

STATE OF MICHIGAN  
IN THE SUPREME COURT

ANGELIC JOHNSON and,  
LINDA LEE TARVER,

MSC No. 162286

Petitioners,

vs.

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,

and

MICHIGAN DEMOCRATIC PARTY, and  
CITY OF DETROIT

Intervenors-Respondents,

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**CITY OF DETROIT’S MOTION TO INTERVENE AS A DEFENDANT**

The City of Detroit (the “City”), by and through counsel, hereby moves to intervene as a Defendant in this matter pursuant to MCR 2.209, because, in part, the significant majority of the substantive “factual” allegations in the lawsuit, albeit false or mistaken, challenge actions supposedly taken by the City of Detroit, and because the relief sought would have direct and dire consequences for the City of Detroit and for its residents. In support of its Motion, the City relies on the accompanying Brief in Support.

On November 27, 2020, Counsel for the City sought concurrence in the relief requested herein. Concurrence was denied.

WHEREFORE, for the reasons specified in the attached Brief in Support, the City of Detroit respectfully requests that this Court enter an order allowing it to intervene as a Defendant.

Respectfully submitted,

**FINK BRESSACK**

December 1, 2020

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**BRIEF IN SUPPORT OF CITY OF DETROIT'S  
MOTION TO INTERVENE AS A DEFENDANT**

**TABLE OF CONTENTS**

INTRODUCTION ..... 1

ARGUMENT ..... 2

    I.    The City is Entitled to Intervene as a Matter of Right ..... 2

        A.    The City’s Application is Timely ..... 3

        B.    The Existing Parties Cannot Fully Protect the City’s Interests ..... 3

        C.    Disposition of the Action May Impair or Impede the City’s Ability to  
                Protect its Interests ..... 4

    II.   In the Alternative, Permissive Intervention Should be Granted ..... 5

    III.  If Intervention is Granted, the City Intends to Seek Dismissal..... 6

CONCLUSION..... 6

**INDEX OF AUTHORITIES**

**Other Authorities**

*Auto-Owners Ins Co v Keizer-Morris, Inc*, 284 Mich App 610; 773 NW2d 267 (2009) ..... 2

*City of Holland v Dept of Nat. Res & Envt*, unpublished opinion of the Court of Appeals,  
issued March, 1, 2012 (Docket No. 302031), 2012 WL 676356 ..... 4

*Oliver v Dept of State Police*, 160 Mich App 107; 408 NW2d 436 (1987)..... 2

*Oostdyk v Auto Owners Ins Co*, unpublished opinion of the Court of Appeals,  
issued December, 30, 2014 (Docket No. 317221), 2014 WL 7440911 ..... 3

*St Nicholas Greek Orthodox Church of Detroit v Pernal*, unpublished opinion of  
the Court of Appeals, issued June, 9, 2005 (Docket No. 252705), 2005 WL 1364399..... 2

*Sumpter v Kosinski*, 165 Mich App 784; 419 NW2d 463 (1988)..... 3

*Vestevich v W Bloomfield Tp*, 245 Mich App 759; 630 NW2d 646 (2001)..... 5

**Rules**

MCR 2.209..... 2

MCR 2.209(A) ..... 2, 5

MCR 2.209(A)(3) ..... 4

MCR 2.209(B) ..... 5

MCR 2.209(C)(2)..... 6

## STATEMENT OF ISSUES PRESENTED

1. Whether the City of Detroit should be permitted to intervene in this matter as of right where the City meets each requirement for intervention as of right.

The City of Detroit answers: Yes.

2. Whether, in the alternative, the City of Detroit should be permitted to intervene in this matter by leave, where the City has met each requirement for permissive intervention.

The City of Detroit answers: Yes.



## INTRODUCTION

This is one of the many lawsuits brought by the Trump campaign and its allies, seeking to interfere with the Michigan electoral process and overturn the State's election results. Lawsuits have been filed in the Court of Claims, the Circuit Court for the County of Wayne, the United States District Court for the Western District of Michigan and the United States District Court for the Eastern District of Michigan. One of the post-election cases found its way to the Court of Appeals and to this Court through interlocutory appeal, where the trial court's denial of immediate injunctive relief was not overturned. The so-far futile search for a forum receptive to their frivolous claims continues with this Petition.

Two Complaints, making allegations regarding the counting of absentee ballots at the TCF Center in Detroit similar (and, in many cases, identical) to those in the instant Petition, have already been reviewed by the Wayne County Circuit Court. See *Costantino et al v City of Detroit et al*, Opinion and Order of Wayne County Circuit Court, issued Nov 13, 2020 (Case No 20-014780-AW) (Ex. 1); *Stoddard et al v City Election Commission of the City of Detroit et al*, Opinion and Order of Wayne County Circuit Court, issued Nov, 6 2020 (Case No 20-014604-CZ) (Ex. 2). The denial of temporary injunctive relief by Judge Timothy Kenny in *Costantino et al v City of Detroit et al* was appealed to the Court of Appeals and to this Court, where the application for leave to appeal was denied. (Ex. 3). Counsel for Petitioners in the case at bar include counsel for the plaintiffs in *Costantino* as well as counsel for plaintiffs in *Stoddard*.

Petitioners now come to this Court, seeking to bypass the lower courts, and apparently seeking to litigate this matter without participation by the City of Detroit. As in the other lawsuits, Petitioners here do not—and cannot—provide any legitimate evidence of voter fraud. Instead, they complain about processes they do not fully understand, repeating claims that have already been fully rebutted and rejected. Similarly, the attacks directed to the actions of Secretary of State

Jocelyn Benson raise issues already addressed (and rejected) by courts months ago.

While the claims related to activities at the TCF Center are grounded in baseless allegations and misunderstandings of the law, the election operations being challenged were conducted by the City of Detroit, not the Secretary of State. The City is the entity, which can best address these spurious legal and factual claims. The City should be allowed to intervene, as a matter of right or of leave, to protect itself and its residents from this attack on the City and its residents.

## ARGUMENT

### I. The City is Entitled to Intervene as a Matter of Right

Intervention as of right is governed by MCR 2.209. The Rule states:

(A) Intervention of Right. On timely application a person has a right to intervene in an action:

(1) when a Michigan statute or court rule confers an unconditional right to intervene;

(2) by stipulation of all the parties; or

(3) when the applicant claims an interest relating to the property or transaction which is the subject of the action and is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

MCR 2.209 is to be broadly construed in favor of potential intervenors. *Auto-Owners Ins Co v Keizer-Morris, Inc*, 284 Mich App 610, 612; 773 NW2d 267, 269 (2009).

