THE STATE OF MICHIGAN
COURT OF CLAIMS

REPUBLICAN NATIONAL COMMITTEE, MICHIGAN REPUBLICAN PARTY, NATIONAL REPUBLICAN CONGRESSIONAL COMMITTEE, DENNIS GROSSE, BLAKE EDMONDS, and CINDY BERRY,

Plaintiffs,

v.

JOCELYN BENSON, in her official capacity as Secretary of State, and JONATHAN BRATER, in his official capacity as DIRECTOR OF ELECTIONS,

Defendants,

and

MICHIGAN ALLIANCE FOR RETIRED AMERICANS and DETROIT/DOWNRIVER CHAPTER OF THE A. PHILIP RANDOLPH INSTITUTE,

Proposed Intervenor-Defendants.

Case No. 24-000041-MZ

HON. CHRISTOPHER P. YATES

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**Pro hac vice motion forthcoming*

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4/5/2024 MOTION OF THE MICHIGAN ALLIANCE FOR RETIRED AMERICANS AND THE DETROIT/DOWNRIVER CHAPTER OF THE A. PHILIP RANDOLPH INSTITUTE TO INTERVENE AS DEFENDANTS OR, IN THE ALTERNATIVE, PARTICIPATE AS AMICI CURIAE

Pursuant to Michigan Court Rule 2.209, the Michigan Alliance for Retired Americans (the "Alliance") and the Downriver/Detroit Chapter of the A. Philip Randolph Institute ("DAPRI") (together, "Proposed Intervenors") respectfully request that they be permitted to intervene as defendants in this matter. Attached is Proposed Intervenors' proposed Answer to Plaintiffs' Verified Complaint for Declaratory and Injunctive Relief, in accordance with Michigan Court Rule 2.209(C)(2). Ex. 1.

Pursuant to Local Rule 2.119(2), counsel for Proposed Intervenors conferred with counsel for Plaintiffs and Defendants for their positions on this motion. The moving party requested all counsels' concurrence in the relief sought on April 4, 2024. Plaintiffs' counsel did not acquiesce in the relief sought, and, therefore, it is necessary to present the motion. Defendants' counsel indicated that they do not oppose or acquiesce in the relief requested.

Proposed Intervenors rely on the attached brief as support. They recognize that the Michigan Court of Appeals' decision in *Council of Organizations & Others for Education About Parochiaid v State*, 321 Mich App 456; 909 NW2d 449 (2017), holds that this Court does not have jurisdiction to grant a private party's motion to intervene as a defendant. *Id*. at 468. Proposed Intervenors file this motion to preserve their argument that intervention is available under Michigan Court Rule 2.209 and to preserve their right to intervene in any appeal. If the Court denies this motion, Proposed Intervenors move the Court to grant them leave to participate as amici curiae pursuant to Michigan Court Rule 7.212(H).

Proposed Intervenors ask the Court to promptly issue its ruling on this Motion.

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Respectfully submitted,

Dated: April 5, 2024

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PROOF OF SERVICE

Sarah Prescott certifies that on the 5th day of April 2024, she caused the above document in this matter to be filed with the Clerk of the Court via the Court's ECF system, MiFILE, which will serve a copy of said document(s) on all counsel of record and parties *in pro per*.

s/ *Sarah S. Prescott*
Sarah Prescott

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REPUBLICAN NATIONAL COMMITTEE, MICHIGAN REPUBLICAN PARTY, NATIONAL REPUBLICAN CONGRESSIONAL COMMITTEE, DENNIS GROSSE, BLAKE EDMONDS, and CINDY BERRY,

Plaintiffs,

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Defendants,

and

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BRIEF IN SUPPORT OF 4/5/2024 MOTION OF THE MICHIGAN ALLIANCE FOR RETIRED AMERICANS AND THE DETROIT/DOWNRIVER CHAPTER OF THE A. PHILIP RANDOLPH INSTITUTE TO INTERVENE AS DEFENDANTS OR, IN THE ALTERNATIVE, PARTICIPATE AS AMICI CURIAE

Proposed Intervenors the Michigan Alliance for Retired Americans (the "Alliance") and Detroit/Downriver Chapter of the A. Philip Randolph Institute ("DAPRI") (together, "Proposed Intervenors") move to intervene as defendants in this case or, in the alternative, to participate as amici curiae. In this case, Plaintiffs Republican National Committee, Michigan Republican Party, National Republican Congressional Committee, Dennis Grosse, Blake Edmonds, and Cindy Berry ask this Court to invalidate the Secretary of State's guidance regarding the verification of signatures on absent voter ballot applications and carrier envelopes, along with Mich Admin Code R. 168.24, which requires election officials to consider certain factors when verifying signatures. The lawsuit threatens to introduce confusion and uncertainty into the signature verification process and to disenfranchise absent voters based on minor and inconsequential differences between signatures. It therefore threatens Proposed Intervenors' members' voting rights and Proposed Intervenors' own efforts to promote voter turnout among their members and constituencies.

The Alliance and DAPRI's immediate intervention as defendants to protect those interests is warranted. Proposed Intervenors recognize, however, that the Michigan Court of Appeals' decision in *Council of Organizations & Others for Education About Parochiaid v State*, 321 Mich App 456, 468; 909 NW2d 449 (2017), holds that this Court does not have jurisdiction to grant a private party's motion to intervene as a defendant. *Id*. at 468. Proposed Intervenors nevertheless file this motion to preserve their argument that intervention is available under Michigan Court Rule ("MCR") 2.209 and to preserve their right to intervene in any appeal. If the Court denies this motion, Proposed Intervenors move the Court to grant them leave to participate as amici curiae pursuant to MCR 7.212(H). This court frequently permits the filing of amicus briefs when

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intervention is barred by the decision in *Council of Organizations*. *See, e.g.*, Ex. 4, *O'Halloran v. Benson*, unpublished opinion and order of the Court of Claims, issued Oct. 4, 2022 (Docket No. 22-000162-MZ).

Intervention is warranted under the relevant rules for intervention, found in MCR 2.209:

> (A) **Intervention of Right.** On timely application a person has a right to intervene in an action . . . (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.
> (B) **Permissive Intervention.** On timely application a person may intervene in an action . . . (2) when an applicant's claim or defense and the main action have a question of law or fact in common.

"The rule for intervention should be liberally construed to allow intervention where the applicant's interests may be inadequately represented." *Neal v Neal*, 219 Mich App 490, 492; 557 NW2d 133 (1996); *see also State Treasurer v Bences*, 318 Mich App 146, 150; 896 NW2d 93 (2016). Here, Proposed Intervenors satisfy the requirements for intervention as of right under MCR 2.209(A). In the alternative, Proposed Intervenors should be allowed permissive intervention.

First, Proposed Intervenors' application is timely because it follows eight days after the filing of this suit, before any significant action has been taken. *See, e.g.*, *Karrip v Cannon Twp*, 115 Mich App 726, 731; 321 NW2d 690 (1982) (finding "no claim of unreasonable delay by the proposed intervenors . . . [because] they moved to intervene two months after the filing of plaintiffs' complaint and before any proceedings or discovery had been taken").

Second, Proposed Intervenors possess interests that will likely be impaired or impeded by this action. The Alliance and DAPRI are nonprofit organizations dedicated to promoting the franchise and ensuring the full constitutional rights of their members. The Alliance's mission is to ensure social and economic justice and full civil rights for retirees after a lifetime of work, with a

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particular emphasis on safeguarding the right to vote. Ex. 2, Affidavit of James R. Pedersen ¶ 4. The Alliance has more than 200,000 members in Michigan, composed of retirees from 23 public and private sector unions, community organizations, and individual activists. *Id.* ¶ 6. Many Alliance members are registered voters who are elderly, disabled, or have mobility issues and thus rely on the right to vote by absent voter ballot. *Id.* ¶ 8. Many experience fluctuations in their signatures due to changing dexterity as they age. *Id.* ¶ 9. This lawsuit poses a direct challenge to the Alliance members' right to vote by absent voter ballot and have that vote be counted, and the Alliance has an interest in protecting its members' right to vote by absent voter ballot. *Id.* ¶¶ 4, 16. Because its members uniquely rely on voting by absent voter ballot, and the exercise of their voting rights is fundamental to the Alliance's ability to advance its mission, the Alliance dedicates time and resources to educating its members on the process and encouraging them to vote by absent voter ballot. *Id.* ¶¶ 11, 13. Plaintiffs' requested relief directly threatens the Alliance's mission and efforts to protect their members' right to vote by absent voter ballot and not have their ballots be erroneously rejected and would require the Alliance to divert resources away from other programming. *Id.* ¶ 16.

DAPRI is a membership organization with a mission of fighting for human equality and economic justice and seeking structural changes through the American democratic process. DAPRI has approximately 100 members in Southeast Michigan. Ex. 3, Affidavit of Andrea Hunter ¶ 4. Many of DAPRI's members and constituents are registered voters, and many of them rely on voting by absent voter ballots because their work schedules do not always allow them time off to vote during business hours or on Election Day. *Id.* ¶ 7. Others have limited English proficiency or disabilities that make it difficult for them to vote in person or simply count on the convenience of voting by absent voter ballot. *Id.* This lawsuit poses a direct challenge to the right to vote by absent

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voter ballot and have that vote be counted, and DAPRI has an interest in protecting its members and constituents' right to vote by absent voter ballot. *Id.* ¶¶ 5, 7. Furthermore, DAPRI's members are involved in election protection, voter registration, get-out-the-vote activities, and political and community education in the Detroit and Downriver areas of Michigan. *Id.* ¶ 5. Part of DAPRI's mission in turning out voters to vote across these areas is to encourage voting by absent voter ballot, in particular for those voters who do not have time or otherwise face challenges with voting in person. *Id.* ¶¶ 7, 8. DAPRI dedicates time and resources to educating members and constituents in the community about their voting options and helping them vote, and Plaintiffs' requested relief directly threatens DAPRI's interest in ensuring that voters who attempt to vote by absent voter ballot will not have their ballots erroneously rejected. *Id.* ¶¶ 5, 9.

Third, no current party adequately represents Proposed Intervenors' interests. Plaintiffs are indisputably opposed to Proposed Intervenors' interest in upholding the Secretary's challenged guidance and Rule 168.24. And although Defendants have a duty to defend the Secretary's rules and guidance and to promote the public interest generally, they cannot be relied upon to vindicate Proposed Intervenors' specific interests, which include protecting their members and constituents' right to vote by absent voter ballot and not have their ballots be erroneously rejected. *See, e.g.*, *Vestevich v West Bloomfield Twp*, 245 Mich App 759, 762; 630 NW2d 646 (2001) (affirming intervention, reasoning that "concern of inadequate representation of interests need only exist [and] . . . need not be definitely established," and noting that "[w]here this concern exists, the rules of intervention should be construed liberally in favor of intervention"); *Karrip*, 115 Mich App at 732 (finding that though a government official "theoretically represents all of the people of the state along with their many and diverse interests . . . the proposed intervenors' interests are much

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narrower," which satisfies the "minimal burden" to show that the intervenors' interests may be inadequately represented by existing parties).

