. The Rehmann Review and the Eliminated Two-Stage Safety Net

[ESTABLISHED FACT] The Bureau's governing Sampling Procedure for Canvassing Petitions (rev. Nov. 2023) confirms and refines the account in the Bureau's July 17, 2026, MMOP staff report. In 2022, the Bureau of Elections "hired an outside firm to further review the statistical methods and processes" last examined in 1990. The firm was Rehmann Robson LLC, a Grand Rapids accounting and consulting firm.

That review "found that the sampling process was still sound, but several changes could be made to improve efficiency and accuracy," and "was validated by an academic expert at Wayne State University": Dr. David Merolla, then Chair of the Sociology Department. MFEI notes this academic validation for balance. The changes discussed below were not adopted on the strength of an internal consultant's opinion alone.

[ESTABLISHED FACT] The Bureau's own manual describes the resulting changes in its own words: "moving the face review process to the sampling stage, utilizing a single-stage sampling method with a larger sample size, eliminating the shuffling of petitions, and utilizing electronic methods to scan and number petitions." In substance, this eliminated the prior two-stage process in favor of a single, larger, one-stage sample. The old process drew an initial sample and then, only when the result fell within a statistically defined "pull more" range between separate acceptance and rejection thresholds, drew a second, much larger combined sample (the Bureau's

own validity-rate table records second-stage checks as large as 4,760 signatures, including 3,799 for Promote the Vote 2018) to increase precision. The Board approved those changes on October 20, 2023 (Petition Manual at 29; Sampling Procedure (Nov. 2023); Bureau of Elections, Analysis of Validity Rates for Initiative and Referendum Petitions, 1978–2026 (Sept. 14, 2026)). At its March 20, 2023, meeting it also approved updates to staff’s random sampling procedures (Staff Report at 4 n.8).

[LEGAL ARGUMENT] ACVM’s final three-signature shortfall, reached after a 166-day review and only days before the September 4 certification deadline, is the kind of close result the prior safeguard existed to address. Under the current one-stage rule, no second sample is drawn no matter how close the first result is, and the delay left little calendar room to create an equivalent check. This raises the question as to why these changes were made and whether the People’s voice is protected and heard fairly.

[ESTABLISHED FACT] Rehmann’s report includes a table showing the margin of error at 90% confidence for different one-stage sample sizes: 500 signatures ($\pm 3.2\%$), 750 ($\pm 2.6\%$), 1,000 ($\pm 2.3\%$), 1,500 ($\pm 1.8\%$), 2,000 ($\pm 1.6\%$), and 2,500 ($\pm 1.4\%$). This figure for a 1,000-signature sample, $\pm 2.3\%$, differs modestly from the $\pm 2.5\%$ margin the Bureau’s August 17, 2026, ACVM staff report applied.

[MFEI CONCLUSION] On MFEI’s calculation, the two figures are consistent. A margin of error depends on the validity rate assumed: at 90% confidence with 1,000 signatures, a validity rate of 62.9% yields $\pm 2.5\%$, while a rate of about 75% yields $\pm 2.3\%$, and every entry in Rehmann’s table matches a 75% assumption. The $\pm 2.5\%$ figure, which reflects a result near the certification threshold, is the one that applies to ACVM.

[ESTABLISHED FACT] The Bureau’s own manual made a specific disclosure commitment. Its footnote on the sampling software states: “As of November 2023, the Bureau is engaged in the state procurement process to acquire this program, and the selected vendor will be publicly disclosed.” This confirms the replacement was to be a procured, third-party product, not an in-house tool. MFEI has not located a subsequent public disclosure of the vendor’s identity; the FOIA request described above will establish whether one was made.

[ESTABLISHED FACT] The manual also states that sample sizes are only “approximate,” explaining in a footnote that “the program will adjust the sample size to achieve the desired error rate.” This describes only how the initial sample size is calculated before sampling begins; the manual does not disclose what error rate the program targets, and, as discussed below, it contains no mechanism for drawing a second, larger sample after an initial result comes back close to the threshold.

[LEGAL ARGUMENT] To the Bureau’s credit, the manual shows the Bureau has committed to transparency in this process. It promises to post the sampled sheet list, universe totals, and staff

report online, and to make scanned petitions, the sample itself, and the underlying QVF review data available through FOIA. Against that backdrop, the one piece MFEI has not found disclosed, despite the manual's written commitment, is the specific software and vendor that determines which signatures are reviewed or how or whether their selection is randomized.

[LEGAL ARGUMENT] The two-stage process Rehmann recommended eliminating existed for over 40 years for the specific purpose of resolving results that fell too close to call on a single, smaller sample. ACVM's working total finished three signatures short of 629 in a 1,000-signature sample. Mark Vaeth (for the initial 612 result) and Justice Zahra (for the final shortfall) both characterized the gap as within ordinary statistical variability. That is close to the paradigm case the safeguard was built to catch. Under the one-stage procedure the Board adopted in its place, no second, larger sample is drawn regardless of how close the initial result falls to the threshold. The published procedure provides no second-stage sample triggered by a close initial result.

[ESTABLISHED FACT] In an unrelated proceeding the same summer, challengers to the MMOP petition argued the mirror-image point about the same statistical concept. Vaeth and Zahra argued that ACVM's shortfall, being within the Bureau's stated margin of error, should not support a finding of insufficiency. In contrast, counsel for Protect MI Free Speech and James Holcomb argued in their July 21, 2026, letter that MMOP's surplus, by the same logic, should not support a finding of sufficiency, writing that "[a] margin of error quantifies the amount of random sampling error within the Sample" and that "[u]ncertainty or an inability to confirm the requisite number of signatures cannot result in placing the measure on the ballot."

F. Why a Large Filing Doesn't Entirely Resolve the Problem

[LEGAL ARGUMENT] A natural response to this count is: ACVM gathered 709,841 signatures against a 446,198 requirement, a 59% surplus, so why should a 1,000-signature sample carry so much weight? The answer is counterintuitive but important to state precisely, because it does not help ACVM's case the way it might first appear to help. A sample's precision depends on the sample's own size, not on the size of the pool it is drawn from, once that pool is much larger than the sample (as 709,841 certainly is relative to 1,000). A 1,000-signature sample carries roughly the same $\pm 2.5\%$ margin of error whether it is drawn from 700,000 signatures or 4 million. The surplus does not make the sample more precise.

[LEGAL ARGUMENT] What the surplus does do is buy a lower required validity rate: because ACVM gathered so many more signatures than the bare minimum, the Bureau only needed 62.9% of the 1,000-signature sample to be valid (629 of 1,000), not something close to 100%. That is a real and meaningful cushion. The count's argument is not that this cushion is illusory. It is that even with a generous cushion built in, the actual sample result (612–626 valid, depending on the stage of review) still landed close enough to that lower bar to fall within the sample's own

margin of error. A bigger surplus of total signatures does not fix that. Only a bigger or more carefully designed sample, or an additional confirmatory sample when the first result is close, would confirm or undermine the soundness of the first sample

[ESTABLISHED FACT] The Bureau’s own governing Ballot Proposal Petition Manual (July 2025) confirms both halves of this problem. First, it states plainly that “BOE staff utilize a single-stage random sampling process,” confirming, from the Bureau’s own current, official procedural document rather than only the MMOP staff report’s account of the Rehmann recommendations, that no second-stage or confirmatory sample exists for close results.

Second, the manual’s 48 pages never mention “margin of error,” “confidence level,” or any comparable concept. The statistical framework that determined ACVM’s fate is not stated in the manual itself, which refers readers to a separate document, the Sampling Procedure for Canvassing Petitions (discussed in Sections D and E), and to the Board-approved statistical analysis in each staff report.

[ESTABLISHED FACT] The manual also says the Bureau posts online, as soon as it is available, the randomly generated list of sheets and signatures to be sampled and the universe totals, and that the 2022 outside review “found that the sampling process continues to be sound,” with the Board approving its recommendations in October 2023 (Petition Manual at 29).

[LEGAL ARGUMENT] MFEI has not verified when the list for ACVM’s sample was posted, and the randomization software’s design is not described in the manual. The Select Committee can ask for the posting date, the software’s documentation, and the QVF petition-module final report for the ACVM sample, which the published procedure says is available through FOIA.

[LEGAL ARGUMENT] The Bureau publishes its single-stage sampling procedure and applies a fixed sample cutoff. MFEI’s transparency concern is narrower: it concerns the vendor’s identity, the software’s randomization and sample-sizing methods, and the records needed to independently assess their implementation. The policy concern is separate: the published procedure provides no second-stage sample or other review triggered by a close initial result.

III. Governing Authority and Competing Explanations

[LEGAL ARGUMENT] When a state agency’s sufficiency determination turns on a statistical sample, and the agency’s own stated confidence interval includes the statutory threshold, the sample does not establish, at the agency’s own confidence level, that the petition fell short. That does not by itself make the determination unlawful, and no statute requires a second sample. It does raise the question as to whether an agency regulation or rule should treat any point estimate below the line as final. It raises the question as to whether the rule or regulation is adequate to the task when its consequence is as serious as exclusion from the ballot, especially when the rule contains no close-result procedure and when the rule has not been approved by the Legislature.

[ESTABLISHED FACT] The Bureau states its decision rule openly. Its staff report says a sample with 629 or more valid signatures certifies and one with 628 or fewer denies certification, and the same report estimates the total at a 90% confidence level with a $\pm 2.5\%$ margin of error (ACV Staff Report (Aug. 17, 2026) at 13). The Bureau thus applies the threshold as a fixed number and reports the interval for information.

[ESTABLISHED FACT] The Bureau’s Analysis of Validity Rates for Initiative and Referendum Petitions, 1978–2026 (Sept. 14, 2026) explains that under the procedure adopted in October 2023, the reported confidence figure measures confidence that staff’s projected number of valid signatures is correct, not confidence that the petition is sufficient. The confidence figures it reports for earlier petitions measured confidence of sufficiency, so the 90% figure for ACVM is not comparable to them.

[LEGAL ARGUMENT] That is a policy choice the Bureau has made in the open, and MFEI does not claim it is unlawful. The question for independent statistical review is whether the choice is adequate when a result falls inside the interval the Bureau itself reports.