A party seeking to intervene as of right under MCR 2.209(A) must establish three elements: “(1) a timely request; (2) a showing that representation of the applicant’s interest by existing parties is or may be inadequate; and (3) a disposition of the action that may, as a practical matter, impair or impede the applicant’s ability to protect his interests.” *St Nicholas Greek Orthodox Church of Detroit v Pernal*, unpublished opinion of the Court of Appeals, issued June, 9, 2005 (Docket No. 252705), 2005 WL 1364399, p \*2 (citing *Oliver v Dept of State Police*, 160 Mich App 107, 113; 408 NW2d 436, 439 (1987)). The City meets each of the required elements.

### **A. The City's Application is Timely**

The timeliness of a motion to intervene is determined by the circumstances of the motion. *Id.* To determine whether the motion is timely, the reviewing court considers the following factors: “[ (1) ] the purpose of the motion to intervene, [ (2) ] the length of time the applicant for intervention should have known of his interest in the case, [ (3) ] whether the original parties would be prejudiced by further delays, [ (4) ] whether there are any unusual circumstances which would bear on granting or denying the motion and [ (5) ] to what stage the lawsuit has progressed.” *Oostdyk v Auto Owners Ins Co*, unpublished opinion of the Court of Appeals, issued December, 30, 2014 (Docket No. 317221), 2014 WL 7440911, p \*10) (citation omitted).

The City's application to intervene is timely. The City is intervening to preserve the right to vote for hundreds of thousands of Detroit residents, and to defend the conduct of City election officials against baseless allegations. The City is filing its motion at the very outset of the case and will not be seeking any delays related to its intervention. There is no prejudice from intervention; there was no delay in seeking intervention. Finally, the unconstitutionality and severity of Petitioners' requested relief militates in favor of granting intervention, and there are no unusual circumstances weighing against intervention.

### **B. The Existing Parties Cannot Fully Protect the City's Interests**

A party seeking to intervene is required to show that its interests will not be adequately protected by existing parties to the litigation. *Sumpter v Kosinski*, 165 Mich App 784, 801; 419 NW2d 463, 469 (1988). This is a minimal burden; a movant need only show that representation “**may** be inadequate.” *Id.* (emphasis added).

While the State Defendants have an interest in defending against this frivolous claim, the majority of the “factual” allegations in this lawsuit involve the processing and tabulation of absentee ballots by the City of Detroit at the TCF Center. The City is best suited to respond to

these attacks.

**C. Disposition of the Action May Impair or Impede the City's Ability to Protect its Interests**

Under MCR 2.209(A)(3), which, again, is to be broadly construed, a proposed intervenor must show that a “disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.” “[T]he test for intervention of right is simply whether the disposition of the action *may* impair or impede the applicant’s ability to protect its interest.” *City of Holland v Dept of Nat. Res & Env't*, unpublished opinion of the Court of Appeals, issued March, 1, 2012 (Docket No. 302031), 2012 WL 676356, p \*1 (emphasis added). The disposition of this action would impede the City of Detroit’s ability to: preserve the right to vote of its citizens, validate the integrity of local election results and defend the conduct of its election officials.

While the City was not named in the Petition as a defendant, most of the allegations in this lawsuit relate to the purported actions or inactions of the City at the TCF Center. In fact, these allegations demonstrate that Petitioners fail to understand basic Michigan election law or the basic principles underlying Michigan elections.

Disposition of this action without the City’s involvement as a party may also affect its substantial interest in validating the outcome of its local elections. Petitioners’ allegations give the impression that the sole subject under consideration on the ballots at issue was the presidential election. On the contrary, the ballots which Petitioners seek to invalidate include local elections for positions such as the Detroit School Board. It is indisputable that the city has a significant interest in establishing that these local elections were conducted in compliance with all state and federal regulations.

Finally, disposition of this matter without the City as a party may impede the City’s

substantial interest in protecting the voting rights of its citizens. Based exclusively on allegations, which actually prove no misconduct occurred, Petitioners seek to disenfranchise all Detroit voters. That is, of course, the most anti-democratic measure imaginable. There is no conceivable way that any of Petitioners' frivolous allegations should result in a single voter being disenfranchised, let alone hundreds of thousands from the State's largest city. It is hard to conceive of a situation where a proposed intervenor would have a stronger interest than is present here.

While MCR 2.209(A) only requires that a proposed intervenor prove that disposition of the action *may* impede its ability to protect its interests, it is a virtual certainty that the City's interests will be affected and could be impaired by this lawsuit. The City has an interest in protecting the voting rights of its citizens, affirming the integrity of local election results and defending the conduct of local election officials. Moreover, this action may significantly undermine the faith and public confidence in the City's election results. For months, various groups have alleged widespread election fraud across the country without proof. Much of the focus of these unsupportable claims has been on certain cities in "battleground" states—with a strong emphasis on cities with predominantly minority populations. Detroit has a strong interest in defending against Petitioners' attempt to disenfranchise all Detroiters and to undermine confidence in the integrity of the City and the country's electoral process.

## **II. In the Alternative, Permissive Intervention Should be Granted**

In the alternative, this Court should permit the City to intervene pursuant to MCR 2.209(B). The rule specifies that "[o]n timely application" the court may permit intervention "when an applicant's claim or defense and the main action have a question of law or fact in common." Permissive intervention is proper "where the intervenor's interests *may be* inadequately represented by one of the existing parties." *Vestevich v W Bloomfield Tp*, 245 Mich App 759, 761; 630 NW2d 646, 649 (2001). "[T]he concern of inadequate representation of interests need only

exist; inadequacy of representation need not be definitely established. Where this concern exists, the rules of intervention should be construed liberally in favor of intervention.” *Id.*

The City should be permitted to intervene. This application to intervene is timely filed, and clearly the City, which should have been named as a party, has defenses to these frivolous claims that share common questions of law and fact.

### **III. If Intervention is Granted, the City Intends to Seek Dismissal**

Because MCR 2.209(C)(2) requires a proposed motion for intervention to “be accompanied by a pleading stating the claim or defense for which intervention is sought,” the City has attached a proposed Answer. (Ex. 4).

The purpose of submitting a proposed pleading is to put the opposing party and court on notice of proposed defenses. If a party cannot demonstrate its ability to submit a legally valid Answer, that party should not be allowed to intervene. Here, the City has satisfied the rule by including the accompanying legally valid Pleading. However, if intervention is granted, the City intends to object to the relief sought by Petitioners and to file a Motion for Summary Disposition.

