UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

TIMOTHY KING, MARIAN ELLEN SHERIDAN, JOHN EARL HAGGARD, CHARLES JAMES RITCHARD, JAMES DAVID HOOPER, and DAREN WADE RUBINGH, Plaintiffs, v. GRETCHEN WHITMER, in her official capacity as Governor of the State of Michigan, JOCELYN BENSON, in her official capacity as Michigan Secretary of State, and the Michigan BOARD OF STATE CANVASSERS, Defendants.	CIVIL ACTION No. 2:20-cv-13134-LVP-RSW Hon. Linda V. Parker

PROPOSED INTERVENOR-DEFENDANTS' MOTION TO INTERVENE

EXPEDITED CONSIDERATION REQUESTED

Proposed Intervenor-Defendants DNC Services Corporation/Democratic National Committee and Michigan Democratic Party ("Proposed Intervenors") seek to participate as intervening defendants in the above-captioned lawsuit to safeguard the substantial and distinct legal interests of themselves, their member candidates, and their member voters, which will otherwise be inadequately represented in the litigation. For the reasons discussed in the memorandum in support, filed concurrently herewith, Proposed Intervenors are entitled to intervene in this case as

a matter of right under Federal Rule of Civil Procedure 24(a)(2). In the alternative, Proposed Intervenors request permissive intervention pursuant to Rule 24(b).

Proposed Intervenors respectfully request that the Court set an expedited schedule regarding this motion to intervene to allow for their participation in any briefing schedules and hearings that are held. Otherwise, Proposed Intervenors' substantial constitutional rights are at risk of being severely and irreparably harmed, as described more fully in the memorandum in support of this motion.

Pursuant to Local Rule 7.1(a), counsel for Proposed Intervenors and for Plaintiffs had a telephonic conference on November 30, 2020, and Plaintiffs concur in the motion. Counsel for Defendants have provided their consent.

WHEREFORE, Proposed Intervenors request that the Court grant them leave to intervene in the above-captioned matter and to file their proposed motion to dismiss (Ex. 1).

Dated: November 30, 2020.

Respectfully submitted,

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*Admission forthcoming

CERTIFICATE OF SERVICE

Scott R. Eldridge certifies that on the 30th day of November 2020, he served a copy of the above document in this matter on all counsel of record and parties via the ECF system.

/s/ *Scott R. Eldridge*
Scott R. Eldridge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

TIMOTHY KING, MARIAN ELLEN SHERIDAN, JOHN EARL HAGGARD, CHARLES JAMES RITCHARD, JAMES DAVID HOOPER, and DAREN WADE RUBINGH, Plaintiffs, v. GRETCHEN WHITMER, in her official capacity as Governor of the State of Michigan, JOCELYN BENSON, in her official capacity as Michigan Secretary of State, and the Michigan BOARD OF STATE CANVASSERS, Defendants.	CIVIL ACTION No. 2:20-cv-13134-LVP-RSW Hon. Linda V. Parker

PROPOSED INTERVENOR-DEFENDANTS' BRIEF IN SUPPORT OF MOTION TO INTERVENE

STATEMENT OF ISSUES PRESENTED

I. Whether Proposed Intervenor-Defendants are entitled to intervene as a matter of right under Federal Rule of Civil Procedure 24(a)(2).

Proposed Intervenor-Defendants' Answer: Yes.

Plaintiffs concur in the relief requested.

II. Whether, in the alternative, Proposed Intervenor-Defendants should be permitted to intervene under Rule 24(b).

Proposed Intervenor-Defendants' Answer: Yes.

Plaintiffs concur in the relief requested.

CONTROLLING OR MOST APPROPRIATE AUTHORITY

Federal Rule of Civil Procedure 24

Blount-Hill v. Zelman, 636 F.3d 278 (6th Cir. 2011)

Stupak-Thrall v. Glickman, 226 F.3d 467 (6th Cir. 2000)

Michigan State AFL-CIO v. Miller, 103 F.3d 1240 (6th Cir. 1997)

I. INTRODUCTION

Pursuant to Federal Rule of Civil Procedure 24, Proposed Intervenor-Defendants DNC Services Corporation/Democratic National Committee ("DNC") and Michigan Democratic Party ("MDP," and together, "Proposed Intervenors") move to intervene as defendants in this lawsuit. Through this action, Plaintiffs seek to undo Michigan's lawful certification of the result of the presidential contest, based on nothing more than wild conspiracy theories, rank speculation, questionable evidence, and fundamentally flawed legal claims. Proposed Intervenors represent a diverse group of Democrats, including elected officials, candidates, members, and voters. Plaintiffs' requested relief—wholesale disenfranchisement of more than 5 million Michiganders—threatens to deprive Proposed Intervenors' individual members of the right to have their votes counted, undermine the electoral prospects of their candidates, and divert their limited organizational resources. Proposed Intervenors' immediate intervention to protect those interests is warranted.

Pursuant to Rule 24(c), a proposed motion to dismiss is attached as Exhibit 1.

II. BACKGROUND

A. The Election

On November 3, 2020, Michiganders voted in one of the most scrutinized elections in recent history, one that yielded record turnout amid an ongoing pandemic. Despite unprecedented levels of observation and supervision, tall tales of

phantom fraud have spread widely in the weeks since election day, including in Michigan, where President-elect Joe Biden prevailed by more than *150,000 votes*. *See 2020 Michigan Election Results*, Mich. Sec'y of State, https://mielections.us/election/results/2020GEN_CENR.html (Nov. 23, 2020). The *Detroit Free Press* reported that "Michigan has been no stranger to election-related falsehoods." *Clara Hendrickson* et al., *Michigan Was a Hotbed for Election-Related Misinformation: Here Are 17 Key Fact Checks*, Detroit Free Press (Nov. 9, 2020), https://www.freep.com/story/news/local/michigan/detroit/2020/11/09/misinformation-michigan-16-election-related-fact-checks/6194128002. Indeed, several pieces of misinformation that have already been debunked, *see id*, make an appearance in Plaintiffs' amended complaint. *See* First Am. Compl. for Declaratory, Emergency, & Permanent Injunctive Relief ("Am. Compl."), ECF No. 6.

Plaintiffs' allegations are rife with stories of fraud undertaken by election workers at TCF Center, where Detroit's absentee ballots were processed, but this impression could not be further from the truth. More than 100 Republican election challengers[1] observed the vote tabulation on election day, *see* Aff. of David Jaffe

[1] Election "challengers" are volunteers appointed by political parties or other organized groups who can observe the tabulation of absentee ballots and make challenges under certain circumstances. *See, e.g.*, Mich. Comp. Laws §§ 168.730, 168.733. Challengers are *not* permitted to "make a challenge indiscriminately," "handle the poll books . . . or the ballots," or "interfere with or unduly delay the work of the election inspectors." *Id.* § 168.727(3). "Election inspectors," by contrast, are

("Jaffe Aff.") ¶ 7 (attached as Ex. 2), and Donna MacKenzie, a credentialed challenger, attested that "there were many more Republican Party challengers than Democratic Party challengers" when she observed the count on November 4. Aff. of Donna M. MacKenzie ("MacKenzie Aff.") ¶ 6 (attached as Ex. 3).[2] David Jaffe, another credentialed challenger at TCF Center who observed the processing of ballots on November 2, 3, and 4, has attested to his "perception that all challengers had a full opportunity to observe what was going on and to raise issues with supervisors and election officials." Jaffe Aff. ¶ 10. Ms. MacKenzie further attested that "the ballot counting process was very transparent," that challengers "were given the opportunity to look at ballots whenever issues arose," and that "[t]here were more than enough challengers to have observers at each table." MacKenzie Aff. ¶¶ 4–5, 7.

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the poll workers appointed by local clerks who perform the tabulation duties. *See id.* § 168.677.

[2] Proposed Intervenor-Defendant Michigan Democratic Party submitted the attached affidavits of David Jaffe, Donna MacKenzie, and Joseph Zimmerman along with its opposition to the plaintiffs' motion for preliminary relief in *Costantino v. City of Detroit*, No. 20-014780-AW (Mich. Cir. Ct. Nov. 11, 2020), another challenge to Wayne County's vote tabulation and election returns currently pending in state court. The court in that case credited the testimony offered in these affidavits in denying the plaintiffs' requested relief. *See Costantino v. City of Detroit*, No. 20-014780-AW, slip op. at 12 (Mich. Cir. Ct. Nov. 13, 2020) (attached as Ex. 12); *see also Costantino v. City of Detroit*, No. 355443, slip op. at 1 (Mich. Ct. App. Nov. 16, 2020) (denying motion for peremptory reversal and application for leave to appeal) (attached as Ex. 13); *Costantino v. City of Detroit*, No. 162245, slip op. at 1 (Mich. Nov. 23, 2020) (similar) (attached as Ex. 14).

While Mr. Jaffe and his fellow challengers—Democratic and Republican alike—"observed minor procedural errors by election inspectors," they "called those errors to the attention of supervisors, and were satisfied that the supervisors had corrected the error and explained proper procedure to the election inspectors." Jaffe Aff. ¶ 12. Indeed, Mr. Jaffe "spoke with several Republican challengers who expressed their view, and in a couple of cases their surprise, that there were no material issues in the counting." *Id*. Although Mr. Jaffe "received very few reports of unresolved issues from Democratic challengers," he "did receive many reports of conduct by Republican or" Election Integrity Fund ("EIF") "challengers that was aggressive, abusive toward the elections inspectors," and "clearly designed to obstruct and delay the counting of votes." Jaffe Aff. ¶ 13; *see also id.* ¶¶ 18, 20, 22–25, 30; MacKenzie Aff. ¶¶ 21–22. And although election officials attempted to maintain social distancing and other preventative measures to curb the potential transmission of COVID-19, Mr. Jaffe "observed that Republican and EIF challengers repeatedly refused to maintain the mandated distance from the elections inspectors." Jaffe Aff. ¶¶ 17–19. Consequently, some "Republican or EIF challengers were removed from the room after intimidating and disorderly conduct, or filming in the counting room in violation of the rules." *Id.* ¶ 24.

Mr. Jaffe concluded that "while some of the Republican challengers were there in good faith, attempting to monitor the procedure, the greater number of

Republican and EIF challengers were intentionally interfering with the work of the elections inspectors so as to delay the count of the ballots and to harass and intimidate election inspectors." *Id.* ¶ 25. Indeed, Joseph Zimmerman, a credentialed challenger on behalf of the Lawyers Committee for Civil Rights Under Law, observed Republican challengers "discussing a plan to begin challenging every single vote on the grounds of 'pending litigation'" and then "repeatedly challenging the counting of military ballots for no reason other than 'pending litigation.'" Aff. of Joseph Zimmerman ¶ 20 (attached as Ex. 4).

B. The Lawsuits

Despite widespread acknowledgement that no fraud occurred, *see, e.g.*, Nick Corasaniti et al., *The Times Called Officials in Every State: No Evidence of Voter Fraud,* N.Y. Times (Nov. 10, 2020), https://www.nytimes.com/2020/11/10/us/politics/voting-fraud.html, various lawsuits have been filed in Michigan in an attempt to sow confusion and cast doubt on the legitimacy of the election—including lawsuits filed by Donald J. Trump for President, Inc. (the "Trump Campaign"), the campaign that Plaintiffs, as Republican presidential elector nominees, *see* Am. Compl. ¶ 24, are obligated to support. In the Trump Campaign's state court case, which featured many of the same claims now raised here, it sought an immediate cessation of the counting of absentee ballots based on allegations of insufficient oversight. *See* Verified Compl. for Immediate Declaratory & Injunctive Relief,

Donald J. Trump for President, Inc. v. Benson, No. 20-000225-MZ (Mich. Ct. Cl. Nov. 4, 2020) (attached as Ex. 5). The Michigan Court of Claims denied the Trump Campaign's emergency motion for declaratory relief, concluding that it was unlikely to succeed on the merits and that, even "overlooking the problems with the factual and evidentiary record," the matter had become moot because "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." *Donald J. Trump for President, Inc. v. Benson*, No. 20-000225-MZ, slip op. at 5 (Mich. Ct. Cl. Nov. 6, 2020) (attached as Ex. 6). The Trump Campaign has since sought an appeal, *see* Mot. for Immediate Consideration of Appeal Under MCR 7.211(C)(6), *Donald J. Trump for President, Inc. v. Benson*, No. 355378 (Mich. Ct. App. Nov. 6, 2020) (attached as Ex. 7), but has failed to correct numerous filing defects as requested by the Michigan Court of Appeals three weeks ago, *see* Appellate Docket Sheet, *Donald J. Trump for President, Inc. v. Benson*, No. 355378 (Mich. Ct. App.) (attached as Ex. 8).

The Trump Campaign also filed a similar action in the U.S. District Court for the Western District of Michigan, *see* Compl. for Declaratory, Emergency, & Permanent Injunctive Relief, *Donald J. Trump for President, Inc. v. Benson*, No. 1:20-cv-01083-JTN-PJG (W.D. Mich. Nov. 17, 2020), ECF No. 1, in which Proposed Intervenors were granted intervention, *see Donald J. Trump for President,*

Inc. v. Benson, No. 1:20-cv-01083-JTN-PJG, slip op. at 5 (W.D. Mich. Nov. 17, 2020), ECF No. 20. After the court set a briefing schedule on Proposed Intervenors' motion to dismiss, *see id.* at 6; *see also* Proposed Intervenor-Defs.' Mot. to Dismiss, *Donald J. Trump for President, Inc. v. Benson*, No. 1:20-cv-01083-JTN-PJG (W.D. Mich. Nov. 14, 2020), ECF No. 10-3—which raised many of the same arguments that Proposed Intervenors now assert here, *see* Ex. 1—the Trump Campaign voluntarily dismissed its suit, *see* Notice of Voluntary Dismissal, *Donald J. Trump for President, Inc. v. Benson*, No. 1:20-cv-01083-JTN-PJG (W.D. Mich. Nov. 19, 2020), ECF No. 33.

Other challenges to Michigan's election procedures and results have been rejected as having no legal or factual merit. On election day, the Michigan Court of Claims denied an emergency motion to increase election oversight. *See Polasek-Savage v. Benson*, No. 20-000217-MM, slip op. at 3 (Mich. Ct. Cl. Nov. 3, 2020) (attached as Ex. 9). And on November 6, the Third Judicial Circuit Court for Wayne County rejected an EIF-backed effort to delay certification of that County's ballots:

> This Court finds that it is mere speculation by plaintiffs that hundreds or thousands of ballots have, in fact, been changed and presumably falsified. . . .
>
> 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.

Stoddard v. City Election Comm'n, No. 20-014604-CZ, slip op. at 4 (Mich. Cir. Ct. Nov. 6, 2020) (attached as Ex. 10).

MDP was granted intervention in another challenge to Wayne County's returns in the Third Judicial Circuit Court. *See Costantino v. City of Detroit*, No. 20-014780-AW, slip op. at 2 (Mich. Cir. Ct. Nov. 13, 2020) (attached as Ex. 11). On November 13, the court denied the plaintiffs' motion for preliminary injunction in that case. After discounting affidavits reporting vague allegations of suspicious conduct at TCF Center and concluding that the "[p]laintiffs' interpretation of events is incorrect and not credible," the court observed that

> [i]t would be an unprecedented exercise of judicial activism for this Court to stop the certification process of the Wayne County Board of Canvassers. . . .
>
> 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.

Costantino v. City of Detroit, No. 20-014780-AW, slip op. at 11–13 (Mich. Cir. Ct. Nov. 13, 2020) (attached as Ex. 12). The Michigan Court of Appeals later denied the plaintiffs' motion for peremptory reversal and application for leave to appeal the circuit court's order, *see Costantino v. City of Detroit*, No. 355443, slip op. at 1 (Mich. Ct. App. Nov. 16, 2020) (attached as Ex. 13), and the Michigan Supreme Court then denied a further application for leave to appeal the decision of the Court

of Appeals, *see Costantino v. City of Detroit*, No. 162245, slip op. at 1 (Mich. Nov. 23, 2020) (attached as Ex. 14).

Others challenges to Michigan's returns—raising yet further iterations of the same general (and unsubstantiated) allegations brought in the other lawsuits, including this one—were filed in the U.S. District Court for the Western District of Michigan and then abandoned. *See* Verified Compl. for Declaratory & Injunctive Relief, *Bally v. Whitmer*, No. 1:20-cv-01088-JTN-PJG (W.D. Mich. Nov. 11, 2020), ECF No. 1; Compl., *Johnson v. Benson*, No. 1:20-cv-01098-JTN-PJG (W.D. Mich. Nov. 18, 2020), ECF No. 1. In *Bally*, the plaintiffs voluntarily dismissed their complaint within a week of filing. *See* Notice of Voluntary Dismissal, *Bally v. Whitmer*, No. 1:20-cv-01088-JTN-PJG (W.D. Mich. Nov. 11, 2020), ECF No. 14. In *Johnson*, after Proposed Intervenors moved to intervene with an accompanying motion to dismiss, *see* Proposed Intervenor-Defs.' Mot. to Intervene, *Johnson v. Benson*, No. 1:20-cv-01098-JTN-PJG (W.D. Mich. Nov. 18, 2020), ECF No. 6; Proposed Intervenor-Defs.' Mot. to Dismiss, *Johnson v. Benson*, No. 1:20-cv-01098-JTN-PJG (W.D. Mich. Nov. 18, 2020), ECF No. 6-2, the *Johnson* plaintiffs also voluntarily dismissed their action, *see* Pls.' Voluntary Dismissal, *Johnson v. Benson*, No. 1:20-cv-01098-JTN-PJG (W.D. Mich. Nov. 18, 2020), ECF No. 12.