Proposed Intervenors also satisfy the requirements for permissive intervention under MCR 2.209(B)(2). That rule provides for permissive intervention where a party timely files a motion and the party's "claim or defense and the main action have a question of law or fact in common." MCR 2.209(B)(2). Trial courts have a great deal of discretion in granting permissive intervention and, in exercising that discretion, consider whether the intervention would "unduly delay or prejudice" the existing parties. *Id.*; *Dean v. Dep't of Corrections*, 208 Mich App 144, 150–51; 527 NW2d 529 (1994), *aff'd*, 453 Mich 448; 556 NW2d 458 (1996) (recognizing "the trial court's discretion" in granting permissive intervention). As discussed above, Proposed Intervenors' intervention is timely, and, at this early stage, poses no delay or prejudice for the adjudication of claims for the existing parties. Proposed Intervenors are prepared to meet all briefing deadlines set by this court. And Proposed Intervenors are entitled to advocate for their interests in protecting their members and constituents' right to vote by absent voter ballot and not have their ballots erroneously rejected.

The Alliance and DAPRI therefore move for leave to intervene or, in the alternative, for leave to participate as amici curiae.

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Respectfully submitted,

Dated: April 5, 2024

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PROOF OF SERVICE

Sarah Prescott certifies that on the 5th day of April 2024, she caused the above document in this matter to be filed with the Clerk of the Court via the Court's ECF system, MiFILE, which will serve a copy of said document(s) on all counsel of record and parties *in pro per*.

s/ *Sarah S. Prescott*
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Exhibit 1

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[PROPOSED] ANSWER TO PLAINTIFFS' 3/28/24 VERIFIED COMPLAINT FOR EXPEDITED DECLARATORY AND INJUNCTIVE RELIEF

Pursuant to MCR 2.209(C)(2), the Michigan Alliance for Retired Americans and the Detroit/Downriver Chapter of the A. Philip Randolph Institute (together, "Proposed Intervenors"), through their counsel, submit the following proposed Answer to Plaintiffs' Verified Complaint for Declaratory and Injunctive Relief.

INTRODUCTION

1. Proposed Intervenors admit that the quoted language appears in the source cited. Paragraph 1 otherwise contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

2. Paragraph 2 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

3. Paragraph 3 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

4. Proposed Intervenors admit that the quoted language appears in the source cited. Paragraph 4 otherwise contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

5. Paragraph 5 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

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6. Paragraph 6 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

7. Proposed Intervenors admit that Plaintiffs have attached a document entitled "Signature Verification, Voter Notification, and Signature Cure" as Exhibit A to their Complaint. Proposed Intervenors also admit that the quoted language appears in the sources cited. Paragraph 7 otherwise contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

8. Paragraph 8 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

9. Paragraph 9 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

10. Paragraph 10 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

11. Paragraph 11 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

12. Proposed Intervenors lack sufficient information or knowledge with which to form a belief as to the truth or falsity of the allegations in Paragraph 12.

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13. Proposed Intervenors lack sufficient information or knowledge with which to form a belief as to the truth or falsity of the allegations in Paragraph 13.

14. Proposed Intervenors admit that the primary election is on August 6, 2024, and that the general election is on November 5, 2024. The remainder of Paragraph 14 consists of Plaintiffs' request for relief, to which no response is required. To the extent that a response is required, Proposed Intervenors deny that Plaintiffs are entitled to any of the requested relief or any other relief.

15. Proposed Intervenors admit that the quoted language appears in the sources cited. Paragraph 15 otherwise contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

16. Proposed Intervenors lack sufficient information or knowledge with which to form a belief as to the truth or falsity of the allegations regarding the timing of signature verification in Paragraph 16. Paragraph 16 otherwise contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

17. Proposed Intervenors lack sufficient information or knowledge with which to form a belief as to the truth or falsity of the allegations in Paragraph 17.

PARTIES, JURISDICTION, AND VENUE

18. Proposed Intervenors lack sufficient information or knowledge with which to form a belief as to the truth or falsity of the allegations in Paragraph 18.

19. Proposed Intervenors lack sufficient information or knowledge with which to form a belief as to the truth or falsity of the allegations in Paragraph 19.

20. Proposed Intervenors admit that Cindy Berry is the Clerk for the Township of

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Chesterfield. Proposed Intervenors otherwise lack sufficient information or knowledge with which to form a belief as to the truth or falsity of the allegations in Paragraph 20.

21. Proposed Intervenors admit that the Michigan Republican Party is a "major political party" under Michigan law. Proposed Intervenors otherwise lack sufficient information or knowledge with which to form a belief as to the truth or falsity of the allegations in Paragraph 21.

22. Proposed Intervenors admit that the NRCC is a national committee affiliated with the Republican Party. Proposed Intervenors otherwise lack sufficient information or knowledge with which to form a belief as to the truth or falsity of the allegations in Paragraph 22.

23. Proposed Intervenors admit that the RNC is the national committee of the Republican Party. Proposed Intervenors otherwise lack sufficient information or knowledge with which to form a belief as to the truth or falsity of the allegations in Paragraph 23.

24. Admitted.

25. Admitted.

26. Proposed Intervenors admit that the quoted language appears in the source cited. Paragraph 26 otherwise contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

27. Paragraph 27 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

28. Denied.

29. Denied.

LEGAL AND FACTUAL BACKGROUND

30. Admitted.

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31. Proposed Intervenors admit that the quoted language appears in the sources cited. Paragraph 31 otherwise contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

32. Proposed Intervenors admit that the quoted language appears in the source cited. Paragraph 32 otherwise contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

33. Proposed Intervenors admit that the quoted language appears in the source cited. Paragraph 33 otherwise contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

34. Proposed Intervenors admit that the quoted language appears in the source cited. Paragraph 34 otherwise contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

35. Paragraph 35 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

36. Denied.

37. Proposed Intervenors admit that the quoted language appears in the sources cited. Paragraph 37 otherwise contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the

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allegations.

38. Proposed Intervenors admit that the quoted language appears in the sources cited. Paragraph 38 otherwise contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

39. Proposed Intervenors admit that the quoted language appears in the sources cited. Paragraph 39 otherwise contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

40. Proposed Intervenors admit that the quoted language appears in the sources cited. Paragraph 40 otherwise contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

41. Proposed Intervenors admit that the quoted language appears in the sources cited. Paragraph 41 otherwise contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

42. Paragraph 42 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

43. Proposed Intervenors admit that the quoted language appears in the sources cited. Paragraph 43 otherwise contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the

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allegations.

44. Paragraph 44 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

45. Paragraph 45 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

46. Paragraph 46 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

47. Paragraph 47 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

48. Proposed Intervenors admit that a lawsuit captioned *Genetski v. Benson*, No. 20-000216-MM, was filed in the Michigan Court of Claims. Paragraph 48 otherwise contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

49. Proposed Intervenors admit that the quoted language appears in the source cited. Paragraph 49 otherwise contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

50. Proposed Intervenors admit that the quoted language appears in the source cited. Paragraph 50 otherwise contains mere characterizations, legal contentions, and conclusions to

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which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

51. Proposed Intervenors admit that the Secretary of State proposed rule set number 2021-61 ST, entitled "Signature Matching for Absent Voter Ballot Applications and Absent Voter Ballot Envelopes." Paragraph 51 otherwise contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

52. Proposed Intervenors admit that the quoted language appears in the source cited. Paragraph 52 otherwise contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

53. Denied.

54. Proposed Intervenors admit that Ruth Johnson served as the Oakland County Clerk, the Michigan Secretary of State from 2011-2019, and the Chair of the Senate Elections Committee. Proposed Intervenors also admit that the quoted language appears in the source cited. Paragraph 54 otherwise contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

55. Proposed Intervenors admit that the quoted language appears in the source cited. Paragraph 55 otherwise contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

56. Proposed Intervenors admit that Representative Bollin submitted a written

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comment that is attached as Exhibit E to the Complaint. Paragraph 56 otherwise contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

57. Proposed Intervenors admit that the quoted language appears in the source cited. Paragraph 57 otherwise contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

58. Proposed Intervenors admit that the quoted language appears in the source cited. Proposed Intervenors lack sufficient information or knowledge with which to form a belief as to the truth or falsity of the remaining allegations in Paragraph 58.

59. Proposed Intervenors admit that the quoted language appears in the source cited. Paragraph 59 otherwise contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

60. Paragraph 60 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

61. Proposed Intervenors admit that the quoted language appears in the source cited. Paragraph 61 otherwise contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

62. Proposed Intervenors admit that the quoted language appears in the source cited. Paragraph 62 otherwise contains mere characterizations, legal contentions, and conclusions to

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which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

63. Paragraph 63 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

64. Paragraph 64 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

65. Admitted.

66. Paragraph 66 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

67. Paragraph 67 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

68. Proposed Intervenors admit that the quoted language appears in the source cited. Paragraph 68 otherwise contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

69. Proposed Intervenors admit that the quoted language appears in the source cited. Paragraph 69 otherwise contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

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70. Proposed Intervenors lack sufficient information or knowledge with which to form a belief as to the truth or falsity of the allegations in Paragraph 70.

71. Proposed Intervenors lack sufficient information or knowledge with which to form a belief as to the truth or falsity of the allegations in Paragraph 71.

72. Paragraph 72 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

73. Paragraph 73 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

74. Paragraph 74 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

75. Denied.

76. Paragraph 76 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

77. Proposed Intervenors admit that the quoted language appears in the source cited. Paragraph 77 otherwise contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

78. Proposed Intervenors admit that the quoted language appears in the source cited. Paragraph 78 otherwise contains mere characterizations, legal contentions, and conclusions to

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which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

79. Paragraph 79 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

80. Paragraph 80 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors denies the allegations.

81. Proposed Intervenors admit that the quoted language appears in the source cited. Paragraph 81 otherwise contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

82. Paragraph 82 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

83. Paragraph 83 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

84. Proposed Intervenors admit that the quoted language appears in the sources cited. Paragraph 84 otherwise contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

85. Proposed Intervenors admit that the quoted language appears in the source cited.

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Paragraph 85 otherwise contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

86. Paragraph 86 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

87. Paragraph 87 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

88. Proposed Intervenors admit that the quoted language appears in the source cited. Paragraph 88 otherwise contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

89. Proposed Intervenors lack sufficient information or knowledge with which to form a belief as to the truth or falsity of the allegations in Paragraph 89.

90. Paragraph 90 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

91. Proposed Intervenors admit that the quoted language appears in the source cited. Paragraph 91 otherwise contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

92. Paragraph 92 contains mere characterizations, legal contentions, and conclusions

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to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

93. Proposed Intervenors admit that the quoted language appears in the sources cited. Paragraph 93 otherwise contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

94. Proposed Intervenors admit that the quoted language appears in the source cited. Paragraph 94 otherwise contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

95. Paragraph 95 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

96. Paragraph 96 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

97. Proposed Intervenors admit that the quoted language appears in the sources cited. Paragraph 97 otherwise contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

98. Proposed Intervenors admit that the quoted language appears in the source cited. Paragraph 98 otherwise contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the

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allegations.

99. Proposed Intervenors admit that the quoted language appears in the source cited. Paragraph 99 otherwise contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

100. Paragraph 100 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

101. Paragraph 101 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

102. Proposed Intervenors admit that the quoted language appears in the sources cited. Paragraph 102 otherwise contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

103. Paragraph 103 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

104. Proposed Intervenors deny that the challenged materials are unlawful. Proposed Intervenors otherwise lack sufficient information or knowledge with which to form a belief as to the truth or falsity of the allegations in Paragraph 104.

105. Paragraph 105 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny

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the allegations.

106. Paragraph 106 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

COUNT I – VIOLATIONS OF THE MICHIGAN CONSTITUTION (PRESUMPTION OF VALIDITY)

107. Proposed Intervenors incorporate by reference all responses in the preceding and ensuing paragraphs as if fully set forth herein.

