

RESPONSE APPENDIX TABLE OF CONTENTS

Michigan Court of Claims
Trump v. Benson
Case No. 20-225-MM
Verified Complaint
Filed: November 4, 2020..... 1a–12a

Michigan Court of Claims
Trump v. Benson
Case No. 20-225-MM
Opinion and Order
Filed: November 6, 2020..... 13a–18a

Wayne County Circuit Court
Costantino v. Detroit
Case No. 20-14780-AW
Complaint
Filed: November 8, 2020..... 19a–45a

Wayne County Circuit Court
Costantino v. Detroit
Case No. 20-14780-AW
Affidavit of Christopher Thomas
Filed: November 11, 2020..... 46a–59a

Wayne County Circuit Court
Costantino v. Detroit
Case No. 20-14780-AW
Affidavit of Opinion & Order
Filed: November 13, 2020..... 60a–74a

Wayne County Circuit Court
Stoddard v. Winfrey
Case No. 20-14604-CZ
Opinion & Order
Filed: November 6, 2020..... 75a–81a

Michigan Supreme Court
Johnson v. Benson
Petition
November 26, 2020 82a–153a

Michigan Court of Claims
Cooper-Keel, J.D. v. Benson; Case No. 20-91-MM
Black v. Benson, Case No. 20-96-MZ
Opinion and Order Denying
Preliminary Injunction
Issued June 18, 2020 154a–162a

Michigan Court of Claims
Cooper-Keel, J.D. v. Benson; Case No. 20-91-MM
Black v. Benson, Case No. 20-96-MZ
Davis v. Benson, Case No. 20-99-MM
Opinion and Order Granting
Summary Disposition
Issued August 25, 2020..... 163a–175a

Michigan Court of Claims
Election Integrity Fund v. Benson
Case No. 20-169-MM
Verified Complaint
Filed August 24, 2020..... 176a–206a

Michigan Court of Claims
Election Integrity Fund v. Benson
Case No. 20-169-MM
Declaration and Verification of
Jonathan Brater
Dated: October 9, 2020 207a–212a

Michigan Court of Claims
Election Integrity Fund v. Benson
Case No. 20-169-MM
Opinion and Order
Filed: October 26, 2020 213a–219a

Meeting of the Board of State Canvassers
Draft Minutes
November 23, 2020 220a–222a

Canvass and Certification of the
November 3, 2020 General Election
with Excerpts of Transcript Pages 1 to 13
November 23, 2020 223a–240a

**STATE OF MICHIGAN
IN THE COURT OF CLAIMS**

DONALD J. TRUMP FOR
PRESIDENT, INC, and
ERIC OSTERGREN,

Plaintiffs,

Case No. 20-000225-MZ
Stephens

v.

JOCELYN BENSON,
in her official Capacity
as SECRETARY OF STATE

Defendants.

**VERIFIED COMPLAINT FOR IMMEDIATE
DECLARATORY AND INJUNCTIVE RELIEF**

There is no other pending or resolved civil action
arising out of the transaction or occurrence alleged in
the complaint.

PARTIES

**A. Plaintiffs Donald J. Trump for President,
Inc., and Eric Ostergren**

1. Donald J. Trump for President, Inc. of the
United States of America and is a candidate for reelection
in the 2020 general election. Donald J. Trump for

President, Inc., is the campaign committee for President Trump and Vice President Pence.

2. Eric Ostergren is a registered voter of Roscommon County, Michigan and credentialed and trained as an election “challenger.” Eric Ostergren was excluded from the counting board during the absent voter ballot review process.

B. Jocelyn Benson is Michigan’s Secretary of State responsible for overseeing Oakland County’s conduct of the 2020 presidential election.

3. Jocelyn Benson is Michigan’s Secretary of State and is the “chief elections officer” responsible for overseeing the conduct of Michigan elections MCL 168.21 (“The secretary of State shall be the chief election officer of the state and shall have supervisory control over local election officials in the performance of their duties under the provisions of this act.”); 168.31 (1)(a) (the “Secretary of State shall ... issue instructions and promulgate rules ... for the conduct of elections and registrations in accordance with the laws of this State”). Local election officials must follow Secretary Benson’s instructions regarding the conduct of elections. Michigan law provides that Secretary Benson “[a]dvice and direct local election officials as to the proper methods of conducting elections.”: MCL 168.31 (1)(b). *See also Hare v. Berrien Co Bd of Election*, 129 N.W.2d 864 (Mich. 1964); *Davis v. Sec’y of State*, 2020 Mich. App. LEXIS 6128, at *9 (Mich. Ct. App. Sep. 16, 2020).

4. Secretary Benson is responsible for assuring Michigan’s local election officials conduct elections in

a fair, just, and lawful manner. *See* MCL 168.21; 168.31; 168.32. *See also* *League of Women Voters of Michigan v. Secretary of State*, 2020 Mich. App. LEXIS 709, *3 (Mich. Ct. App. Jan. 27, 2020); *Citizens Protecting Michigan’s Constitution v. Secretary of State*, 922 N.W.2d 404 (Mich. Ct. App. 2018), *aff’d* 921 N.W.2d 247 (Mich. 2018); *Fitzpatrick v. Secretary of State*, 440 N.W.2d 45 (Mich. Ct. App. 1989).

JURISDICTION AND STANDING

5. The Court of Claims has “exclusive” jurisdiction to “hear and determine any claim or demand, statutory or constitutional,” or any demand for “equitable[] or declaratory relief or any demand for an extraordinary writ against the state or any of its departments or officers notwithstanding another law that confers jurisdiction of the cast in the circuit court.” MCL 600.6419(1)(a).

6. Donald J. Trump has a special and substantial interest in assuring that Michigan processes the ballots of Michigan citizens case according to Michigan law so that every lawful Michigan voter’s ballot is fairly and equally processed and counted. Eric Ostergren has a special and substantial interest under Michigan law as a credentialed election challenger to observe the processing of absent voter ballots.

7. Plaintiffs raise statutory and constitutional claims asking this Court to order equitable, declaratory, and extraordinary relief against Secretary of State Benson. This Court has exclusive jurisdiction to hear these claims. Venue is appropriate in this Court.

8. An actual controversy exists between Plaintiff's and Secretary of State Benson. Plaintiff's has suffered, or will suffer, an irreparable constitutional injury should Secretary Benson continue to fail to ensure that Michigan complies with Michigan law allowing challengers to meaningfully monitor the conduct of the election.

BACKGROUND

9. A general election is being held in the State of Michigan on November 3, 2020.

10. MCL 168.765a, regarding Absent Voter Counting Boards, where absentee votes are processed and counted, states in relevant part as follows:

At all times, at least 1 election inspector from each major political party must be present at the absent voter counting place and the policies and procedure adopted by the secretary of state regarding the counting of absent voter ballots must be followed.

11. Michigan absent voter counting boards are not complying with this statute. These boards are being conducted without inspectors from each party being present.

12. Further, a political party, incorporated organization, or organized committee of interested citizens may designate one "challenger" to serve at each counting board. MCL 168.730.

13. An election challenger's appointed under MCL 168.730 has those responsibilities described at MCL 168.733.

14. An election challenger's legal rights are as follows:

a. An election challenger shall be provided a space within a polling place where they can observe the election procedure and each person applying to vote. MCL 168.733(1).

b. An election challenger must be allowed opportunity to inspect poll books as ballots are issued to electors and witness title electors' names being entered in the poll book. MCL 168.733(1)(a).

c. An election Challenger must be allowed to observe the manner in which the duties of the election inspectors are being performed. MCL 168.733(1)(b),

d. An election challenger is authorized to challenge the voting rights of a person who the challenger has good reason to believe is not a registered elector. MCL 168.733(1)(c).

e. An election challenger is authorized to challenge an election procedure that is not being properly performed. MCL 168.733(1)(d).

f. An election challenger may bring to an election inspector's attention any of the following: (1) improper handling of a ballot by an elector or election inspector; (2) a violation of a regulation made by the board of election inspectors with regard to the time in which an elector may remain in the polling place; (3)

campaigning and fundraising being performed by an election inspector or other person covered by MCL 168.744; and/or (4) Any other violation of election law or other prescribed election procedure. MCL, 168.733(l)(e).

g. An election challenger may remain present during the canvass of votes and until the statement of returns is duly signed and made. MCL 168.733(1)(f).

h. An election challenger may examine each ballot as it is being counted. MCL 168.733(1)(g).

i. An election challenger may keep records of votes cast and other election procedures as the challenger desires. MCL 168.733(1)(h).

j. An election challenger may observe the recording of absent voter ballots on voting machines. MCL 168.733(1)(i).

15. Michigan values the important role challengers perform in assuming the transparency and integrity of elections. For example, Michigan law provides it is a felony punishable by up to two years in state prison for any person to threaten or intimidate a challenger who is performing any activity described in Michigan law. MCL 168.734(4); MCL 168.734. It is a felony punishable by up to two years in state prison for any person to prevent the presence of a challenger exercising their rights or to fail to provide a challenger with “conveniences for the performance of the[ir] duties.” MCL 168.734.

16. Local election jurisdictions locate ballot drop-off boxes without opportunity for challengers to

observe the process, and as such Secretary Benson violates her constitutional and I statutory authority and damages the integrity of Michigan elections.

17. Michigan law requires that ballot containers be monitored by video surveillance. See Senate Bill 757 at 761d(4)(c).

18. Secretary Benson is violating the Michigan Constitution and Michigan election law by allowing absent voter ballots to be processed and counted without allowing challengers to observe the video of the ballot boxes into which these ballots are placed.

19. Plaintiffs asks Secretary Benson to segregate ballots cast in these remote and unattended ballot drop boxes and, before the ballots are processed, removed from their verifying envelopes, and counted, allow designated challengers to view the video of the remote ballot box.

20. Secretary Benson's actions and her failure to act have undermined the constitutional . right of all Michigan voters - including the voters bringing this action -- to participate in fair and lawful elections. These Michigan citizens' constitutional rights are being violated by Secretary Benson's failure to prevent unlawful ballots to be processed and her failure to ensure that statutorily-authorized challengers have a right to do their job.

COUNT I

Secretary Benson violated the Equal Protection Clause of Michigan's Constitution

21. Michigan’s Constitution declares that “[n]o person shall be denied the equal protection of the laws ...” Const 1963, art 1, § 2.

22. This clause is coextensive with the United States Constitution’s Equal Protection Clause. *Harville v. State Plumbing & Heating* 218 Mich. App. 302, 305-306; 553 N.W.2d 377 I (1996). *See also Bush v. Gore*, 531 U.S. 98, 104 (2000) (“Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person’s vote over that of another.”); *Harper v. Virginia Bd of Elections*; 383 U.S. 663, 665, (1966) (“Once the franchise is granted to the electorate, lines may not be drawn which are inconsistent with the Equal Protection Clause of the Fourteenth Amendment.”)¹

23. Plaintiff seeks declaratory and injunctive relief requiring Secretary Benson to direct that election authorities comply with Michigan law mandating election inspectors from each party and allowing challengers access to video of ballot boxes before counting of relevant votes takes place.

COUNT II

Secretary Benson and Oakland County violated Michigan voters’ rights under the Michigan Constitution’s “purity of elections” clause.

¹ Most United States Supreme Court rulings concerning the right to vote frame the issue in terms of the Equal Protection Clause. Ronald D. Rotunda & John E. Nowak, *Treatise on Constitutional Law: Substance & Procedure* §18.31(a) (2012 & Supp. 2015).

24. The Michigan Constitution’s “purity of elections” clause states, “the legislature shall enact laws to regulate the time, place and manner of all nominations and elections, to preserve the purity of elections, to preserve the secrecy of the ballot, to guard against abuses of the elective franchise, and to provide for a system of voter registration and absentee voting.” Const. 1963, art 2, §4(2).

25. “The phrase ‘purity of elections’ does not have a single precise meaning. But it unmistakably requires fairness and evenhandedness in the election laws of this state.” *Barrow v. Detroit Election Comm.*, 854 N.W.2d 489,504 (Mich. Ct. App. 2014).

26. Michigan statutes protect the purity of elections by allowing ballot challengers and election inspectors to monitor absentee ballots at counting boards.

27. Plaintiff seeks declaratory and injunctive relief requiring Secretary Benson to direct that election authorities comply with Michigan law mandating election inspectors from each party and allowing challengers access to video of ballot boxes before counting of relevant votes takes place.

COUNT III

The Secretary of State is Violating of MCL 168.765a.

28. MCL 168.765a, regarding Absent Voter Counting Boards, where absentee votes are processed and counted, states in relevant part as follows:

At all times, at least 1 election inspector from each major political party must be present at the absent voter counting place and the policies and procedure adopted by the secretary of state regarding the counting of absent voter ballots must be followed.

29. Michigan absent voter counting boards, under the authority of Secretary Benson, are not complying with this statute. These boards are being conducted without inspectors from each party being present.

PRAYER FOR RELIEF

These Michigan citizens and voters ask this Court to:

A. Order “a speedy hearing” of this action and “advance it on the calendar” as provided by MCR 2.605(D);

B. Mandate that Secretary Benson order all counting and processing of absentee votes cease immediately until an election inspector from each party is present at each absent voter counting board and until video is made available to challenger of each ballot box;

C. Mandate that Secretary Benson order the immediate segregation of all ballots that are not being inspected and monitored as aforesaid and as is required under law.

D. Award these Michigan citizens the costs, expenses, and expert witness fees they incurred in this action as allowed by law.

12a

Midland County, Michigan
My Commission Expires: 11-22-2023
Acting in Midland County, Michigan

**STATE OF MICHIGAN
COURT OF CLAIMS**

DONALD J. TRUMP
FOR PRESIDENT, INC.
and ERIC OSTEGREN,

Plaintiffs,

OPINION AND ORDER

v

Case No. 20-000225-MZ
Hon. Cynthia Diane Stephens

JOCELYN BENSON,
in her official capacity as
Secretary of State,
Defendants.

_____ /

Pending before the Court are two motions. The first is plaintiffs' November 4, 2020 emergency motion for declaratory relief under MCR 2.605(D). For the reasons stated on the record and incorporated herein, the motion is DENIED. Also pending before the Court is the motion to intervene as a plaintiff filed by the Democratic National Committee. Because the relief requested by plaintiffs in this case will not issue, the Court DENIES as moot the motion to intervene.

According to the allegations in plaintiffs' complaint, plaintiff Eric Ostegren is a credentialed election challenger under MCL 168.730. Paragraph 2 of the complaint alleges that plaintiff Ostegren was "excluded from the counting board during the absent voter ballot review process." The complaint does not specify when, where, or by whom plaintiff was

excluded. Nor does the complaint provide any details about why the alleged exclusion occurred.

The complaint contains allegations concerning absent voter ballot drop-boxes. Plaintiffs allege that state law requires that ballot containers must be monitored by video surveillance. Plaintiff contends that election challengers must be given an opportunity to observe video of ballot drop-boxes with referencing the provision(s) of the statute that purportedly grant such access, . See MCL 168.761d(4)(c).

Plaintiffs' emergency motion asks the Court to order all counting and processing of absentee ballots to cease until an "election inspector" from each political party is allowed to be present at every absent voter counting board, and asks that this court require the Secretary of State to order the immediate segregation of all ballots that are not being inspected and monitored as required by law. Plaintiffs argue that the Secretary of State's failure to act has undermined the rights of all Michigan voters. While the advocate at oral argument posited the prayer for relief as one to order "meaningful access" to the ballot tabulation process, plaintiffs have asked the Court to enter a preliminary injunction to enjoin the counting of ballots. A party requesting this "extraordinary and drastic use of judicial power" must convince the Court of the necessity of the relief based on the following factors:

- (1) the likelihood that the party seeking the injunction will prevail on the merits, (2) the danger that the party seeking the injunction will suffer irreparable harm if the injunction is not issued, (3) the risk that the party seeking the injunction would be harmed more by

the absence of an injunction than the opposing party would be by the granting of the relief, and (4) the harm to the public interest if the injunction is issued. [*Davis v Detroit Fin Review Team*, 296 Mich App 568, 613; 821 NW2d 896 (2012).]

As stated on the record at the November 5, 2020 hearing, plaintiffs are not entitled to the extraordinary form of emergency relief they have requested.

I. SUBSTANTIAL LIKELIHOOD OF SUCCESS ON THE MERITS

A. OSTEGRÉN CLAIM

Plaintiff Ostegren avers that he was removed from an absent voter counting board. It is true that the Secretary of State has general supervisory control over the conduct of elections. See MCL 168.21; MCL 168.31. However, the day-to-day operation of an absent voter counting board is controlled by the pertinent city or township clerk. See MCL 168.764d. The complaint does not allege that the Secretary of State was a party to or had knowledge of, the alleged exclusion of plaintiff Ostegren from the unnamed absent voter counting board. Moreover, the Court notes that recent guidance from the Secretary of State, as was detailed in matter before this Court in *Carra et al v Benson et al*, Docket No. 20-000211-MZ, expressly advised local election officials to admit credentialed election challengers, provided that the challengers adhered to face-covering and social-distancing requirements. Thus, allegations regarding the purported conduct of an unknown local election official do not lend

themselves to the issuance of a remedy against the Secretary of State.

B. CONNARN AFFIDAVIT

Plaintiffs have submitted what they refer to as “supplemental evidence” in support of their request for relief. The evidence consists of: (1) an affidavit from Jessica Connarn, a designated poll watcher; and (2) a photograph of a handwritten yellow sticky note. In her affidavit, Connarn avers that, when she was working as a poll watcher, she was contacted by an unnamed poll worker who was allegedly “being told by other hired poll workers at her table to change the date the ballot was received when entering ballots into the computer.” She avers that this unnamed poll worker later handed her a sticky note that says “entered receive date as 11/2/20 on 11/4/20.” Plaintiffs contend that this documentary evidence confirms that some unnamed persons engaged in fraudulent activity in order to count invalid absent voter ballots that were received after election day.

This “supplemental evidence” is inadmissible as hearsay. The assertion that Connarn was informed by an unknown individual what “other hired poll workers at her table” had been told is inadmissible hearsay within hearsay, and plaintiffs have provided no hearsay exception for either level of hearsay that would warrant consideration of the evidence. See MRE 801(c). The note— which is vague and equivocal—is likewise hearsay. And again, plaintiffs have not presented an argument as to why the Court could consider the same, given the general prohibitions against hearsay evidence. See *Ykimoff v Foote Mem Hosp*, 285 Mich App 80, 105; 776 NW2d 114 (2009). Moreover,

even overlooking the evidentiary issues, the Court notes that there are still no allegations implicating the Secretary of State's general supervisory control over the conduct of elections. Rather, any alleged action would have been taken by some unknown individual at a polling location.

C. BALLOT BOX VIDEOS

It should be noted at the outset that the statute providing for video surveillance of drop boxes only applies to those boxes that were installed after October 1, 2020. See MCL 168.761d(2). There is no evidence in the record whether there are any boxes subject to this requirement, how many there are, or where they are. The plaintiffs have not cited any statutory authority that requires any video to be subject to review by election challengers. They have not presented this Court with any statute making the Secretary of State responsible for maintaining a database of such boxes. The clear language of the statute directs that “[t]he city or township clerk must use video monitoring of that drop box to ensure effective monitoring of that drop box.” MCL 168.761d(4)(c) Additionally, plaintiffs have not directed the Court's attention to any authority directing the Secretary of State to segregate the ballots that come from such drop-boxes, thereby undermining plaintiffs' request to have such ballots segregated from other ballots, and rendering it impossible for the Court to grant the requested relief against this defendant. Not only can the relief requested not issue against the Secretary of State, who is the only named defendant in this action, but the factual record does not support the relief requested. As a result,

plaintiffs are unable to show a likelihood of success on the merits.

II. MOOTNESS

Moreover, even if the requested relief could issue against the Secretary of State, the Court notes that the complaint and emergency motion were not filed until approximately 4:00 p.m. on November 4, 2020—despite being announced to various media outlets much earlier in the day. By the time this action was filed, the votes had largely been counted, and the counting is now complete. Accordingly, and even assuming the requested relief were available against the Secretary of State—and overlooking the problems with the factual and evidentiary record noted above—the matter is now moot, as it is impossible to issue the requested relief. See *Gleason v Kincaid*, 323 Mich App 308, 314; 917 NW2d 685 (2018)

IT IS HEREBY ORDERED that plaintiff's November 4, 2020 emergency motion for declaratory judgment is DENIED.

IT IS HEREBY FURTHER ORDERED that proposed intervenor's motion to intervene is DENIED as MOOT.

This is not a final order and it does not resolve the last pending claim or close the case.

November 6, 2020

Cynthia Diane Stephens
Cynthia Diane Stephens
Judge, Court of Claims

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF
WAYNE

CHERYL A. COSTANTINO
and
EDWARD P. McCALL, Jr.,

Plaintiff,

-vs-

CITY OF DETROIT;
DETROIT ELECTION
COMMISSION;
JANICE M. WINFREY,
in her official capacity
as the CLERK OF THE
CITY OF DETROIT and the
Chairperson of the DETROIT
ELECTION COMMISSION;
CATHY M. GARRETT,
in her official capacity as the
CLERK OF WAYNE COUNTY;
and the WAYNE COUNTY BOARD
OF CANVASSERS,

Defendants.

COMPLAINT
AND
APPLICATION
FOR SPECIAL
LEAVE TO FILE
QUO
WARRANTO
COMPLAINT

**EXPEDITED
CONSIDERA-
TION RE-
QUESTED**

**FILE NO: 20- -
AW**

JUDGE

David A. Kallman (P34200)
Erin E. Mersino (P70886)
Jack C. Jordan (P46551)
Stephen P. Kallman (P75622)
GREAT LAKES JUSTICE CENTER
Attorneys for Plaintiff

5600 W. Mount Hope Hwy.
Lansing, MI 48917
(517) 322-3207/Fax: (517) 322-3208

There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint.

**APPLICATION FOR SPECIAL LEAVE TO FILE
QUO WARRANTO COMPLAINT**

NOW COMES the above-named Plaintiffs, **CHERYL A. COSTANTINO AND EDWARD P. MCCALL, JR.**, by and through their attorneys, **GREAT LAKES JUSTICE CENTER**, and for their application for leave to file a complaint for quo warranto relief, and for their complaint, hereby states as follows:

1. Pursuant to MCL 600.4545(2), Plaintiffs respectfully request that this Honorable Court grant them special leave to file Counts II and III of this complaint for quo warranto for all the reasons as stated in their complaint, motion for temporary restraining order, supporting affidavits, exhibits, and accompanying brief, which are all incorporated herein by reference.

2. Plaintiffs request this relief as recognized in *Shoemaker v City of Southgate*, 24 Mich App 676, 680 (1970).

WHEREFORE, Plaintiffs request that his application for special leave to file Counts II and III of this complaint for quo warranto relief be granted and that

this Honorable Court grant such other and further relief as appropriate.

Dated: November 8, 2020.

/s/ David A. Kallman
David A. Kallman (P34200)
Attorney for Plaintiffs

COMPLAINT

NOW COMES the above-named Plaintiffs, **CHERYL A. COSTANTINO AND EDWARD P. MCCALL, JR.** (hereinafter “Plaintiff”), by and through their attorneys, **GREAT LAKES JUSTICE CENTER**, and for their Complaint hereby states as follows:

INTRODUCTION

1. The election was held on November 3, 2020 and approximately 850,000 votes were reported as cast in Wayne County, Michigan.

2. Plaintiff brings this action to raise numerous issues of fraud and misconduct that occurred in order to protect the rights of all voters in Michigan, especially Wayne County.

3. In summary, this Complaint raises numerous instances of fraud, including, but not limited to:

a. Defendants systematically processed and counted ballots from voters whose name failed to appear in either the Qualified Voter File (QVF) or in the supplemental sheets. When a voter’s name could not be found, the election worker assigned the ballot to a

random name already in the QVF to a person who had not voted.

b. Defendants instructed election workers to not verify signatures on absentee ballots, to backdate absentee ballots, and to process such ballots regardless of their validity.

c. After election officials announced the last absentee ballots had been received, another batch of unsecured and unsealed ballots, without envelopes, arrived in trays at the TCF Center. There were tens of thousands of these absentee ballots, and apparently every ballot was counted and attributed only to Democratic candidates.

d. Defendants instructed election workers to process ballots that appeared after the election deadline and to falsely report that those ballots had been received prior to November 3, 2020 deadline.

e. Defendants systematically used false information to process ballots, such as using incorrect or false birthdays. Many times, the election workers inserted new names into the QVF after the election and recorded these new voters as having a birthdate of 1/1/1900.

f. On a daily basis leading up to the election, City of Detroit election workers and employees coached voters to vote for Joe Biden and the Democrat party. These workers and employees encouraged voters to do a straight Democrat ballot. These election workers and employees went over to the voting booths with voters in order to watch them vote and coach them for whom to vote.

g. Unsecured ballots arrived at the TCF Center loading garage, not in sealed ballot boxes, without any chain of custody, and without envelopes.

h. Defendant election officials and workers refused to record challenges to their processes and removed challengers from the site if they politely voiced a challenge.

i. After poll challengers started discovering the fraud taking place at the TCF Center, Defendant election officials and workers locked credentialed challengers out of the counting room so they could not observe the process, during which time tens of thousands of ballots were processed.

j. Defendant election officials and workers allowed ballots to be duplicated by hand without allowing poll challengers to check if the duplication was accurate. In fact, election officials and workers repeatedly obstructed poll challengers from observing. Defendants permitted thousands of ballots to be filled out by hand and duplicated on site without oversight from poll challengers.

PARTIES, JURISDICTION, AND VENUE

4. Plaintiff Cheryl A. Costantino is a resident of Wayne County, voted in the November 3, 2020 election, and was a poll challenger.

5. Plaintiff Edward P. McCall, Jr. is a resident of Wayne County, voted in the November 3, 2020 election, and was a poll challenger.

6. Defendant City of Detroit is a municipality located in Wayne County tasked with the obligation to hold all elections in a fair and legal manner.

7. Defendant Election Commission is a department of the City of Detroit.

8. Janice M. Winfrey, in her official capacity, is Clerk of the Defendant City of Detroit and the Chairman of the Defendant Detroit City Election Commission and is the city official who oversees and supervises all elections in the City of Detroit.

9. Cathy M. Garrett, in her official capacity, is the Clerk of Defendant Wayne County, and is the county official who oversees and supervises all elections in Wayne County.

10. Defendant Wayne County Board of Canvassers is the appointed body that is responsible for canvassing the votes cast within the county they serve. The Board members certify elections for all local, countywide and district offices which are contained entirely within the county they serve.

11. This action is properly filed in Wayne County Circuit Court pursuant to MCR 3.306(A)(2), Mich. Const. art. 2, sec. 4, par. 1(h), MCL 600.4545, and MCL 600.605. Venue is proper pursuant to MCR 3.306(D).

GENERAL ALLEGATIONS

12. Wayne County used the TCF Center in downtown Detroit to consolidate, collect, and tabulate all of the ballots for the County.

13. The TCF Center was the only facility within Wayne County authorized to count the ballots.

Forging Ballots on the Qualified Voter List

14. An attorney and former Michigan Assistant Attorney General was a certified poll challenger at the TCF Center (Exhibit A – Affidavit of Zachary Larsen).

15. As Mr. Larsen watched the process, he was concerned that ballots were being processed without confirmation that the voter was an eligible voter in the poll book because of information he had received from other poll challengers (Exhibit A).

16. Mr. Larsen reviewed the running list of scanned in ballots in the computer system, where it appeared that the voter had already been counted as having voted. An official operating the computer then appeared to assign this ballot to a different voter as he observed a completely different name that was added to the list of voters at the bottom of a running tab of processed ballots on the right side of the screen (Exhibit A).

17. Mr. Larsen was concerned that this practice of assigning names and numbers indicated that a ballot was being counted for a non-eligible voter who was not in either the poll book or the supplemental poll book. From his observation of the computer screen, the voters were not in the official poll book. Moreover, this appeared to be the case for the majority of the voters whose ballots he personally observed being scanned (Exhibit A).

18. Because of Mr. Larsen's concern, he stepped behind the table and walked over to a spot behind where the first official was conducting her work. Understanding health concerns due to COVID-19, he attempted to stand as far away from this official as he reasonably could while also being able to visually observe the names on the supplemental poll book and on the envelopes (Exhibit A).

19. As soon as Mr. Larsen moved to a location where he could observe the process by which the first official at this table was confirming the eligibility of the voters to vote, the first official immediately stopped working and glared at him. He stood still until she began to loudly and aggressively tell him that he could not stand where he was standing. She indicated that he needed to remain in front of the computer screen where he could not see what the worker was doing (Exhibit A).

20. Both officials then began to tell Mr. Larsen that because of COVID, he needed to be six feet away from the table. He responded that he could not see and read the supplemental poll book from six feet away, and that he was attempting to keep his distance to the extent possible (Exhibit A).

21. Just minutes before at another table, a supervisor had explained that the rules allowed Mr. Larsen to visually observe what he needed to see and then step back away. Likewise, on Election Day, he had been allowed to stand at equivalent distance from poll books in Lansing and East Lansing precincts without any problem. With this understanding, he remained in a position to observe the supplemental poll book (Exhibit A).

22. Both officials indicated that Mr. Larsen could not remain in a position that would allow him to observe their activities; the officials indicated they were going to get their supervisor (Exhibit A).

23. When the supervisor arrived, she reiterated that Mr. Larsen was not allowed to stand behind the official with the supplemental poll book, and he needed to stand in front of the computer screen. Mr. Larsen told her that was not true, and that he was statutorily allowed to observe the process, including the poll book (Exhibit A).

24. The supervisor then pivoted to arguing that Mr. Larsen was not six feet away from the first official. Mr. Larsen told her that he was attempting to remain as far away as he could while still being able to read the names on the poll book (Exhibit A).

25. The supervisor then stood next to the chair immediately to the left of the first official and indicated that Mr. Larsen was “not six feet away from” the supervisor and that she intended to sit in the chair next to the official with the poll book, so he would need to leave (Exhibit A).

26. This supervisor had not been at the table at any time during the process, and she had responsibility for numerous ACVBs. Further, the supervisor’s choice of chairs was approximately three feet to the left of the first official and therefore in violation of the six-foot distance rule (Exhibit A).

27. Accordingly, Mr. Larsen understood that this was a ruse to keep him away from a place where he could observe the confirmation of names in the

supplemental poll book. The supervisor began to repeatedly tell him that he “needed to leave” so he responded that he would go speak with someone else and fill out a challenge form (Exhibit A).

28. After Mr. Larsen observed and uncovered the fraud that was taking place and had the confrontation with the supervisor, he left the counting room to consult with another attorney about the matter around 1:30 p.m. to 2:00 p.m. (Exhibit A).

29. It was at this point that election officials stopped permitting any further poll challengers to enter the counting room, including Mr. Larsen (Exhibit A).

30. Election officials never allowed Mr. Larsen to re-enter the counting room to fulfill his duties as a poll challenger after he had discovered the fraud which was taking place.

Illegal Voter Coaching and Identification Issues

31. An election employee with the City of Detroit was working at a polling location for approximately three weeks prior to the election. This City of Detroit employee directly observed, on a daily basis, other City of Detroit election workers and employees coaching voters to vote for Joe Biden and the Democrat party. This employee witnessed these workers and employees encouraging voters to do a straight Democrat ballot and witnessed these election workers and employees going over to the voting booths with voters in order to watch them vote and coach them for whom to vote (Exhibit B – Affidavit of Jessy Jacob).

32. During the last two weeks while this same employee was working at the polling location, she was specifically instructed by her supervisor never to ask for a driver's license or any photo I.D. when a person was trying to vote (Exhibit B).

Changing Dates on Ballots

33. All absentee ballots that existed were required to be inputted into the QVF system by 9:00 p.m. on November 3, 2020. This was required to be done in order to have a final list of absentee voters who returned their ballots prior to 8:00 p.m. on November 3, 2020. In order to have enough time to process the absentee ballots, all polling locations were instructed to collect the absentee ballots from the drop-box once every hour on November 3, 2020 (Exhibit B).

34. On November 4, 2020, a City of Detroit election worker was instructed to improperly pre-date the absentee ballots receive date that were not in the QVF as if they had been received on or before November 3, 2020. She was told to alter the information in the QVF to falsely show that the absentee ballots had been received in time to be valid. She estimates that this was done to thousands of ballots (Exhibit B).

Illegal Double Voting

35. The election employee observed a large number of people who came to the satellite location to vote in-person, but they had already applied for an absentee ballot. These people were allowed to vote in-person and were not required to return the mailed absentee ballot or sign an affidavit that the voter lost the mailed absentee ballot (Exhibit B).

36. This would permit a person to vote in person and also send in his/her absentee ballot.

37. Prior to the election, the Michigan Secretary of State sent ballot applications to deceased residents and to non-residents of the State of Michigan.

First Round of New Ballots

38. At approximately 4:00 a.m. on November 4, 2020, tens of thousands of ballots were suddenly brought into the counting room through the back door (Exhibit C – Affidavit of Andrew Sitto).

39. These new ballots were brought to the TCF Center by vehicles with out-of-state license plates (Exhibit C).

40. It was observed that all of these new ballots were cast for Joe Biden (Exhibit C).

Second Round of New Ballots

41. The ballot counters were required to check every ballot to confirm that the name on the ballot matched the name on the electronic poll list; this was the list of all persons who had registered to vote on or before November 1, 2020 and is often referred to as the QVF (Exhibit D - Affidavit of Bob Cushman)

42. The ballot counters were also provided with Supplemental Sheets which had the names of all persons who had registered to vote on either November 2, 2020 or November 3, 2020 (Exhibit C).

43. The validation process for a ballot requires the name on the ballot to be matched with a registered voter on either the QVF or the Supplemental Sheets.

44. At approximately 9:00 p.m. on Wednesday, November 4, 2020, numerous boxes of ballots were brought to TCF Center (Exhibit D).

45. Upon information and belief, the Wayne County Clerk's office instructed the ballot counters to use the date of birth of January 1, 1900 on all of these newly appearing ballots.

46. None of the names of these new ballots corresponded with any registered voter on the QVF or the Supplemental Sheets (Exhibit D).