One of the *Johnson* plaintiffs has since filed a petition with the Michigan Supreme Court seeking, among other things, an order enjoining the State "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." Pet. for Extraordinary Writs & Declaratory Relief at 52–54, *Johnson v. Benson*, No. 162286 (Mich. Nov. 26, 2020) (attached as Ex. 15).

Defendant Jocelyn Benson, the Michigan Secretary of State—recognizing that "voters continue to be inundated with misinformation" even though "no evidence of widespread wrongdoing has been presented to date"—has announced that Michigan will conduct a "statewide risk-limiting audit . . . paired with comprehensive local audits." Jocelyn Benson, *Benson Pens Oped to Michigan: The Will of the People Is Clear—and Facts Will Carry the Day*, Detroit Free Press (Nov. 23, 2020), https://www.freep.com/story/opinion/contributors/2020/11/23/benson-says-michigan-audit-presidential-election-after-votes-certified/6389371002; *see also Statement from Secretary of State Jocelyn Benson on Planned Audits to Follow Certification of the Nov. 3, 2020, General Election*, Mich. Sec'y of State (Nov. 19, 2020), https://www.michigan.gov/documents/sos/SOS_Sstatement_on_Audits_708290_7.pdf.

Despite the failure of previous challenges to Michigan's returns and the promise of a comprehensive audit, Plaintiffs have filed yet another baseless attempt to disrupt the democratic process; indeed, this one is even more frivolous than the

ones before it, asserting claims rooted in (among many other things) an alleged "criminal conspiracy to manipulate Venezuelan elections in favor of dictator Hugo Chavez." Am. Compl. ¶ 6. And although they had the opportunity to strengthen their arguments and allegations with an amended complaint, their second bite at the apple is no less meritless and farfetched than their first.

Proposed Intervenors now move to intervene. DNC is a national political committee as defined in 52 U.S.C. § 30101 that is, among other things, dedicated to electing local, state, and national candidates of the Democratic Party in Michigan. MDP is the Democratic Party's official state party committee for the State of Michigan, and its mission is to elect Democratic Party candidates to offices across Michigan, up and down the ballot. Both seek intervention on their own behalf and on behalf of their members, candidates, and voters.

III. STANDARD OF LAW

The requirements for intervention under Rule 24 "should be 'broadly construed in favor of potential intervenors.'" *Stupak-Thrall v. Glickman*, 226 F.3d 467, 472 (6th Cir. 2000) (quoting *Purnell v. City of Akron*, 925 F.2d 941, 950 (6th Cir. 1991)).

To intervene as of right under Rule 24(a), the proposed intervenor must show that "1) the application was timely filed; 2) the applicant possesses a substantial legal interest in the case; 3) the applicant's ability to protect its interest will be

impaired without intervention; and 4) the existing parties will not adequately represent the applicant's interest." *Blount-Hill v. Zelman*, 636 F.3d 278, 283 (6th Cir. 2011) (citing *Grutter v. Bollinger*, 188 F.3d 394, 397–98 (6th Cir. 1999)).

"Permissive intervention has a less exacting standard than mandatory intervention and courts are given greater discretion to decide motions for permissive intervention." *Priorities USA v. Benson*, 448 F. Supp. 3d 755, 759–60 (E.D. Mich. 2020) (citing *Grubbs v. Norris*, 870 F.2d 343, 345 (6th Cir. 1989)). "On a timely motion, the court may permit anyone to intervene who . . . has a claim or defense that shares with the main action a common question of law or fact." Fed. R. Civ. P. 24(b)(1). "In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." Fed. R. Civ. P. 24(b)(3). The interest of the intervenors, for the purposes of permissive intervention, only needs to be "distinct" from the defendants, regardless of whether it is "substantial." *Pub. Interest Legal Found., Inc. v. Winfrey*, 463 F. Supp. 3d 795, 800 (E.D. Mich. 2020) (quoting *League of Women Voters of Mich. v. Johnson*, 902 F.3d 572, 579 (6th Cir. 2018)).

IV. ARGUMENT

A. Proposed Intervenors are entitled to intervene as of right.

1. The motion to intervene is timely.

First, this motion is timely. Courts consider the following factors when deciding whether a motion to intervene is timely:

> (1) the point to which the suit has progressed; (2) the purpose for which intervention is sought; (3) the length of time preceding the application during which the proposed intervenors knew or should have known of their interest in the case; (4) the prejudice to the original parties due to the proposed intervenors' failure to promptly intervene after they knew or reasonably should have known of their interest in the case; and (5) the existence of unusual circumstances militating against or in favor of intervention.

Stupak-Thrall, 226 F.3d at 472–73 (quoting *Jansen v. City of Cincinnati*, 904 F.2d 336, 340 (6th Cir. 1990)). "No one factor is dispositive, but rather the determination of whether a motion to intervene is timely should be evaluated in the context of all relevant circumstances." *Zelman*, 636 F.3d at 284.

Proposed Intervenors' motion is timely. It follows only five days after Plaintiffs filed their initial complaint, and before any significant action in the case has occurred. *See Priorities USA*, 448 F. Supp. 3d at 763 (concluding that it was "difficult to imagine a more timely intervention" where legislature moved to intervene twenty days after lawsuit was filed without being formally noticed). Proposed Intervenors seek to intervene to protect against irreparable harm to themselves and to safeguard their members' fundamental rights. This is unquestionably a "legitimate" purpose, and this is a case where "the motion to intervene was timely in light of the stated purpose for intervening." *Kirsch v. Dean*, 733 F. App'x 268, 275 (6th Cir. 2018) (quoting *Linton ex rel. Arnold v. Comm'r of*

Health & Env't, 973 F.2d 1311, 1318 (6th Cir. 1992)). Nor is there any risk of prejudice to other parties if intervention is granted. Proposed Intervenors are prepared to follow any briefing schedule the Court sets and participate in any future hearings or oral arguments, without delay. Finally, there are no unusual circumstances that should dissuade the Court from granting intervention.

2. Proposed Intervenors have significant protectable interests that might be impaired by this litigation.

Second and third, Proposed Intervenors have significant cognizable interests that might, as a practical matter, be impaired by Plaintiffs' action. Intervenors "'must have a direct and substantial interest in the litigation' such that it is a 'real party in interest in the transaction which is the subject of the proceeding.'" *Reliastar Life Ins. Co. v. MKP Invs.*, 565 F. App'x 369, 372 (6th Cir. 2014) (citation omitted) (first quoting *Grubbs*, 870 F.2d at 346; and then quoting *Providence Baptist Church v. Hillandale Comm., Ltd.*, 425 F.3d 309, 317 (6th Cir. 2005)). The Sixth Circuit has described this requirement as "rather expansive," *Mich. State AFL-CIO v. Miller*, 103 F.3d 1240, 1245 (6th Cir. 1997), and one that courts should "construe[] liberally." *Bradley v. Milliken*, 828 F.2d 1186, 1192 (6th Cir. 1987). For example, an intervenor need not have the same standing necessary to initiate a lawsuit, and the Sixth Circuit has rejected the notion that Rule 24(a)(2) requires a "specific legal or equitable interest." *Mich. State AFL-CIO*, 103 F.3d at 1245. The burden of establishing impairment of a protectable interest is "minimal," *id.* at 1247, and an

intervenor need only demonstrate that impairment is *possible*. *See Purnell*, 925 F.2d at 948. Moreover, the Sixth Circuit "has recognized that the time-sensitive nature of a case may be a factor in our intervention analysis," *Mich. State AFL-CIO*, 103 F.3d at 1247, and has found impairment of interest when the proposed intervenor "may lose the opportunity to ensure that one or more electoral campaigns in Michigan are conducted under legislatively approved terms that [the proposed intervenor] believes to be fair and constitutional." *Id.* at 1247.

Here, Proposed Intervenors have several legally cognizable interests that might be impaired by this lawsuit. First, Plaintiffs seek to disrupt the certification of lawfully cast ballots and cast doubt on the legitimacy of the election of Proposed Intervenors' candidates. Courts have often concluded that such interference with a political party's electoral prospects constitutes a legally cognizable injury. *See, e.g.*, *Tex. Democratic Party v. Benkiser*, 459 F.3d 582, 586–87 (5th Cir. 2006) (recognizing that "harm to [] election prospects" constitutes "a concrete and particularized injury"); *Owen v. Mulligan*, 640 F.2d 1130, 1132 (9th Cir. 1981) (holding that "the potential loss of an election" is sufficient injury to confer Article III standing). Indeed, political parties—including Proposed Intervenors—have been granted intervention in several recent voting cases on these grounds. *See, e.g., Issa v. Newsom*, No. 2:20-cv-01044-MCE-CKD, 2020 WL 3074351, at *3 (E.D. Cal. June 10, 2020) (granting intervention to state party and party committee where

"Plaintiffs' success on their claims would disrupt the organizational intervenors' efforts to promote the franchise and ensure the election of Democratic Party candidates" (quoting *Paher v. Cegavske*, No. 3:20-cv-00243-MMD-WGC, 2020 WL 2042365, at *2 (D. Nev. Apr. 28, 2020))).

Moreover, Plaintiffs' requested relief of undoing the certification process threatens Proposed Intervenors' members' right to vote. "[T]o refuse to count and return the vote as cast [is] as much an infringement of that personal right as to exclude the voter from the polling place." *United States v. Saylor*, 322 U.S. 385, 387–88 (1944). In turn, the disruptive and potentially disenfranchising effects of Plaintiffs' action would require Proposed Intervenors to divert resources to safeguard the timely certification of statewide results, thus implicating another of their protected interests. *See, e.g.*, *Ne. Ohio Coal. for Homeless v. Husted*, 837 F.3d 612, 624 (6th Cir. 2016) (finding concrete, particularized harm where organization had to "redirect its focus" and divert its "limited resources" due to election laws); *Crawford v. Marion Cnty. Election Bd.*, 472 F.3d 949, 951 (7th Cir. 2007) (concluding that electoral change "injure[d] the Democratic Party by compelling the party to devote resources" that it would not have needed to devote absent new law), *aff'd*, 553 U.S. 181 (2008); *Democratic Nat'l Comm. v. Reagan*, 329 F. Supp. 3d 824, 841 (D. Ariz. 2018) (finding standing where law "require[d] Democratic organizations . . . to retool their [get-out-the-vote] strategies and divert []

resources"), *rev'd on other grounds sub nom. Democratic Nat'l Comm. v. Hobbs*, 948 F.3d 989 (9th Cir. 2020) (en banc); *see also Issa*, 2020 WL 3074351, at *3 (granting intervention and citing this protected interest).

3. Proposed Intervenors' interests are not adequately represented by the current parties.

Finally, Proposed Intervenors' interests are not adequately represented by Plaintiffs or Defendants. "Although a would-be intervenor is said to shoulder the burden with respect to establishing that its interest is not adequately protected by the existing parties to the action, this burden 'is minimal because it is sufficient that the movant[] prove that representation *may* be inadequate.'" *Mich. AFL-CIO*, 103 F.3d at 1247 (alteration in original) (emphasis added) (quoting *Linton*, 973 F.2d at 1319). "The question of adequate representation does not arise unless the applicant is somehow represented in the action. An interest that is not represented at all is surely not 'adequately represented,' and intervention in that case must be allowed." *Grubbs*, 870 F.2d at 347. Where one of the original parties to the suit is a government entity whose "views are necessarily colored by its view of the public welfare rather than the more parochial views of a proposed intervenor whose interest is personal to it," courts have found that "the burden [of establishing inadequacy of representation] is comparatively light." *Kleissler v. U.S. Forest Serv.*, 157 F.3d 964, 972 (3d Cir. 1998) (citing *Conservation Law Found. of New Eng., Inc. v. Mosbacher*, 966 F.2d 39, 44 (1st Cir. 1992); *Mausolf v. Babbitt*, 85 F.3d 1295, 1303 (8th Cir. 1996)).

Here, while Defendants have an interest in defending the actions of state officials, Proposed Intervenors have different objectives: ensuring that the valid ballot of every Democratic voter in Michigan is counted and safeguarding the election of Democratic candidates. Courts have "often concluded that governmental entities do not adequately represent the interests of aspiring intervenors." *Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 736 (D.C. Cir. 2003); *accord Citizens for Balanced Use v. Mont. Wilderness Ass'n*, 647 F.3d 893, 899 (9th Cir. 2011) ("[T]he government's representation of the public interest may not be 'identical to the individual parochial interest' of a particular group just because 'both entities occupy the same posture in the litigation.'" (quoting *WildEarth Guardians v. U.S. Forest Serv.*, 573 F.3d 992, 996 (10th Cir. 2009))). That is the case here. Proposed Intervenors have specific interests and concerns—from their overall electoral prospects to the most efficient use of their limited resources—that neither Defendants nor any other party in this lawsuit share. *See Paher*, 2020 WL 2042365, at *3 (granting intervention as of right where proposed intervenors "may present arguments about the need to safeguard [the] right to vote that are distinct from [state defendants'] arguments"). As one court recently explained under similar circumstances,

> [w]hile Defendants' arguments turn on their inherent authority as state executives and their responsibility to properly administer election laws, the Proposed Intervenors [including a state political party] are concerned with ensuring their party members and the voters they

> represent have the opportunity to vote in the upcoming federal election, advancing their overall electoral prospects, and allocating their limited resources to inform voters about the election procedures. As a result, the parties' interests are neither "identical" nor "the same."

Issa, 2020 WL 3074351, at *3 (citation omitted). Because Proposed Intervenors' particular interests are not shared by the present parties, they cannot rely on Defendants or anyone else to provide adequate representation. They have thus satisfied the four requirements for intervention as of right under Rule 24(a)(2). *See id.* at *3–4; *Paher*, 2020 WL 2042365, at *3.

B. Alternatively, Proposed Intervenors should be granted permissive intervention.

Even if Proposed Intervenors were not entitled to intervene as of right, permissive intervention is warranted under Rule 24(b). "On timely motion, the court may permit anyone to intervene who . . . has a claim or defense that shares with the main action a common question of law or fact." Fed. R. Civ. P. 24(b)(1). The court must consider "whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." Fed. R. Civ. P. 24(b)(3). "Permissive intervention has a less exacting standard than mandatory intervention and courts are given greater discretion to decide motions for permissive intervention." *Priorities USA*, 448 F. Supp. 3d at 759–60. Proposed intervenors need only show that their interest is "'distinct' from the defendants, regardless of whether it is 'substantial.'"

Pub. Interest Legal Found., 463 F. Supp. 3d at 800 (quoting *League of Women Voters*, 902 F.3d at 579).

Proposed Intervenors easily meet these requirements. First, their motion is timely and intervention will not unduly delay or prejudice the adjudication of the original parties' rights. *See* Part IV.A.1 *supra*. Moreover, Proposed Intervenors' interests are distinct and not adequately represented by the existing defendants. *See* Part IV.A.3 *supra*. And Proposed Intervenors will undoubtedly raise common questions of law and fact in opposing Plaintiffs' suit. In addition to challenging Plaintiffs' claims as a matter of law, *see* Ex. 1, Proposed Intervenors will also submit affidavits from election volunteers refuting the amended complaint's baseless allegations. *See, e.g.*, Exs. 2–4.

V. CONCLUSION

For the foregoing reasons, Proposed Intervenors respectfully ask this Court to grant their motion to intervene.

Dated: November 30, 2020.

Respectfully submitted,

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*Admission forthcoming

EXHIBIT 1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

TIMOTHY KING, MARIAN ELLEN SHERIDAN, JOHN EARL HAGGARD, CHARLES JAMES RITCHARD, JAMES DAVID HOOPER, and DAREN WADE RUBINGH, Plaintiffs, v. GRETCHEN WHITMER, in her official capacity as Governor of Michigan, JOCELYN BENSON, in her official capacity as Michigan Secretary of State, and MICHIGAN BOARD OF STATE CANVASSERS. Defendants.	CIVIL ACTION Case No. 2:20-CV-13134 Hon. Linda V. Parker

PROPOSED INTERVENOR-DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' FIRST AMENDED COMPLAINT

Proposed Intervenor-Defendants DNC Services Corporation/Democratic National Committee and Michigan Democratic Party hereby move to dismiss Plaintiffs' first amended complaint in its entirety for numerous reasons: (1) doctrines of federalism and comity favor abstention; (2) Plaintiffs' claims are barred by the Eleventh Amendment; (3) Plaintiffs lack standing; and (4) Plaintiffs have failed to state viable claims on which relief can be granted.

Pursuant to Local Rule 7.1(a), counsel for Proposed Intervenor-Defendants and Plaintiffs had a telephonic conference on November 30, 2020, and Plaintiffs do not concur, thereby making this motion necessary.

WHEREFORE, for the reasons stated more fully in the accompanying brief, Proposed Intervenor-Defendants respectfully request that the Court dismiss this action in its entirety, and award any other relief that the Court deems appropriate under the circumstances.

Dated: November 30, 2020.

Respectfully submitted,

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

TIMOTHY KING, MARIAN ELLEN SHERIDAN, JOHN EARL HAGGARD, CHARLES JAMES RITCHARD, JAMES DAVID HOOPER, and DAREN WADE RUBINGH,

Plaintiffs,

v.

GRETCHEN WHITMER, in her official capacity as Governor of Michigan, JOCELYN BENSON, in her official capacity as Michigan Secretary of State, and MICHIGAN BOARD OF STATE CANVASSERS.

Defendants.

