

STATE OF MICHIGAN  
IN THE 3<sup>rd</sup> CIRCUIT COURT FOR THE COUNTY OF WAYNE

**KRISTINA KARAMO,**  
Candidate for MI Secretary of State,

**PHILIP O'HALLORAN, MD**  
Poll Challenger,

22-012759-AW

CASE NO: 22- -AW

**BRADEN GIACOBAZZI**  
Poll Challenger,

HON.

**TIMOTHY MAHONEY,**  
Poll Watcher,

**KRISTY WALLS,**  
Detroit Election Worker,

**PATRICIA FARMER,**  
Detroit Resident Taxpayer,

**ELECTION INTEGRITY FUND AND FORCE,**  
A Michigan non-profit corporation  
Plaintiffs,

v.

**JANICE WINFREY,**  
In her official capacity as Detroit City Clerk,

**CITY OF DETROIT BOARD OF ELECTION INSPECTORS,**  
In their official capacity,  
Defendants.

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**Alexandria Taylor (P75271)**  
**Attorney for Plaintiffs**  
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**MOTION FOR EXPEDITED SCHEDULING AND AN EMERGENCY HEARING.**

**MOTION FOR PRELIMINARY INJUNCTION**

NOW COMES the Plaintiffs, through their attorneys, and state in support of their motions:

1. The Defendant seeks injunctive relief pursuant to MCR 3.310 and requests that this Court order the Defendants to comply with the Michigan Election Law and specifically to address the election laws which have been broken in the August, 2022 Primary and without intervention will be violated again rendering the election in the City of Detroit illegal.
2. The Plaintiffs seek orders to remedy the following violations:
  - (i) That all ballots requested by mail or online require identification under the procedure of bringing the identification to the clerk's office as there is no standard rule promulgated for signature comparison and therefore no ability to fulfill the requirements for signature comparison pursuant to MCL 168.761 (2);
  - (ii) That all ballots that are returned to the ballot drop boxes are not effectively monitored in violation of MCL 168.761D(4)(c). Reports are currently ongoing of the failure to provide cameras as required by law and more important to monitor the cameras to prevent persons not authorized to transport ballots from injecting them into the election in violation of MCL 168.764a and MCL 168.764b. Finally, there has been a denial of the requirement under MCL 168.798a which requires observation by the public, (the poll watchers and poll challengers included) of the signature comparison

process. The newly enacted changes to MCL 168.765 that permit the clerk to separate the ballots in the secrecy envelope from the outer envelope require observation by the poll challengers and poll watchers but the practice of the Detroit Clerk is to do the signature comparison outside of the purview of the poll challenger and public.

- (iii) That all ballots that are returned also have a signature comparison without a standard. If the SOS instruction is followed to compare the signature to the application rather than the QVF then this is a violation of law. Further that the use of the Veri-vote system for signature comparison on ballot envelopes is both a security risk and a non-conforming novel process not permitted or authorized by law; and finally the signature comparison has been, and will be done, without following the law in MCL 168.765 and MCL 168.766.
- (iv) The Clerk is failing to reject ballots that are illegally pursuant to MCL 168.767.
- (v) There was no evidence of compliance with the requirements to post the number of absentee ballots mailed and returned under MCL 168.765(5) at 8 am on election day and before 9 pm on election night.
- (vi) The clerk has failed to follow the rules when a ballot number does not match and instead permits the ballot to be commingled and counted. This is a violation of MCL 168.765.
- (vii) The clerk has provided for duplication of ballots in excess of authority granted by law which is limited only to a damaged ballot by MCL 168.798b. There is no process for duplicating portions of a 'wrong' ballot that was cast. The

duplication process is also used for military and overseas voters that are emailed without authority.

- (viii) The use of high-speed scanners instead of tabulators. The requirement is that the AVCB is to process ballots in nearly the same manner as in person pursuant to MCL 168.765(8). This configuration is not uniform in the software or hardware to the rest of the state or the uniform system. The scanners are also not certified for use by a VSTL as configured in violation of the standards of the Help America Vote Act section 301 and do not conform to the requirement of MCL 168.795a in that they are not authorized for use.
- (ix) These scanners also create a ballot image that is altered by the adjudication process. The ballot images are then reportedly not saved after being converted into the cast vote record in the table violating MCL 168.795(K) and HAVA Section 301 which requires an audit trail.
- (x) There is an adjudication process that is completely unauthorized by law and contrary to Michigan law which defines a mark in MCL 168.803. The determination of a voter's intent is a violation of equal protection. The removal of a stray mark is permitted by law but not the interpretation of an improper mark contrary to instructions.
- (xi) The law requires rejection of a ballot, not adjudication. It does not allow for the counting of some of the contests on the ballot. The voting system is supposed to be programmed to reject the ballot when the ballot is marked in violation of the law. MCL 168.795(2)

(xii) The clerk has restricted access of the poll challengers to the platform and the center at the clerk's office where votes from precincts accumulate. Access is guaranteed by MCL 168.974(d) where votes are received and accumulated by MCL 168.733.