47. Despite election rules that required that all absentee ballots be inputted into the QVF system before 9:00 p.m. on November 3, 2020 (Exhibit B), the election workers inputted all of these new ballots into the QVF and manually added each voter to the list after 9:00 p.m. (Exhibit D).

48. Upon information and belief, the vast majority of these new ballots indicated the voter's date of birth as January 1, 1900 entered into the QVF (Exhibit D).

49. These newly received ballots were either fraudulent or apparently cast by persons who were not registered to vote prior to the polls closing at 8:00 p.m. on November 3, 2020.

No Transparency - Denied Access

50. Numerous election challengers were denied access to observe the counting process by the Defendants.

51. After denying access to the counting rooms, election officials used large pieces of cardboard to block the windows to the counting room thereby preventing anyone from watching the ballot counting process (Exhibit C). Qualified Voter File Access

52. Whenever an absentee vote application or in-person absentee voter registration was finished, election workers were instructed to input the voter's name, address, and date of birth into the QVF system (Exhibit B).

53. The QVF system can be accessed and edited by any election processor with proper credentials in the State of Michigan at any time and from any location with internet access (Exhibit B).

54. This access permits anyone with the proper credentials to edit when ballots were sent, received, and processed from any location with internet access (Exhibit B).

55. Many of the counting computers within the counting room had icons that indicated that they were connected to the internet (Exhibit F – Affidavit of Patrick J. Colbeck).

Absentee Ballot Signatures

56. Whenever a person requested an absentee ballot either by mail or in-person, that person was required to sign the absentee voter application.

57. When the voter returned his/her absentee ballot to be counted, the voter was required to sign the outside of the envelope that contained the ballot.

58. Election officials who process absentee ballots are required to compare the signature on the absentee ballot application with the signature on the absentee ballot envelope.

59. Election officials at the TCF Center instructed workers to never validate or compare the signatures on absentee applications and the absentee envelopes to ensure their authenticity and validity (Exhibit B).

Unsecured Ballots

60. A poll challenger witnessed tens of thousands of ballots being delivered to the TCF Center that were not in any approved, sealed, or tamper-proof container (Exhibit E – Affidavit of Daniel Gustafson).

61. Large quantities of ballots were delivered to the TCF Center in what appeared to be mail bins with open tops (Exhibit E).

62. Contrary to law, these ballot bins and containers did not have lids, were not sealed, and did not have the capability of having a metal seal (Exhibit E).

COUNT I – CONSTITUTIONAL RIGHT TO ACCURACY AND INTEGRITY OF ELECTIONS

**MICHIGAN CONSTITUTION – ARTICLE 2,
SECTION 4, PARAGRAPH 1(H)**

63. Paragraphs 1 through 62 are hereby incorporated by reference as if fully restated herein.

64. Plaintiff brings this action to vindicate his constitutional right to a free and fair election ensuring the accuracy and integrity of the process pursuant to the Michigan Constitution, art. 2, sec. 4, par. 1(h), which states all Michigan citizens have: The right to have the results of statewide elections audited, in such a manner as prescribed by law, to ensure the accuracy and integrity of elections.

65. The Mich. Const., art. 2, sec. 4, further states, “All rights set forth in this subsection shall be self-executing. This subsection shall be liberally construed in favor of voters’ rights in order to effectuate its purposes.”

66. Based upon all the allegations of fraud, statutory violations, and other misconduct, as stated herein and in the attached affidavits, it is necessary to enjoin the certification of the election results pending a full investigation and court hearing, and to order an independent audit of the November 3, 2020 election to ensure the accuracy and integrity of the election.

**COUNT II – STATUTORY QUO WARRANTO
CLAIM – ELECTION FRAUD**

MCL 600.4545(2); MCL 168.861

67. Paragraphs 1 through 66 are hereby incorporated by reference as if fully restated herein.

68. MCL 600.4545(2) permits an action to request the issuance of a writ of quo warranto if the action is brought within 30 days after the election upon the request of “any citizen of the county by special leave of the court or a judge thereof.”

69. The statute also requires this action to “be brought against the municipality wherein such fraud or error is alleged to have been committed.”

70. Quo Warranto may be brought to remedy fraudulent or illegal voting or tampering with ballots or ballot boxes before a recount pursuant to MCL 168.861, which states,

For fraudulent or illegal voting, or tampering with the ballots or ballot boxes before a recount by the board of county canvassers, the remedy by quo warranto shall remain in full force, together with any other remedies now existing.

71. Based upon the allegations contained herein, material fraud or error occurred in this election so that the outcome of the election was affected.

72. Based upon the above allegations of fraud, statutory violations, and other misconduct, as stated herein and in the attached affidavits, it is necessary to issue a writ of quo warranto and order appropriate relief, including, but not limited to, enjoining the certification of the election results pending a full investigation and court hearing, ordering a recount of the

election results, or voiding the election and ordering a new election, to remedy the fraud.

**COUNT III – COMMON LAW QUO WARRANTO
CLAIM – ELECTION FRAUD**

73. Paragraphs 1 through 72 are hereby incorporated by reference as if fully restated herein.

74. MCR 3.306(B)(2) permits an action to request the issuance of a writ of quo warranto.

75. An application to proceed by quo warranto must disclose sufficient facts and grounds and sufficient apparent merit to justify further inquiry.

76. Quo warranto is warranted whenever it appears that material fraud or error has been committed at any election. This type of action is brought to challenge the validity of the election itself. *Barrow v Detroit Mayor*, 290 Mich App 530, 543 (2010). For all the reasons stated herein and in the attached affidavits, material fraud or error was committed during the election.

77. This Quo Warranto claim is brought to remedy fraudulent or illegal voting or tampering with ballots or ballot boxes.

78. Based upon the allegations contained herein, material fraud or error occurred in this election so that the outcome of the election was affected.

79. Based upon the above allegations of fraud, statutory violations, and other misconduct, as stated herein and in the attached affidavits, it is necessary

to issue a writ of quo warranto and order appropriate relief, including, but not limited to, enjoining the certification of the election results pending a full investigation and court hearing, ordering a recount of the election results, or voiding the election and ordering a new election, to remedy the fraud.

COUNT IV – EQUAL PROTECTION
VIOLATION

Mich Const, art I, § 2.

80. Paragraphs 1 through 79 are hereby incorporated by reference as if fully restated herein.

81. The Equal Protection Clause of the Michigan Constitution provides that “[n]o person shall be denied the equal protection of the laws; nor shall any person be denied the enjoyment of his civil or political rights.” Mich Const, art I, § 2.

82. The right to vote is a fundamental civil right and a political right.

83. The Equal Protection Clause forbids election officials granting the right to vote on equal terms but later devaluing a person’s vote through failing to use specific standards and uniform rules.

84. Only specific standards and uniform rules provide sufficient guarantees of equal treatment.

85. Every person has the right to vote, with their vote counted as one vote, and not have his or her vote diluted and voided out by the counting of an illegal vote.

86. Defendants handling of the election, as described above and as described in the attached affidavits, establish how rampant and systemic fraud devalued and diluted Plaintiff's civil and political rights.

87. The illegal procedures, illegal standards, and illegal treatment of the ballots and the counting of ballots in Wayne County and in Detroit employed by Defendants unconstitutionally burden the fundamental right to vote.

88. Defendants have no legitimate interest in counting illegal and improper ballots, counting ballots more than once, illegally correcting and improperly duplicating ballots, adding false birthdates and voter information to ballots, and improperly handling the collection and counting of ballots in a way that dilutes and cancels out rightfully and properly cast votes.

89. Based upon the above allegations of fraud, statutory violations, and other misconduct, as stated herein and in the attached affidavits, it is necessary to order appropriate relief, including, but not limited to, enjoining the certification of the election results pending a full investigation and court hearing, ordering a recount of the election results, or voiding the election and ordering a new election, to remedy the fraud.

COUNT V – STATUTORY ELECTION LAW
VIOLATIONS

90. Paragraphs 1 through 89 are hereby incorporated by reference as if fully restated herein.

Violation of MCL 168.765a.

91. Absent voter ballots must only be counted when “at all times” there is “at least 1 election inspector from each major political party.” MCL 168.765a.

92. Per eyewitness accounts described in this Complaint and its attached sworn affidavits, Defendants habitually and systematically disallowed election inspectors from the Republican party, including Plaintiff, to be present in the voter counting place and refused access to election inspectors from the Republican party, including Plaintiff, to be within a close enough distance from the absent voter ballots to be able to see for whom the ballots were cast.

93. Defendants refused entry to official election inspectors from the Republican party, including Plaintiff, into the counting place to observe the counting of absentee voter ballots. Defendants even physically blocked and obstructed election inspectors from the Republican party, including Plaintiff, by adhering large pieces of cardboard to the transparent glass doors so the counting of absent voter ballots was not viewable.

Violation of MCL 168.733

94. MCL 168.733 requires:

(1) The board of election inspectors shall provide space for the challengers within the polling place that enables the challengers to observe the election procedure and each person applying to vote. A challenger may do 1 or more of the following:

(a) Under the scrutiny of an election inspector, inspect without handling the poll books as ballots are issued to electors and the electors' names being entered in the poll book.

(b) Observe the manner in which the duties of the election inspectors are being performed.

(c) Challenge the voting rights of a person who the challenger has good reason to believe is not a registered elector.

(d) Challenge an election procedure that is not being properly performed.

(e) Bring to an election inspector's attention any of the following:

(i) Improper handling of a ballot by an elector or election inspector.

(ii) A violation of a regulation made by the board of election inspectors pursuant to section 742.

(iii) Campaigning being performed by an election inspector or other person in violation of section 744.

(iv) A violation of election law or other prescribed election procedure.

(f) Remain during the canvass of votes and until the statement of returns is duly signed and made.

(g) Examine without handling each ballot as it is being counted.

(h) Keep records of votes cast and other election procedures as the challenger desires.

(i) Observe the recording of absent voter ballots on voting machines.

95. Per eyewitness accounts described in this Complaint and its attached sworn affidavits, Defendants habitually and systematically failed to provide space for election inspectors from the Republican party, including Plaintiff, to observe election procedure, failed to allow the inspection of poll books, failed to share the names of the electors being entered in the poll books, failed to allow the examination of each ballot as it was being counted, and failed to keep records of obvious and observed fraud.

96. Poll challengers, including Plaintiff, observed election workers and supervisors writing on ballots themselves to alter them, apparently manipulating spoiled ballots by hand and then counting the ballots as valid, counting the same ballot more than once, adding information to incomplete affidavits accompanying absentee ballots, counting absentee ballots returned late, counting unvalidated and unreliable ballots, and counting the ballots of “voters” who had no recorded birthdates and were not registered in the State’s Qualified Voter File or on any Supplemental voter lists.

97. Michigan law requires that in order to register as an absentee voter, the application must be made in

writing and received by the clerk by 5pm on the Friday before the election.

Violation of MCL 168.765(5)

98. Michigan election law, MCL 168.765(5), requires Defendants to post the following absentee voting information anytime an election is conducted which involves a state or federal office:

a. The clerk must post before 8:00 a.m. on Election Day: 1) the number of absent voter ballots distributed to absent voters 2) the number of absent voter ballots returned before Election Day and 3) the number of absent voter ballots delivered for processing.

b. The clerk must post before 9:00 p.m. on Election Day: 1) the number of absent voter ballots returned on Election Day 2) the number of absent voter ballots returned on Election Day which were delivered for processing 3) the total number of absent voter ballots returned both before and on Election Day and 4) the total number of absent voter ballots returned both before and on Election Day which were delivered for processing. c. The clerk must post immediately after all precinct returns are complete: 1) the total number of absent voter ballots returned by voters and 2) the total number of absent voter ballots received for processing.

99. Upon information and belief, Defendants failed to post by 8:00 a.m. on Election Day the number of absentee ballots distributed to absent voters and

failed to post before 9:00 p.m. the number of absent voters returned before on Election Day.

100. Per Michigan Election law, all absentee voter ballots must be returned to the clerk before polls close at 8pm. MCL 168.764a. Any absentee voter ballots received by the clerk after the close of the polls on election day will not be counted.

101. Michigan allows for early counting of absentee votes prior to the closings of the polls for large jurisdictions, such as the City of Detroit and Wayne County.

102. Upon information and belief, receiving tens of thousands additional absentee ballots in the early morning hours after election day and after the counting of the absentee ballots had concluded, without proper oversight, with tens of thousands of ballots attributed to just one candidate, Joe Biden, indicates Defendants failed to follow proper election protocol.

103. Based upon the above allegations of fraud, statutory violations, and other misconduct, as stated herein and in the attached affidavits, it is necessary to order appropriate relief, including, but not limited to, enjoining the certification of the election results pending a full investigation and court hearing, ordering a recount of the election results, or voiding the election and ordering a new election, to remedy the fraud.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court:

A. issue an order requiring Defendants to conduct an independent and non-partisan audit to determine the accuracy and integrity of the November 3, 2020 election;

B. issue an *ex-parte* TRO prohibiting Defendants' from certifying the election results or continuing to count ballots until this matter can be heard by the Court.

C. issue an preliminary injunction prohibiting Defendants' from certifying the election results until this matter can be heard by the Court.

D. issue an order voiding the November 3, 2020 election results and order a new election to be held.

E. Issue a protective order as requested in the attached Motion for TRO.

F. grant such other and further relief as is equitable and just, and grant him costs, expenses and attorney fees incurred in having to bring this action.

I HEREBY STATE AND AFFIRM THAT I HAVE HAD READ THE FOREGOING COMPLAINT AND THAT IT IS TRUE AND ACCURATE TO THE BEST OF MY INFORMATION, KNOWLEDGE, AND BELIEF.

Dated: November 8, 2020.

Cheryl A. Constantino, Plaintiff

Dated: November 8, 2020

Edward P. McCall

Edward P. McCall, Plaintiff

Prepared By: /s/ David A. Kallman

David A. Kallman (P34200)

Stephen P. Kallman (P75622)

Jack C. Jordan (P46551)

Erin E. Mersino (P70886)

Attorneys for Plaintiff

**I HEREBY STATE AND AFFIRM THAT I
HAVE HAD READ THE FOREGOING COM-
PLAINT AND THAT IT IS TRUE AND ACCU-
RATE TO THE BEST OF MY INFORMATION,
KNOWLEDGE, AND BELIEF.**

Dated: November 8, 2020.

Cheryl A. Constantino

Cheryl A. Constantino, Plaintiff

Dated: November 8, 2020

Edward P. McCall, Plaintiff

Prepared By: /s/ David A. Kallman

David A. Kallman (P34200)

Stephen P. Kallman (P75622)

Jack C. Jordan (P46551)

Erin E. Mersino (P70886)

Attorneys for Plaintiff

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF
WAYNE

CHERYL A. COSTANTINO and,
EDWARD P. MCCALL, JR.,

Case No. 20-014780-AW
Plaintiffs, Hon. Timothy M. Kenny

vs. CITY OF DETROIT;
DETROIT ELECTION COMMISSION;
JANICE WINFREY, in her official capacity as the
CLERK OF THE CITY and the Chairperson of the
DETROIT ELECTION COMMISSION; CATHY M.
GARRETT, in her official capacity as the CLERK OF
WAYNE COUNTY; and the WAYNE COUNTY
BOARD OF CANVASSERS,
Defendants.

GREAT LAKES JUSTICE CENTER

David A. Kallman (P34200)

Erin E. Mersino (P70886)

Jack C. Jordan (P46551)

Stephen P. Kallman (P75622)

5600 W. Mount Hope Hwy.

Lansing, MI 48917

(517) 322-3207

Attorneys for Plaintiffs

FINK BRESSACK

David H. Fink (P28235)

Darryl Bressack(P67820)

38500 Woodward Ave., Suite 350

Bloomfield Hills, MI 48304

(248) 971-2500

dfink@finkbressack.com
dbressack@finkbressack.com
*Attorneys for City of Detroit,
City of Detroit Election Commission
and Janice Winfrey*

CITY OF DETROIT LAW DEPARTMENT
Lawrence T. García (P54890)
Charles N. Raimi (P29746)
James D. Nosedá (P52563)
2 Woodward Ave., 5th Floor
Detroit, MI 48226
(313) 237-5037
garcial@detroitmi.goc
raimic@detroitmi.gov
nosej@detroitmi.gov
*Attorneys for City of Detroit, City of Detroit Election
Commission and Janice Winfrey*

AFFIDAVIT OF CHRISTOPHER THOMAS

Being duly sworn, Christopher Thomas, deposes and states the following as true, under oath:

1. I am a Senior Advisor to Detroit City Clerk Janice Winfrey beginning on September 3, 2020 until December 12, 2020. In this capacity I advise the Clerk and management staff on election law procedures, implementation of recently enacted legislation, revamped absent voter counting board, satellite offices and drop boxes, Bureau of Election matters and general preparation for the November 3, 2020 General Election.

2. I served in the Secretary of State Bureau of Election for 40 years beginning in May 1977 and finishing in June 2017. In June 1981 I was appointed Director of Elections and in that capacity implemented four Secretaries of State election administration, campaign finance and lobbyist disclosure programs.

3. In 2013, I was appointed to President Barack Obama's Commission on Election Administration and served until a final report was submitted to the President and Vice-President in January 2014.

4. I am a founding member of the National Association of State Election Directors and served as its president in 1997 and 2013.

5. On November 2, 3 and 4, 2020, I worked at the TCF Center absent voter counting boards primarily as liaison with challenger parties and organizations. I provided answers to questions about processes at the counting board tables, resolved disputed about process and directed leadership of each organization or party to adhere to Michigan Election Law and Secretary of State procedures concerning the rights and responsibilities of challengers. I have reviewed the complaint and affidavits in this case.

6. It is clear from the affidavits attached to the Complaint that these challengers do not understand absent voter ballot processing and tabulating. It is clear also that they did not operate through the leadership of their challenger party, because the issues they bring forward were by and large discussed and resolved with the leadership of their challenger party. The leadership on numerous occasions would ask me to accompany them to a particular counting board

table to resolve an issue. I would always discuss the issue with counting board inspectors and their supervisors and the challengers. The affiants appear to have failed to follow this protocol established in a meeting with challenger organizations and parties on Thursday, October 29, 2020 at the TCF Center where a walk-through of the entire process was provided. A few basics are in order: The Qualified Voter File (QVF) is a statewide vote registration file and was not available to counting boards. E-pollbook (EPB) is a computer program used in election day precincts to create the poll list of voters casting ballots. Supplemental poll lists contain names of voters who cast an absent voter ballot on Sunday, Monday and Tuesday. At the processing tables no ballots are scanned. A poll list is not used to confirm whether any specific voter's ballot is counted.

7. To increase the accuracy of the poll list, the Detroit Department of Elections employed the Secretary of State e-pollbook (EPB) to assist in creating the poll list. For each of the counting boards, the EPB held all the names of voters who requested and returned an absent voter ballot by mid-afternoon Sunday, November 1. The download on Sunday was necessary to prepare for the pre-processing granted by a recently enacted law that allows larger municipalities to process ballots, but not to tabulate them, for 10 hours on Monday. (To clarify some apparent confusion by Plaintiffs, Wayne County does not tabulate City of Detroit absent voter ballots.)

8. Absent voter ballots received Sunday after the download to EPB, all day Monday until 4 p.m. and Tuesday by 8 p.m. were not in the EPB. They would

be added either by manually entering the voter names into the EPB or on supplemental paper poll lists printed from the Qualified Voter File (QVF).

9. Zachery Larsen is raising an issue about return ballot envelopes where the barcode on the label would not scan and the voter's name was not on the supplemental list. He was observing the correction of clerical errors, not some type of fraud. In every election, clerical errors result in voters being left off the poll list, whether it is a paper poll list or the EPB. These errors are corrected so that voters are not disenfranchised. Michigan law ensures that voters are not disenfranchised by clerical errors.

10. On Wednesday, November 4 it was discovered that the envelopes for some ballots that had been received prior to November 3 at 8 p.m., had not been received in the QVF. They would not scan into the EPB and were not on the supplemental paper list. Upon reviewing the voters' files in the QVF, Department of Elections staff found that the final step of processing receipt of the ballots was not taken by the satellite office employees. The last step necessary to receive a ballot envelope requires the satellite employee to enter the date stamped on the envelope and select the "save" button. They failed to select "save".

11. A team of workers was directed to correct those clerical errors by entering the date the ballots were received in the satellite office and selecting "save". This action then placed the voter into the Absent Voter Poll List in the QVF so that the ballot could be processed and counted. None of these ballots were received after 8 p.m. on election day. Most were

received on Monday, November 2nd – the busiest day for the satellite offices.

12. The return ballot envelopes for each of these voters are marked with the date received and initialed by satellite employees who verified the voter signatures. By entering the date on which the ballot was received, no QVF data was altered. The date field was empty because the satellite workers did not select ‘save’, thus failing to complete the transaction. The “backdating” allegation is that on November 4 the staff entered the correct dates the ballots were received – all dates were November 3 or earlier. The date of receipt was not backdated.

13. These return ballot envelopes were discussed with several Republican challengers. Two challengers were provided a demonstration of the QVF process to show them how the error occurred, and they chose not to file a challenge to the individual ballots.

14. The inspectors at the counting boards were able to manually enter voters into the EPB. The return ballot envelope could easily be observed and every key stroke of the EPB laptop operator was clearly visible on the large screen at one corner of the table. The Department of Elections, at some expense, provided large monitors (see attached photo) to keep the inspectors safe and provide the challengers with a view of what was being entered, without crossing the 6-foot distancing barrier. Instead of creating problems for challengers, the monitors made observing the process very transparent.

15. The EPB has an “Unlisted Tab” that allows inspectors to add the names of voters not listed. The

EPB is designed primarily for use in election day polling places and reserves the Unlisted Tab to enter voters casting provisional ballots. In polling places, voters are verified by providing their date of birth. Consequently, the EPB is designed with a birthdate field that must be completed to move to the next step. When using this software in an absent voter counting board, a birthdate is not necessary to verify voters, as these voters are verified by signature comparisons (a process which was completed before the ballots were delivered to the TCF Center). Inspectors at the TCF Center did not have access to voters' birthdates. Therefore, due to the fact that the software (but not the law or the Secretary of State) requires the field be completed to move to the next step, 1/1/1900 was used as a placeholder. This is standard operating procedure and a standard date used by the State Bureau of Elections and election officials across the state to flag records requiring attention. The date of 1/1/1900 is recommended by the Michigan Secretary of State for instances in which a placeholder date is needed. 16. When Republican challengers questioned the use of the 1/1/1900 date on several occasions, I explained the process to them. The challengers understood the explanation and, realizing that what they observed was actually a best practice, chose not to raise any challenges.

17. Ballots are delivered to the TCF Center after they are processed at the Department of Elections main office on West Grand Boulevard. On election day, ballots are received from the post office and the satellite offices. It takes several hours to properly process ballots received on election day. It appears that some of the affidavits submitted by Plaintiffs are

repeating false hearsay about ballots being delivered, when actually television reporters were bringing in wagons of audio-video equipment. All ballots were delivered the same way— from the back of the TCF Hall E.

18. Early in the morning on Wednesday, November 4, approximately 16,000 ballots were delivered in a white van used by the city. There were 45 covered trays containing approximately 350 ballots each. The ballots were not visible as the trays had a sleeve that covered the ballots.

19. The ballots delivered to the TCF Center had been verified by the City Clerk’s staff prior to delivery in a process prescribed by Michigan law. Thus, when Jessy Jacob complains that she “was instructed not to look at any of the signatures on the absentee ballots, and I was instructed not to compare the signature on the absentee ballot with the signature on file” it was because that part of the process had already been completed by the City Clerk’s Office in compliance with the statutory scheme.

20. It would have been impossible for any election worker at the TCF Center to count or process a ballot for someone who was not an eligible voter or whose ballot was not received by the 8:00 p.m. deadline on November 3, 2020. No ballot could have been “backdated,” because no ballots received after 8:00 p.m. on November 3, 2020 were ever at the TCF Center. No voter not in the QVF or in the “Supplemental Sheets” could have been processed, or “assigned” to a “random name” because no ballot from a voter not in one of the two tracking systems, was brought to the TCF Center.

21. Mr. Larsen complains he was not given a full opportunity to stand immediately behind or next to an election inspector. As stated, monitors were set up for this purpose. Moreover, election inspectors were instructed to follow the same procedure for all challengers. The Detroit Health Code and safety during a pandemic required maintaining at least 6-feet of separation. This was relaxed where necessary for a challenger to lean in to observe something and then lean back out to return to the 6-foot distancing. The inspectors could see and copy the names of each person being entered into the e-pollbook. If an inspector did not fully accommodate a challenger's reasonable request and the issue was brought to the attention of a supervisor, it was remedied. Announcements were made over the public address system to inform all inspectors of the rules. If what Mr. Larsen says is accurate, any inconvenience to him was temporary, had no effect on the processing of ballots, and certainly was not a common experience for challengers.

22. Jessy Jacob alleges she was instructed by her supervisor to adjust the mailing date of absentee ballot packages being sent out to voters in September 2020. The mailing date recorded for absentee ballot packages would have no impact on the rights of the voters and no effect on the processing and counting of absentee votes.

23. Michigan Election Law requires clerks to safely maintain absent voter ballots and deliver them to the absent voter counting board. There is no requirement that such ballots be transported in sealed ballot boxes. To my knowledge, they are not sealed by any jurisdiction in Michigan in a ballot box prior to

election day. Employees bring the ballot envelopes to the TCF Center, which is consistent with chain of custody. The only ballots brought to TCF that are not in envelopes are blank ballots used to duplicate ballots when necessary.

24. At no time after ballots were delivered to TCF on Sunday, November 1, did any ballot delivery consisted of “tens of thousands of ballots”.

25. Reference is made to a “second round of new ballots” around 9:00 p.m. on Wednesday, November 4. At or about 9:00 p.m. on November 4, 2020 the Department of Elections delivered additional blank ballots that would be necessary to complete the duplication of military and overseas ballots. No new voted ballots were received. The affidavits are likely referring to blank ballots that were being delivered in order to process AV and military ballots in compliance with the law.

26. In the reference to a “second round of new ballots” there are numerous misstatements indicative of these challengers’ lack of knowledge and their misunderstanding of how an absent voter counting board operates. These statements include “confirm that the name on the ballot matched the name on the electronic poll list” – there are no names on ballots.

27. No absentee ballots received after the deadline of 8:00 p.m. on November 3, 2020, were received by or processed at the TCF Center. Only ballots received by the deadline were processed.

28. Plaintiffs reference “Supplement Sheets with the names of all persons who have registered to vote

on either November 2, 2020 or November 3, 2020.” Some of the names are voters who registered to vote on those days, but the vast majority are voters who applied for and voted an absent voter ballot.

29. Plaintiffs use “QVF” in place of “EPB”. The QVF is a statewide voter registration file; an EPB for a counting board is a file of the voters who applied for and returned an absent voter ballot for that counting board.

30. There is no “election rule” requiring all absent voter ballots be recorded in the QVF by 9:00 p.m. on November 3, 2020.

31. Plaintiffs also misunderstand the process when they state ballots were “filled out by hand and duplicated on site.” Instead, ballots were duplicated according to Michigan law. Michigan election law does not call for partisan challengers to be present when a ballot is duplicated; instead, when a ballot is duplicated as a result of a “false read,” the duplication is overseen by one Republican and one Democratic inspector coordinating together. That process was followed.

32. Regarding access to TCF Hall E by challengers, there is also much misinformation contained in the statements of challengers. Under the procedure issued by the Secretary of State there may only be 1 challenger for each qualified challenger organization at a counting board. Detroit maintains 134 counting board, thus permitting a like number of challengers per organization.

33. In mid-afternoon on Wednesday, I observed that few challengers were stationed at the counting board tables. Rather, clusters of 5, 10 or 15 challengers were gathered in the main aisles at some tables. I conducted a conversation with leaders of the Republican Party and Democratic Party about the number of challengers in the room and their locations. It became clear that more than 134 challengers were present for these organizations. No one was ejected for this Document received by the MI Wayne 3rd Circuit Court. 10 reason, but access to Hall E was controlled to ensure that challenger organizations had their full complement and did not exceed the ceiling any further than they already had.

34. Challengers were instructed to sign out if they needed to leave Hall E. For a short period of time—a few hours—because there were too many challengers in Hall E for inspectors to safely do their jobs, new challengers were not allowed in until a challenger from their respective organization left the Hall. However, as stated above, each challenger organization, including Republican and Democrat, continued to have their complement of challengers inside of the Hall E.

35. As stated previously, challengers are expected to be at their stations next to a counting board. Unfortunately, this was not the behavior being displayed. Instead, challengers were congregating in large groups standing in the main aisles and blocking Election Inspectors' movement. In one instance, challengers exhibited disorderly behavior by chanting "Stop the Vote." I believed this to be inappropriate threatening of workers trying to do their jobs. Such action is

specifically prohibited in Michigan election law. Nevertheless, challengers were permitted to remain.

36. The laptop computers at the counting boards were not connected to the Internet. Some of the computers were used to process absent voter ballot applications in mid-October and were connected to the QVF. On election day and the day after election day, those computers were not connected and no inspector at the tables had QVF credentials that would enable them to access the QVF.

37. The Qualified Voter File has a high level of security and limitation on access to the file. For example, it is not true that a person with QVF credentials in one city is able to access data in another city's file within the QVF. That is not possible. Document received by the MI Wayne 3rd Circuit Court. Document received by the MI Wayne 3rd Circuit Court.

38. A point of much confusion in these claims is centered on the law that permits a city clerk to verify the signatures on absent voter ballots before election day. Inspectors at absent voter counting boards do not verify the signatures on the return ballot envelopes. Department of Elections staff may use a voter's signature on an application to verify the voter's signature on return ballot envelope. Or the staff may use the voter's signature in the QVF to make the comparison. Often using the QVF is more efficient than the application signatures.

39. I am not aware of any valid challenge being refused or ignored or of any challengers being removed because they were challenging ballots. Ballot challengers are an important part of the democratic

process and were fully able to participate in the process at the TCF Center.

40. In conclusion, upon reviewing Plaintiffs' Complaint, Affidavits, and Motion, I can conclude based upon my own knowledge and observation that Plaintiffs' claims are misplaced and that there was no fraud, or even unrectified procedural errors, associated with processing of the absentee ballots for the City of Detroit.

I affirm that the representations above are true.

Further, Affiant sayeth not.

Date: November 11, 2020

Christopher Thomas
CHRISTOPHER THOMAS

Subscribed and sworn to before me
This 11th day of November 2020.
Nancy M. Black
Notary Public, Nancy M. Black
County of: VanBuren, State of Michigan
My Commission Expires: 09-05-2025
Acting in Berrien County, Michigan

STATE OF MICHIGAN
IN THE THIRD JUDICIAL CIRCUIT COURT FOR
THE COUNTY OF WAYNE

Cheryl A. Costantino and
Edward P. McCall, Jr.

Hon. Timothy M. Kenny
Case No. 20-014780-AW

Plaintiffs,

City of Detroit; Detroit Election
Commission; Janice M. Winfrey,
in her official capacity as the
Clerk of the City of Detroit
and the Chairperson and the
Detroit Election Commission;
Cathy Garrett,
In her official capacity as the
Clerk of Wayne County; and the
Wayne County Board of Canvassers,

Defendants.

OPINION & ORDER

At a session of this Court
Held on: November 13, 2020
In the Coleman A. Young Municipal Center
County of Wayne, Detroit, MI

PRESENT: Honorable Timothy M. Kenny
Chief Judge
Third Judicial Circuit Court of Michigan

This matter comes before the Court on Plaintiffs' motion for preliminary injunction, protective order, and a results audit of the November 3, 2020 election. The Court having read the parties' filing and heard oral arguments, finds:

With the exception of a portion of Jessy Jacob affidavit, all alleged fraudulent claims brought by the Plaintiffs related to activity at the TCF Center. Nothing was alleged to have occurred at the Detroit Election Headquarters on West Grand Blvd. or at any polling place on November 3, 2020.

The Defendants all contend Plaintiffs cannot meet the requirements for injunctive relief and request the Court deny the motion.

When considering a petition for injunction relief, the Court must apply the following four-pronged test:

1. The likelihood the party seeking the injunction will prevail on the merits.

2. The danger the party seeking the injunction will suffer irreparable harm if the injunction is not granted.

3. The risk the party seeking the injunction would be harmed more by the absence an injunction than the opposing party would be by the granting of the injunction.

4. The harm to the public interest if the injunction is issued. *Davis v City of Detroit Financial Review Team*, 296 Mich. App. 568,613; 821 NW2nd 896 (2012).

In the *Davis* opinion, the Court also stated that injunctive relief “represents an extraordinary and drastic use of judicial power that should be employed sparingly and only with full conviction of its urgent necessity.” *Id.* at 612 fn 135 quoting *Senior Accountants, Analysts and Appraisers Association v Detroit*, 218 Mich. App. 263, 269; 553 NW2nd 679 (1996).

When deciding whether injunctive relief is appropriate MCR 3.310 (A)(4) states that the Plaintiffs bear the burden of proving the preliminary injunction should be granted. In cases of alleged fraud, the Plaintiff must state with particularity the circumstances constituting the fraud. MCR 2.112 (B) (1)

Plaintiffs must establish they will likely prevail on the merits. Plaintiffs submitted seven affidavits in support of their petition for injunctive relief claiming widespread voter fraud took place at the TCF Center. One of the affidavits also contended that there was blatant voter fraud at one of the satellite offices of the Detroit City Clerk. An additional affidavit supplied by current Republican State Senator and former Secretary of State Ruth Johnson, expressed concern about allegations of voter fraud and urged “Court intervention”, as well as an audit of the votes.

In opposition to Plaintiffs’ assertion that they will prevail, Defendants offered six affidavits from individuals who spent an extensive period of time at the TCF Center. In addition to disputing claims of voter fraud, six affidavits indicated there were numerous instances of disruptive and intimidating behavior by Republican challengers. Some behavior necessitated removing Republican challengers from the TCF Center by police.

After analyzing the affidavits and briefs submitted by the parties, this Court concludes the Defendants offered a more accurate and persuasive explanation of activity within the Absent Voter Counting Board (AVCB) at the TCF Center.