108. Paragraph 108 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

109. Paragraph 109 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

110. Paragraph 110 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

111. Paragraph 111 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

112. Paragraph 112 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

113. Paragraph 113 contains mere characterizations, legal contentions, and conclusions

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to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

114. Paragraph 114 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

COUNT II – VIOLATIONS OF THE MICHIGAN ELECTION LAW (PRESUMPTION OF VALIDITY)

115. Proposed Intervenors incorporate by reference all responses in the preceding and ensuing paragraphs as if fully set forth herein.

116. Paragraph 116 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

117. Paragraph 117 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

118. Paragraph 118 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

119. Paragraph 119 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

120. Paragraph 120 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

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121. Paragraph 121 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

122. Paragraph 122 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

COUNT III – VIOLATION OF THE ADMINISTRATIVE PROCEDURES ACT

123. Proposed Intervenors incorporate by reference all responses in the preceding and ensuing paragraphs as if fully set forth herein.

124. Admitted.

125. Paragraph 125 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

126. Proposed Intervenors admit that the quoted language appears in the source cited. Paragraph 126 otherwise contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

127. Paragraph 127 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

128. Paragraph 128 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

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129. Paragraph 129 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

130. Paragraph 130 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

131. Proposed Intervenors admit that the quoted language appears in the source cited. Paragraph 131 otherwise contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

132. Proposed Intervenors admit that the Michigan Republican Party was a plaintiff in *Genetski* and that Secretary Benson and Director Brater were both defendants in *Genetski*. Paragraph 132 otherwise contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

133. Paragraph 133 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

COUNT IV – VIOLATIONS OF THE MICHIGAN CONSTITUTION (RULE 168.24)

134. Proposed Intervenors incorporate by reference all responses in the preceding and ensuing paragraphs as if fully set forth herein.

135. Paragraph 135 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny

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the allegations.

136. Paragraph 136 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

137. Paragraph 137 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

138. Paragraph 138 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

139. Paragraph 139 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

140. Paragraph 140 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

141. Paragraph 141 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

COUNT V – VIOLATIONS OF THE MICHIGAN ELECTION LAW (RULE 168.24)

142. Proposed Intervenors incorporate by reference all responses in the preceding and ensuing paragraphs as if fully set forth herein.

143. Paragraph 143 contains mere characterizations, legal contentions, and conclusions

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to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

144. Paragraph 144 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

145. Paragraph 145 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

146. Paragraph 146 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

147. Paragraph 147 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

148. Paragraph 148 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

149. Paragraph 149 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

REQUEST FOR RELIEF

The remaining Paragraphs of the Complaint consist of Plaintiffs' request for relief, to which no response is required. To the extent that any response is required, Proposed Intervenors deny that Plaintiffs are entitled to any of the requested relief or any other relief.

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WHEREFORE, Proposed Intervenors respectfully request that this Court:

A. Deny Plaintiffs' request for "a speedy hearing;"

B. Deny that Plaintiffs are entitled to any relief;

C. Dismiss the complaint in its entirety, with prejudice; and

D. Grant such other and further relief as the Court may deem just and proper.

AFFIRMATIVE DEFENSES

Proposed Intervenors set forth their affirmative defenses without assuming the burden of proving any fact, issue, or element of a cause of action where such burden properly belongs to Plaintiffs. Nothing stated here is intended or shall be construed as an admission that any particular issue or subject matter is relevant to the allegations in the Complaint. Proposed Intervenors reserve the right to amend or supplement their affirmative defenses as additional facts concerning defenses become known.

As separate and distinct affirmative defenses, Proposed Intervenors allege as follows:

This Court lacks subject matter jurisdiction to adjudicate Plaintiffs' claims;

Plaintiffs lack standing to assert these claims; and

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

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Respectfully submitted,

Dated: April 5, 2024

s/ *Sarah S. Prescott*
Sarah S. Prescott (P70510)
Attorney for Proposed Intervenor-Defendants
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**Pro hac vice motion forthcoming*

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PROOF OF SERVICE

Sarah Prescott certifies that on the 5th day of April 2024, she caused the above document in this matter to be filed with the Clerk of the Court via the Court's ECF system, MiFILE, which will serve a copy of said document(s) on all counsel of record and parties *in pro per*.

s/ *Sarah S. Prescott*
Sarah Prescott

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Exhibit 2

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THE STATE OF MICHIGAN
COURT OF CLAIMS

REPUBLICAN NATIONAL COMMITTEE, MICHIGAN REPUBLICAN PARTY, NATIONAL REPUBLICAN CONGRESSIONAL COMMITTEE, DENNIS GROSSE, BLAKE EDMONDS, and CINDY BERRY,

Plaintiffs,

v.

JOCELYN BENSON, in her official capacity as Secretary of State, and JONATHAN BRATER, in his official capacity as DIRECTOR OF ELECTIONS,

Defendants,

and

MICHIGAN ALLIANCE FOR RETIRED AMERICANS and DETROIT/DOWNRIVER CHAPTER OF THE A. PHILIP RANDOLPH INSTITUTE,

Proposed Intervenor-Defendants.

Case No. 24-000041-MZ

HON. CHRISTOPHER P. YATES

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**Pro hac vice motion forthcoming*

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AFFIDAVIT OF JAMES R. PEDERSEN

I, James R. Pedersen, hereby declare as follows:

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

2. I am the President of the Michigan Alliance for Retired Americans. I am a retired autoworker and I have been a proud member in good standing of the United Auto Workers for 45 years.

3. The Alliance for Retired Americans is a nonprofit, nonpartisan 501(c)(4) organization. The Alliance's members are retired union members from all sectors of the economy and all walks of life. All told, the Alliance has over 4.4 million members around the country.

4. The Alliance's mission is to ensure social and economic justice and full civil rights after a lifetime of work, with a particular emphasis on safeguarding the right to vote.

5. The Michigan Alliance for Retired Americans ("Michigan Alliance") is the Michigan state chapter of the national Alliance.

6. Michigan Alliance has over 200,000 members. Michigan Alliance members reside in every county in Michigan and represent the state's diversity with regard to race, gender, and career type. Michigan Alliance members are retirees from 23 public and private sector unions, including the AFL-CIO, UAW, AFSCME, and MEA, reflecting a broad array of different trades and jobs. Our membership also includes members of community organizations and individual activists.

7. Many Michigan Alliance members are politically active older citizens and are registered to vote at a higher rate than the public at large in Michigan.

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8. Many Michigan Alliance members are elderly, disabled, or have mobility issues and thus rely on the right to vote by absent voter ballot.

9. As they age, many Michigan Alliance members experience fluctuations in their signatures due to changing dexterity and other issues.

10. Retirees, including many Michigan Alliance members, tend to travel frequently. In particular, many retirees in Michigan are snowbirds, heading south to Florida, the southwest, or elsewhere after the first snow or the winter holidays. These retirees remain Michigan residents and are eligible to vote in Michigan, and they rely on voting by absent voter ballots.

11. The main resources the Michigan Alliance has at its disposal are the time of its leadership, including myself; volunteer time; and opportunities to communicate to and educate our members.

12. Our constituent unions usually have monthly or quarterly retiree meetings, and those meetings are the key forum at which the Michigan Alliance is able to communicate with members and constituents. Many union retirees also have regularly occurring informal meetings at coffee shops and restaurants, and we engage retirees at those gatherings as well. The Michigan Alliance also sometimes tables at other union or community events to promote our policy goals and to recruit new members and volunteers.

13. At Michigan Alliance meetings, we remind people to register and make a plan to vote, encourage them to sign up for the permanent absent voter list, and help them with the process of voting by absent voter ballots. We also help members with any issues that arise during the voting process to make sure that their vote is counted and that their ballots are not erroneously rejected.

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14. We also ask members to volunteer as poll watchers, canvassers, or phone bankers. Many members volunteer to educate and help other voters vote and make sure that their ballots are counted.

15. Beyond voting, the Michigan Alliance also works hard to keep its members informed about where local, state, and national candidates stand on our key issues: social security, Medicare, pensions, prescription drug prices, and so on.

16. If the Plaintiffs' lawsuit succeeds, Michigan Alliance members may have their absent voter ballots rejected based on minor differences between their signatures on different documents. The Michigan Alliance itself will also be harmed, as it will have to dedicate more resources to helping members cure their ballots if they are rejected, and helping members avoid rejection by educating members on the signature verification process and the need for consistent signatures. These efforts would divert the Michigan Alliance's resources away from the rest of our programming. Michigan Alliance leadership would have less time to create materials and educate members on issue advocacy and other get-out-the-vote efforts.

SIGNATURE PAGE FOLLOWS

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James R. Pedersen
James Raymond Pedersen who produced
Michigan Drivers License as identification

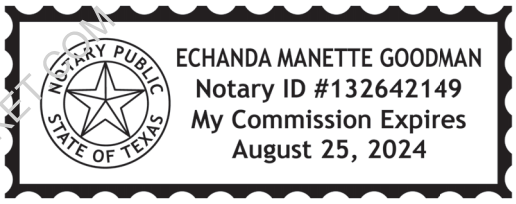
04/05/2024
Date

State of Texas
County of Jefferson

Subscribed and sworn to (or affirmed) before me on this 5th day of April, 2024.

E'Chanda Manette Goodman

Notary Public
E'Chanda Manette Goodman
Remote Online Notary Public
State of Texas, Jefferson County



This notarial act was an online notarization along with multi-factor authentication and using audio/video recording.

My commission expires on 08/25/2024

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Exhibit 3

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THE STATE OF MICHIGAN
COURT OF CLAIMS

REPUBLICAN NATIONAL COMMITTEE, MICHIGAN REPUBLICAN PARTY, NATIONAL REPUBLICAN CONGRESSIONAL COMMITTEE, DENNIS GROSSE, BLAKE EDMONDS, and CINDY BERRY,

Plaintiffs,

v.

JOCELYN BENSON, in her official capacity as Secretary of State, and JONATHAN BRATER, in his official capacity as DIRECTOR OF ELECTIONS,

Defendants,

and

MICHIGAN ALLIANCE FOR RETIRED AMERICANS and DETROIT/DOWNRIVER CHAPTER OF THE A. PHILIP RANDOLPH INSTITUTE,

Proposed Intervenor-Defendants.

Case No. 24-000041-MZ

HON. CHRISTOPHER P. YATES

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**Pro hac vice motion forthcoming*

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AFFIDAVIT OF ANDREA HUNTER

I, Andrea Hunter, hereby declare as follows:

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

2. I am the President of the Detroit/Downriver Chapter of the A. Philip Randolph Institute, as well as President of United Steelworkers Local 1299.

3. The A. Philip Randolph Institute ("APRI") is the senior constituency group of the AFL-CIO. APRI was founded in 1965 by A. Philip Randolph and Bayard Rustin to fight for human equality and economic justice and to seek structural changes through the American democratic process.

4. The Detroit/Downriver Chapter of APRI ("DAPRI") serves the Downriver and Detroit areas of Michigan. It was formed June 2012 and has approximately 100 members in Southeast Michigan who typically meet on a monthly basis. The majority of DAPRI's members are people of color.

5. DAPRI members are involved in election protection, voter registration, political and community education, legislative action, and labor support activities. Many of DAPRI's members and constituents are registered voters. Voting rights are central to our efforts, and DAPRI believes that protecting the ability to vote—whether in person or by mail—is the only way to ensure that people have an opportunity to have a say in their governments and communities. Making sure that voters' ballots are counted is therefore incredibly important to DAPRI and to me individually.