[ESTABLISHED FACT] The staff report cites *Taxpayers United for Assessment Cuts v. Austin*, 994 F.2d 291, 299 (6th Cir. 1993), for the holding that Michigan’s combined use of random sampling and technical checks was rational and “may even make the random sampling procedure more accurate” (ACV Staff Report at 7 n.12).

[LEGAL ARGUMENT] That holding predates the 2023 single-stage procedure and applied rational-basis review. It does not address whether a result inside the Bureau’s own margin of error should trigger further review.

[LEGAL ARGUMENT] The vendor-opacity problem is analytically separate. Due process and basic principles of transparent governance arguably require that a dispositive statistical process be auditable by the parties whose rights depend on it, independent of whether that process, if disclosed, would turn out to be sound.

[LEGAL ARGUMENT] The identical statistical concept was invoked, in the same election cycle, by opposing camps to argue for opposite outcomes: for certification where the sponsor fell short, against certification where the sponsor appeared to clear the threshold. This does not mean either side’s math was wrong. It demonstrates that the one-stage procedure adopted in 2023, unlike the two-stage procedure it replaced, provides no additional sampling step triggered by a close result, regardless of which direction the uncertainty cuts. That is a structural problem independent of any single petition’s political valence. The one-stage procedure accepts sampling uncertainty without a further precision check when the result is close.

[LEGAL ARGUMENT] MFEI reserves for counsel the question whether the Bureau’s use of a random sample as its test of petition sufficiency has an adequate statutory basis. Justice Zahra’s

footnote 17 (Count 4) argues that MCL 168.476(1) “says nothing regarding the determination of the validity of affidavit signatures” (n.17, at 13), which is a narrower point than a challenge to sampling as a whole.

The Legislature has also addressed the subject. In December 2024 it passed House Bill 5573 of the 2023-2024 session, which would have amended MCL 168.476 to provide that the Board “may use a statistical random sampling methodology, as approved by the board of state canvassers,” and Governor Whitmer vetoed it on January 17, 2025. Operative law should perhaps set clear standards for statistical sampling.

[LEGAL ARGUMENT] MFEI’s position is that no Michigan statute authorizes the Board to certify or reject a petition based on a random sample. The Legislature passed House Bill 5573 in 2024 to confer that authority, the Governor vetoed it on January 17, 2025, and MFEI has found no other statute that does so. MFEI has also found no administrative rule governing random sampling; the procedure exists as guidance that the Board votes on and changed in 2023. Whether the Bureau of Elections has authority to promulgate rules on random sampling is unresolved. MFEI flags both questions for counsel and for the Select Committee.

[LEGAL ARGUMENT] The sampling question is two questions. First, who decides whether random sampling is a lawful way to canvass a petition. Second, if it is, who decides the sample size, confidence level, margin of error, and rule for close results. Today the Board decides both by vote, on guidance that was never promulgated as a rule. House Bill 5573 would have left the methodology to the Board as well, so even the Legislature’s own proposal did not set accuracy standards. MFEI’s position is that these are policy choices the Legislature should make by statute, or delegate with standards subject to rulemaking review.

[ATTRIBUTED CLAIM] According to MFEI’s notes of the House Select Committee’s October 14, 2026, hearing, Board Chairman Richard Houskamp recommended using artificial intelligence to evaluate all submitted signatures rather than a sample.

[LEGAL ARGUMENT] A full review of every signature, using automated tools with human review of each flagged signature, would remove sampling error from the question. It would also raise the same “who decides” questions: whether the Legislature has authorized the tool, who sets its accuracy and error standards, how its results are disclosed and challenged, and how comparison against QVF signature images can be done within the privacy limits the Bureau has cited (MCL 168.509gg(1)(f); 18 U.S.C. § 2721). MFEI treats full review as an alternative the Select Committee should examine, not as a finding.

[ESTABLISHED FACT] MFEI’s August 20, 2026, report, *Michigan Election Issues 2020 and Ripple Effects*, documents how the Department of State’s Rule Sets 2025-13, 2025-14, 2025-15, and 2025-63-ST advanced through Michigan’s rulemaking process. The Michigan Office of Administrative Hearings and Rules (MOAHR), an executive branch office created by

Executive Order 2019-06 (compiled as [E.R.O. 2019-1](#), MCL 324.99923), approved the rules, and they were submitted to the Legislature's Joint Committee on Administrative Rules (JCAR). JCAR was unable to achieve a quorum, so Rule Sets 2025-13, 2025-14, and 2025-15 automatically advanced to take effect with the force of law. Only Rule Set 2025-63-ST's eight new rules (R 168.51 through R 168.58) titled "General Roles and Responsibilities of Election Officials," are still pending as of October 12, 2026 (see Count 2, Section II.E).

[LEGAL ARGUMENT] MFEI's report calls rules taking effect without affirmative legislative approval the "MCL 24.245a Inversion" and treats it as executive usurpation of the Legislature's constitutionally prescribed authority. MFEI's report also cites *Genetski v. Benson*, No. 20-000216-MM (Mich. Ct. Cl. Mar. 9, 2021), which held the Secretary of State's October 6, 2020, signature-matching standards invalid because the rules were not promulgated under the Administrative Procedures Act. Neither the rule-set history nor *Genetski* addresses the sampling procedure the Board approved in 2023, so MFEI offers both as persuasive background on Michigan's rulemaking process.

IV. MFEI's Conclusion and Its Limits

[MFEI CONCLUSION] Vaeth analyzed the initial 612-signature result. MFEI applies the same reported margin to staff's later working total and concludes, without needing the vendor's identity, that 626 valid signatures against the 629 needed was itself inside the Bureau's own $\pm 2.5\%$ margin of error at a 90% confidence level. The resulting interval contains the certification threshold. The same is true of the earlier 612-signature staff-report figure. The principal illustration uses the Bureau staff's retained working total of 626. The alternative total of 622 is also considered because the four deadlocked signatures remained unresolved.

This shows that the sample did not establish insufficiency at the Bureau's own confidence level. It does not by itself show the Board's decision was invalid. It shows the decision rested on a rule with no procedure for close results. Treating the four deadlocked signatures as invalid would put the total at 622, still inside the margin.

This claim requires no FOIA response and rests entirely on the Bureau's own published figures. The vendor-disclosure question remains a live, separate concern but is not necessary to this count's core statistical claim.

This conclusion is reinforced by two facts. First, the Bureau adopted its 2022–23 consultant's recommendation to eliminate the two-stage safety net that previously existed to resolve exactly this kind of close call. Second, MMOP's own challengers invoked the identical margin-of-error concept to argue the opposite conclusion in a different proceeding. The more fundamental policy question is whether a one-stage procedure that resolves close calls with no additional precision check, in either direction, is adequate to the consequence.

MFEI alleges that a result this close, reached under a one-stage process, with no confirmatory check, with error parameters that the manual does not state, at the 90% confidence level the Bureau chose, does not establish insufficiency within the Bureau's own margin of error. The questions for the Committee are two: 1) Is a decision rule with no close-result procedure adequate to the consequences? If not, 2) What are the appropriate remedies?

V. Reasonable Actions

- That the House Select Committee evaluate whether a certification standard applied at a 90% confidence level and $\pm 2.5\%$ margin of error, where the observed result falls inside that margin relative to the statutory threshold, can support a determination of petition insufficiency.
- That the House Select Committee ask the Bureau, and the Board members who voted to approve the procedure, why a 90% rather than a 95% confidence level was selected for a determination with no further sampling opportunity and limited time and uncertain avenues for effective judicial relief before the ballot deadline.
- That the Bureau of Elections publicly disclose the vendor's identity, as the Bureau's own manual promised in November 2023.
- That the Bureau publicly disclose documentation as to the program's randomization methodology and the specific "desired error rate" its sample-sizing calculation targets, as a separate matter from the statistical argument above.
- That the House Select Committee ask the Bureau, Rehmann, and the Board members who voted for the change why the two-stage "pull more" safety net was eliminated rather than retained alongside the other 2023 efficiencies and consider whether it should be restored for petitions whose initial sample result falls within the Bureau's own stated margin of error of the certification threshold.
- That the House Select Committee examine whether a single-stage sample that finishes inside the Bureau's own margin of error should trigger a confirmatory sample or other published close-result rule, especially when the staff report issues so late that no such check can occur before the statutory ballot-certification deadline.
- That the House Select Committee obtain an independent statistical review of how the Bureau's single-stage sampling rule treats results that fall inside its own reported margin of error, including the Bureau's decision to apply the threshold as a fixed number.
- That the Bureau be required to affirmatively demonstrate, through independent, third-party audit, not its own internal assurance, that its sampling software in fact produces a genuinely random selection. MFEI has not located any disclosure of the vendor's identity

or the underlying algorithm, and opacity about the method used to decide a petition's fate is itself a due-process and transparency concern independent of whether the method turns out to be sound.

- That the Board, which votes on its sampling procedures, review its 2023 single-stage procedure and consider adopting by vote a close-result rule, such as a confirmatory second sample, before the next petition cycle.
- That the House Select Committee ask the Bureau and the Board whether verifying every submitted signature, including with automated tools under human review, is feasible, what it would cost, and what statutory authority and accuracy standards would be needed to use it in place of a sample.