### **CONCLUSION**

For the foregoing reasons, the City of Detroit respectfully requests that this Honorable Court grant its Motion to Intervene as a Defendant in this matter.

December 1, 2020

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on December 1, 2020, I electronically filed the foregoing paper with the Clerk of the court using the electronic filing system, which sends notice to all counsel of record.

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**CITY OF DETROIT’S MOTION TO INTERVENE AS A DEFENDANT**

**Index of Exhibits**

Exhibit 1 – *Costantino et al v City of Detroit et al*, Opinion and Order of Wayne County Circuit Court, issued Nov 13, 2020 (Case No 20-014780-AW)

Exhibit 2 – *Stoddard et al v City Election Commission of the City of Detroit et al*, Opinion and Order of Wayne County Circuit Court, issued Nov, 6 2020 (Case No 20-014604-CZ)

Exhibit 3 – Denial of application for leave to appeal in *Costantino et al v City of Detroit et al*

Exhibit 4 – City of Detroit’s Proposed Answer and Affirmative Defenses

# **EXHIBIT 1**

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 29<sup>th</sup> 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 4<sup>th</sup>. 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 4<sup>th</sup>. 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 4<sup>th</sup> 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 3<sup>rd</sup> 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 3<sup>rd</sup> and 4<sup>th</sup> explaining processes to challengers and resolving disputes. Mr. Thomas' account of the November 3<sup>rd</sup> and 4<sup>th</sup> 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.

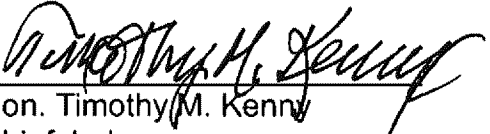
Perhaps if Plaintiffs' election challenger affiants had attended the October 29, 2020 walk-through of the TCF Center ballot counting location, questions and concerns could have been answered in advance of Election Day. Regrettably, they did not and, therefore, Plaintiffs' affiants did not have a full 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 2

STATE OF MICHIGAN

IN THE THIRD JUDICIAL CIRCUIT COURT FOR THE COUNTY OF WAYNE

Sarah Stoddard and  
Election Integrity Fund,

v

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

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

\_\_\_\_\_ /

**OPINION & ORDER**

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

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

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

1. Defendants be required to retain all original and duplicate ballots and poll books.
2. The Wayne County Board of Canvassers not certify the election results until both Republican and Democratic party inspectors compare the duplicate ballots with original ballots.
3. The Wayne County Board of Canvassers unseal all ballot containers and remove all duplicate and original ballots for comparison purposes.
4. The Court provide expedited discovery to plaintiffs, such as limited interrogatories and depositions.

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

1. The likelihood the party seeking the injunction will prevail on the merits.
2. The danger the party seeking the injunction will suffer irreparable harm if the injunction is not granted.
3. The risk the party seeking the injunction would be harmed more by the absence of an injunction than the opposing party would be by the granting of the injunction.
4. The harm to the public interest if the injunction is issued. *Davis v City of Detroit Financial Review Team*, 296 Mich. App. 568, 613; 821 NW2d 896 (2012).

In the *Davis* opinion, the Court also stated that injunctive relief “represents an extraordinary and drastic use of judicial power that should be employed sparingly and only with full conviction of its urgent necessity” *Id* at 612 fn 135, quoting *Senior Accountants, Analysts & Appraisers Ass’n v. Detroit*, 218 Mich. App. 263, 269; 553 NW2d 679 (1996).

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

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

Pursuant to MCL 168.73a the County chairs for Republican and Democratic parties were permitted and did submit names of absent voter counting board inspectors to the City of Detroit Clerk. Consistent with MCL 168.674, the Detroit City Clerk did make appointments of inspectors. Both Republican and Democratic inspectors were present throughout the absent voter counting board location.

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

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

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

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

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

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

In the present case, Plaintiffs allege that the preparation and submission of "duplicate ballots" for "false reads" without the presence of inspectors of both parties violates both state law, MCL 168.765a (10), and the Secretary of State election manual. However, Plaintiffs fail to identify the occurrence and scope of any alleged violation. The only "substantive" allegation appears in paragraph 15 of the First Amended Complaint, where Plaintiffs' allege "on information and belief" that hundreds or thousands of ballots have been impacted by this improper practice. Plaintiffs' Supplemental Motion fails to present any further specifics. In short, the motion is based upon speculation and conjecture. Absent any evidence of an improper practice, the Court cannot identify if this alleged violation occurred, and, if it did, the frequency of such violations. Consequently, Plaintiffs fail to move past mere apprehension of a future injury or to establish that a threatened injury is more than speculative or conjectural.

This Court finds that it is mere speculation by plaintiffs that hundreds or thousands of ballots have, in fact, been changed and presumably falsified. Even with this assertion, plaintiffs do have several other remedies available. Plaintiffs are entitled to bring their challenge to the Wayne County Board of Canvassers pursuant to MCL 168.801 *et seq.* and MCL 168.821 *et seq.* Additionally, plaintiffs can file for a recount of the vote if they believe the canvass of the votes suffers from fraud or mistake. 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 3

# Order

Michigan Supreme Court  
Lansing, Michigan

November 23, 2020

162245 & (27)(38)(39)

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

v

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.

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

Bridget M. McCormack,  
Chief Justice

David F. Viviano,  
Chief Justice Pro Tem

Stephen J. Markman  
Brian K. Zahra  
Richard H. Bernstein  
Elizabeth T. Clement  
Megan K. Cavanagh,  
Justices

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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/](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.<sup>1</sup> 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.<sup>2</sup> 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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<sup>1</sup> 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").

<sup>2</sup> 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)<sup>3</sup> (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.<sup>4</sup> For these reasons, I dissent.

<sup>3</sup> Overruled in part on other grounds by *Petrie v Curtis*, 387 Mich 436 (1972).

<sup>4</sup> 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 4

STATE OF MICHIGAN  
IN THE SUPREME COURT

ANGELIC JOHNSON and,  
LINDA LEE TARVER,

MSC No. 162286

Petitioners,

vs.

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,

and

MICHIGAN DEMOCRATIC PARTY, and  
CITY OF DETROIT

Intervenors-Respondents,

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### CITY OF DETROIT'S PROPOSED ANSWER TO PETITION FOR WRITS

The City of Detroit hereby submits this Answer to Petitioners' Petition for Writs.