6. Part of DAPRI's mission is to turn out voters across Detroit and Downriver, especially voters who may not vote without DAPRI's assistance. Because DAPRI is well known

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and has roots in the community, voters trust DAPRI to provide assistance with voting, and the same voters return to seek assistance from year to year.

7. One of the ways that DAPRI fulfills its mission is through its historic involvement in encouraging individuals to vote via absent voter ballot. Many of DAPRI's members and constituents vote by absent voter ballot in Detroit. These individuals include working people who do not get time off to vote during business hours or on Election Day, and who therefore choose to vote by mail or drop box. Others have limited English proficiency or disabilities that make it difficult for them to vote in person or simply count on the convenience of voting by absent voter ballot.

8. In addition to representing the interests of its dues-paying members, DAPRI brings this lawsuit based on its relationships with individual voters in the community who rely on DAPRI to advocate for their needs, connect them to relevant services, and facilitate their civic participation. Indeed, many of the voters that DAPRI serves are the most vulnerable individuals in the community, and they suffer disproportionately from limited financial resources and time as well as low levels of English literacy and education. Because of these challenges, they face practical obstacles to bringing lawsuits on their own and rely on DAPRI to advocate for their interests.

9. This lawsuit poses a direct challenge to DAPRI's members and constituents' right to vote by absent voter ballot and to have that vote be counted. DAPRI has an interest in protecting its members and constituents' right to vote by absent voter ballot.

10. DAPRI spends time and resources educating our members, volunteers, and constituents about their voting options. For example, as part of its efforts to help voters vote via absent ballot, DAPRI (a) educates individuals throughout our community about their ability to

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apply to vote using an absent ballot; (b) provides assistance with applications; and (c) informs voters about their voting options, including by posting signs to make people aware of drop box locations where they can return their ballots.

11. This lawsuit threatens to disenfranchise many of DAPRI's members, volunteers, and constituents based on minor deviations between signatures on different documents.

12. In addition, this lawsuit threatens to injury DAPRI itself because any relief that is granted in this lawsuit would require DAPRI to divert resources from its typical get-out-the-vote programming to 1) finding ways to educate voters on the new policies; 2) help them ensure their absent ballot application and carrier envelope signatures match the signatures on their voter file; and 3) educate voters on how they can update their voter file signatures if needed.

SIGNATURE PAGE FOLLOWS

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Andrea Ada Hunter

Andrea Hunter

04/05/2024

Date

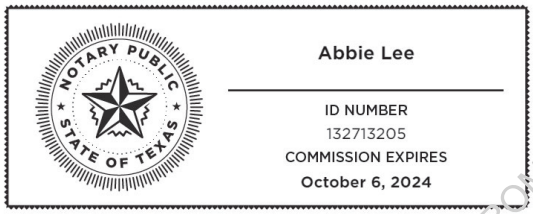
STATE OF TEXAS
COUNTY OF HARRIS

Subscribed and sworn to (or affirmed) before me on this 5th day of April, 2024. by Andrea Ada Hunter.

Electronically signed and notarized online using the Proof platform.

Abbie Lee

Notary Public



My commission expires on 10/06/2024

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Exhibit 4

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STATE OF MICHIGAN

COURT OF CLAIMS

PHILIP M. O'HALLORAN, M.D., BRADEN GIACOBAZZI, ROBERT CUSHMAN, PENNY CRIDER, and KENNETH CRIDER,

Plaintiffs,

v

JOCELYN BENSON, in her official capacity as Secretary of State for the State of Michigan and JONATHAN BRATER, in his official capacity as Director of the Michigan Bureau of Elections,

Defendants.
_____/

OPINION AND ORDER

Case No. 22-000162-MZ

Hon. Brock A. Swartzle

RICHARD DEVISSER, MICHIGAN REPUBLICAN PARTY, and REPUBLICAN NATIONAL COMMITTEE,

Plaintiffs,

v

JOCELYN BENSON, in her official capacity as Secretary of State and JONATHAN BRATER, in his official capacity as Director of Elections,

Defendants.
_____/

Case No. 22-000164-MM

Hon. Brock A. Swartzle

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An executive-branch department cannot do by instructional guidance what it must do by promulgated rule. This straightforward legal maxim does most of the work in resolving these two consolidated cases. Similar to the holdings in *Davis v Benson*, unpublished opinion of the Court of Claims, issued October 27, 2020 (Docket Nos. 20-000207-MZ and 20-000208-MZ), and

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Genetski v Benson, unpublished opinion of the Court of Claims, issued March 9, 2021 (Docket No. 20-000216-MM), this Court concludes that defendants have exceeded their authority with respect to certain provisions in an election manual. With that said, this Court will not grant the entirety of the sweeping relief sought by plaintiffs in Docket Number 22-000162-MZ. Rather, as explained below, the Court will grant more narrow relief with respect to the five specific claims raised by plaintiffs in Docket Number 22-000164-MM.

I. BACKGROUND

Plaintiffs include several election challengers for the November 2022 general election; two candidates for the Michigan Legislature; the Michigan Republican Party; and the Republican National Committee. Section 730 of the Michigan Election Law, MCL 168.1 *et seq.*, permits political parties to designate challengers to be present in the room where the ballot box is kept during the election. MCL 168.730. These consolidated cases relate to a manual that the Michigan Bureau of Elections regularly issues relating to election challengers and poll watchers. By all accounts, the Bureau has issued several iterations of the manual since at least 2003; the one just prior to the current one was issued in October 2020. In May 2022, defendants drafted and published the current version titled, "The Appointment, Rights, and Duties of Election Challengers and Poll Watchers" ("May 2022 Manual"). The Court attaches the May 2022 Manual to this Opinion and Order as an exhibit for ease of reference.

On September 28, 2022, plaintiffs Philip O'Halloran, Braden Giacobazzi, Robert Cushman, Penny Crider, and Kenneth Crider (collectively, "O'Halloran Plaintiffs"), sued defendants in this Court in Docket No. 22-000162-MZ. O'Halloran, Giacobazzi, and Cushman are designated election challengers for the November 2022 general election. Penny Crider is a

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candidate for the Michigan House of Representatives, and Kenneth Crider is a candidate for the Michigan Senate. The O'Halloran Complaint raises two claims. In Count I, the O'Halloran Plaintiffs allege that the May 2022 Manual violates Section 733 of the Michigan Election Law, MCL 168.733. In Count II, the O'Halloran Plaintiffs assert that the May 2022 Manual was promulgated without the proper notice-and-comment requirements outlined in the Administrative Procedures Act ("APA"), MCL 24.201 *et seq.*

Two days later, plaintiffs Richard DeVisser (another election challenger), the Michigan Republican Party, and the Republican National Committee (collectively, "DeVisser Plaintiffs") sued defendants separately in Docket No. 22-000164-MM. In Count I, the DeVisser Plaintiffs allege that certain provisions of the May 2022 Manual violate the Michigan Election Law. Like the O'Halloran Plaintiffs, the DeVisser Plaintiffs also allege that the May 2022 Manual is a rule promulgated without the required notice-and-comment procedures outlined in the APA.

Both sets of plaintiffs request various forms of expedited declaratory and injunctive relief, including a declaration that the publication is void in toto, or alternatively, that certain passages must be removed before the November 2022 general election. The O'Halloran Plaintiffs have moved for a temporary restraining order ("TRO") and preliminary injunction; similarly, the DeVisser Plaintiffs have sought expedited declaratory relief under MCR 2.605(D).

In the interest of conserving time for expedited appellate review before the November 2022 general election, this Court consolidated the cases on October 3, 2022, and ordered defendants to show cause why the relief requested in the complaints should not be granted. Defendants responded and moved for summary disposition under MCR 2.116(C)(4), (C)(8), and (C)(10).

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Defendants first argue that the O'Halloran Plaintiffs' complaint should be dismissed for lack of jurisdiction because the O'Halloran Plaintiffs failed to verify their complaint, as required under MCL 600.6431. Defendants next argue that plaintiffs' claims are barred by laches because plaintiffs did not sue until September 2022, but the Bureau of Elections issued the manual months earlier. Defendants also assert that the May 2022 Manual did not need to be promulgated through notice-and-comment rulemaking because the Michigan Election Law grants the Secretary of State broad authority to issue instructions, advice, and directives, and the May 2022 Manual fits within these categories. Finally, defendants address each of plaintiffs' specific challenges to the May 2022 Manual, as outlined below.

Both sets of plaintiffs responded to defendants' motion for summary disposition. They reiterate that the May 2022 Manual's language extends beyond the Michigan Election Law and should have been promulgated as a rule in accordance with the APA. On the question of laches, the O'Halloran Plaintiffs argue that they brought their challenges to defendants' attention over the summer, and they maintain that defendants will not suffer any prejudice if the May 2022 Manual is rescinded or revised. The DeVisser Plaintiffs contend that they challenged the May 2022 Manual after learning about the changes during the August 2022 primary election. Finally, the O'Halloran Plaintiffs amended their complaint to include signatures and verifications.

Finally by way of background, the Michigan Democratic Party moved to participate in these cases as amicus curiae and submitted a proposed brief, which this Court has already granted. The Downriver/Detroit Chapter of the A. Philip Randolph Institute ("DAPRI") moved to intervene as a party defendant or, alternatively, to participate as an amicus curiae. As DAPRI appears to acknowledge, however, intervention of a nonstate entity as a party defendant is barred by our Court of Appeals' decision in *Council of Organizations & Others for Ed about Parochiaid v State*, 321

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Mich App 456; 909 NW2d 449 (2017). The Court will, however, grant DAPRI's motion to participate as an amicus curiae, and the Court will accept DAPRI's brief as-filed.

II. ANALYSIS

Before the Court are plaintiffs' respective requests for emergency and expedited declaratory and injunctive relief, as well as defendants' motion for summary disposition under MCR 2.116(C)(4), (C)(8), and (C)(10).

Summary disposition is appropriate under MCR 2.116(C)(4) when the Court lacks subject-matter jurisdiction over the case. *Ind Mich Power Co v Community Mills, Inc*, 336 Mich App 50, 54; 969 NW2d 354 (2020). A motion under MCR 2.116(C)(8) tests the legal sufficiency of the complaint. *Bailey v Antrim Co*, ___ Mich App ___; ___ NW2d ___ (2022); slip op at 5. "A motion under MCR 2.116(C)(8) may . . . be granted when a claim is so clearly unenforceable that no factual development could possibly justify recovery." *Id.* The Court will consider the factual allegations in the complaint as true, but it may also consider documentary evidence attached to the complaint. *Jawad A Shah, MD, PC v State Farm Mut Auto Ins Co*, 324 Mich App 182, 206; 920 NW2d 148 (2018).

A motion for summary disposition under MCR 2.116(C)(10) tests the factual support for the plaintiff's claims. See *White v Dep't of Transp*, 334 Mich App 98, 106; 964 NW2d 88 (2020). "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *Id.* (cleaned up). The Court views the evidence and all reasonable inferences arising from the evidence in the light most favorable to the nonmovant. *Anzaldua v Neogen Corp*, 292 Mich App 626, 637; 808 NW2d 804 (2011).