CIVIL ACTION

Case No. 2:20-CV-13134

Hon. Linda V. Parker

PROPOSED INTERVENOR-DEFENDANTS' BRIEF IN SUPPORT OF MOTION TO DISMISS PLAINTIFFS' FIRST AMENDED COMPLAINT

TABLE OF CONTENTS

STATEMENT OF ISSUES PRESENTED

I. Whether principles of federalism and comity require this Court to abstain.

Proposed Intervenor-Defendants' Answer: Yes.

II. Whether the Eleventh Amendment bars Plaintiffs' claims.

Proposed Intervenor-Defendants' Answer: Yes.

III. Whether Plaintiffs lack Article III standing and prudential standing.

Proposed Intervenor-Defendants' Answer: Yes.

IV. Whether Plaintiffs fail to state a claim on which relief can be granted where Plaintiffs' claims are not plausible; Plaintiffs have not pleaded a viable equal protection claim; Plaintiffs have not pleaded a viable due process claim; Plaintiff have not pleaded a viable claim under the Elections and Electors Clauses; and Plaintiffs' claim under the Michigan Constitution and Michigan Election Code fails as a matter of law.

Proposed Intervenor-Defendants' Answer: Yes.

CONTROLLING AND APPROPRIATE AUTHORITY

Ashcroft v. Iqbal, 556 U.S. 662 (2009)

Pennhurst State School & Hospital v. Halderman, 465 U.S. 89 (1984)

Lance v. Coffman, 549 U.S. 437 (2007)

Costantino v. City of Detroit, No. 20-014780-AW (Mich. Cir. Ct. Nov. 13, 2020)

Bognet v. Sec'y of Commonwealth, No. 20-3214, 2020 WL 6686120 (3d Cir. Nov. 13, 2020)

Donald J. Trump for President, Inc. v. Sec'y of Commonwealth, No. 20-3371, 2020 WL 7012522 (3d Cir. Nov. 27, 2020)

I. INTRODUCTION

Since the 2020 general election, various groups and individuals—unwilling to accept President-elect Biden's victory in Michigan—have filed baseless lawsuits attacking the election's legitimacy. This suit, alleging an "interstate fraudulent scheme to rig the 2020 General Election for Joe Biden," takes to new heights the increasingly feverish conspiracy theories animating these post-election challenges. First Am. Compl. for Declaratory, Emergency & Permanent Injunctive Relief ("Am. Compl."), ECF No. 6, ¶ 112. Plaintiffs' requested relief is as absurd as their allegations—they ask this Court to order Michigan's officials to "de-certify" the election results and order the Governor to declare "that President Donald Trump is the winner of the election." *Id.* ¶ 233. Courts do not decide who wins elections in a democracy; voters do. This Court should reject Plaintiffs' request to disenfranchise 5.5 million Michiganders based on implausible allegations of electoral malfeasance.

This Court should dismiss this case on multiple grounds. First, the Court should abstain in deference to ongoing state court proceedings raising some of the same issues and allegations Plaintiffs raise here. Second, the Eleventh Amendment prohibits this suit because a federal court cannot require state officials to comply with state law. Third, Plaintiffs lack Article III standing to bring their claims, and further lack prudential standing to assert the Michigan Legislature's interests. Each of these jurisdictional bars precludes this Court from adjudicating Plaintiffs' suit.

Even if this Court had jurisdiction, Plaintiffs' claims fail as a matter of law. Their complaint reads more like a Hollywood potboiler than a serious filing made in compliance with Rule 11, let alone Rules 8 and 9(b). Finally, Plaintiffs' requested relief—an unprecedented judicial override of the State's democratic process—would violate the constitutional rights of millions of Michiganders.

Ultimately, Plaintiffs' lawsuit is part of a broader and deeply troubling national effort to enlist the judiciary to overturn the will of the voters. Having failed to secure the election of their preferred candidate, and to secure favorable rulings in state court, Plaintiffs have now turned to this forum to recycle the same meritless claims. Every other court confronted with these efforts has promptly and properly rejected them. This Court should do the same.

II. BACKGROUND

More than 5.5 million Michiganders cast ballots in the November election. The presidential election was not close. The Michigan State Board of Canvassers certified that President-elect Biden prevailed over President Donald Trump by a margin of 154,188 votes. *See* Am. Compl. ¶ 31. But that has not stopped the Trump Campaign and its supporters from repeatedly filing meritless lawsuits.

A. State Court Lawsuits

In the past month, various challenges to Michigan's election procedures and results have been filed in state court, many of which are currently being litigated and

bear a striking resemblance (or are identical, as explained below) to Plaintiffs' suit. The day after election day, the Trump Campaign sought an immediate cessation of the counting of absentee ballots based on allegations of insufficient oversight. *See* Verified Compl. for Immediate Declaratory & Injunctive Relief, *Donald J. Trump for President, Inc. v. Benson*, No. 20-000225-MZ (Mich. Ct. Cl. Nov. 4, 2020) (attached as Ex. 5).[1] The Michigan Court of Claims denied the Trump Campaign's emergency motion, noting "the problems with the factual and evidentiary record" and concluding that the Trump Campaign was unlikely to succeed on the merits, among other issues. *Donald J. Trump for President, Inc. v. Benson*, No. 20-000225-MZ, slip op. at 5 (Mich. Ct. Cl. Nov. 6, 2020) (attached as Ex. 6). The Trump Campaign has since sought an appeal, which is still pending in state court. *See* Mot. for Immediate Consideration of Appeal Under MCR 7.211(C)(6), *Donald J. Trump for President, Inc. v. Benson*, No. 355378 (Mich. Ct. App. Nov. 6, 2020) (attached as Ex. 7).

Similarly, two sets of plaintiffs brought suits in Wayne County based on many of the same allegations Plaintiffs rehash here. In the first, the plaintiffs sought to delay certification of Wayne County's results based on alleged lack of oversight and

[1] Exhibit cites refer to the exhibits attached to Proposed Intervenor-Defendants' motion to intervene, filed concurrently. "Courts may [] take judicial notice of public records" like court opinions when ruling on motions to dismiss. *Geiling v. Wirt Fin. Servs., Inc.*, No. 14-11027, 2014 WL 8473822, at *6 (E.D. Mich. Dec. 31, 2014) (collecting cases), *aff'd*, No. 15-1393, 2017 WL 6945559 (6th Cir. June 8, 2017).

violations of Michigan's election code at Detroit's TCF Center. *See* First Am. Verified Compl. for Emergency & Permanent Injunctive Relief, *Stoddard v. City Election Comm'n*, No. 20-014604-CZ (Mich. Cir. Ct. Nov. 5, 2020) (attached as Ex. 16). Chief Judge Kenny of the Third Judicial Circuit Court denied that motion for injunctive relief, finding "it is mere speculation by plaintiffs that hundreds or thousands of ballots have, in fact, been changed and presumably falsified." *Stoddard v. City Election Comm'n*, No. 20-014604-CZ, slip op. at 4 (Mich. Cir. Ct. Nov. 6, 2020) (attached as Ex. 10). In the second, the same court denied a motion for injunctive relief. *See Costantino v. City of Detroit*, No. 20-014780-AW, slip op. at 13 (Mich. Cir. Ct. Nov. 13, 2020) (attached as Ex. 12). After reviewing affidavits raising vague allegations of suspicious conduct at TCF Center and concluding that the "[p]laintiffs' interpretation of events is incorrect and not credible," Chief Judge Kenny observed that "[i]t would be an unprecedented exercise of judicial activism for this Court to stop the certification process of the Wayne County Board of Canvassers." *Id.* at 11–13. Plaintiffs unsuccessfully appealed the denial of their motion to both the Michigan Court of Appeals and Michigan Supreme Court. *See Costantino v. City of Detroit*, No. 355443, slip op. at 1 (Mich. Ct. App. Nov. 16, 2020) (attached as Ex. 13); *Costantino v. City of Detroit*, No. 162245, slip op. at 1 (Mich. Nov. 23, 2020) (attached as Ex. 14). As described below, Plaintiffs' suit here

attempts to "incorporate[] by reference" the rejected allegations presented to the court in *Costantino*, which Plaintiffs call the "GLJC Complaint." Am. Compl. ¶ 81.

Finally, a petition filed with the Michigan Supreme Court just a few days ago brings many of the same issues Plaintiffs raise here, including a claimed right under Article II, section 4 of the Michigan Constitution to an audit of election results and a request for an order enjoining certification. *See* Pet. for Extraordinary Writs & Declaratory Relief, *Johnson v. Benson*, No. 162286 (Mich. Nov. 26, 2020) (attached as Ex. 15). Each of these state court actions remains ongoing.[2]

B. Plaintiffs' Suit

Plaintiffs initiated this lawsuit three weeks after election day and after the State Board of Canvassers certified the election for President-elect Biden. *See* Am. Compl. ¶ 31. Plaintiffs' complaint is hard to follow, but its basic gist is that Michigan election officials engaged in a massive, shadowy, transnational conspiracy to manufacture "hundreds of thousands of illegal, ineligible, duplicate, or purely

[2] Separately, every effort to challenge President-elect Biden's victory in federal courts in other states, many raising claims similar to Plaintiffs', has been soundly rejected. *See generally, e.g.*, *Donald J. Trump for President, Inc. v. Sec'y of Commonwealth*, No. 20-3371, 2020 WL 7012522 (3d Cir. Nov. 27, 2020) (affirming district court's refusal to enjoin Pennsylvania from certifying election results based on similar equal protection claims); *Bognet v. Sec'y of Commonwealth*, No. 20-3214, 2020 WL 6686120 (3d Cir. Nov. 13, 2020) (affirming denial of preliminary relief based on equal protection claim premised on vote dilution by purportedly illegal ballots); *Wood v. Raffensperger*, No. 1:20-cv-04561-SDG, 2020 WL 6817513 (N.D. Ga. Nov. 20, 2020) (rejecting plaintiffs' motion to enjoin Georgia from certifying election results based on similar equal protection claims).

fictitious ballots in the State of Michigan" to elect Joe Biden. *Id.* ¶¶ 2–3, 17. As noted, the complaint purports to "incorporate[] by reference" the entirety of other state court complaints not before this Court, *id.* ¶¶ 81–100, and is riddled with conclusory allegations as to the fraudulent manufacturing of ballots to "rig" the election for President-elect Biden, *id.* ¶¶ 84, 112. Plaintiffs' complaint is also "supported" by "expert" declarations written for other lawsuits, concerning entirely different issues, in different states. *See id.* ¶¶ 8, 10, 157–58.

From these incredible allegations, Plaintiffs assert various causes of action under the U.S. and Michigan Constitutions as well as assorted provisions of Michigan's Election Code. Among other requests, Plaintiffs ask this Court to order Defendants to "decertify" the election and affirmatively certify results "in favor of President Donald Trump." *Id*. ¶¶ 229–30, 233.

III. LEGAL STANDARD

Whether a party has Article III standing is a question of a court's subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1). *See Lyshe v. Levy*, 854 F.3d 855, 857 (6th Cir. 2017). "[W]here subject matter jurisdiction is challenged under Rule 12(b)(1), . . . the plaintiff has the burden of proving jurisdiction in order to survive the motion." *RMI Titanium Co. v. Westinghouse Elec. Corp.*, 78 F.3d 1125, 1134 (6th Cir. 1996) (emphasis omitted) (quoting *Rogers v. Stratton Indus., Inc.*, 798 F.2d 913, 915 (6th Cir. 1986)).

When considering a Rule 12(b)(6) motion to dismiss for failure to state a claim, a court presumes that all well-pleaded material allegations in the complaint are true, *see Total Benefits Plan. Agency, Inc. v. Anthem Blue Cross & Blue Shield*, 552 F.3d 430, 434 (6th Cir. 2008), but "a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (alteration in original) (quoting Fed. R. Civ. P. 8(a)). Courts need not accept as true legal conclusions or unwarranted factual inferences. *See Total Benefits Plan.*, 552 F.3d at 434. Where, as here, a complaint expressly alleges "fraud," Rule 9(b) requires pleading with "particularity." This pleading standard requires "[a]t a minimum" that allegations of fraud "specify the 'who, what, when, where, and how' of the alleged fraud." *Sanderson v. HCA-Healthcare Co.*, 447 F.3d 873, 877 (6th Cir. 2006) (alteration in original) (quoting *United States ex rel. Thompson v. Columbia/HCA Healthcare Corp.*, 125 F.3d 899, 903 (5th Cir. 1997)).

IV. ARGUMENT

A. Principles of federalism and comity strongly favor abstention.

The relief Plaintiffs seek calls for an extraordinary intrusion on state sovereignty by a federal court. Under the *Pullman*, *Colorado River*, and *Buford* abstention doctrines, the claims Plaintiffs raise should be addressed in state court.

Pullman recognizes that "'federal courts should avoid the unnecessary resolution of federal constitutional issues and that state courts provide the authoritative adjudication of questions of state law.'" *Brown v. Tidwell*, 169 F.3d 330, 332 (6th Cir. 1999) (quoting *Brockett v. Spokane Arcades, Inc.*, 472 U.S. 491, 508 (1985)); *see also R.R. Comm'n v. Pullman Co.*, 312 U.S. 496, 501 (1941). Under *Pullman*, the court should abstain if (1) "state law is unclear," and (2) "a clarification of that law would preclude the need to adjudicate the federal question," *Hunter v. Hamilton Cnty. Bd. of Elections*, 635 F.3d 219, 233 (6th Cir. 2011). Both requirements are met here.

First, Plaintiffs' federal constitutional claims focus on questions of state law. The complaint is premised on multiple alleged "violations of the Michigan Election Code," including provisions related to poll challengers, inspectors, and the counting of ballots. Am. Compl. ¶¶ 1, 208–28. Whether such violations occurred is a question of state law that a state court can and should adjudicate.

Second, clarification of these state law issues would preclude the need to adjudicate the federal questions in this case. Indeed, if a state court concludes that election officials did not "deviate from the requirements of the Michigan Election Code," *id.* ¶ 179, Plaintiffs' Elections and Electors Clauses claim vanishes. Similarly, Plaintiffs' Equal Protection Clause and Due Process Clause claims are based on Defendants' alleged "fail[ure] to comply with the requirements of the

Michigan Election Code," which Plaintiffs allege "diluted the[ir] lawful ballots." *Id.* ¶¶ 188, 205. Numerous other cases that allege near-identical instances of illegality and fraud—on which Plaintiffs' federal constitutional claims are premised—are pending in state court. *See supra* at 3–5. If these state courts definitively interpret Michigan law, there would be nothing left for this Court to decide. Allowing Michigan courts to interpret these state law questions thus "may obviate the federal claims" and "eliminate the need to reach the federal question," and this Court should therefore abstain. *GTE N., Inc. v. Strand*, 209 F.3d 909, 921 (6th Cir. 2000).

Colorado River Water Conservation District v. United States also counsels abstention in favor of ongoing, parallel state proceedings for reasons of "'[w]ise judicial administration, giving regard to conservation of judicial resources and comprehensive disposition of litigation.'" 424 U.S. 800, 817 (1976) (alteration in original) (quoting *Kerotest Mfg. Co. v. C-O-Two Fire Equip. Co.*, 342 U.S. 180, 183 (1952)). As noted, Michigan state courts are currently weighing many of the issues Plaintiffs raise, including specifically the alleged right to an audit under the Michigan Constitution. *See supra* at 5. The other *Colorado River* factors—avoiding piecemeal litigation, the order and relative progress of the cases, the critical issues of state law at stake, and the adequacy of the state court to continue addressing these issues—also weigh in favor of abstention. *See Romine v. Compuserve Corp.*, 160 F.3d 337, 340–42 (6th Cir. 1998).

Finally, Plaintiffs' claims are precluded under *Burford* abstention, which is appropriate, as here,

> where timely and adequate state-court review is available and (1) a case presents "difficult questions of state law bearing on policy problems of substantial public import whose importance transcends the result in the case at bar," or (2) the "exercise of federal review of the question in a case and in similar cases would be disruptive of state efforts to establish a coherent policy with respect to a matter of substantial public concern."

Caudill v. Eubanks Farms, Inc., 301 F.3d 658, 660 (6th Cir. 2002) (quoting *New Orleans Pub. Serv., Inc. v. Council*, 491 U.S. 350, 361 (1989)); *see also Burford v. Sun Oil Co.*, 319 U.S. 315, 334 (1943). As Plaintiffs themselves note, the U.S. Constitution delegates *to the states* the responsibility for determining the "Manner" in which each appoints presidential electors. U.S. Const. art. I, § 4, cl. 1. Indeed, as Plaintiffs' complaint also notes, Michigan has an extensive Election Code that provides for an orderly certification of election results. Because the State has "primary authority over the administration of elections," *Hunter*, 635 F.3d at 232, abstention is proper—this case implicates an area where "the State's interests are paramount" and thus "would best be adjudicated in a state forum." *Caudill*, 301 F.3d at 660 (quoting *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 728 (1996)).

B. The Eleventh Amendment bars Plaintiffs' claims.

As the Supreme Court explained in *Pennhurst State School & Hospital v. Halderman*, the Eleventh Amendment prohibits federal courts from granting "relief

against state officials on the basis of state law, whether prospective or retroactive." 465 U.S. 89, 106 (1984). This is true even when state law claims are styled as federal causes of action. *See, e.g.*, *Balsam v. Sec'y of State*, 607 F. App'x 177, 183–84 (3d Cir. 2015) (Eleventh Amendment bars state law claims even when "premised on violations of the federal Constitution"); *Massey v. Coon*, No. 87-3768, 1989 WL 884, at *2 (9th Cir. Jan. 3, 1989) (affirming dismissal where "on its face the complaint states a claim under the due process and equal protection clauses of the Constitution, [but] these constitutional claims are entirely based on the failure of defendants to conform to state law").