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.

**These conclusory legal statements are neither admitted nor denied, as they constitute out of context and generalized statements of law which do not support the relief sought by this Petition and do not require a response.**

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.

**These conclusory legal statements are neither admitted nor denied, as they constitute out of context and generalized statements of law which do not support the relief sought by this Petition and do not require a response.**

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.



**These conclusory legal statements are neither admitted nor denied, as they constitute out of context and generalized statements of law which do not support the relief sought by this Petition and do not require a response.**

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).

**The City of Detroit (hereinafter “the City”) admits that this paragraph includes a partial, incomplete citation to one portion of the Constitution of the State of Michigan.**

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).

**These conclusory legal statements are neither admitted nor denied, as they constitute out of context and generalized statements of law and limited citation to case law which do not support the relief sought by this Petition and do not require a response.**

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 v. 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.

**These conclusory legal statements are neither admitted nor denied, as they constitute out of context and generalized statements of law and limited citation to case law which do not support the relief sought by this Petition and do not require a response.**

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).

**The City admits that this paragraph includes a partial, incomplete citation to one portion of the Constitution of the State of Michigan. The remainder of the paragraph contains conclusory legal statements which are neither admitted nor denied, as they constitute out of context and generalized statements of law and limited citation to case law which do not support the relief sought by this Petition and do not require a response.**

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.

**The City admits that this paragraph includes a partial, incomplete citation to one portion of the Constitution of the State of Michigan. The remainder of the paragraph contains conclusory legal statements which are neither admitted nor denied, as they constitute out of context and generalized statements of law which do not support the relief sought by this Petition and do not require a response.**

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).

**The City admits that this paragraph includes a partial, incomplete citation to one portion of the Constitution of the State of Michigan. The remainder of the paragraph**

**contains conclusory legal statements and limited citations to case law which are neither admitted nor denied, as they constitute out of context and generalized statements of law which do not support the relief sought by this Petition and do not require a response.**

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.

**The City denies the allegations in this paragraph and more specifically notes that the allegation that Jocelyn Benson is “a registered Democrat,” in a state that does not have party registration, reveals Petitioners’ willful ignorance of Michigan election law and procedure.**

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

**The City denies the allegations in this paragraph.**

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

**The City denies the allegations in this paragraph.**

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

**The City denies the implication that Secretary of State Benson needed and did not obtain the approval of the Michigan Legislature for any actions that she took.**

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.

**The City denies the allegations in this paragraph.**

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.

**The City admits that this paragraph includes partial, incomplete citations to one portion of the Constitution of the State of Michigan, and State statutes. The City of Detroit denies the implication that a significant departure from the legislative scheme for appointing Presidential electors has occurred. The remainder of the paragraph contains conclusory legal statements which are neither admitted nor denied, as they constitute out of context and generalized statements of law and limited citations to cased law which do not support the relief sought by this Petition and do not require a response.**

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).

**These conclusory legal statements are neither admitted nor denied, as they constitute out of context and generalized statements of law and limited citations to case law which do not support the relief sought by this Petition and do not require a response.**

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.”).

**These conclusory legal statements are neither admitted nor denied, as they constitute out of context and generalized statements of law and limited citations to case law which do not support the relief sought by this Petition and do not require a response. The Secretary of State did not circumvent legislative intent.**

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).

**These conclusory legal statements are neither admitted nor denied, as they constitute out of context and generalized statements of law and limited citations to case law which do not support the relief sought by this Petition and do not require a response.**

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.

**The citation to a statute is admitted. The remainder of the paragraph contains conclusory legal statements which are neither admitted nor denied, as they constitute out of context and generalized statements of law which do not support the relief sought by this Petition and do not require a response.**

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.

**The City denies that this Petition states a valid cause of action arising under the cited sources of authority.**

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).

**The partial citation to the Constitution of the State of Michigan is admitted.**

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.

**These conclusory legal statements are neither admitted nor denied, as they constitute out of context and generalized statements of law and limited citations to case law which do not support the relief sought by this Petition and do not require a response.**

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).

**This out of context citation to one section of the election code does not apply to the facts of the instant matter.**

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).

**The City neither admits nor denies the allegation for lack of sufficient information to form a belief as to the truth of the allegation, and, being without sufficient information, leaves Plaintiffs to their proofs.**

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

**The City neither admits nor denies the relevance of this partial out of context citation to one statutory provision.**

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.

**The City admits that the Board of State Canvassers certified election results for the State of Michigan on November 23, 2020. The City denies that the cited code provision is relevant to this matter.**

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.

**The City denies that the allegations in this Petition support the relief sought,**

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).

**The City denies that this Petition is properly brought as an original matter in the Supreme Court.**

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).

**The City denies the relevance of the cited case to this Petition.**

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

**The City denies that immediate consideration is warranted for this belated Petition,**

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.

**The City neither admits nor denies the allegation for lack of sufficient information to form a belief as to the truth of the allegation, and, being without sufficient information, leaves Plaintiffs to their proofs.**

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.

**The City neither admits nor denies the allegation for lack of sufficient information to form a belief as to the truth of the allegation, and, being without sufficient information, leaves Plaintiffs to their proofs.**

33. Respondent Jocelyn Benson is the Michigan Secretary of State. As the Secretary of State, Respondent Benson is the State’s “chief election officer” with supervisory control over local election officials in the performance of their election related duties, including supervisory control over the election officials and workers at the TCF Center. MCL 168.21. Secretary Benson holds the power to “direct local election officials as to the proper methods of conducting elections.” MCL 168.31(1)(b), 168.509n. Secretary Benson is responsible for “[e]stablish[ing] a curriculum for comprehensive training and accreditation of all [election] officials who are responsible for conducting elections.” MCL 168.31(1)(j). Secretary Benson took an oath to support the United States and Michigan Constitution, Mich Const Art 11, § 1, and has a clear legal duty to enforce

Michigan Election Law, the United States Constitution, and the Michigan Constitution. This clear legal duty involves no exercise of judgment or discretion. Secretary Benson is sued in her official capacity.

**The City admits that Jocelyn Benson is the Secretary of State for the State of Michigan and also admits the citations to statutes. The remainder of the paragraph is comprised of conclusory legal statements which are neither admitted nor denied, as they constitute out of context and generalized statements of law which do not require a response.**

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.

**The City admits this allegation.**

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.

**The City admits this allegation.**

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).

**The City admits to this partial statutory citation.**

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.