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With respect to summary disposition, the court rules also provide, "If the pleadings show that a party is entitled to judgment as a matter of law, or if the affidavits or other proofs show that there is no genuine issue of material fact, the court shall render judgment without delay." MCR 2.116(I)(1). With respect to the nonmovant, the court rules similarly provide, "If it appears to the court that the opposing party, rather than the moving party, is entitled to judgment, the court may render judgment in favor of the opposing party." MCR 2.116(I)(2).

A. VERIFICATION AND STANDING

The Court first addresses defendants' motion for summary disposition of the O'Halloran Plaintiffs' complaint under MCR 2.116(C)(4). Defendants argue that the Court lacks subject-matter jurisdiction over the O'Halloran Plaintiffs' complaint because they failed to verify it in accordance with the Court of Claims Act ("COCA"), MCL 600.6401 *et seq.*

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The COCA contains notification requirements that a plaintiff must follow to sue in the Court of Claims. Specifically, MCL 600.6431(1) and (2)(d) provide:

> (1) Except as otherwise provided in this section, a claim may not be maintained against this state unless the claimant, within 1 year after the claim has accrued, files in the office of the clerk of the court of claims either a written claim or a written notice of intention to file a claim against this state or any of its departments, commissions, boards, institutions, arms, or agencies.
>
> (2) A claim or notice under subsection (1) must contain all of the following:
>
> * * *
>
> (d) A signature and verification by the claimant before an officer authorized to administer oaths.

Our Supreme Court has held that the requirements outlined in MCL 600.6431 of the COCA constitute "conditions precedent" to filing suit. *Fairley v Dep't of Corrections*, 497 Mich 290, 298; 871 NW2d 129 (2015). Along the same vein, MCL 600.6434(2) requires that "[t]he complaint

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shall be verified." An unverified complaint does not comply with the requirements of MCL 600.6434(2), and is subject to dismissal. *Progress Mich v Attorney General*, 506 Mich 74, 95; 954 NW2d 475 (2020). The *Progress Mich* Court held that the complaint must contain an oath or affirmation by the plaintiff, consistent with MCR 1.109(D)(3). *Id.* at 92 and n 10. Nevertheless, the *Progress Mich* Court held that allowing the plaintiff to amend its complaint to correct a verification defect does not "subvert the verification requirement of MCL 600.6434." *Id.* at 98.

The O'Halloran Plaintiffs filed an amended complaint that addresses the verification issue. The amended complaint contains a verification by each plaintiff, including a handwritten signature and a notarization by an officer authorized to administer oaths. The verifications meet the requirements of MCL 600.6431 and MCL 600.6434. Because the O'Halloran Plaintiffs have addressed the deficiencies in their complaint, the Court agrees with plaintiffs that they need not re-file their case. See *id.*

With respect to standing, MCR 2.605(A)(1) provides, "In a case of actual controversy within its jurisdiction, a Michigan court of record may declare the rights and other legal relations of an interested party seeking a declaratory judgment, whether or not other relief is or could be sought or granted." For the reasons stated in their respective pleadings and briefs, the Court agrees with plaintiffs that there is an actual controversy, and they have standing to bring these actions.

B. THE O'HALLORAN PLAINTIFFS' BROAD, SWEEPING CHALLENGE

The O'Halloran Plaintiffs request a TRO and a preliminary injunction for the declaratory relief requested in their complaint. They ask that the Court: (1) declare rescission of the May 2022 Manual; (2) enjoin enforcement of the May 2022 Manual; (3) declare that the entirety of MCL 168.733 and MCL 168.734 of the Michigan Election Law must be included in the May 2022

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Manual; (4) enter an order implementing the requested amendments and corrections to the May 2022 Manual; and (5) order that certain passages in the May 2022 Manual be removed.

To the extent that the O'Halloran Plaintiffs raise specific concerns similar to those raised by the DeVisser Plaintiffs, those concerns are addressed subsequently in Part II.C of this Opinion and Order. In the current part, the Court is focused on the more broad, sweeping objections and relief sought by the O'Halloran Plaintiffs.

The legal standard for reviewing a request for a preliminary injunction is the same as the standard governing a request for a TRO, at least when the Court has permitted the nonmoving party to respond. See MCR 3.310(A)(1) and (B)(1). As the staff comment to the 1985 adoption of MCR 3.310 explains, "[MCR 3.310] adopts the terminology used in the federal rule, distinguishing between temporary restraining orders, which are entered without notice, and preliminary injunctions, which are granted with notice and after hearing."

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The purpose of a preliminary injunction is to maintain the status quo before a final hearing on the parties' rights. *Hammel v Speaker of the House of Representatives*, 297 Mich App 641, 647; 825 NW2d 616 (2012). An injunction "is an extraordinary remedy that issues only when justice requires, there is no adequate remedy at law, and there exists a real and imminent danger of irreparable injury." *Davis v Detroit Fin Review Team*, 296 Mich App 568, 633-634; 821 NW2d 896 (2012) (cleaned up). The moving party has the burden to prove that four elements weigh in favor the preliminary injunction. *Hammel*, 297 Mich App at 648. Those elements include:

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

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by the granting of the relief, and (4) the harm to the public interest if the injunction is issued. [*Id.* (cleaned up).]

With that said, because the matters have been sufficiently briefed and ultimately turn on questions of law and undisputed material fact, the Court will reach the merits of plaintiffs' claims. Doing so will permit the parties to seek expedited appellate review of this Court's Opinion and Order. Accordingly, the Court will not issue preliminary relief, and, as a result, it need not address or weigh the relative harms of a TRO or preliminary injunction. See *Pontiac Fire Fighters Union Local 376 v Pontiac*, 482 Mich 1, 13 n 21; 753 NW2d 595 (2008).

The O'Halloran Plaintiffs raise a broad, sweeping challenge to the Secretary of State's authority to issue the May 2022 Manual as an instructive guide, rather than as a promulgated rule under the APA. The O'Halloran Plaintiffs contend that, at the very least, the May 2022 Manual must include the complete language of MCL 168.733 and MCL 168.734.

The Court begins its analysis with the Michigan Election Law and the APA. The interpretation of a statute, including the authorization provided to a department by our Legislature, is a question of law for this Court to decide, and the Court does not defer to a department's interpretation of the statute. *In re Complaint of Rovas Against SBC Mich*, 482 Mich 90, 103; 754 NW2d 259 (2008). As explained by the undersigned while sitting on our Court of Appeals: "As I read our caselaw, the directives to give 'respectful consideration' to an agency's interpretation and not depart from it unless there are 'cogent reasons' for doing so are little more than judicial dross." *West Mich Annual Conf of the United Methodist Church v Grand Rapids*, 336 Mich App 132, 159; 969 NW2d 813 (2021) (SWARTZLE, P.J., concurring). This is so because a court owes "respectful consideration" to *each and every party's* interpretation of a statute—not just that of a government official—and a court must not load the interpretive dice in favor of one party over the

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other. *Id.* Thus, this Court gives defendants' interpretation of the Michigan Election Law and APA respectful consideration and does not reject that interpretation without a cogent reason, but it likewise gives similar consideration and treatment to the interpretations offered by the parties, the Michigan Democratic Party, and DAPRI. In sum, "[a] court should adopt the best interpretation of a statute, based on a fair reading of the text, using clear, even-handed criteria objectively applied—full stop." *Id.* at 160.

As a state department, the Michigan Department of State must follow the requirements of the APA. Under the APA, only a department's "rule," promulgated by that department through the crucible of public notice-and-comment rulemaking, has the force and effect of law. *Slis v Michigan*, 332 Mich App 312, 346; 956 NW2d 569 (2020). Any other pronouncement by a department *does not* have the force and effect of law unless specifically authorized by our Legislature. *Twp of Hopkins v State Boundary Comm'n*, __ Mich App __; __ NW2d __ (2022) (Docket No. 355195); slip op at 11.

Section 7 of the APA defines the term "rule" to mean "an agency regulation, statement, standard, policy, ruling, or instruction of general applicability that implements or applies law enforced or administered by the agency, or that prescribes the organization, procedure, or practice of the agency." MCL 24.207. Defendants argue that the May 2022 Manual is an instructional manual that provides mere guidance and, therefore, falls under several statutory exceptions to the rulemaking requirement. They cite exceptions to the rulemaking requirement,[1] including for "[a]

[1] Defendants argue that the Secretary of State has permissive statutory authority that allows a directive or instruction to be issued with the force and effect of law outside of the APA rulemaking process. For reasons similar to those set forth by then-Chief Judge MURRAY in *Davis v Benson*

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decision by an agency to exercise or not to exercise a permissive statutory power, although private rights or interests are affected," MCL 24.207(j); "[a]n intergovernmental, interagency, or intra-agency memorandum, directive, or communication that does not affect the rights of, or procedures and practices available to, the public," MCL 24.207(g); and "[a] form with instructions, an interpretive statement, a guideline, an informational pamphlet, or other material that in itself does not have the force and effect of law but is merely explanatory," MCL 24.207(h).

MCL 168.31(1)(a) and (b) authorize the Secretary of State to "issue instructions and promulgate rules pursuant to [the APA] for the conduct of elections" and "[a]dvise and direct local election officials as to the proper methods of conducting elections." MCL 168.31(1)(c) adds that the Secretary of State shall

> [p]ublish and furnish for the use in each election precinct before each state primary and election a manual of instructions that includes specific instructions on assisting voters in casting their ballots, directions on the location of voting stations in polling places, procedures and forms for processing challenges, and procedures on prohibiting campaigning in the polling places as prescribed in this act.

Thus, the Secretary's responsibility for issuing instructions is distinct from the authority to promulgate rules, where the latter has the force and effect of law, but the former does not. Indeed, under the APA, only an instruction of "general applicability," properly promulgated, that implements or applies a law, constitutes a department rule. Finally, MCL 168.31(1)(e) requires the Secretary of State to "[p]rescribe and require uniform forms, notices, and supplies the secretary of state considers advisable for use in the conduct of elections and registrations."

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cited earlier, the Court rejects defendants' attempts to justify as binding the specific provisions of the May 2022 Manual that are explored in Part II.C of this Opinion and Order.

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The Court agrees with defendants that, taken as a whole (though with certain exceptions explored below), the May 2022 Manual is informational in nature and does not, in and of itself, have the force and effect of law. Defendants have specifically acknowledged to this Court the limited reach of the May 2022 Manual: "The [May 2022 Manual] is principally explanatory, *does not have the force and effect of law*, and *does not affect the rights of the public*." Defendants Sec'y of State Jocelyn Benson and Director of Elections Jonathan Brater's Response to Order to Show Cause and Brief in Support of Motion for Summary Disposition, p 19 (emphasis added).

As all parties acknowledge, the May 2022 Manual was not promulgated according to the notice-and-comment rulemaking procedures set forth under the APA. Nor does the Michigan Election Law require the Secretary of State to issue rules on the areas outlined in the May 2022 Manual as it does, for example, in the context of electronic-voting systems. See MCL 168.795a(8). The Michigan Election Law does, however, permit the Secretary of State to issue explanatory instructions and forms.

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Moreover, the Michigan Election Law does not provide that any unpromulgated, instructional guidance issued by the Secretary of State is "binding" on anyone—with the sole caveat found in MCL 168.765a ("Absent voter counting board"), where in subsection (13), our Legislature stated that the Secretary of State "*shall* develop instructions consistent with this act for the conduct of absent voter counting boards," and added, "[t]he instructions developed under this subsection are binding upon the operation of an absent voter counting board . . . ." (Emphasis added.) Thus, as our Legislature has made clear, the instructions in the May 2022 Manual are binding only on those who operate the absent voter counting boards (AVCB), per MCL 168.765a(13), and, critically, only to the extent that the instructions are consistent with, and do not add to or omit from, any provision in the Michigan Election Law or properly promulgated rule. In

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all other respects, the May 2022 Manual, as mere explanatory instruction, is not binding on any Michigan citizen, including election challengers. There is no basis in law for this Court to prohibit defendants from issuing merely instructional guidance. Accordingly, the Court declines to declare the entirety of the May 2022 Manual unlawful or enjoin any use of an instructional manual for training purposes.