Affiant Jessy Jacob asserts Michigan election laws were violated prior to November 3, 2020, when City of Detroit election workers and employees allegedly coached voters to vote for Biden and the Democratic Party. Ms. Jacob, a furloughed City worker temporarily assigned to the Clerk's Office, indicated she witnessed workers and employees encouraging voters to vote a straight Democratic ticket and also witnessed election workers and employees going over to the voting booths with voters in order to encourage as well as watch them vote. Ms. Jacob additionally indicated while she was working at the satellite location, she was specifically instructed by superiors not to ask for driver's license or any photo ID when a person was trying to vote.

The allegations made by Ms. Jacob are serious. In the affidavit, however, Ms. Jacob does not name the location of the satellite office, the September or October date these acts of fraud took place, nor does she state the number of occasions she witnessed the alleged misconduct. Ms. Jacob in her affidavit fails to name the city employees responsible for the voter fraud and never told a supervisor about the misconduct.

Ms. Jacob's information is generalized. It asserts behavior with no date, location, frequency, or names of employees. In addition, Ms. Jacob's offers no indication of whether she took steps to address the alleged

misconduct or to alter any supervisor about the alleged voter fraud. Ms. Jacob only came forward after the unofficial results of the voting indicated former Vice President Biden was the winner in the state of Michigan.

Ms. Jacob also alleges misconduct and fraud when she worked at the TCF Center. She claims supervisors directed her not to compare signatures on the ballot envelopes she was processing to determine whether or not they were eligible voters. She also states that supervisors directed her to “pre-date” absentee ballots received at the TCF Center on November 4, 2020. Ms. Jacob ascribes a sinister motive for these directives. Evidence offered by long-time State Elections Director Christopher Thomas, however, reveals there was no need for comparison of signatures at the TCF Center because eligibility had been reviewed and determined at the Detroit Election Headquarters on West Grand Blvd. Ms. Jacob was directed not to search for or compare signatures because the task had already been performed by other Detroit city clerks at a previous location in compliance with MCL 168.765a. As to the allegation of “pre-dating” ballots, Mr. Thomas explains that this action completed a data field inadvertently left blank during the initial absentee ballot verification process. Thomas Affidavit, #12. The entries reflected the date the City received the absentee ballot. *Id.*

The affidavit of current State Senator and former Secretary of State Ruth Johnson essentially focuses on the affidavits of Ms. Jacob and Zachery Larsen. Senator Johnson believed the information was concerning to the point that judicial intervention was

needed and an audit of the ballots was required. Senator Johnson bases her assessment entirely on the contents of the Plaintiffs' affidavits and Mr. Thomas' affidavit. Nothing in Senator Johnson's affidavit indicates she was at the TCF Center and witnessed the established protocols and how the AVCB activity was carried out. Similarly, she offers no explanation as to her apparent dismissal of Mr. Thomas' affidavit. Senator Johnson's conclusion stands in significant contrast to the affidavit of Christopher Thomas, who was present for many hours at TCF Center on November 2, 3 and 4. In this Court's view, Mr. Thomas provided compelling evidence regarding the activity at the TCF Center's AVCB workplace. This Court found Mr. Thomas' background, expertise, role at the TCF Center during the election, and history of bipartisan work persuasive.

Affiant Andrew Sitto was a Republican challenger who did not attend the October 29th walk-through meeting provided to all challengers and organizations that would be appearing at the TCF Center on November 3 and 4, 2020. Mr. Sitto offers an affidavit indicating that he heard other challengers state that several vehicles with out-of-state license plates pulled up to the TCF Center at approximately 4:30 AM on November 4th. Mr. Sitto states that "tens of thousands of ballots" were brought in and placed on eight long tables and, unlike other ballots, they were brought in from the rear of the room. Sitto also indicated that every ballot that he saw after 4:30 AM was cast for former Vice President Biden.

Mr. Sitto's affidavit, while stating a few general facts, is rife with speculation and guess-work about

sinister motives. Mr. Sitto knew little about the process of the absentee voter counting board activity. His sinister motives attributed to the City of Detroit were negated by Christopher Thomas' explanation that all ballots were delivered to the back of Hall Eat the TCF Center. Thomas also indicated that the City utilized a rental truck to deliver ballots. There is no evidentiary basis to attribute any evil activity by virtue of the city using a rental truck with out-of-state license plates.

Mr. Sitto contends that tens of thousands of ballots were brought in to the TCF Center at approximately 4:30 AM on November 4, 2020. A number of ballots speculative on Mr. Sitto's part, as is his speculation that all of the ballots delivered were cast for Mr. Biden. It is not surprising that many of the votes being observed by Mr. Sitto were votes cast for Mr. Biden in light of the fact that former Vice President Biden received approximately 220,000 more votes than President Trump.

Daniel Gustafson, another affiant, offers little other than to indicate that he witnessed "large quantities of ballots" delivered to the TCF Center in containers that did not have lids were not sealed, or did not have marking indicating their source of origin. Mr. Gustafson's affidavit is another example of generalized speculation fueled by the belief that there was a Michigan legal requirement that all ballots had to be delivered in a sealed box. Plaintiffs have not supplied any statutory requirement supporting Mr. Gustafson's speculative suspicion of fraud.

Patrick Colbeck's affidavit centered around concern about whether any of the computers at the absent voter counting board were connected to the internet.

The answer given by a David Nathan indicated the computers were not connected to the internet. Mr. Colbeck implies that there was internet connectivity because of an icon that appeared on one of the computers. Christopher Thomas indicated computers were not connected for workers, only the essential tables had computer connectivity. Mr. Colbeck, in his affidavit, speculates that there was in fact Wi-Fi connection for workers use at the TCF Center. No evidence supports Mr. Colbeck's position.

This Court also reads Mr. Colbeck's affidavit in light of his pre-election day Facebook posts. In a post before the November 3, 2020 election, Mr. Colbeck stated on Facebook that the Democrats were using COVID as a cover for Election Day fraud. His predilection to believe fraud was occurring undermines his credibility as a witness.

Affiant Melissa Carone was contracted by Dominion Voting Services to do IT work at the TCF Center for the November 3, 2020 election. Ms. Carone, a Republican, indicated that she "witnessed nothing but fraudulent actions take place" during her time at the TCF Center. Offering generalized statements, Ms. Carone described illegal activity that included, untrained counter tabulating machines that would get jammed four to five times per hour, as well as alleged cover up of loss of vast amounts of data. Ms. Carone indicated she reported her observations to the FBI.

Ms. Carone's description of the events at the TCF Center does not square with any of the other affidavits. There are no other reports of lost data, or tabulating machines that jammed repeatedly every hour during the count. Neither Republican nor Democratic

challengers nor city officials substantiate her version of events. The allegations simply are not credible.

Lastly, Plaintiffs rely heavily on the affidavit submitted by attorney Zachery Larsen. Mr. Larsen is a former Assistant Attorney General for the State of Michigan who alleged mistreatment by city workers at the TCF Center, as well as fraudulent activity by election workers. Mr. Larsen expressed concern that ballots were being processed without confirmation that the voter was eligible. Mr. Larsen also expressed concern that he was unable to observe the activities of election official because he was required to stand six feet away from the election workers. Additionally, he claimed as a Republican challenger, he was excluded from the TCF Center after leaving briefly to have something to eat on November 4th. He expressed his belief that he had been excluded because he was a Republican challenger.

Mr. Larsen's claim about the reason for being excluded from reentry into the absent voter counting board area is contradicted by two other individuals. Democratic challengers were also prohibited from reentering the room because the maximum occupancy of the room had taken place. Given the COVID-19 concerns, no additional individuals could be allowed into the counting area. Democratic party challenger David Jaffe and special consultant Christopher Thomas in their affidavits both attest to the fact that neither Republican nor Democratic challengers were allowed back in during the early afternoon of November 4th as efforts were made to avoid overcrowding.

Mr. Larsen's concern about verifying the eligibility of voters at the AVCB was incorrect. As stated

earlier, voter eligibility was determined at the Detroit Election Headquarters by other Detroit city clerk personnel.

The claim that Mr. Larsen was prevented from viewing the work being processed at the tables is simply not correct. As seen in a City of Detroit exhibit, a large monitor was at the table where individuals could maintain a safe distance from poll workers to see what exactly was being performed. Mr. Jaffe confirmed his experience and observation that efforts were made to ensure that all challengers could observe the process.

Despite Mr. Larsen's claimed expertise, his knowledge of the procedures at the AVCB paled in comparison to Christopher Thomas'. Mr. Thomas' detailed explanation of the procedures and processes at the TCF Center were more comprehensive than Mr. Larsen's. It is noteworthy, as well, that Mr. Larsen did not file any formal complaint as the challenger while at the AVCB. Given the concerns raised in Mr. Larsen's affidavit, one would expect an attorney would have done so. Mr. Larsen, however, only came forward to complain after the unofficial vote results indicated his candidate had lost.

In contrast to Plaintiffs' witnesses, Christopher Thomas served in the Secretary of State's Bureau of Elections for 40 years, from 1977 through 2017. In 1981, he was appointed Director of Elections and in that capacity implemented Secretary of State Election Administration Campaign Finance and Lobbyist disclosure programs. On September 3, 2020 he was appointed as Senior Advisor to Detroit City Clerk Janice Winfrey and provided advice to her and her

management staff on election law procedures, implementation of recently enacted legislation, revamped absent voter counting boards, satellite offices and drop boxes. Mr. Thomas helped prepare the City of Detroit for the November 3, 2020 General Election.

As part of the City's preparation for the November 3rd election Mr. Thomas invited challenger organizations and political parties to the TCF Center on October 29, 2020 to have a walk-through of the entire absent voter counting facility and process. None of Plaintiff challenger affiants attended the session.

On November 2, 3, and 4, 2020, Mr. Thomas worked at the TCF Center absent voter counting boards primarily as a liaison with Challenger Organizations and Parties. Mr. Thomas indicated that he "provided answers to questions about processes at the counting board's resolved dispute about process and directed leadership of each organization or party to adhere to Michigan Election Law and Secretary of State procedures concerning the rights and responsibilities of challengers."

Additionally, Mr. Thomas resolved disputes about the processes and satisfactorily reduced the number of challenges raised at the TCF Center.

In determining whether injunctive relief is required, the Court must also determine whether the Plaintiffs sustained their burden of establishing they would suffer irreparable harm if an injunction were not granted. Irreparable harm does not exist if there is a legal remedy provided to Plaintiffs.

Plaintiffs contend they need injunctive relief to obtain a results audit under Michigan Constitution Article 2, § IV, Paragraph 1 (h) which states in part “the right to have the results of statewide elections audited, in such a manner as prescribed by law, to ensure the accuracy and integrity of the law of elections.” Article 2, § IV, was passed by the voters of the state of Michigan in November, 2018.

A question for the Court is whether the phrase “in such a manner as prescribed by law” requires the Court to fashion a remedy by independently appointing an auditor to examine the votes from the November 3, 2020 election before any County certification of votes or whether there is another manner “as prescribed by law”.

Following the adoption of the amended Article 2, § IV, the Michigan Legislature amended MCL 168.31 a effective December 28, 2018. MCL 168.31 a provides for the Secretary of State and appropriate county clerks to conduct a results audit of at least one race in each audited precinct. Although Plaintiffs may not care for the wording of the current MCL 168.31a, a results audit has been approved by the Legislature. Any amendment to MCL 168.31 a is a question for the voice of the people through the legislature rather than action by the Court.

It would be an unprecedented exercise of judicial activism for this Court to stop the certification process of the Wayne County Board of Canvassers. The Court cannot defy a legislatively crafted process, substitute its judgment for that of the Legislature, and appoint an independent auditor because of an unwieldy process. In addition to being an unwarranted intrusion

on the authority of the Legislature, such an audit would require the rest of the County and State to wait on the results. Remedies are provided to the Plaintiffs. Any unhappiness with MCL 168.31a calls for legislative action rather than judicial intervention.

As stated above, Plaintiffs have multiple remedies at law. Plaintiffs are free to petition the Wayne County Board of Canvassers who are responsible for certifying the votes. (MCL 168.801 and 168.821 et seq.) Fraud claims can be brought to the Board of Canvassers, a panel that consists of two Republicans and two Democrats. If dissatisfied with the results, Plaintiffs also can avail themselves of the legal remedy of a recount and a Secretary of State audit pursuant to MCL 168.31a.

Plaintiff's petition for injunctive relief and for a protective order is not required at this time in light of the legal remedy found at 52 USC § 20701 and Michigan's General Schedule #23 - Election Records, Item Number 306, which imposes a statutory obligation to preserve all federal ballots for 22 months after the election.

In assessing the petition for injunctive relief, the Court must determine whether there will be harm to the Plaintiff if the injunction is not granted, as Plaintiffs' existing legal remedies would remain in place unaltered. There would be harm, however, to the Defendants if the Court were to grant the requested injunction. This Court finds that there are legal remedies for Plaintiffs to pursue and there is no harm to Plaintiffs if the injunction is not granted. There would be harm, however, to the Defendants if the injunction is granted. Waiting for the Court to locate and appoint

an independent, nonpartisan auditor to examine the votes, reach a conclusion and then finally report to the Court would involve untold delay. It would cause delay in establishing the Presidential vote tabulation, as well as all other County and State races. It would also undermine faith in the Electoral System.

Finally, the Court has to determine would there be harm to the public interest. This Court finds the answer is a resounding yes. Granting Plaintiffs' requested relief would interfere with the Michigan's selection of Presidential electors needed to vote on December 14, 2020. Delay past December 14, 2020 could disenfranchise Michigan voters from having their state electors participate in the Electoral College vote.

Conclusion

Plaintiffs rely on numerous affidavits from election challengers who paint a picture of sinister fraudulent activities occurring both openly in the TCF Center and under the cloak of darkness. The challengers' conclusions are decidedly contradicted by the highly-respected former State Elections Director Christopher Thomas who spent hours and hours at the TCF Center November 3rd and 4th explaining processes to challengers and resolving disputes. Mr. Thomas' account of the November 3rd and 4th events at the TCF Center is consistent with the affidavits of challengers David Jaffe, Donna MacKenzie and Jeffrey Zimmerman, as well as former Detroit City Election Official, now contractor, Daniel Baxter and City of Detroit Corporation Counsel Lawrence Garcia.

Perhaps if Plaintiffs' election challenger affiants had attended the October 29, 2020 walk-through of

the TCF Center ballot counting location, questions and concerns could have been answered in advance of Election Day. Regrettably, they did not and, therefore, Plaintiffs' affidants did not have a full understanding of the TCF absent ballot tabulation process. No formal challenges were filed. However, sinister, fraudulent motives were ascribed to the process and the City of Detroit. Plaintiffs' interpretation of events is incorrect and not credible.

Plaintiffs are unable to meet their burden for the relief sought and for the above mentioned reasons, the Plaintiffs' petition for injunctive relief is DENIED. The Court further finds that no basis exists for the protective order for the reasons identified above. Therefore, that motion is DENIED. Finally, the Court finds that MCL 168.31a governs the audit process. The motion for an independent audit is DENIED.

It is so ordered.

This is not a final order and does not close the case.

November 13, 2020

Timothy M. Kenney

Hon. Timothy M. Kenney

Chief Judge Third Judicial Circuit Court

STATE OF MICHIGAN
IN THE THIRD JUDICIAL CIRCUIT COURT FOR
THE COUNTY OF WAYNE

Sarah Stoddard and
Election Integrity Fund,

v

Hon. Timothy M. Kenny
Case No. 20-014604-CZ

City Election Commission of
The City of Detroit and Janice Winfrey,
in her official Capacity as
Detroit City Clerk and
Chairperson of the City Election Commission,
and Wayne County Board of Canvassers

OPINION & ORDER

At a session of this Court
Held on: November 6, 2020
In the Coleman A. Young Municipal Center
County of Wayne, Detroit, MI

PRESENT: Honorable Timothy M. Kenny
Chief Judge
Third Judicial Circuit Court of Michigan

Plaintiffs Sarah Stoddard and the Election Integrity Fund petition this Court for preliminary injunctive relief seeking:

1. Defendants be required to retain all original and duplicate ballots and poll books.

2. The Wayne County Board of Canvassers not certify the election results until both Republican and Democratic party inspectors compare the duplicate ballots with original ballots.

3. The Wayne County Board of Canvassers unseal all ballot containers and remove all duplicate and original ballots for comparison purposes.

4. The Court provide expedited discovery to plaintiffs, such as limited interrogatories and depositions.

When considering a petition for injunctive relief the Court must apply the following four-prong test:

1. The likelihood the party seeking the injunction will prevail on the merits.

2. The danger the party seeking the injunction will suffer irreparable harm if the injunction is not granted.

3. The risk the party seeking the injunction would be harmed more by the absence of an injunction than the opposing party would be by the granting of the injunction.

4. The harm to the public interest if the injunction is issued. *Davis v City of Detroit Financial Review Team*, 296 Mich. App. 568,613; 821 NW2d 896 (2012).

In the *Davis* opinion, the Court also stated that injunctive relief “represents an extraordinary and drastic use of judicial power that should be employed sparingly and only with full conviction of its urgent necessity” *Id* at 612 fn 135, quoting *Senior*

Accountants, Analysts & Appraisers Ass'n v. Detroit, 218 Mich. App. 263, 269; 553 NW2d 679 (1996).

When deciding whether injunctive relief is appropriate MCR 3.310 (A)(4) indicates that the plaintiff bears the burden of proving the preliminary injunction should be granted.

Plaintiffs' pleadings do not persuade this Court that they are likely to prevail on the merits for several reasons. First, this Court believes plaintiffs misinterpret the required placement of major party inspectors at the absent voter counting board location. MCL 168.765a (10) states in part "At least one election inspector from each major political party must be present at the absent voter counting place ..." While plaintiffs contends the statutory section mandates there be a Republican and Democratic inspector at each table inside the room, the statute does not identify this requirement. This Court believes the plain language of the statute requires there be election inspectors at the TCF Center facility, the site of the absentee counting effort.

Pursuant to MCL 168. 73a the County chairs for Republican and Democratic parties were permitted and did submit names of absent voter counting board inspectors to the City of Detroit Clerk. Consistent with MCL 168.674, the Detroit City Clerk did make appointments of inspectors. Both Republican and Democratic inspectors were present throughout the absent voter counting board location.

An affidavit supplied by Lawrence Garcia, Corporation Counsel for the City of Detroit, indicated he was present throughout the time of the counting of

absentee ballots at the TCF Center. Mr. Garcia indicated there were always Republican and Democratic inspectors there at the location. He also indicated he was unaware of any unresolved counting activity problems.

By contrast, plaintiffs do not offer any affidavits or specific eyewitness evidence to substantiate their assertions. Plaintiffs merely assert in their verified complaint “Hundreds or thousands of ballots were duplicated solely by Democratic party inspectors and then counted.” Plaintiffs’ allegation is mere speculation.

Plaintiffs’ pleadings do not set forth a cause of action. They seek discovery in hopes of finding facts to establish a cause of action. Since there is no cause of action, the injunctive relief remedy is unavailable. *Terlecki v Stewart*, 278 Mich. App. 644; 754 NW2d 899 (2008).

The Court must also consider whether plaintiffs will suffer irreparable harm. Irreparable harm requires “A particularized showing of concrete irreparable harm or injury in order to obtain a preliminary injunction.” *Michigan Coalition of State Employee Unions v Michigan Civil Service Commission*, 465 Mich. 212, 225; 634 NW2d 692, (2001).

In *Dunlap v City of Southfield*, 54 Mich. App. 398, 403; 221 NW2d 237 (1974), the Michigan Court of Appeals stated “An injunction will not lie upon the mere apprehension of future injury or where the threatened injury is speculative or conjectural.”

In the present case, Plaintiffs allege that the preparation and submission of “duplicate ballots” for “false reads” without the presence of inspectors of both parties violates both state law, MCL 168. 765a (10), and the Secretary of State election manual. However, Plaintiffs fail to identify the occurrence and scope of any alleged violation. The only “substantive” allegation appears in paragraph 15 of the First Amended Complaint, where Plaintiffs’ allege “on information and belief” that hundreds or thousands of ballots have been impacted by this improper practice. Plaintiffs’ Supplemental Motion fails to present any further specifics. In short, the motion is based upon speculation and conjecture. Absent any evidence of an improper practice, the Court cannot identify if this alleged violation occurred, and, if it did, the frequency of such violations. Consequently, Plaintiffs fail to move past mere apprehension of a future injury or to establish that a threatened injury is more than speculative or conjectural.

This Court finds that it is mere speculation by plaintiffs that hundreds or thousands of ballots have, in fact, been changed and presumably falsified. Even with this assertion, plaintiffs do have several other remedies available. Plaintiffs are entitled to bring their challenge to the Wayne County Board of Canvassers pursuant to MCL 168.801 *et seq.* and MCL 168.821 *et seq.* Additionally, plaintiffs can file for a recount of the vote if they believe the canvass of the votes suffers from fraud or mistake. MCL 168.865-168.868. Thus, this Court cannot conclude that plaintiffs would experience irreparable harm if a preliminary injunction were not issued.

Additionally, this Court must consider whether plaintiffs would be harmed more by the absence of injunctive relief than the defendants would be harmed with one.

If this Court denied plaintiffs' request for injunctive relief, the statutory ability to seek relief from the Wayne County Board of Canvassers (MCL 168.801 et seq. and MCL 168.821 et seq.) and also through a recount (MCL 168.865-868) would be available. By contrast, injunctive relief granted in this case could potentially delay the counting of ballots in this County and therefore in the state. Such delays could jeopardize Detroit's, Wayne County's, and Michigan's ability to certify the election. This in turn could impede the ability of Michigan's electors to participate in the Electoral College.

Finally, the Court must consider the harm to the public interest. A delay in counting and finalizing the votes from the City of Detroit without any evidentiary basis for doing so, engenders a lack of confidence in the City of Detroit to conduct full and fair elections. The City of Detroit should not be harmed when there is no evidence to support accusations of voter fraud.

Clearly, every legitimate vote should be counted. Plaintiffs contend this has not been done in the 2020 Presidential election. However, plaintiffs have made only a claim but have offered no evidence to support their assertions. Plaintiffs are unable to meet their burden for the relief sought and for the above-mentioned reasons, the plaintiffs' petition for injunctive relief is denied.

It is so ordered.

November 6, 2020 Timothy M. Kenny
Date Hon. Timothy M. Kenny
Chief Judge Third Judicial
Circuit Court of Michigan

STATE OF MICHIGAN
IN THE SUPREME COURT

ANGELIC JOHNSON, and
LINDA LEE TARVER,

Supreme Court
Case No. _____

PETITIONERS,

v JOCELYN BENSON,
in her official capacity as
Michigan Secretary of
State; JEANNETTE
BRADSHAW,
in her official capacity as
Chair of the Board of State
Canvassers for Michigan;
BOARD OF STATE
CANVASSERS FOR
MICHIGAN; and
GRETCHEN WHITMER,
in her official capacity as
Governor of Michigan,

PETITION FOR
EXTRAORDINARY
WRITS &
DECLARATORY
RELIEF

IMMEDIATE
CONSIDERATION
REQUESTED FOR
DECISION
BEFORE
DECEMBER 8, 2020

RESPONDENTS.

SPECIAL COUNSEL FOR THOMAS MORE
SOCIETY—
AMISTAD PROJECT
Ian A. Northon, Esq. (P65082)
Gregory G. Timmer (P39396)
RHOADES MCKEE, PC*
55 Campau Avenue Suite 300
Grand Rapids, MI 49503
Tel.: (616) 233-5125 Fax: (616) 233-5269

ian@rhoadesmckee.com
ggtimmer@rhoadesmckee.com

Robert J. Muise, Esq. (P62849)
AMERICAN FREEDOM LAW CENTER*
PO Box 131098
Ann Arbor, Michigan 48113
Tel: (734) 635-3756 Fax: (801) 760-3901
rmuise@americanfreedomlawcenter.org

Erin Elizabeth Mersino, Esq. (P70886)
GREAT LAKES JUSTICE CENTER*
5600 W. Mt. Hope Highway
Lansing, Michigan 48917
(517) 322-3207
erin@greatlakesjc.org

*for identification purposes only **COUNSEL FOR
PETITIONERS**

1. Petitioners Angelic Johnson and Dr. Linda Lee Tarver (collectively, “Petitioners”) sue for Extraordinary Writs against Respondents, their employees, agents, and successors in office, and Declaratory Relief, and in support allege the following upon information and belief:

INTRODUCTION

1. Our constitutional republic thrives only in proportion to the integrity and accuracy of its elections. Elections replete with error and dishonesty threaten its survival.

2. Michigan citizens deserve honest, fair, and transparent elections from their state officials. The

process should be open, and their votes should be protected with privacy.

3. Michigan citizens deserve a process that ensures that their *legal* votes count but *illegal* votes do not. In fact, the United States and Michigan Constitutions require it, and for good reason, as shown further in this Petition.

4. The Michigan Constitution provides: “All political power is inherent in the people.” Const 1963, art 1, § 1. In 2018, the people of this state exercised this power when they, as registered voters, amended the constitution by approving Proposal 3. As a result of the passage of Proposal 3, the Michigan Constitution now provides in relevant part:

(1) Every citizen of the United States who is an elector qualified to vote in Michigan *shall* have the following rights:

(a) The right, once registered, to vote a secret ballot in all elections.

* * *

(h) *The right to have the results of statewide elections audited, in such manner as prescribed by law, to ensure the accuracy and integrity of elections.*

All rights set forth in this subsection shall be self-executing. This subsection shall be liberally construed in favor of voters’ rights in order to effectuate its purposes.

* * *

(2) Except as otherwise provided in this constitution or in the constitution or laws of the United States the legislature shall enact laws to regulate the time, place and manner of all nominations and elections, *to preserve the purity of elections*, to preserve the secrecy of the ballot, *to guard against abuses of the elective franchise*, and to provide for a system of voter registration and absentee voting. . . .

Const 1963, art 2, § 4 (emphasis added).

5. When the State legislature vests the right to vote for President in its people, as Michigan has done here, “the right to vote as the *legislature* has prescribed is fundamental; and one source of its fundamental nature lies in the equal weight accorded to each vote and the equal dignity owed to each voter.” *Bush v Gore*, 531 US 98, 104 (2000) (emphasis added).

6. “The right to vote is protected in more than the initial allocation of the franchise. Equal protection applies as well to the manner of its exercise. Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person’s vote over that of another. . . . It must be remembered that ‘the right of suffrage can be denied by a debasement or dilution of the weight of a citizen’s vote just as effectively as by wholly prohibiting the free exercise of the franchise.’” *Bush*, 531 US at 104-05 (quoting *Reynolds . Sims*, 377 US 533, 555 (1964)). Permitting the counting of illegal votes creates the very debasement and dilution of the weight

of a citizen's legal vote that the Fourteenth Amendment prohibits.

7. The Michigan Constitution demands the same thing of its officials: “[n]o person shall be denied the equal protection of the laws; nor shall any person be denied the enjoyment of his civil or political rights or be discriminated against in the exercise thereof because of religion, race, color or national origin.” 1963 Const, art 1, § 2. Indeed, the Equal Protection Clause in the Michigan Constitution is coextensive with the Equal Protection Clause of the United States Constitution. *Shepherd Montessori Ctr Milan v Ann Arbor Charter Twp*, 486 Mich 311, 318; 783 NW2d 695 (2010). Equal protection applies when a state either classifies voters in disparate ways or unduly restricts the right to vote. *Obama for America v Husted*, 697 F3d 423, 428 (CA6, 2012). *Promote the Vote v Sec’y of State*, Nos. 353977, 354096, 2020 Mich App LEXIS 4595, at *39 (Ct App July 20, 2020).

8. Likewise, Due Process and bedrock principles of fundamental fairness require this Court to look carefully behind the certification process at the actual ballot boxes, ballots, and other election evidence. Indeed, the Due Process Clause of the Michigan Constitution commands that “[n]o person shall be . . . deprived of life, liberty or property, without due process of law.” Const 1963, art 1, § 17; see also, MCL 168.10.

9. This constitutional provision is nearly identical to the Due Process Clause of the United States Constitution, see US Const, Am XIV, § 1. Accordingly, “[t]he due process guarantee of the Michigan Constitution is coextensive with its federal counterpart.” *Grimes v Van Hook- Williams*, 302 Mich App 521, 530;

839 NW2d 237 (2013); *Quinn v State & Governor*, No. 350235, 2020 Mich App LEXIS 5941, at *7 (Ct App Sep 10, 2020).

10. In Michigan, the Secretary of State, Jocelyn Benson, a registered Democrat, acting unilaterally and without legislative approval, flooded the electoral process for the 2020 general election with absentee ballots. The Secretary of State accomplished this partisan scheme by unilaterally sending absentee ballot request forms to every household in Michigan with a registered voter (no matter if the voter was still alive or lived at that address) and to non-registered voters who were temporarily living in Michigan or who were not United States citizens.

11. Respondent Benson also permitted online requests for absentee ballots without signature verification, thereby allowing for fraud in obtaining an absentee ballot.

12. Worse, Respondent Benson sent unsolicited ballots to countless thousands living in Michigan and in some cases to citizens of other states.

13. The Michigan Legislature did not approve or authorize Benson's unilateral actions—and for good reason.

14. Predictably, a flood of unauthorized, absentee ballots ensured the dilution of lawful votes and precipitated an unfair 2020 general election, as the evidence adduced from election day at the TCF Center in Detroit, Michigan proves.

15. There are a few exceptional cases in which the Federal Constitution imposes a duty or confers a power on a particular branch of a State's government. Article II, section 1, clause 2 is one of them. It provides that "[e]ach State shall appoint, in such Manner as the Legislature thereof may direct," electors for President and Vice President. US Const art II, § 1, cl 2. As the Supreme Court explained in *McPherson*, 146 US 1 (1892), this provision of the Constitution "convey[s] the broadest power of determination" and "leaves it to the legislature exclusively to define the method" of appointment. *Id.* at 27. A significant departure from the legislative scheme for appointing Presidential electors defies this constitutional mandate.

16. Not even the Michigan Constitution can confer extra authority on the Secretary of State to change or alter the election procedures established by the State legislature. *McPherson*, 146 US at 35 (acknowledging that the State legislature's power in this area is such that it "cannot be taken from them or modified" even through "their state constitutions"); see also *Bush v Palm Beach Cnty Canvassing Bd*, 531 US 70; 121 S Ct 471 (2000).

17. And perhaps most important for purposes of the current situation, the Secretary of State cannot rely on the declared pandemic as a rationale for circumventing legislative intent or for unilaterally implementing procedures that undermined the integrity of the 2020 general election. *Carson v Simon*, No 20-3139, 2020 US App LEXIS 34184, at *17-18 (CA8, Oct. 29, 2020) ("[T]he Secretary's attempt to re-write the laws governing the deadlines for mail-in ballots in the 2020 Minnesota presidential election is invalid.

However well-intentioned and appropriate from a policy perspective in the context of a pandemic during a presidential election, it is not the province of a state executive official to re-write the state's election code.”).

18. The rule of law, as established by the United States Constitution and the Michigan Legislature, dictates that the Secretary of State follow these rules. There is no pandemic exception. See *Democratic Nat'l Comm v State Legislature*, No 20A66, 2020 US LEXIS 5187, at *13 (Oct 26, 2020) (Kavanaugh, J., concurring in denial of application for stay) (“[T]he design of electoral procedures is a legislative task,’ including during a pandemic.”) (internal citation omitted).

19. This case seeks to protect and vindicate fundamental rights. It is a civil rights action brought under the Fourteenth Amendment to the United States Constitution, Article II, section 1 of the United States Constitution, the Equal Protection and Due Process clauses of the Michigan Constitution, Article 2, section 4 of the Michigan Constitution, and MCL 168.479, as Petitioners have been “aggrieved by [a] determination made by the board of state canvassers.” Most important, this case seeks to restore the purity and integrity of elections in Michigan so that “We the people” can have confidence in their outcome, and thus, confidence that those who govern do so legitimately.

JURISDICTION AND VENUE

20. This action arises under the Constitution and laws of the United States, the Michigan Constitution

of 1963, Michigan Court Rules 7.305 and 7.306, and MCL 168.1, *et seq*, including 168.109 and 168.479.

21. The Michigan Constitution, Article 6, § 4 states that:

The supreme court shall have general superintending control over all courts; *power to issue, hear and determine prerogative and remedial writs*; and appellate jurisdiction as provided by rules of the supreme court. Const 1963, art 6, § 4 (emphasis added).

22. “Mandamus is properly categorized as both an ‘extraordinary’ and a ‘prerogative’ writ.” *O’Connell v Director of Elections*, 316 Mich App 91, 100, 891 NW 2d 240, 249 (2016). Thus, the Supreme Court has jurisdiction to hear and determine complaints for writs of mandamus, although that jurisdiction may not exclusively belong to the Supreme Court. *Id.* at 106.

23. Here, MCL 168.479 expressly allows for “any person who feels aggrieved by any determination made by the board of state canvassers have the determination reviewed by mandamus or other appropriate remedy in the supreme court.” (emphasis added).

24. Petitioners demanded that Respondent Board of State Canvassers (“Board”) exercise their constitutional duty and refuse to certify the general election without first conducting an audit or first determining the accuracy and integrity of the underlying votes. Affidavit of Ian Northon; **Appendix** 199 at ¶3, Ex A (Petitioners’ Demand Letter to Board).

25. MCL 168.878 expressly requires that Petitioners challenge a determination of the Board of State Canvassers “by no other action than mandamus.”

26. Over Petitioners’ objections, Respondent Board certified the election on Monday, November 23, 2020, giving immediate rise to Petitioners’ aggrieved status under MCL 168.479.

27. Petitioners’ claims for a temporary restraining order, declaratory judgment, relief under MCR 7.316(A)(7), and other relief such as mandamus is also authorized by the general doctrine of the Separation of Powers, and the Michigan Const 1963 art 2, § 4(1)(h), which deigns to ensure the accuracy and integrity of elections as a fundamental right, not just for Petitioners, but for all citizens of Michigan.

28. Venue is proper because the Secretary, Board, and Governor are seated in the jurisdiction of this Court, and all Respondents reside and voted in the State of Michigan. Venue is also proper under MCL 168.1, *et seq.* because the Michigan Legislature delegated a specific type of election dispute and controversy over ballots and other election indicia to this Court by statute. See *also* MCL 168.10 (allowing any single supreme court justice to issue restraining orders over the ballots when there is danger of mishandling).

