

**STATE OF MICHIGAN  
BOARD OF STATE CANVASSERS**

In re Petition Filed  
By Secure MI Vote,

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**PUBLIC COMMENTS AND SUGGESTED SUMMARY LANGUAGE  
OF PROMOTE THE VOTE REGARDING SECURE MI VOTE PETITION**

By any measure the 2020 Michigan elections were an unprecedented success--record voter turnout, record absentee voting, and smooth administration despite the COVID pandemic--all done with integrity, accuracy, and without legal problems.

This petition is the latest effort to rewrite the history of the 2020 elections by perpetuating the Big Lie about them—that the presidential election results were wrong and that there was “fraud” which needs a “remedy.” Having failed in every lawsuit—and the lawyers who brought them sanctioned<sup>1</sup>--and despite 250 legitimate post-election audits demonstrating the integrity of the elections,<sup>2</sup> Big Lie proponents now seek to foist on Michigan voters a rollback of

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<sup>1</sup> See *King v Whitmer*, ED Mich No 20-13134 (Opinion and Order of August 25, 2021).

<sup>2</sup> See Department of State, “Post-election audit report confirms accuracy and integrity of Michigan’s election” (April 22, 2021).

Michiganders’ voting rights at a level never seen before under the false pretense of “increasing confidence” and “protecting election integrity.”

All that the sponsor has offered as a proposed “summary” of this voter suppression proposal is the formal title of the legislation. Treating that title as a “summary,” it is neither true nor impartial, is written in legislative jargon instead of common everyday words, and fails to disclose the proposal’s harmful effects on Michigan voters.

As detailed below, the proposed “summary” should be rejected in favor of the true and impartial alternative summary written in everyday language which discloses the major effects of the proposal if enacted.

#### **I. PROMOTE THE VOTE**

Promote The Vote (“PTV”) is the statewide coalition of nonpartisan groups which successfully sponsored 2018 Proposal 3, the largest expansion of voting rights in Michigan history. Its members include the Arab Community Center for Economic and Social Services (ACCESS), ACLU of Michigan, America Votes, AFT Michigan, Asian & Pacific Islander American (APIA) Vote Michigan, Detroit Action, Detroit Hispanic Development Corporation, League of Women Voters of Michigan, Michigan League for Public Policy, NAACP, and the NAACP Detroit Branch.

#### **II. THE LEGAL STANDARDS GOVERNING PETITION SUMMARIES**

Michigan law sets forth the standards a petition summary must meet:

(b) The summary is limited to not more than 100 words and must consist of a true and impartial statement of the purpose of the proposed amendment or question proposed in language that does not create prejudice for or against the proposed amendment or question proposed.

(c) The summary must be worded as to apprise the petition signers of the subject matter of the proposed amendment or question proposed, but does not need to be legally precise.

(d) The summary must be clearly written using words that have a common everyday meaning to the general public.

MCL 168.482b(2)(b)-(d).<sup>3</sup> The standards used in MCL 168.482b are taken from several other statutes that have long governed the preparation of ballot summaries for proposals in Michigan. *Compare* MCL 168.482b *with* MCL 168.32(2), 168.85, and 168.643a. The contents of those ballot summaries provide guidance for what constitutes a compliant petition summary under MCL 168.482b.

For example, the Director and Board in their previous ballot summaries have repeatedly disclosed the *effect* of a proposal if adopted. For example, the summary for 2018 Proposal 1 stated that the proposal would:

- *Change several current violations from crimes to civil infractions.*

Similarly, the ballot summary for 2012 Proposal 4 was clear on the proposal's impact:

This proposal would:

- *Allow in-home care workers to bargain collectively with the Michigan Quality Home Care Council (MQHCC). Continue the*