Count IV, which alleges *only* violations of Michigan law, is indisputably barred under *Pennhurst*. The same is true of Plaintiffs' other claims, each of which, although presented in the garb of a federal cause of action, ultimately asks the Court to determine that state officials violated state law and compel state officials to do what Plaintiffs believe *Michigan* law requires. Counts II and III hinge on alleged violations of Michigan law that have "diluted" Plaintiffs' votes. *See* Am. Compl. ¶¶ 188, 205. But whether Defendants abided by their statutory responsibilities is a question of *state law*, not federal law. The same is true of Count I; although couched as a claim under the Elections and Electors Clauses, Plaintiffs' core allegation is that Defendants "fail[ed] to follow the requirements of the Michigan Election Code, as enacted by the Michigan Legislature." *Id.* ¶ 180. This Court cannot order Defendants

to de-certify the election based on alleged violations of Michigan law without running afoul of the Eleventh Amendment. *See, e.g.*, *Ohio Republican Party v. Brunner*, 543 F.3d 357, 360–61 (6th Cir. 2008) (holding *Pennhurst* bars claim that Secretary of State violated state election law). Thus, the Eleventh Amendment bars Plaintiffs' claims.

C. Plaintiffs lack standing.

To avoid dismissal on Article III grounds, a "plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016). Plaintiffs fail to establish a sufficient injury-in-fact under Article III, and they lack prudential standing to bring Count I.

First, Plaintiffs do not allege harms sufficient to establish Article III standing on any of their claims. Plaintiffs do not allege that they were deprived of the right to vote; instead, they allege they are harmed by violations of Michigan law which "diluted" their votes. Am. Compl. ¶¶ 188, 205. But this purported injury of vote-dilution-through-unlawful balloting has been repeatedly rejected as a viable basis for standing, and for good reason: any purported vote dilution somehow caused by counting allegedly improper votes would affect *all* Michigan voters and candidates, not just Plaintiffs, and therefore constitutes a generalized grievance insufficient for

standing. *See Bognet v. Sec'y of Commonwealth*, No. 20-3214, 2020 WL 6686120, at *11–14 (3d Cir. Nov. 13, 2020) (rejecting identical theory for standing and explaining that "[t]his conceptualization of vote dilution—state actors counting ballots in violation of state election law—is not a concrete harm under the Equal Protection Clause of the Fourteenth Amendment"); *Donald J. Trump for President, Inc. v. Cegavske*, No. 2:20-CV-1445, 2020 WL 5626974, at *4 (D. Nev. Sept. 18, 2020) (similar).

Plaintiffs also claim they have suffered harm as a result of alleged violations of the Elections and Electors Clauses, but that injury too "is precisely the kind of undifferentiated, generalized grievance about the conduct of government" insufficient for Article III standing. *Lance v. Coffman*, 549 U.S. 437, 442 (2007) (per curiam); *accord Wood v. Raffensperger*, No. 1:20-cv-04561-SDG, 2020 WL 6817513, at *5 (N.D. Ga. Nov. 20, 2020).

Plaintiffs rely on *Carson v. Simon*, in which the Eighth Circuit held that "[a]n inaccurate vote tally is a concrete and particularized injury" to electors under the theory that Minnesota electors are candidates for office under Minnesota law. 978 F.3d 1051, 1058 (8th Cir. 2020); *see also* Am. Compl. ¶ 25. But *Carson* is neither binding on this Court nor in the legal mainstream; federal courts have *repeatedly* held that even candidates for office lack Article III standing to challenged alleged violations of state law under the Elections Clause. *See Bognet*, 2020 WL 6686120,

at *6–7 (voters and candidate lacked Article III standing to bring claims under Elections and Electors Clauses); *Hotze v. Hollins*, No. 4:20-cv-03709, 2020 WL 6437668, at *2 (S.D. Tex. Nov. 2, 2020) (holding candidate lacked standing under Elections Clause and concluding that Supreme Court's cases "stand for the proposition that only the state legislature (or a majority of the members thereof) have standing to assert a violation of the Elections Clause").[3]

Second, Plaintiffs also lack Article III standing because they do not allege injury that is traceable to the named Defendants or redressable. Any alleged injury is attributable to officials from Wayne County and Detroit or other third parties, not the named state officials. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992) (requiring causal connection between injury and defendant's conduct). Moreover, Plaintiffs cite no authority for the proposition that a federal court has the power to order state officials to "de-certify" an election they have already certified.

Third, Plaintiffs lack prudential standing to bring their Elections and Electors Clauses claim. "Even if an injury in fact is demonstrated, the usual rule"—applicable here—"is that a party may assert only a violation of its own rights." *Virginia v. Am. Booksellers Ass'n*, 484 U.S. 383, 392 (1988). Plaintiffs' Count I, by contrast,

[3] Although separate constitutional provisions, the Electors and Elections Clauses share "considerable similarity" and should be interpreted in the same manner. *Ariz. State Leg. v. Ariz. Indep. Redistricting Comm'n*, 576 U.S. 787, 839 (2015) (Roberts, C.J., dissenting); *see also Bognet*, 2020 WL 6686120, at *7 (applying same test for standing under both Elections and Electors Clauses).

"rest[s] . . . on the legal rights or interests of third parties,'" *Kowalski v. Tesmer*, 543 U.S. 125, 129 (2004)—specifically, *the Michigan Legislature's* purported rights under the Elections and Electors Clauses. *See* Am. Compl. ¶ 179 (alleging "Defendants are not part of the Michigan Legislature and cannot exercise legislative power"). But Plaintiffs have no authority to assert the rights of the Michigan Legislature. *See Lance*, 549 U.S. at 442 (rejecting notion that "private citizens acting on their own behalf" can bring Elections Clause claim); *Corman v. Torres*, 287 F. Supp. 3d 558, 573 (M.D. Pa. 2018) (per curiam) ("[T]he Elections Clause claims asserted in the verified complaint belong, if they belong to anyone, only to the Pennsylvania General Assembly."); *Bognet*, 2020 WL 6686120, at *7 (similar). "Absent a 'hindrance' to the [Legislature's] ability to defend its own rights, this prudential limitation on standing cannot be excused." *Corman*, 287 F. Supp. 3d at 572 (quoting *Kowalski*, 543 U.S. at 130). Plaintiffs have not attempted to identify such a hindrance and Count I should be dismissed on this additional ground.

D. Plaintiffs fail to state a claim on which relief can be granted.

Even if this Court had jurisdiction to consider Plaintiffs' claims, their complaint should be dismissed under Rule 12(b)(6). Plaintiffs' wild-eyed allegations of widespread fraud and malfeasance are the antithesis of plausible claims for relief.

1. Plaintiffs' claims are not plausible.

Under the Federal Rules, plaintiffs must allege "enough facts to state a claim to relief that is plausible on its face." *Twombly*, 550 U.S. at 570. While Rule 8 "does not require 'detailed factual allegations,' [] it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 555). The shortcomings in Plaintiffs' complaint become even more apparent when considered through the lens of Rule 9(b), which demands Plaintiffs "state with particularity the circumstances constituting fraud or mistake." Fed. R. Civ. P. 9(b).

Plaintiffs' complaint does not satisfy the standards of Rule 8, much less Rule 9(b). The complaint suggests a massive, coordinated effort among election software systems, local election officials, and hostile foreign actors to perpetrate electoral fraud and swing a presidential election. *See, e.g.*, Am. Compl. ¶ 112 (alleging an "interstate fraudulent scheme to rig the 2020 General Election for Joe Biden"). The Supreme Court has instructed that "[d]etermining whether a complaint states a plausible claim for relief" is "a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Iqbal*, 556 U.S. at 679. It challenges both experience and common sense to accept Plaintiffs' overarching theory that widespread fraud occurred during the most scrutinized election in modern history, particularly based on the allegations advanced in the complaint.

Even a cursory glance at these allegations demonstrates their utter lack of plausibility. For example, Plaintiffs cite as "[p]erhaps [their] most probative evidence" a witness's claim that she saw two vans arrive at TCF Center on November 4, which she assumed were for food but "never saw any food coming out of these vans." Am. Compl. ¶ 84. The witness "noted the coincidence that 'Michigan had discovered over 100,000 more ballots—not even two hours after the last van left,'" which Plaintiffs conclude evidences an "illegal vote dump." *Id*. But as much as Plaintiffs would like to draw such an extraordinary inference, the witness did not see 100,000 ballots come out of the vans. *See id.* Ex. 5. And seeing two vans in downtown Detroit does not render plausible a claim that those vans were brimming with fraudulent ballots.[4] The Court need not accept unwarranted factual inferences of this ilk. *See Total Benefits Plan.*, 552 F.3d at 434; *see also United States v. Walgreen Co.*, 846 F.3d 879, 881 (6th Cir. 2017) ("[I]nferences and implications are not what Civil Rule 9(b) requires. It demands specifics—at least if the claimant wishes to raise allegations of fraud against someone.").

[4] Plaintiffs' allegations of nefarious fraud at the TCF Center have already been rejected, including specifically in *Costantino*, the case Plaintiffs now attempt to incorporate by reference. *See* slip op. at 6 (explaining that one affidavit was "rife with speculation and guess-work about sinister motives") (attached as Ex. 12); *id.* at 7 ("[T]he allegations [in the affidavit] are simply not credible."); *id.* at 8 (affidavits contradicted by other individuals who were present); *id.* at 9 (affiant lacked knowledge and experience with vote-counting process).

Similarly, Plaintiffs allege massive fraud in election software, explaining that their expert found a "dramatic shift in votes between the two major party candidates as the tabulation of the turnout increased, and more importantly, the change in voting share before and after 2 AM on November 4, 2020." Am. Compl. ¶ 142. But even under the traditional pleading standard, "[w]here a complaint pleads facts that are 'merely *consistent* with' a defendant's liability, it 'stops short of the line between possibility and plausibility of entitlement to relief.'" *Iqbal*, 556 U.S. at 678 (emphasis added) (quoting *Twombly*, 550 U.S. at 557). Here, the sequencing of vote tabulation is instead consistent with the opposite inference—namely, the well-reported fact that absentee ballots, which could not be processed and counted in Michigan until election day, heavily favored President-elect Biden. Given that "obvious alternative explanation" for the facts alleged by Plaintiffs, *Twombly*, 550 U.S. at 567, this Court need not credit Plaintiffs' unwarranted factual inferences and conclusory allegations.[5] Their complaint should be dismissed.

[5] Far from supporting the complaint, the attached exhibits only prove this point, and also make unsupported, conclusory, and wildly implausible allegations. They include an anonymous declaration claiming that the Dominion voting system—which has been vetted by the U.S. government and dozens of state governments—was "certainly compromised by rogue actors, such as Iran and China," Am. Compl. Ex. 25 ¶ 21, and another anonymous declaration alleging, without factual basis, that "the vote counting was abruptly stopped in five states using Dominion software," *id.* Ex. 1 ¶ 26.

2. Plaintiffs have not pleaded a viable equal protection claim.

Even if their complaint were plausible, Plaintiffs have not stated a cognizable equal protection claim. Counts II alleges that "Defendants[']fail[ure] to comply with the requirements of the Michigan Election Code [] diluted [their] lawful ballots." Am. Compl. ¶ 188. This is not an equal protection injury. Vote dilution is a viable basis for federal claims only in certain contexts, such as when laws structurally devalue one community's votes over another's. *See, e.g.*, *Bognet*, 2020 WL 6686120, at *11 ("[V]ote dilution under the Equal Protection Clause is concerned with votes being weighed differently."). But Plaintiffs' "conceptualization of vote dilution—state actors counting ballots in violation of state election law—is not a concrete harm under the Equal Protection Clause of the Fourteenth Amendment." *Id.*; *see also Wood*, 2020 WL 6817513, at *8–10 (concluding that vote-dilution injury is not "cognizable in the equal protection framework"). Indeed, "if dilution of lawfully cast ballots by the 'unlawful' counting of invalidly cast ballots 'were a true equal-protection problem, then it would transform every violation of state election law . . . into a potential federal equal-protection claim.'" *Bognet*, 2020 WL 6686120, at *11 (quoting *Donald J. Trump for President, Inc. v. Boockvar*, No. 2:20-CV-966, 2020 WL 5997680 at *45-46 (W.D. Pa. Oct. 10, 2020)).

Plaintiffs also briefly insinuate an equal protection claim by alleging that Defendants "violate[d] Plaintiffs' right to be present and have actual observation and

access to the electoral process," Am. Compl. ¶ 193, but this too lacks merit. Courts have repeatedly held "there is no individual constitutional right to serve as a poll watcher." *Boockvar*, 2020 WL 5997680, at *7 (quoting *Pa. Democratic Party v. Boockvar*, 238 A.3d 345, 385 (Pa. 2020)). Plaintiffs cite no authority to the contrary.

3. Plaintiffs have not pleaded a due process claim.

With Count III, Plaintiffs attempt to mold their purported violations of Michigan's Election Code into a due process violation, once again alleging that these violations of state law diluted their votes. *See* Am. Compl. ¶¶ 203–05. But as discussed *supra* at 19, vote dilution is a context-specific theory of constitutional harm premised on the Equal Protection Clause, *not* the Due Process Clause, and at any rate, Plaintiffs have failed to plead a cognizable vote-dilution claim.

Even if this Court construed Plaintiffs' allegations as attempting to state a "fundamental fairness" due process claim, the complaint would still fall short. "The Constitution is not an election fraud statute," *Minn. Voters All. v. Ritchie*, 720 F.3d 1029, 1031 (8th Cir. 2013), and it "d[oes] not authorize federal courts to be state election monitors." *Gamza v. Aguirre*, 619 F.2d 449, 454 (5th Cir. 1980). Even "a deliberate violation of state election laws by state election officials does not transgress against the Constitution." *Shipley v. Chi. Bd. of Election Comm'rs*, 947 F.3d 1056, 1062 (7th Cir. 2020) (quoting *Kasper v. Bd. of Election Comm'rs*, 814 F.2d 332, 342 (7th Cir. 1987)). As the Ninth Circuit has explained,

> [A] court will strike down an election on substantive due process grounds if two elements are present: (1) likely reliance by voters on an established election procedure and/or official pronouncements about what the procedure will be in the coming election; and (2) significant disenfranchisement that results from a change in the election procedures.

Bennett v. Yoshina, 140 F.3d 1218, 1226–27 (9th Cir. 1998). In other words, the sort of unconstitutional irregularities that courts have entertained under the Due Process Clause consist of widescale disenfranchisement. But Plaintiffs' complaint does not allege disenfranchisement at all. To the contrary, it is *Plaintiffs* who seek to negate the votes cast by millions of eligible Michigan voters. Count III therefore does not state a due process claim and must be dismissed.

4. Plaintiffs have not stated an Elections and Electors Clause claim.

Count I alleges that Defendants "fail[ed] to follow the requirements of the Michigan Election Code," Am. Compl. ¶ 180. This is not a violation of the Elections and Electors Clauses; it is simply not the case, as Plaintiffs suggest, that any deviation from statutory election procedures automatically constitutes a violation of these Clauses.

Indeed, the distinction between an *actual* federal claim under the Elections and Electors Clauses and a state law claim masquerading as a federal claim (like Count I) becomes clear after examining other cases brought under these Clauses. In *Cook v. Gralike*, for example, the Supreme Court struck down a Missouri law mandating a particular ballot designation for any congressional candidate who

refused to commit to term limits after concluding that such a statute constituted a "'regulation' of congressional elections" under the Elections Clause. 531 U.S. 510, 525–26 (2001) (quoting U.S. Const. art. I, § 4, cl. 1). And in *Arizona State Legislature v. Arizona Independent Redistricting Commission*, the Supreme Court upheld a law that delegated the redistricting process to an independent commission after reaffirming that "the Legislature" as used in the Elections Clause includes "the State's lawmaking processes." 576 U.S. 787, 824 (2015). In these cases, the task of federal courts was to measure state laws against *federal* mandates set out under the Elections Clause—in the former, what is a "regulation"; in the latter, who is "the Legislature." No such federal question is posed here. Instead, the only issue presented here is whether Defendants followed Michigan's Election Code. Count I, like Plaintiffs' other claims, is premised solely on violations of state law. It does not raise an Elections and Electors Clauses claim and should therefore be dismissed.

5. Plaintiffs' claim under the Michigan Constitution and Michigan Election Code fails a matter of law.

Count IV of Plaintiffs' complaint alleges that Defendants violated several provisions of Michigan's Election Code, primarily related to the rights of election challengers and inspectors, which they then assert gives them the right to conduct a

free-wheeling audit and "void[] the election" under Article II, section 4 of the Michigan Constitution. Am. Compl. ¶¶ 208–28.[6]

But Plaintiffs omit essential text from the constitutional provision they seek to vindicate, which unequivocally states that Michigan voters have only the right to an audit "***in such a manner as prescribed by law***." Mich. Const. art. II, § 4(1)(h) (emphasis added). Since passing that constitutional amendment in 2018, Michigan has indeed implemented procedures, under Michigan law, for the Secretary of State to conduct an audit after an election. *See* Mich. Comp. Laws § 168.31a. Indeed, Secretary Benson has confirmed that the State *will* conduct an audit of the 2020 general election, as Michigan law requires her to do.[7] Plaintiffs are entitled to nothing more under the Michigan Constitution or Michigan Election Code. Indeed, it is Plaintiffs' request for an extralegal audit and order "voiding the election" that

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[6] For this claim, Plaintiffs rely on the *Costantino* complaint, which Plaintiffs seek to "incorporate[] by reference." Am. Compl. ¶ 81. Even though the claims in *Costantino* have been found unlikely to succeed, and two appeals of that ruling have been rejected, Plaintiffs lift entire allegations from the *Costantino* complaint and place them in their own. *Compare id.* ¶ 216 ("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."), *with id.* Ex. 4 ¶ 93 (same). It hardly needs stating Plaintiffs cannot assert injuries of parties not before this Court.