**NECESSITY FOR IMMEDIATE
CONSIDERATION**

29. This Court previously granted immediate consideration of election-related cases. *Scott v Director of Elections*, 490 Mich 888, 889; 804 NW 2d 119 (2011).¹

30. Time is of the essence. Petitioners seek immediate consideration before the electors convene on December 8, 2020.

PARTIES

31. Petitioner Angelic Johnson is an adult citizen of the United States and a resident of Macomb County, Michigan. She is a member of Black Voices for Trump (hereinafter “Black Voices”). She legally voted in the November 2020 General Election in the State of Michigan, and she was a poll challenger at the TCF Center.

32. Petitioner Dr. Linda Lee Tarver is an adult citizen of the United States and a resident of Ingham County, Michigan. Dr. Tarver is on the advisory board of Black Voices. Dr. Tarver legally voted in the

¹ See also, Order of November 23, 2020 in *Constantino, et al, v City of Detroit, et al*, Case Nos 162245 & (27)(38)(39). Under a similar post-election challenge, Justice Zahra recognized in his concurrence: “[I] would order the most expedited consideration possible of the remaining issues. . . .”; “I would have this Court retain jurisdiction [] under both its appellate authority and its superintending authority under Const. 1963, art 6, § 4”; “Federal law imposes tight time restrictions on Michigan’s certification of our electors. Plaintiffs should not have to file appeals following our standard processes and procedure to obtain a final answer from this Court on such weighty issues.”

November 2020 General Election in the State of Michigan.

33. Respondent Jocelyn Benson is the Michigan Secretary of State. As the Secretary of State, Respondent Benson is the State's "chief election officer" with supervisory control over local election officials in the performance of their election related duties, including supervisory control over the election officials and workers at the TCF Center. MCL 168.21. Secretary Benson holds the power to "direct local election officials as to the proper methods of conducting elections." MCL 168.31(1)(b), 168.509n. Secretary Benson is responsible for "[e]stablish[ing] a curriculum for comprehensive training and accreditation of all [election] officials who are responsible for conducting elections." MCL 168.31(1)(j). Secretary Benson took an oath to support the United States and Michigan Constitution, Mich Const Art 11, § 1, and has a clear legal duty to enforce Michigan Election Law, the United States Constitution, and the Michigan Constitution. This clear legal duty involves no exercise of judgment or discretion. Secretary Benson is sued in her official capacity.

34. Respondent Board was created pursuant to the Mich Const art 2, § 7 and is required to follow the United States and Michigan Constitutions and Michigan Election Law.

35. MCL 168.22c requires the members of the Board to take the following oath prior to taking office: "I do solemnly swear (or affirm) that I will support the Constitution of the United States and the constitution of this state, and that I will faithfully discharge the duties of office." Mich Const art XI, § 1.

36. The Board is required to “canvass the returns and determine the result of all elections for electors of president and vice president of the United States, state officers, United States senators, representatives in congress, circuit court judges, state senators, representatives elected by a district that is located in more than 1 county, and other officers as required by law.” MCL 841. Further, the Board shall record the results of a county canvass, but only upon receipt of a *properly* certified certificate of a determination from a board of country canvassers. *Id.* (emphasis added).

37. Respondent Jeannette Bradshaw is the Chair of the Board of State Canvassers for Michigan. The Board is supposed to certify Michigan election results when appropriate. The Board’s certification prompts the winning presidential candidate’s selection of the 16 Michigan electors. But if the election process cannot be certified, then the task reverts back to the Michigan Legislature under MCL 168.846 and the United States Constitution.

38. Respondent Gretchen Whitmer is the Governor of the State of Michigan. As Michigan’s chief executive, by statute, she will ostensibly transmit the State’s certified results to the US Department of State and Congress on or before December 8, 2020. This ministerial task is corrupted, however, by the subordinate executive branch election officials and Respondents’ failure to meaningfully investigate and determine the proper lawful vote counts when the general election was marked with inaccuracy and loss of integrity over absentee ballots and other serious statutory violations such as failure to require bipartisan oversight at absent voting counting boards.

STATEMENT OF FACTS

39. The Nation held its general election on November 3, 2020 (“Election”).

40. Registered Voters in Michigan allegedly cast 5,539,302 total votes for president.²

41. Registered Voters in Michigan allegedly cast 3,507,410 absentee ballots according to statewide records.

42. Petitioners’ experts as explained below reveal that **at least 508,016 ballots** in Michigan were unlawful and did not conform to established Michigan Election Law. See generally, Expert Reports of Matthew Braynard and Dr. Qianying “Jennie” Zhang, attached hereto in Petitioner’s **Appendix** 278-300.

43. This is a shocking total, exceeding 14.4% of the absentee ballots and over 9.1% of the total popular vote count.

44. State records also report 878,102 total votes (absentee and in person) cast in Wayne County, Michigan.

45. The TCF Center contained 134 Absent Voter Counting Boards (“AVCBs”), and it was the only facility within Wayne County authorized to count ballots for the City of Detroit.

² See Secretary of State, official election results at https://mielections.us/election/results/2020GEN_CENR.html

46. Wayne County used the TCF Center in downtown Detroit to consolidate, collect, and tabulate all the ballots throughout the City of Detroit.

47. William Hartman is a member of the Wayne County Board of Canvassers. He determined that about 71% of Detroit's AVCBs were left unbalanced and *unexplained*. See Affidavit of William Hartman; **Appendix** 17-18 at ¶6 (emphasis in original).

48. Monica Palmer, Chairperson of the Wayne County Board of Canvassers, said under oath that more than 70% of the AVCBs in Detroit did not balance and many had no explanation to why they did not balance. See Affidavit of Monica Palmer, **Appendix** 24 at ¶16.

49. Palmer and Hartman first refused to certify the election results based on these and other serious discrepancies and irregularities. Affidavit of William Hartman; **Appendix** 18 at ¶7.

50. Before the county canvassing deadline, the two Republican members of the Wayne County Board of Canvasser refused to certify the improper votes from Wayne County.³

51. The two canvassers changed their minds after being given inaccurate assurances of a state-wide audit and under duress, only to change them again the

³ After being harassed and berated for several hours, and based on assurances of a full and independent audit, the two Republican Wayne County Board of Canvasser Members capitulated under inaccurate inducement, duress, and coercion. See Affidavits of Palmer and Hartmann, *supra*.

next day once they were safely outside and had consulted with independent counsel. Affidavit of William Hartman; **Appendix** 19 at ¶12; Affidavit of Monica Palmer, **Appendix** 24 at ¶20.

52. Among other problems, Palmer and Hartmann “found” 14,000 unaccounted for votes, which ostensibly changed the outcome of at least one judicial race, but left unresolved many unanswered questions.

53. Other eyewitnesses as outlined below and in the attached **Appendix** saw serious irregularities in Detroit, elsewhere in Wayne County, and throughout the State.

I. Respondents’ Failure to Allow Meaningful Observation Offends the State Statute and the Michigan and Federal Constitutions.

54. Michigan law generally allows the public the right to observe the counting of ballots. See MCL 168.765a(12)(“At all times, at least 1 election inspector from each major political party must be present at the absent voter counting place and the policies and procedures adopted by the secretary of state regarding the counting of absent voter ballots must be followed.”).

55. The Michigan Constitution provides all lawful voters with “[t]he right to have the results of statewide elections audited, in such a manner as prescribed by law, to ensure the accuracy and integrity of elections.” Const 1963, art 2, § 4(1)(h).

56. Indeed, “[a]ll rights set forth in this subsection shall be self-executing. This subsection shall be

liberally construed in favor of voters' rights in order to effectuate its purposes." *Id.* (emphasis added).

57. The public's right to observe applies to counting both in-person and absentee ballots.⁴

58. Respondents and their agents failed to grant meaningful observation opportunities to the public over the absentee ballots. See Affidavit of Angelic Johnson, **Appendix** 26 at ¶12; Affidavit of Zachary C. Larsen, **Appendix** 8 at ¶¶37-55; Affidavit of G Kline Preston IV, **Appendix** 53 at ¶8; Affidavit of Articia Boomer, **Appendix** 65 at ¶21; Affidavit of Phillip O'Halloran, **Appendix** 74 at ¶¶18-19; Affidavit of Robert Cushman, **Appendix** 95 at ¶3; Affidavit of Jennifer Seidl, **Appendix** 97 at ¶6; Affidavit of Andrew Sitto, **Appendix** 58 at ¶¶23; Affidavit of Kristina Karamo, **Appendix** 61 at ¶5; Affidavit of Jennifer Seidl, **Appendix** 101 at ¶35, 102 at ¶42; Affidavit of Cassandra Brown **Appendix** 109 at ¶33; Affidavit of Adam di Angeli, **Appendix** 122 at ¶30; Affidavit of Kayla Toma **Appendix** 144 at ¶¶14-15, 146 at ¶21, 147 at ¶¶31-32; Affidavit of Matthew Mikolajczak, **Appendix** 156; Affidavit of Braden Giacobazzi, **Appendix** 161 at ¶¶3, 5, 162 at ¶8; Affidavit of Kristy Klamer **Appendix** 172 at ¶¶4-5, 173 at ¶¶6-9.

⁴ Regrettably, Defendants and their agents have exclusive possession of the ballots, ballot boxes, and other indicia of voting irregularities so a meaningful audit cannot timely occur. Normally, "[a] person requesting access to voted ballots is entitled to a response from the public body within 5 to business days; however, the public body in possession of the ballots may not provide access for inspection or copying until 30 days after certification of the election by the relevant board of canvassers." Op.Atty.Gen.2010, No. 7247, 2010 WL 2710362.

59. Wayne County is the most populous county in Michigan.

60. Detroit is the largest city in Wayne County.

61. The City of Detroit's observation procedures, for example, failed to ensure transparency and integrity as it did not allow the public to see election officials during key points of absentee ballot processing in the AVCBs at TCF Arena (f/k/a Cobo Hall). *Id.*

62. These irregularities were repeated elsewhere in Wayne County, including in Canton Township, and throughout the State. See generally, Affidavits of Cassandra Brown **Appendix** 109 at ¶34; Lucille Ann Huizinga, **Appendix** 185 at ¶31; Laurie Ann Knott, **Appendix** 180 at ¶¶34- 35; Marilyn Jean Nowak **Appendix** 189 at ¶17; Marlene K. Hager, **Appendix** 192 at ¶¶19-23; and Sandra Sue Workman **Appendix** 198 at ¶33 (allegedly sending ballots from Grand Rapids to TCF Center to be processed and counted).

63. For instance, when absentee ballots arrived, the ballots should have been in an envelope, signed, sealed (and delivered) by the actual voter. Often it was not.

64. Ballots were taken from their envelopes and inspected to determine whether any deficiencies would obstruct the ballot from being fed through a tabulation machine. If any deficiencies existed (or were created by tampering), the ballot was hand duplicated.

65. There are credible allegations that Democrat officials and election workers repeatedly scanned

ballots in high-speed scanners, often counting the same ballot more than once. Affidavit of Articia Boomer, **Appendix** 64 at ¶¶10-11, 13; Affidavit of William Carzon, **Appendix** 140 at ¶8; Affidavit of Matthew Mikolajczak **Appendix** 154; Affidavit of Melissa Carone, **Appendix** 159 at ¶¶3-4.

66. The evidence will also show that these hand duplication efforts ignored the legislative mandate to have one person from each major party sign every duplicated vote (*i.e.*, one Republican and one Democrat had to sign each “duplicated” ballot and record it in the official poll book).

67. Several poll watchers, inspectors, and other whistleblowers witnessed the surge of unlawful practices described above. Affidavit of Melissa Carone, **Appendix** 159 at ¶9.

68. The evidence shows the unlawful practices provided cover for careless or unscrupulous officials or workers to mark choices for any unfilled elections or questions on the ballot, potentially and substantially affecting down ballot races where there are often significant undervotes, or causing the ballots to be discarded due to overvotes.

II. Summary of Election Malfeasance at the TCF Center Shows Widespread Problems that only this Court can Alleviate in the Short Term.

69. There were many issues of mistake, fraud, and other malfeasance at the TCF Center during the Election and during the counting process thereafter.

70. On election day, election officials at the TCF Center systematically processed and counted ballots from voters whose names failed to appear in either the Qualified Voter File (“QVF”) or in the supplemental sheets. When a voter’s name could not be found, the election worker assigned the ballot to a random name already in the QVF to a person who had not voted. See Affidavit of Zachary C. Larsen, **Appendix** 7 at ¶33; Affidavit of Robert Cushman, **Appendix** 95 at ¶7.

71. On election day, election officials at the TCF Center instructed election workers to not verify signatures on absentee ballots, to backdate absentee ballots, and to process such ballots regardless of their validity. See Affidavit of Jessy Jacobs, **Appendix** 14 at ¶15.

72. After the statutory deadlines passed and local officials had announced the last absentee ballots had been received, another batch of unsecured and unsealed ballots, without envelopes, arrived in unsecure trays at the TCF Center.

73. There were tens of thousands of these late-arriving absentee ballots, and apparently every ballot was counted and attributed only to Democratic candidates. See Affidavit of John McGrath **Appendix** 135 at ¶8.

74. Election officials at the TCF Center instructed election workers to process ballots that appeared after the election deadline and to inaccurately report or backdate those ballots as having been received before the November 3, 2020, deadline. See Affidavit of Jessy Jacobs, **Appendix** 14 at ¶17.

75. Election officials at the TCF Center systematically used inaccurate information to process ballots. Affidavit of Cassandra Brown, **Appendix** 109 at ¶33.

76. Many times, the election workers overrode the software by inserting new names into the QVF after the election deadline or recording these new voters as having a birthdate of “1/1/1900,” which is the “default” birthday. See Affidavit of John McGrath **Appendix** 135 at ¶8; Affidavit of Kristina Karamo **Appendix** 61 at ¶6; Affidavit of Robert Cushman, **Appendix** 95 at ¶¶10-12, 96 at ¶16; Affidavit of Jennifer Seidl, **Appendix** 103 at ¶¶52-53; Affidavit of Braden Giacobazzi **Appendix** 163 at ¶10; Affidavit of Kristy Klamer **Appendix** 174 at ¶13.

77. Each day before the election, City of Detroit election workers and employees coached voters to vote for Joe Biden and the Democratic Party candidates. See Affidavit of Jessy Jacobs, **Appendix** 13 at ¶8.

78. These workers, employees, and so-called consultants encouraged voters to vote a straight Democratic Party ticket. These election workers went over to the voting booths with voters to watch them vote and to coach them as to which candidates they should vote for. See Affidavit of Jessy Jacobs, **Appendix** 13 at ¶8.

79. Before and after the statutory deadline, unsecured ballots arrived at the TCF Center loading garage, loose on the floor not in sealed ballot boxes—with no chain of custody and often with no secrecy envelopes. Affidavit of Articia Boomer, **Appendix** 63 at ¶8, 64 at ¶¶9, 18.

80. Election officials and workers at the TCF Center duplicated ballots by hand without allowing poll challengers to check if the duplication was accurate. See Affidavit Andrew Sitto, **Appendix** 57 at ¶9; Affidavit of Phillip O'Halloran **Appendix** 75 at ¶22; Affidavit of Eugene Dixon, **Appendix** 113 at ¶5.

81. In fact, election officials repeatedly obstructed poll challengers from observing. See Affidavit of Zachary C. Larsen, **Appendix** 8-11 at ¶¶37-55; Affidavit of Janice Hermann, **Appendix** 81 at ¶5; Affidavit of Jennifer Seidl, **Appendix** 100 at ¶29, 102 at ¶42; Affidavit of Cassandra Brown, **Appendix** 109 at ¶33.

82. Election officials violated the plain language of the law MCL 168.765a by permitting thousands of ballots to be filled out by hand and duplicated on site without oversight from bipartisan poll challengers.

83. After poll challengers started uncovering the statutory violations at the TCF Center, election officials and workers locked credentialed challengers out of the counting room so they could not observe the process, during which time tens of thousands of ballots, if not more, were improperly processed. See Affidavit of Zachary C. Larsen, **Appendix** 8-11 at ¶¶37-55; Affidavit of Janice Hermann, **Appendix** 81 at ¶5; Affidavit of Jennifer Seidl, **Appendix** 100 at ¶29, 101 at ¶32, 102 at ¶42; Affidavit of Cassandra Brown, **Appendix** 109 at ¶¶33; Affidavit of Anna England, **Appendix** 115 at ¶¶5,7; Affidavit of Matthew Mikolajczak **Appendix** 155; Affidavit of Braden Giacobazzi, **Appendix** 162 at ¶6.

III. Suspicious Funding and Training of Election Workers

84. In September, the Detroit City council approved a \$1 million contract for the staffing firm P.I.E. Management, LLC to hire up to 2,000 workers to work the polls and to staff the ballot counting machines at the TCF Center. P.I.E. Management, LLC is owned and controlled by a Democratic Party operative.

85. A week after approval, P.I.E. Management, LLC began advertising for workers, stating, “Candidates must be 16 years or older. Candidates are required to attend a 3-hour training session before the General Election. The position offers two shifts and pay-rates: 1) From 7 am to 7 pm at \$600.00; and 2) From 10 pm to 6 am at \$650.” Consequently, these temporary workers were earning at least \$50 per hour—far exceeding prevailing rates at most rural communities.

86. Upon information and belief, the evidence will show that this money and much more came from a single private source: Mark Zuckerberg and his spouse, through the charity called CTCL, which paid over \$400 million nationwide to Democrat-favoring election officials and municipalities. See generally, Expert Report of James Carlson, **Appendix** 245-276.

87. The improper private funding to Michigan exceeded \$9.8 million. *Id.* at 252 and 255.

IV. Forging Ballots on the QVF

88. Whistleblowers observed election officials processing ballots at the TCF Center without confirming

that the voter was eligible to vote. See Affidavit of Zachary C. Larsen, **Appendix** 4 at ¶12.

89. Whistleblowers observed election officials assigning ballots to different voters, causing a ballot being counted for a non-eligible voter by assigning it to a voter in the QVF who had not yet voted. See Affidavit of John McGrath **Appendix** 135 at ¶8; Affidavit of Kristina Karamo **Appendix** 61 at ¶6; Affidavit of Robert Cushman, **Appendix** 95 at ¶¶10-12, 96 at ¶16; Affidavit of Jennifer Seidl, **Appendix** 103 at ¶¶52-53; Affidavit of Braden Giacobazzi **Appendix** 163 at ¶10; Affidavit of Kristy Klamer **Appendix** 174 at ¶13.

V. Changing Dates on Ballots

90. All lawful absentee ballots were supposed to be in the QVF system by 9:00 p.m. on November 3, 2020.

91. This deadline had to be met to ensure an accurate final list of absentee voters who returned their ballots before the statutory deadline of 8:00 p.m. on November 3, 2020.

92. To have enough time to process the absentee ballots, Respondents told polling locations to collect the absentee ballots from the drop-boxes every hour on November 3, 2020.

93. On November 4, 2020, a City of Detroit election whistleblower at the TCF Center was told to improperly pre-date the receive date for absentee ballots that were not in the QVF as if they had been received on or before November 3, 2020. The Whistleblower swore she was told to alter the information in the QVF

to inaccurately show that the absentee ballots had been timely received. She estimates that this was done to thousands of ballots. See Affidavit of Jessie Jacobs, Appendix 14 at ¶17.

VI. Double Voting

94. An election worker in the City of Detroit observed several people who came to the polling place to vote in-person, but they had already applied for an absentee ballot. See Affidavit of Jessie Jacobs, Appendix 13 at ¶10; Affidavit of Anna England, Appendix 124-125 at ¶45.

95. Election officials allowed these people to vote in-person, and they did not require them to return the mailed absentee ballot or sign an affidavit that the voter lost or “spoiled” the mailed absentee ballot as required by law and policy.

96. This illicit process allowed people to vote in person and to send in an absentee ballot, thereby voting twice. This “double voting” was made possible by the unlawful ways in which election officials were counting and inputting ballots at the TCF Center from across the City’s several polling places.

97. The Secretary of State’s absentee ballot scheme exacerbated this “double voting,” as set forth further in this Petition. See also, Expert Report of Matthew Braynard, Appendix 282 at ¶6.

VII. First Wave of New Ballots

98. Early in the morning of November 4, 2020, tens of thousands of ballots were suddenly brought

into the counting room at the TCF Center through the back door. See Affidavit of John McGrath Appendix 134 at ¶4 (around 3:00 a.m.); Affidavit of Articia Boomer, Appendix 64 at ¶18 (around 4:00 a.m.); Affidavit of William Carzon, Appendix 141 at ¶11 (around 4:00 a.m.); Affidavit Andrew Sitto, Appendix 57 at ¶16 (alleges about 4:30 a.m.).

99. These new ballots were brought to the TCF Center by vehicles with out-of-state license plates. See Affidavit of Andrew Sitto, Appendix 57 at ¶15.

100. Whistleblowers claim that all of these new ballots were cast for Joe Biden. See Affidavit of Andrew Sitto, Appendix 57 at ¶¶17-18.

101. Upon information and belief, inexplicably, these ballots still do not share or have the markings establishing the proper chain of custody from valid precincts and clerks and are among the approximately 70% of unmatched AVCB errors identified by Palmer and Hartmann.

VIII. Second Wave of New Ballots

102. The ballot counters needed to check every ballot to confirm that the name on the ballot matched the name on the electronic poll list—the list of all persons who had registered to vote on or before November 1, 2020 (the QVF).

103. The ballot counters were also provided with supplemental sheets which had the names of all persons who had registered to vote on either November 2, 2020 or November 3, 2020.

104. The validation process for a ballot requires the name on the ballot match with a registered voter on either the QVF or the supplemental sheets.

105. At around 9:00 p.m. on Wednesday, November 4, 2020, several more boxes of ballots were brought to the TCF Center. This was a second wave of new ballots.

106. Election officials instructed the ballot counters to use the “default” date of birth of January 1, 1900, on all of these newly appearing ballots. See Affidavit of John McGrath **Appendix** 135 at ¶8; Affidavit of Kristina Karamo **Appendix** 61 at ¶6; Affidavit of Robert Cushman, **Appendix** 95 at ¶¶10-12, 96 at ¶16; Affidavit of Jennifer Seidl, **Appendix** 103 at ¶¶52-53; Affidavit of Braden Giacobazzi **Appendix** 163 at ¶10; Affidavit of Kristy Klamer **Appendix** 174 at ¶13.

107. None of the names on these new ballots corresponded with any registered voter on the QVF or the supplemental sheets. See Affidavit of John McGrath, **Appendix** 135 at ¶¶7, 14, 136 at ¶¶16-18.

108. Despite election rules requiring all absentee ballots to be inputted into the QVF system before 9:00 p.m. the day before, election workers inputted these new ballots into the QVF, manually adding each voter to the list *after* the deadline.

109. Upon information and belief, almost all of these new ballots were entered into the QVF using the “default” date of birth of January 1, 1900. See Affidavit of John McGrath, **Appendix** 135 at ¶8; Affidavit of Kristina Karamo, **Appendix** 61 at ¶6; Affidavit of

Robert Cushman, Appendix 95 at ¶¶10-12, 96 at ¶16; Affidavit of Jennifer Seidl, Appendix 103 at ¶¶52-53; Affidavit of Braden Giacobazzi, Appendix 163 at ¶10; Affidavit of Kristy Klamer, Appendix 174 at ¶13.

110. These newly received ballots were either fabricated or apparently cast by persons who were not registered to vote before the polls closed at 8:00 p.m. on election day.

111. Upon information and belief, inexplicably, these ballots still do not share or have the markings establishing the proper chain of custody from valid precincts and clerks and are among the approximately 70% of unmatched AVCB errors identified by Palmer and Hartmann. See *generally* Affidavits of Monica Palmer and William Hartman, Appendix 17 at ¶6 and 24 at ¶14.

112. This means there were more votes tabulated than there were ballots in over 71% of the 134 AVCBs in Detroit. That equates to over 95 AVCB being significantly “off.” *Id.*

113. According to public testimony before the state canvassers on November 23, City of Detroit Election Consultant Daniel Baxter admitted in some instances the imbalances exceeded 600 votes per AVCB. He did not reveal the total disparity.

IX. Concealing the Malfeasance in Violation of Michigan law.

114. Many election challengers were denied access to observe the counting process by election officials at

the TCF Center. See Affidavit of Angelic Johnson, **Appendix** 26 at ¶12; Affidavit of Zachary C. Larsen, **Appendix** 8 at ¶¶37-55; Affidavit of G Kline Preston IV, **Appendix** 53 at ¶8; Affidavit of Articia Boomer, **Appendix** 65 at ¶21; Affidavit of Phillip O'Halloran, **Appendix** 74 at ¶¶18-19; Affidavit of Robert Cushman, **Appendix** 95 at ¶3; Affidavit of Jennifer Seidl, **Appendix** 97 at ¶6; Affidavit of Andrew Sitto, **Appendix** 58 at ¶23; Affidavit of Kristina Karamo, **Appendix** 61 at ¶5; Affidavit of Jennifer Seidl, **Appendix** 101 at ¶35, 102 at ¶42; Affidavit of Cassandra Brown **Appendix** 109 at ¶33; Affidavit of Adam di Angeli **Appendix** 122 at ¶30; Affidavit of Kayla Toma **Appendix** 144 at ¶¶14-15, 146 at ¶21, 147 at ¶¶31-32; Affidavit of Matthew Mikolajczak **Appendix** 156; Affidavit of Braden Giacobazzi **Appendix** 161 at ¶¶3, 5, 162 at ¶8; Affidavit of Kristy Klamer **Appendix** 172 at ¶¶4-5, 173 at ¶¶6-9.

115. After denying access to the counting rooms, election officials at the TCF Center used large pieces of cardboard to block the windows to the counting room, thereby preventing anyone from watching the ballot counting process. See Affidavit of Zachary C. Larsen, **Appendix** 10 at ¶52; Affidavit of John McGrath **Appendix** 135 at ¶10; Affidavit of Andrew Sitto, **Appendix** 58 at ¶22.

116. Respondents have continued to conceal their efforts by refusing meaningful bipartisan access to inspect the ballots. Even if Republicans were involved in oversight roles by statute (such as with the Wayne County Canvassing Board), the Republican members have been harassed, threatened, and doxed (including publicly revealing where their children go to school) to

pressure them to capitulate and violate their statutory duties. This conduct is beyond the pale and shocking to the conscience. See Affidavit of William Hartman; **Appendix** 18 at ¶8; Affidavit of Monica Palmer, **Appendix** 24-25 at ¶¶18-22, and 24; Affidavit of Dr. Phillip O'Halloran, **Appendix** 76 at ¶24-25; Affidavit of Jennifer Seidl, **Appendix** 99 at ¶23, 100 at ¶¶27, 30-31, 101 at ¶¶36-37; Affidavit of Eugene Dixon, **Appendix** 114 at ¶9; Affidavit of Matthew Mikolajczak, **Appendix** 156; Affidavit of Mellissa Carone **Appendix** 160 at ¶12; Affidavit of Braden Giacobazzi, **Appendix** 161 at ¶3, 162 at ¶7, 163 at 12, 164 at ¶¶12-14; Affidavit of Kaya Toma **Appendix** 144 at ¶15; Affidavit of Kristy Klamer **Appendix** 172 at ¶¶4-5, 173 at ¶¶6-9.

X. Unsecured QVF Access further Violating MCL 168.765a, et seq.

117. Whenever an absentee voter application or in-person absentee voter registration was finished, election workers at the TCF Center were instructed to input the voter's name, address, and date of birth into the QVF system.

118. The QVF system can be accessed and edited by any election processor with proper credentials in the State of Michigan at any time and from any location with Internet access.

119. This access permits anyone with the proper credentials to edit when ballots were sent, received, and processed from any location with Internet access.

120. Many of the counting computers within the counting room had icons that revealed that they were connected to the Internet.

121. Respondent Benson executed a contract to give a private partisan group, Rock the Vote, unfettered real-time access to Michigan's QVF. See Rock the Vote Agreement, **Appendix** 327.

122. She sold or gave Michigan citizens' private voter information to private groups in furtherance of her own partisan goals.

123. Benson and the State repeatedly concealed this unlawful contract and have refused to tender a copy despite several lawful requests for the government contract under FOIA.

124. Improper access to the QVF was one of the chief categories of serious concern identified by the Michigan Auditor General's Report, **Appendix** 207 at material finding #2.

125. Upon information and belief, Benson made it worse, not better. In the most charitable light, this was incredibly naïve. More cynically, Benson likely acted in furtherance of her partisan political goals and in dereliction of her statutory and constitutional duties.

XI. Unsecured Ballots

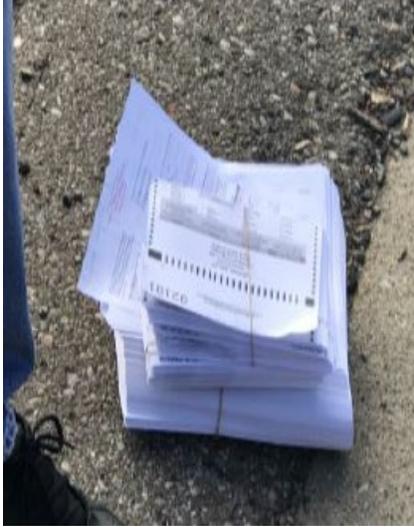
126. A poll challenger witnessed tens of thousands of ballots, and possibly more, being delivered to the TCF Center that were not in any approved, sealed, or tamper-proof container.

127. Large quantities of ballots were delivered to the TCF Center in what appeared to be mail bins with open tops. See Affidavit of Daniel Gustafson, **Appendix** 112 at ¶¶4-6; see the photo of the TCF Center below:



128. These ballot bins and containers did not have lids, were unsealed, and could not have a metal seal. See Affidavit of Rhonda Webber, **Appendix** 43 at ¶3.

129. Some ballots were found unsecured on the public sidewalk outside the Department of Elections in the City of Detroit, reinforcing the claim that boxes of ballots arrived at the TCF Center unsealed, with no chain of custody, and with no official markings. A photograph of ballots found on the sidewalk outside the Department of Elections appears below:



130. The City of Detroit held a drive-in ballot drop off where individuals would drive up and drop their ballots into an unsecured tray. No verification was done. This was not a secured drop-box with video surveillance. To encourage this practice, free food and beverages were provided to those who dropped off their ballots using this method. See Affidavit of Cynthia Cassell **Appendix** 28 at ¶3 and 29 ¶¶9-10.

XII. Breaking the Seal of Secrecy Undermines Constitutional Liberties under Const Art 2, § 4(1)(a).

131. Many times, election officials at the TCF Center broke the seal of secrecy for ballots to check which candidates the individual voted for on his or her ballot, thereby violating the voter's expectation of privacy. See Affidavit of Zachary C. Larsen; **Appendix** 5 at ¶16-18, 20.

132. Voters in Michigan have a constitutional right to open elections, and the Michigan Legislature provided them the right to vote in secret. Respondents' conduct, together with others, violates both of these hallmark principles. See Affidavit of Jennifer Seidl, **Appendix** 99 at ¶18.

133. In Michigan, it is well-settled that the election process is supposed to be transparent and the voter's ballot secret, not the other way around.

134. Here, Respondents' absentee ballot scheme has improperly revealed voters' preferences exposing Petitioners' and similarly-situated voters to dilution or spoliation while simultaneously obfuscating the inner workings of the election process.

135. Now the Respondents seek to perform an "audit" on themselves.

XIII. Statewide Irregularities Over Absentee Ballots Reveal Widespread Mistake or Fraud.

136. Whenever a person requested an absentee ballot either by mail or in-person, that person needed to sign the absentee voter application.

137. When the voter returned their absentee ballot to be counted, the voter was required to sign the outside of the envelope that contained the ballot.

138. Election officials who process absentee ballots are required to compare the signature on the absentee ballot application with the signature on the

absentee ballot envelope. See Affidavit of Jennifer Seidl, **Appendix** 103 at ¶60.

139. Election officials at the TCF Center, for example, instructed workers not to validate or compare signatures on absentee ballot applications and absentee ballot envelopes to ensure their authenticity and validity. See Affidavit of Jessy Jacobs, **Appendix** 14 at ¶15.

140. Michigan law requires absentee votes to be counted by election inspectors in a particular manner. It requires, in relevant part:

(10) The oaths administered under subsection (9) must be placed in an envelope provided for the purpose and sealed with the red state seal. Following the election, the oaths must be delivered to the city or township clerk. Except as otherwise provided in subsection (12), a person in attendance at the absent voter counting place or combined absent voter counting place shall not leave the counting place after the tallying has begun until the polls close. Subject to this subsection, the clerk of a city or township may allow the election inspectors appointed to an absent voter counting board in that city or township to work in shifts. A second or subsequent shift of election inspectors appointed for an absent voter counting board may begin that shift at any time on election day as provided by the city or township clerk. However, an election inspector shall not leave the absent voter counting place after the tallying has begun until the polls close. If the election inspectors appointed to an absent

voter counting board are authorized to work in shifts, at no time shall there be a gap between shifts and the election inspectors must never leave the absent voter ballots unattended. **At all times, at least 1 election inspector from each major political party must be present at the absent voter counting place and the policies and procedures adopted by the secretary of state regarding the counting of absent voter ballots must be followed.** A person who causes the polls to be closed or who discloses an election result or in any manner characterizes how any ballot being counted has been voted in a voting precinct before the time the polls can be legally closed on election day is guilty of a felony.

MCL 168.765a (10) (emphasis added).

141. Under MCL 168.31, the Secretary of State can issue instructions and rules consistent with Michigan statutes and the Constitution that bind local election authorities. Likewise, under MCL 168.765a(13), the Secretary can develop instructions consistent with the law for the conduct of Absent Voter Counting Boards (“AVCB”) or combined AVCBs. “The instructions developed under [] subsection [13] are binding upon the operation of an absent voter counting board or combined absent voter counting board used in an election conducted by a county, city, or township.” MCL 168.765a(13).