3. The Plaintiffs are entitled to the relief by law. See the brief which is incorporated herein.
4. The election is scheduled for November 8, 2022 and is less than two full weeks away so an emergency hearing must be scheduled and heard before the election in order to prevent irreparable harm.
5. In the event, this Court declines to act before the election then there will be a question about the legitimacy of the outcome but the case will require resolution.
6. The lawsuit has been prepared expeditiously after the plaintiffs learned both that their challenges filed on August 2, 2022 (and others) were ignored and that the Detroit Clerk was training election workers to violate the law again. This discovery occurred very recently as in days before this filing.
7. It is inconceivable that the clerk would violate this many laws, fail to address challenges filed in August, and then plan to violate the same laws objected to previously.
8. *Ex parte* relief was not sought as the court has time to order the clerk to answer and conduct an emergency hearing.

WHEREFORE, the Plaintiffs ask for an expedited schedule, an emergency hearing and the entry of orders of injunctive relief as required by law.

Respectfully Submitted,

/s/ Daniel J Hartman 10/26/2022

Daniel J. Hartman (P52632)

/s/ Alexandria J. Taylor 10/26/2022

Alexandria Taylor (P75271)

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**BRIEF IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION AND  
REQUEST FOR EXPEDITED HEARING**

The Complaint asks for declaratory, injunctive, and mandamus relief from numerous violations of Michigan Election Law that have occurred in the General Election of 2020 and the August 2, 2022 Primary.

Injunctive relief is an extraordinary remedy that should only be granted when justice requires, when no adequate legal remedy exists, and when there is a real and imminent danger of irreparable injury. *Pontiac Fire Fighters Union Local 376 v Pontiac*, 482 Mich 1, 8 (2008).

In the present case the danger is **real**. The violation has occurred previously and so there is a reasonable expectation that the violations will occur again BUT for action. This is not speculative when the election laws have been violated twice. The danger is **imminent** in that the election is about to occur in several weeks. Without action by this court, there will be injury. The injuries will be addressed with each act that the Plaintiffs seek to be enjoined. The injury will also be irreparable as will be discussed below.

To address why this filing is so close to the election, the Plaintiffs have only recently realized that these issues were not going to be addressed. Challenges were filed at the August 2, 2022 primary which were ignored. Records of action on the challenges are absent and unattainable. Challengers who filed written challenges expected action on the challenges. The violations of law and procedure were reported.



**168.733 Challengers; space in polling place; rights; space at counting board; expulsion for cause; protection; threat or intimidation.**

Sec. 733.

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

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

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

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

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

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

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

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

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

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

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

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

- (h) Keep records of votes cast and other election procedures as the challenger desires.
- (i) Observe the recording of absent voter ballots on voting machines.

After 60 days had passed and no response despite the written challenges being filled out by the clerk's office, the Plaintiffs have rapidly assembled and brought this action which should be unnecessary BUT FOR blatant violations of election law. It only became apparent about one week ago when the Detroit clerk, during its training of election staff, indicated that the same violations of the law would be used in the 2022 General Midterm Election. While it is anticipated that the Defendants will claim the action was brought too close to this election, it is better that this be addressed before the election rather than after and once again calling into question the results of the election.

The court should consider four factors in determining whether to grant a preliminary injunction:

- (1) whether the injunction would harm the public interest;
- (2) whether the harm to the Plaintiff in the absence of a stay would outweigh the harm to the Defendant if the stay is granted;
- (3) whether the Plaintiff is likely to succeed on the merits; and
- (4) whether the Plaintiff will be irreparably harmed if a preliminary injunction is denied.

*Michigan State Emp Ass'n v Dep't of Mental Health*, 421 Mich 152, 157-158 (1984).

A party seeking a preliminary injunction "bears the burden of proving that the traditional four elements favor the issuance of a preliminary injunction." *Detroit Fire Fighters Ass'n, IAF Local 344 v Detroit*, 482 Mich 18, 34 (2008).