**The City admits that Jeannette Bradshaw is the Chair of the Board of State Canvassers for the State of Michigan. The remainder of the paragraph is comprised of conclusory legal statements which are neither admitted nor denied, as they constitute out of context and generalized statements of law and do not require a response.**

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.

**The City admits that Gretchen Whitmer is the Governor of the State of Michigan. The City denies that anything has been "corrupted," as alleged.**

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

**The City admits this allegation.**

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

**The City admits this allegation.**

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

to statewide records.

**The City admits this allegation.**

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.

**The City denies the allegations in this paragraph.**

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

**The City denies the allegations in this paragraph.**

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

**The City admits this allegation.**

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.

**The City denies that the TCF Center 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.

**The City denies the allegations in this paragraph.**

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).

**The City admits that William Hartmann (corrected spelling) included this statement in his affidavit.**

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.

**The City admits that Monica Palmer included this statement in her affidavit.**

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.

**The City denies the relevance of the “first refusal,” when all members of the Wayne County Board of Canvassers ultimately voted to certify.**

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.

**The City denies the relevance of any refusal to certify, when all members of the Wayne County Board of Canvassers ultimately voted to certify.**

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 outside and had consulted with independent counsel. Affidavit of William Hartman; Appendix 19 at ¶12; Affidavit of Monica Palmer, Appendix 24 at ¶20.

**The City denies that any member had the power to “change their minds,” absent a timely motion for reconsideration, which did not occur.**

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.

**The City denies the allegations in this paragraph.**

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

**The City denies the allegations in this paragraph.**

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.”).

**The citation to a statute is admitted, and the City affirmatively states that at all relevant times at least one election inspector was present at the TCF Center,**

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).

**The citation to the State of Michigan Constitution is admitted.**

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).

**The citation to the State of Michigan Constitution is admitted.**

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

**The City neither admits not denies this generalized statement of law.**

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.

**The City denies the allegations in this paragraph.**

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

**The City admits this allegation.**

60. Detroit is the largest city in Wayne County.

**The City admits this allegation.**

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.*

**The City denies the allegations in this paragraph.**

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



Center to be processed and counted).

**The City denies the allegations in this paragraph.**

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.

**The City denies the allegations in this paragraph.**

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.

**The City denies the allegations in this paragraph.**

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.

**The City denies the allegations in this paragraph.**

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).

**The City denies the allegations in this paragraph.**

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

**The City of denies the allegations in this paragraph.**

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.

**The City denies the allegations in this paragraph.**

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

**The City denies the allegations in this paragraph.**

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.

**The City denies the allegations in this paragraph.**

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.

**The City denies the allegations in this paragraph.**

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.

**The City denies the allegations in this paragraph.**

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.

**The City denies the allegations in this paragraph.**

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.

**The City denies the allegations in this paragraph.**

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

**The City denies the allegations in this paragraph.**

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.

**The City denies the allegations in this paragraph.**

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.

**The City denies the allegations in this paragraph.**

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.

**The City denies the allegations in this paragraph.**

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.

**The City denies the allegations in this paragraph.**

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.

**The City denies the allegations in this paragraph.**

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.

**The City denies the allegations in this paragraph.**

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.

**The City denies the allegations in this paragraph.**

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.

**The City denies the allegations in this paragraph.**

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.

**The City admits that a contract was approved, but denies the details as set forth in this paragraph.**

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.

**The City neither admits nor denies the allegations in this paragraph, but leaves Petitioners to their proofs.**

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.

**The City denies the allegations in this paragraph.**

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

**The City denies the allegations in this paragraph.**

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.

**The City denies the allegations in this paragraph.**

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.

**The City denies the allegations in this paragraph.**

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

**The City denies the allegations in this paragraph.**

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

**The City denies the allegations in this paragraph.**

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.

**The City admits that satellite locations were instructed to collect ballots from drop-boxes periodically.**

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.

**The City denies the allegations in this paragraph.**

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.

**The City denies the allegations in this paragraph.**

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.

**The City denies the allegations in this paragraph.**

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.

**The City denies the allegations in this paragraph.**

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.

**The City denies the allegations in this paragraph.**

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.).

**The City denies the allegations in this paragraph.**

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.

**The City denies the relevance of the allegations in this paragraph.**

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

**The City denies the allegations in this paragraph.**

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.

**The City denies the allegations in this paragraph.**

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).

**The City denies the allegations in this paragraph.**

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.

**The City admits the allegations in this paragraph, and affirmatively states that the sheets included other names also.**

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.

**The City denies the allegations in this paragraph. Names are not on the ballots.**

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.

**The City denies the allegations in this paragraph, to the extent it implies that these were not blank 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 Klammer Appendix 174 at ¶13.

**The City denies the allegations in this paragraph.**

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.

**The City denies the allegations in this paragraph.**

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.

**The City denies the allegations in this paragraph.**

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.

**The City denies the allegations in this paragraph.**

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.

**The City denies the allegations in this paragraph.**

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.

**The City denies the allegations in this paragraph.**

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.*

**The City denies the allegations in this paragraph.**

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.

**The City denies the allegations in this paragraph.**

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.

**The City admits that some election challengers were not permitted to enter the TCF Center due to COVID-19 protocols and the building’s capacity limit. However, the City states that, at all times, election officials permitted a sufficient number of election challengers to enter the TCF Center as required by law.**

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.

**The City denies the allegations in this paragraph.**

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.

**The City denies the allegations in this paragraph.**

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.

**The City denies the allegations in this paragraph.**

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.

**The City denies the allegations in this paragraph.**

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

**The City denies the allegations in this paragraph.**

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

**The City denies the allegations in this paragraph.**

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.

**The City denies the allegations in this paragraph.**

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

**The City denies the allegations in this paragraph.**

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.

**The City denies the allegations in this paragraph.**

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.

**The City denies the allegations in this paragraph to the extent there is any implication that these allegations are relevant to the relief sought by Petitioners.**

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.

**The City denies the allegations in this paragraph.**

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.

**The City denies the allegations in this paragraph.**

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:

**The City denies the allegations in this paragraph.**

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.

**The City denies the allegations in this paragraph.**

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:

**The City denies the allegations in this paragraph.**

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.

**The City admits that drive-up ballot drop boxes were installed around Detroit. The**

**City denies the allegation and implication that ballots were not properly verified before being counted.**

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.

**The City denies the allegations in this paragraph.**

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.

