
**IN THE
SUPREME COURT OF THE UNITED STATES**

AMERICANS FOR CITIZEN VOTING – MICHIGAN and FRED SMITH,

Applicants,

v.

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

Respondents.

On Application for an Emergency Injunction Pending Appeal by September 3, 2026

**BRIEF OF THE INITIATIVE AND REFERENDUM INSTITUTE AS *AMICUS
CURIAE* IN SUPPORT OF APPLICANTS**

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INTEREST OF *AMICUS CURIAE*¹

Amicus curiae Initiative & Referendum Institute is a non-profit, non-partisan organization devoted to the study, protection, and improvement of the initiative and referendum process in the United States. *Amicus* has no stake in the outcome of the underlying policy question presented by Applicants' Petition. *Amicus*' interest is instead in ensuring that the constitutional and statutory processes by which citizens exercise their reserved lawmaking power are administered consistently with due process and equal protection, wherever in the country that power is exercised.

SUMMARY OF ARGUMENT

This case is not an isolated dispute about one petition in one state. It is the latest instance of a recurring, nationwide pattern in which election administrators use opaque signature-verification procedures, inconsistent deadline enforcement, and unreviewable evidentiary standards to keep citizen initiatives off the ballot notwithstanding facially sufficient signature totals. Left uncorrected, that pattern imposes a chilling effect on the exercise of the reserved constitutional right of initiative nationwide, discouraging the substantial civic and financial investment the process requires. And because the public interest in direct democracy is not abstract — decades of empirical research confirm that the initiative process functions as a meaningful, majoritarian check on unresponsive government — the balance of harms

¹ No counsel for a party authored this brief in whole or in part; no counsel or party contributed money intended to fund the preparation or submission of this brief; and no person other than *amicus* or its counsel contributed money intended to fund its preparation or submission.

and the public interest favor an injunction preserving, rather than foreclosing, the voters' opportunity to decide this measure for themselves.

ARGUMENT

I. This Case Reflects a Recurring National Pattern of Administrative Obstruction of Citizen Initiatives, not an Isolated Dispute.

The due-process and equal-protection problems Applicants identify — signature rejections based on undisclosed comparator records, shifting or selectively enforced deadlines, and administrative findings that leave facially qualified petitions off the ballot — recur across states with initiative processes. This Court should understand the Michigan Respondents' conduct here against that backdrop.

In North Dakota, the Secretary of State rejected 29,101 signatures from a term-limits initiative based on a blanket, unreviewed determination that petitions notarized by a single notary should be disqualified for suspected fraud. *Hendrix v. Jaeger*, 2022 ND 168, ¶¶ 3–4, 979 N.W.2d 918 (N.D. 2022). The North Dakota Supreme Court held the Secretary had misapplied the law and, because the wrongly excluded signatures pushed the petition over the constitutional threshold, issued a writ of mandamus ordering the measure onto the November 2022 ballot. *Id.* ¶¶ 22–24. As in this case, the petition sponsor was left to seek emergency judicial relief to undo an administrative signature determination made without a meaningful opportunity to test the agency's evidence.

In Arizona, a similar dynamic has played out through the state's circulator-subpoena process. In *Leach v. Hobbs*, 250 Ariz. 572 (2021), the Arizona Supreme Court upheld the disqualification of thousands of signatures after circulators failed

to respond to subpoenas, and in a related case tens of thousands more signatures were struck after circulators could not be reached at a shared office address. *Stanwitz v. Reagan*, 245 Ariz. 344 (2018). *See also*, Will Notelovitz, *Sign a Petition? Your Support May Not Count*, State Court Report (Apr. 24, 2024). Unlike a voter casting a mail ballot, a citizen who signs an initiative petition ordinarily has no way to learn — let alone contest — whether or why their signature was invalidated. *Id.*

And just last month in Missouri, the Secretary of State's office disqualified roughly 103,000 signatures gathered in support of a ballot measure notwithstanding record evidence that the petition had cleared the constitutional threshold in two-thirds of the state's congressional districts, prompting renewed litigation over the scope of administrative authority to keep sufficiently signed petitions off the ballot. *See* Rudi Keller, *Missouri Ballot Proposals Blocked by Secretary of State Had Enough Signatures, Records Show*, Missouri Independent (Aug. 18, 2026).

These are not aberrations. They are examples of a single, recognizable phenomenon: election officials relying on internal, non-public records or discretionary procedural rulings to invalidate otherwise-qualifying signatures, while affording petition sponsors little or no opportunity to test that evidence before the petition is permanently kept off the ballot. Michigan's Board did the same thing here — twice: first by refusing ACVM any access to the Qualified Voter File signatures used to invalidate 94 signatures, and second by applying its own 48-hour submission rule to exclude sworn, notarized affidavits while simultaneously excusing a challenger's own untimely filing. This Court's review accordingly implicates a due-process and equal-

protection problem of national dimension, not a one-off disagreement about nine affidavits in Michigan.