VI. Works Cited (Count 3)

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Michigan Bureau of Elections. Petition Manual: Statewide Initiative, Referendum, and Constitutional Amendment Petitions (FDC-FC-MAN-1; running title “Ballot Proposal Petition Manual”). As approved July 31, 2025. <https://www.michigan.gov/sos/-/media/Project/Websites/sos/Elections/Ballot-Access/FDC-FC-MAN-1-Ballot-Proposal-Petition-Manual.pdf>

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Michigan Legislature. House Bill 5573 of the 2023-2024 session (passed Dec. 2024; vetoed Jan. 17, 2025; not the 2026 House Bill 5573, a property-tax bill), which would have amended MCL 168.476 to allow the Board to use statistical random sampling; and House Fiscal Agency, Legislative Analysis, HBs 5571 to 5573, 5575, and 5576 as enrolled and vetoed. <https://www.legislature.mi.gov/documents/2023-2024/billanalysis/House/pdf/2023-HLA-5571-7SCQWN5M.pdf>

Rehmann (Rehmann Robson LLC). Review of Michigan Board of State Canvassers Petition Sampling Methodology, attached to Michigan Bureau of Elections Staff Report: Michiganders for Money Out of Politics. July 17, 2026. <https://www.michigan.gov/sos/-/media/Project/Websites/sos/BSC-Announcements/2026/MMOP-Staff-Report.pdf>

Rule set 2025-63 ST, Elections & Campaign Finance, ARS Administrative Rulemaking System. Department of State, General Roles and Responsibilities of Election Officials. Rule number(s) or rule set range of numbers: R 168.51 -R 168.99, Filing date: Pending, Effective date: Pending, as of October 12, 2026. <https://ars.apps.lara.state.mi.us/Transaction/RFRTTransaction?TransactionID=1636>

Vaeth, Mark. Public Comment to the Michigan Board of State Canvassers Re: Americans for Citizen Voting—Michigan Petition (submitted by email Aug. 19, 2026). Copy held by MFEI; see Appendix A.1.

COUNT 4: Judicial Review and the Justices' Competing Interpretations

I. Issue and Significance

Two courts said no to ACVM on the same day, but even the Michigan Supreme Court's own order shows its justices were split as to whether that was the right call. The Board's handling of the 100-word ballot wording also narrowed the margin: deferring the wording to September 4 left the Board scheduled to complete that step on the certification deadline, reducing the time available to implement favorable judicial relief.

A note on this count's role: The federal government does not supervise the Michigan Supreme Court, and a single Justice's denial of emergency relief without opinion is not evidence that the U.S. Supreme Court endorsed or rejected the underlying claims. This count is presented as contextual and corroborative material, not as a claim of judicial wrongdoing.

It documents two things:

- 1) that a sitting Michigan Supreme Court justice independently reached a conclusion consistent with Count 1, and
- 2) that the per curiam order does not itself resolve Count 1's due-process theory.

Justice Zahra's language is presented throughout as a dissenting judicial assessment.

On September 3, 2026, the Michigan Supreme Court (MSC) issued an unsigned per curiam order denying ACVM's complaint for mandamus and declaratory judgment and its motion for order to show cause. MSC held that the Board of State Canvassers' (Board) certification decision was a discretionary, not a ministerial duty enforceable by mandamus. Justices Welch and Hood concurred separately. Justice Zahra concurred in part and dissented in part.

II. Relevant Facts

A. The Per Curiam Order

[ESTABLISHED FACT] The order's full caption is Americans for Citizen Voting—Michigan and Fred Smith, Plaintiffs, v. Board of State Canvassers, Secretary of State, and Director of Elections, Defendants, and Promote the Vote Action and Robert LaBrant, Intervening Defendants (SC: 170595), decided September 3, 2026.

[COURT HOLDING] The Court granted ACVM's motions to expedite, for immediate consideration, to intervene, and for leave to file a brief. But the Court denied the complaint for mandamus and declaratory judgment "because the Court is not persuaded that it should grant the requested relief," (MSC Order at 1) and it separately denied the motion to show cause.

[COURT HOLDING] The per curiam order held that mandamus requires: (1) a clear legal right to performance of a specific duty; (2) a clear legal duty on the defendant to perform it; (3) that the act is ministerial, involving no exercise of discretion; and (4) that no other adequate legal or equitable remedy exists (citing *Miller v. Detroit*, 250 Mich. 633 (1930), and *Kennedy v. Secretary of State*, 515 Mich. 893 (2024)). The Court concluded: “Because the actions taken by the Board of State Canvassers in this case were discretionary, mandamus relief cannot issue.” (MSC Order at 1–2)

[COURT HOLDING] The order noted the Legislature could amend [MCL 168.476](#) to address audit timeframes, whether and when affidavits must be considered to rehabilitate a rejected signature, and whether a rejected signature’s affidavit should itself be compared to the QVF, but that the statute “contains no requirements on any of these matters” (MSC Order at 2) as currently written.

B. Justice Welch’s Concurrence: A Competing Authority on Due Process

[SEPARATE OPINION] Justice Welch concurred, agreeing mandamus could not issue because the Board’s actions were discretionary. She wrote separately, “state law dictates the process due to plaintiffs in this case, and no one disputes that plaintiffs received that process,” (Welch, J., concurring, at 2) and that [MCL 168.476](#) mandates comparison of petition signatures to the QVF, a requirement “[n]either this Court nor the Board can ignore.” (Welch, J., concurring, at 2)

[LEGAL ARGUMENT] Welch’s concurrence directly addresses and rejects the due-process theory underlying MFEI’s Count 1. She cites *Taxpayers United for Assessment Cuts v. Austin*, 994 F.2d 291, 297 n.4 (6th Cir. 1993), for the Sixth Circuit’s holding that “there has been no violation of the plaintiffs’ procedural due process rights because the Board and the Michigan courts gave the plaintiffs all of the procedure that they were due,” (Welch, J., concurring, at 2, quoting *Taxpayers United*). She concludes ACVM in fact “received more process than the statute requires” (Welch, J., concurring, at 3) because Bureau staff considered its challenges, reviewed its affidavits, rehabilitated some signatures, and the Board held a full hearing at which ACVM’s counsel argued its case.

[ESTABLISHED FACT] Welch also noted that the Michigan Supreme Court had denied mandamus to a judicial candidate who made similar arguments in *Drissman v. Michigan Dep’t of State*, ___ Mich ___; 35 NW3d 354 (2026), in which she concurred. She explained that *Drissman* involved the nominating-petition statute, MCL 168.552, whose QVF-comparison language is the same as MCL 168.476(1), and that she had written there that even timely affidavits must be matched to the QVF and that nothing in the statute required officials to accept them as evidence that the person signed. She added: “[t]he Legislature can prevent this from recurring by amending the statute to provide that reviewing officials must consider affidavits

from voters” (Welch, J., concurring, at 4 & n.3, quoting Drissman, 35 NW3d at 357 (Welch, J., concurring)).

[ESTABLISHED FACT] The Court of Appeals decided *Drissman v. Michigan Dep’t of State*, No. 380984, on June 4, 2026, in a published opinion denying mandamus to a probate-judge candidate. The Director of Elections had compared the disputed signatures to the QVF and declined to consider 111 voter statements filed after the statutory review deadline, and the Court held that the statute leaves the method of review to the officials’ discretion (slip op. at 2–3). The panel (Trebilcock, P.J., and Borrello and M.J. Kelly, JJ.) added this observation:

“The currently enacted legislative scheme seemingly does not permit a candidate to rehabilitate signatures through submission of affidavits because of the discretionary enforcement of the filing deadline as a deadline to submit supporting documentation and the statutory mandate that signatures be compared solely through use of the qualified voter file.” (Drissman at 4)

C. Justice Hood’s Concurrence: The Structural Timing Problem

[SEPARATE OPINION] Justice Hood concurred, agreeing the Board’s actions were discretionary and expressly declining to reach the merits of the Board’s sufficiency determination.

However, Hood identified a “structural tension” (Hood, J., concurring, at 6) in [MCL 168.476](#). The statute lets the Board complete its canvass up to two months before the election, which functionally overlaps the Secretary of State’s own ballot-finalization deadline under [MCL 168.648](#), compressing the time available for adversarial proceedings and judicial review and “sometimes making timely relief functionally impossible.”

Hood noted [MCL 168.476](#) has not been amended since 2005 and recommended the Legislature require the Bureau’s staff report within two months of petition submission, or at least one month before the Secretary of State’s ballot-notice deadline.

[LEGAL ARGUMENT] Justices have asked for this fix before. In 2022, Justice Zahra called on the Legislature to give the Court at least six weeks between certification and the ballot deadline. He suggested the legislation “should be enacted before the 2024 primary and general elections” (Promote the Vote, 510 Mich. 884 (Zahra, J., dissenting)).

[SEPARATE OPINION] In footnote 4, Justice Hood separately disputed the legal basis for Justice Zahra’s proposed remedy of remanding the matter to the Board, writing that “the dissent cites no authority permitting such a remand in an original-jurisdiction mandamus action in which we deny mandamus relief,” (Hood, J., concurring, n.4, at 5) and questioning whether the Court’s authority extends that far.

[LEGAL ARGUMENT] This internal disagreement matters for any remedy MFEI might propose. Hood’s footnote shows at least one sitting justice doubts the legal availability of a remand-style remedy even where a due-process violation is found.

D. Justice Zahra’s Opinion Concurring in Part and Dissenting in Part

[SEPARATE OPINION] Justice Zahra concurred in denying mandamus as to five affidavits rejected as untimely under [Mich. Admin. Code R. 168.846](#) (including Applicant Fred Smith’s), agreeing that enforcement of the 48-hour deadline is a discretionary function not subject to mandamus. Notwithstanding that agreement, the hearing transcript he quotes shows all four Board members acknowledging that these five signatures genuinely matched the voters’ signatures on file, with timeliness as the two Board members’ only stated ground for rejecting them.

[SEPARATE OPINION] Zahra dissented from the Court’s refusal to vacate the Board’s rejection of four other affidavits, rejected because the affidavit’s own signature did not match the voter’s digitized QVF signature. He would have vacated that portion of the Board’s decision and remanded for the Board to consider whether the four affidavits were in fact valid evidence that the affiants signed the petition.

He reasoned that the Bureau’s affidavit-cure mechanism was “illusory” (Zahra, J., concurring in part and dissenting in part (at 11) and its reasoning “fatally circular” (at 13) because it subjected the cure itself to comparison against the same undisclosed QVF record ACVM could never independently verify. Further, he argued that the Bureau’s 166-day delay in issuing its staff report independently deprived ACVM of a meaningful opportunity to respond as to the 71 of the 94 flagged entries for which no affidavit was submitted.