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<sup>3</sup> Similar standards exist in other states. *See, e.g., Fairness and Accountability in Ins Reform v Greene*, 886 P2d 1338, 1346; 180 Ariz 582 (1994) (“[T]he purpose of the required analysis is to assist voters in rationally assessing an initiative proposal by providing a fair, neutral explanation of the proposal’s contents and the changes it would make if adopted . . . . The analysis and description must eschew advocacy—argument—for or against the proposal’s adoption.”); *Gaines v McCuen*, 758 SW2d 403, 406; 296 Ark 513 (Ark 1988) (“The ballot [summary] must accurately reflect the general purposes and fundamental provisions of the proposed initiative, so that an elector does not vote for a proposal based on its description in the ballot [summary], when, in fact, the vote is for a position he might oppose.”); *Advisory Opinion to Attorney Gen re Term Limits Pledge*, 718 So2d 798, 803 (Fla 1998) (holding that the purpose of requiring the explanatory statement “is to provide fair notice of the content of the proposed amendment so that the voter will not be misled as to its purpose, and can cast an intelligent and informed ballot”) (internal quotation omitted; citation omitted).

*current exclusive representative of in-home care workers until modified in accordance with labor laws.*

(emphasis added). Again and again, for decades ballot summaries prepared by the Director and approved by the Board under the same standards as MCL §168.482b have described the *effect* of the proposal. There are many more examples. See, e.g., 2012 Proposal 2 (repeatedly stating effect on current and future laws); 1998 Proposal B (disclosing exemptions from transparency laws and creation of legal rights); 1996 Proposal D (creating a cause of action); 1994 Proposal B (disclosing loss of right to a criminal appeal if adopted); 1994 Proposal D (disclosing a limit on legal right to sue if adopted).

It is well-established that the effects of a proposal must be disclosed in a summary.<sup>4</sup>

### **III. THE PROPOSED SUMMARY DOESN'T MEET THE STANDARDS OF MCL 168.482B**

A proposed summary from Secure MI Vote has not been publicly disclosed. There is only the title of the proposed legislation:

An initiation of legislation to protect the right to vote and increase confidence in the conduct of elections by requiring photo identification before casting a ballot, to increase participation by providing free photo identification to anyone needing it to vote, and to protect election integrity by prohibiting special interest funding of elections, by amending Michigan Election Code sections 495, 523, 759, 759a, 759b, 761, 761b, 764b, and 813 (MCL 168.495, MCL 168.523, MCL 168.759, MCL 168.759a, MCL 169.759b, MCL 168.761, MCL 168.761b, MCL 168.764b, and MCL 168.813),

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<sup>4</sup> This is the law in other states as well. See, e.g., *Advisory Op to Attorney Gen re Right to Competitive Energy Mkt for Customers of Investor-Owned Utils*, 287 So3d 1256, 1260 (Fla 2020) (ballot language “may be clearly and conclusively defective in violation of statutory requirements either in an affirmative sense, because it misleads the voters as to the *material effects* of the proposed amendment, or in a negative sense by failing to inform the voters of those *material effects*”) (emphasis added); *Sedey v Ashcroft*, 594 SW3d 256, 263 (Mo Ct App 2020) (when drafting summary statements under statute governing petitions for ballot initiatives for constitutional amendments, the Secretary of State “should accurately reflect the *legal and probable effects* of the proposed amendment”) (emphasis added).

and adding sections 523b (MCL 168.523b) 766a (MCL 168.760a) and 946 (MCL 168.946).

This isn't even an adequate bill title<sup>5</sup> let alone a sufficient summary because it fails to meet the requirements of MCL 168.482b.

First, it asserts conclusions, not facts, in language which creates prejudice for the proposal—"protect the right to vote," "increase confidence in the conduct of elections." "increase participation," "protect election integrity," and "prohibiting special interest funding." All of those phrases are advocacy; they are value-laden, speculative opinions and conclusions which create prejudice for the proposal. They are not germane to a statement of purpose. No summary of a proposal affecting voting has ever contained such prejudicial language. See, e g, Ballot Summaries for 2018 Proposal 3 and Proposal 02-1.