Likewise, the Court disagrees with the O'Halloran Plaintiffs that the May 2022 Manual must include the entire language of MCL 168.733 and MCL 168.734. The O'Halloran Plaintiffs argue that, unless the May 2022 Manual recites the entirety of both statutes, there are bound to be violations of the law.

But plaintiffs do not cite any provision of the Michigan Election Law that would require the language of each statute to appear in the May 2022 Manual. Private citizens and government officials alike are expected to know and follow the law, see *Adams Outdoor Advertising v East Lansing*, 463 Mich 17, 27 n 7; 614 NW2d 634 (2000), and this Court declines to impose a requirement on defendants to explain each and every aspect of the Michigan Election Law in the May 2022 Manual. This does not preclude, of course, a challenger or poll watcher from bringing a hardcopy or (as explained below) an electronic version of MCL 168.733 or MCL 168.734 (or, indeed, the entire Michigan Election Law) to a particular polling precinct. For these reasons, defendants need not amend the May 2022 Manual to include the complete language of MCL 168.733 or MCL 168.734.

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C. PLAINTIFFS' MORE NARROW CLAIMS

Apart from the O'Halloran Plaintiffs' broad, sweeping attacks, both sets of plaintiffs also articulate specific challenges to several provisions of the May 2022 Manual. In essence, they argue

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that defendants have not limited themselves to mere instruction or guidance, but have, instead, attempted to impose binding rules on challengers and poll watchers. As explained above, defendants have authority to issue instructional guidance, but they do not have the authority to issue rules with the force and effect of law, apart from those promulgated through notice-and-comment rulemaking. To the extent that defendants have issued an unpromulgated rule in the guise of an "instruction," they have exceeded their lawful authority under the Michigan Election Law and APA.

The DeVisser Plaintiffs articulate these specific challenges most clearly in Paragraph 30 of their complaint, and these can be described as followed: (1) the credential-form requirement; (2) appointment of challengers on election day; (3) communication with election inspectors other than the "challenger liaison"; (4) the prohibition on electronic devices in AVCB facilities, and (5) the prohibition on recording "impermissible challenges." The Court addresses each specific challenge in turn.

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1. The Credential-Form Requirement. Our Legislature requires that challengers be credentialed. MCL 168.732. For the first time in recent memory, defendants have issued a specific, uniform form that challengers are purportedly required to use with respect to their credentials. The May 2022 Manual references the form, which is available on the Secretary of State's website, and states, "If the entire form is not completed, the credential is invalid and the individual presenting the form cannot serve as a challenger." This is different from years past, when political parties have issued custom credential forms to their own challengers. The DeVisser Plaintiffs argue that the Michigan Election Law does not grant the Secretary of State the authority to mandate a uniform challenger-credential form.

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To be clear, the Court does not take issue with the policy of having a uniform challenger-credential form. There is, in fact, much to commend with such a form, in terms of clarity and administrative efficiency. With that said, our Legislature expressly set out the "evidence" needed to show that a person was properly credentialed as a challenger. In MCL 168.732, a section entitled, "Presence of challenger in room containing ballot box; *evidence of right to be present*," (emphasis added), our Legislature set forth the following three items that evidence a valid challenger: (a) "[a]uthority signed by the recognized chairman or presiding officer" of the organization or committee (here, major political party); (b) the written or printed name of the challenger; and (c) the precinct number for the challenger's assigned precinct. Because our Legislature set forth three specific requirements that a person must satisfy to evidence that the person is a valid challenger, defendants cannot, in the absence of a promulgated rule, add a fourth, i.e., the mandatory use of a particular form issued by the Secretary of State.

The Secretary of State can certainly create a form, under MCL 168.31(1)(e), for the convenience of election challengers. And the Court recognizes the Secretary of State's position, as noted in Director of Elections Jonathan Brater's affidavit, that a uniform authorization form would expedite the credentialing process. But our Legislature has set forth the exhaustive list of evidence for validating a credential, and if a purported credential includes the three items in MCL 168.732, then that purported credential fully complies with the Michigan Election Law—nothing more is required. The provision in the May 2022 Manual requiring the use of the uniform challenger-credential form violates the Michigan Election Law and APA.

2. Appoint or Credential Challengers on Election Day. Next, the DeVisser Plaintiffs challenge the following language on page 2 of the May 2022 Manual: "Political parties eligible to appear on the ballot may appoint or credential challengers at any time *until* Election Day."

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(Emphasis added.) Plaintiffs argue that political parties should be permitted to appoint or credential election challengers *on* Election Day as well. In their response brief, defendants acknowledge that "challengers appointed on Election Day . . . will be accepted." In their reply brief supporting summary disposition, defendants state more directly, that "neither the form nor the guidance will prevent appointing a challenger on Election Day." They explain that the guidance, which is not a rule, is intended to encourage parties to prepare ahead of time and not wait until Election Day to appoint most of their election challengers.

The Court agrees with plaintiffs that MCL 168.730 and MCL 168.731 authorize political parties to appoint and credential challengers on Election Day. The Court also accepts defendants' acknowledgment that the language "until Election Day" is not intended to, and should not, prohibit the appointment and credentialing of election challengers on Election Day. Because changes to the May 2022 Manual are required in any event, the Court will order defendants to clarify this provision (e.g., "... until or on ...").

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3. Communication Through Only the "Challenger Liaison." Both sets of plaintiffs challenge language in the May 2022 Manual requiring that challengers may only communicate with a particular election inspector, designated as the "challenger liaison." On page 6, the May 2022 Manual states in relevant part (with bold in the original), "**Challengers must not communicate with election inspectors other than the challenger liaison or the challenger liaison's designee unless otherwise instructed by the challenger liaison or a member of the clerk's staff.**" The manual adds on the same page, "Challengers must not communicate with election inspectors who are not the challenger liaison unless otherwise instructed by the challenger liaison or a member of the clerk's staff." If the challenger violates these provisions, the challenger is subject to a warning, and repeated violations may lead to ejection of the challenger, according

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to the manual. Plaintiffs argue that the manual's limitation on which inspectors the challengers may interact with violates MCL 168.733(1)(e), which provides that a challenger may bring certain issues to "an election inspector's attention" without restriction to a *particular* inspector.

The authority to designate a "challenger liaison" is absent from the Michigan Election Law—in fact, the very label appears nowhere in statute. Defendants have not presented this Court with any statute, common law, case law, or promulgated rule that gives them the authority to restrict with which election inspector a challenger can communicate. Our Legislature provided a challenger the right to communicate to "an" election inspector, and defendants cannot artificially restrict that to a designated inspector. Whether it makes sense to have such a liaison is one thing; it is another thing entirely to require, at the risk of being ejected, a challenger to speak to only the designated liaison. This provision of the May 2022 Manual goes well beyond what is provided in law and impermissibly restricts a challenger's ability to bring certain issues to any inspector's attention. Accordingly, the manual must be revised to make clear that a challenger need not bring an issue to the attention of only a liaison challenger, but instead can bring such issue to the attention of any election inspector at the applicable location.

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4. *Electronic Devices in AVCB.* Next, plaintiffs challenge language in the May 2022 Manual restricting the possession of electronic devices, including cell phones, in AVCB facilities. (As an aside, the Court notes that while the October 2020 manual also prohibited electronic devices in AVCB facilities, there is nothing in the record to suggest that the manual was challenged in court on these grounds.)

On this topic, the May 2022 Manual provides: "No electronic devices capable of sending or receiving information, including phones, laptops, tablets, or smartwatches, are permitted in an

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absent voter ballot processing facility while absent voter ballots are being processed until the close of polls on Election Day." According to the manual, election challengers may possess electronic devices at in-person polling places if the device is not disruptive or used to record activity in the polling place, but election challengers may not similarly possess electronic devices within AVCB facilities until after the polls close.

As a penalty, according to the manual, a challenger who possesses an electronic device is subject to ejection from the AVCB facility, because doing so would purportedly violate the oath that the challengers take upon entering the facility. Page 21 of the May 2022 Manual adds that challengers may not "[u]se a device to make video or audio recordings in a polling place, clerk's office, or absent voter ballot processing facility." And page 23 of the May 2022 Manual states that poll watchers are subject to the same restrictions as credentialed challengers, and are also subject to ejection for failing to follow the instructions.

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The May 2022 Manual is unclear on whether the prohibition applies to everyone in the AVCB facility or just election challengers and poll watchers. On October 14, 2022, the Court ordered the parties to submit letters addressing the scope of the electronic-device prohibition. In their letter of October 18, 2022, defendants represented to the Court, "The exclusion of cell phone and other devices is *not* limited to poll watchers and challengers. Election workers and inspectors are also prohibited from communicating information out of the AVCB and are prohibited from leaving . . . pursuant to MCL 168.765a(9)-(10)." But defendants conflate here their unpromulgated ban on the mere possession of an electronic device with our Legislature's statutory ban on a specific use of an electronic device (i.e., to communicate certain election information before the polls close). In any event, even if the electronic-device ban applies alike to challengers and poll

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watchers as well as election workers and inspectors, the penalties outlined in the May 2022 Manual only apply to challengers and poll watchers—not election workers and inspectors.

Defendants have taken the position that the only persons permitted to have electronic devices in the AVCB facility before the polls close are certain "authorized individuals." In its October 14, 2022, Order, this Court asked the parties to identify the "authorized individuals," and explain from where their authority came. In response, defendants cited MCL 168.765a(12).

This statute permits certain individuals to enter and leave the AVCB facility before the polls close, including: the local election official who established the AVCB; the deputy or employee of such an official; a Bureau of Elections employee; a county clerk; a county-clerk employee; and a representative of the voting equipment company. These individuals can enter the AVCB facility only to respond to an inquiry or to provide instructions on AVCB operations. *Id.* But MCL 168.765a(12) is utterly silent with respect to whether these authorized individuals are to be treated different from challengers in terms of their ability to carry electronic devices. Nor does MCL 168.765a(12) provide that election challengers may *not* possess electronic devices in the AVCB facility, or that the election challengers who violate the electronic-device ban should be subject to penalties to which "authorized individuals" are not subject.

Defendants also rely on MCL 168.765a(9) and (10) to support their ban on the possession of electronic devices in the AVCB facility. MCL 168.765a(9) requires election inspectors, challenges, and any other person present in the AVCB facility to take the following oath: " 'I (name of person taking oath) do solemnly swear (or affirm) that I shall not communicate in any way any information relative to the processing or tallying of votes that may come to me while in this counting place until after the polls are closed.' " MCL 168.765a(10) adds, in relevant part,

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that "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." The statute also provides that a person whose conduct causes the polls to close or who discloses an election result is guilty of a felony. *Id.*

Thus, MCL 168.765a(9) and (10), collectively, prohibit a challenger from disclosing information relating to the processing of absentee ballots before the polls close, the disclosure of which is a felony. But MCL 168.765a does *not* categorically prohibit the possession of electronic devices in the AVCB facility or otherwise suggest that physical sequestration includes (or equates to) a prohibition on the possession of electronic devices. In reality, defendants' electronic-device ban is a prophylactic measure designed to prevent potential disclosure of absentee-vote information, which Director Brater appears to acknowledge in ¶47 of his affidavit.

