

**STATE OF MICHIGAN  
BOARD OF STATE CANVASSERS**

In re Petition Summary Request  
of Audit MI

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**MEMORANDUM OF PROMOTE THE VOTE IN SUPPORT  
OF SUGGESTED PETITION SUMMARY LANGUAGE**

**INTRODUCTION**

This proposal makes several fundamental changes to decades of well-established and proven election audit procedures – among other things, establishing a partisan board to hire private contractors to review election results, ousting public officials with expertise in election administration from that responsibility; creating a secret grand jury controlled by a political party with extensive criminal powers possibly not subject to judicial oversight; illegally breaking the chain of custody of election records and equipment; authorizing private, including foreign, funding of election reviews; and making any act of noncompliance by millions of people a felony.

Signers of the petition are entitled by law to clear disclosure of these seismic changes to Michigan election law.

**I. THE PROPOSED PETITION SUMMARY**

Promote the Vote proposes this summary of the Audit MI proposal:

Initiation of legislation creating a board of 20 political party officials, selected by legislative leaders, to hire private contractors to review the previously certified and audited 2020 election results and future election results; creating a grand jury of 13 political party officials controlled by Republicans for 2020-22 audits with power to issue arrest warrants and subpoenas; breaking the chain of custody by transferring all election records, including secret ballots, to private contractors; prohibiting state and county elections officials from conducting election audits; funding reviews with taxpayer funds and undisclosed private, including foreign, funds; and imposing criminal penalties for impeding reviews.

This 100-word summary complies with Michigan law, should be recommended by the Director to the Board of Canvassers, and should be adopted by the Board of Canvassers.

## II. THE LEGAL STANDARDS GOVERNING PETITION SUMMARIES

Michigan law sets for 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>1</sup>

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<sup>1</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 quotations omitted; citation omitted).

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.

**A. *Impact on Current or Future Laws***

For example, the Director and Board in their previous ballot summaries have repeatedly disclosed the impact on current or future laws of a proposal if adopted. The summary for 2018 Proposal 1 stated that the proposal would:

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

(emphasis added). Similarly, the ballot summary for 2012 Proposal 2 was clear on the proposal’s impact on current and future laws:

- *Invalidate existing or future state or local laws that limit the ability to join unions or bargain collectively, and to negotiate and enforce collective bargaining agreements, including the employees’ financial support of their labor unions. Laws may be enacted to prohibit public employees from striking.*
- *Override state laws that regulate hours and conditions of employment to the extent that those laws conflict with collective bargaining agreements.*

(emphasis added). Finally, the summary of the 2008 proposal on embryonic stem cell research disclosed that it would “prohibit state and local laws” relating to stem cell research.

**B. *Funding Sources***

Previous ballot summaries have disclosed the funding sources for a proposal. Most recently on November 29, 2021 the Board approved a petition summary for Let MI Kids Learn (B) which disclosed that private individual donors would fund the so-called Student Opportunity Scholarships.

### III. THE PROPOSAL

The poorly drafted proposal contains typos, single word sentences, and myriad state constitutional violations from the separation of powers to failure to republish to amendment by reference to transferring government authority to private, political organizations, to being void for vagueness, and more, all of which are beyond the Board's jurisdiction. However, merely because the Board doesn't have the authority to declare the proposal unconstitutional doesn't mean the Board can shirk its responsibility to ensure that the harmful salient features of the proposal are disclosed to petition signers.

The proposal does the following, among other things:

- Creates a so-called "Audit Board" of 10 Republican Party and 10 Democratic Party precinct delegates with no requirement that they have any election administration or audit experience. The Board is housed in the State of House of Representatives and appointed by the Speaker of the House and the House legislative leader of the minority party.
- Requires the Board to hire private contractors without regard to state contracting procedures and Civil Service regulations to review the already certified and audited (250 times) 2020 election and future elections.
- Requires the transfer of all election machinery and records, including secret ballots, to the private contractors, breaking the chain of custody in violation of state and federal law, and at a large cost to local governments.
- Prohibits and prevents state and local election officials who currently perform election audits from doing so in the future.
- Establishes a secret partisan grand jury of 13 Board members appointed by the Speaker of the House and controlled by the Speaker's political party with the power to issue arrest

warrants and subpoenas, and to hold people in contempt. Millions of people, including every voter, are subject to the grand jury’s criminal powers.