Second, instead of factually describing the proposal in "clearly written" words with a "common everyday meaning to the general public," the summary spends 47 words, about half the summary, in legal jargon citing the election code. While this is required in the title of a legislative bill<sup>6</sup>, references to the election code in a petition summary are completely meaningless if not confusing to signers and tell them nothing about the purpose of the proposal. These statutory cites only use up valuable space which could be filled with information that informs signers what the proposal will do in plain English and serve no useful purpose. Moreover, if a signer wants to read them they can be found in the title and text of the legislation on the back of the petition.

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<sup>5</sup> See Legislative Service Bureau, "Legislative Drafting Manual" §101.

<sup>6</sup> See *id.*

Next, the summary inaccurately describes the proposal in several ways. The first error is that the summary focuses on only 2 aspects of the proposal (and even those are inaccurately described), a claimed photo identification requirement to cast a ballot and the funding of elections. The summary fails to indicate that the proposal also affects voter registration, access to absentee applications, clerk and dropbox availability prior to elections, spending taxpayer money on free photo ID's, and an appropriation blocking a voter referendum. The summary fails to also disclose that the Legislature can adopt the proposal without a vote of the people at all, the stated goal of the sponsor. See Oosting, "Republicans launch 'secure MI vote' drive to reform Michigan election laws," Bridge Magazine, August 30, 2021.

An underinclusive summary such as this is inaccurate. See, e.g., *Burgess v Alaska Lieutenant Governor*, 654 P2d 273, 275 (Alaska 1982) (a summary must be "complete enough to convey an intelligible idea of the scope and import of the proposed law, and it ought to be free from any misleading tendency, whether of amplification, *of omission*, or of fallacy, and that it must contain no partisan coloring") (emphasis added); *Conway v Martin*, 499 SW3d 209, 212; 2016 Ark 322 (Ark 2016) (a summary of an initiated act must be "free from any misleading tendency, whether of amplification, *of omission*, or of fallacy, and it must not be tinged with partisan coloring") (emphasis added); *State ex rel Schuck v City of Columbus*, 152 Ohio St 3d 590, 594-95; 99 NE3d 383 (Ohio 2018) (summary of a ballot initiative must inform and protect the voter and presupposes a condensed text which is fair, honest, clear and *complete, and from which no essential part of the proposed amendment is omitted*) (emphasis

added); *Hopkins v. Rosenblum*, 460 P3d 503, 506; 366 Or 239 (Or 2020) (a ballot summary may be inaccurate because it is “*underinclusive* [by] identify[ing] the subject matter of a measure *by mentioning only some of its aspects, while leaving other, major aspects of the measure unmentioned*”) (emphasis added).

The second error as to accuracy lies in the woefully incorrect description of the photo ID and funding provisions. The summary states that the proposal “require[s] photo identification before casting a vote.” Plainly put, that’s wrong because the proposal significantly changes current law by limiting how voters verify their identity. In addition, a voter can still “cast” a vote without photo ID by absentee ballot or on election day—the proposal prevents that vote from *counting*.

The funding provision is incorrectly summarized as “prohibiting special interest funding of elections.” But the proposal is far broader than that, whatever the pejorative “special interest” may mean. Section 946(1) prohibits “in-kind contributions, or other consideration, from any individual or entity . . . to conduct or administer elections.” This would ban everything from federal government election funding to cities and townships loaning personnel and equipment to each other to churches and schools donating polling places to citizens volunteering their time to work on elections, and much more. Indeed, phone calls and emails between clerks or between clerks and the Bureau of Elections would be illegal under §946(1) as an “in-kind contribution” from “an individual or entity.” None of that is “special interest funding” of elections.

The biased, misleading, incomplete, inaccurate, and jargon-laden title of the legislation fails the standards of MCR 168.482b.