142. Benson also promulgated an election manual that requires bipartisan oversight:

Each ballot rejected by the tabulator must be visually inspected by an election inspector to verify the reason for the rejection. **If the rejection is due to a false read the ballot must be duplicated by two election inspectors who have expressed a preference for different political parties.** Duplications may not be made until after 8 p.m. in the precinct (place the ballot requiring duplication in the auxiliary bin). At an AV counting board duplications can be completed throughout the day. NOTE: The Bureau of Elections has developed a video training series that summarizes key election day management issues, including a video on Duplicating Ballots. These videos can be accessed at the Bureau of Elections web site at www.michigan.gov/elections; under “Information for Election Administrators”; Election Day Management Training Videos. Election Officials Manual, Michigan Bureau of Elections, Chapter 8, last revised October 2020.

https://www.michigan.gov/documents/sos/VIII_Absent_Voter_County_Boards_265998_7.pdf (emphasis added).

143. Election officials at the TCF Center flouted § 168.765a because there were not, at all times, at least one inspector from each political party at the absentee voter counting place. Rather, the many tables assigned to precincts under the authority of the AVCB were staffed by inspectors for only one party. Those inspectors alone were deciding on the processing and counting of ballots. See Affidavit of Jennifer Seidl, Appendix 98 at ¶9; Affidavit of Eugene Dixon, Appendix 113 at ¶5; Affidavit of Mellissa Carone, Appendix 159 at ¶5.

144. This processing included the filling out of brand new “cure” or “duplicate” ballots. The process the election officials sanctioned worked in this way. When an absentee ballot was processed and approved for counting, it was fed into a counting machine. Some ballots were rejected—that is, they were a “false read”—because of tears, staining (such as coffee spills), overvotes, and other errors. In some of these cases, inspectors could visually inspect the rejected ballot and determine what was causing the machine to find a “false read.” When this happened, the inspectors could duplicate the ballot, expressing the voter’s intent in a new ballot that could then be fed into the machine and counted.

145. Under § 168.765a and the Secretary of State’s controlling manual, as cited above, an inspector from each major party must be present and must sign to show that they approve of the duplication.

146. Rather than following this controlling mandate, the AVCB was allowing a Democratic Party inspector only to fill out a duplicate. Republicans would sign only “if possible.” See Affidavit of Patricia Blackmer, **Appendix** 90 at ¶11. A photograph evidencing this illicit process appears below:

IV PRE-PROCESSING POLL BOOK INSERT (Monday)
Monday, November 2, 2020

PRECINCT # 27

Number of AV ballot return envelopes opened on the day before Election Day 450 1,354

Number of AV ballot return envelopes delivered to inspectors that did not contain a voter's signature and that were returned to the Clerk 0

Number of absentee ballot envelopes delivered to the Board which did not contain an absentee ballot 0

Number of AV ballot return envelopes that were MILITARY or CHALLENGED, not approved by inspectors, and set aside to be processed by inspectors on Election Day 3

I solemnly certify that each ballot is contained in a secrecy sleeve and sealed in a certified ballot container with the following State of Michigan seal number(s):
585 859
145 972

Shawn Simpson Muhammad Khalid
Robert Brown Peter Johnson

Patrick [unclear] [unclear]

DEMOCRATIC SIGNATURE REPUBLICAN SIGNATURE (if possible)

147. The TCF Center election officials allowed hundreds or thousands of ballots to be “duplicated” solely by the Democratic Party inspectors and then counted in violation of Michigan election law. See Affidavit of Zachary C. Larsen, **Appendix** 8-11 at ¶¶37-55; Affidavit of Janice Hermann, **Appendix** 81 at ¶¶4-5; Affidavit of Jennifer Seidl, **Appendix** 100 at ¶¶29, 102 at ¶42; Affidavit of Cassandra Brown, **Appendix** 109 at ¶¶33; Affidavit of Phillip O’Halloran, **Appendix** 75 at ¶22; Affidavit of Anna England, **Appendix** 115 at ¶8.

148. According to eyewitness accounts, election officials at the TCF Center habitually and systematically disallowed election inspectors from the Republican Party to be present in the voter counting place and refused access to election inspectors from the Republican party to be within a close enough distance from

the absentee voter ballots to see for whom the ballots were cast.

149. Election officials at the TCF Center refused entry to official election inspectors from the Republican Party into the counting place to observe the counting of absentee voter ballots. Election officials even physically blocked and obstructed election inspectors from the Republican party by adhering large pieces of cardboard to the transparent glass doors so the counting of absent voter ballots was not viewable. See Affidavit of Zachary C. Larsen, **Appendix** 8-11 at ¶¶37-55; Affidavit of Janice Hermann, **Appendix** 81 at ¶5; Affidavit of Jennifer Seidl, **Appendix** 100 at ¶29, 101 at ¶32, 102 at ¶42; Affidavit of Cassandra Brown, **Appendix** 109 at ¶¶33; Affidavit of Anna England, **Appendix** 115 at ¶¶5,7; Affidavit of Matthew Mikolajczak, **Appendix** 155; Affidavit of Braden Giacobazzi, **Appendix** 162 at ¶6.

150. Absentee ballots from military members, who tend to vote Republican in the general elections, were counted separately at the TCF Center. All (100%) of the military absentee ballots had to be duplicated by hand because the form of the ballot was such that election workers could not run them through the tabulation machines used at the TCF Center. See Affidavit of Janice Hermann, **Appendix** 82 at ¶16.

151. These military ballots were supposed to be the last ones counted, but there was another large drop of ballots that occurred during the counting of the military absentee ballots. *Id.* see also, Affidavit of Robert Cushman, **Appendix** 95 at ¶¶4-5.

152. Worse, the military absentee ballot count at the TCF Center occurred after the Republican challengers and poll watchers were kicked out of the counting room. *Id.* Affidavit of Jennifer Seidl, Appendix 102 at ¶42.

153. The Michigan Legislature also requires City Clerks to post the following absentee voting information anytime an election is conducted that involves a state or federal office:

a. The clerk must post before 8:00 a.m. on Election Day: 1) the number of absent voter ballots distributed to absent voters 2) the number of absent voter ballots returned before Election Day and 3) the number of absent voter ballots delivered for processing.

b. The clerk must post before 9:00 p.m. on Election Day: 1) the number of absent voter ballots returned on Election Day 2) the number of absent voter ballots returned on Election Day which were delivered for processing 3) the total number of absent voter ballots returned both before and on Election Day and 4) the total number of absent voter ballots returned both before and on Election Day which were delivered for processing.

c. The clerk must post immediately after all precinct returns are complete: 1) the total number of absent voter ballots returned by voters and 2) the total number of absent voter ballots received for processing.

See MCL 168.765(5).

154. Upon information and belief, the clerk for the City of Detroit failed to post by 8:00 a.m. on “Election Day” the number of absentee ballots distributed to absent voters and failed to post before 9:00 p.m. the number of absent voter ballots returned both before and on “Election Day.”

155. According to Michigan Election law, all absentee voter ballots must be returned to the clerk before polls close at 8 p.m. MCL 168.764a. Any absentee voter ballots received by the clerk after the close of the polls on election day should not be counted.

156. The Michigan Legislature allows for early counting of absentee votes before the closings of the polls for large jurisdictions, such as the City of Detroit and Wayne County.

157. Upon information and belief, receiving tens of thousands more absentee ballots in the early morning hours after Election Day and after the counting of the absentee ballots had already concluded, without proper oversight, with tens of thousands of ballots attributed to just one candidate, Joe Biden, confirms that election officials failed to follow proper election protocols and established Michigan election law. See Affidavit of John McGrath **Appendix** 134 at ¶4; Affidavit of Robert Cushman, **Appendix** 96 at ¶14.

158. Missing the statutory deadline proscribed by the Michigan Legislature for turning in the absentee ballot or timely updating the QVF invalidates the vote under Michigan Election Law and the United States Constitution.

159. Poll challengers observed election workers and supervisors writing on ballots themselves to alter them, apparently manipulating spoiled ballots by hand and then counting the ballots as valid, counting the same ballot more than once, adding information to incomplete affidavits accompanying absentee ballots, counting absentee ballots returned late, counting unvalidated and unreliable ballots, and counting the ballots of “voters” who had no recorded birthdates and were not registered in the QVF or on any supplemental sheets. See Affidavit of Angelic Johnson **Appendix** 26 at ¶7; Affidavit of Adam di Angeli **Appendix** 129 at ¶61; see also, Affidavit of John McGrath, *supra*; Affidavit of Kristina Karamo, *supra*; Affidavit of Robert Cushman, *supra*; Affidavit of Jennifer Seidl, *supra*; Affidavit of Braden Giacobazzi, *supra*; Affidavit of Kristy Klamer, *supra*.

XIV. Flooding the Election with Absentee Ballots was Improper.

160. Michigan does not permit “mail-in” ballots *per se*, and for good reason: mail-in ballots facilitate fraud and dishonest elections. See, e.g., *Veasey v Abbott*, 830 F3d 216, 256, 263 (CA5, 2016) (observing that “mail-in ballot fraud is a significant threat—unlike in-person voter fraud,” and comparing “in-person voting—a form of voting with little proven incidence of fraud” with “mail-in voting, which the record shows is far more vulnerable to fraud”).

161. Yet Respondent Benson’s absentee ballot scheme, as explained in this Petition, achieved the same purpose as mail-in ballots—contrary to Michigan law. In the most charitable light, this was

profoundly naïve and cut against the plain language and clear intent of the Michigan Legislature to limit fraud. More cynically, this was an intentional effort to favor her preferred candidates.

162. Upon information and belief, she put this scheme in place because it is generally understood that Republican voters were more likely to vote in-person. This trend has been true for decades and proved true with this Election too. See Expert Report of John McLaughlin, **Appendix** 301-303.

163. To counter this (*i.e.*, the fact that Republicans are more likely than Democrats to vote in-person), Respondent Benson implemented a scheme to permit mail-in voting, leading to this dispute and the absentee ballot scheme that unfairly favored Democrats over Republicans.

164. In her letter accompanying her absentee ballot scheme, Respondent Benson misstated, “You have the right to vote by mail in every election.” Playing on the fears created by the current pandemic, Respondent Benson encouraged voting “by email,” stating, “During the outbreak of COVID-19, it also enables you to stay home and stay safe while still making your voice heard in our elections.” Affidavit of Christine Muise, **Appendix** 46 at ¶2, Ex A.

165. Prior to election day, the Democratic Party’s propaganda was to push voters to vote by mail and to vote early. Democratic candidates used the fear of the current pandemic to promote this agenda—an agenda that would benefit Democratic Party candidates. For example, on September 14, 2020, the Democratic National Committee announced the following:

Today Biden for President and the Democratic National Committee are announcing new features on IWillVote.com—the DNC’s voter participation website—that will help voters easily request and return their ballot by mail, as well as learn important information about the voting process in their state as they make their plan to vote. Previously, an individual could use the site to check or update their registration and find voting locations. Now the new user experience will also guide a voter through their best voting-by-mail option

(available at <https://democrats.org/news/biden-for-president-dnc-announce-new-vote-by-mailfeatures-on-iwillvote-com/> (last visited Nov. 17, 2020)).

According to the Associated Press:

“We have to make it easier for everybody to be able to vote, particularly if we are still basically in the kind of lockdown circumstances we are in now,” Biden told about 650 donors. “But that takes a lot of money, and it’s going to require us to provide money for states and insist they provide mail-in ballots.”

(available at <https://apnews.com/article/6cf3ca7d5a174f2f381636cb4706f505> (last visited Nov. 17, 2020)).

166. Similar statements were repeatedly publicly on the Secretary of State’s website:

Voters are encouraged to vote at home with an absentee ballot and

to return their ballot as early as possible by drop box, in person at their city or township clerk's office, or well in advance of the election by mail.

https://www.michigan.gov/sos/0,4670,7-127-1633_101996---,00.html (emphasis added).

167. The Michigan Legislature set forth detailed requirements for absentee ballots, and these requirements are necessary to prevent voter fraud because it is far easier to commit fraud via an absentee ballot than when voting in person. See, e.g., *Griffin v Roupas*, 385 F3d 1128, 1130- 31 (CA7, 2004) (“Voting fraud is a serious problem in U.S. elections generally . . . and it is facilitated by absentee voting”). Michigan law plainly limits the ways you may get an absentee ballot:

(1) Subject to section 761(3), at any time during the 75 days before a primary or special primary, but not later than 8 p.m. on the day of a primary or special primary, *an elector may apply for an absent voter ballot. The elector shall apply in person or by mail* with the clerk of the township or city in which the elector is registered. The clerk of a city or township shall not send by first-class mail an absent voter ballot to an elector after 5 p.m. on the Friday immediately before the election. Except as otherwise provided in section 761(2), the clerk of a city or township shall not issue an absent voter ballot to a registered elector in that city or township after 4 p.m. on the day before the election. An application received before a primary or special primary may be for

either that primary only, or for that primary and the election that follows. An individual may submit a voter registration application and an absent voter ballot application at the same time if applying in person with the clerk or deputy clerk of the city or township in which the individual resides. Immediately after his or her voter registration application and absent voter ballot application are approved by the clerk or deputy clerk, the individual may, subject to the identification requirement in section 761(6), complete an absent voter ballot at the clerk's office.

(2) Except as otherwise provided in subsection (1) and subject to section 761(3), at any time during the 75 days before an election, but not later than 8 p.m. on the day of an election, an elector may apply for an absent voter ballot. *The elector shall apply in person or by mail with the clerk of the township, city, or village in which the voter is registered.* The clerk of a city or township shall not send by first-class mail an absent voter ballot to an elector after 5 p.m. on the Friday immediately before the election. Except as otherwise provided in section 761(2), the clerk of a city or township shall not issue an absent voter ballot to a registered elector in that city or township after 4 p.m. on the day before the election. An individual may submit a voter registration application and an absent voter ballot application at the same time if applying in person with the clerk or deputy clerk of the city or township in which the individual resides. Immediately

after his or her voter registration application and absent voter ballot application are approved by the clerk, the individual may, subject to the identification requirement in section 761(6), complete an absent voter ballot at the clerk's office.

(3) An application for an absent voter ballot under this section may be made in any of the following ways:

(a) By a written request **signed** by the voter.

(b) On an absent voter ballot application form provided for that purpose by the clerk of the city or township.

(c) On a federal postcard application.

(4) An applicant for an absent voter ballot **shall sign** the application. Subject to section 761(2), a clerk or assistant clerk shall not deliver an absent voter ballot to an applicant who does not sign the application. A person shall not be in possession of a signed absent voter ballot application except for the applicant; a member of the applicant's immediate family; a person residing in the applicant's household; a person whose job normally includes the handling of mail, but only during the course of his or her employment; a registered elector requested by the applicant to return the application; or a clerk, assistant of the clerk, or other authorized election official. A registered elector who is requested by the applicant to return his or her absent voter

ballot application shall sign the certificate on the absent voter ballot application.

(5) The clerk of a city or township shall have absent voter ballot application forms *available in the clerk's office* at all times and shall furnish an absent voter ballot application form to anyone *upon a verbal or written request*. MCL 168.759 (emphasis added).

168. The Secretary of State sent *unsolicited* absentee ballot applications to every household in Michigan with a registered voter, no matter if the voter was still alive or lived at that address.

169. The Secretary of State also sent absentee ballot requests to non-residents who were temporarily living in Michigan, such as out-of-state students who are unregistered to vote in Michigan.

170. In many instances, the Secretary of State's absentee ballot scheme led to the Secretary of State sending ballot requests to individuals who did *not* request them. See Affidavit of Christine Muise, **Appendix** 46 at ¶3. Affidavit of Rena M. Lindevaldesen, **Appendix** 167 at ¶¶1,3 and 168 ¶5.

XV. Expert Analysis of these statutory violations reveals widespread inaccuracies and loss of election integrity.

171. Petitioners retained experts who analyzed the State's database for the Election and related data sets, including its own call center results. See generally, Expert Report of Matthew Braynard, **Appendix** 278-288.

172. Petitioners then retained an expert statistician to extrapolate the datasets statewide. See generally, Expert Report of Dr. Quanying “Jennie” Zhang, **Appendix** 289-299.

a. Unlawful unsolicited ballots cast in General Election

173. Braynard opined to a reasonable degree of scientific certainty that out of the 3,507,410 individuals who the State’s database identifies as applying for and the State sending an absentee ballot, that in his sample of this universe, 12.23% of those absentee voters did not request an absentee ballot to the clerk’s office. See Expert Report of Matthew Braynard, **Appendix** 282 at ¶1.

174. These data extrapolate with 99% confidence interval that between **326,460 and 531,467** of the absentee ballots the State issued that were counted were not requested by an eligible State voter (unsolicited). Expert Report of Dr. Quanying “Jennie” Zhang, **Appendix** 293 at ¶1.

b. Unsolicited ballots not cast in General Election

175. Out of the 139,190 individuals who the State’s database identifies as having not requested (unsolicited) and not returned an absentee ballot, 24.14% of these absentee voters in the State did not request an absentee ballot. See Expert Report of Matthew Braynard, **Appendix** 282 at ¶2.

176. These data extrapolate with 99% confidence interval that between **28,932 and 38,409** of the absentee ballots the State issued were not requested by

an eligible State voter (unsolicited). Expert Report of Dr. Quanying “Jennie” Zhang, **Appendix** 293 at ¶2.

177. Using the most conservative boundary, taken together, these data suggest Respondents violated Michigan Election Law by sending unsolicited ballots to at least **355,392 people**. *Id.* See also, Affidavit of Sandra Sue Workman, **Appendix** 197 at ¶28.

c. Absentee ballots were also cast but not properly counted (improperly destroyed or spoiled)

178. Out of the 139,190 individuals who the State’s database identifies as having not returned an absentee ballot, 22.95% of those absentee voters did in fact mail back an absentee ballot to the clerk’s office. See Expert Report of Matthew Braynard, **Appendix** 282 at ¶3.

179. This suggests many ballots were destroyed or not counted.

180. These data extrapolate with 99% confidence interval that between **29,682 and 39,048** of absentee ballots that voters returned but were not counted in the State’s official records. Expert Report of Dr. Quanying “Jennie” Zhang, **Appendix** 294 at ¶3.

181. Out of the 51,302 individuals that had changed their address before the election who the State’s database shows as having voted, 1.38% of those individuals denied casting a ballot. *Id.* at ¶4.

182. This suggests that bad actors exploited Respondents’ unlawful practice of sending unsolicited

ballots and improperly harvested ballots on a widespread scale.

183. Indeed, by not following the anti-fraud measures mandated by the Michigan Legislature, the Secretary of State's absentee ballot scheme invited the improper use of absentee ballots and promoted such unlawful practices as ballot harvesting. See Affidavit of Rhonda Weber, **Appendix** 43 at ¶7.

184. Using the State's databases, the databases of the several states, and the NCOA database, at least **13,248** absentee or early voters were not residents of Michigan when they voted. See Expert Report of Matthew Braynard, **Appendix** 282 at ¶5.

185. Of absentee voters surveyed and when comparing databases of the several states, at least **317** individuals in Michigan voted in more than one state. See Expert Report of Matthew Braynard, **Appendix** 282 at ¶6.

d. Respondents ignored other statutory signature requirements

186. The Secretary of State also sent ballots to people who requested ballots online, but failed to sign the request. See adverse Affidavit of Jonathan Brater, Head of Elections **Appendix** 317 at ¶10.

187. As of October 7, 2020, Brater admits sending at least **74,000 absentee ballots** without a signed request as mandated by the Michigan Legislature. *Id.*

188. By the Election, we must infer that the actual number of illegal ballots sent was much higher.

189. According to state records, another **35,109 absentee votes** counted by Respondent Benson listed no address. See Braynard Report, *supra*.

190. As a result of the absentee ballot scheme, the Secretary of State improperly flooded the election process with absentee ballots, many of which were fraudulent.

191. The Secretary of State's absentee ballot scheme violated the checks and balances put in place by the Michigan Legislature to ensure the integrity and purity of the absentee ballot process and thus the integrity and purity of the 2020 general election. See generally, Affidavits of Lucille Ann Huizinga, **Appendix** 185 at ¶31; Laurie Ann Knott, **Appendix** 180 at ¶¶34-35; Marilyn Jean Nowak **Appendix** 189 at ¶17; Marlene K. Hager, **Appendix** 192 at ¶¶19-23; and Sandra Sue Workman **Appendix** 198 at ¶33.

192. Without limitation, according to state records, **3,373 votes counted** in Michigan were ostensibly from voters 100 years old or older. See Braynard, *supra*.

193. According to census data, however, there are only about 1,747 centenarians in Michigan,⁵ 5 and of

⁵ Based on the US Census, 0.0175 percent of Michigan's population is 100 years or older (1,729 centenarians of the total of 9,883,640 people in Michigan in 2010). Census officials estimated Michigan's population at 9,986,857 as of July 2019, which puts the total centenarians at 1,747 or fewer. Source: <https://www.census.gov/content/dam/Census/library/publications/2012/dec/c2010sr-03.pdf>

those, we cannot assume a 100% voting rate. See McLaughlin, *supra*.

194. According to state records, at least **259 absentee ballots counted** listed their official address as “email” or “accessible by email,” which are unlawful *per se* and suggests improper ballot harvesting. See Braynard, *supra*.

195. According to state records, at least 109 people voted absentee from the Center for Forensic Psychiatry at 8303 PLATT RD, SALINE, MI 48176 (not necessarily ineligible felons, but the State does house the criminally insane at this location), which implies improper ballot harvesting.

196. According to state records, at least 63 people voted absentee at PO BOX 48531, OAK PARK, MI 48237, which is registered to a professional guardian and implies improper ballot harvesting.

197. When compared against the national social security and deceased databases, at least **9 absentee voters** in Michigan are confirmed dead as of Election Day, which invalidates those unlawful votes. See Braynard, *supra*.

198. Taken together, these irregularities far exceed common sense requirements for ensuring accuracy and integrity.

e. Respondents did not fix other recent errors or serious irregularities either

199. These are the same types of serious concerns raised by the Michigan Auditor General in December 2019, **Appendix** 205-244.

200. The Auditor General specifically found several violations of MCL 168.492:

- i. 2,212 Electors voted more than once;
- ii. 230 voters were over 122 years old;⁶ *Id.* at 217.
- iii. Unauthorized users had access to QVF; *Id.* at 219; and
- iv. Clerk and Elected Officials had not completed required training. *Id.* at 225.

201. The Auditor General found election officials had not completed required training to obtain or retain accreditation in 14% of counties, 14% of cities, and 23% of townships. *Id.*

202. The Auditor General found 32 counties, 83 cities, and 426 townships where the clerk had not completed initial accreditation training or, if already accredited, all continuing education training as required by law. *Id.*

203. The Auditor General found 12 counties, 38 cities, and 290 townships where the clerk had not completed the initial accreditation or continuing

⁶ The oldest living person confirmed by the *Guinness Book of World Records* is 117 years old and she lives in Japan, not Michigan.

education training requirements and no other local election official had achieved full accreditation. *Id.*

204. Not only were the Auditor General's red flags ignored by Respondent Benson, but she arguably made them worse through her absentee ballot scheme.

205. This not only suggests malfeasance, but the scheme precipitated and revealed manifest fraud and exploitation at a level Michigan has never before encountered in its elections.

206. The abuses permitted by the Secretary of State's ballot scheme were on display at the TCF Center, and elsewhere throughout the State.

207. Because this absentee ballot scheme applied statewide, it undermined the integrity and purity of the general election statewide, and it dilutes the lawful votes of millions of Michigan voters.

XVI. Flooding the Election with Private Money also Violates Federal Law and Raises the Appearance of Impropriety.

208. Inappropriate secrecy and lack of transparency began months before Election Day with an unprecedented and orchestrated infusion of hundreds of millions of dollars into local governments nationwide.

209. More than \$9.8 million in private money was poured into Michigan to create an unfair, two-tier election system in Michigan. See Carlson Report, *supra*.

210. This Election will be remembered for the evisceration of state statutes designed to treat voters equally, thereby causing disparate treatment of voters and thus violating the constitutional rights of millions of Michiganders and Americans citizens.

211. To date, Petitioners and related experts and investigations have uncovered more than \$400 million funneled through a collection of non-profits directly to local government coffers nationwide dictating to these local governments how they should manage the election, often contrary to state law. See Carlson Report, *supra*.

212. These funds were mainly used to: 1) pay “ballot harvesters” bounties, 2) fund mobile ballot pick up units, 3) deputize and pay political activists to manage ballots; 4) pay poll workers and election judges (a/k/a inspectors or adjudicators); 5) establish drop-boxes and satellite offices; 6) pay local election officials and agents “hazard pay” to recruit cities recognized as Democratic Party strongholds to recruit other cities to apply for grants from non-profits; 7) consolidate AVCBs and counting centers to facilitate the movement of hundreds of thousands of questionable ballots in secrecy without legally required bi-partisan observation; 8) implement a two-tier ballot “curing” plan that unlawfully counted ballots in Democrat Party strongholds and spoiled similarly situated ballots in Republican Party areas; and 9) subsidized and designed a scheme to remove the poll watchers from one political party so that the critical responsibility of determining the accuracy of the ballot and the integrity of the count could be done without oversight.

213. The Help America Vote Act of 2002 (HAVA) controls how money is spent under federal law. See 42 USC 15301, *et seq*; see also, MCL 168.18. In turn, Congress used HAVA to create the non-regulatory Election Assistance Commission (EAC), which was delegated the responsibility of providing information, training standards, and funding management to states. The mechanism for administering HAVA is legislatively adopted state HAVA Plans.

214. Michigan's HAVA Plan is undisputed. See Certified Michigan HAVA State Plan of 2003, Terri Lynn Land Secretary, FR Vol. 69. No. 57 March 24 2004.

215. These private funds exceeded the federal government's March 2020 appropriation under HAVA and CARES Acts to help local governments manage the general election during the pandemic.

216. As these unmonitored funds flowed through the pipeline directly to hand-picked cities, the outlines of two-tiered treatment of the American voter began to take place. Local governments in Democrat Party strongholds were flush with cash to launch public-private coordinated voter registration drives allowing private access directly to government voter registration files, access to early voting opportunities, the provision of incentives such as food, entertainment, and gifts for early voters, and the off-site collection of ballots. Outside the urban core and immediate suburbs, unbiased election officials were unable to start such efforts for lack of funding.

217. Difficult to trace private firms funded this scheme through private grants, which dictated

methods and procedures to local election officials and where the grantors retained the right to “claw-back” all funds if election officials failed to reach privately set benchmarks—thus entangling the private-public partnership in ways that demand transparency—yet none has been given.

218. The state officials implicated, and the private interests involved, have refused repeated demands for the release of communications outlining the rationale and plan behind spending more than \$400 million provided directly to various election officials before the 2020 general election.

219. These funds greased the skids of Democrat-heavy areas violating mandates of the Michigan Legislature, the Michigan HAVA Plan, the dictates of Congress under HAVA, and equal protection and Separation of Powers demanded under the United States Constitution.

220. In Michigan specifically, CTCL had awarded eleven grants as of the time of this survey. CTCL funded cities were:

- i. Detroit (\$3,512,000);
- ii. Lansing (\$443,742);
- iii. East Lansing (\$43,850);
- iv. Flint (\$475,625);
- v. Ann Arbor (\$417,000);
- vi. Muskegon (\$433,580);

- vii. Pontiac (\$405,564);
- viii. Romulus (\$16,645);
- ix. Kalamazoo (\$218,869); and
- x. Saginaw (\$402,878).

See Expert Report of James Carlson, **Appendix 255** (last updated November 25, 2020). RECEIVED by MSC 11/26/2020 2:44:12 AM 45

221. In the 2016 election, then candidate Donald Trump only won Saginaw; then candidate Hillary Clinton won the remaining cities.

222. In 2020, CTCL funneled **\$9,451,235 (95.7%)** to the ten jurisdictions where candidate Clinton won and only **\$402,878 (4.3%)** to where candidate Trump won. *Id.*

223. On its face, this raises serious equal protection concerns under *Bush v Gore*, which requires city, county, and state officials to faithfully—and even-handedly—administer Michigan Election Law fairly between cities, counties, and across the state.

XVII. Private Money Improperly Flooded into Democratic Party strongholds

224. Only the States themselves or certain federal agencies may spend money on federal elections under HAVA.

225. Counties and cities cannot spend money on federal elections without going through the proper

state and federal channels under HAVA transparency rules.

226. CTCL's private federal elections grants to the City of Detroit for \$3,512,000 violate federal law—and thus in turn, offend the rights of voters under the Michigan Constitution.

227. CTCL's private federal elections grants to the City of Lansing for \$443,742 violate federal law—and thus in turn, offend the rights of voters under the Michigan Constitution.

228. CTCL's private federal elections grants to the City of Flint for \$475,625 violate federal law—and thus in turn, offend the rights of voters under the Michigan Constitution.

229. CTCL's private federal election grants to the Michigan cities tortiously interfere with Petitioners' legal rights under federal law to legally-authorized, uniform, and fair federal elections. See *The League of Women Voters v Blackwell*, 340 F Supp. 2d 823 (ND Ohio 2004).

230. A government's election policy favoring certain demographic groups injures the disfavored demographic groups. "Parity of reasoning suggests that a government can violate the Elections Clause if it skews the outcome of an election by encouraging and facilitating voting by favored demographic groups." *Young v Red Clay Consol Sch Dist*, 122 A3d 784, 858 (Del Ch 2015).

231. Upon information and belief, the evidence will show that this flood of private money to

Democratic-controlled areas improperly skewed the Election results for Joe Biden and unfairly prejudiced Petitioners.

232. Petitioners do not want progressive Democrat candidates to win in the general election, and the Petitioners are injured by CTCL's private federal election grants because they are targeted to cities with progressive voter patterns—causing more progressive Democrat votes and a greater chance that progressive Democrat candidates will win. See, *id.*

XVIII. Irreparable Harm to Petitioners and All Legal Voters

233. Petitioners Johnson and Dr. Traver voted for the Republican Party candidates during the 2020 general election. These Petitioners voted for Donald J. Trump for President and John James for the United States Senate. But for the unlawful acts set forth in this Petition, President Trump will win Michigan's 16 electoral votes and John James would be elected to the United States Senate, thereby promoting Petitioners' political interests.

234. The unlawful acts set forth in this Petition have caused, and will continue to cause, Petitioners irreparable harm.

235. Based on the statutory violations and other misconduct, and evidence of widespread mistake, irregularities, and fraud, it is necessary to order appropriate relief, including, but not limited to, enjoining the statewide certification of the election results pending a full and independent investigation, this Court taking immediate custody and control of the ballots,

poll books, and other indicia of the voting, ordering a recount of the election results, voiding the election, and ordering a new election as permitted by law for down ballot candidates, or at a minimum, voiding the illicit absentee ballots to remedy the unfairness, irregularities, and fraud.

236. Petitioners have no adequate remedy at law and will suffer serious and irreparable harm unless the injunctive relief requested here is granted.

FIRST CLAIM FOR RELIEF (Due Process)

237. Petitioners incorporate by reference all stated paragraphs.

238. Because of the acts, policies, practices, procedures, and customs, created, adopted, and enforced under color of state law, Respondents have deprived Petitioners of the right to due process guaranteed by the Due Process Clause of the Fourteenth Amendment to the United States Constitution and the Due Process Clause of the Michigan Constitution.

239. In Michigan, Respondents have a duty to ensure the accuracy and integrity of the election.

240. In Michigan, Respondents owe citizens an audit of election results that is meaningful and fair and to safeguard against election abuses.

241. Respondents have failed to satisfy these duties. Therefore, Petitioners are entitled to mandamus to prevent further constitutional harm.

242. The right of qualified citizens to vote in a state election involving federal candidates is recognized as a fundamental right under the Fourteenth Amendment. *Harper v Va State Bd of Elections*, 383 US 663, 665 (1966); see also *Reynolds*, 377 US at 554 (“The Fourteenth Amendment protects the] the right of all qualified citizens to vote, in state as well as in federal elections.”).

243. The fundamental right to vote protected by the Fourteenth Amendment is cherished in our nation because it “is preservative of other basic civil and political rights.” *Reynolds*, 377 at 562.

244. Voters have a right to cast a ballot in an election free from the taint of intimidation and fraud, and confidence in the integrity of our electoral processes is essential to the functioning of our constitutional republic.

245. Included within the right to vote, secured by the United States and Michigan Constitutions, is the right of qualified voters within a State to cast their ballots and have them counted if they are validly cast. The right to have the vote counted means counted at full value without dilution or discount.

246. Every voter in a federal election, whether he votes for a candidate with little chance of winning or for one with little chance of losing, has a right under the Constitution to have his vote fairly counted, without its being distorted by fraudulently cast votes.

247. Invalid or fraudulent votes debase and dilute the weight of each validly cast vote.

248. The right to an accurate count is a right possessed by each voting elector, and when the importance of his vote is negated, even in part, he has been injured in the free exercise of a right or privilege secured to him by the laws and Constitutions of the United States and Michigan.

249. Practices that promote the casting of illegal or unreliable ballots or fail to contain basic minimum guarantees against such conduct—such as the Secretary of State’s absentee ballot scheme—can and did violate the right to due process by leading to the dilution of validly cast ballots. See *Reynolds*, 377 US at 555 (“[T]he right of suffrage can be denied by a debasement or dilution of the weight of a citizen’s vote just as effectively as by wholly prohibiting the free exercise of the franchise.”).

250. The Due Process Clauses of the Fourteenth Amendment and the Michigan Constitution protect the right to vote from conduct by state officials which undermines the fundamental fairness of the electoral process.

251. Separate from the Equal Protection Clause, the Fourteenth Amendment’s Due Process Clause protects the fundamental right to vote against the disenfranchisement of a state electorate. The Due Process Clause of the Michigan Constitution protects the same.

252. When an election process reaches the point of patent and fundamental unfairness, as in this case, there is a due process violation.

253. As a result, the right to vote, the right to have one's vote counted, and the right to have one's vote given equal weight are basic and fundamental constitutional rights incorporated in the Due Process Clause of the Fourteenth Amendment, the Due Process Clause of the Michigan Constitution, and 42 USC § 1983.

254. Respondents have a duty to guard against the deprivation of the right to vote through the dilution of validly cast ballots caused by ballot fraud or election tampering. The Secretary of State and the Board failed in their duties.

255. The actions of election officials at the TCF Center and the Secretary of State's absentee ballot scheme have caused the debasement and dilution of the weight of Petitioners' votes in violation of the Due Process Clause of the Fourteenth Amendment, the Due Process Clause of the Michigan Constitution, and 42 USC § 1983.