MCL 168.765a was enacted four years ago as a provision in a 2018 update to the Michigan Election Law. See 2018 PA 123. Our Legislature amended the same statute twice in 2020. See 2020 PA 95 and 2020 PA 177. Cell phones and other electronic devices have been prevalent for decades and have long had the capability to record. In the face of the existence of these devices, our Legislature did not see fit to ban them in AVCB facilities when it added section 765a to the Michigan Election Law in 2018 or when it amended the statute twice in 2020. Rather, our Legislature enacted two different prophylactic measures to guard against the communication of election-related information—i.e., first, the taking of an oath, and second, physical sequestration at the AVCB facility—and, for violating either measure or otherwise communicating election-related information, our Legislature imposed the penalty of a felony conviction. See MCL 168.765a(9) and (10). Our Legislature could have added a third prophylactic measure, maybe even the one favored by defendants, but it chose not to do so. When our Legislature enacts a public

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policy in one particular way but not another, its choice must be respected and enforced by the other two branches. *Spalding v Swiacki*, 338 Mich App 126, 138; 979 NW2d 338 (2021) ("When the Legislature expressly sets a particular standard in one section of a statute but not in another, we presume that the Legislature intended for different standards to apply to the different sections—i.e., the Legislature's word choice was intentional.").

The Court is cognizant of, and frankly shares, defendants' concerns about the security of absentee-ballot counting. But there is nothing in the Michigan Election Law that precludes a challenger from merely possessing an electronic device in the AVCB facility. Nor have defendants promulgated a rule through public notice-and-comment rulemaking that might have given them the lawful authority to impose such a ban. Prohibiting electronic devices in the AVCB facility might be a good idea, but before a good idea can become law or have legal force and effect, that idea must be embodied within an enacted statute or promulgated rule. The Court declines to read a prophylactic measure into a statute that does not appear in its plain language.

Finally, defendants cite the Sixth Circuit's decision in *Crookston v Johnson*, 841 F3d 396 (CA 6, 2016), a case involving a federal district court's preliminary injunction preventing the state from enforcing a ban on "ballot selfies." *Crookston* involved the question whether a photography ban at the polls was a content-neutral regulation that placed a reasonable restriction on the plaintiff's constitutional rights, or whether it impermissibly impinged on the plaintiff's First-Amendment rights. *Id.* at 400. The court stayed the district court's preliminary injunction, applying the doctrine of laches and concluding that "the tardiness of Crookston's motion for a preliminary injunction alone requires us to reject it." *Id.* at 399.

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The court continued its analysis, in what was arguably dicta, and explained that it was "skeptical . . . of the district court's assessment of Crookston's odds of success on the merits." *Id.* at 399-400. The court explained that the photograph ban "seems to be" a content-neutral regulation reasonably protecting the privacy of voters. *Id.* at 400. Ultimately, the court concluded that the state's interest in a stay outweighed any imposition on the plaintiff's First-Amendment rights. *Id.* But the court noted that it was "not clear" whether the selfie ban significantly impinged on the plaintiff's First-Amendment rights. *Id.* The court then stated, "To be clear, we are not resolving the merits of the case," leaving the issue for another day. *Id.* at 401. As defendants note in their brief, the court never addressed the merits because the parties settled.

This Court does not read *Crookston* as granting defendants broad-stroke authority to prohibit the mere possession of electronic devices in the name of voter privacy; the Sixth Circuit never reached that sweeping conclusion (or any conclusion on the merits, for that matter). Because defendants lack any legal basis to prohibit election challengers from possessing electronic devices in the AVCB facility, the May 2022 Manual must be revised accordingly.

To be clear to the parties and any other challenger, poll watcher, election inspector, election official, election worker, or any person in an AVCB facility: Nothing in this Court's Opinion and Order should be read to permit a person to *use* an electronic device in a way that violates the Michigan Election Law. Our Legislature has made it a felony to communicate—*in any way* before the polls close—any information relative to the processing or tallying of votes that may come to the person. One practical way that a person can reduce the risk of being suspected of violating MCL 168.765a would be for that person to leave any electronic device outside the facility. If an election inspector or other official has a reasonable suspicion that a person has used an electronic-

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communication device to communicate prohibited information, that person is subject to removal and potential criminal prosecution.

5. *Making a Record of "Impermissible" Election Challenges.* Finally, the DeVisser Plaintiffs challenge language in the May 2022 Manual limiting what types of challenges are recorded in the poll book. The May 2022 Manual states in relevant part, "A challenge must be made to a challenger liaison. The challenger liaison will determine if the challenge is permissible as explained below . . . If the challenge is rejected, the reason for that determination must be recorded in the poll book. . . . An impermissible challenge, as explained below, need not be noted in the poll book." The May 2022 Manual explains that the challenger liaison is responsible for adjudicating each challenge by determining if it is impermissible, rejected, or accepted. The O'Halloran Plaintiffs also take issue with language in the May 2022 Manual preventing the challengers from making "repeated impermissible challenges."

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The May 2022 Manual defines an "impermissible challenge" to include "[c]hallenges made to something other than a voter's eligibility or an election process," "[c]hallenges made without a sufficient basis," or "[c]hallenges made for a prohibited reason." The May 2022 Manual makes explicitly clear, "**Election inspectors are not required to record an impermissible challenge in the poll book.**" In his affidavit, Director Brater explains that the Bureau of Elections incorporated this new language because the Bureau received reports of "an increased volume of challenges that were not based on any permitted reason in the Michigan Election Law."

The labels "permissible challenge" and "impermissible challenge" are not found in the Michigan Election Law. Our Legislature has made clear that, when a challenge is made to the voting rights of a person—regardless of who makes the challenge—"an election inspector *shall*

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immediately . . . Make a written report [including certain information] . . . [and] Retain the written report . . . and make it a part of the election record." MCL 168.727(2)(b) and (c) (emphasis added). There is no discretion available to the election inspector not to record a so-called "impermissible challenge" to a person's voting rights under MCL 168.727(1). Thus, to the extent that the May 2022 Manual permits an election inspector not to record a challenger's challenge to a person's voting rights because, in the election inspector's view, such challenge does not have a sufficient basis, this is directly contrary to our Legislature's requirement in MCL 168.727(2) that a record of the challenge be made. Even if the challenge is determined to be without basis in law or fact, if the challenge is made, it must be recorded. *Id.*

With respect to a challenger's claim that *does not* involve a particular person's right to vote (i.e., a reason other than those listed in MCL 168.727(1) or MCL 168.733(1)(c)), our Legislature does not require that any specific report be generated, and the parties have not pointed this Court to any promulgated rule that would so require. See MCL 168.733. So, for example, if a challenger brings to an election inspector's attention the purported improper handling of a ballot by an election worker, our Legislature does not require that a report of that matter be recorded by the election inspector. See *id.* It certainly seems advisable to make a record of such alleged instances, and our Legislature expressly permits a challenger to "[k]eep records of . . . other election procedures as the challenger desires." MCL 168.733(1)(h). But, defendants have the discretion to adopt a system of recordkeeping for these non-voter's rights challenges, and the one identified in the May 2022 Manual is reasonable, except as otherwise explained here. Defendants will need to revise the May 2022 Manual to make clear that the exception for not recording so-called "impermissible challenges" has no applicability to challenges involving voting rights set forth in MCL 168.727 or MCL 168.733(1)(c).

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On the prohibition against making repeated "impermissible challenges," the May 2022 Manual warns challengers (with bold in the original), "**Repeated impermissible challenges may result in a challenger's removal from the polling place or absent voter ballot processing facility.**" May 2022 Manual, p 11. The authority for this warning is not apparent. A challenger can be removed for drinking alcohol or disorderly conduct in a polling place or AVCB facility. MCL 168.733(3). The "disorderly conduct" prohibition would necessarily cover someone who commits a felony in an AVCB facility by, for example, divulging certain prohibited information or violating the specific sequestration requirements. Defendants have not pointed this Court to any other part of the Michigan Election Law or a promulgated rule that would permit expulsion merely for several challenges that an election inspector deems to be "impermissible." Only if a challenger's repeated, unfounded challenges rise to the level of "disorderly conduct" does the law permit that challenger's expulsion. The language in the May 2022 Manual must be modified to make this clear.

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D. LACHES

The Court lastly turns to defendants' laches argument. "If a plaintiff has not exercised reasonable diligence in vindicating his or her rights, a court sitting in equity may withhold relief on the ground that the plaintiff is chargeable with laches." *Knight v Northpointe Bank*, 300 Mich App 109, 114; 832 NW2d 439 (2013). The key for laches is not the passage of time alone, but rather, the effect that the delay has had on the defendants. *Id.* at 115. The doctrine is particularly applicable in election matters. See *New Democratic Coalition v Austin*, 41 Mich App 343, 356-357; 200 NW2d 749 (1972); see also *Purcell v Gonzalez*, 549 US 1, 5-6; 127 US 5; 166 L Ed 2d 1 (2006) (per curiam); *Crookston*, 841 F3d at 398; MCL 691.1031.

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The question whether laches applies in these cases is an interesting one. Unlike a challenge to a candidate's eligibility to run for office, there is no potential in this circumstance that a party could lose any specific right, such as the right to vote. But even if laches *could* apply, the Court declines to exercise its equitable authority under the facts presented.

To start, defendants have not demonstrated that plaintiffs failed to act with due diligence. The Bureau of Elections amended the manual in May 2022, but it did not highlight or redline the changes from the October 2020 iteration of the document. The O'Halloran Plaintiffs have presented the Court with evidence that, once they discovered the changes in the revised document, they communicated with defendants about their disagreements as early as July 2022. The DeVisser Plaintiffs allege that they discovered the revisions to the May 2022 Manual on the night of the August 2022 primary election, when those changes were put into practice. The DeVisser Plaintiffs wrote to defendants to address their concerns with the May 2022 Manual shortly thereafter. Since that time, plaintiffs obtained legal counsel to sue on their behalf, and they sued in late September 2022. Thus, plaintiffs did not simply sit on their hands for four months, as defendants argue.

More critically, on the issue of prejudice, the May 2022 Manual is merely instructive—it does not (and cannot) independently create *any* new, mandatory requirement, with the narrow exception of MCL 168.765a(13), not applicable here. Defendants have acknowledged in these proceedings that the May 2022 Manual does not have the force and effect of law. Moreover, these proceedings are not similar to *Davis v Benson*, Court of Claims Docket Nos. 20-000207-MZ and 20-000208-MZ, where this Court applied the doctrine of laches, in part, because of the impending need to print millions of paper ballots, some of which were to be mailed overseas to our military personnel.

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Theoretically, the November 2022 general election can take place without any challenger guidance. Alternatively, the Bureau of Elections can revise the May 2022 Manual (or even the October 2020 version) to comply with this Opinion and Order. This Court's several findings are relatively narrow in scope, and there is nothing in the record to suggest that revising the May 2022 Manual to conform with this Court's Opinion and Order would be time consuming or otherwise onerous. The May 2022 Manual resides as a PDF on defendants' website and, in today's world, the manual could be widely disseminated in a matter of minutes, if not seconds. In fact, defendants acknowledge in their brief that they revised and disseminated the prior version of the manual in October 2020—only a month before the November 2020 general election.

Thus, the Court is not persuaded by defendants' and amicus's argument that revising the May 2022 Manual and updating election personnel about the revisions will present an onerous burden. Accordingly, the Court declines to exercise its equitable authority on laches.