- Funds the work of the Audit Board and grand jury with taxpayer funds and undisclosed private, including foreign, funds.
- Imposes felony penalties for impeding the work of the Audit Board or failing to comply with the act in any way, subjecting millions of people including every voter to criminal sanctions.
- The placement of the Audit Board and grand jury in the State House of Representatives invites the assertion that they are insulated from judicial review of their actions.
- The grand jury will operate in secret not being subject to the Open Meetings Act or Freedom of Information Act.
- Targets senior citizen voters for special scrutiny.

### **III. THE PROPOSED SUMMARY COMPLIES WITH MICHIGAN LAW**

#### **A. *Clause-By-Clause Analysis***

**CLAUSE 1:** *creating a board of 20 political party officials, selected by legislative leaders, to hire private contractors to review the previously certified and audited 2020 election results and future election results;*

This clause accurately, succinctly, and in plain English describes the board created by the proposal. Precinct delegates are not public officials – they are political party officials – they run as partisans, are elected by their party’s primary voters, and serve various roles in their political parties. Prior to this proposal no government authority had ever been delegated to them.

The contractors are “private” – hired outside the state’s contracting regulations and the Civil Service system. The 2020 election was previously certified by the Board of Canvassers in late 2020 with no recount requests. The 2020 election has been audited 250 times with the

involvement of more than a thousand bipartisan and nonpartisan election officials from across the state, with no material errors uncovered.

[https://www.michigan.gov/documents/sos/BOE\\_2020\\_Post\\_Election\\_Audit\\_Report\\_04\\_21\\_21\\_723005\\_7.pdf](https://www.michigan.gov/documents/sos/BOE_2020_Post_Election_Audit_Report_04_21_21_723005_7.pdf)

**CLAUSE 2:** *creating a grand jury of 13 political party officials controlled by Republicans for 2020-22 audits with power to issue arrest warrants and subpoenas;*

This clause truthfully and briefly describes the new grand jury created by the proposal. It is made up of precinct delegates – political party officials – making it a partisan body. Indeed, under the proposal it will be controlled by the political party of the Speaker of the House. By terms of the proposal the Republican Speaker of the House will appoint the majority of the grand jury members for the 2020 and 2022 reviews if the proposal is adopted by the Legislature or the voters in November. Michigan has never had a partisan grand jury with such vast but still vague criminal powers arguably not subject to judicial review. Petition signers need to be informed of this historic change.

**CLAUSE 3:** *breaking the chain of custody by transferring all election records, including secret ballots, to private contractors;*

Under the proposal the chain of custody of election records maintained by public officials will be broken when those election records, including secret ballots, are given to the private contractors. This is a major, unprecedented change in election integrity protection, violates state and federal law, and will have costly implications for future elections, of all of which petition signers should be aware.

**CLAUSE 4:** *prohibiting state and county election official from conducting election audits;*

By transferring the current statutory audit authority from state and county election

officials to the board as well as by transferring all the election records and machinery to the private contractors, those public officials will be prohibited and unable to conduct election audits. This is a significant change in current historic procedure and from the intention of 2018 Proposal 3 which petition signers are entitled to know.

**CLAUSE 5:** *funding review with taxpayer funds and undisclosed private, including foreign, funds;*

As with previous petition summaries signers are entitled to know how the proposal is funded including the nondisclosure of private funds from any source, including foreign sources. The proposal contains no restrictions whatsoever on the sources of funding about which the public will never know. In fact, by its very terms, the proposal prohibits the disclosure of private, including foreign, sources.

**CLAUSE 6:** *imposing criminal penalties for impeding reviews.*

Finally, this clause discloses to signers that there are criminal penalties for impeding the reviews required by the proposal. Millions of people – including every voter – are subject to those penalties.

**B. Overall Analysis**

This summary presents the substance of the proposal in the same order as the proposal and it is complete, omitting no material part of the proposal. *See, e g, Burgess, supra; Conway, supra; Schuch, supra; Hopkins, supra.* This summary 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). Finally, the summary is factual as well as "true and impartial," creating no "prejudice for or against" the proposal.

**CONCLUSION AND RELIEF SOUGHT**

For the reasons stated the proposed summary should be recommended by the Director

and adopted by the Board.

Respectfully submitted,

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