256. As a direct and proximate result of Respondents' violation of due process, Petitioners have suffered irreparable harm, including the loss of their fundamental constitutional rights, disparate treatment, and dilution of their lawful votes, entitling them to declaratory and injunctive relief.

SECOND CLAIM FOR RELIEF

(Equal Protection)

257. Petitioners incorporate by reference all stated paragraphs.

258. Because of the acts, policies, practices, procedures, and customs, created, adopted, and enforced under color of state law, Respondents have deprived Petitioners of the equal protection of the law guaranteed under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, the Michigan Constitution's counterpart, and 42 USC § 1983.

259. The actions of election officials at the TCF Center and the Secretary of State's absentee ballot scheme have caused the debasement and dilution of the weight of Petitioners' votes in violation of the equal protection guarantee of the Fourteenth Amendment and the Michigan Constitution.

260. In Michigan, Respondents have a duty to ensure the accuracy and integrity of the election.

261. In Michigan, Respondents owe citizens an audit of election results that is meaningful and fair and to safeguard against election abuses.

262. Respondents have failed to satisfy these duties. Therefore, Petitioners are entitled to mandamus to prevent further constitutional harm.

263. As a direct and proximate result of Respondents' violation of the equal protection guarantee of the United States and Michigan Constitutions, Petitioners have suffered irreparable harm, including the loss of their fundamental constitutional rights, disparate treatment, and dilution of their lawful votes, entitling them to declaratory and injunctive relief.

THIRD CLAIM FOR RELIEF**(Article II, section 1, clause 2)**

264. Petitioners incorporate by reference all stated paragraphs.

265. Through the absentee ballot scheme created, adopted, and enforced by the Secretary of State under color of state law and without legislative authorization, Respondent Benson violated Article II, section 1, clause 2 of the United States Constitution.

266. In Michigan, Respondents have a duty to ensure the accuracy and integrity of the election.

267. In Michigan, Respondents owe citizens an audit of election results that is meaningful and fair and to safeguard against election abuses.

268. Respondents have failed to satisfy these duties. Therefore, Petitioners are entitled to mandamus to prevent further constitutional harm.

269. As a direct and proximate result of Respondent Benson's violation of the Michigan and United States Constitutions, Petitioners have suffered irreparable harm, including the loss of their fundamental constitutional rights, disparate treatment, and dilution of their lawful votes, entitling them to declaratory and injunctive relief.

FOURTH CLAIM FOR RELIEF**(Mandamus and *Quo Warranto*)**

270. Because of the exigencies caused by the statewide certification of this unlawful scheme by the Board of Canvassers on November 23, 2020, Petitioners have no recourse to protect their civil liberties except through extraordinary relief from this Court.

271. The last popular election unstained by Respondents' scheme installed the current Michigan Legislature. By fundamental design, this Legislature is tasked with ensuring Petitioners' constitutional rights are upheld and safeguarded. Moreover, under the United States Constitution, only the legislatures of the several states may select its electors when the statutes proscribed for a popular vote have been corrupted by executive branch officials.

272. The Michigan Legislature has delegated certain tasks to Respondents. However, Respondents failed to follow the clear and unambiguous language of the election law statutes, as set forth in this Petition.

273. This abuse of authority cuts at the root of the Separation of Powers and cannot be countenanced by this Court. Moreover, the Michigan Legislature has provided this Court with unique authority to hear and resolve election disputes on an expediated basis.

274. Moreover, because the Board of Canvassers certified the Election without conducting an audit and investigating the multiple allegations of election fraud and irregularities, Petitioners have been aggrieved by this determination, requiring this Court to issue the requested relief.

275. As a direct and proximate result of Respondents' violations of the United States Constitution, the Michigan Constitution, and Michigan Election Law, Petitioners have been aggrieved and have suffered irreparable harm, including the loss of their fundamental constitutional rights, disparate treatment, and dilution of their lawful votes, entitling them to declaratory and injunctive relief.

PRAYER FOR RELIEF

WHEREFORE, Petitioners ask this Court to narrowly tailor its relief to:

A) ensure the Separation of Powers and protect the accuracy and integrity of the November 2020 General Election by giving the Michigan Legislature an opportunity to finish its constitutionally-mandated work to pick Michigan's electors;

B) take custody and control of all ballots, ballot boxes, poll books, and other indicia of the Election from Respondents or their designee to prevent further irregularities and to ensure the Michigan Legislature and this Court have a chance to perform a constitutionally sound audit of lawful votes;

C) segregate any ballots counted or certified inconsistent with Michigan Election Law;

D) declare that Respondent Benson violated Petitioners' fundamental constitutional rights as explained in this Petition;

E) segregate any ballots attributable to the Secretary of State's absentee ballot scheme and declare the Secretary of State's absentee ballot scheme unlawful;

F) appoint a special master or committee from both chambers of the Michigan Legislature to investigate all claims of mistake, irregularity, and fraud at the TCF Center and to verify and certify the legality of all absentee ballots ordered through the Secretary of State's absentee ballot scheme. The special master may recommend, including a recommendation with findings, that illegal votes can be separated from legal votes to determine a proper tabulation, or that the fraud is of such a character that the correct vote cannot be determined;

G) alternatively, to enjoin Respondents or Governor Whitmer from finally certifying the election results and declaring winners of the 2020 general election to the United States Department of State or United States Congress until after a special master can be appointed to review and certify the legality of all absentee ballots ordered through the Secretary of State's absentee ballot scheme;

H) alternatively, to enjoin Respondents from finally certifying the election results and declaring winners of the 2020 general election until a special master can be appointed to independently review the election procedures employed at the TCF Center and throughout the State;

I) alternatively, to enjoin Respondents from finally certifying the election results and declaring winners of the 2020 general election until a special master can be appointed to review and certify the legality of

all absentee ballots submitted in Wayne County and throughout the State;

J) to grant such other and further relief as this Court should find just and proper. Respectfully submitted,

Dated: November 26, 2020

**THOMAS MORE SOCIETY—AMISTAD
PROJECT AS SPECIAL COUNSEL**

/s/ Ian A. Northon

Ian A. Northon, Esq. (P65082)

Gregory G. Timmer (P39396)

RHOADES MCKEE, PC

55 Campau Avenue Suite 300

Grand Rapids, MI 49503

Tel.: (616) 233-5125 Fax: (616) 233-5269

ian@rhoadesmckee.com

ggtimmer@rhoadesmckee.com

/s/ Robert J. Muise

Robert J. Muise, Esq. (P62849)

AMERICAN FREEDOM LAW CENTER

PO Box 131098 Ann Arbor, Michigan 48113

Tel: (734) 635-3756 Fax: (801) 760-3901

rmuise@americanfreedomlawcenter.org

/s/ Erin E. Mersino

Erin Elizabeth Mersino, Esq. (P70886)

GREAT LAKES JUSTICE CENTER

5600 W. Mt. Hope Highway

Lansing, Michigan 48917

(517) 322-3207

erin@greatlakesjc.org

COUNSEL FOR PETITIONERS

STATE OF MICHIGAN
COURT OF CLAIMS

NEVIN P. COOPER-KEEL, J.D.,

Plaintiff,

v

OPINION AND ORDER
DENYING PRELIMINARY IN-
JUNCTION

JOCELYN BENSON, Case No. 20-000091-MM
in her official capacity as
Secretary of State, Hon. Cynthia Diane
Stephens
Defendant.

_____ /

YVONNE BLACK,

Plaintiff,

v

Case No. 20-000096-MZ
Hon. Cynthia Diane
Stephens

JOCELYN BENSON,
in her official capacity as
Secretary of State,

Defendant.

_____ /

Pending before the Court in these consolidated cases are plaintiffs' respective motions for preliminary injunctive relief filed in Docket Nos. 20-000091-MM

and 20-000096-MZ.¹ For the reasons that follow, the motions are DENIED.

I. BACKGROUND

The pertinent underlying facts in this case are largely undisputed. This case arises out of defendant Secretary of State Jocelyn Benson's decision to mail absent voter ballot applications to all registered voters in this state for the upcoming August (primary) and November (general) elections. The parties agree that only the absent voter ballot applications have been sent to this state's electorate. There is no allegation that the defendant has mailed ballots. There is also no dispute that, in order to receive an absent voter ballot, a recipient must fill out, sign, and return the application. See MCL 168.759(4). Plaintiffs argue that defendant lacked authority to mail absent voter ballot applications in this state-wide, unsolicited fashion. Plaintiffs ask the Court to conclude that the Secretary of State exceeded her constitutional and statutory authority by sending out the applications and to preclude the defendant from directing or even encouraging local clerks to do the same. Plaintiffs argue that MCL 168.759 is the sole descriptor of the manner in which an elector may request and receive an absent voter ballot. They assert that the methods for a request for an application for an absent voter ballot found in MCL 168.759(3), exclude any other process. Citing *Taylor v Currie*, 277 Mich App 85; 743 NW2d

¹ The Court consolidated these matters along with *Davis v Jocelyn Benson* (Docket No. 20-000099- MM). Mr. Davis, as confirmed at the June 16, 2020, hearing conducted via Zoom, is not seeking preliminary injunctive relief. As a result, this opinion and order does not address his pending request for declaratory relief.

571 (2007), they argue that the request for an absent voter application must originate from the individual registered elector. They note that *Taylor*, 277 Mich App at 95-97, held that local election officials are prohibited from sending unsolicited absent voter ballot applications to electors and by analogy so is the defendant. The defendant to the contrary argues that her supervisory role over elections coupled with Const 1963, art 2, § 4(1)(g), authorizes her to send applications for absent voter ballots to persons whose names are on lists of registered voters without a request from the qualified elector.

II. ANALYSIS

Plaintiffs Cooper-Keel and Black request preliminary injunctions. A preliminary injunction is an “extraordinary and drastic” form of equitable relief that “should be employed sparingly and only with full conviction of its urgent necessity.” *Senior Accountants, Analysts & Appraisers Ass’n v Detroit*, 218 Mich App 263, 269; 553 NW2d 679 (1996). When considering whether to grant this extraordinary form of relief, the Court must consider:

(1) whether the applicant has demonstrated that irreparable harm will occur without the issuance of an injunction; (2) whether the applicant is likely to prevail on the merits; (3) whether the harm to the applicant absent an injunction outweighs the harm an injunction would cause to the adverse party; and (4) whether the public interest will be harmed if a preliminary injunction is issued. [*Slis v State*, __ Mich App __, __; __ NW2d __ (2020) (Docket Nos. 351211; 351212), slip op at 12.]

A. PLAINTIFFS DID NOT SHOW IRREPARABLE HARM

The Court will begin with the first factor listed above—irreparable harm. Our Supreme Court has explained that a “particularized showing of irreparable harm . . . is . . . an indispensable requirement to obtain a preliminary injunction.” *Pontiac Fire Fighters Union Local 376 v Pontiac*, 482 Mich 1, 9; 753 NW2d 595 (2008) (citation and quotation marks omitted). The showing of irreparable harm must be particularized, i.e., “[t]he mere apprehension of future injury or damage cannot be the basis for injunctive relief.” *Id.*

Plaintiffs failed to demonstrate a particularized showing of irreparable harm, and this failure is fatal to their request for preliminary injunctive relief. Plaintiff Black argues that, without injunctive relief, she and every elector in this state will be harmed because the Secretary of State will be allowed to exercise power she does not possess. Plaintiff Black alleges she is harmed by the defendant’s failure to adhere to strict processes outlined in the Michigan Election Law, MCL 168.1 *et seq.* Furthermore, she asserts that unsolicited mailing of absent voter ballot applications deprives her and all electors of their ability to choose an absent voter ballot as guaranteed by Const 1963, art 2, § 4. See art 2, § 4(1)(g) (guaranteeing to every qualified elector in this state “The right, once registered, to vote an absent voter ballot without giving a reason, during the forty (40) days before an election, and *the right to choose whether the absent voter ballot is applied for*, received and submitted in person or by mail”) (emphasis added).

Neither allegation will suffice to make the requisite showing of irreparable harm. As to her first allegation, a generalized assertion that an action violates the law or Constitution is not “particularized” and fails to demonstrate the requisite irreparable injury. See *Hammel v Speaker of House of Representatives*, 297 Mich App 641, 652; 825 NW2d 616 (2012). Here, plaintiff Black like the plaintiff in *Hammel* has done nothing more than assert, generally, that the law has been violated. With respect to plaintiff Black’s second assertion of irreparable harm, the Court concludes at this stage that no constitutionally guaranteed choice has been taken from the plaintiff or this state’s electorate. As counsel for the Secretary of State noted at oral argument, only applications for absent voter ballots were sent to this state’s registered electors. Recipients of the applications can choose to fill them out and apply for an absent voter ballot. Alternatively, recipients may apply by another method, they may ignore the applications altogether, or they may even throw away the applications. The Secretary of State’s actions did not compel anyone to act in a certain way, nor did her actions harm this state’s electors. The choice regarding whether to exercise the constitutional right to vote by absentee ballot set forth in art 2, § 4, and the decision of how to apply for the ballot, should one choose to apply, was not taken from an elector by way of the mailing of mere absent voter ballot applications. Accordingly, plaintiff Black has not demonstrated irreparable harm.

Plaintiff Cooper-Keel’s assertion of irreparable harm also falls short of convincing the Court that preliminary injunctive relief is warranted. He alleges that the sending of the absent voter ballot

applications is a ploy designed to solicit early voting that would prevent him, or other candidates, from reaching voters before votes are cast. He argues, also that the defendant's actions violate what he has described as a legal "preference" for in person voting. Neither argument persuades this court that he has met his burden of particularized injury. The Secretary of State has only sent applications for absent voter ballots. At most, this action informed registered electors of their constitutional right to cast an absent voter ballot without reason and provided electors with an option for applying for an absentee ballot should the elector choose to do so. Indeed, registered electors must complete an application and return it to the pertinent authority before they even receive an absentee ballot. The same voters had the option of exercising that right by utilizing the methods described in MCL 168.759(4). In either case, the ability of candidates to reach voters right up to election day is the same. The Secretary of State's decision to mail applications—which may be ignored or discarded at the choice of the recipient—has not occasioned the type of injury alleged by plaintiff Cooper-Keel. As to his argument that there is some legal preference for in person voting is unsupported by any authority.

In sum, neither plaintiff has demonstrated irreparable harm that would warrant the issuance of preliminary injunctive relief. The failure to make the required showing on this "indispensable" factor for establishing entitlement to preliminary injunctive relief is enough to convince the Court to deny the respective motions. See *Pontiac Fire Fighters Union*, 482 Mich at 9.

**B. PLAINTIFFS HAVE NOT ESTABLISHED
A LIKELIHOOD OF SUCCESS ON THE
MERITS**

Although the above analysis would suffice to deny the motions for preliminary injunctive relief, the Court will briefly comment on the respective plaintiffs' ability to demonstrate a likelihood of success on the merits. At this stage, and without making a definitive ruling on the merits of the issues presented in this case, the Court is not convinced plaintiffs can make the requisite showing of success, thereby providing an additional basis to reject their claims for preliminary injunctive relief. To that end, the statutes and caselaw plaintiffs have cited in support of their arguments only focus on *local election officials* and the authority (or lack thereof) bestowed upon those local officials. See, e.g., MCL 168.759; *Taylor v Currie*, 277 Mich App 85; 743 NW2d 571 (2007). At this stage in the litigation, statutes and caselaw declaring that local election officials cannot send unsolicited absent voter ballot applications does not convince the Court that plaintiffs are likely to prevail on the merits of their allegations about the Secretary of State. Indeed, the Secretary of State's authority was not at issue in *Taylor*, and there is some support for the notion that she possesses superior authority as compared to local election officials. See MCL 168.21 (declaring that "[t]he secretary of state shall be the chief election officer of the state and shall have supervisory control over local election officials in the performance of their duties under the provisions of this act."). Furthermore, the statutes and caselaw cited by plaintiffs do not account for the change to this state's constitution effectuated by way of 2018 Proposal 3, which enshrined in this state's constitution the right to vote by

absentee ballot for any reason. That the right to vote by absentee ballot is a new, self-executing right, see Const 1963, art 2, § 4,² raises the specter of whether plaintiffs' proposed reading of the statute and caselaw cited above might infringe upon or unduly restrict the right established in art 2, § 4. Furthermore, adopting plaintiffs' proposed construction appears, at least at this stage of the litigation, to run the risk of adopting impermissible restrictions on a self-executing constitutional right. See *League of Women Voters of Mich v Secretary of State*, __ Mich App __, __; __ NW2d __ (2020) (Docket Nos. 350938; 351073), slip op at 11 (cautioning against the imposition of additional obligations on self-executing constitutional provisions).

III. CONCLUSION

Plaintiffs are unable to demonstrate the existence of a particularized irreparable harm, and they are unable, at this stage of the litigation to establish a likelihood of success on the merits. For those reasons:

IT IS HEREBY ORDERED that plaintiff Nevin Cooper-Keel's and plaintiff Yvonne Black's respective motions for preliminary injunction are DENIED.

² Art 2, § 4 expressly declares that the right to vote by absentee ballot, like all rights listed in art 2 § 4, "shall be self-executing" and that the Constitution must be "liberally construed in favor of voters' rights in order to effectuate its purposes."

This is not a final order and it does not resolve the last pending claim or close the case.

June 18, 2020

Cynthia Diane Stephens

Cynthia Diane Stephens

Judge, Court of Claims

STATE OF MICHIGAN
COURT OF CLAIMS

NEVIN P. COOPER-KEEL, J.D.,
Plaintiff,

v

OPINION AND ORDER
GRANTING SUMMARY
DISPOSITION

JOCELYN BENSON, Case No. 20-000091-MM
in her official capacity as
Secretary of State, Hon. Cynthia Diane
Stephens
Defendant.

_____/

YVONNE BLACK, Case No. 20-000096-MZ
Plaintiff,
v Hon. Cynthia Diane
Stephens

JOCELYN BENSON,
in her official capacity as
Secretary of State,
Defendant.

_____/

ROBERT DAVIS, Case No. 20-000099-MM
Plaintiff,
v Hon. Cynthia Diane
Stephens

JOCELYN BENSON,
in her official capacity as
Secretary of State,
Defendant.

_____/

Pending before the Court in these consolidated cases is defendant's motion for summary disposition filed pursuant to MCR 2.116(C)(8) and (C)(10). Because the Court concludes that defendant had authority to send the absent voter ballot applications at issue, the motion is GRANTED and these consolidated cases are DISMISSED.

I. BACKGROUND

The pertinent underlying facts in this case are well known to the parties and they have already been set forth in this Court's June 18, 2020 opinion and order denying plaintiff Nevin Cooper-Keel's and Yvonne Black's motions for preliminary injunction. As a result, they need not be recited at length. The issue in this case concerns whether defendant Jocelyn Benson, as Secretary of State, has the authority to send unsolicited absent voter ballot applications to this state's registered voters. The Court's June 18, 2020 opinion and order concluded that plaintiffs Cooper-Keel and Black were unable, at that preliminary stage of the litigation, to demonstrate a likelihood of success on the merits with respect to this issue. After reviewing various amicus filings and the parties' summary disposition papers, the Court concludes that defendant possesses the requisite authority and that plaintiffs' complaints must be dismissed.

II. ANALYSIS

A. PERTINENT SECTIONS OF MICHIGAN ELECTION LAW

In support of their assertions that defendant lacked authority to send unsolicited absent voter

ballot applications to this state's registered voters, plaintiffs focus on statutes and caselaw— discussed *infra*—describing the role of county clerks in the absentee voting process. Notably, they focus on MCL 168.759, which describes how “an application for an absent voter ballot *under this section*” may be made. (Emphasis added). Such application may be made in any of the following ways:

- (a) By a written request signed by the voter.
- (b) On an absent voter ballot application form provided for that purpose by the clerk of the city or township.
- (c) On a federal postcard application. [MCL 168.759(3).]

In general, MCL 168.759(1)-(3) reference the manner in which a voter may apply for an absent voter ballot. These subsections also describe the rather passive role a township, city, or village clerk has in the process, i.e., responding to a request, but only after it has been made.

B. AUTHORITY OF THE SECRETARY OF STATE

The Secretary of State is a single executive heading a principal department under Const 1963, art 5, § 3. The Constitution declares that, as a single executive, the Secretary of State “shall” “perform duties prescribed by law.” With respect to her statutory duties and the Michigan Election Law, MCL 168.21 declares that the Secretary of State “shall be the chief election officer of the state and shall have supervisory control over local election officials in the performance

of their duties under the provisions of this act.” Hence, she is granted greater authority than those local election officials over whom she has supervisory control. And in her role as “chief election officer” of this state, the Secretary of State possesses authority to promulgate rules pursuant to the Administrative Procedures Act. MCL 168.31(1)(a). In addition, the statute declares that she “shall” “Advise and direct local election officials as to the proper methods of conducting elections.” MCL 168.31(1)(b). She also “shall” provide information and instructions that include “specific instructions on assisting voters in casting their ballots, directions on the location of voting stations in polling places, procedures and forms for processing challenges, and procedures on prohibiting campaigning in the polling places as prescribed in this act.” MCL 168.31(1)(c). Furthermore, she also “shall,” in her discretion, “Prescribe and require uniform forms, notices, and supplies the secretary of state considers advisable for use in the conduct of elections and registrations.” MCL 168.31(1)(e). This subsection gives the Secretary of State authority and discretion to supply that which she “*considers advisable*” in the conduct of elections. This state’s Supreme Court has interpreted a previous iteration of MCL 168.31—albeit one containing substantially the same language—and concluded that the same gave the Secretary of State discretionary authority with respect to the conduct of elections. See *Hare v Berrien Co Bd of Election Comm’rs*, 373 Mich 526, 530-531; 129 NW2d 864 (1964).

C. 2018 PROPOSAL 3

In 2018, this state’s electorate adopted Proposal 3, which amended Const 1963, art 2, § 4, in ways that

are pertinent to this case. As amended, art 2, § 4(1)(g) provides that every United States citizen who is a qualified elector in this state shall have the right “once registered, to vote an absent voter ballot without giving reason, during the forty (40) days before an election, and the right to choose whether the absent voter ballot is applied for, received and submitted in person or by mail.” This right is self-executing, and art 2, § 4 “shall be liberally construed in favor of voters’ rights in order to effectuate its purposes.” In short, Proposal 3 significantly expanded absentee voting in this state by guaranteeing this state’s electorate the constitutional right to utilize this voting method for any reason. The creation of a constitutional right to vote by absent voter ballot did not, however, alter or amend the Legislature’s role under art 2, § 4. Notably, the Legislature, as it had before the adoption of Proposal 3, retained its role under art 2, § 4(2) “to regulate the time, place and manner of all nominations and elections, to preserve the purity of elections, to preserve the secrecy of the ballot, to guard against abuses of the elective franchise, and to provide for a system of voter registration and absentee voting.”

D. THE SECRETARY OF STATE POSSESSED THE REQUISITE AUTHORITY

In light of the above statutory and constitutional provisions, the Court concludes that defendant possessed the authority to send absent voter ballot applications to this state’s electorate, even where no request for such application has been made. Defendant has clear and broad authority to provide advice and direction with respect to the conduct of elections and registrations. See MCL 168.31(1)(c); MCL 168.21;

Hare, 373 Mich at 530-531. That is all she has done here: she has provided direction for conducting an election during an unprecedented global pandemic involving a highly contagious respiratory virus. In addition, defendant's statutory authority permits her to prescribe and require supplies and forms that she "considers advisable for use in the conduct of elections and registrations." MCL 168.31(1)(e). Here, defendant sent supplies to registered voters which she considers advisable for conducting an election during the midst of a global pandemic by mailing out absent voter ballot applications. Given the ubiquitous attention paid to the importance of social distancing and limiting large gatherings, particularly indoor gatherings, the notion that it would be "advisable" to inform this state's electorate of its constitutional right to vote by absentee ballot, as opposed to in-person voting, cannot reasonably be disputed. Furthermore, it must be noted that all that has been sent are applications for absent voter ballots, not absent voter ballots themselves. Electors retain the choice whether to fill out the applications. All defendant has done is to send out an application that makes it easier to make that choice and to exercise the new constitutional right to vote by absentee ballot for any reason, having decided that the same was "advisable" for the conduct of the 2020 primary and general elections. In short, the Secretary of State's express statutory authority contemplates the sending of the very "supplies," that are at the heart of plaintiffs' complaints and requests for relief. There is no merit to any contention by plaintiffs that defendant's actions were contrary to the Michigan Election Law.

The Court’s conclusion that the Secretary of State’s actions were authorized by law is strengthened by the role played by Proposal 3’s amendments to art 2, § 4. To that end, art 2, § 4 now guarantees that this state’s electorate enjoys the constitutional right to vote, for any reason, by absent voter ballot. This right is self-executing, meaning that it is not subject to additional legislative obligations. See *Promote the Vote v Secretary of State*, __ Mich App __, __; __ NW2d __ (2020) (Docket Nos. 353977; 354096), slip op at 14. Plaintiffs’ attempts to read MCL 168.759—which only applies to local election officials—as placing constraints on how absent voter ballot applications may be distributed by defendant run contrary to the self-executing nature of the Constitutional right bestowed by art 2, § 4. In this respect, it appears to the Court that the Legislature would be prohibited by art 2, § 4 from enacting a statute that would prevent defendant from sending absent voter ballot applications to this state’s registered voters. Such a result would surely impose an unwarranted obligation on a self-executing Constitutional right. As a result, the Court declines to read existing statutes as prohibiting defendant from taking this action. Indeed, art 2, § 4 directs that the constitutional right must be “liberally construed” in favor of the right to vote by absentee ballot. The Secretary of State, as chief election officer of this state, merely sent applications that will make it easier for voters to exercise that constitutional right, should they choose to do so.

E. PLAINTIFFS’ CASELAW IS UNPERSUASIVE

The caselaw on which plaintiffs rely in support of a contrary result is unpersuasive. Plaintiffs first cite

Taylor v Currie, 277 Mich App 85; 743 NW2d 571 (2007). In that case, the Detroit City Clerk, who was a candidate for reelection in that year, authorized a mass-mailing of absent voter ballot applications to potential absentee voters. *Id.* at 88. The application was accompanied by a cover letter in which the Clerk, Jackie Currie, identified herself as “the City Clerk and Chairperson for the Election Commission.” *Id.* On appeal, the issue concerned whether MCL 168.759 prohibited *city clerks* from mailing unsolicited applications for absent voter ballots to prospective voters. *Id.* at 93. Interpreting MCL 168.759 and the Clerk’s authority under that statute, the Court of Appeals concluded that the Clerk lacked the authority to send absent voter ballot applications without a verbal or written request from a voter. *Id.* at 97. Informing this decision was the idea that the “general rule, *with regard to municipal officers*, is that they only have such powers as are expressly granted by statute or by sovereign authority or those which are necessarily to be implied from those granted.” *Id.* at 94 (citation and quotation marks omitted; emphasis added). Applying this general rule to MCL 168.759, the Court explained that it was:

clear that the city clerk has no powers concerning the distribution of ballot applications other than those that are expressly granted in the statute. And the power to mail unsolicited ballot applications to qualified voters is not expressly stated anywhere in this statute. [Id. at 95 (emphasis added).]

The Court continued by explaining that its interpretation of MCL 168.759 was consistent with the

Legislature’s role under art 2, § 4 to “preserve the purity of elections” *Id.* at 96, quoting art 2, § 9. The Court reasoned that permitting the Clerk to distribute absent voter applications in her official capacity “amounts to propaganda at the city’s expense” and that the same was “not within the scope of Michigan election laws or the Michigan Constitution.” *Id.* at 97.

This Court concludes that *Taylor* is not dispositive in the instant case because, although the case dealt with the same act here, i.e., the sending of absent voter ballot applications, the actors at issue—the Secretary of State versus a local election official—are different, and those actors possess different authority that compels a different outcome in this case. The issue in *Taylor* concerned the authority of a municipal officer under a statute that does not implicate the Secretary of State, MCL 168.759. The limited authority of the Clerk in that case constrained the Clerk to only act if expressly permitted by statute. By contrast, defendant is not confined by MCL 168.759. Nor is defendant’s authority as limited as the authority possessed by a municipal clerk. Rather, insofar as elections are concerned, defendant’s authority is discretionary and she possesses authority over municipal officers. See *Hare*, 373 Mich at 530-531.

Additionally, there are other, significant differences that counsel against relying on *Taylor* in the case at bar. Notably, in *Taylor*, the Court of Appeals raised concerns about what it described as “propaganda” being distributed by the Clerk. It is noteworthy that the Clerk was a candidate for reelection and thus stood to benefit from the very applications she was sending. The Clerk also identified herself in a

cover letter sent with the applications. Here, by contrast the Secretary of State is not a candidate for reelection in the November 2020 general election (nor was she in the August 2020 primary election). Thus, the “propaganda” concerns and the “purity of elections” concerns raised by the *Taylor* panel with respect to art 2, § 4 are not present in the instant case.

Furthermore, insofar as art 2, § 4 is concerned, the constitutional amendment effectuated by Proposal 3 must also be kept in mind. This constitutional amendment was effectuated after the Court of Appeals issued its decision in *Taylor*. And this amendment enshrined in this state’s constitution the right to cast an absent voter ballot for any reason. Art 2, § 4 must be “liberally construed” in order to advance this newly enshrined right. As noted above, this “liberal construction” favors finding that the Secretary of State has authority to send absent voter ballot applications.

Plaintiffs’ reliance on *Fleming v Macomb Co Clerk*, unpublished per curiam opinion of the Court of Appeals, issued June 26, 2008 (Docket No. 279966), is no more convincing than their reliance on *Taylor*. Initially, the unpublished decision is not binding on this Court. See MCR 7.215(C)(1). And whatever persuasive value the case has is hampered by the same limitations noted above with respect to *Taylor*: (1) it involves a local election official, as opposed to the Secretary of State; (2) the case focused on the interpretation and application of a statute that is of little moment to the Secretary of State’s authority, i.e., MCL 168.759; (3) the panel was concerned about the potential self-serving actions of the official who sent the applications, given that the official appeared on the ballot

and given that the applications were directed to only one particular group of voters; and (4) the decision was issued prior to the amendment of art 2, § 4. In short, the *Fleming* case is neither controlling nor persuasive in the case at bar.

Finally, the Court is unconvinced that the result in this case is influenced by plaintiff Davis' citation to the recently issued decision in *League of Women Voters of Mich v Secretary of State*, __ Mich App __; __ NW2d __ (2020) (Docket No. 353654). Judge Sawyer's lead opinion, in which Judge Riordan concurred, addressed whether certain statutory provisions pertaining to absentee voting conflicted with the Constitution. *Id.* at 2-3 (opinion by SAWYER, J.). Those issues concerned: (1) whether the 8:00 p.m. deadline on election day for the receipt of absent voter ballots violated various constitutional provisions; (2) whether the statutory requirement that voters pay the postage to return an absentee ballot was unconstitutional; and (3) whether local election clerks violated MCL 168.761's requirement that they "immediately" forward an absent voter ballot upon receipt of an application. *Id.* The case simply did not address, nor was the issue before the *League of Women Voters* panel, whether defendant had authority to mail absent voter ballot applications.

F. SEPARATION OF POWERS

As a final matter, the Court notes that plaintiffs Davis and Black appear to allege that defendant's mailing of absent voter ballot applications runs afoul of Const 1963, art 3, § 2 (separation of powers). While not expressly citing art 3, § 2, the complaint—and amended complaint, in the case of plaintiff Black—

note the lawmaking authority of the Legislature, and asserts that defendant lacks such lawmaking authority. Thus, plaintiffs appear to allege that defendant's decision to send absent voter ballot applications to this state's electorate was an exercise in lawmaking by defendant. And this exercise in lawmaking, allege plaintiffs Davis and Black, is contrary to the Michigan Election Law.

The separation of powers doctrine "does not require an absolute separation of the branches of government." *Oakland Co v State*, 325 Mich App 247, 261; 926 NW2d 11 (2018) (citation and quotation marks omitted). Caselaw has explained that "the boundaries between these branches need not be airtight." *Id.* (citation and quotation marks omitted). Instead, there may be an overlap of responsibilities that is constitutionally permissible. *Id.*

Here, plaintiffs have failed to state a separation of powers claim on which relief can be granted. The crux of plaintiffs' position is that a separation of powers violation occurred because defendant, by sending unsolicited absent voter ballot applications, essentially engaged in lawmaking by taking an action that was not permitted by statute. However, because the Court has already rejected plaintiffs' contentions about whether defendant possessed the requisite authority, this argument fails to state a claim. And there are no allegations that defendant has exercised the entire power of the Legislative branch, much less that defendant's statutory authority was unconstitutional delegation of authority. See *House of Representatives v Governor*, ___ Mich App ___, __; ___ NW2d __ (2020) (Docket No. 353655), slip op at 17-18 (discussing delegations of

authority within the context of the separation of powers doctrine). As a result, the separation of powers allegations fail to state a claim on which relief can be granted, and they will be dismissed under MCR 2.116(C)(8).

III. CONCLUSION

IT IS HEREBY ORDERED that defendant's motion for summary disposition is GRANTED pursuant to MCR 2.116(C)(8) and (C)(10).

This order resolves the last pending claim and closes the case.

Dated: August 25, 2020 Cynthia Diane Stephens,
Cynthia Diane Stephens,
Judge Court of Claims

STATE OF MICHIGAN
COURT OF CLAIMS

RECEIVED
AUG 24 2020
COURT OF CLAIMS

ELECTION INTEGRITY)
FUND)

)Case No. 20-000169 MM

And

)Stephens

GLEN SITEK,

)VERIFIED COMPLAINT

Plaintiffs,

)FOR DECLARATORY

)AND INJUNCTIVE

)RELIEF

JOCELYN BENSON,)
in her official capacity as)
SECRETARY OF STATE,)

Defendant.)

Ian Northon
Michigan Bar No. P65082
RHOADES MCKEE PC
55 Campau Ave NW #300
Grand Rapids, MI 49503
Tel.: (616) 233-5125
Fax: (616) 233-5269
inorthon@rhoadesmckee.com

Edward D. Greim (pro hac pending)
Special Counsel, Thomas More Society
Missouri Bar No. 54034
GRAVES GARRETT, LLC
1100 Main Street, Suite 2700

Kansas City, Missouri 64105
Tel.: (816) 256-3181
Fax: (816) 222-0534
edgreim@gravesgarrett.com

**VERIFIED COMPLAINT FOR IMMEDIATE DE-
CLARATORY AND INJUNCTIVE RELIEF**

There is no other pending or resolved civil action arising out of the transaction or occurrence alleged in the complaint.