[7] *See Statement from Secretary of State Jocelyn Benson on Planned Audits to Follow Certification of the Nov. 3, 2020, General Election*, Mich. Sec'y of State (Nov. 19, 2020), https://www.michigan.gov/documents/sos/SOS_Sstatement_on_Audits_708290_7.pdf. The Court can take judicial notice of this statement, which is a public document published on the Michigan Secretary of State's website. *See, e.g.*, *Geiling*, 2014 WL 8473822, at *6.

would rewrite the statutory and constitutional provisions under which they purport to bring this claim. Am. Compl. ¶ 228. Count IV should therefore be dismissed.

E. Plaintiffs are not entitled to the relief they seek.

Lastly, rather than *remedying* a constitutional violation, Plaintiffs' requested relief would *create* one. No court has ever done what Plaintiffs ask this Court to do—throw out the election results, discard 5.5 million votes, and ordain the losing candidate the victor by judicial proclamation. As another federal court stated this past week when the Trump Campaign sought an order prohibiting Pennsylvania's officials from certifying election results, "[t]his Court has been unable to find any case in which a plaintiff has sought such a drastic remedy in the contest of an election, in terms of the sheer volume of votes asked to be invalidated." *Donald J. Trump for President, Inc. v. Boockvar*, No. 4:20-CV-02078, 2020 WL 6821992, at *1 (M.D. Pa. Nov. 21, 2020), *aff'd*, No. 20-3371 (3d Cir. Nov. 27, 2020).

America is a democracy. "Voters, not lawyers, choose the President. Ballots, not briefs, decide elections." *Boockvar*, 2020 WL 7012522 at *9.

V. CONCLUSION

For the foregoing reasons, Proposed Intervenor-Defendants respectfully request that the Court dismiss Plaintiffs' amended complaint.

Dated: November 30, 2020.

Respectfully submitted,

/s/ Scott R. Eldridge

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*Admission forthcoming

EXHIBIT 2

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

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

Plaintiffs,

v.

Case No. 20-014780-AW

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,

v.

MICHIGAN DEMOCRATIC PARTY,

[Proposed] Intervenor Defendant.
_____/

AFFIDAVIT OF DAVID JAFFE

I, David Jaffe, having been duly sworn according to law, do hereby depose and state as follows.

1. I am at least 18 years of age and have personal knowledge of the below facts, which are true and accurate to the best of my knowledge and belief.

2. I am a United States citizen and a resident of and registered voter in Michigan, and I am an attorney licensed to practice in Michigan. I served as a law clerk to Chief Judge James Browning of the U.S. Court of Appeals for the Ninth Circuit, and to (then) Justice William Rehnquist of the Supreme Court of the United States. I currently have my own solo law practice,

and have in the past been a partner at Honigman Miller Schwartz and Cohn and the Vice President, General Counsel and Secretary of Guardian Industries Corp. (among other positions).

3. On November 2, 3, and 4, 2020, I served as a credentialed challenger for the Michigan Democratic Party at the Detroit Absent Voter Counting Board (AVCB) at TCF Center in Detroit, Michigan, where the Detroit absent voter ballots were being counted. In addition, I was the team leader for the Democratic Party challengers. I have been an election challenger at many elections in Michigan, including at the AVCB at TCF Center for the August 2020 primary election. I was present in the counting room at TCF Center on Monday, November 2 for the pre-processing of ballots and on November 3 and 4 for the continued processing and tabulation of the ballots.

4. Michigan law provides that the Democratic Party and the Republican Party are each permitted to appoint challengers to serve in precincts and in AVCBs.

5. In addition, the law provides that other organizations may apply for permission to have challengers in those locations. In addition to challengers from the two parties, I personally saw challengers with credentials from an organization identified as the Election Integrity Fund (EIF), as well as from the NAACP and the Lawyers Committee for Civil Rights.

6. I was present on Monday, November 2 from approximately 9:00 am until approximately 8:00 pm, on Tuesday, November 3, from 6:00 a.m. until approximately 3:30 a.m. on Wednesday, November 4, and again on Wednesday, November 4 from approximately 9:30 a.m. until shortly after 6:00 a.m. on Thursday, November 5.

7. During most of the time I was present on November 3 and during the day and early evening of November 4, there appeared to me to be at least 100 Republican Party

challengers inside the AVCB at TCF. As the night of November 4 progressed, some challengers from each group left the room.

8. During that time, there were also many challengers from EIF, and I saw the EIF and Republican Party challengers regularly conferring with each other. It was evident to me that they were coordinating their efforts.

9. This meant that the Republican Party effectively had many more challengers in the room than did the Democratic Party.

10. It was my perception that all challengers had a full opportunity to observe what was going on and to raise issues with supervisors and election officials.

11. The political parties and other authorized challenging organizations were invited to a walkthrough of the Detroit AVCB set up at TCF Center on Thursday, October 29, 2020, and were also given a detailed explanation of the procedure which would be followed and the opportunity to ask questions. We all had access to the Michigan Election Law, the Secretary of State's Election Officials Manual, and other materials. Nevertheless, it was my observation that many of the Republican and EIF challengers were not well trained and did not understand the process by which ballots were handled or tabulated in an AVCB.

12. Over the course of the pre-processing and tabulation, Democratic challengers reported to me about their observations and, of course, I was observing the work being done. From time to time I, or other Democratic, Republican, and other challengers, observed minor procedural errors by election inspectors, called those errors to the attention of supervisors, and were satisfied that the supervisors had corrected the error and explained proper procedure to the election inspectors. I spoke with several Republican challengers who expressed their view, and in a couple of cases their surprise, that there were no material issues in the counting.

13. I received very few reports of unresolved issues from Democratic challengers, but did receive many reports of conduct by Republican or EIF challengers that was aggressive, abusive toward the elections inspectors (and in some cases toward Democratic challengers), and/or clearly designed to obstruct and delay the counting of votes.

14. There was a person from the Election Integrity Fund, who was identified to me as Timothy Griffin, who appeared to be playing a supervisory role. I observed that he initially came into the counting area in the early morning of November 3, evidently representing himself as a duly credentialed challenger. I have been advised that Mr. Griffin is a resident of and a voter in Virginia. After a short while, I observed Mr. Griffin in the area near the door that was provided for poll observers and the press.

15. Under Michigan law, mobile phones and other electronic devices were not permitted in the counting room while polls were open – from 7:00 a.m. to 8:00 p.m. on November 3. I left my mobile phone in my car when I arrived at TCF Center on November 3, and returned to my car to retrieve it after the polls closed at 8:00 p.m.

16. Mr. Griffin remained in the observer area through the day and evening. I personally saw Republican Party challengers and EIF challengers conferring with him frequently. I (and other Democratic challengers) observed Mr. Griffin using a cell phone on November 3, and mentioned this observation to elections officials. I saw elections officials talking with him, evidently directing him to stop using his phone, but I was advised that he continued to do so. It was clear that elections officials had not confiscated his phone. I observed and received reports of numerous Republican challengers using their phones in the counting room during the period when phones were not allowed.

17. Because of COVID, there was an effort to maintain distance between the elections inspectors processing ballots at the tables. In addition, challengers were directed to attempt to maintain a six-foot distance, while being permitted to move closer for particular observations.

18. The elections officials at TCF Center advised us that all persons in the room were required to wear face masks. Officials occasionally made public address announcements reminding all present of this requirement. I observed that many of Republican and EIF challengers were scornful of the mask requirement and other attempts to protect the workers and the other persons at TCF Center.

19. Several Republican challengers who refused to comply with the mandate to wear masks, and removed masks in close proximity to elections inspectors, were escorted from the counting room by Detroit police officers. Others were engaged in conversations with elections officials, in which they evidently received warnings.

20. Throughout my time at TCF Center, I observed that Republican and EIF challengers repeatedly refused to maintain the mandated distance from the elections inspectors, and instead hovered over them, often questioning them in a hostile and belligerent manner, treating them with shocking disrespect. I observed that almost all of the Republican and EIF challengers were white, while most of the Detroit elections inspectors were Black, and found it startling and telling that this crowd of white challengers was behaving so aggressively toward the mostly Black workers.

21. The challengers were directed to address questions and concerns to elections supervisors, who were clearly identified by their white shirts with Detroit Elections Department insignia, or to team leaders (who were above the supervisors), who were clearly identified by their black shirts with Detroit Elections Department insignia. We were also permitted to interact

with the senior elections officials who were present, including Mr. Daniel Baxter, the Detroit Director of Elections. We were instructed not to talk unnecessarily to the elections inspectors so as not to interfere with their work.

22. Nevertheless, I repeatedly witnessed Republican and EIF challengers confronting and interrogating elections inspectors, asking their names and political affiliation, and demanding explanations of the counting procedures, election laws, and what they were doing. I repeatedly witnessed elections supervisors and officials spend their time explaining to the Republican and EIF challengers the process and the roles of inspectors, supervisors, and challengers.

23. One of the things that we asked the Democratic Party challengers to do was to try to protect the elections inspectors from abuse and interference, and to intercede and seek assistance from supervisors when the Republican and EIF challengers were materially interfering with the work of the inspectors or were particularly intimidating and offensive.

24. I observed Republican or EIF challengers were removed from the room after intimidating and disorderly conduct, or filming in the counting room in violation of the rules.

25. It appeared to me that while some of the Republican challengers were there in good faith, attempting to monitor the procedure, the greater number of Republican and EIF challengers were intentionally interfering with the work of the elections inspectors so as to delay the count of the ballots and to harass and intimidate election inspectors.

26. Ballots which cannot be read by the tabulators, because, for example, they are torn or stained, must be duplicated. In addition, all of the military and overseas ballots must be duplicated because they are submitted on forms that cannot be read by the tabulators.

27. I repeatedly watched the duplication procedure, which was undertaken by three elections inspectors as follows: one would read off the votes from the original ballot, the second would record these votes on the duplicated ballot, and the third would watch to ensure accuracy. The original would be placed in an envelope identified for that purpose, and the duplicate would be sent to be tabulated.

28. The inspectors endeavored to keep the process visible to challengers while maintain social distancing to the extent possible. The elections officials required that there be an opportunity for one Republican and one Democratic challenger, and one challenger from another group (such as EIF) to observe directly, and that other challengers move back from the table.

29. In my judgment this procedure allowed the challengers from each party, and often EIF, to confirm the accuracy of the duplication, and I did not receive complaints from Democratic challengers that they were unable to see. Some Republican and EIF challengers expressed dissatisfaction with the positions at which they were asked to stand. In the situations I observed, when a challenger politely stated that he or she could not see and asked for a different place, the challenger was accommodated. In a number of cases the election inspectors paused after each duplication to show the original and the duplicate to the challengers (from any organization) so that they each had the opportunity to confirm the accuracy of the duplication.

30. However, Republican and EIF challengers often tried to shove their way closer to watch the duplication process, both slowing it down and endangering the inspectors. They often began a discussion of where they could stand by shouting aggressively at the inspectors and supervisors, rather than by asking for a better vantage point. This approach served to harass and intimidate the election workers and to delay the process.

31. At one point in the early afternoon of Wednesday, the elections officials evidently determined that there were too many challengers in the room. They then directed that no additional challengers be admitted so that the numerical restriction could be honored. There remained many Republican, EIF, Democratic, and other challengers in the room. I wanted to bring in additional Democratic challengers, but accepted the determination of the elections officials.

32. After this happened, people who seemed to be Republican and EIF challengers and their supporters began pounding on the doors and windows while chanting and shouting.

33. I heard elections inspectors say that there were frightened by the shouting and pounding. I felt that the conduct going on outside the room was that of a mob, and found it threatening, even though there were police officers present.

34. Further, Affiant sayeth not.

David Jaffe _____ 11/10/2020

David Jaffe Date

State of Florida, County of Palm Beach

Subscribed and sworn to (or affirmed) before me on this 10 day of November, 2020.

Lillianna Alcida Lee Garibaldi

Notary Public

LILLIANNA ALCIDA LEE GARIBALDI
Notary Public - State of Florida
Commission # GG926405
Expires on October 27, 2023

My commission expires on 10/27/2023.

Electronic Notary Public
Notarized online using audio-video communication

EXHIBIT 3

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

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

Plaintiffs,

v.

Case No. 20-014780-AW

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,

v.

MICHIGAN DEMOCRATIC PARTY,

[Proposed] Intervenor Defendant.
_____/

AFFIDAVIT OF DONNA M. MACKENZIE

I, Donna M. MacKenzie, having been duly sworn according to law, do hereby depose and state as follows.

1. I am at least 18 years of age and have personal knowledge of the below facts, which are true and accurate to the best of my knowledge and belief.

2. I am a U.S. citizen and a resident of and registered voter in Michigan. I am an attorney licensed in Michigan and currently practice with the law firm of Olsman MacKenzie Peacock & Wallace.

3. On Wednesday, November 4, 2020, I served as a credentialed challenger for the Michigan Democratic Party at TCF Center in Detroit, Michigan, where Detroit's absent voter ballots were counted. I was present at TCF Center from approximately 9:00am until 2:30pm.

4. The ballot counting process was very transparent. Each ballot counting table had six election workers, each of whom had a specific task that would be performed for each ballot. For example, one worker would open the envelope, another would remove the ballot from the secrecy sleeve, and so on. Each table also had a computer monitor, which was angled in the corner of the table so that all observers could see it.

5. When issues were raised by challengers, they were immediately brought to the attention of supervisors, who calmly and politely addressed the issues and allowed the challengers and observers to view the ballots. Although some challengers had to be admonished not to touch the ballots, they were given the opportunity to look at ballots whenever issues arose.

6. My impression was that, throughout the approximately five-and-a-half hours I served at TCF Center, there were many more Republican Party challengers than Democratic Party challengers. There were certainly more Republican challengers when I left around 2:30pm.

7. Challengers were allowed to move freely about the facility and observe ballot counting. Although social distancing requirements were sometimes observed, all of the counting occurred in full view of the challengers. There were more than enough challengers to have observers at each table, and I recall that at one point, approximately 10 Republican challengers were gathered around a table where no ballots were actively being processed because all of the counting tables that were actively processing ballots were adequately staffed.

8. In addition to viewing counting myself, I also spoke with other challengers, both Democrats and Republicans, about their experiences and what they saw in the facility.

9. Any time a question was asked or an issue raised by a challenger, a crowd would gather and word would spread through the facility very quickly.

10. I saw no evidence of election workers backdating absentee ballots or otherwise processing invalid absentee ballots, and I did not hear of anyone else witnessing or challenging such activities.

11. I saw no evidence of election workers processing or counting ballots from voters who were not included in the Qualified Voter File or supplemental sheets or assigning ballots to random names in the system, and I did not hear of anyone else witnessing or challenging such activities.

12. I saw no evidence of election workers using false information or incorrect birthdays to process absentee ballots, and I did not hear of anyone else witnessing or challenging such activities.

13. I saw no evidence of election workers neglecting to verify the signatures on absentee ballots before processing them, and I did not hear of anyone else witnessing or challenging such activities.

14. I saw no evidence of election workers removing ballots from their secrecy sleeves before deciding whether the ballots should be processed, and I did not hear of anyone else witnessing or challenging such activities.

15. I saw no evidence of election officials processing or counting ballots received after the election deadline or falsely reporting that late ballots were received on time, and I did not hear of anyone else witnessing or challenging such activities.

16. I saw no evidence of election officials refusing to record challenges or challengers being asked to leave after voicing challenges, and I did not hear of anyone else witnessing or

challenging such activities. I frequently saw Republican challengers who asked for ballot numbers and wrote those numbers down on their own personal notepad, but they did not voice any challenge to the ballots. At no point did I witness a ballot challenge going unrecorded or unaddressed by election workers.

17. I saw no evidence of election officials locking challengers out of the facility so they could not observe the process, and I did not hear of anyone else witnessing such activities. While some challengers waited outside when the room was at capacity, at no point did I witness or hear of any counting that occurred without challengers present.

18. I saw no evidence of election workers duplicating ballots without allowing challengers to check the accuracy of the duplication, and I did not hear of anyone else witnessing such activities. In fact, when I did witness a duplication, the election workers went out of their way to make sure the challengers could view the ballot. Although challengers were not permitted to touch the ballot, election officials offered to move the ballot around the table and flip it over so that everyone could get a clear look at it.

19. I saw no evidence of unsecured or otherwise questionable ballots being delivered to TCF Center, and I did not hear of anyone else witnessing or challenging such activities.

20. I decided to leave around 2:30pm because most of the counting had stopped. By that time, it seemed that fewer than half of the counting tables were still processing ballots.

21. I observed frequent objectionable behavior on the part of Republican challengers. For example, I saw Republican challengers (identifiable because they were wearing wristbands or lanyards) approach tables for the sole purpose of attempting to slow down the process and intimidate election workers. By the time I left at 2:30pm, the atmosphere in the TCF Center had grown tense and the Republican challengers had become more aggressive.

22. In short, what I witnessed in the TCF Center was an organized, methodical, and completely transparent process. The only issues I saw were problems caused by the Republican challengers, who frequently engaged in disruptive, intimidating, and aggressive behavior.