[ATTRIBUTED CLAIM] Zahra’s opinion recites, for the first time in the record MFEI has reviewed, specific challenger allegations against ACVM’s own petition: that ACVM used five circulators named in a 2024 Bureau of Elections memo identifying circulators associated with clear indications of fraud; that the audited 1,000-signature sample contained roughly 100 duplicate signatures, a 10% duplication rate; and that one person signed the petition 38 times, with ten people collectively signing it 229 times.

[LEGAL ARGUMENT] These are the challengers’ allegations as recited in Zahra’s opinion, not independent findings by the Court or by MFEI, and this report treats them as such rather than as established fact about ACVM’s conduct. This is the same 1,000-signature sample discussed in Count 3. See that count for the sampling-methodology question and transparency of sampling these allegations raise.

[ESTABLISHED FACT] The Bureau’s August 17 staff report addressed the circulator allegation. It states that the 2024 memo named one circulator used by ACVM in this petition,

Diallo Daniely, who has not been convicted of submitting fraudulent signatures or banned by the Board from circulating. Staff rejected the challenge to his sampled sheets because the sampled signatures matched the voters' QVF signatures (ACVM Staff Report at 4 n.6, 8–9 & n.19). On duplicates, staff accepted 59 duplicate-signature challenges, rejected 6, and found 29 that overlapped its own determinations (*id.* at 7).

[LEGAL ARGUMENT] By staff's account, then, one listed circulator, not five, appears in ACVM's petition. MFEI has not independently verified either count.

[SEPARATE OPINION] Zahra separately argued that a three-signature discrepancy in a 1,000-signature sample drawn from a 700,000-plus-signature pool is “well within the statistical margin of error” (at 15) for such a data set, that the review process is “nearly entirely insulated from meaningful judicial review” (at 15) because most Board decisions are reviewable only under the exacting mandamus standard, and that the Bureau's 166-day delay (roughly six signatures reviewed per day, on his calculation) remains “curiously unexplained” (at 12).

[LEGAL ARGUMENT] Zahra's margin-of-error observation is consistent with the confidence-interval analysis in Mark Vaeth's August 19, 2026, public comment to the Board (see Count 3), which was filed before the August 24 hearing and used the Bureau's own reported figures.

E. The 2022 Deadlocks and the Ballot-Wording Step

[ESTABLISHED FACT] At its August 31, 2022, meeting, the Board of State Canvassers deadlocked 2-2 on the sufficiency of two separate constitutional-amendment petitions: Promote the Vote 2022 (Ayes: Bradshaw, Gurewitz; Nays: Daunt, Houskamp; motion failed) and Reproductive Freedom for All (same vote split; motion failed). The minutes record no stated reason for either dissenting vote. The transcript, however, shows that both dissenting members explained their positions at the hearing. On Promote the Vote, Chair Daunt pointed to the seriousness of the alter-or-abrogate question and to what voters would be told if the proposal reached the ballot.

Member Houskamp said the petition had not given signers the full story (Aug. 31, 2022, Bd. Tr. at 180:20–181:19, 182:22–183:12, 185:7–10). On Reproductive Freedom for All, Chair Daunt treated the petition's word spacing as a form defect because the Board had not approved the petition as circulated (*id.* at 240:17–241:15, 242:12–20).

[ESTABLISHED FACT] The two petitions are textually linked. ACVM's petition would amend Article 2, Section 4 of the Constitution, which Proposal 22-2 amended in 2022. ACVM's petition would eliminate the affidavit alternative to photo identification (ACVM Petition, Form v2483a; House Fiscal Agency, Ballot Proposal 2 of 2022). As in 2022, the Director of Elections drafted the ballot statement, and it differs from the petition summary the Board approved before circulation (Aug. 24, 2026, Agenda, item 7; ACVM Petition).

[ESTABLISHED FACT] The deadlocks on Ballot Proposals 2 and 3 of 2022 did not end the Board’s work on either petition. At the same meeting, the Board voted unanimously to approve the 100-word ballot wording for both proposals, after hearing requested changes from both sponsors and expressly in case the Michigan Supreme Court ordered the proposals onto the ballot. It also voted unanimously to conditionally assign them ballot numbers, Proposal 22-2 and Proposal 22-3 (Aug. 31, 2022, Bd. Tr. at 186:6–25, 208:4–17, 253:14–254:19, 274:3–21). Before either case reached the Michigan Supreme Court, everything the ballot required except certification itself was already in place.

[ESTABLISHED FACT] The Board took those steps regarding Ballot Proposals 2 and 3 of 2022 on the Director of Elections’ advice. After the first deadlock, Chair Daunt asked whether the Board should proceed with the number assignment and the 100-word summary “so that that is taken care of when the Court completes its action.” Director Brater recommended that it do so, because if the Court overturned the Board, “they may give the Board very little time to implement that,” and “as much as the Board can get off its plate before that happens, I think the Board should do” (Aug. 31, 2022, Bd. Tr. at 185:13–24). Director Brater gave the same reasons again when the Board returned to the wording: a lawsuit was likely, the Court’s decision might come close to the September 9 deadline, and counties needed the ballot contents to begin proofing ballots (id. at 187:18–189:8).

[ESTABLISHED FACT] The Michigan Supreme Court decided both cases September 8, 2022, nine days after the Board’s deadlock and one day before the September 9 ballot-certification deadline, ordering both petitions placed on the ballot. The Board reconvened September 9 and, in a meeting that lasted 34 minutes, unanimously certified both proposals pursuant to the Court’s orders (Bd. of State Canvassers Minutes, Sept. 9, 2022). Because the ballot wording was already approved, one day was adequate.

(See *Promote the Vote 2022 v. Board of State Canvassers*, 510 Mich. 884 (2022) (Sept. 8, 2022, order, No. 164755). <https://www.courts.michigan.gov/4a5525/siteassets/case-documents/briefs/msc/2022-2023/164755/164755-2022-09-08-or.pdf> Also available at <https://statecourtreport.org/case-tracker/promote-vote-2022-v-board-state-canvassers.>)

[LEGAL ARGUMENT] The 2022 and 2026 disputes differ in ways that explain much of the difference in the Court’s response. In 2022, Bureau staff had recommended certification (an estimated 507,780 valid signatures against 425,059 required; Aug. 31, 2022, Bd. Tr. at 131:17–132:16), and the Court wrote that it was “undisputed that there are sufficient signatures to warrant certification.” The only challenge to the *Promote the Vote* petition was an opponent’s argument that it failed to publish constitutional provisions it would abrogate, raised after the Board had pre-approved the petition’s form and content in February 2022. The Court held that the proposal would not abrogate those provisions and that the Board “thus has a clear legal duty to certify the petition” (*Promote the Vote 2022 v. Board of State Canvassers*, 510 Mich. 884

(2022); *id.* (Welch, J., concurring) (pre-approval); House Fiscal Agency, Ballot Proposal 2 of 2022).

In *Reproductive Freedom for All*, the only challenge concerned spacing between words, and the Court again found the signatures undisputed (*Reproductive Freedom for All v. Board of State Canvassers*, 510 Mich. 894 (2022)). Chief Justice McCormack added that, absent an insufficient number of signatures or a petition form that does not comply with unambiguous statutory requirements, the Board lacks authority to refuse certification (*Promote the Vote*, 510 Mich. 884 (McCormack, C.J., concurring)). Counsel for *Reproductive Freedom for All* told the Board the same about its signatures on September 9 (Sept. 9, 2022, hearing video at 23:33–24:18).

In 2026, staff recommended against certification and the dispute concerned individual signatures and affidavits, which the Court treated as discretionary (Mich. Sup. Ct. Order, SC 170595 (Sept. 3, 2026), at 1–2). That difference limits what the 2022 comparison can show about the Court’s standard.

The stronger practical comparison is the one above. In 2022 the Board approved the ballot wording before the Court acted, so one day was adequate, and in 2026 it did not approve ballot wording before the Court acted, so timing was insufficient.

[ESTABLISHED FACT] The same legal challenge arose in both years, and staff handled it the same way. In 2022, *Defend Your Vote* argued that the *Promote the Vote* petition failed to republish provisions it would abrogate, and the Director told the Board that staff took no position on that legal argument (Aug. 31, 2022, Bd. Tr. at 132:20–133:21). In 2026, *Promote the Vote Action* argued that ACVM’s petition failed to list provisions it would abrogate. The staff report called it a legal question and made no recommendation, and the Director told the Board the same (ACV Staff Report (Aug. 17, 2026) at 11–12; Aug. 24, 2026, Tr. 38:14–24). The Board debated the issue at length in 2022 (Aug. 31, 2022, Bd. Tr. at 142:11–185:5). On August 24, 2026, the Board never took up the issue. The Vice Chair raised it, the Chair moved to another issue first, and when the Director later asked whether the Board wanted to discuss it further, the Chair said no (Aug. 24, 2026, Tr. 246:24–247:2, 258:19–21).

[LEGAL ARGUMENT] Whether the Board may decide abrogation at all remains open. The Court did not decide it in 2022, and two Justices, Chief Justice McCormack and Justice Welch, doubted that the Board has that authority (*Promote the Vote*, 510 Mich. 884 (McCormack, C.J., concurring; Welch, J., concurring); ACV Staff Report at 12 n.24). In both years the parties argued from their roles. The sponsor said the Board cannot decide it (Aug. 31, 2022, Bd. Tr. at 159:20–24; ACV Staff Report at 12), and the challenger said it can (Aug. 31, 2022, Bd. Tr. at 137:13–19; Aug. 24, 2026, Tr. 41:5–20).

[ESTABLISHED FACT] In 2026, the Board took only one of those two steps. After both certification motions failed 2-2 on August 24, it voted unanimously to conditionally designate

ACVM's measure as Proposal 2026-02. It did not adopt the 100-word ballot statement, although that statement was on the meeting's own agenda as Item 7. The ballot statement is distinct from the 100-word petition summary the Board approved in 2025 before circulation. It is prepared by the Director of Elections and approved by the Board under MCL 168.32(2).