#### IV. THE ALTERNATIVE SUMMARY CURES THE DEFECTS OF THE PROPOSED SUMMARY AND MEETS THE STATUTORY STANDARDS

This alternative summary corrects the defects of the proposed summary by providing far more accurate information in plain English about the major aspects of the proposal. The summary makes much better use of the 100 words in simpler language:

Initiation of legislation to mandate that people disclose partial Social Security numbers when registering to vote; restrict options for registered voters to verify their identity; discard votes of registered voters who cannot meet the restricted options; prohibit election officials from providing absentee applications unless asked; spend millions of dollars providing free photo identification; require clerks' offices to open or provide ballot dropboxes for a week before an election; ban charitable contributions, including volunteer time, to help administer elections; and allow the Legislature to adopt the legislation without a vote of the people and block a peoples' referendum vote after adoption.

Unlike the proposed summary, this alternative describes the major aspects of the proposal succinctly and accurately in 100 words in the order in which they appear. It is not fatally underinclusive. *See, e g, Burgess, supra, Conway, supra; Schuck, supra; and Hopkins, supra.*

The alternative also eschews legal jargon and citations because it doesn't have to be "legally precise," instead employing words which "have a common everyday meaning to the public." MCL 168.482(2)(c), (d).

The alternative accurately describes the *effects* of the proposal—votes will be discarded, millions of dollars will be spent, dropboxes will be provided, a people's referendum will be blocked, etc.

Finally, each phrase is "true and impartial," creating no "prejudice for or against" the proposal. *Id.*

**CLAUSE 1: “Mandate that people disclose partial Social Security numbers when registered to vote”**

Section 495(f) mandates the disclosure of the last 4 digits of the Social Security number by people registering to vote as truthfully and impartially described in clause 1 of the alternative summary.

**CLAUSE 2: “Restrict options for registered voters to verify their identity”**

Clause 2 truthfully and impartially describes the proposal as restricting options for voters to verify their identity, principally by deleting the current, longstanding affidavit option in §523(2) and replacing it with the limited list of identification documents or means in §§523(3), (6), (7); 759; 759a; 759b, and 761. Unlike the proposed summary, this clause does not use the inaccurate phrase “photo ID,” as an omnibus, but incorrect description of the new identity verification requirements. As set forth in the proposal, photo ID is *not* the only identification option and it is completely misleading to mention it only.

**CLAUSE 3: “Discard votes of registered voters who cannot meet the restricted options”**

This clause truthfully and impartially describes the effect of a voter failing to comply with the restricted options of §§552(3), (6) and (7): the vote she or he has already cast is discarded under *id* (6) and (7).

**CLAUSE 4: “Prohibit election officials from providing absentee applications when asked”**

Clause 4 truthfully and impartially describes the prohibitions in §759(1) on absentee application distribution.

**CLAUSE 5: “Spend millions of dollars to provide free photo identification”**

This clause truthfully and impartially lays out the purpose of the fund created by §523b.

**CLAUSE 6: “Require Clerk’s offices to open or provide ballot dropboxes for a week before an election”**

This clause truthfully and impartially describes the requirements of §761b(5).

**CLAUSE 7: “Ban charitable contributions, including volunteer time, to help administer elections”**

This clause truthfully and impartially describes the broad effect of §946(1).

**CLAUSE 8: “Allow the legislature to adopt the legislation without a vote of the people and block a peoples’ referendum after adoption”**

This clause truthfully and impartially informs signers that the Legislature can adopt the proposed legislation under Art 2, §9 of the Michigan Constitution. Sponsors of the proposal have stated that that is their intent. See Mauger, “Michigan Republicans launching petition drive to require ID’s for voting,” Detroit News, August 30, 2021; Bridge Michigan, *supra*. Under current law, Clause 8 also accurately informs signers of the effect of the appropriation in §523b(5) barring a referendum on the proposal if adopted. See *MUCC v Secretary of State*, 464 Mich 359; 630 NW2d 297 (2001) (appropriation bars referendum). Signers are entitled to know these 2 important pieces of information.

## CONCLUSION AND RELIEF SOUGHT

For the reasons stated the proposed summary should be rejected and the alternative summary adopted.

Respectfully submitted,

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