23. Further, Affiant sayeth not.

Donna MacKenzie

Donna M. MacKenzie

11/11/2020

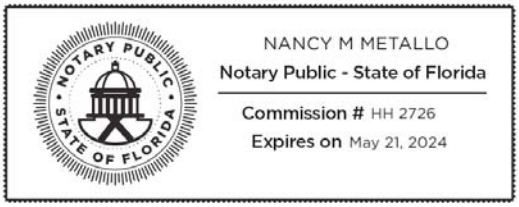
Date

Subscribed and sworn to (or affirmed) before me on this 11th day of November, 2020.

Nancy M Metallo

Electronic Notary Public

Notary Public



Notarized online using audio-video communication

My commission expires on 05/21/2024.

EXHIBIT 4

AFFIDAVIT OF JOSEPH ZIMMERMAN

JOSEPH ZIMMERMAN, BEING OF FULL AGE, ON HIS OATH, DEPOSES AND SAYS:

1. I am over the age of 21 years and if sworn as a witness I am competent to testify about the matters set forth herein based on personal knowledge except where the matter is indicated to be based on information and belief.
2. I am currently a second-year law student at the University of Michigan. Prior to law school, I served in the United States Air Force for four years. I was honorably discharged from the service with the rank of captain. During my four years of service, I was stationed at FE Warren Air Force Base in Cheyenne, Wyoming where my duties included operating nuclear weapons.
3. I am a registered voter in Ann Arbor, Michigan.
4. I volunteered as a poll worker in Ann Arbor on November 3, counting ballots all night until approximately 5:30 a.m. in the morning on November 4. On the morning of November 4, I learned via social media that there was a need for non-partisan challengers at the absentee voting counting board (AVCB) at TCF Center in Detroit because of tensions there overnight. Upon learning of the need, I decided that it was my duty to keep working to ensure a free and fair election, so I headed out to TCF, arriving around 11:00 a.m.
5. I entered TCF as a non-partisan challenger credentialed by the Lawyers Committee for Civil Rights Under Law (LCCRUL), and registered as such when I entered the room.
6. I was present at the TCF Center between approximately 11:00 a.m. and 4:00 p.m. on November 4. During my time there, I was regularly patrolling inside the AVCB counting room in an attempt to provide support to election inspectors and challengers whenever a tense situation arose. Such situations arose often and, in my observations, were exclusively attributable to aggressive and intimidating actions by Republican challengers. As someone who had been a poll worker in Ann Arbor the night before, I was familiar with the process of counting ballots. I witnessed no improper actions by any election inspector. The only improprieties I

saw were from Republican challengers. As a veteran, I was particularly shocked by the fact that Republic challengers attempted to stop the counting of military ballots (more on that below).

7. From the moment I arrived, I observed aggressive and intimidating actions by Republican challengers. On several occasions, I saw five to ten such challengers crowd around a table at once, encroaching on the personal space of election workers (much less than six feet away) and harassing them with repetitive questions. I had been trained that our job as challengers was to observe and, if necessary, challenge particular ballots—not to speak directly to election workers, let alone interrogate or badger them, which is what I was observing.

8. On several occasion, I received a text message from other non-partisan challengers asking me to come to wherever they were in the room because they were the only non-Republican challenger at a table at which several Republican challengers were acting menacingly.

9. I witnessed one Republican challenger be removed from the room for filming the proceedings. I had been trained that filming inside the AVCB was prohibited conduct by a challenger.

10. The dynamic I witnessed was particularly striking when compared to my experience as an election inspector in Ann Arbor, where challengers stood a respectful distance away and allowed me to do my job. By contrast, at TCF, it was difficult not to notice the racial dynamic of aggressive, mostly white, challengers invading the personal space of election workers, who were mostly Black, and repeatedly questioning them and making it difficult for inspectors to continue with their work.

11. Around 1:00 p.m., things slowed down in the AVCB. An election inspector told me that most of the regular absentee ballots had been counted and that they were waiting for the military ballots to arrive and be counted.

12. Meanwhile, between 1:00-2:00 p.m. challengers from both parties (and non-partisan challengers like me) were receiving news on their phones about the progress of the election. Specifically, challengers became aware that Wisconsin

had been called for Joe Biden by news networks and that the networks were predicting that Detroit's ballots might put Joe Biden in the lead in Michigan.

13. The military ballots arrived in the room just before 2:00 p.m.

14. I neither saw nor heard of any other ballots being brought into the room around that time despite the fact that I was circulating throughout the room.

15. Around that time, I headed towards the front of the room to pick up a delivery of additional masks that were being brought for the challengers, and I realized how heated things were becoming outside the counting room. There were approximately 20-30 Republican challengers standing near the door to the counting room yelling at police officers.

16. Around 2:00 p.m., word rapidly circulated through the room via social media that the Trump campaign had filed a lawsuit to stop the count in Detroit, although I later learned that a lawsuit had not yet been filed at that time.

17. Around 2:30 p.m., it was announced that the counting room had hit COVID capacity and that no one else would be allowed in the room. I could not precisely count the number of challengers for each party, but my observation at that time, and throughout my time at TCF, was that the number of Republican challengers seemed roughly proportionate to the number of Democratic challengers. Indeed, as I said above, I repeatedly saw Republican challengers congregating in groups to aggressively question or challenge poll workers in settings where there was no Democratic challenger or only one Democratic or non-partisan challenger.

18. Around the time that the room closed, I witnessed a Republican challenger in his 30s or 40s with short hair and glasses in a tan sweatshirt or sweater standing by the window to the room writing messages to someone on the outside of the room. A short time later, I saw and heard the man with the tan sweatshirt say to another challenger, "We are going to start yelling 'STOP THE COUNT.'" And that is what he did, beginning to yell it loudly inside the AVCB center. The chant did not catch on inside, but it did catch on outside, and the Republican challengers gathered in the lobby outside were chanting and yelling for approximately a half an hour and banging on the all-glass wall that separated the counting room from the lobby.

19. I also witnessed approximately 5–10 Republican challengers standing outside the glass doors filming what was going on inside, which was prohibited. That was when workers inside the counting room began covering the windows, and my understanding was that they were doing so to prevent prohibited filming of the AVCB.

20. As the chanting was going on outside, I heard several Republican challengers inside discussing a plan to begin challenging every single vote on the grounds of "pending litigation." And that is what they did: repeatedly challenging the counting of military ballots for no reason other than "pending litigation".

21. Eventually, the Republican challengers stopped challenging every military ballot after several Republican challengers were removed from continuing to make such challenges without a lawful basis. Shortly after it became clear that the military votes would be counted despite the efforts to stop that from happening, I decided that it was time to leave and make room for new observers.

22. I am still processing my emotions from what I witnessed in TCF Center on November 4th. Honestly, the whole thing mostly just made me sad. I do not understand how people can be so tied up in who they want to be elected so much that they would be willing to harass poll workers and seek to stop the counting of votes—military votes, no less—in the way that I witnessed. As someone who served in the military, I was willing to sacrifice my life so that we would all have the right to vote. I thought that that was something we all believe in as Americans. It broke my heart to see that some of my fellow Americans disagree, and that they were willing to try to undermine this sacred right.

AFFIRMATION

I affirm that the contents of this affidavit are true and correct to the best of my knowledge.

Signature of the person making this affidavit: _____

Affirmed before me this 10th day of Nov, 2020 at 3:02 pm

My commission expires on 2/10/2026

Signature of Officer Administering Oath Julie M. Aust Title Notary Public

JULIE MARIE AUST
Notary Public, State of Michigan
County of Washtenaw
My Commission Expires 02-10-2026
Acting in the County of Washtenaw

EXHIBIT 5

Approved, SCAO

Original - Court
1st copy - Defendant

2nd copy - Plaintiff
3rd copy - Return

STATE OF MICHIGAN JUDICIAL DISTRICT JUDICIAL CIRCUIT COUNTY PROBATE	SUMMONS	CASE NO. 20-000225 - MZ Stephens

Court address
Michigan Court of Claims. 925 W. Ottawa Street, Lansing, MI 48909

Court telephone no.
517-373-0807

Plaintiff's name(s), address(es), and telephone no(s).
Donald J. Trump for President, Inc., and Eric Ostergren

v

Defendant's name(s), address(es), and telephone no(s).
Jocelyn Benson, in her official capacity as Secretary of State
430 W. Allegan St.
Richard H. Austin Building, 4th Floor
Lansing, MI 48918
888-767-6424

Plaintiff's attorney, bar no., address, and telephone no.
Mark F. (Thor) Hearne, II, #P40231
True North Law, LLC
112 S. Hanley Road, Suite 200
St. Louis, MO 63015 (314) 296-4000

RECEIVED
NOV 04 2020

Instructions: Check the items below that apply to you and provide any required information. Submit this form to the court clerk along with your complaint and, if necessary, a case inventory addendum (form MC 21). The summons section will be completed by the court clerk.

Domestic Relations Case
- ☐ There are no pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint.
- ☐ There is one or more pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint. I have separately filed a completed confidential case inventory (form MC 21) listing those cases.
- ☐ It is unknown if there are pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint.

Civil Case
- ☐ This is a business case in which all or part of the action includes a business or commercial dispute under MCL 600.8035.
- ☐ MDHHS and a contracted health plan may have a right to recover expenses in this case. I certify that notice and a copy of the complaint will be provided to MDHHS and (if applicable) the contracted health plan in accordance with MCL 400.106(4).
- ☒ There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint.
- ☐ A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has been previously filed in ☐ this court, ☐ _____ Court, where it was given case number _____ and assigned to Judge _____.

The action ☐ remains ☐ is no longer pending.

Summons section completed by court clerk. **SUMMONS**

NOTICE TO THE DEFENDANT: In the name of the people of the State of Michigan you are notified:
1. You are being sued.
2. **YOU HAVE 21 DAYS** after receiving this summons and a copy of the complaint to **file a written answer with the court** and serve a copy on the other party **or take other lawful action with the court** (28 days if you were served by mail or you were served outside this state).
3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.
4. If you require special accommodations to use the court because of a disability or if you require a foreign language interpreter to help you fully participate in court proceedings, please contact the court immediately to make arrangements.

Issue date	Expiration date*	Court clerk
11-4-2020	2-3-2021	Jerome W. Zimmer Jr.

*This summons is invalid unless served on or before its expiration date. This document must be sealed by the seal of the court.

SUMMONS
Case No. 20-000225-MZ

PROOF OF SERVICE

TO PROCESS SERVER: You are to serve the summons and complaint not later than 91 days from the date of filing or the date of expiration on the order for second summons. You must make and file your return with the court clerk. If you are unable to complete service you must return this original and all copies to the court clerk.

CERTIFICATE / AFFIDAVIT OF SERVICE / NONSERVICE

☐ **OFFICER CERTIFICATE**

I certify that I am a sheriff, deputy sheriff, bailiff, appointed court officer, or attorney for a party (MCR 2.104[A][2]), and that: (notarization not required)

OR

☐ **AFFIDAVIT OF PROCESS SERVER**

Being first duly sworn, I state that I am a legally competent adult, and I am not a party or an officer of a corporate party (MCR 2.103[A]), and that: (notarization required)

☐ I served personally a copy of the summons and complaint,
☐ I served by registered or certified mail (copy of return receipt attached) a copy of the summons and complaint,

together with _____
List all documents served with the summons and complaint

_____ on the defendant(s):

Defendant's name	Complete address(es) of service	Day, date, time

☐ I have personally attempted to serve the summons and complaint, together with any attachments, on the following defendant(s) and have been unable to complete service.

Defendant's name	Complete address(es) of service	Day, date, time

I declare under the penalties of perjury that this proof of service has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

Service fee	Miles traveled	Fee	
$		$	
Incorrect address fee	Miles traveled	Fee	TOTAL FEE
$		$	$

_____
Signature

_____
Name (type or print)

_____
Title

Subscribed and sworn to before me on _____ (Date), _____ County, Michigan.

My commission expires: _____ (Date) Signature: _____ (Deputy court clerk/Notary public)

Notary public, State of Michigan, County of _____

ACKNOWLEDGMENT OF SERVICE

I acknowledge that I have received service of the summons and complaint, together with _____ (Attachments)

_____ on _____ (Day, date, time)

_____ on behalf of _____.
Signature

STATE OF MICHIGAN
IN THE COURT OF CLAIMS

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

Plaintiffs,

v.

JOCELYN BENSON, in her official Capacity as SECRETARY OF STATE

Defendants.

Case No. 20- 000225 -MZ
Stephens

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. Joselyn 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]dvise 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 Plaintiffs and Secretary of State Benson. Plaintiffs 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 procedures 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 the 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(1)(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 assuring 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 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 (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.

[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).

COUNT II

Secretary Benson and Oakland County violated Michigan voters' rights under the Michigan Constitution's "purity of elections" clause.

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 procedures 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 challengers 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.

Dated: November 4, 2020

Respectfully submitted,

/s/ *Mark F. (Thor) Hearne, II*
MARK F. (THOR) HEARNE, II
#P40231
STEPHEN S. DAVIS
J. MATTHEW BELZ
TRUE NORTH LAW, LLC
112 S. Hanley Road, Suite 200
St. Louis, MO 63105
(314) 296-4000
thor@truenorthlawgroup.com

VERIFICATION

STATE OF MICHIGAN)
) ss
COUNTY OF OAKLAND)

I, Eric Ostergrenbeing first duly sworn, depose and say that I am a resident of the state of Michigan and duly qualified as a voter in this state. While I may not have personal knowledge of all of the facts recited in this Complaint, the information contained therein has been collected and made available to me by others, and I declare, pursuant to MCR 2.114(B)(2), that the allegations contained in this Complaint are true to the best of my information, knowledge, and belief.

Subscribed and sworn to before me this 4th day of ~~October~~ November, 2020.

Notary Public

Midland County, Michigan

My Commission Expires: 11-22-2023

Acting in Midland County, Michigan

LORI A LECRONIER
Notary Public - State of Michigan
County of Midland
My Commission Expires Nov 22, 2023
Acting in the County of Midland

EXHIBIT 6

STATE OF MICHIGAN

COURT OF CLAIMS

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

Plaintiffs,

v

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

Defendants.
_____/

OPINION AND ORDER

Case No. 20-000225-MZ

Hon. Cynthia Diane Stephens

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. OSTEGREN 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
Judge, Court of Claims

EXHIBIT 7

STATE OF MICHIGAN
COURT OF APPEALS

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

Plaintiffs-Appellants,

Court of Claims Case No.: 20-000225-MZ

v.

JOCELYN BENSON, in her official Capacity as SECRETARY OF STATE,

Defendant-Appellee.

Mark F. (Thor) Hearne, II (P40231)
Stephen S. Davis (*pro hac* pending)
TRUE NORTH LAW, LLC
112 S. Hanley Road, Suite 200
St. Louis, MO 63105
(314) 296-4000
thor@truenorthlawgroup.com

Counsel for Plaintiffs

MOTION FOR IMMEDIATE CONSIDERATION OF APPEAL UNDER MCR 7.211(C)(6)

The Trump presidential campaign and Eric Ostergren, the plaintiffs below, ask this Court, under MCR 7.211(C)(6), 7.105(F), and 7.205(F), for immediate consideration of their appeal from today's order of the Court of Claims denying them relief. Immediate consideration is necessary because this case concerns the process by which Michigan is conducting the ongoing presidential election. The results of the election in Michigan may determine who wins the presidential election nationwide.

Michigan law allows "challengers" to monitor the absentee ballot process and challenge ballots that do not meet Michigan's strict compliance with absent voting procedures. MCL 168.730-168.734.

This action asks the Court to order Michigan's Secretary of State Jocelyn Benson to direct local election jurisdictions to allow election challengers to observe the processing and adjudicating of ballots and election challengers to observe video recordings of absent voter ballot drop off boxes according to Michigan law. A political party, incorporated organization, or organized committee of interested citizens may designate one "challenger" to serve at each counting board. MCL 168.730. An election challenger appointed under MCL 168.730 has those responsibilities described at MCL 168.733, including the opportunity to observe the manner in which the duties of the election inspectors are being performed and opportunity to challenge an election procedure that is not being properly performed. MCL 168.733(1)(b) and (d).

The Court of Claims erred both in denying this requested relief and in holding that Michigan election law can only be adjudicated by filing individual lawsuits in dozens of Circuit Courts against each of the 1,603 county and local election officials in Michigan. Contrary to the Court of Claims order, Michigan law provides that the Secretary of State 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]dvise 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).

Secretary Benson is violating the Michigan Constitution and Michigan election law by allowing ballots to be processed and counted without bipartisan teams of inspectors and challengers from candidates and interested organizations opportunity to meaningfully observe and challenge the processing of ballots as provided in Michigan election code 168.730, *et seq*. Secretary Benson's actions and her failure to act have undermined the constitutional right of all Michigan voters – including the credentialed and qualified challenger 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 meaningful opportunity to observe and challenge the process.

Furthermore, contrary to the Court of Claims' order, this case is not moot because review and certification of election results continues at both the local and state level, including city, county, and state boards of canvassers. See MCL 168.46; MCL 168.801, *et seq*. *See also* MCL 168.862 ("A candidate for office who believes he or she is aggrieved on account of fraud or mistake in the canvass or returns of the votes by the election inspectors may petition for a recount of the votes cast for that office in any precinct or precincts…."). Part of the county canvass process is "examin[ation of] the 'Challenged Voters' and 'Challenged Procedures' sections of the Poll Book" and absent voter ballot challenges. Boards of County Canvassers Manual, ch. 4, p. 13. In addition, review of absent uniformed services voter or overseas voter ballots is ongoing. Review of these ballots must be performed by bipartisan teams of election inspectors. *See* MCL 168.733. Election

challengers must be allowed to oversee the conduct of the election to assure transparency and public confidence in the conduct of the election. *See id.* Strict and swiftly-impending deadlines are imposed for election result review processes.