Plaintiffs Election Integrity Fund (“EIF”) and Glen Sitek, by and through counsel, and for their complaint against Secretary of State Jocelyn Benson, in her official capacity as Michigan Secretary of State (“Secretary”), state the following:

INTRODUCTION

1. This lawsuit challenges the action of Michigan Secretary of State Jocelyn Benson in allowing individuals to apply for absentee ballots online. The online system fails to comply with Michigan law and invites fraud. The problem is this: every individual who gains access to the Secretary’s online application system can apply for a ballot to be mailed without submitting the actual signature of a voter. Without a real signature on the application, election officials have no signature to check against the voter signature that is already on file—a crucial anti-fraud protection. Using the Secretary’s new online system, thousands of ballots will be mailed to addresses, but without the statutorily required signature comparison to ensure that the

addressee-voter really requested the ballot, and really requested it to be sent to that address.

2. Additionally, the lack of an application signature also undermines the process of authenticating ballots once they are returned via mail. The Secretary's own "Election Officials' Manual" requires the officials processing these ballots to compare the signature on the ballot to the signature on the application to "determine the legality of the ballot". This comparison cannot be accomplished, of course, if the application lacks an accompanying signature. Hence, the officials cannot determine the legality of the ballots requested using the Secretary's online system.

3. Voting in the general election should be safe and it should not be unduly burdensome, as voters recognized two years ago in amending the constitution to allow for absentee voting "without giving a reason," including by mail. Mich. Const. Art. II, § 4(1)(g). But voters never approved a system that allows key procedural safeguards to be so easily circumvented. These safeguards arise from the express language of the constitution itself. They include citizens' individual "right to have the results of statewide elections audited, in such a manner as prescribed by law, to ensure the accuracy and integrity of the elections." *Id.*, § 4(1)(h). They also include a constitutional delegation to the legislature, which "shall enact laws" to "preserve the purity of elections" and "guard against abuses of the elective franchise." *Id.*, § 4(2).

4. Almost since the beginning of the Covid-19 pandemic, Michigan's executive branch officials have cited the pandemic as part of an effort to undermine these important statutory and constitutional

protections. On March 10, 2020, Governor Whitmer issued Executive Order 2020-4 which declared a state of emergency in Michigan “to address the COVID-19 pandemic.” Since then, citing the pandemic as their rationale, the Governor and Secretary have worked together to promote voting by mail and heavily discourage in-person voting in Michigan’s May and August elections. They continue to encourage the use of voting by mail and discourage in-person voting for the November 3, 2020 election.

5. The Secretary’s first means of achieving this goal was her plan to mail an absentee ballot application to every voter, regardless of whether the voter requested an application or not. This is not permitted under Michigan law – a voter must request an application before one can be sent to him or her. However, at least under this plan, the applications will be signed, and election officials will be able to compare the application signature to the signature in the voter file before mailing a ballot to the requested address. While this system is not perfect and far more prone to fraud than in-person voting¹, this particular error is not being challenged here. Indeed, it shows that one can increase voter participation without resorting to an online system.

¹ In person voting allows for direct control of the ballot: a voter’s identification and eligibility to vote is verified at the time that the vote is cast and the polling place protects voters from being coerced, intimidated, or misled as they cast their ballot. Mail in voting, on the other hand, is ripe with opportunities for third parties to fraudulently obtain and cast ballots, or to coerce, intimidate, or mislead voters as they cast their ballot outside the sanctity of the polling place.

6. The Secretary's second effort, the online application system, is far more problematic. Under that system, an individual can enter a voter's information into an online portal. It would be possible under such a system to use this information to print off a computer-generated form that could then be signed and then mailed in or perhaps even scanned and emailed. But rather than adopting these fair and easy options, the Secretary permits individuals to avoid signing an application by clicking an option that "borrows" a voter's pre-existing signature from their driver's license or state ID; this pre-existing, borrowed signature then does double-duty as the "signature" for the individual's application. To be clear, the online system does not require any contemporaneous, handwritten, or wet signature at the time of application.

7. The application signature is of fundamental importance in the absentee voting process in Michigan. Michigan law requires that the voter affix his or her signature to both the application for the ballot and the ballot itself. The two step signature requirement - at both the application and ballot stages - is a fraud prevention measure. Before the ballot is sent, the signature on the application is matched to the signature for that applicant in the State's Qualified Voter File ("QVF"). Before the ballot is counted, the signature on the ballot is likewise matched to the signature stored in the QVF. If the signature on the application does not match the signature in the QVF, the applicant is not supposed to receive a ballot. Likewise, if the signature on the ballot itself does not match the signature in the QVF, the ballot is not supposed to be counted.

8. This signature matching ensures that the person requesting and casting the absentee ballot is actually who they purport to be. It also ensures that only eligible voters are able to receive and cast absentee ballots in Michigan's elections.

9. The signature matching function is of such vital importance that the Legislature codified the requirement in Michigan's statutes. *See* MCL 168.761(2) ("The qualified voter file *must be used* to determine the genuineness of a signature on an application for an absent voter ballot.") (emphasis added); MCL 168.766 ("The qualified voter file *must be used* to determine the genuineness of a signature on an envelope containing an absent voter ballot. Signature comparisons *must be made* with the digitized signature in the qualified voter file.") (emphasis added).

10. The Secretary's online system further undermines the signature matching function because at least some of the signatures in the QVF come from the signature that was collected when the applicant received his driver's license or state ID. *See* MCL 168.509q ("The qualified voter file shall contain all of the following information for each qualified voter: ... (g) The most recent digitized signature of an elector if captured or reproduced by the secretary of state or a county, city, or township clerk from a voter registration application pursuant to section 509hh, or captured or reproduced by the secretary of state pursuant to section 307 of the Michigan vehicle code, 1949 PA 300, MCL 257.307."). For some of these online applicants, the "signature match" is illusory- the signature affixed to the application by the online system and the signature in the QVF originate from the exact same

source: the applicant's driver's license or state ID. The "signature match" is merely a reproduction of the same signature, not a comparison of two different signatures.

11. By eliminating this important procedural safeguard, the online application system increases the chances that fraudulent absentee ballots will be cast in Michigan, affecting the outcomes of elections that will determine who will serve in offices from Detroit to Lansing to Washington D.C.

12. This action, therefore, seeks an order compelling the Michigan Secretary of State to comply with statutory and constitutional voter protections by *only* mailing ballots to voters who have affixed real application signatures, and whose real application signatures have been matched to those in the voter file. That will require an immediate end to the current form of the online application system before even more damage is done to the purity and integrity of Michigan's elections.

BACKGROUND

I. The Secretary of State orchestrates the statewide mailing of absent voter applications in advance of the May election.

13. Even before implementing the online application system that is the subject of this lawsuit, the Secretary of State, in cooperation with and at the encouragement of the Governor, began to unilaterally suspend important statutory election safeguards.

14. The most striking example came very early in the spring of 2020. On March 23, 2020 the Secretary announced that her office would mail absent voter ballot applications to all registered voters in advance of the May 5 election, regardless of whether those voters requested an application or not. According to the Secretary's corresponding press release, applications would be sent to all voters with a postage-paid return envelope unless the voter had already requested an absent voter ballot.²

15. Shortly thereafter, on March 27, 2020, the Governor blessed the Secretary's efforts by signing Executive Order 2020-27, ordering that "Elections on May 5, 2020 must be conducted to the greatest extent possible by absent voter ballots issued and submitted without in-person interaction."

16. Among other amendments to Michigan election law sprinkled throughout the order, the Governor directed:

The Department of State may assist local clerks, county clerks, and election administrators with: the mailing of absent voter ballot applications with a postage-prepaid, pre-addressed return envelope to each registered voter within any jurisdiction conducting a May 5, 2020 election; the preparation of

² Press Release, Office of Michigan Secretary of State Jocelyn Benson, Secretary of State to mail absent voter ballot applications to all May 5 voters (2020), https://www.michigan.gov/sos/0,4670,7-127-1640_9150-522761--,00.html (last visited Aug. 20, 2020).

postage-prepaid absent voter ballot return envelopes

17. These actions were in derogation of Michigan law. A voter must request an absent voter ballot application before that application can be sent to the voter. *See* MCL 168.759(3)-(5) (requiring written or verbal request from voter to furnish ballot application form); *see also Taylor v. Currie*, 277 Mich. App. 85, 93, 743 N.W.2d 571, 576 (2007) (MCL 168.759(5) does not permit a city clerk to mail absent voter ballot applications without having received a verbal or written request.”). The mailing of unsolicited absent voter applications is not authorized under Michigan election law.³

18. The applications were mailed to voters regardless of whether the voter had requested such an application.

19. The applications mailed by the Secretary included a cover letter that claimed that voting by mail is “the optimal way to cast a ballot due to the public health crisis.”

³ “A person who is not authorized in this act and who both distributes absent voter ballot applications to absent voters and returns those absent voter ballot applications to a clerk or assistant of the clerk is guilty of a misdemeanor.” MCL 168.759(8).

20. Approximately 740,000 voters were mailed applications for the May election. Of those voters that received applications, 213,011 submitted them.⁴

21. The Secretary would later trumpet the success of her efforts: “Record-breaking turnout was recorded in the approximately 50 elections held across 33 counties on May 5, with nearly 25 percent of eligible voters casting ballots and 99 percent of them doing so by mail or in a drop box. From 2010 to 2019, average turnout in local elections in May was 12 percent.”

II. The Secretary of State orchestrates the statewide mailing of absent voter applications in advance of the August and November elections.

22. On May 19, 2020, the Secretary again announced that all registered voters in Michigan would be sent an absent voter ballot application for the August and November elections.^{5 6}

⁴ Press Release, Office of Michigan Secretary of State Jocelyn Benson, Secretary Benson encourages voters to return absentee ballots as soon as possible (2020),

https://www.michigan.gov/sos/0,4670,7-127-1640_9150-527286--m_2020_4,00.html (last visited Aug. 20, 2020).

⁵ Press Release, Office of Michigan Secretary of State Jocelyn Benson. Benson: All voters receiving applications to vote by mail (2020), https://www.michigan.gov/sos/0,4670,7-127-1640_9150-529536--00.html (last visited Aug. 20, 2020).

⁶ Ex. A, Michigan absent voter ballot application sent by Secretary to Voters; Ex. B, Secretary’s Letter accompanying absent voter ballot applications.

23. “Secretary Benson ensured that all of the state’s 7.7 million registered voters were mailed an application and instructions to safely vote from home.”⁷

24. In her press release, the Secretary acknowledged that “some jurisdictions are mailing applications to all local registered voters.” The Michigan Court of Appeals explicitly held in *Taylor v. Currie*, 277 Mich. App. 85, 97, 743 N.W.2d 571, 578 (2007), that a local election official - there a city clerk - was not authorized by Michigan law to mail unsolicited absent voter ballot applications to voters.

25. According to the Secretary, the Michigan Department of State’s Bureau of Elections was to ensure that all registered voters who had not already received an application would receive one in time to vote absentee for the August and November elections.

26. On information and belief, the Secretary’s office then mailed absentee ballot applications to all voters for the August and November elections, regardless of whether or not the voter requested an application.

⁷ Press Release, Office of Michigan Secretary of State Jocelyn Benson, Absentee ballot requests up by 1 million from 2016, https://www.michigan.gov/sos/0,4670.7-127-1640_9150-533467--00.html (last visited Aug. 20, 2020).

III. The Secretary of State develops and encourages the use of an online application system which does not require the applicant's signature.

27. On or about June 12, 2020, the Secretary launched an online absentee voter application system.

28. By navigating to the Secretary's website, Michigan residents are able to fill out an online form to apply for an absentee ballot.

29. Prior to the launch of the Secretary's online system, voters could already submit applications digitally by scanning and emailing their signed applications to their local clerk.

30. The fully online system purportedly makes it easier for voters to apply for an absentee ballot, but in doing so, it removes a key component of the application process: the signature.

31. Instead of requiring a contemporaneous signature, the online application system borrows the applicant's signature from their driver's license or state ID.

32. Because of this, in order to utilize the new tool to request the absentee ballot online, individuals must have access to a voter's Michigan driver's license or state ID, and submit the same information required to register to vote digitally, including their driver's license number and the last four digits of the voter's Social Security number.⁸

⁸ Press Release, Office of Michigan Secretary of State Jocelyn Benson, Michigan Department of State launches online absentee

33. After completing an application, the individual then uses the tool built into the online application system to send the handwritten signature the voter provided for their driver's license or state ID card along with the completed application to the voter's local clerk through the state's Qualified Voter File software. Clerks are alerted of the request and are able to see the application and signature.

34. The clerk then sends a ballot to the voter after verifying the information provided by the individual online.

35. A voter who does not use the online system must provide a signature at the time that the voter completes the application. Both the absent voter ballot application available on the Michigan.gov website and the absent voter ballot application mailed to voters by the Secretary contain a clear admonition: "You must sign the form to get a ballot."⁹

36. An individual who uses the online system does not have to provide a voter's signature at the time the individual completes the application. Instead, the signature is borrowed from the voter's driver's license or state ID. "When they complete their application, voters can then use the tool to send the handwritten signature they provided for their driver's license or state ID card, and the completed application, to their local

voter application, https://www.michigan.gov/sos/0,4670.7-127-1640_9150-531796--00.html (last visited Aug. 20, 2020).

⁹ See Ex. C, Michigan absent voter ballot application and instructions, available online at https://www.michigan.gov/documents/AbsentVoterBallot_105377_7.pdf; see also Ex. A.

clerk through the state's Qualified Voter File software.”¹⁰

37. The “signature” transaction - borrowing the signature from the license or ID - is entirely facilitated by the State's online platform.

38. When using the online system, the person who is logged in does not need to provide a contemporaneous handwritten, electronic, or scanned signature with the application.

39. The Secretary's online system further undermines the signature matching function because at least some of the signatures in the QVF come from the signature that was collected when the applicant received his driver's license or state ID. *See* MCL 168.509q (“The qualified voter file shall contain all of the following information for each qualified voter: ... (g) The most recent digitized signature of an elector if captured or reproduced by the secretary of state or a county, city, or township clerk from a voter registration application pursuant to section 509hh, or captured or reproduced by the secretary of state pursuant to section 307 of the Michigan vehicle code, 1949 PA 300, MCL 257.307.”).

40. For some of these online applicants, the “signature match” is illusory- the signature affixed to the application by the online system and the signature in the QVF originate from the exact same source: the applicant's driver's license or state ID. The “signature

¹⁰ *Id.*

match” is merely a reproduction of the same signature, not a comparison of two different signatures.

41. By July 14, 2020, 1,718,384 absentee ballot applications had been received, 1,673,442 absentee ballots had been sent out, and 323,657 absentee ballots had been cast for the August 4, 2020 primary. During the same time period - 21 days before the election - in 2016, 475,046 absentee ballot applications were received, 474,989 absentee ballots were issued, and 134,900 absentee ballots were returned.¹¹

42. By August 3, 2020, those numbers rose to 2,052,186 applications received, 2,066,106 ballots issued, and 1,289,025 ballots returned. This again reflected a massive increase compared to the 2016 August primary, which during the same time period - 1 day before the election - saw 566,010 applications received, 575,239 ballots issued, and 456,220 ballots returned.¹²

43. On information and belief, at least some of these absent voter ballot applications originated and/or were processed via the Secretary’s online application system.

¹¹ Press Release, Office of Michigan Secretary of State Jocelyn Benson e, More than 1.6 million absentee ballots sent ahead of August election, <https://www.michigan.gov/som/0,4669,7-192-47796-534096--,00.html> (last visited Aug. 20, 2020).

¹² Press Release, Office of Michigan Secretary of State Jocelyn Benson, Bring absent voter ballots to clerk offices and drop boxes, <https://www.michigan.gov/sos/0,4670,7-127-16409150-535497--,00.html> (last visited Aug. 20, 2020).

IV. Michigan sees its highest ever usage rate of absent voter ballots, a substantial number of which do not have a signature on the application for comparison to the QVF because they were requested via the online system.

44. By August 3, 2020, more than 1.28 million absent voter ballots had been cast, breaking the record for total absent-voter ballots ever cast in a Michigan election. The previous record was 1.27 million, cast in the November 2016 General Election.¹³

45. The Secretary's July 2, 2020 press release regarding the dramatic rise in absentee ballot applications acknowledges the vital importance of the voter's signature in the absentee ballot context:

Once completed, they must place the ballot into the secrecy sleeve and then into the return envelope. Once the envelope is sealed, the voter must sign the back of the envelope. This signature will be compared to the signatures election officials have on file, and must match for the ballot to be counted.¹⁴

46. On information and belief, at least some of the absentee ballots cast in the August 4, 2020 election were cast by voters that applied for an absentee ballot via the Secretary's online system.

¹³ *Id.*

¹⁴ Press Release, Office of Michigan Secretary of State Jocelyn Benson, Absentee ballot requests up by 1 million from 2016, https://www.michigan.gov/sos/0,4670,7-127-1640_9150-533467--00.html (last visited Aug. 20, 2020).

V. The Secretary continues to permit and encourage the signature-less online application process for the November 3, 2020 general election.

47. On August 13, 2020, Secretary Benson issued a press release announcing that she was going to mail postcards to Michigan voters encouraging them to use her online system to “vote from home” - i.e. vote via absentee ballot.¹⁵

48. Beginning on August 20, 2020, individuals could use the Secretary’s online system to apply for an absent voter ballot for the November 3rd election by navigating to <https://mvic.sos.state.mi.us/avapplication> and filling out the Secretary’s form.

49. As part of the online application, the applicant must “authorize the Secretary of State to send [his or her] stored digital signature to [his or her] city or township clerk for [his or her] absent voter ballot application.”

50. The system continues to provide individuals with an option to apply for an absentee ballot without providing a contemporaneous voter signature at the time they submit the application.

51. The applicant need not upload a signature, provide an electronic signature, or otherwise provide

¹⁵ Press Release, Office of Michigan Secretary of State Jocelyn Benson, Benson to mail postcards encouraging voters to apply online to vote from home, <https://www.michigan.gov/sos/0,4670.7-127--536718-.00.html> (last visited Aug. 20, 2020).

a contemporaneous signature at the time of application.

52. A person need only have the limited personal information required by the online system to request an absentee ballot on behalf another.

53. Permitting the applicant to “borrow” his or her signature from a voter’s driver’s license or state ID guts the signature requirement altogether, undermining the purpose for the requirement: to prevent voter fraud.

54. The Secretary’s own “Election Officials’ Manual” asserts that the legality of an absentee ballot is determined by comparing the signature on the application to the signature on the ballot itself:

Step 1 Materials: AV return envelopes, QVF AV List, and AV applications.

- Determine the legality of the ballot by checking the signature on the absentee ballot return envelope against the voter’s absent voter ballot application and checking the ePollbook to confirm that the voter has not voted in person at the election (these steps are optional for AVCBs).¹⁶

55. This comparison, which the Secretary considers vital for the purposes of determining the legality

¹⁶ See Election Officials’ Manual, Michigan Secretary of State-Bureau of Election, Chapter 8, p. 3; https://www.michigan.gov/documents/sos/VIII_Absent_Voter_County_Boards_265998_7.pdf (updated February 2019).

of the ballot, cannot occur if there is not a contemporaneous signature on the application with which the ballot signature can be compared.

VI. EIF members participate as election challengers for the August 4, 2020 election and observe further disregard for the law's signature matching requirements for absentee ballots.

56. EIF's primary purposes include maintaining the integrity of electoral processes, preserving the purity of elections, and guarding against the abuse of the elective franchise in the state of Michigan.

57. During the August 4, 2020 primary, several EIF members participated as election challengers in Oakland County pursuant to § 168.730, MCL.

58. The EIF challengers observed the actions of the local election officials in Oakland County over the course of the entire election day, with some challengers engaged in performing their duties for nearly 14 hours, from 8:00 a.m. to 10:00 p.m.

59. EIF became aware that a challenger in Wayne County witnessed the absentee counting board count every absentee ballot in its possession, without conducting any comparison of signatures on thousands of ballots as required by law.

60. Given what the EIF challengers learned and observed during the primary and the dramatic increase in the use of mail in ballots, EIF is concerned that the lack of a contemporaneous signature on the

absent voter application will make it difficult or impossible to prevent fraud in the absentee ballot arena.

61. Specifically, by not requiring a contemporaneous signature at the time of application for comparison to the QVF, the Secretary is increasing the likelihood that absentee ballots will end up in the hands of someone other than the voter qualified to cast the ballot.

62. In order to fulfill its purpose - to maintain the integrity and purity of Michigan's elections - EIF must now divert time and resources that it planned on using for voter outreach and education, rallies, and other election related activities and instead devote its time and resources towards training election challengers to monitor the counting of absentee ballot during the November 3, 2020 election.

63. EIF has had to reallocate its already limited resources to identify additional election challengers and plans to reallocate funds to train these challengers to ensure the validity of absentee ballots cast for the November 3, 2020 election, particularly those that were processed via the Secretary's online system and do not have a contemporaneous signature on the application that was checked against the QVF before a ballot was sent to the applicant.

64. If the Secretary continues to provide an avenue for individuals to apply for mail in ballots without a contemporaneous signature, EIF will not only have to train and provide election challengers in hundreds of precincts on election day itself, but it will also have to carve out weeks' worth of time to observe the

processing of applications and comparing of signatures in clerks' offices across the state.

PARTIES

65. Plaintiff Election Integrity Fund is a Michigan 501(c)(4). EIF's primary purposes include maintaining the integrity of electoral processes, preserving the purity of elections, and guarding against the abuse of the elective franchise in the state of Michigan. EIF's members participated as election challengers in Oakland County during the August 4th primary and quickly became concerned with the lack of fidelity to the law that they witnessed. As a result, EIF must reallocate its limited time and resources to training challengers for the November 3, 2020 general election to monitor the absentee vote counting process, particularly for those absentee ballots that were received as a result of an online application via the Secretary's system.

66. Plaintiff Glen Sitek is a Michigan taxpayer, resident, and voter. Mr. Sitek resides in Oakland County. Mr. Sitek regularly votes and understands the importance of only having valid votes cast by eligible voters counted in elections. Mr. Sitek is also the Vice President of the Election Integrity Fund.

67. Defendant Jocelyn Benson is the Michigan Secretary of State. The Secretary is being sued in her official capacity only.

JURISDICTION AND VENUE

68. The Court of Claims has "exclusive" jurisdiction to "hear and determine any claim or demand, statutory or constitutional," or any demand for

“equitable[]or declaratory relief or any demand for an extraordinary writ against the state or any of its departments or officers notwithstanding another law that confers jurisdiction of the case in the circuit court.” MCL 600.6419(1)(a).

69. Because Plaintiffs raise statutory and constitutional claims and seek equitable, declaratory, and extraordinary relief against the Secretary, this Court has jurisdiction to hear these claims.

70. For the same reason, venue is appropriate in this Court.

COUNT I: Violation of MCL § 168.759 Failure to Collect Signature with Application

71. Plaintiffs restate and reallege the foregoing paragraphs as if the same were repeated verbatim herein.

72. Michigan law, specifically MCL § 168.759, requires an applicant to sign an absent voter ballot application:

An applicant for an absent voter ballot shall sign the application. A clerk or assistant clerk shall not deliver an absent voter ballot to an applicant who does not sign the application.

MCL § 168.759(4). This law is a valid exercise of voters’ constitutional command to the legislature that it “shall enact laws ... to preserve the purity of elections,” to “guard against abuses of the elective franchise,” and to otherwise “provide for a system of voter registration and absentee voting.” Mich. Const. Art.

II, § 4(2). It is also necessary to protect Michigan citizens' individual "right to have the results of statewide elections audited, in such a manner as prescribed by law, to ensure the accuracy and integrity of elections." *Id.*, § 4(1)(g).

73. The statute also prescribes exact instructions which must be included with each application furnished to an absent voter ballot applicant, including: "After completely filling out the application, sign and date the application in the place designated. *Your signature must appear on the application or you will not receive an absent voter ballot.*" MCL § 168.759(6).

74. The Legislature was sufficiently concerned with signature fraud in the absent voter ballot application context that they determined it should be a felony. *See* MCL § 168.759(6) ("A person who forges a signature on an absent voter ballot application is guilty of a felony.").

75. Upon receiving an application, the clerk is required to compare the signature on the application to the applicant's signature in the Qualified Voter File ("QVF") before sending an absentee ballot to the applicant. MCL § 168.761(2). "The qualified voter file must be used to determine the genuineness of a signature on an application for an absent voter ballot. Signature comparisons must be made with the digitized signature in the qualified voter file." *Id.*

76. The Secretary's online system prevents the clerk from fulfilling this role, as there is no contemporaneous application signature to compare to the QVF.

77. The Secretary is not authorized by Michigan law to provide an application which does not require a contemporaneous signature or to transmit applications lacking such a signature to local clerks. “A person who is not authorized in this act and who both distributes absent voter ballot applications to absent voters and returns those absent voter ballot applications to a clerk or assistant of the clerk is guilty of a misdemeanor.” MCL 168. 759(8).

78. On information and belief, the Secretary has spent and continues to spend funds generated from tax revenue to operate and maintain the online application system, as well as to process applications through the online system.

79. Plaintiff EIF is directly injured as a result of the Secretary’s actions in not requiring a signature via the online application. EIF must now reallocate its time and resources that it would have spent on other election related tasks to identify and train individuals to serve as election challengers to oversee the absentee voting process in order to guard against absentee ballot fraud. The loss of a real, wet signature on the application also compromises the “right to audit” the results of statewide elections to “ensure the accuracy and integrity of elections,” another constitutional right that MCL § 168.759 enforces and protects.

80. Plaintiff Sitek and Plaintiff EIF’s individual members are likewise harmed. Plaintiff Sitek and EIF’s members plan to vote in the upcoming election. Any fraudulent vote that is cast in that election, including a fraudulent absentee ballot, dilutes the strength of Plaintiff Sitek’s and EIF’s members’ legitimate votes. Plaintiff Sitek’s and EIF’s members’ right

to vote includes the assurance that their votes will not be diluted by votes of fraudulent voters. Further, the loss of a real, wet signature on the application also compromises their individual constitutional rights “to audit” the results of statewide elections to “ensure the accuracy and integrity of elections,” another constitutional right that MCL § 168.759 enforces and protects.

81. The Secretary should be enjoined from providing an absentee ballot application system which permits and encourages Michigan residents to apply for an absentee ballot without providing a contemporaneous signature at the time of application because the system violates Michigan law, specifically, MCL § 168.759.

82. Alternatively, the Court should issue a writ of mandamus ordering the Secretary to require an applicant for an absent voter ballot to submit a signature created contemporaneously with the filing of the application.

83. Any action by the Secretary to accept and process absent voter ballot applications without a contemporaneous signature on the application is not allowed by Michigan law.

84. If the Secretary is going to facilitate the processing of absent voter ballot applications, the Secretary has a duty to collect a signature at the time of application.

85. The Secretary’s duty to collect a signature is ministerial and involves no discretion or judgment.

86. Plaintiffs have a clear legal right to the proper discharge by the Secretary to perform her ministerial duty to collect a signature at the time that a person applies for an absent voter ballot.

87. Plaintiffs have no other adequate legal or equitable remedy.

COUNT II: Violation of the Purity of Elections Clause, Michigan Constitution Art. II, § 4(2)

88. Plaintiffs restate and reallege the foregoing paragraphs as if the same were repeated verbatim herein.

89. Article II, § 4(2) of the Michigan Constitution of 1963 states:

Except as otherwise provided in this constitution or in the constitution or laws of the United States the legislature shall enact laws to regulate the time, place and manner of all nominations and elections, to preserve the purity of elections, to preserve the secrecy of the ballot, to guard against abuses of the elective franchise, and to provide for a system of voter registration and absentee voting.

90. This “purity of elections” clause requires the legislature to preserve the purity of election and guard against abuses of the elective franchise, including in the context of absentee voting.

91. The Michigan Supreme Court has interpreted the “purity of elections” clause to embody two concepts: “first, that the constitutional authority to enact

laws to preserve the purity of elections resides in the Legislature; and second, ‘that any law enacted by the Legislature which adversely affects the purity of elections is constitutionally infirm.’ *Socialist Workers Party v. Secretary of State*, 412 Mich. 571, 596, 317 N.W.2d 1 (1982), quoting *97 *Wells v. Kent Co. Bd. of Election Comm’rs*, 382 Mich. 112, 123, 168 N.W.2d 222 (1969).

92. The Legislature has carried out the directive of the “purity of elections” clause, at least in part, by enacting the signature matching requirement in MCL 168.759 as a means of preventing absentee ballot fraud.

93. However, by creating and encouraging the use of a system which ignores the signature requirement and obviates its purpose, the Secretary usurps “the constitutional authority to enact laws to preserve the purity of elections” which “resides in the Legislature,” simultaneously undermining the purity of Michigan’s elections and encouraging abuses of the elective franchise via absentee voter ballot fraud.

94. On information and belief, the Secretary has spent and continues to spend funds generated from tax revenue to operate and maintain the online application system, as well as to process applications through the online system.

95. Plaintiff EIF is directly injured as a result of the Secretary’s actions in not requiring a signature via the online application. EIF must now reallocate its time and resources that it would have spent on other election related tasks to identify and train individuals to serve as election challengers to oversee the

absentee voting process in order to guard against absentee ballot fraud.

96. The necessity of having challengers and poll watchers was driven home by EIF's experience in the August 4, 2020 primaries. There, EIF learned that the Secretary had not offered any additional resources, provided training, or educated local election authorities on best practices or methods for verifying that signature comparison is fair and accurate-or indeed, that it is occurring at all.

97. Indeed, EIF's poll watchers and challengers observed a failure to verify signatures on absentee ballots in Wayne County on August 4, 2020. Without their presence, neither the Secretary nor anyone else would have known whether signature verification had occurred. In order to preserve the purity of Michigan's elections, EIF's mission compels it to allocate substantial resources to providing even more challengers and poll-watchers for the general election.

98. Plaintiff Sitek and Plaintiff EIF's individual members are likewise harmed. Plaintiff Sitek and EIF's members plan to vote in the upcoming election. Any fraudulent vote that is cast in that election, including a fraudulent absentee ballot, dilutes the strength of Plaintiff Sitek's and EIF's members' legitimate votes. Plaintiff Sitek's and EIF's members' right to vote includes the assurance that their votes will not be diluted by votes of fraudulent voters.

99. The Secretary should be enjoined from providing an absentee ballot application system which permits and encourages Michigan residents to apply for an absentee ballot without providing a

contemporaneous signature at the time of application because the system violates Art. II, § 4(2) of the Michigan Constitution.

100. Alternatively, the Court should issue a writ of mandamus ordering the Secretary to require an applicant for an absent voter ballot to submit a signature created contemporaneously with the filing of the application.

101. Any action by the Secretary to accept and process absent voter ballot applications without a contemporaneous signature on the application is not allowed by Michigan law.

102. If the Secretary is going to facilitate the processing of absent voter ballot applications, the Secretary has a duty to collect a signature at the time of application.

103. The Secretary's duty to collect a signature is ministerial and involves no discretion or judgment.

104. Plaintiffs have a clear legal right to the proper discharge by the Secretary to perform her ministerial duty to collect a signature at the time that a person applies for an absent voter ballot.

105. Plaintiffs have no other adequate legal or equitable remedy.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Election Integrity fund respectfully requests this Court:

A. Order “a speedy hearing” of this action and “advance it on the calendar” under MCR 2.605(D).

B. Declare and adjudge that:

a. The Secretary’s online absent voter ballot application system violates MCL § 168.759; and

b. The Secretary’s online absent voter ballot application system violates Michigan’s “purity of elections clause”, Article II, § 4(2) of the Michigan Constitution of 1963.

C. Immediately enjoin the Secretary from providing any absentee voter ballot application system, whether online or not, which does not require the applicant to submit a signature created contemporaneously with the filing of the application;

D. Alternatively, issue a writ of mandamus ordering the Secretary to require an applicant for an absent voter ballot to submit a signature created contemporaneously with the filing of the application; and,

E. Grant such other and further relief as this Court deems just and proper.

Dated: August 24, 2020

Respectfully submitted,
Edward D. Greim
Edward D. Greim
(pro hac pending)

Special Counsel, Thomas More Society
Missouri Bar No. 54034

GRAVES GARRETT, LLC
1100 Main Street,
Suite 2700
Kansas City, Missouri 64105
Tel.: (816) 256-3181
Fax: (816) 222-0534
edgreim@gravesgarrett.com

Ian Norton
Ian Norton
Michigan Bar No. P65082
RHOADES MCKEE PC
55 Campau Ave NW #300
Grand Rapids, MI 49503
Tel.: (616) 233-5125
Fax: (616) 233-5269
inorthon@rhoadesmckee.com

VERIFICATION

I declare that the statements above are true to the best of my information, knowledge, and belief.

By *Glen Sitek*

Glen Sitek, Individually Dated: 8/24/20

By *Glen Sitek*

Glen Sitek, Dated: 8/24/20
Vice President, Election Integrity Fund

Debra Hass, Notary Public of Michigan, Oakland
County, Expires 2/14/2014, Acting in County of
Ingham 8/24/2020

STATE OF MICHIGAN
COURT OF CLAIMS

ELECTION INTEGRITY FUND
and GLEN SITEK,

Plaintiffs, No. 20-000169-MM

v

HON. CYNTHIA STEPHENS

JOCELYN BENSON, in her
official capacity as Secretary of State,

Defendant.