The certified transcript shows the Board setting Item 7 aside for lack of time, at the direction of Chair Houskamp, who had voted to certify the petition. At about 3:35 p.m., the Chair reminded the room that the Board still had "100-word summary to do" (Aug. 24, 2026, Tr. 219:19–23). Shortly before the final votes, he asked when the Board had to be out of the room, and Director Brater answered, "5:00" (id. at 259:14–17). After the sufficiency deadlock, the Chair asked whether the Board could still assign a ballot number, noting that it still had to take public comment, and Director Brater said it could (id. at 263:18–25). Immediately after the designation vote, the Chair said, "Item number 7 is a consideration of the 100 words. However, we are going to move to public comment" (id. at 264:14–16). The Board adjourned after public comment without returning to Item 7. The Board's minutes, both the draft and the version signed on September 25, 2026, record no action on Item 7; they proceed from the conditional designation of Proposal 2026-02 directly to adjournment at 4:55 p.m. ([Bd. of State Canvassers Draft Minutes, Aug. 24, 2026](#)).

[ESTABLISHED FACT] The Board did not abandon the wording. It noticed a September 4, 2026, meeting, captioned as a continuation of the August 24 meeting, whose second agenda item was consideration of ACVM's 100-word summary of purpose "in the event it is placed on the ballot." The agenda set out the Director of Elections' draft language in full as Proposal 2026-2 (Board of State Canvassers, Sept. 4, 2026, Meeting Agenda). On September 3, the same day the Michigan Supreme Court denied relief, a notice signed by Director Brater as the Board's Secretary announced that the September 4 meeting was canceled. The notice states no reason ([Board of State Canvassers, Cancellation Notice, posted Sept. 3, 2026](#)).

[ESTABLISHED FACT] Postponing the ballot statement was not unique to ACVM. On July 24, 2026, after finding MMOP's petition sufficient, the Board assigned MMOP a conditional proposal number and postponed its 100-word statement. Director Brater told the Board that the number designation was straightforward, but there was not enough time for any substantive discussion of wording (July 24, 2026, Tr. at 292–293). Vice Chair Gurewitz then asked when the wording had to be determined. Director Brater answered that it would be needed roughly 60 days before the election (id. at 295). The Board adopted MMOP's statement at its next meeting, on August 17, 2026 (hearing video at 1:03:11–2:16:19, per MFEI's caption-based working transcript).

[LEGAL ARGUMENT] The issue is margin, not impossibility. Had the Michigan Supreme Court ruled for ACVM on September 3, the Board could have adopted the draft wording and certified the measure at its September 4 meeting. But in 2022, facing two deadlocked petitions,

the Board adopted the wording at the same meeting, so certification was the only step left when the Court ruled. It did so on Director Brater’s own recommendation, given precisely because a court order might leave the Board little time to act.

In 2026, after a deadlock that made litigation all but certain, the Board deferred ACVM’s wording to the certification deadline itself. With about six weeks remaining, deferral cost MMOP nothing. However, for ACVM the deferral meant that a favorable ruling on September 3 would have left the Board to adopt wording for a contested constitutional amendment on the last day of possible certification.

Two of the four members who deadlocked on ACVM, Vice Chair Gurewitz and Chair Houskamp, sat on the Board when it followed the 2022 practice. The time pressure that led the Board to skip Item 7 on August 24 traces back to the 166-day processing delay discussed in Count 1, an effect of the compressed timeline that Justice Hood described.

Two questions warrant the House Select Committee’s attention. First, why was a hearing of this size held under a 5:00 p.m. room limit that left no time for the wording when the Chair had flagged the item by 3:35 p.m. and, in 2022, the Director had advised taking up the wording at once because a court might leave the Board little time to act? Second, who decided to cancel the September 4 meeting, and was that decision made before or after the Michigan Supreme Court ruled? The cancellation notice is signed by the Director of Elections rather than recorded as a Board action, and it states no reason. The Board’s rules provide that a hearing “must be adjourned or continued only by order of the board” (R 168.844(6)); the record does not show a Board order canceling the continuation.

[ESTABLISHED FACT] The Board worked under the same five o’clock room limit on August 31, 2022. The Chair told the room during a late-afternoon recess, before the Board reconvened at 4:45 p.m., that it had to be out by five (Aug. 31, 2022, hearing video at 5:58:05–5:58:23; the recess does not appear in the official transcript). The Board adopted the second 100-word summary at 5:04 p.m. and adjourned at about 5:05 p.m. (Aug. 31, 2022, Bd. Tr. at 274:3–21, 275:4–6; Aug. 31, 2022, Minutes). It could finish because no one disputed individual signatures in either 2022 petition (*id.* at 132:17–19, 212:3–6), so the day’s work was legal argument, the wording and public comment. On August 24, 2026, the Board was still reviewing signatures when the Chair asked when the Board had to be out of the room, and the Director answered “5:00” (Aug. 24, 2026, Tr. 259:14–17). The first question above therefore turns on how the hearing’s time was spent, not on the room limit alone.

[ESTABLISHED FACT] For disclosure, two MFEI officers addressed the Board against the Promote the Vote petition at the August 31, 2022, meeting. MFEI’s Chair and Founder, Patrice Johnson, speaking for MFEI’s affiliate Pure Integrity Michigan Elections (PIME), and James Johnson, treasurer of MFEI and PIME, speaking for Michigan Fair Elections, each urged the

Board to reject the petition (Aug. 31, 2022, hearing video at 20:11–23:03, 35:01–36:43; Aug. 31, 2022, Bd. Tr. at 2 (index: Patrice Johnson at 21, James Johnson at 31)). The comparison in this report concerns the Board’s process, not the merits of that proposal.

III. Governing Authority and Competing Explanations

[LEGAL ARGUMENT] MFEI does not read the September 3, 2026, order and the Court’s separate, same-day denial of Protect MI Free Speech’s (PMFS) challenge to MMOP’s certification (Count 2) as proof that the Court applied its mandamus doctrine in bad faith in 2026. The discretionary/ministerial distinction the Court invoked is a real, pre-existing legal standard, and applying it consistently in both 2026 cases is not itself evidence of intent.

But the comparison to 2022 sharpens rather than resolves the concern. In 2022, the Court broke two separate Board deadlocks by ordering certification within nine days. In 2026, it left ACVM’s deadlock in place and, on the same day, preserved MMOP’s certification as well. Whether that shift in outcome reflects a change in the underlying legal standard, the specific facts of each petition, or something else is precisely the kind of question MFEI believes the House Select Committee should consider examining directly.

[LEGAL ARGUMENT] The order turns on the mandamus doctrine’s distinction between ministerial and discretionary acts. Mandamus lies only to compel a duty that involves no exercise of discretion or judgment. The per curiam order and all three separate writings agree that the Board’s signature and affidavit determinations involve discretion, so mandamus cannot issue regardless of the underlying merits. That is exactly why the order cannot resolve the due-process question Count 1 raises, not merely why it happens not to. The question remains open, addressed only by individual justices writing separately, never by the Court as a body.

[LEGAL ARGUMENT] ACVM’s own original complaint supplies additional authority worth weighing on this exact point. For more than a century, the Michigan Supreme Court has treated “making the canvass and certifying the result” as a “statutory ministerial duty” once the Board has the relevant vote totals before it (*Withey v. Board of State Canvassers*, 194 Mich. 564, 567 (1917)). Neither the per curiam order nor any of the three separate writings addressed this authority.

If arithmetic alone, adding signatures the Board has already found genuine to a running total, is what *Withey* means by ministerial, that authority sits in tension with the per curiam order’s holding that the Board’s actions here were entirely discretionary, at least as to the affidavits no member disputed were genuine (Count 1, subsection A). MFEI does not yet know whether, or how, counsel briefed *Withey* to the Michigan Supreme Court in this matter and flags it here as additional authority counsel may wish to evaluate. *Withey* may also be distinguishable: adding

signatures already found genuine is arithmetic but deciding whether late-arriving evidence may be considered is a different kind of determination.

[LEGAL ARGUMENT] Justice Welch’s citation to *Taxpayers United for Assessment Cuts v. Austin* is the strongest existing authority against Count 1’s due-process theory. But that case held Michigan’s earlier signature-verification scheme constitutional because the Board and courts gave petitioners “all of the procedure they were due.”

MFEI’s response, consistent with Justice Zahra’s dissent, is that *Taxpayers United* does not address the specific circularity problem here. An affidavit cure should not be measured against the same undisclosed record that produced the original rejection. Zahra’s opinion is, to date, the only judicial writing to confront that circularity directly and find it constitutionally deficient.

IV. MFEI’s Conclusion and Its Limits

[MFEI CONCLUSION] MFEI concludes that the Michigan Supreme Court’s September 3, 2026, order strengthens but also complicates, the referral. It strengthens Count 1 because a sitting justice, after reviewing the same record MFEI has reviewed, independently concluded that the Bureau’s affidavit-cure mechanism was illusory and circular for substantially the reasons cited in Count 1.

The order also complicates the report in that Justice Welch’s concurrence supplies the State’s strongest existing judicial authority against that same theory. Justice Hood’s footnote casts doubt on the availability of a remand remedy of the kind Justice Zahra proposed. Because of that, MFEI’s citation to Zahra’s dissent directly engages Welch’s reliance on *Taxpayers United* and Hood’s doubts about remand.

[LEGAL ARGUMENT] If a court or the Legislature concludes that ACVM was treated unfairly, the available remedies are uncertain. A remand for a supplemental, time-limited cure period is the kind of remedy Justice Zahra proposed, but Justice Hood doubted that a remand is available after a mandamus denial (Mich. Sup. Ct. Order, SC 170595 (Sept. 3, 2026) (Hood, J., concurring, n.4)). Legislation is a further possibility.

[LEGAL ARGUMENT] As a legislative matter separate from any federal referral, MFEI recommends that the Legislature consider a mechanism by which a petition found sufficient after the certification deadline for the current general election, through no fault of the sponsor, could reach voters sooner than the next even-year general election. Any such mechanism must respect Article XII, §2’s direction that a qualifying amendment be submitted at the next general election and must avoid recreating the compressed review this report describes. Counsel should determine whether such a mechanism could be enacted by statute or would require a constitutional amendment.