Accordingly, President Trump's campaign and Michigan voter and credentialed election challenger Eric Ostergren request this Court to immediately consider this appeal and issue an order granting the relief requested in their emergency motion of injunctive relief, to wit: allowing lawfully designated challengers to observe the conduct of the election and to observe the videos of the remote, unattended ballot drop boxes established under Senate Bill 757.

Dated: November 6, 2020

Respectfully submitted,

/s/ Mark F. (Thor) Hearne, II
Mark F. (Thor) Hearne, II (P40231)
Stephen S. Davis (*pro hac* pending)
TRUE NORTH LAW, LLC
112 S. Hanley Road, Suite 200
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thor@truenorthlawgroup.com

Counsel for Plaintiffs-Appellants

PROOF OF SERVICE

The undersigned certifies that on November 6, 2020, he served the foregoing Motion for Immediate Consideration via email and First Class Mail to Erik A. Grill, Assistant Attorney General, Civil Litigation, Elections, & Employment Division at grille@michigan.gov, and Heather Meingast, Assistant Attorney General, at meingasth@michigan.gov.

/s/ Mark F. (Thor) Hearne, II
MARK F. (THOR) HEARNE, II
Counsel for Plaintiffs

EXHIBIT 8

Case Search

Case Docket Number Search Results - 355378

Appellate Docket Sheet

COA Case Number: 355378

DONALD J TRUMP FOR PRESIDENT INC V SECRETARY OF STATE

1	DONALD J TRUMP FOR PRESIDENT INC	PL-AT	RET	(40231) **HEARNE MARK F II**
2	OSTERGREN ERIC	PL-AT	SAM	
3	SECRETARY OF STATE	DF-AE	AG	(55439) **MEINGAST HEATHER S**

COA Status: OPEN

Case Flags: Election - Priority per MCR 7.213(C)(4); Emergency; Defective Filing

11/06/2020 1 App For Leave to Appeal - Civil
- Proof of Service Date: 11/09/2020
- Answer Due: 11/30/2020
- Fee Code: EPAY
- Immediate Consideration: Y
- Attorney: 40231 - HEARNE MARK F II

11/06/2020 2 Order Appealed From
- From: COURT OF CLAIMS
- Case Number: 2020-000225-MZ
- Trial Court Judge: 28417 STEPHENS CYNTHIA DIANE
- Nature of Case:
  - Elections

11/09/2020 3 Defective Holding File Letter
- Attorney: 40231 - HEARNE MARK F II
- Comments: Letter sent to all parties.

11/09/2020 4 Telephone Contact
- For Party: 1 DONALD J TRUMP FOR PRESIDENT INC PL-AT
- Attorney: 40231 - HEARNE MARK F II
- Comments: Left tx message re case number and filing defects

11/09/2020 5 LCt Document
- For Party: 1 DONALD J TRUMP FOR PRESIDENT INC PL-AT
- Attorney: 40231 - HEARNE MARK F II
- Comments: register of actions

11/09/2020 6 LCt Order
- For Party: 1 DONALD J TRUMP FOR PRESIDENT INC PL-AT
- Attorney: 40231 - HEARNE MARK F II
- Comments: copy of order appealed

11/09/2020 7 Transcript Filed By Party
- Date: 11/09/2020
- Filed By Attorney: 40231 - HEARNE MARK F II
- Hearings:

Case Listing Complete

EXHIBIT 9

STATE OF MICHIGAN

COURT OF CLAIMS

BRENDA POLASEK-SAVAGE, and GREGORY A. BEHLING,

Plaintiffs,

v

JOCELYN BENSON, and OAKLAND COUNTY,

Defendants.
_____/

OPINION AND ORDER

Case No. 20-000217-MM

Hon. Michael J. Kelly

Pending before the Court is plaintiffs' emergency motion for declaratory judgment.[1] The motion is DENIED. In addition, defendant Oakland County is DISMISSED from this action because the Court lacks subject-matter jurisdiction over the county as a defendant.

Plaintiffs have been designed election challengers under MCL 168.730. The issue presented in this case concerns the number of election challengers that can be present at a combined absent voter counting board established under MCL 168.764d(1)(a). According to ¶ 28 of the complaint, Oakland County has declared that organizations approved to appoint election challengers will only be permitted to have one challenger[2] present at each combined absent voter

[1] The Court appreciates defendants' compliance with the expedited briefing ordered in this case.

[2] Oakland County attached to its briefing a document purporting to show that organizations may have four challengers present at one of the county's absent voter counting boards. Thus, it is not clear whether, or to what extent, the controversy alleged in plaintiffs' complaint still exists.

counting board. It is unclear when plaintiffs were made aware of this policy; however, they contend that Oakland County "reaffirmed" the policy on Friday, October 30, 2020.[3] Plaintiffs allege that this policy is inadequate and that some other reasonable number of challengers, such as 10 election challengers, should be permitted.

Plaintiffs' motion for emergency declaratory judgment will be denied. As an initial matter, the Court agrees with Oakland County that it lacks subject-matter jurisdiction over the county. See MCL 600.6419 (describing this Court's jurisdiction); *Mays v Snyder*, 323 Mich App 1, 47; 916 NW2d 227 (2018) (noting that this Court's jurisdiction does not extend to local governments). And because the Court lacks subject-matter jurisdiction over Oakland County, the county must be dismissed from this action.

Turning to the Secretary of State, the complaint does not contain any specific allegations against the Secretary of State. Instead, the complaint merely alleges that the Secretary of State has general supervisory control over local election officials. See MCL 168.21; MCL 168.31. It is not apparent what action, if any, was taken by the Secretary of State in this case. This lack of clarity cuts strongly against the issuance of the emergency relief requested here. See, e.g., *Purcell v Gonzalez*, 549 US 1, 5-6; 127 S Ct 5; 166 L Ed 2d 1 (2006) (per curiam). Furthermore, plaintiffs have not explained how the relief they requested against the Secretary of State can issue in this case. Plaintiffs have asked the Court to order the Secretary of State to require Oakland County to allow a number of election challengers selected by plaintiffs, based on plaintiffs' interpretation of

[3] The Court is mindful that it should be hesitant to interfere with aspects of an election at this late hour, particularly where the facts are unclear. See, e.g., *Purcell v Gonzalez*, 549 US 1, 5-6; 127 S Ct 5; 166 L Ed 2d 1 (2006) (per curiam).

various statutes. As the Secretary of State has pointed out, the types of allegations made by plaintiffs do not support the issuance of declaratory relief. See *Lansing Schs Ed Ass'n v Lansing Bd of Ed (On Remand)*, 293 Mich App 506, 515; 810 NW2d 95 (2011) (describing the purposes of declaratory relief). In essence, and without expressly requesting the same, plaintiffs have asked the Court to issue a writ of mandamus against the Secretary of State, compelling her to exercise her supervisory authority over local election officials. See MCL 168.21. However, mandamus will not issue in this case because, in addition to plaintiffs' failure to expressly request the same, it is not apparent plaintiffs have a clear legal right to request that their chosen number of election challengers be permitted at an absent voter counting board. Likewise, it is not apparent that ordering an elected official, when she has taken no action herself, to order a county to perform a certain act is appropriate for a mandamus action. See *Berry v Garrett*, 316 Mich App 37, 41; 890 NW2d 882 (2016) (describing mandamus relief, generally).

IT IS HEREBY ORDERED that plaintiffs' November 2, 2020, emergency motion or declaratory relief is DENIED.

IT IS HEREBY FURTHER ORDERED that defendant Oakland County is DISMISSED from this matter for lack of subject-matter jurisdiction.

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

November 3, 2020

Michael J. Kelly
Judge, Court of Claims

EXHIBIT 10

STATE OF MICHIGAN

IN THE THIRD JUDICIAL CIRCUIT COURT FOR THE COUNTY OF WAYNE

Sarah Stoddard and
Election Integrity Fund,

v

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,
_____/

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

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. MCL168.865-168.868. 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 elector's 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
Date

Hon. Timothy M. Kenny
Chief Judge
Third Judicial Circuit Court of Michigan

EXHIBIT 11

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

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

Plaintiffs,

v.

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.

v.

MICHIGAN DEMOCRATIC PARTY,

[Proposed] Intervenor Defendant.
_____/

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

ORDER GRANTING UNOPPOSED MOTION OF MICHIGAN DEMOCRATIC PARTY TO INTERVENE AS DEFENDANT

At a session of said court held in the City of Detroit,
County of Wayne, State of Michigan on

Date: 11/13/2020

Present: Hon. Timothy M. Kenny, Chief Judge
CIRCUIT COURT JUDGE

This matter having come before the Court on the Unopposed Motion of Michigan Democratic Party to Intervene as Defendant; the Court having read the movant's brief and submissions; the Court having heard oral argument on November 11, 2020; and the Court being otherwise fully advised in the premises;

IT IS HEREBY ORDERED that, for the reasons stated on the record, the Unopposed Motion of Michigan Democratic Party to Intervene as Defendant is GRANTED.

Pursuant to MCR 2.602(A)(3), this order does not resolve the last pending claim and the case remains open.

Dated: November 11, 2020

By: /s/ Timothy M. Kenny
Hon. Timothy M. Kenny, Chief Judge
Circuit Court Judge

EXHIBIT 12

STATE OF MICHIGAN

IN THE THIRD JUDICIAL CIRCUIT COURT FOR THE COUNTY OF WAYNE

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

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

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 E at 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 as 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 as 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 168.31a effective December 28, 2018. MCL 168.31a 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 168.31a 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' affiants 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

Hon. Timothy M. Kenny
Chief Judge
Third Judicial Circuit Court of Michigan

EXHIBIT 13

Court of Appeals, State of Michigan

ORDER

Cheryl A Costantino v City of Detroit

Docket No. 355443

LC No. 20-014780-AW

Michael J. Riordan
Presiding Judge

Cynthia Diane Stephens

Anica Letica
Judges

The motion for immediate consideration is GRANTED.

The motion for peremptory reversal pursuant to MCR 7.211(C)(4) is DENIED for failure to persuade the Court of the existence of manifest error requiring reversal and warranting peremptory relief without argument or formal submission.

The application for leave to appeal is DENIED.

Presiding Judge

A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

November 16, 2020
Date

Chief Clerk

EXHIBIT 14

Order

November 23, 2020

162245 & (27)(38)(39)

CHERYL A. COSTANTINO and EDWARD P. McCALL, JR.,
Plaintiffs-Appellants,

v

SC: 162245
COA: 355443
Wayne CC: 20-014780-AW

CITY OF DETROIT, DETROIT ELECTION COMMISSION, DETROIT CITY CLERK, WAYNE COUNTY CLERK, and WAYNE COUNTY BOARD OF CANVASSERS,
Defendants-Appellees,

and

MICHIGAN DEMOCRATIC PARTY,
Intervening Defendant-Appellee.

_____/

On order of the Court, the motions for immediate consideration and the motion to file supplemental response are GRANTED. The application for leave to appeal the November 16, 2020 order of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the question presented should be reviewed by this Court.

ZAHRA, J. (*concurring*).

Plaintiffs ask this Court to "enjoin the Wayne County Canvassers certification of the November 2020 election prior to their meeting [on] November 17, 2020 at 3:00 p.m." on the basis that "the audit [requested by plaintiffs pursuant to Const 1963, art 2, § 4(1)(h)] needs to occur prior to the election results being certified by the Wayne County Board of Canvassers." Plaintiffs contend that if "the results of the November 2020 election [are] certified . . . Plaintiffs will lose their right to audit its results, thereby losing the rights guaranteed under the Michigan Constitution." However, plaintiffs cite no support, and I have found none, for their proposition that an audit under Const 1963, art

2, § 4(1)(h)—which provides "[e]very citizen of the United States who is an elector qualified to vote in Michigan . . . [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"—must *precede* the certification of election results. Indeed, the plain language of Const 1963, art 2, § 4(1)(h) does *not* require an audit to precede the certification of election results. To the contrary, certified results would seem to be a *prerequisite* for such an audit. For how can there be "[t]he right to have the results of statewide elections audited" absent any results, and, further, what would be properly and meaningfully audited other than final, and presumably certified, results? See also *Hanlin v Saugatuck Twp*, 299 Mich App 233, 240-241 (2013) (allowing for a quo warranto action to be brought by a citizen within 30 days of an election in which it appears that a material fraud or error has been committed), citing *Barrow v Detroit Mayor*, 290 Mich App 530 (2010); MCL 168.31a (which sets forth election-audit requirements and does not require an audit to take place before election results are certified); MCL 168.861 ("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.").

Even so, while plaintiffs are not precluded from seeking a future "results audit" under Const 1963, art 2, § 4(1)(h), the certification of the election results in Wayne County has rendered the instant case moot to the extent that plaintiffs ask this Court to enjoin that certification; there is no longer anything to enjoin. While it is noteworthy that two members of the board later sought to rescind their votes for certification, see LeBlanc, *GOP Canvassers Try to Rescind Votes to Certify Wayne County Election*, Detroit News (November 19, 2020) <https://www.detroitnews.com/story/news/local/michigan/2020/11/19/gop-canvassers-attempt-rescind-votes-certify-wayne-county-vote/3775246001/> (accessed November 23, 2020) [https://perma.cc/2SS2-Y29V], plaintiffs have nonetheless provided no support, and I have found none, for their proposition that this effects a "decertification" of the county's election results, so it seems they presently remain certified. Cf. *Makowski v Governor*, 495 Mich 465, 487 (2014) (holding that the Governor has the power to grant a commutation, but does not have the power to revoke a commutation). Thus, I am inclined to conclude that the certification of the election by the Wayne County board has rendered the instant case moot—but only as to plaintiffs' request for injunctive relief.

Nothing said is to diminish the troubling and serious allegations of fraud and irregularities asserted by the affiants offered by plaintiffs, among whom is Ruth Johnson, Michigan's immediate past Secretary of State, who testified that, given the "very concerning" "allegations and issues raised by Plaintiffs," she "believe[s] that it would be proper for an independent audit to be conducted as soon as possible to ensure the accuracy and integrity of th[e] election." Plaintiffs' affidavits present evidence to substantiate their allegations, which include claims of ballots being counted from voters whose names are not contained in the appropriate poll books, instructions being given to

disobey election laws and regulations, the questionable appearance of unsecured batches of absentee ballots after the deadline for receiving ballots, discriminatory conduct during the counting and observation process, and other violations of the law. Plaintiffs, in my judgment, have raised important constitutional issues regarding the precise scope of Const 1963, art 2, § 4(1)(h)—a provision of striking breadth added to our Michigan Constitution just two years ago through the exercise of direct democracy and the constitutional initiative process—and its interplay with MCL 168.31a and other election laws. Moreover, the current Secretary of State has indicated that her agency will conduct a postelection performance audit in Wayne County. See Egan, *Secretary of State: Post-Election "Performance Audit" Planned in Wayne County*, Detroit Free Press (November 19, 2020) <https://www.freep.com/story/news/politics/elections/2020/11/19/benson-post-election-performance-audit-wayne/3779269001/> (accessed November 23, 2020) [https://perma.cc/WS95-XBPG]. This development would seem to impose at least some obligation upon plaintiffs both to explain why a constitutional audit is still required after the Secretary of State conducts the promised process audit and to address whether there is some obligation on their part to identify a specific "law" in support of Const 1963, art 2, § 4(1)(h) that prescribes the specific "manner" in which an audit pursuant to that provision must proceed.

In sum, at this juncture, plaintiffs have not asserted a persuasive argument that their case is not moot and that the entry of immediate injunctive relief is proper. That is all that is now before this Court. Accordingly, I concur in the denial of injunctive relief. In addition to denying the relief currently sought in this Court, I would order the most expedited consideration possible of the remaining issues. With whatever benefit such additional time allows, the trial court should meaningfully assess plaintiffs' allegations by an evidentiary hearing, particularly with respect to the credibility of the competing affiants, as well as resolve necessary legal issues, including those identified in the separate statement of Justice VIVIANO. I would also have this Court retain jurisdiction of this case under both its appellate authority and its superintending authority under Const 1963, art 6, § 4 (stating that, with certain limitations, "the supreme court shall have general superintending control over all courts"). 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 procedures to obtain a final answer from this Court on such weighty issues.

Finally, I am cognizant that many Americans believe that plaintiffs' claims of electoral fraud and misconduct are frivolous and obstructive, but I am equally cognizant that many Americans are of the view that the 2020 election was not fully free and fair. See, e.g., Monmouth University Polling Institute, *More Americans Happy About Trump Loss Than Biden Win* (November 18, 2020) <https://www.monmouth.edu/polling-institute/reports/monmouthpoll_us_111820/> (accessed November 23, 2020) [https://perma.cc/7DUN-CMZM] (finding that 32% of Americans "believe [Joe Biden] only won [the election] due to voter fraud"). The latter is a view that strikes at the core of

concerns about this election's lack of both "accuracy" and "integrity"—values that Const 1963, art 2, § 4(1)(h) appears designed to secure.

In sum, as explained above, I would order the trial court to expedite its consideration of the remaining issues, and I would retain jurisdiction in order to expedite this Court's final review of the trial court's decision. But, again, because plaintiffs have not asserted a persuasive argument that immediate injunctive relief is an appropriate remedy, I concur in the denial of leave to appeal and, by extension, the denial of that relief.

MARKMAN, J., joins the statement of ZAHRA, J.