Ian Northon (P65082)
Attorney for Plaintiffs
55 Campau Ave, NW, #300
Grand Rapids, Michigan 49503
616.233.5125
inorthon@rhoadesmckee.com

Edward D. Greim
Attorney for Plaintiffs
1100 Main Street, Suite 2700
Kansas City, Missouri 64105
816.236.3181
edgreim@gravesgarrett.com

Heather S. Meingast (P55439)
Erik A. Grill (P64713)
Assistant Attorneys General
PO Box 30736
Lansing, Michigan 48909
517.335.7659

meingasth@michigan.gov
grille@michigan.gov

**DECLARATION AND VERIFICATION OF
JONATHAN BRATER**

I, Jonathan Brater, declare that I have firsthand knowledge of the matters stated herein and, if called upon to testify to them, I would do so truthfully and competently. Under MCR 2.109(D)(3)(b), I declare and affirm the following:

1. I have been employed by the Secretary of State as Director of Elections since January 2, 2020 and in such capacity serve as Director of the Bureau of Elections (Bureau). *See* MCL 168.32.

2. I bring this declaration in support of Defendant Secretary of State Jocelyn Benson's 10/9/20 Motion for Summary Disposition and Response in Opposition to Plaintiffs' 9/25/20 Motion for a Preliminary Injunction in the above-cited case.

3. If called as a witness, I could testify truthfully and accurately as to the information contained within this declaration.

4. The Michigan Election Law requires that requests for an absent voter ballot application be signed. MCL 168.759. On June 12, 2020, the Michigan Department of State (Department) launched an online tool that voters can use to submit absent voter ballot applications.

5. Prior to the development of the online tool, voters could submit a signed request for an absent voter ballot either on paper or electronically. For years, local clerks have been instructed to accept applications for AV ballots by facsimile or by email.¹ However, in order to do this electronically voters needed to print the application and sign it before submitting it electronically. For example, a voter could print out an absent voter ballot application, fill it out and sign it, and then scan or photograph the signed application and email it to the clerk.

6. The online tool available on the Michigan Department of State's Bureau of Elections website was developed so that a voter could submit a signed absent voter ballot request without having to print out the application. Using the online tool, a voter with a Michigan Driver's License or State ID card can log in using the driver's license or ID card number and apply for an AV ballot by authorizing the use of a stored, digital image of the voter's handwritten signature provided to the Michigan Department of State (MDOS) when the voter obtained his/her driver's license or state identification. If an applicant does not have a signature on file, or is not a registered voter, the applicant cannot avail him/herself of this online tool.

7. The online AV ballot application requires the voter to provide the date of the election or elections for which the voter is requesting a ballot; the voter's name; the statements that the voter is a U.S. citizen

¹ See Chapter 6, Michigan's Absentee Voting Process, October 6, 2020, p 2, available at https://www.michigan.gov/documents/sos/VI_Michigans_Absentee_Voting_Process_265992_7.pdf.

and a qualified and registered elector in the jurisdiction; a statement that the voter requests to apply for an official ballot; a section for the voter to specify if the voter wants a ballot mailed to an alternate address; a statement for the voter to certify that the statements in the application are true; and a warning about requirements to vote and false statements for voting. The voter signs the application by authorizing submission of his/her handwritten signature stored on file with the Michigan Department of State (MDOS). This signature must be compared with the applicant's digitized signature in the qualified voter file (QVF) or registration card. Only if the signatures agree may a local clerk mail the actual AV ballot to the applicant.

8. The online AV ballot application incorporates safeguards against voter fraud in the application process. For example, a person who makes a false statement on an AV ballot application is guilty of a misdemeanor, and a person who forges a signature on an AV ballot application is guilty of a felony—under Michigan law. *See* MCL 168.759(8). This is true regardless of whether the AV ballot application is submitted through the online tool, or by paper or electronic means. In addition, in order to access the online tool, an applicant must provide unique identifying information—including a driver's license or state identification number and the last four digits of the individual's social security number—which are not required on an AV ballot application signed without use of the online tool.²

² *See* https://www.michigan.gov/documents/sos/AVApp_535884_7.pdf

9. Moreover, the online AV application tool only authorizes the use of the signature on file for the application for the AV ballot—it does not affect the AV ballot itself. Upon receipt of the application for an AV ballot and after comparing the signatures on the application to the qualified voter file, local clerks remain obligated under Michigan law to mail the AV ballot to the voter, who must then complete the ballot, handwrite his/her signature on the envelope provided for return, and return it to their local clerk. *See* MCL 168.761. The handwritten signature on the AV ballot envelope is then compared to the signature on the application, regardless of how the application was submitted. AV ballots must be delivered through one of the methods specified under Michigan law, *see* MCL 168.764a & MCL 168.764b(1), and an individual who knowingly makes a false statement on the return envelope is subject to criminal penalties. MCL 168.761(5).

10. The Department released and publicized the release of the online AV application tool in June 2020 – months before the August primary election. Thousands of voters have already used the tool to request AV ballots for the August election and already cast ballots that were counted in that election. Thousands more have already applied for AV ballots for the November 3, 2020 general election using the tool. Specifically, at least 74,000 online absent voter ballot applications have been received for the November election, and at least 7,000 individuals who applied for an absent voter ballot online have already received and returned their ballots.

11. I declare under the penalty of perjury that this Declaration and Verification have been examined by me, that its contents are true to the best of my knowledge, information and belief.

Date: October 9, 2020 *Jonathan Brater*
Jonathan Brater

STATE OF MICHIGAN
COURT OF CLAIMS

ELECTION INTEGRITY FUND
and GLEN SITEK,

OPINION AND ORDER

Plaintiffs, No. 20-000169-MM

v

HON. CYNTHIA STEPHENS

JOCELYN BENSON, in her
official capacity as Secretary of State,

Defendant.

Pending before the Court is plaintiffs' motion for preliminary injunction.¹ For the reasons stated herein, the motion for preliminary injunctive relief is DENIED.

At issue in this case is a process that, by plaintiffs' own admission, was implemented by defendant Secretary of State on or about June 12, 2020. Specifically, the issue in this case involves defendant's implementation of an online absent voter ballot application system. Previously, voters in this state had to submit a paper form, which included a wet-ink signature, in order to apply for an absent voter ballot.² However, as of

¹ Defendant filed a motion to dismiss on October 9, 2020. However, as indicated at the October 16, 2020 hearing, the Court indicated that the motion to dismiss was not properly before the Court, so it would not be considered at this time.

² On this point, defendant contends that absent voter ballot applications have, "for years," been honored when made by

June 12, 2020, defendant implemented a new online system that allows voters in this state to submit an online form for an absent voter ballot.

According to plaintiffs, the ease of applying for an absent voter ballot online comes at a cost—they allege that the online application system effectively removes the statutory requirement that a voter sign an absent voter ballot application. In this regard, MCL 168.759(4) provides that “[a]n applicant for an absent voter ballot *shall sign the application.*” (Emphasis added). Plaintiffs assert that this signature must be submitted contemporaneously with the absent voter ballot application. Here, the system implemented by defendant does not, according to plaintiffs, require a contemporaneous signature. Instead, the system allows the voter to “borrow” his or her signature from their driver’s license or a state identification card.

Plaintiffs filed a complaint in this Court on or about August 24, 2020, in which they challenged the online signature process. Approximately one month later, on September 25, 2020, they moved this Court for preliminary injunctive relief. Plaintiffs contend that defendant’s failure to require a signature at the time an individual applies for an absent voter ballot violates this state’s election law. Plaintiffs have requested that the Court enjoin defendant from providing an online absent voter ballot application system that allows a voter to “borrow” his or her signatures

facsimile or e-mail. However, the primary documentation defendant cites in support of this assertion is a document from October 2020. Nevertheless, and regardless of whether this is the case, the Court will deny plaintiffs’ requested injunctive relief for the reasons stated *infra*.

from another source and which does not require applicants to submit signatures in the same method as is required for paper applications. According to plaintiffs, all voters in this state must submit contemporaneous, wet-ink signatures when applying for an absent voter ballot.

II. ANALYSIS

Plaintiffs have asked the Court to issue preliminary injunctive relief. Courts have remarked that “an injunction represents an extraordinary and drastic use of judicial power that should be employed sparingly and only with full conviction of its urgent necessity.” *Davis v Detroit Fin Review Team*, 296 Mich App 568, 613; 821 NW2d 896 (2012) (citation and quotation marks omitted; cleaned up). The Court should consider four factors when deciding whether to upset the status quo and to award such relief:

(1) whether the applicant has demonstrated that irreparable harm will occur without the issuance of an injunction; (2) whether the applicant is likely to prevail on the merits; (3) whether the harm to the applicant absent an injunction outweighs the harm an injunction would cause to the adverse party; and (4) whether the public interest will be harmed if a preliminary injunction is issued. [*Slis v State*, __ Mich App __, __; __ NW2d __ (2020) (Docket Nos. 351211; 351212), slip op at 12.]

The primary argument put forth by defendant is laches—namely, defendant argues that plaintiffs waited until the waning days before the election to challenge a process that has been in place since June

2020. The Court agrees with defendant that the doctrine of laches suffices to deny plaintiffs the requested relief. Insofar as laches is concerned, the doctrine:

is founded upon long inaction to assert a right, attended by such intermediate change of conditions as renders it inequitable to enforce the right. The application of the doctrine of laches requires the passage of time combined with a change in condition that would make it inequitable to enforce the claim against the defendant. To merit relief under this doctrine, the complaining party must establish prejudice as a result of the delay. Proof of prejudice is essential. [*Williamston Twp v Sandalwood Ranch, LLC*, 325 Mich App 541, 553; 927 NW2d 262 (2018) (citation and quotation marks omitted).]

Here, defendants have demonstrated dilatory conduct on the part of plaintiffs as well as prejudice arising from the delay. Turning first to the delay itself, there is no dispute that the online absent voter ballot application process began on or about June 12, 2020. And as defendant points out, the process was well-publicized, having been the subject of repeated public pronouncements by defendant. Moreover, voters were availing themselves of the new absent voter ballot application process, registering not only for the August primary election online, but for the November 2020 general election as well.

In spite of this publicized process, plaintiffs waited. They waited for weeks after the August primary was completed before filing their complaint. And even after they filed their complaint, they continued

to procrastinate, waiting over a month after they filed their complaint to ask the Court for preliminary injunctive relief. As defendant points out, during this time voters in this state continued to apply to vote by absent voter ballot online, as they had been instructed to do so since the middle of June. And during this time, the election continued to draw closer. In sum, the Court finds that plaintiffs acted with unreasonable delay—first in filing their complaint, and second in moving for preliminary injunctive relief.

In addition, the Court concludes that defendant has produced adequate proof of prejudice arising from the delay. According to defendant's documentary evidence, over 74,000 voters in this state have submitted online applications for absent voter ballots, and over 7,000 of those voters have already returned their ballots. In other words, defendant has shown significant reliance on the process, such that upending the process at this stage would prejudice defendant—as well those who intend to or have already availed themselves of the online application process. Indeed, plaintiffs' position pays little, if any, regard to those who have already applied for such ballots online, nor do plaintiffs explain what should be done about these voters or their ballots. Allowing plaintiffs' untimely action to a process that could have been challenged months ago, and before significant reliance had been placed thereon by this state's electorate, would result in prejudice to all involved.

In addition, the Court notes that caselaw has long counseled against disrupting a looming election in the manner requested by plaintiffs. See, e.g., *New Democratic Coalition v Secretary of State*, 41 Mich App 343,

356-357; 200 NW2d 749 (1972). “When an election is “imminen[t]” and when there is “inadequate time to resolve [] factual disputes” and legal disputes, courts will generally decline to grant an injunction to alter a State’s established election procedures.” *Crookston v Johnson*, 841 F3d 396, 398 (CA 6, 2016), quoting *Purcell v Gonzalez*, 549 US 1, 5- 6; 127 S Ct 5; 166 L Ed 2d (2006) (per curiam). And this is “especially true,” remarked the United States Court of Appeals for the Sixth Circuit, “when a plaintiff has unreasonably delayed bringing his claim,” such as plaintiffs in the instant case. *Crookston*, 841 F3d at 398. Plaintiffs have not given the Court a compelling reason why it should exercise its discretion to grant preliminary injunctive relief on the eve of an election, given the delay occasioned in bringing this matter. Thus, the Court concludes that the doctrine of laches weighs heavily in favor of denying the requested relief.

And in light of the application of the doctrine of laches, the Court finds that plaintiffs are unable to demonstrate a likelihood of success on the merits. Furthermore, as it concerns irreparable harm—which has been described as an “indispensable” requirement of obtaining preliminary injunctive relief, see *Pontiac Fire Fighters Union Local 376 v Pontiac*, 482 Mich 1, 9; 753 NW2d 595 (2008)—the Court finds plaintiffs’ submissions lacking as well. Plaintiffs merely theorize that fraud might occur from the existing process, and they speculate about vote-dilution. However, the proponent of preliminary injunctive relief must demonstrate particularized harm, and “[t]he mere apprehension of future injury or damage cannot be the basis for injunctive relief.” *Id.* On the record before the Court, plaintiffs cannot make this “indispensable” showing.

As a result of plaintiffs' inability to satisfy these two important factors, the Court concludes that preliminary injunctive relief is not appropriate in this case and that a lengthy discussion of the remaining factors is not warranted. Furthermore, plaintiffs have not presented a compelling argument with respect to public harm or to the nature of the interests at stake.

III. CONCLUSION

IT IS HEREBY ORDERED that plaintiffs' motion for preliminary injunctive relief is DENIED.

This is not a final order and it does not resolve the last pending claim or close the case.

October 26, 2020 Cynthia Diane Stephens
Cynthia Diane Stephens
Judge, Court of Claims

**Meeting
of the
Board of State Canvassers
November 23, 2020**

Called to order: 1:07 p.m.

Members present: Jeannette Bradshaw - Chairperson Aaron Van Langevelde – Vice Chairperson Julie Matuzak Norman Shinkle

Members absent: None.

Agenda item: Consideration of meeting minutes for approval (October 15, 2020 meeting).

Board action on agenda item: The Board approved the minutes of the October 15, 2020 meeting as submitted. Moved by Matuzak; supported by Van Langevelde. Ayes: Bradshaw, Van Langevelde, Matuzak, Shinkle. Nays: None. Motion carried.

Agenda item: Canvass and certification of the November 3, 2020 general election.

Board action on agenda item: Three motions were offered. (1) Based on an examination of the election returns received by the Secretary of State for the November 3, 2020 general election, the Board certified that the attached reports are true statements of the votes cast at the election for the offices certified by this Board, and for the Electors of President and Vice President of the United States; the Board further certified that the persons named on the attached

listing were duly elected for the indicated offices, and State Proposals 20-1 and 20-2 passed. Moved by Matuzak; supported by Bradshaw. Ayes: Bradshaw, Van Langevelde, Matuzak. Nays: None. Abstention: Shinkle. Motion carried.

Time of certification: 4:34 p.m.

(2) The Board authorized the staff of the Bureau of Elections to represent the Board in any recount of votes cast at the November 3, 2020 general 2 election. Moved by Matuzak; supported by Shinkle. Ayes: Bradshaw, Van Langevelde, Matuzak, Shinkle. Nays: None. Motion carried.

(3) The Board requested that the Michigan Legislature conduct an in-depth review of Michigan election processes and procedures to address concerns that have been raised by experts and citizens about our elections in order to assure our citizens that Michigan elections are accurate, transparent and fully protective of all citizens constitutional rights. Moved by Shinkle; supported by Matuzak. Ayes: Bradshaw, Van Langevelde, Matuzak, Shinkle. Nays: None. Motion carried.

Agenda item: Recording the results of the November 3, 2020 special election for the Michigan House of Representatives, 4th District, partial term ending January 1, 2021.

Board action on agenda item: The Board recorded the results of the November 3, 2020 special election for the office of State Representative, 4th District as certified by the Wayne County Board of Canvassers

on November 17, 2020. Moved by Shinkle; supported by Van Langevelde. Ayes: Bradshaw, Van Langevelde, Matuzak, Shinkle. Nays: None. Motion carried.

Agenda item: Such other and further business as may be properly presented to the Board.

Board action on agenda item: None.

Adjourned: 9:40 p.m.

Chair Bradshaw

Vice-Chair Van Langevelde

Member Matuzak

Member Shinkle

Date

November 20, 2020

**CANVASS AND CERTIFICATION OF THE
NOVEMBER 3, 2020 GENERAL ELECTION**

STAFF RECOMMENDATION: Staff recommends that the Board of State Canvassers certify the results of the November 3, 2020 general election. Staff's recommendation is based on the fact that all 83 counties in Michigan have certified their official results.

This memorandum also includes discussion of additional issues that have gained public attention before and during the county canvass process.

Unofficial Reporting Errors

As in past elections, some jurisdictions made errors in reporting unofficial results on Election Night. These errors are all attributable to human error in the operation of tools used to report unofficial results, did not affect the actual tabulation of votes, and were identified and corrected either prior to or during the county canvass.

Unofficial reporting errors occur when tabulator results – which are the totals scanned from hand-marked, paper ballots, and which are accurate – are not correctly or completely reported on unofficial election night reporting websites. These errors are always caught in the county canvass if not before, because the county canvass process involves reviewing all printed totals tapes from tabulators and comparing them to the unofficial results to identify any discrepancies.

These errors can happen for various reasons:

(1) Local jurisdiction errors in transmitting unofficial data from tabulators to election management systems. For example, if a local jurisdiction accidentally did not transmit the unofficial results from one precinct or tabulator, or transmitted a precinct total twice.

(2) County errors in adding results to unofficial reporting sites. For example, if a county did not properly export the unofficial results file received from a local jurisdiction, causing some precincts to not be included; or a made a data-entry error in reporting unofficial results.

(3) In one case in Antrim County, a clerk made an error in programming election software that did not affect tabulation, but did cause candidate vote totals to be transposed in unofficial reported totals. All tabulators properly counted ballots. A fuller explanation of this incident is provided in the attached documents.

The Bureau of Elections did not identify unusual patterns in unofficial reporting; the examples identified were typical human error similar to that which has occurred in past elections. Nor did the Bureau determine that these human errors occurred only with the use of one voting system in Michigan. For example, in addition to the error in Antrim County, which uses Dominion Voting Systems, there were also publicly reported issues which occurred in Bay County,¹ which

¹ <https://www.abc12.com/2020/11/06/michigan-election-numbers-will-change-after-bay-county-ballots-werentcounted-properly/>

uses Election Systems & Software, and Oakland County,² which uses Hart Intercivic.

Detroit Out-of-Balance Precincts

During the canvass of the August 2020 Primary Election, which the Board of State Canvassers certified, the Board discussed the Wayne County Canvass of election precincts in Detroit and noted that a significant number of precincts were out of balance.

If a precinct is in balance, meaning the number of ballots counted equals the number of names on the pollbook (or if the reason for the imbalance can be identified), the precinct can be recounted. A precinct can also be recounted even if it is not in balance, as long as the number of ballots in the ballot container matches the number ballots tabulated according to the tabulator tape.

A review of data from the November 2020 Wayne County Canvass showed a substantial improvement in the percentage of precincts that were in balance and recountable as compared both to the August 2020 Primary and the November 2016 General Election.

The Bureau of Elections compared out-of-balance precincts from August and November 2020 and determined both that a significantly higher percentage of precincts were recountable and, when precincts were

² <https://www.detroitnews.com/story/news/local/oakland-county/2020/11/06/oakland-county-commissioner-winstechical-glitch-vote-totals/6186062002/>

out of balance, the imbalances were smaller in magnitude.

Percentage of Precincts Balanced or Explained:

August 2020: 53.6 % (539/1,006)

November 2020: 71.9% (458/637)

As noted above, balanced precincts or precincts where an imbalance can be explained³ can be recounted. Additionally, precincts with unexplained imbalance between the vote total and the poll book can be recounted if the number of ballots in the container matches the number recorded. The additional number of out-of-balance but recountable precincts is typically not known until recounts occur and all containers are opened. Accordingly, in August 2020 at least 53.6% of precincts were recountable, whereas in November 2020 at least 71.9% are recountable.

The Bureau also reviewed out of balance precincts to determine how out of balance the precincts were. The Bureau found that the percentage of significantly out-of-balance precincts – those with an imbalance of 5 or more – was also lower in November 2020 than August 2020.

³ There are many legitimate reasons why the numbers may not match. For example, a voter may appear in the poll book but have voted a provisional envelope ballot that was not tabulated.

Percentage of Precincts with a Difference of 5 or More:

August 2020: 8.1% (81/1,006)

November 2020: 5.7% (36/637)

Together, these figures indicate that Detroit did a substantially better job of balancing precincts in November when compared to August, and also that the recordkeeping errors related to out of balance precincts were of smaller scale in the November election when compared with August. This improvement is particularly notable given that:

- (1) Overall turnout in Detroit approximately doubled in November when compared with August.
- (2) The number of absent voter ballots approximately doubled when compared with August.
- (3) Multiple precincts were combined into absent voter counting boards in November (meaning poll books and vote totals were larger).

Collectively, these factors meant more ballots were cast, collected, and counted; more names had to be kept track of in poll books; and precincts were more difficult to balance. Despite these factors, Detroit improved on both of these metrics compared to November 2020.

The Bureau also compared November 2020 to November 2016 and found a substantial increase in the percentage of balanced or explained precincts compared

to 2016, when there was a much closer margin in the Presidential race.

Percentage of precincts balanced or explained:

November 2016: 41.8% (270/662)

- Presidential election margin: 10,704

November 2020: 71.9% (458/637)

- Presidential election margin: 154,187

Detroit Turnout and Claimed Irregularities

The Bureau of Elections also examined Detroit's overall turnout and Presidential and Senate Election vote totals to determine if any of the claimed irregularities regarding Detroit's elections, even if verified, could have significantly impacted the outcome.

In litigation seeking to prevent Wayne County from certifying election results, allegations were made of irregularities in the processing of ballots in Detroit. Although the Wayne County Circuit Court determined that these claims did not give a credible overall account of the processing of ballots in Detroit,⁴ the Bureau reviewed overall turnout data for Detroit to determine if any anomalous data tended to suggest irregularities in the outcome that would affect the Presidential election.

The Bureau found that turnout in Detroit increased less than other parts of the state when compared to

⁴ <https://www.freep.com/story/news/local/michigan/detroit/2020/11/13/judge-rules-against-separate-audit-waynecounty-election/6272704002/>

2016, that President Trump gained a higher percentage of votes in Detroit compared to 2016, and that John James' performance in Detroit compared to Trump was similar to their relative performance statewide, tending to undermine the suggestion that irregularities affecting the outcome of the election occurred on any significant scale.

Overall, turnout in Detroit increased less than turnout statewide, which tends to undermine suggestions that an unusually large number of ballots were counted in Detroit. In Detroit, 256,514 votes were cast in the presidential race,⁵ an increase of 9,145 compared to 247,369 in 2016.⁶ Statewide, 5,538,212 votes were cast in the Presidential Election,⁷ an increase of 738,928 compared to 2016⁸ (Nationally, turnout increased by approximately 20 million votes).

Increase in Presidential Election Votes as a Percentage of 2016 Votes:

Detroit: 3.7% (9,145/247,369)

Statewide: 15.4% (738,928/4,799,284)

Additionally, when compared to 2016, President Trump gained a higher percentage of votes in Detroit

⁵ <https://www.waynecounty.com/elected/clerk/election-results.aspx>

⁶ <https://detroitmi.gov/sites/detroitmi.localhost/files/2018-05/official-results-nov-8-2016.pdf>

⁷ https://mielections.us/election/results/2020GEN_CENR.html.

⁸ https://mielections.us/election/results/2016GEN_CENR.html. Differences in reporting of write-in votes may affect these numbers slightly, but not on any significant scale.

in 2020, which tends to undermine suggestions that Trump votes were treated irregularly or not counted.

Percentage of Trump Votes in Detroit:

2016: 3.1% (7,682/247,369)

2020: 5.0% (12,889/256,514)

The Bureau also did not identify any anomalous differences in vote totals regarding James votes relative to Trump votes in Detroit in comparison to the rest of the state; as was the case statewide, James received a slightly higher percentage of votes than Trump in Detroit.

Percentage of Votes in Detroit/Statewide:

Trump Detroit: 5.0% (12,889/256,514)

Trump Statewide: 47.9% (2,649,852/5,538,212)

James Detroit: 5.1% (12,970/254,941)

James Statewide: 48.2% (2,642,222/5,479,687)

Additional Materials and Correspondence

The Board of State Canvassers received additional submissions from interested parties. These documents are enclosed in the Board Members packets.

BOARD OF STATE CANVASSERS MEETING

VOLUME I

November 23, 2020

Prepared by

depos@networkreporting.com

Phone: 800.632.2720

Fax: 800.968.8653

www.networkreporting.com

Let us assist you GLOBALLY for all of your deposition needs.

[Page 1]

STATE OF MICHIGAN

DEPARTMENT OF STATE

JOCELYN BENSON, SECRETARY OF STATE

VOLUME I

BOARD OF STATE CANVASSERS MEETING

425 West Ottawa Street, Lansing, Michigan

Monday, November 23, 2020, 1:00 p.m.

BOARD: MS. JEANNETTE BRADSHAW - Chair

MR. AARON VAN LANGEVELDE - Vice Chair

MR. NORMAN SHINKLE - Board Member

MS. JULIE MATUZAK - Board Member

MR. JONATHAN BRATER - Elections Staff

MS. MELISSA MALERMAN - Elections Staff

APPEARANCES:

For the State:

MS. HEATHER S. MEINGAST (P55439)

Assistant Attorney General

525 West Ottawa Street

Lansing, Michigan 48909

(517) 373-1110

Also Present:

Adam Fracassi, Lori Bourbonais, Walter Marshall, Sarah Reinhardt, Sally Marsh, David Tarrant

RECORDED BY:

Marcy A. Klingshirn, CER 6924
Certified Electronic Recorder
Network Reporting Corporation
Firm Registration Number 8151
1-800-632-2720

[Page 2]

TABLE OF CONTENTS

[Page 5]

Lansing, Michigan

Monday, November 23, 2020 - 1:07 p.m.

MS. BRADSHAW: Good afternoon. I would like to welcome everyone to our Michigan Board of State Canvassers meeting. At this time, Director Brater, did you have a statement or -- to read or did you want me to go forward with my remarks?

MR. BRATER: Well, I can first confirm that the Notice was published in conformance with the Open Meetings Act.

MS. BRADSHAW: Thank you.

MR. BRATER: And I am -- this meeting is being held remotely in conformance with the OMA and I'm

happy to hand it back to you for the first segment of the agenda which is the consideration of the minutes.

MS. BRADSHAW: I do want to just note that there might be some pauses just because we do have - - this is a remote meeting, so please allow us for technical issues. So going to our first item on our agenda is the consideration of the meeting minutes for approval for October 15th, 2020.

MS. MATUZAK: Madam Chair? Member Matuzak moves approval of the minutes as printed from the October 15th meeting.

MR. VAN LANGEVELDE: I'll support.

MS. BRADSHAW: Okay. It has been moved and

[Page 6]

supported. And just for everyone's sake, we will be taking roll call votes just like we did in our Teams Meetings so this does not change. It's been moved and supported. Is there any discussion on the motion of the approval of the minutes from October 15th? And I am muted. I apologize. Is there any discussion on the approval of the minutes from October 15th? Hearing none, Melissa, will you please take a roll call vote?

MR. MALERMAN: Chair Bradshaw?

MS. BRADSHAW: Yes.

MR. MALERMAN: Vice Chair Van Langevelde?

MR. VAN LANGEVELDE: Yes.

MR. MALERMAN: Ms. Matuzak?

MS. MATUZAK: Yes.

MR. MALERMAN: Mr. Shinkle?

MR. SHINKLE: Yes.

MR. MALERMAN: Madam Chair, you have four aye 18 votes.

MS. BRADSHAW: It is so moved.

(Whereupon motion passed at 1:09 p.m.)

MS. BRADSHAW: We will go to our second item on our agenda which is the canvass and certification of the November 3rd, 2020, general election.

MS. BRADSHAW: Thank you, Chair Bradshaw, Vice Chair Van Langevelde, Members Matuzak and Shinkle. Thank

[Page 7]

you for the opportunity to present on the canvass and certification of the November 3rd, 2020, general election. I'd also like to thank all four of you for your dedicated service to our state, our voters, and our candidates throughout the year.

The staff recommendation is that you certify. You have before you the results of Michigan's elections certified by all 83 counties. More than five and a half million Michiganders cast ballots in the November election, a record in our state. They have chosen candidates for President and United States Senate, 14

members of Congress, and more than 100 representatives in the state legislature. They have voted in favor of two constitutional amendments, chosen two supreme court justices, and elected eight members of statewide education and university boards, plus thousands of local offices and proposals. Record setting civic participation in the midst of a global pandemic is inspiring and voters should be commended for making their voices heard this November.

The 83 sets of certified returns before you and the elections they represent are a labor of love on behalf of our state performed by Michigan's 1600 election clerks and their staff. It is an effort that is unprecedented both in scope and in difficulty. Long before most were giving any thought to this month's elections, clerks and their

[Page 8]

staff were hard at work preparing for the new responsibilities they would shoulder in support of our new state constitutional voting rights.

It's been quite a year. On the night of our March presidential primary, the first case of COVID-19 was reported in Michigan. Since that night, our election officials have grappled with challenge after challenge to operate an election system not built for social distancing, not equipped for unexpected absences, and not friendly to service disruptions. Into May, that meant trying to canvass the March election and conducting an all-mail May election at the same time when public health guidance for combating the virus was still emerging.

Clerks then managed to find new election equipment, replace poll workers with many of their regulars unavailable, and move voting locations so they could hold the August state primary. In August, clerks managed to administer yet another election successfully under extremely difficult conditions.

November was the greatest challenge of all. Election workers have been on a marathon to ensure our elections can continue to run. The two months leading up to November 3rd required, among many other things, printing, testing, and distributing millions of ballots, serving voters continuously by mail and in person, hiring and

[Page 9]

training poll workers, and running a busy election day all in the middle of a pandemic.

Election day was a long one in many communities as we expected. Despite meticulous preparation, clerks knew the sheer volume of absentee ballots would mean going late into the night, and at least the following day, to finish counting all ballots. They got that done too, with barely time for a nap, before the county canvasses began. That final 12-day push, running on fumes, culminated in the successful certification of the county election results you have before you.

Now none of this just happened. Election work is essential, so on paper work has to get done no matter what. But in the real world, what that meant was election workers sacrificing continuously and tirelessly to staff election offices when many others had the luxury of staying home. For clerks, evenings and weekends

off became a thing of the past. Even working seven days and nights a week there were scarcely hours in the day.

At the Bureau, we've spoken to clerks and staff who have overcome any challenge you can imagine – budgets slashed, colleagues sidelined and buildings closed, even friends and family members lost with little time to mourn. Other clerks, on the ballot themselves, have endured election defeats --

[Page 10]

MS. BRADSHAW: Jonathan? Can you speak a little louder?

MR. BRATER: Sure. Other clerks, on the ballot themselves, have endured election defeats and still continued doing their civic duty.

Few see, or well understand, the dedication it takes to run an election. That means that clerks typically only hear from members of the public who are not happy. It also means that despite their constant dedication, clerks have sometimes been the subject of unfair criticism, abuse, and even threats. Despite all this, I cannot thank election workers enough for the sacrifice, courage, and commitment to our state that they have shown throughout the year. They achieved what is at the very least the greatest accomplishment in election administration in recent memory. They understand better than anyone the importance of this work and the effort that went into getting us to this point.

I am immensely grateful also to my staff on the Bureau of Elections for their tireless efforts in support of this election, and also for the tremendous support we have received from the entire Department of State, other state agencies, and other federal partners. All of this work was also essential in supporting the achievements of our election officials this year.

As the Board is aware, the Board has received

[Page 11]

requests that it delay certification or that a special audit be conducted in response to claims from some of irregularities in the administration of the election. The Bureau has not identified any irregularities this year other than the typical, occasional human error that is always part of the process. Overall, we had an extremely well run and secure election.

The Bureau did not identify anything anomalous in the county certified election results suggesting large scale irregularities. Michiganders voted for candidates of both parties, as they always do. They elected seven democrats and seven republicans in Congress. They elected a majority of one party to the State House of Representatives and members of the other party for President and U.S. Senate. They elected bipartisan slates of candidates to statewide education and university boards.

As indicated in the staff report, there were several errors in the reporting of unofficial results. This happens every election and we will continue to work on improvements to the process to reduce the extent to which it occurs. Importantly, however, none of these

errors affected how the hand marked, paper ballots that we use to vote are actually counted by ballot tabulators. Any errors in reporting of unofficial results were quickly caught soon after they occurred or during the county canvass, when

[Page 12]

canvassers reviewed tabulator tapes before certifying official results.

Because some comments have focused on Detroit, I will also note that we saw there a reduction in the clerical errors that led to precincts being out of balance. That is, when records show the number of ballots tabulated does not match exactly the poll book number. Although we need continued improvement in this area, by any metric November was a better run election in Detroit than the August primary or the November 2016 general. The percentage of balanced or explained precincts in Detroit was 72 percent, up from 42 percent in November 2016, and up from 54 percent in August of this year. The percentage of precincts that can be recounted is likely significantly higher than 72 percent, because we can recount it if the number of ballots in the ballot container matches the tabulated total, a figure not reflected in the out-of-balance totals.

We likely will have several recounts across the state following certification including in Wayne County before audits occur. In auditing jurisdictions after certification, those with out-of-balance precincts will be a point of focus and I expect that we will find, as we typically do, that these issues can be explained, can be fixed by process improvements, and do not

mean that votes were not properly counted. By performing a statewide risk

[Page 13]

limiting audit, as we did after March, we will also be able to confirm that our tabulators counted ballots accurately.

Finally, I'll just note that under our election law, these audits must occur after certification because we don't have legal authority to inspect the materials we need until that time. Therefore, despite the requests to start audits sooner, we have not identified any provision of law that that would allow for some sort of special precertification audit or authority for the Board to conduct that. On that point, however, in closing, I will just pass it off to Heather Meingast from the Attorney General's Office who may have some additional clarification or elaboration on that point. And then with that I'll just hand it off and thank you again.

MS. BRADSHAW: Heather?

MS. MEINGAST: Thank you, Director Brater. I would just echo Jonathan's comments that we looked at the issue of -- looked at the issue of whether the Board has the authority to request an audit itself before choosing or voting on the matter of certification or whether some other person can, you know, compel upon the Board and request the Board to do such an audit. And if we're talking about an audit as used in the constitution and the statute, which is MCL 168.31a, both of those -- both the constitution and the statute clearly contemplate that we are conducting audits