V. Requested Action

MFEI respectfully requests:

- That legal counsel assess whether a remand remedy of the kind Justice Zahra proposed survives Justice Hood’s footnote 4 objection, and what remedy, if any, should be requested.
- That the House Select Committee consider legislation responsive to Justice Hood’s specific, textual recommendation and require the Bureau’s staff report within two months of petition submission or at least one month before the Secretary of State’s ballot-notice deadline under [MCL 168.648](#).
- That the House Select Committee ask the Board of State Canvassers, on the record, why on August 24, 2026, it assigned ACVM’s measure a conditional proposal number but deferred the 100-word ballot statement to September 4, the last day for certification, rather than adopting it that day as it had for two deadlocked petitions in 2022; and who decided to cancel the September 4 meeting, when, and on what basis, including what Board order or other authority supported it (R 168.844(6)).
- That the House Select Committee consider legislation requiring the Board, whenever it assigns a conditional proposal number to a petition whose sufficiency remains unresolved, to adopt the 100-word ballot statement at the same meeting, so that a court-ordered placement can be carried out with only the certification step remaining.
- That the House Select Committee consider requiring a standardized record of each Board member’s reasons for any deadlock vote on petition sufficiency, including how the member treated each material disputed signature. In 2022, Justice Viviano noted that other courts require board members in a deadlock to state their reasons of record so that reviewing courts can act (*Reproductive Freedom for All*, 510 Mich. 894 (Viviano, J., dissenting, n.32)). The 2022 members did explain their votes at the hearing, but the minutes did not record the reasons (Aug. 31, 2022, Bd. Tr. at 180:20–183:12, 240:17–242:20).

VI. Works Cited (Count 4)

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https://www.house.mi.gov/hfa/PDF/Alpha/Ballot_Proposal_2_of_2022.pdf

Kennedy v. Secretary of State, 515 Mich. 893 (2024).
https://www.courts.michigan.gov/49d7e4/siteassets/case-documents/uploads/sct/public/orders/167545_43_01.pdf

Michigan Board of State Canvassers. Cancellation Notice, September 4, 2026, meeting (posted Sept. 3, 2026). <https://www.michigan.gov/sos/-/media/Project/Websites/sos/BSC-Announcements/2026/20260904-CANCELLATION.pdf>

Michigan Board of State Canvassers. Meeting Agenda, September 4, 2026 [Continuation of August 24, 2026, meeting]. <https://www.michigan.gov/sos/-/media/Project/Websites/sos/BSC-Announcements/2026/20260904-Meeting-Agenda.pdf>

Michigan Board of State Canvassers. Meeting Minutes archive (approved minutes, 2017 to present, and current draft minutes). <https://www.michigan.gov/sos/elections/bsc/copy-of-minutes>

Michigan Board of State Canvassers. Meeting Minutes, August 31, 2022 (signed and approved Sept. 9, 2022). <https://www.michigan.gov/sos/-/media/Project/Websites/sos/BSC-Meeting-Minutes/2022/Aug-31-2022-BSC-Meeting->

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Michigan Board of State Canvassers. Public Meeting, August 17, 2026. [Meeting video](#) and signed minutes. <https://www.youtube.com/watch?v=lfrk6s0GSeg>

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Michigan Board of State Canvassers. Public Meeting, August 31, 2022. Meeting video and MFEI’s caption-based working transcript (uncertified). https://www.youtube.com/watch?v=Akbd_x0Q2zY. MFEI used the video’s captions as a working transcript, matched names and motions to the signed minutes, and did not check the wording against the audio. Official transcripts may differ.

Michigan Board of State Canvassers. Public Meeting, August 31, 2022. Transcript (Network Reporting), filed in Board of State Canvassers’ Appendix, Mich. Sup. Ct. No. 164760 (received Sept. 7, 2022). https://www.courts.michigan.gov/4a53b5/siteassets/case-documents/briefs/msc/2022-2023/164760/164760_25_02_apx_bd-state-canvassers.pdf MFEI cites pages 119 to 275. The public-comment pages (6 to 118) were not available to

MFEI; for those, the report cites MFEI's caption-based working transcript of the meeting video (see the Note on Transcripts).

Michigan Board of State Canvassers. Public Meeting, July 24, 2026. Certified transcript (Esquire Deposition Solutions), filed as Plaintiffs' Appendix N ([Mich. Sup. Ct., received Aug. 4, 2026](#)). MFEI's copy bears the Appendix N cover page (Plaintiffs' Appendix p. 1261 of 1807).

https://www.supremecourt.gov/DocketPDF/26/26A275/422446/20260831091004542_A_CVM%20Emergency%20App_Exhibits.pdf Also reproduced in ACVM's Emergency Application exhibits, U.S. Sup. Ct. No. 26A275.

Michigan Board of State Canvassers. Public Meeting, September 9, 2022. Meeting video and MFEI's caption-based working transcript (uncertified; not verified against the audio). <https://www.youtube.com/watch?v=qOfZh6yL9w0>. MFEI was unable to locate an official transcript of this meeting, so it relied on the meeting's video captions as a working transcript, and matched names and motions to the signed minutes, and did not check the wording against the audio. MFEI has requested the official transcript under FOIA and may revise this report if the official transcript differs.

Michigan Bureau of Elections. Staff Report: Americans for Citizen Voting—Michigan. Aug. 17, 2026. <https://www.michigan.gov/sos/-/media/Project/Websites/sos/BSC-Announcements/2026/ACV-staff-report-FINAL.pdf?rev=090fa244d519489597f21edeade706f4&hash=1AA1EE58A7644D1FFDA9362A19410958>

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CONCLUSION

Nearly six months elapsed between ACVM's filing and the Board's sufficiency vote. Staff's retained working total was 626, three below the 629-signature sample cutoff and inside the Bureau's own stated margin of error, and it included four signatures whose treatment the Board never resolved. The Board deadlocked, and the petition did not reach the November ballot. This report has asked one question about that outcome: not whether ACVM's amendment should have passed, but whether the process that decided its fate was fair, consistent, and transparent enough to trust with the next petition, whoever sponsors it.

The record most strongly supports two questions warranting investigation. First, a Bureau that issues its findings five and a half months after a petition is filed, leaving the sponsor about five days to respond, raises a serious due-process question regardless of how any other issue in this report is resolved (Count 1). Second, the Board heard late material in one proceeding but excluded it in another, and the two hearings gave different explanations of how tied signature votes should be treated. The record does not reconcile those differences (Count 2).

Neither conclusion depends on resolving the harder questions this report also raises:

- whether the affidavit cure, judged against voter-file records the sponsor could not see, is lawful as designed (Count 1);
- whether the 115-day difference between ACVM's review (173 days) and MMOP's (58 days) reflects a neutral queue or something else (Count 2);
- whether the treatment of tied signature votes, and the cancellation of the September 4 meeting, rested with the Board or with staff (Counts 2 and 4);
- whether a result inside the Bureau's own margin of error should have been treated as final without further review, given a sampling process whose vendor the Bureau promised in writing to disclose (Count 3); and
- how the separate opinions in the Michigan Supreme Court's September 3 order bear on the due-process question (Count 4).

MFEI has tried to keep these two categories separate: what the record documents, and what it raises as a serious but unresolved question. Treating an open question as a settled violation invites distrust. Treating a well-supported concern as speculation lets a process failure go unexamined.

Taken together, the record documents a compressed response period and unresolved questions about the treatment of curative evidence and tied votes. Those concerns warrant investigation

into whether the petition-review process gave ACVM a meaningful, consistent, and reviewable opportunity to establish sufficiency.

The House Select Committee can close most of what remains open in ways MFEI, working from public records, cannot. It can subpoena the Bureau's internal communications from the 166-day review, obtain the sampling vendor's identity and randomization methodology, and take sworn testimony from the officials who made these decisions, including the Board members who voted on the 2023 sampling procedure.

MFEI does not ask either recipient to accept its characterization of events. It asks each to use the authority MFEI lacks to find out whether what happened to a 709,841-signature petition in 2026 was a one-time failure by an overburdened agency, or a process open to inconsistency at best and misuse at worst.

APPENDIX A: Public Comment and Meeting Minutes Availability

This appendix documents what MFEI has and has not been able to locate regarding public comment submitted to the Board of State Canvassers and the Board's own meeting minutes for the August 24, 2026, hearing.

A.1 Public Comments MFEI Has Obtained

MFEI has direct copies of, and cites throughout this report, the following public comments and correspondence related to the ACVM petition. All are written submissions except Mr. Schaeper's, which was an oral comment recorded on video:

- Patrice Johnson, letter to Director Brater and Chair Houskamp requesting a written processing schedule (May 22, 2026).
- Jeffery Schaeper, oral public comment to the Board at its March 20, 2026, meeting on the processing timeline for ACVM's petition (recorded; caption-based working transcript, video at 14:18–16:15).
- Patrice Johnson, public comment to the Board urging certification (Aug. 20, 2026).
- Dee Davey, public comment submitted to the Board the evening of the August 24, 2026, hearing (sent 9:32 p.m.).
- Douglas Basberg, public comment to the House Select Committee (Sept. 14, 2026).
- Mark Vaeth, public comment to the Board analyzing the Bureau's margin-of-error figures (submitted by email Aug. 19, 2026).

At least four MFEI/PIME-affiliated individuals are confirmed to have submitted written comment in connection with the ACVM petition.

A.2 What Is Not Publicly Available

[ESTABLISHED FACT] The Board website does not maintain a standalone, searchable archive of written public comment. Written comment is, at most, folded into meeting-packet materials at the Board's discretion; it is not published as a separate testimony record. MFEI is not aware of any of the five written submissions listed in Section A.1 appearing in a Board-posted document.

[ESTABLISHED FACT] The Board's minutes for August 24, 2026, record, as to ACVM's petition, only the two sufficiency motions and the conditional designation of Proposal 2026-02. They record none of the signature-level votes on which the outcome turned: the Board's 2-2 deadlocks on individual signatures, on the five affidavits rejected as untimely, on the signatures staff had found valid, and on PTVA's late duplicate theory. The only public record of those votes is the Board's video and the certified hearing transcript, filed as Exhibit I to a response in

opposition in *Americans for Citizen Voting–Michigan v. Board of State Canvassers*, U.S. Sup. Ct. No. 26A275. Section A.3 identifies where each appears.