II. Opaque, Standardless Signature-Verification Regimes Chill the Exercise of Initiative Rights Nationwide.

The harm from episodes like this one extends well beyond the parties before the Court. Sponsors of citizen initiatives — who must recruit volunteers, retain circulators, and often spend millions of dollars gathering hundreds of thousands of signatures months before a filing deadline — invest those resources against the risk that an opaque, after-the-fact administrative review can nullify the effort based on evidence the sponsor is never permitted to see or meaningfully rebut. That risk does not merely affect the sponsor who loses; it discourages the exercise of the initiative right generally.

This is not merely anecdotal. In the most comprehensive empirical study of the phenomenon to date, economist John G. Matsusaka examined 70 years of state legislative activity nationwide and found that lawmakers have proposed restrictions on the initiative and referendum process at a rate of roughly 2.2 measures every two-year election cycle — four restrictive proposals for every one that expanded direct-democracy rights. John G. Matsusaka, *Direct Democracy Backsliding, 1955–2024*, 6 J. Pol. Institutions & Pol. Econ. 249, 249 (2025). The study found this erosion to be a persistent, decades-long feature of state governance rather than a recent aberration, underscoring that administrative and legislative obstruction of the initiative process is a systemic, ongoing threat to the right this Court is asked to protect here.

The mechanism at issue in this case — non-transparent signature comparison, followed by an ostensible “cure” (the affidavit process) that is itself subjected to the same undisclosed comparison standard — is a particularly potent chilling device precisely because it appears procedurally fair on its face while functioning, in practice, as an unreviewable veto. A sponsor cannot design around a standard it is not permitted to see, and a voter cannot correct a rejection whose grounds are never disclosed. Left standing, the Board's approach here provides a template that other jurisdictions' election administrators may adopt or already employ: reject signatures based on confidential records, offer a facially adequate cure, and then apply the same confidential records to defeat the cure. This Court's guidance is needed to prevent that template from taking hold as accepted practice.

III. The Public Interest Strongly Favors Preserving, Not Foreclosing, the Voters' Opportunity to Exercise Direct Democracy.

The public interest in this case is not simply the generic interest in orderly elections; it is the specific interest, recognized in the constitutions of more than 20 states (including Michigan) in preserving the people's reserved power to legislate directly when their elected representatives will not or cannot act. Empirical research spanning decades confirms that this reserved power is not a symbolic formality — it materially affects governance outcomes and tends to move policy toward, not away from, majority preferences.

Professor Matsusaka's decades-long research program — synthesized in *For the Many or the Few: The Initiative, Public Policy, and American Democracy* (University of Chicago Press: 2004) and *Let the People Rule: How Direct Democracy*

Can Meet the Populist Challenge (Princeton University Press: 2020) — finds that initiative states adopt tax, spending, and social policies that track public opinion more closely than non-initiative states, and that voters in initiative states report greater satisfaction with resulting policy outcomes than voters in states without the process. *See also* John G. Matsusaka, *Direct Democracy Works*, 19 J. Econ. Persp. 185 (2005) (surveying this line of research); Univ. of S. Cal. Gould Sch. of Law, *Direct Democracy at Work* (Nov. 2, 2016) (interview with J. Matsusaka) (noting research finding that “the process is working in the sense that voters are getting what they want”), available at <https://gould.usc.edu/news/direct-democracy-at-work/> (accessed Sept. 3, 2026).

That research confirms what courts applying the irreparable-harm and public-interest factors have long assumed as a matter of common sense: keeping a qualifying measure off the ballot does not merely disappoint its sponsors, it deprives the electorate of a functioning channel for self-government that produces outcomes the public itself tends to prefer. And, as Applicants’ own brief observes, that harm is asymmetric and one-directional. If ACVM’s Petition appears on the ballot and voters reject it, no cognizable harm results — the process will have worked exactly as intended. If the Petition appears and voters approve it, the merits of the Board’s process can still be tested on an ordinary schedule. But if the Petition is wrongly kept off the ballot, the voters of Michigan lose, permanently and without remedy, the only opportunity the State Constitution gives them to decide the question for themselves. Because direct democracy functions as a meaningful, majoritarian check on

government only when citizens can actually get qualifying measures in front of voters, the public interest and the balance of equities weigh heavily in favor of the injunction Applicants seek.

CONCLUSION

For the above reasons, *Amicus Curiae* respectfully asks that this Court grant Applicants' Emergency Application for an Injunction Pending Appeal.

Respectfully submitted,

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