“In order to establish irreparable injury, the moving party must demonstrate a non-compensable injury for which there is no legal measurement of damages or for which damages cannot be determined with a sufficient degree of certainty. The injury must be both certain and great, and it must be actual rather than theoretical. Economic injuries are not irreparable because they can be remedied by damages at law.” *Thermatool Corp v Borzym*, 227 Mich App 366, 377 (1998) (internal citations omitted).

**(1) whether the injunction would harm the public interest;**

The public interest is in following Michigan Election Law. There should be no deviations or novel processes created. If an action is not authorized by law or the law requires a disposition then the public interest is to follow the law. All of the acts sought to be enjoined are violations of Michigan Election Law or unauthorized acts that are unauthorized by law.

The Plaintiffs seek orders to remedy the following violations:

- (i) That all ballots requested by mail or online require identification under the procedure of bringing the identification to the clerk’s office as there is no standard rule promulgated for signature comparison and therefore no ability to fulfill the requirements for signature comparison pursuant to MCL 168.761 (2);
- (ii) That all ballots that are returned to the ballot drop boxes are not effectively monitored in violation of MCL 168.761D(4)(c). Reports are currently ongoing of the failure to provide cameras as required by law and more important to monitor the cameras to prevent persons not authorized to transport ballots from injecting them into the election in violation of MCL 168.764a and MCL 168.764b. Finally, there has been a denial of the

requirement under MCL 168.798a which requires observation by the public, (the poll watchers and poll challengers included) of the signature comparison process. The newly enacted changes to MCL 168.765 that permit the clerk to separate the ballots in the secrecy envelope from the outer envelope require observation by the poll challengers and poll watchers but the practice of the Detroit Clerk is to do the signature comparison outside of the purview of the poll challenger and public.

- (iii) That all ballots that are returned also have a signature comparison without a standard. If the SOS instruction is followed to compare the signature to the application rather than the QVF then this is a violation of law. Further that the use of the Veri-vote system for signature comparison on ballot envelopes is both a security risk and a non-conforming novel process not permitted or authorized by law; and finally the signature comparison has been, and will be done, without following the law in MCL 168.765 and MCL 168.766.
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- (xii) The clerk has restricted access of the poll challengers to the platform and the center at the clerk's office where votes from precincts accumulate. Access is guaranteed by MCL 168.974(d) where votes are received and accumulated by MCL 168.733.

**(2) whether the harm to the plaintiff in the absence of a stay would outweigh the harm to the defendant if the stay is granted;**

The harm must be as stated above harm that is an irreparable injury. The loss of confidence in yet another election from violations of law will undermine the security of the entire election. The relief the Plaintiffs seek is to have the court enforce the laws that already exist. To determine the effects that each of these violations have on the outcome is nearly impossible but the effect is a loss of confidence in the integrity of the election. On balance there is NO harm to the defendants from following the law. There may be economic harm or inconvenience, but it will be far less than having to re-run the election or to spend years in litigation. The court should restrain illegal acts and require the clerk to follow the law as written. In the event the clerk claims they are in compliance then they will not suffer any harm by agreeing to follow the law.

**(3) whether the plaintiff is likely to succeed on the merits; and**

There is virtually no way that the plaintiffs do not succeed on the merits. The law is clear and the violations flagrant. There is likely going to be defenses asserted for laches and for lack of standing. Neither of these are defenses to the merits. On the merits, the Plaintiffs prevail. While it seems preposterous, the clerk may actually argue that she lacks time to conform to the law before the election is conducted—meaning that she intends to conduct an illegal election.

**(4) whether the plaintiff will be irreparably harmed if a preliminary injunction is denied.**

If there is a denial, there will be irreparable harm. Damages can not replace the harm. Plaintiffs that are poll challengers will have been denied their legal rights, the taxpayers citizens will have to bear the expense, time and uncertainty of litigation and possibly re-running of the election as well as harm to the reputation of the community, the candidate bears the real risk of these illegal practices changing the outcome of the election, the non-profit which has been instructing its poll challengers and poll watchers will have conflict during the election as well as the very principles for which they stand a secure, honest open and transparent election will be again denied to them. There is no recovery for a violation of the constitutional rights of citizen voters. These ordinary people will lack standing and be effectively barred from seeking redress of these violations of law. In general, there is no way to repair the damage that can easily be avoided by following the law.

Therefore, the Plaintiffs respectfully requests that this Honorable Court enter orders for injunctive relief keeping this election in conformity to law.

Respectfully Submitted,

/s/ Daniel J Hartman

Daniel J. Hartman (P52632)

/s/ Alexandria J. Taylor

Alexandria Taylor (P75271)

October 26, 2022

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