**The City states that no answer is necessary regarding the rights of Michigan voters because the allegations are purely conclusions of law. To the extent that an answer is necessary regarding the rights of Michigan voters, the City denies because the Michigan Constitution and related election statutes speak for themselves. The City denies the remaining allegations in this paragraph.**

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.

**This conclusory legal statement is neither admitted nor denied because no response is required.**

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.

**The City denies the allegations in this paragraph.**

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

**The City denies the allegations in this paragraph.**

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

**The City denies the allegations in this paragraph as they are overly-broad.**

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.

**The City denies the allegations in this paragraph as they are overly-broad.**

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.

**The City denies the allegations in this paragraph as they are overly-broad. Not all election officials in every context are required to compare signatures.**

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.

**The City admits that election workers at the TCF Center were instructed not to validate or compare signatures when those signatures had been validated or compared before ballots were delivered to the TCF Center.**

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).

**The citation to a statute is admitted.**

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).

**The citation to statutes is admitted.**

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](http://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](https://www.michigan.gov/documents/sos/VIII_Absent_Voter_County_Boards_265998_7.pdf)

(emphasis added).

**The citation to the Election Officials’ Manual of the Michigan Bureau of Elections is admitted.**

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.

**The City denies the allegations in this paragraph.**

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.

**The City denies the allegations in this paragraph, as the allegations misstate the**

**meaning of a “false read.”**

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.

**The City denies the allegations of this paragraph to the extent there is an implication that every ballot rejected by the tabulating equipment is a “false read,” and states affirmatively that the statutes and manual speak for themselves.**

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:

**The City denies the allegations in this paragraph.**

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.

**The City denies the allegations in this paragraph.**

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.

**The City denies the allegations in this paragraph.**

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.

**The City denies the allegations in this paragraph. The City further states that, at all times, election officials permitted election inspectors from both major political parties to meaningfully observe the counting of absentee voter ballots.**

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.

**The City admits that there is a special process for processing of military ballots, which was observed consistent with all legal requirements.**

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.

**The City denies the allegations in this paragraph.**

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.

**The City denies the allegations in this paragraph. The City further states that, at all times, election challengers from both major political parties were permitted to meaningfully observe the counting of absentee ballots.**

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).

**The citation to a statute is admitted.**

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.”

**The City denies the allegations in this paragraph.**

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.

**The citation to a statute is admitted. These conclusory legal statements are neither admitted nor denied, as they constitute out of context and generalized statements of law which do not support the relief sought by this Petition and do not require a response.**

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.

**The City admits the allegations in this paragraph.**

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.

**The City denies the allegations in this paragraph.**

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.

**These conclusory legal statements are neither admitted nor denied, as they constitute out of context and generalized statements of law which do not support the relief sought by this Petition and do not require a response.**

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*.

**The City denies the allegations in this paragraph.**

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”).

**These conclusory legal statements are neither admitted nor denied, as they constitute out of context and generalized statements of law which do not support the relief sought by this Petition and do not require a response.**

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.

**The City denies the allegations in this paragraph.**

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.

**The City denies the existence of any scheme.**

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.

**The City denies the allegations in this paragraph.**

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.

**The City denies the allegations in this paragraph.**

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))

**The City denies the allegations in this paragraph.**

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

**The citation to the Michigan Secretary of State website is admitted.**

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).

**The citation to statutes is admitted. These conclusory legal statements are neither admitted nor denied, as they constitute out of context and generalized statements of law which do not support the relief sought by this Petition and do not require a response.**

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.

**The City admits that absentee ballot applications were sent to all registered voters. The City further states that the Michigan Court of Appeals ruled that mailing absentee ballot applications to all registered Michigan voters was within the Secretary of State's constitutional authority.**

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.

**The City denies the allegations in this paragraph.**

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.

**The City admits that absentee ballot applications were sent to all registered voters. The City further states that the Michigan Court of Appeals ruled that mailing absentee ballot applications to all registered Michigan voters was within the Secretary of State’s constitutional authority, regardless of whether the applications had been requested.**

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.

**The City neither admits nor denies the allegation for lack of sufficient information to form a belief as to the truth of the allegation, and, being without sufficient information, leaves Petitioners to their proofs.**

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

**The City neither admits nor denies the allegation for lack of sufficient information to form a belief as to the truth of the allegation, and, being without sufficient information, leaves Petitioners to their proofs.**

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.

**The City neither admits nor denies the allegation for lack of sufficient information to**

**form a belief as to the truth of the allegation, and, being without sufficient information, leaves Petitioners to their proofs.**

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.

**The City neither admits nor denies the allegation for lack of sufficient information to form a belief as to the truth of the allegation, and, being without sufficient information, leaves Petitioners to their proofs.**

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.

**The City neither admits nor denies the allegation for lack of sufficient information to form a belief as to the truth of the allegation, and, being without sufficient information, leaves Petitioners to their proofs.**

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.

**The City neither admits nor denies the allegation for lack of sufficient information to form a belief as to the truth of the allegation, and, being without sufficient information, leaves Petitioners to their proofs.**

177. Using the most conservative boundary, taken together, these data suggest Respondents violated Michigan Election Law by sending unsolicited ballots to at least 355,392

people. *Id.* See also, Affidavit of Sandra Sue Workman, Appendix 197 at ¶28.

**The City denies the allegation with respect to the violation of Michigan election law. The City neither admits nor denies the remaining allegations for lack of sufficient information to form a belief as to the truth of the allegations, and, being without sufficient information, leaves Petitioners to their proofs.**

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.

**The City neither admits nor denies the allegation for lack of sufficient information to form a belief as to the truth of the allegation, and, being without sufficient information, leaves Petitioners to their proofs.**

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

**The City denies the allegations in this paragraph.**

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.

**The City neither admits nor denies the allegation for lack of sufficient information to form a belief as to the truth of the allegation, and, being without sufficient information, leaves Petitioners to their proofs.**

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.

**The City neither admits nor denies the allegation for lack of sufficient information to**

**form a belief as to the truth of the allegation, and, being without sufficient information, leaves Petitioners to their proofs.**

182. This suggests that bad actors exploited Respondents' unlawful practice of sending unsolicited ballots and improperly harvested ballots on a widespread scale.

**The City denies the allegation in this paragraph because it is false.**

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.

**The City denies the allegation in this paragraph because it is false.**

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.

**The City neither admits nor denies the allegation for lack of sufficient information to form a belief as to the truth of the allegation, and, being without sufficient information, leaves Petitioners to their proofs.**

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.