VIVIANO, J. (*dissenting*).

Plaintiffs Cheryl Costantino and Edward McCall seek, among other things, an audit of the recent election results in Wayne County. Presently before this Court is their application for leave to appeal the trial court's ruling that plaintiffs are not likely to succeed and therefore are not entitled to a preliminary injunction to stop the certification of votes by defendant Wayne County Board of Canvassers. See MCL 168.824; MCL 168.825. The Court of Appeals denied leave, and this Court has now followed suit. For the reasons below, I would grant leave to answer the critical constitutional questions of first impression that plaintiffs have squarely presented concerning the nature of their right to an audit of the election results under Const 1963, art 2, § 4(1)(h).

The constitutional provision at issue in this case, which the people of Michigan voted to add in 2018 through Proposal 3, guarantees to "[e]very citizen of the United States who is an elector qualified to vote in Michigan . . . [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." *Id.* The provision is self-executing, meaning that the people can enforce this right even without legislation enabling them to do so and that the Legislature cannot impose additional obligations on the exercise of this right. *Wolverine Golf Club v Secretary of State*, 384 Mich 461, 466 (1971).

The trial court failed to provide a meaningful interpretation of this constitutional language. Instead, it pointed to MCL 168.31a, which prescribes the minimum requirements for statewide audits and requires the Secretary of State to issue procedures for election audits under Article 2, § 4. But the trial court never considered whether MCL 168.31a accommodates the full sweep of the Article 2, § 4 right to an audit or whether it imposes improper limitations on that right.

In passing over this constitutional text, the trial court left unanswered many questions pertinent to assessing the likelihood that plaintiffs would succeed on the

merits.[1] As an initial matter, the trial court did not ask what showing, if any, plaintiffs must make to obtain an audit. It appears that no such showing is required, as neither the constitutional text nor MCL 168.31a expressly provide for it. None of the neighboring rights listed in Article 2, § 4, such as the right to vote by absentee ballot, requires citizens to present any proof of entitlement for the right to be exercised. Yet, the trial court here ignored this threshold legal question and instead scrutinized the parties' bare affidavits, concluding that plaintiffs' allegations of fraud were not credible.[2] The trial court's factual findings have no significance unless, to obtain an audit, plaintiffs were required to prove their allegations of fraud to some degree of certainty.

Wrapped up in this question is the meaning and design of Const 1963, art 2, § 4. Is it a mechanism to facilitate challenges to election results, or does it simply allow for a postmortem perspective on how the election was handled? To ascertain the type of audit the Constitution envisions, it is necessary to consider whether the term "audit" has a special meaning in the context of election administration. In this regard, we should examine the various auditing practices in use around the time Proposal 3 was passed. See Presidential Commission on Election Administration, *The American Voting Experience: Report and Recommendations* (January 2014), p 66 ("Different types of audits perform different functions."). Some audits occur regardless of how close the election was. They simply review the election process to verify that procedures were complied with, rules were followed, and technology performed as expected. See *id.*; see also League of Women Voters, *Report on Election Auditing* (January 2009), p 3 ("Post-election audits routinely check voting system performance in contests, regardless of how close margins of victory appear."). For these process-based audits, it would not appear critical whether they occur before the election results are finally certified, as the audit is intended to gather information that could be used to perfect voting systems going forward.

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[1] The court also suggested that plaintiffs could seek a recount. But, with few exceptions, the relevant recount provisions can be invoked only by candidates for office, which plaintiffs here were not. Compare MCL 168.862 and MCL 168.879 (allowing candidates to request recounts) with MCL 168.880 (allowing any elector, in certain circumstances, to seek a recount of "votes cast upon the question of a proposed amendment to the constitution or any other question or proposition").

[2] The court's credibility determinations were made without the benefit of an evidentiary hearing. Ordinarily, an evidentiary hearing is required where the conflicting affidavits create factual questions that are material to the trial court's decision on a motion for a preliminary injunction under MCR 3.310. See 4 Longhofer, Michigan Court Rules Practice, Text (7th ed, 2020 update), § 3310.6, pp 518-519. See also *Fancy v Egrin*, 177 Mich App 714, 723 (1989) (an evidentiary hearing is mandatory "where the circumstances of the individual case so require").

Other audits, by contrast, aim to ensure accuracy in a specific election and enable alteration of results if necessary. The American Law Institute's recent *Principles of the Law, Election Administration*, drafted around the time Proposal 3 was passed, suggests that audits should be used in this manner:

> [I]f an audit exposes a problem, the number of randomly sampled ballots can be increased in order to ascertain whether or not the problem is one that threatens the accuracy of the determination of which candidate is the election's winner. In an extreme case, when problems exposed by an audit were severe, the audit would need to turn into a full recount of all ballots in the election in order to provide the requisite confidence in the accuracy of the result (or, as necessary, to alter the result based on the findings of the audit-turned-recount). In those circumstances when the audit exposes no such problem, election officials ordinarily would be able to complete the audit prior to the deadline for certifying the results of the election; when, however, the audit reveals the necessity of a full recount, then a state—depending on how it chooses to structure the relationship between certification and a recount—either could delay certification until completion of the recount or issue a preliminary certification that is subject to revision upon completion of the recount. [ALI, Principles of the Law, Election Administration (2019), § 209, comment *c*.]

These audits, such as a risk-limiting audit, "are designed to be implemented before the certification of the results, and to inform election officials whether they should be confident in the results—or if they should bump the audit up to a full recount." Pettigrew & Stewart, *Protecting the Perilous Path of Election Returns from the Precinct to the News*, 16 Ohio St Tech L J 587, 636 (2020) ("[Risk-limiting audits] conducted as part of the certification process currently provide the best mechanism through which the manipulation of election returns at the precinct level can be detected and, most importantly, remedied."). A review of election laws conducted in early 2018 similarly recommended that audits be undertaken "after preliminary outcomes are announced, but before official certification of election results" because this allows for "correction of preliminary results if preliminary election outcomes are found to be incorrect." Root et al, Center for American Progress, *Election Security in All 50 States: Defending America's Elections* (Feb 12, 2018), available at <https://www.americanprogress.org/issues/democracy/reports/2018/02/12/446336/election-security-50-states/>.

Whether the constitutional right to an audit may be utilized to uncover evidence of fraud to challenge the results of an election will also need to be addressed. In particular, how does the constitutional audit operate within our statutory framework and procedures for canvassing election returns, certifying the results, and disputing ballots on the basis of fraud? We have long indicated that canvassing boards' role is ministerial and does not

involve investigating fraud. See *McLeod v State Bd of Canvassers*, 304 Mich 120 (1942); see also *People ex rel Williams v Cicott*, 16 Mich 283, 311 (1868)[3] (opinion of Christiancy, J.) (noting that the boards, "acting thus ministerially," are "often compelled to admit votes which they know to be illegal"); see generally Paine, *Treatise on the Law of Elections to Public Offices* (1888), § 603, p 509 ("The duties of county, district, and state canvassers are generally ministerial. . . . Unless authorized by statute, they cannot go behind those returns. . . . Questions of illegal voting and fraudulent practices are to be passed upon by another tribunal."). The Board of State Canvassers has more of a role in investigating fraud in recounts, although we have held that it cannot exclude votes on this basis. See MCL 168.872 (providing that if the board conducting a recount suspects fraud occurred during the election, it can make an investigation that produces a report that is submitted to the prosecuting attorney or to the circuit judges of the county); *May v Wayne Co Bd of Canvassers*, 94 Mich 505, 512 (1893) (holding that the board could not exclude votes during a recount based on fraud). These holdings may suggest that evidence of fraud uncovered in an audit is not a barrier to certification and instead may only be used to challenge an election in quo warranto and other related proceedings. See *The People ex rel Attorney General v Van Cleve*, 1 Mich 362, 364-366 (1850) (holding in a quo warranto proceeding that the certification "is but *prima facie* evidence" of the election results and that a party can "go behind all these proceedings[; that the party] may go to the ballots, if not beyond them, in search of proof of the due election of either the person holding, or the person claiming the office").

Consequently, it is imperative to determine the nature and scope of the audit provided for in Article 2, § 4, so we can determine when the audit occurs and whether it will affect the election outcome. These questions are important constitutional issues of first impression that go to the heart of our democracy and the power of our citizens to amend the Constitution to ensure the accuracy and integrity of elections. They deserve serious treatment. I would grant leave to appeal and hear this case on an expedited basis to resolve these questions.[4] For these reasons, I dissent.

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[3] Overruled in part on other grounds by *Petrie v Curtis*, 387 Mich 436 (1972).

[4] In doing so, I would consider the parties' arguments regarding whether the matter is moot.

b1117t

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

November 23, 2020

Clerk

EXHIBIT 15

STATE OF MICHIGAN

IN THE SUPREME COURT

ANGELIC JOHNSON, and
LINDA LEE TARVER,
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,
RESPONDENTS.

Supreme Court Case No. _____

PETITION FOR EXTRAORDINARY WRITS & DECLARATORY RELIEF

IMMEDIATE CONSIDERATION REQUESTED FOR DECISION BEFORE DECEMBER 8, 2020

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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 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

[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."

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.

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

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.

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 next day once they were safely

[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*.

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]

[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

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.

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

10 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.

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 bet 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 Jessy 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 Jessy 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.

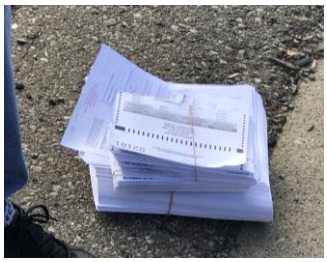
XI. Unsecured Ballots

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.

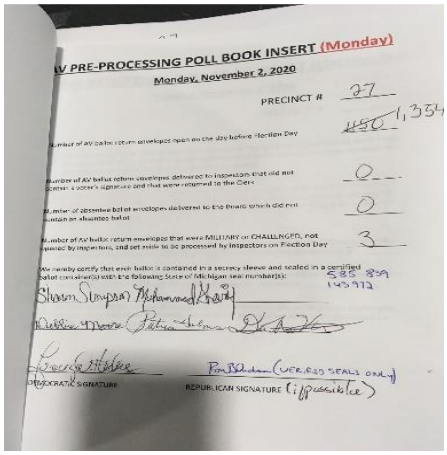
https://www.michigan.gov/documents/sos/VIII_Absent_Voter_County_Boards_265998_7.pdf (emphasis added).

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), over-votes, 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:



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-mail-features-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 revels 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 Lection 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] and of those, we cannot assume a 100% voting rate. See McLaughlin, *supra*.

[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

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 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.

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

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 administrating 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).

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

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EXHIBIT 16

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

SARAH STODDARD and ELECTION INTEGRITY FUND, Plaintiffs, v. 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, Defendants.	Case No. 20-014604-CZ Hon. Timothy M. Kenny, Chief Judge

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

FIRST AMENDED VERIFIED COMPLAINT FOR EMERGENCY AND PERMANENT INJUNCTIVE RELIEF

INTRODUCTION

1. This lawsuit challenges the ongoing action of the City Election Commission of the City of Detroit and the Detroit City Clerk with respect to one-party control of the Absent Voter Counting Board ("AVCB") operating out of TCF Center (formerly known as Cobo Hall). Specifically, individual inspectors from a single major political party are "curing" rejected absentee ballots – those absentee ballots that cannot be properly read by the electronic counting machine -- including transposing the voter's perceived choices onto a new ballot, without the

required oversight and signatures of two election inspectors—one from each major political party. These rejected absentee ballots are reviewed by only one inspector, in most cases a Democratic inspector, who then unilaterally decides how the voter intended to vote and creates a ballot that can be read reflecting the inspector's unilateral decision.

2. This violates MCL 168.765a (10), which requires one inspector from each party to be present at the AVCB. It also violates the Secretary of State's rule, as set forth in her controlling Election Officials' Manual, requiring that any cured ballot bear the signature of two election inspectors who have expressed a preference for different political parties. *See* 168.765a(13). In application, this arrangement in the TCF Center fails to comply with Michigan law and invites fraud.

3. This action seeks an order: (a) halting further "curing" of absentee ballots rejected by the counting machines until one inspector from each party is present to observe the cure and sign the cured ballot; and (b) segregating the rejected and cured ballots; and (c) halting certification until the statutorily-required inspectors can be located and used to ensure election integrity.

PARTIES

4. Plaintiffs are an individual Michigan citizen and election challenger working at the TCF Center in Detroit and a nonprofit organization devoted to ensuring election integrity that credentialed that individual as a challenger, the Election Integrity Fund. Both Plaintiffs have standing to enforce local officials' compliance with their clear legal duty under Michigan election laws and regulations that protect the purity of Michigan elections. Mich. Const. art. 4, section 2.

5. The City Election Commission, which consists of the City Clerk, the City Council president, and the Corporation Counsel, is responsible for establishing and supervising the operation of an AVCB in the City of Detroit. The City Clerk is the chief election official for the

City of Detroit and serves as chair of the Commission. The Commission and Clerk ("the City Defendants") had and have authority to allow and to halt the conduct complained of here, and to take the remedial actions sought by Plaintiff.

6. The Wayne County Board of Canvassers, which consists of four members (Monica Palmer, Jonathan Kinloch, William Hartmann, and Allen Wilson), is responsible for canvassing the vote in Wayne County and the City of Detroit once the City Defendants have completed their canvass and delivered the results to the Wayne County Board of Canvassers. The Wayne County Board of Canvassers has the power, authority, and responsibility to ensure that all legally cast ballots are counted, and the concomitant responsibility to ensure that **only** legally cast ballots are counted. The Wayne County Board of Canvassers also has the statutory authority to correct erroneous, incorrect, and fraudulent tabulations of votes before sending the results to the Secretary of State. MCL 168.823. Per Michigan Law (MCL 168.821), the Wayne County Board of Canvassers could begin their canvass of the election results – including the correction of any mistakes or errors in the counting process – on November 5, 2020 at 9:00 A.M.

BACKGROUND

7. For 2020, the Defendants decided to establish a combined AVCB at TCF Center in Detroit, Michigan. This means that absentee ballots for hundreds of precincts are being processed and counted at the facility under the control of a single AVCB. At over 100 tables, groups of election inspectors (between one and approximately five inspectors per table) are processing and counting ballots.

8. Under the Michigan Constitution, the legislature has authority to pass laws to regulate the conduct of elections and to ensure their purity and integrity. Pursuant to that authority,

the Michigan Legislature passed MCL 168.765a, which 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.

See MCL 168.765a (10) (emphasis added).

9. Pursuant to MCL 168.31, the Secretary of State has authority to issue instructions and rules that are consistent with the Michigan statutes and Constitution, and that bind local election authorities, including Defendants. Likewise, pursuant to MCL 168.765a(13), the Secretary has the authority to develop instructions consistent with the law for the conduct of AVCBs 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."

10. Under her statutory authority, the Secretary of State promulgated an election manual that requires the following:

> *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

COUNT I: INJUNCTIVE RELIEF

11. Defendants are failing to comply with MCL 168.765a, in that there is not, at all times, at least one inspector from each political party at the absentee voter counting place. Rather, many of the tables assigned to precincts under the authority of the AVCB are staffed by inspectors of only one party. Those inspectors alone are making decisions regarding the processing and counting of ballots.

12. This includes the filling out of brand new "cure" or "duplicate" ballots. The process Defendants have sanctioned works in the following manner. When an absentee ballot is processed and approved for counting, it is fed into a counting machine. Some ballots are rejected—that is, they are a "false read"—because of tears, staining (such as coffee spills) over-votes, and other errors. In some of these cases, inspectors can personally, visually inspect the rejected ballot and determine what is causing the machine to find a "false read." When this happens, the inspectors

can duplicate the ballot, expressing the voter's intent in a new ballot that can then be fed into the machine and counted.

13. However, under MCL 168.765a and the Secretary of State's controlling manual, as cited above, an inspector from each major party must be present and must actually sign to indicate that they approve of the duplication.

14. Rather than following this controlling mandate, the AVCB is allowing a Democratic Party inspector only to fill out a duplicate. Republicans sign only "if available."

15. On information and belief, Defendants are allowing hundreds or thousands of ballots to be "duplicated" solely by the Democratic Party inspectors and then counted.

16. This is in clear violation of the law and Defendants should stop it immediately. The duplicated ballots should be preserved and segregated, and no further duplication of absentee ballots should occur unless an inspector from each major party is present.

WHEREFORE, Plaintiffs respectfully request that this Court grant temporary, preliminary, and permanent injunctive relief:

(1) Enjoining the all Defendants to immediately cease and desist from allowing any further duplication of absentee ballots until one inspector from each major party observes and approves the duplication process;

(2) Enjoining all Defendants to immediately preserve and segregate all duplicate ballots and the underlying ballots originally rejected by the tabulators;

(3) Enjoining the Wayne County Board of Canvassers from certifying or delivering election results to the Secretary of State or State Board of Canvassers until the ballots at issue have been properly verified by members of both major political parties and re-tabulated;

(4) Enjoining the Wayne County Board of Canvassers to exercise their authority under MCL 168.823 to correct the errors identified herein; and,

(5) Granting such further and additional relief as is just and proper.

VERIFICATION

I declare under the penalties of perjury that this Verified Complaint for Emergency and Permanent Injunctive Relief has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

Verification Dated: November 4, 2020

Dated: November 5, 2020

Respectfully submitted,

Edward D. Greim (pro hac forthcoming)

Special Counsel, Thomas More Society

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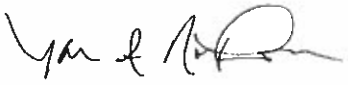

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