

Michigan Supreme Court Requires Board of State Canvassers to Certify Proposed Constitutional Amendment for Inclusion on Nov. 8 Ballot

September 13, 2022

On Sept. 8, the Michigan Supreme Court issued an order that made national headlines.

The case involved a technical challenge to petitions circulated by the organization Reproductive Freedom For All (RFFA) to enshrine the right to abortion in the Michigan Constitution. RFFA obtained approval from the state's Board of State Canvassers prior to circulation, but the petition approved differed from the petition ultimately circulated in that the circulated petition lacked the same spacing in the text of the proposed amendment as the approved petition. On this basis, the board, along party lines, refused to certify the petition for inclusion on the Nov. 8 ballot.

The Supreme Court began its discussion by noting that "[t]he Board's duty with respect to petitions is 'limited to determining the sufficiency of a petition's form and content and whether there are sufficient signatures to warrant certification.'" (quoting *Stand Up for Democracy v Secretary of State*, 492 Mich 588, 618 (2012)).

The order noted that the relevant provisions of Michigan Election Law are silent as to any spacing requirements. The law simply requires that "[t]he full text of the amendment so proposed must follow the summary and be printed in 8-point type." MCL 168.482(3). The order noted that the "full text" of the proposed amendment "[was] present: regardless of the existence or extent of the spacing, all of the words remain[ed] and they remain[ed] in the same order, and it [was] not disputed that they are printed in 8-point type." The order further noted that "the meaning of the words ha[d] not changed by the alleged insufficient spacing between them" and the petition fulfilled all the statutory form requirements.

As a result, RFFA was entitled to a writ of mandamus because the Board had a clear legal duty to certify the petition for inclusion on the Nov. 8 ballot.

Aside from the obvious result of ensuring RFFA's proposed constitutional amendment will be included on the Nov. 8 ballot, only time will tell the full implications of the Supreme Court's decision in this case.

MICHIGAN SUPREME COURT REQUIRES BOARD OF STATE CANVASSERS TO CERTIFY PROPOSED
CONSTITUTIONAL AMENDMENT FOR INCLUSION ON NOV. 8 BALLOT *Cont.*

What the Supreme Court's order highlights, however, is the importance of having experienced legal
counsel prepared to raise or defend against any and all challenges to an initiatory petition.