[ESTABLISHED FACT] Where certified transcripts were unavailable, MFEI relied on recorded videos with caption-based transcripts (see the Note on Transcripts).

A.3 Votes Recorded Only in the Hearing Record

The table below lists the August 24, 2026, votes and staff statements this report relies on that do not appear in the Board’s minutes, with their location in the certified transcript. Appendix C provides the corresponding sheet-level ledger and numerical reconciliation.

Vote or event	What the record shows	Transcript	Count
Individual signature challenges	The Board splits 2-2 on numerous individual signatures.	Passim; e.g., 219:5–15	1, 3
Five affidavits rejected as untimely	All four members agree the five signatures match; the Director summarizes six deadlocks, five of them on timeliness.	152:1–22; 156:3–8; 221:16–19	1, 2, 3
Signatures staff found valid	The Board deadlocks on four; the Director calls the effect “a question for the board”; counsel advises a tie leaves them invalid; staff keeps them in its 626 count; the Board never resolves it.	248:14–24; 249:13–252:25; 260:4–14	1, 2, 3
PTVA’s late duplicate theory	Staff does not deduct the two signatures from 626; applying the theory would reduce the total to 624. The Board deadlocks on whether to consider the late duplicate challenges together with the late affidavits.	245:20–246:23; 248:10–12; 251:23–24; 260:5–7	2
Effect of the five affidavits	Counting them yields 631, or exactly 629 with the two duplicates removed.	248:8–13; 260:18–22	3
Item 7, 100-word summary	Chair Houskamp flags the summary at 3:35 p.m.; with a 5:00 p.m. room limit, he moves	219:19–23; 259:14–17; 263:18–264:17	4

Vote or event	What the record shows	Transcript	Count
	to public comment without acting; the minutes omit the item.		

Citations are to the certified transcript of the August 24, 2026, meeting (recorded by Rachelle Roberts, CER 9585; transcribed by Janeen Radtke, CER 7895; both certified August 26, 2026), filed as Exhibit I in U.S. Sup. Ct. No. 26A275. The exhibit's cover sheet misdescribes it as an August 23, 2026, transcript, pages 24 to 39; the document is the complete 273-page transcript of the August 24 meeting. The Board's posted video (<https://www.youtube.com/watch?v=htvH4gl3ZdA>) is the Board's own audiovisual record of the meeting.

APPENDIX B: About MFEI

The Michigan Fair Elections Institute (MFEI) is a nonpartisan, 501(c)(3) educational organization founded in 2022 to research the administration of elections in Michigan, including statutes, procedures, court rulings, and equipment.

MFEI's work is grounded in primary sources: statutes, court rulings, official records, and sworn testimony, organized under an explicit evidentiary framework that distinguishes established fact from inference, judicial finding, and organizational conclusion. This report follows that same framework, developed for MFEI's prior report, *Michigan Election Issues 2020 and Ripple Effects*.

MFEI does not endorse or oppose ballot measures or candidates. Its research is intended to inform voters, policymakers, and, where the record warrants it, referral to the appropriate reviewing authority.

[ESTABLISHED FACT] MFEI's Chair, Patrice Johnson, submitted a public comment to the Board on August 20, 2026, urging certification of ACVM's petition. MFEI member Jeffery Schaeper addressed the Board on March 20, 2026, about the petition's processing timeline, and MFEI members Mark Vaeth and Dee Davey submitted written comments on the petition (Appendix A.1). MFEI discloses these comments so readers can weigh this report accordingly.

[ESTABLISHED FACT] MFEI discloses its role in related litigation so that readers can weigh this report accordingly. MFEI sponsored *Lindsey v. Whitmer*, in which eleven Michigan legislators challenged the use of citizen initiatives to regulate federal elections (No. 1:23-cv-01025 (W.D. Mich.); *aff'd*, No. 24-1413, 124 F.4th 408 (6th Cir. 2024); certiorari denied (U.S. May 2025)).

MFEI and Wisconsin Voter Alliance filed an amicus brief supporting the Pennsylvania legislators' petition in *Keefer v. Biden* (No. 23-1162 (U.S. May 2024)). MFEI, with Pennsylvania Fair Elections and Wisconsin Voter Alliance, filed amicus briefs supporting the petitioners in *Bost v. Illinois State Board of Elections* (No. 24-568), decided January 14, 2026. Erick Kaardal, who filed MFEI's amicus briefs in *Bost*, and Elizabeth Nielsen, who wrote this report's Foreword, both of Mohrman, Kaardal & Erickson, P.A., represented the legislator plaintiffs on appeal in *Lindsey* and *Keefer*. This report does not rely on those cases or on MFEI's positions in them.

[ESTABLISHED FACT] Mark Brewer, counsel for Promote the Vote Action, whose statements to the Board are quoted in Counts 1 and 2, told the Board on August 24, 2026, that he was "the lawyer for the challengers to this petition" (Aug. 24, 2026, Tr. 39:25–40:2).

[ATTRIBUTED CLAIM] MFEI has been informed that ACVM received a letter from attorney Mark Brewer alleging in-kind support from MFEI to ACVM, and that ACVM responded

rejecting the allegation. MFEI has not obtained a copy of the letter or the response. MFEI discloses this so readers can weigh this report accordingly.

APPENDIX C: ACVM Signature Reconciliation Ledger

This appendix reconstructs how the number of valid signatures in the 1,000-signature sample moved from 612 in the Bureau's August 17 staff report to the 626 that staff treated as its retained working total at the August 24 hearing. It uses three public records: the staff report, the Bureau's August 23 Supplemental Review (Exhibit H to the State's response in U.S. Sup. Ct. No. 26A275), and the certified hearing transcript (Exhibit I). It is MFEI's reconstruction. The Bureau's own tally and coding history would confirm or correct it (see Requests for Records and Testimony).

C.1 From 612 to 626

Step	What changed	Source	Count
Staff report	Valid signatures in the 1,000-signature sample	Staff Report; Aug. 24 Tr. 28:22	612
ACVM restorations	Add 19 restorations staff accepted: 12 affidavit rehabilitations (10 on Aug. 21, 2 on Aug. 22) and 7 other corrections	Supp. Review at 1–3, 7; Tr. 30:18–25	+19
PTVA rebuttals	Subtract 7 PTVA rebuttals staff accepted (5 duplicates, 2 invalid dates)	Supp. Review at 8–9; Tr. 30:22–25	–7
After supplemental review	Staff's count before the hearing	Supp. Review at 1; Tr. 30:18–25	624
Board reversal 1	Stennis, sheet 48837: staff found no match; the Board found a match	Tr. 154:11–22	+1
Board reversal 2	Main, sheet 99503: two-part affidavit accepted, 3-1	Tr. 155:1–5	+1
Retained working total	Staff's count at the hearing, pending further votes	Tr. 155:14–25; 260:4–14	626

[ESTABLISHED FACT] The numerical bridge from the August 17 staff report to staff's retained working total is $612 + 19 \text{ staff-accepted restorations} - 7 \text{ PTVA deductions} + 2 \text{ Board reversals} = 626$. The nineteen restorations comprised twelve affidavit rehabilitations and seven

other corrections. The two Board reversals concerned Ayan Eric Demetrius Stennis (sheet 48837) and McKinnon Shelton Main (sheet 99503). Because the seven other restorations and the seven deductions offset each other, the fourteen affidavit rehabilitations the Board accepted (twelve already counted by staff plus the two Board reversals) happen to equal the total increase from 612 to 626.

C.2 Sheet-level changes

Each row below is a change the Supplemental Review states expressly. “Effect” is the change to the valid-signature count in the sample.

Sheet	Issue and staff’s reason	Source	Effect
Affidavit 41031	Joel Scot-Aaron Long: affidavit notarized and matched QVF	Supp. Review at 2	+1
Affidavit 43632	Lesa Rae Vandermeer: same	Supp. Review at 2	+1
Affidavit 52012	Jayde Keshane Graves: same	Supp. Review at 2	+1
Affidavit 61852	James Michael Danielski: same	Supp. Review at 2	+1
Affidavit 74422	Richard Roy Johnson: same	Supp. Review at 2	+1
Affidavit 75156	Davion James Spitzley: same	Supp. Review at 2	+1
Affidavit 80912	Aaron Christopher Guitar: same	Supp. Review at 2	+1
Affidavit 91108	Stacy Jane Stewart: same (staff called it a close call)	Supp. Review at 2	+1
Affidavit 100822	Dustin Joseph Herr: same	Supp. Review at 2	+1
Affidavit 101433	Joseph Leemon Gallapoo: same	Supp. Review at 2	+1
Affidavit 88870	James Herrington: Aug. 22 affidavit matched QVF	Supp. Review at 7	+1

Sheet	Issue and staff's reason	Source	Effect
Affidavit 107618	Angela Haller: Aug. 22 affidavit matched QVF	Supp. Review at 7	+1
Other 55688	Ellis: voter first misidentified; registered as Ricky Wayne Ellis	Supp. Review at 2	+1
Other 58123	Required element not completely obscured	Supp. Review at 2	+1
Other 64739	Universe signature invalid, so the sampled signature is valid	Supp. Review at 3	+1
Other 75866	Year arguably reads "25"	Supp. Review at 3	+1
Other 93302	Year arguably reads "25"	Supp. Review at 3	+1
Other 104316	Horton: registered as Verlyn Craig Horton at the petition address	Supp. Review at 3	+1
Other 107469	Bowers: registered when she signed; deceased status took effect later	Supp. Review at 3	+1
PTVA 59314	Stevenson: on re-review, same voter signed both sheets (duplicate)	Supp. Review at 8	-1
PTVA 67674	Barton: one of four other signatures duplicated this one	Supp. Review at 8	-1
PTVA 68652	Duplicate of sheet 83152	Supp. Review at 9	-1
PTVA 85835	Duplicate of sheet 73231	Supp. Review at 9	-1
PTVA 96407	Universe signature clearly dated "25," so this one is a duplicate	Supp. Review at 9	-1

Sheet	Issue and staff's reason	Source	Effect
PTVA 101175	Date reads 1/24/24, invalid	Supp. Review at 9	-1
PTVA 112556	No month in the date, every element crossed out	Supp. Review at 9	-1

C.3 Affidavits at the hearing

[ESTABLISHED FACT] Director Brater told the Board that staff had received 20 unique attempted rehabilitations by affidavit. Staff thought 12 matched the QVF and 8 did not, and the Board accepted the 12 (Aug. 24, 2026, Tr. 87:20–88:11). Of the other eight, the Board accepted two, Stennis and Main (Tr. 154:11–155:5), and deadlocked 2-2 on Cramer, sheet 103527 (Tr. 154:24–155:1; 156:4–6). Separately, the Board deadlocked on five late affidavits, which staff described as timeliness issues (Tr. 155:6–13; 156:6–8). The Michigan Supreme Court's September 3 order counts 23 affidavits, 14 accepted and 9 rejected. MFEI has not reconciled the Court's figure of 23 with the transcript's 20 unique attempts plus five late affidavits.