**The City neither admits nor denies the allegation for lack of sufficient information to form a belief as to the truth of the allegation, and, being without sufficient information, leaves Petitioners to their proofs.**

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.

**The City neither admits nor denies the allegation for lack of sufficient information to form a belief as to the truth of the allegation, and, being without sufficient information, leaves Petitioners to their proofs.**

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.*

**The City neither admits nor denies the allegation for lack of sufficient information to form a belief as to the truth of the allegation, and, being without sufficient information, leaves Petitioners to their proofs.**

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

**The City denies the allegation in this paragraph because it is false.**

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

**The City neither admits nor denies the allegation for lack of sufficient information to form a belief as to the truth of the allegation, and, being without sufficient information, leaves Petitioners to their proofs.**

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.

**The City denies the allegation in this paragraph because it is false.**

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.

**The City denies the allegation in this paragraph because it is false.**

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*.

**The City neither admits nor denies the allegation for lack of sufficient information to form a belief as to the truth of the allegation, and, being without sufficient information, leaves Petitioners to their proofs.**

193. According to census data, however, there are only about 1,747 centenarians in Michigan, and of those, we cannot assume a 100% voting rate. See McLaughlin, *supra*.

**The City neither admits nor denies the allegation for lack of sufficient information to form a belief as to the truth of the allegation, and, being without sufficient information, leaves Petitioners to their proofs.**

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*.

**The City neither admits nor denies the allegation for lack of sufficient information to form a belief as to the truth of the allegation, and, being without sufficient information, leaves Petitioners to their proofs.**

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.

**The City neither admits nor denies the allegation for lack of sufficient information to form a belief as to the truth of the allegation, and, being without sufficient information, leaves Petitioners to their proofs.**

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.

**The City neither admits nor denies the allegation for lack of sufficient information to form a belief as to the truth of the allegation, and, being without sufficient information, leaves Petitioners to their proofs.**

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*.

**The City neither admits nor denies the allegation for lack of sufficient information to form a belief as to the truth of the allegation, and, being without sufficient information, leaves Petitioners to their proofs.**

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

**The City denies the allegation in this paragraph because it is false.**

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

**The City denies the allegation in this paragraph because it is false.**

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; *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.

**The City neither admits nor denies the allegation for lack of sufficient information to form a belief as to the truth of the allegation, and, being without sufficient information, leaves Petitioners to their proofs.**

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.*

**The City neither admits nor denies the allegation for lack of sufficient information to form a belief as to the truth of the allegation, and, being without sufficient information, leaves Petitioners to their proofs.**

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.*

**The City neither admits nor denies the allegation for lack of sufficient information to form a belief as to the truth of the allegation, and, being without sufficient information, leaves Petitioners to their proofs.**

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.*

**The City neither admits nor denies the allegation for lack of sufficient information to form a belief as to the truth of the allegation, and, being without sufficient information, leaves**

**Petitioners to their proofs.**

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.

**The City denies the allegations in this paragraph because they are false.**

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.

**The City denies the allegations in this paragraph because they are false.**

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

**The City denies the allegation in this paragraph because it is false.**

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.

**The City denies the allegation in this paragraph because it is false.**

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.

**The City denies the allegations in this paragraph because they are false.**

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*.

**The City denies the allegations in this paragraph because they are false.**

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.

**The City denies the allegations in this paragraph because they are false.**

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*.

**The City neither admits nor denies the allegations as they relate to other local units of government for lack of sufficient information to form a belief as to the truth of the allegation, and, being without sufficient information, leaves Petitioners to their proofs. As to the City of Detroit, the City denies these allegations.**

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.

**The City denies the allegations in this paragraph because they are false.**

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

**The citations to statutes are admitted. The remainder of the paragraph is conclusory legal statements which are neither admitted nor denied, as they constitute out of context and generalized statements of law which do not support the relief sought by this Petition and do not require a response.**

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.

**This is a conclusory legal statement which is neither admitted nor denied because it does not require a response.**

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.

**The City neither admits nor denies the allegation for lack of sufficient information to form a belief as to the truth of the allegation, and, being without sufficient information, leaves Petitioners to their proofs.**

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.

**The City denies the allegations in this paragraph because they are false.**

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.

**The City denies the allegations in this paragraph because they are false.**

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.

**The City neither admits nor denies the allegation for lack of sufficient information to form a belief as to the truth of the allegation, and, being without sufficient information, leaves Petitioners to their proofs.**

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.

**The City denies the allegations in this paragraph because they are false.**

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).

**The City neither admits nor denies the allegation for lack of sufficient information to form a belief as to the truth of the allegation, and, being without sufficient information, leaves Petitioners to their proofs.**

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

**The City neither admits nor denies this paragraph, but states that if it is correct it is irrelevant to any relief requested by Petitioners.**

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.*

**The City neither admits nor denies the allegation for lack of sufficient information to form a belief as to the truth of the allegation, and, being without sufficient information, leaves Petitioners to their proofs.**

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.

**This is a statement of law which does not require a response, but the City states**



**affirmatively that the implication that this statement supports the relief sought by Petitioners is incorrect.**

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

**This is a statement of law which does not require a response, but the City states affirmatively that the implication that this statement supports the relief sought by Petitioners is incorrect.**

225. Counties and cities cannot spend money on federal elections without going through the proper state and federal channels under HAVA transparency rules.

**This is a statement of law which does not require a response, but the City states affirmatively that the implication that this statement supports the relief sought by Petitioners is incorrect.**

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.

**The City denies the allegations in this paragraph.**

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.

**The City denies the allegations in this paragraph.**

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.

**The City denies the allegations in this paragraph.**

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).

**The City denies the allegations in this paragraph.**

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).

**The City denies the interpretation of the law and its application to the facts implied by this paragraph.**

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.

**The City denies the allegations in this paragraph.**

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.*

**The City admits that Petitioners have filed this Petition and other lawsuits to advance their personal political agendas and not based upon any legitimate factual or legal grounds, but the City denies the balance of the paragraph.**

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.

**Except with respect to the allegations of the political preferences of Petitioners, the City denies the allegations in this paragraph.**

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

**The City denies the allegations in this paragraph.**

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.

**The City denies the allegations in this paragraph.**

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

**The City denies the allegations in this paragraph.**

**FIRST CLAIM FOR RELIEF  
(Due Process)**

237. Petitioners incorporate by reference all stated paragraphs.

**The City incorporates by reference all of its answers to the above-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.

**The City denies the allegations in this paragraph.**

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

**These conclusory legal statements are neither admitted nor denied, as they constitute generalized statements of law which do not support the relief sought by this Petition and do not require a response.**

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

**These conclusory legal statements are neither admitted nor denied, as they constitute generalized statements of law which do not support the relief sought by this Petition and do not require a response.**

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

**The City denies the allegations in this paragraph.**

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.”).

**These conclusory legal statements and limited citation to case law are neither admitted nor denied, as they constitute generalized statements of law which do not support the relief sought by this Petition and do not require a response.**

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.

**These conclusory legal statements and limited citation to case law are neither admitted nor denied, as they constitute generalized statements of law which do not support the relief sought by this Petition and do not require a response.**

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.

**These conclusory legal statements are neither admitted nor denied, as they constitute generalized statements of law which do not support the relief sought by this Petition and do not require a response.**

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.

**These conclusory legal statements and limited citation to case law are neither admitted nor denied, as they constitute generalized statements of law which do not support the relief sought by this Petition and do not require a response.**

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.

**These conclusory legal statements are neither admitted nor denied, as they constitute generalized statements of law which do not support the relief sought by this Petition and do not require a response.**

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

**These conclusory legal statements are neither admitted nor denied, as they constitute generalized statements of law which do not support the relief sought by this Petition and do not require a response.**

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.

**These conclusory legal statements are neither admitted nor denied, as they constitute generalized statements of law which do not support the relief sought by this Petition and do not require a response.**

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.”).

**These conclusory legal statements and limited citation to case law are neither admitted nor denied, as they constitute generalized statements of law which do not support the relief sought by this Petition and do not require a response.**

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.

**These conclusory legal statements law are neither admitted nor denied, as they constitute generalized statements of law which do not support the relief sought by this Petition and do not require a response.**

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.

**These conclusory legal statements are neither admitted nor denied, as they constitute generalized statements of law which do not support the relief sought by this Petition and do not require a response.**

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

**These conclusory legal statements are neither admitted nor denied, as they constitute generalized statements of law which do not support the relief sought by this Petition and do not require a response. There was no unfairness and no 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.

**These conclusory legal statements are neither admitted nor denied, as they constitute generalized statements of law which do not support the relief sought by this Petition and do not require a response.**

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.

**These conclusory legal statements neither admitted nor denied, as they constitute generalized statements of law which do not support the relief sought by this Petition and do not require a response.**

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.

**The City denies the allegations in this paragraph.**

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.

**The City denies the allegations in this paragraph.**

**SECOND CLAIM FOR RELIEF  
(Equal Protection)**

257. Petitioners incorporate by reference all stated paragraphs.

**The City incorporates by reference all of its answers to the above-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.

**The City denies the allegations in this paragraph.**

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.

**The City denies the allegations in this paragraph.**

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

**These conclusory legal statements neither admitted nor denied, as they constitute generalized statements of law which do not support the relief sought by this Petition and do not require a response.**

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

**These conclusory legal statements neither admitted nor denied, as they constitute generalized statements of law which do not support the relief sought by this Petition and do not require a response.**

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

**The City denies the allegations in this paragraph.**

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.

**The City denies the allegations in this paragraph.**

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

264. Petitioners incorporate by reference all stated paragraphs.

**The City incorporates by reference all of its answers to the above-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.

**The City denies the allegations in this paragraph.**

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

**These conclusory legal statements neither admitted nor denied, as they constitute generalized statements of law which do not support the relief sought by this Petition and do not require a response.**

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

**These conclusory legal statements neither admitted nor denied, as they constitute generalized statements of law which do not support the relief sought by this Petition and do**

**not require a response. The City further states that the Constitution and the audit process, as prescribed by law, establishes the extent of any right to an audit.**

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

**The City denies the allegations in this paragraph.**

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.

**The City denies the allegations in this paragraph.**

**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.

**The City denies the allegations in this paragraph.**

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.

**The City denies the implication that the Legislature reserves the power to select electors where, as here, a statutory process has been established and followed.**

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.

**The City denies the allegations in this paragraph.**

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 expedited basis.

**The City denies any abuse of authority and further denies that a direct Petition to this Court is authorized by statute or rule.**

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.

**The City denies the allegations in this paragraph.**

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.

**The City denies the allegations in this paragraph.**

#### **PRAYER FOR RELIEF**

**WHEREFORE, the City of Detroit denies that Petitioners are entitled to the relief they seek and request that this Court dismiss this action with prejudice and award costs and fees to all Defendants and Intervening Defendants.**

December 1, 2020

Respectfully submitted,

**FINK BRESSACK**

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STATE OF MICHIGAN  
IN THE SUPREME COURT

ANGELIC JOHNSON and,  
LINDA LEE TARVER,

MSC No. 162286

Petitioners,

vs.

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,

and

MICHIGAN DEMOCRATIC PARTY, and  
CITY OF DETROIT

Intervenors-Respondents,

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### **CITY OF DETROIT'S PROPOSED AFFIRMATIVE DEFENSES**

For its Affirmative Defenses, the City of Detroit states as follows:

1. This Petition is not properly brought directly to this Court.
2. Petitioners' fail to state a claim upon which relief may be granted.
3. Petitioners' claims are barred in whole or in part by governmental immunity or other immunity granted by law.
4. Petitioners' suffered no injury or damages and are not entitled to any relief.
5. Petitioners' claims are barred by res judicata.
6. Petitioners' claims are barred by collateral estoppel.
7. Petitioners' claims are barred the prohibition against collateral attacks.
8. Petitioners' claims are barred by estoppel.
9. Petitioners' claims are barred by laches.
10. Petitioners' claims are barred by the rule against splitting a cause of action.
11. Petitioners' claims are barred because they are not ripe for adjudication.

12. Petitioners' claims are barred because they are moot.
13. Petitioners' claims are barred because Plaintiffs lack standing to bring their claims.
14. Petitioners' claims should be dismissed because there are no genuine issues as to any material facts.
15. The City of Detroit reserves the right to name additional affirmative defenses as they become known through the course of discovery.

WHEREFORE, the City of Detroit, having fully answered the Petition, requests that Petitioners' claims be dismissed with prejudice, and that the City of Detroit and all Defendants be permitted to recover all costs incurred.

December 1, 2020

Respectfully submitted,

**FINK BRESSACK**

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**CERTIFICATE OF SERVICE**

I hereby certify that on December 1, 2020, I electronically filed the foregoing paper with the Clerk of the court using the electronic filing system, which sends notice to all counsel of record.

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