C.4 Unresolved votes and alternative totals

Item	Treatment at the hearing	Source	Effect on 626
Five late affidavits	Received after the cutoff; the Board did not vote to accept them and deadlocked on timeliness	Tr. 155:6–13; 156:6–8	+5 if counted (631)
Sheets 108697, 113496	Staff agreed both were duplicates but did not count them because PTVA challenged them after the Aug. 7 deadline	Supp. Review at 1 n.1, 12; Tr. 248:10–13; 260:5–7	-2 if counted (624)
Kweck, sheet 105665	Staff found valid; the Board deadlocked on overturning	Tr. 228:8–230:19	Counted in 626; -1 if a tie leaves it invalid

Item	Treatment at the hearing	Source	Effect on 626
Mike Johnson, sheet 85200	Staff found valid; the Board deadlocked	Tr. 236:18–238:6	Same
Diana Green circulator sheets 11468, 30575	Staff found valid; the Board deadlocked on both	Tr. 243:11–17	Same (–2)
Counsel’s advice on ties	Without a Board determination of validity, is a tied signature valid or invalid? The Board never resolved the question	Tr. 252:16–24; 260:4–22	All four: –4 (622)

Staff gave alternative totals depending on how those items are treated (Tr. 248:8–24; 260:4–22). The last column applies counsel’s advice that a tied signature is not valid, which the Board never adopted or rejected.

Scenario	Working total	Source	If the four tied signatures are excluded
Staff’s retained count	626	Tr. 155:14–25; 260:4–14	622
Add the five late affidavits	631	Tr. 248:8–13; 260:18–22	627
Add the five late affidavits; remove the two late-challenged duplicates	629	Tr. 248:8–24	625
Remove the two late-challenged duplicates only	624	Tr. 248:10–12; 260:5–7	620

Tied votes on signatures staff had already rejected do not change any total, because the staff determination of invalidity may stand either way.

Tied vote on a staff-rejected signature	Result	Source	Effect
Cramer, sheet 103527 (affidavit)	Deadlocked 2-2; signature stays invalid	Tr. 154:24–155:1; 156:4–6	None
Sheets 68652 and 85835 (duplicates)	Two deadlocks; staff's invalid determination stands	Tr. 213:19–25	None
Sheet 101175 (date)	Deadlocked; staff's invalid determination stands	Tr. 218:8–17	None

C.5 Limits of this reconstruction

[ESTABLISHED FACT] This ledger records only the changes that the Supplemental Review and the certified transcript state expressly. It does not show every sheet-level coding decision, which only the Bureau's tally and coding history can supply. Page references to the Supplemental Review are to its own page numbers, counted from its first page.

APPENDIX D: Background Material

This appendix collects background that supports Count 1 but is not needed to follow its argument. MFEI draws no conclusions from it beyond those stated.

D.1 The 2018 Promote the Vote Litigation

[ESTABLISHED FACT] In 2018, Promote the Vote (PTV), joined by three individual petition signers, sued Michigan’s Secretary of State, three members of the Board of State Canvassers, and the Bureau’s then-director in federal court. The complaint alleged “unconstitutional application of Michigan election rules” through “standardless and arbitrary signature comparison practices to reject petition signatures, without giving notice and an opportunity to be heard,” and sought an order that the Bureau “cease and desist from rejecting petition signatures using their standardless and subjective signature comparison practice” ([Promote the Vote v. Johnson, No. 2:18-cv-12692 \(E.D. Mich.\)](#), Compl. ¶¶ 3, 5, and at 22 (filed Aug. 28, 2018)).

[ATTRIBUTED CLAIM] The complaint alleges that, of a 500-signature first-stage sample, the Bureau found 380 valid and rejected 120, including 24 rejected as “incomplete,” a classification PTV’s own review found did not meet the Bureau’s stated definition. PTV alleges it obtained sworn, notarized affidavits from 13 of those 24 signers, which, added to the 380, would have produced 393 valid signatures against a 390 threshold (id. ¶¶ 33–37). The complaint also alleges, on information and belief, that the Bureau and Board had “not treated other ballot question proponents in the same manner” (id. ¶ 44).

[ESTABLISHED FACT] At the August 24, 2018, Board meeting, a motion by Vice-Chairperson Matuzak to direct staff to prepare an interim staff report on the first-stage sample “failed for lack of support” (Bd. of State Canvassers Minutes, Aug. 24, 2018).

[ESTABLISHED FACT] The Board voted unanimously to certify the petition on September 6, 2018 (Bd. of State Canvassers Minutes, Sept. 6, 2018). The case was voluntarily dismissed as moot in November 2018 after the measure passed.

[LEGAL ARGUMENT] The ACLU of Michigan’s own account attributes the Bureau’s reversal to the lawsuit’s filing. MFEI has not independently confirmed whether the certification rested on the first sample’s affidavit-corrected count or on the second, larger sample’s independent result, and does not adopt that causal claim. No court ruled on the merits of the standardless-comparison theory, so the episode is not binding precedent. It shows only that a similar due-process theory was previously raised in litigation but not adjudicated on the merits.

[ESTABLISHED FACT] The Bureau’s Analysis of Validity Rates for Initiative and Referendum Petitions, 1978–2026 (Sept. 14, 2026) lists Promote the Vote 2018 with 433,069

signatures filed, 3,799 signatures checked, a 76.4% validity rate against 72.9% required, and an observed confidence level of 98.25.

[LEGAL ARGUMENT] A 3,799-signature check indicates that a second, larger sample was drawn and that the Bureau's recorded result rests on it. The table does not state which sample the certification relied on.

D.2 Prior Advocacy Roles of Two Board Members

[ESTABLISHED FACT] The signature block of the 2018 PTV complaint lists Mary Ellen Gurewitz (P25724) of Sachs Waldman, P.C., as one of two attorneys of record for Plaintiff PTV, alongside Andrew Nickelhoff. Ms. Gurewitz is the current Vice Chair of the Board and cast one of the two votes against certifying ACVM's petition on August 24, 2026.

[ESTABLISHED FACT] In *Reproductive Freedom for All v. Board of State Canvassers*, Mich. Sup. Ct. No. 164760, the amicus brief of Michigan United and 1,295 petition signers, filed September 6, 2022, thanks "attorney Heather Cummings" for help preparing it (Br. at 4 n.1). Ms. Cummings, a Novi labor attorney admitted to the Michigan bar in 2004, was appointed to the Board by Governor Whitmer for a term beginning February 1, 2025. On August 24, 2026, she voted with the Vice Chair against certifying ACVM's petition and against admitting its five late affidavits. The 2022 brief argued that the Board's duty to certify a qualifying petition is ministerial (id. at 9–10).

[LEGAL ARGUMENT] These facts do not show which portions either attorney drafted, and the filings were advocacy for clients. The 2018 case concerned a signature-comparison practice and the 2022 dispute concerned a petition's printed format, not late-arriving evidence. An attorney's arguments for a client are not necessarily her personal views years later. MFEI draws no conclusion about either member's August 24 votes. It records the facts because they are independently verifiable and because the Select Committee can ask each member directly how she distinguishes the matters.

D.3 A Burden-of-Proof Theory MFEI Has Not Verified

[LEGAL ARGUMENT] ACVM's original complaint (§ 92) argues that Michigan law presumes petition signatures valid and puts the burden of proving invalidity on the challenger, or on the Board, "by clear, convincing, and competent evidence." MFEI read the authorities ACVM cites. That standard appears in *Jaffe v Oakland County Clerk*, 87 Mich App 281, 285 (1978), a recall-petition case that Johnson and ACVM cite as "*Jaffee v Allen*," as one of five reasons for holding that a clerk need not compare petition signatures to signatures on file.

Johnson v Board of State Canvassers, 341 Mich App 671 (2022), a candidate-petition case, recited it as the candidate’s contention and did not apply it. *Farm Bureau*, 204 Mich App 361 (1994), contains it only in an appended non-binding Attorney General opinion. *Grosse Pointe Farms Fire Fighters Ass’n v Grosse Pointe Farms City Clerk*, 11 Mich App 112, 118-119 (1968), a municipal charter-petition case, holds that petitions in proper form are presumed valid, but that the presumption disappears on a showing by the clerk “of sufficient magnitude,” after which the proponents must affirmatively show compliance.

Thompson v Secretary of State, 192 Mich 512, 527 (1916), and *Michigan State Dental Society v Secretary of State*, 294 Mich 503, 518 (1940), hold only that handwriting similarity is too indefinite to act on in a canvass. The words “or the Board” are ACVM’s addition to the *Johnson* quotation. Neither MCL 168.476 nor the Board’s rules (R 168.841 to .846) states who bears the burden.

The statute requires QVF signature comparison and attaches rebuttable presumptions of invalidity only to registration facts. The question this theory raises is this: Is a staff comparison to an undisclosed record a showing “of sufficient magnitude.” MFEI has found no decision applying any of these rules to a Board canvass under MCL 168.476. MFEI flags the theory for counsel.

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MFEI Volunteer Awards Potluck, September 2025. Photo Credit: Sheree Ritchie

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