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III. CONCLUSION

Accordingly, the Court orders as follows:

IT IS ORDERED that the relief sought by the DeVisser Plaintiffs on Counts I and II of their complaint is **GRANTED IN PART** and **DENIED IN PART**. Under MCR 2.116(I) and MCR 2.605, the Court concludes that the DeVisser Plaintiffs' claims set forth in Paragraph 30 of their complaint are well-founded in fact and law, and, as a result, the Court declares that defendants have violated the Michigan Election Law and the APA, as explained in this Opinion and Order. The May 2022 Manual, in and of itself, does not have the force and effect of law and defendants are enjoined from using or otherwise implementing the current version of the May 2022 Manual

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to the extent that such enforcement, use, or implementation would be inconsistent with this Opinion and Order.

The DeVisser Plaintiffs also request that this Court order defendants to rescind the current manual and use an earlier one. This Court has not been asked to review the October 2020 version of the manual with respect to the claims raised herein. Instead, **IT IS FURTHER ORDERED** that defendants shall have the discretion either to (1) rescind the May 2022 Manual in its entirety; (2) revise the May 2022 Manual to comply with this Opinion and Order; or (3) revise an earlier iteration of the manual to comply with this Opinion and Order. All other relief sought by the DeVisser Plaintiffs is **DENIED**.

IT IS FURTHER ORDERED that the O'Halloran Plaintiffs' emergency motion for declaratory and injunctive relief is **GRANTED IN PART** and **DENIED IN PART**. The motion is **GRANTED** to the extent consistent with this Opinion and Order and otherwise **DENIED** in all other respects, as explained in this Opinion and Order.

IT IS FURTHER ORDERED that defendants' motion for summary disposition is **GRANTED IN PART** and **DENIED IN PART**. The motion is **GRANTED** to the extent that plaintiffs request that this Court strike the May 2022 Manual in its entirety, and it is likewise **GRANTED** to the extent that the O'Halloran Plaintiffs seek relief broader than such relief already ordered herein by this Court. The motion is otherwise **DENIED** in all other respects, as explained in this Opinion and Order.

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IT IS FURTHER ORDERED that DAPRI's motion to intervene as a party defendant is **DENIED**. DAPRI's alternative request to participate as an amicus curiae is **GRANTED**, and its brief is accepted as-filed.

IT IS SO ORDERED. This is the final order and closes each of the consolidated cases.

Date: October 20, 2022

Hon. Brock A. Swartzle
Judge, Court of Claims

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EXHIBIT TO COURT'S OPINION AND ORDER OF OCTOBER 20, 2022

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The Appointment, Rights, and Duties of Election Challengers and Poll Watchers

May 2022

INSTRUCTIONS PROVIDED BY THE MICHIGAN BUREAU OF ELECTIONS
RICHARD H. AUSTIN BUILDING • 1ST FLOOR • 430 W. ALLEGAN • LANSING, MICHIGAN 48918
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I. Introduction

This publication is designed to familiarize election challengers, poll watchers, election inspectors, and members of the public with the rights and duties of election challengers and poll watchers in Michigan. Election challengers and poll watchers play a constructive role in ensuring elections are conducted in an open, fair, and orderly manner by following these instructions.

Challengers and poll watchers should familiarize themselves with the instructions and directions in this publication governing their conduct, rights, and responsibilities. Election inspectors should likewise familiarize themselves with the instructions and directions in this publication, including their duties to record challenges and their powers to maintain order at the polls.

Any questions or concerns about the procedures laid out in this document may be sent to BOERegulatory@michigan.gov.

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II. Challengers

Challenger-Credentialing Organizations

Credentialing organizations are organizations eligible to appoint and credential challengers in Michigan. Credentialing organizations must be one of the following:

- A political party eligible to appear on the ballot in Michigan;
- An organized group of citizens interested in the passage or defeat of a ballot proposal being voted on at that election;
- An organized group of citizens interested in preserving the purity of elections and guarding against the abuse of the elective franchise; or
- An incorporated organization.

A credentialing organization appoints a challenger by giving a person a credential indicating that the person is serving as a challenger on behalf of the organization. This process is known as credentialling. The credential must conform to the standards set out later in this publication.

Candidates, candidate committees, or organizations formed to support or oppose candidates are not eligible to appoint or credential challengers.

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Challenger Credentialing By Political Parties

Political parties eligible to appear on the ballot may appoint or credential challengers at any time until Election Day. A challenger is appointed when they are given a credential by a representative of the political party. Political parties do not need to apply for approval by local election officials in the same way that other challenger-credentialing organizations must be approved; however, political parties should notify local clerks of their intention to appoint or credential challengers prior to Election Day.

Challenger Credentialing By Other Qualified Organizations

All other qualified organizations wishing to appoint or credential challengers must file an application to field challengers with the clerk of each county, city, or township in which the organization intends to field challengers. The application must be filed no less than 20 and no more than 30 calendar days prior to Election Day. The application consists of a written statement indicating the organization's intent to field challengers in that jurisdiction, the reason that the organization believes itself to be an organization qualified to field challengers under the criteria set out above, and a copy of a completed *Michigan Challenger Credential Card* form that the organization will distribute to its challengers. The statement must be signed and sworn by an officer of the organization.

Within two business days of receiving an application from an organization wishing to appoint challengers, the clerk must approve or deny the application and notify the group of the approval or denial. The clerk may deny the application if the group or organization fails to demonstrate that it is qualified to appoint challengers under the criteria explained above or if the application is not timely filed. If the application is denied, the organization may appeal the denial to the Secretary of State within two business days of receiving notice of the clerk's decision. Within two business days of receiving the appeal, the Secretary of State will render a decision on the appeal and notify the organization and the local clerk of that decision.

An organization wishing to appoint or credential challengers whose application is approved by a county clerk is qualified to appoint or credential challengers in any jurisdiction within that county, even if the organization has not filed an application with each specific city or township in the county.

Each county clerk must notify the clerk of every city and township within their county of all political parties and other organizations who have been approved to appoint challengers within their county. Each municipal clerk

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must notify election inspectors at all precincts in the clerk's jurisdiction of all political parties and other organizations qualified to appoint and credential challengers within that jurisdiction prior to the opening of the polls on Election Day.

Eligibility to Serve as a Challenger

A person may serve as a challenger only if the person is registered to vote in Michigan and only if the person is provided a challenger credential by a credentialing organization. The credential must be specific to the election at which the person is serving as a challenger; a credential issued for a prior election does not entitle a person to serve as a challenger at a future election. A person cannot serve as a challenger if the person is serving as an election inspector during the same election. Additionally, a person cannot serve as a challenger if the person is running for nomination or for office during the same election, with the exception that precinct delegate candidates can serve as challengers so long as they do not serve at the precinct in which they are running for office.

Training of Challengers

Credentialing organizations are responsible for the behavior and actions of challengers that they credential. As such, credentialling organizations are strongly encouraged to provide challengers with training on both the basic aspects of election administration in Michigan and the rights and duties of challengers in Michigan. Providing challengers with a basic understanding of election administration will allow challengers to fully participate in the election process and to make informed challenges without disrupting or delaying election-related activities. Providing challengers with an explanation of their rights and duties will allow them to realize the full benefit of their status without violating the law.

Challengers should be provided training that is specific to the type of election-related location at which the challenger will be serving. For example, a challenger who will be serving at an absent voter ballot processing facility should be trained in how absent voter ballots are processed, while a challenger serving at a polling place where voters are casting ballots on Election Day should be trained on in-person voting processes. Failure to tailor training confuses challengers about which procedures should be followed in different types of locations, which may lead to confusion, ineffective observation, and impermissible challenges.

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III. Rights and Duties of Challengers When Observing Election-Related Procedures

Challengers' Obligation to Follow Election Inspector Directions

Election inspectors are empowered and obligated to maintain order and facilitate the peaceful conduct of elections at the polling place or absent voter ballot processing facility in which the election inspector is serving. **Challengers present at a polling place or absent voter ballot processing facility must follow the directions of the election inspectors operating the polling place or absent voter ballot processing facility.** The directions election inspectors may give to challengers include, but are not limited to:

- Directing challengers on where to stand and how to conduct themselves in accordance with these instructions;
- Directing challengers to cease any behavior prohibited by these instructions;
- Directing challengers to cease any behavior that intimidates voters or disrupts the voting process; and
- Directing a challenger who violates these instructions to leave the polling place or absent voter ballot processing facility, or requesting that the local clerk or local law enforcement remove the challenger from the polling place or absent voter ballot processing facility.

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Form of Challenger Credential

Under Michigan law, each challenger present at a polling place or an absent voter ballot processing facility must possess an authority signed by the chairman or presiding officer of the organization sponsoring the challenger. This authority, also known as the *Michigan Challenger Credential Card*, must be on a form promulgated by the Secretary of State. The blank template credential form is available on the Secretary of State's website. The entire credential form, including the challenger's name, the date of the election at which the challenger is credentialed to serve, and the signature of the chairman or presiding officer of the organization appointing the challenger, must be completed. If the entire form is not completed, the credential is

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invalid and the individual presenting the form cannot serve as a challenger. The credential may not be displayed or shown to voters.

A credential form may be digital and may be presented on a phone or other electronic device. If a challenger uses a digital credential, the credential must include all of the information required on the template credential form promulgated by the Secretary of State. A digital credential should not include any information or graphics that are not included or requested on the template credential form. If a challenger using a digital credential is serving in an absent voter ballot processing facility on Election Day, the challenger must display the credential to the appropriate election official, gain approval to enter the facility, and then store the device in a place outside of the absent voter ballot processing facility. Electronic devices are not permitted within the absent voter ballot processing facility.

Clerks may allow or require challengers serving at a polling place on Election Day or at a clerk's office at any time that voters are present to wear a reasonably sized nametag or badge. The nametag or badge cannot include any text or graphics aside from the challenger's name and the words "election challenger". The nametag must be printed on white paper, and the words "election challenger" must be printed in black ink.

Clerks may allow or require challengers serving in absent voter ballot processing facilities where voters are not present to wear nametags or badges that identify challengers and the organization represented by the challenger.

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Challenger Liaison

Every polling place or absent voter ballot processing facility should have an election inspector designated as the challenger liaison. Unless otherwise specified by the local clerk, the challenger liaison at a polling place is the precinct chairperson. The challenger liaison or precinct chairperson may designate one or more additional election inspectors to serve as challenger liaison, or as the challenger liaison's designees, at any time. Unless otherwise specified by the local clerk, the challenger liaison at an absent voter ballot processing facility is the most senior member of the clerk's staff present, or, if no members of the clerk's staff are present, the challenger liaison is the chairperson of the facility. Unless otherwise specified by the local clerk, the challenger liaison at the clerk's office is the most senior member of the clerk's staff present.

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Challengers must not communicate with election inspectors other than the challenger liaison or the challenger liaison's designee unless otherwise instructed by the challenger liaison or a member of the clerk's staff.

Challenger Identification Upon Entering Polling Place or Absent Voter Ballot Processing Facility

Upon arriving at a polling place, an absent voter ballot processing facility, or a clerk's office, a challenger must introduce themselves and show their credential to the challenger liaison or their designee. A challenger cannot make challenges or take advantage of any of the other rights afforded to challengers until they have properly made their presence known to the challenger liaison. The challenger's name, the organization which the challenger represents, and the time of the challenger's arrival should be noted in the poll book.

If the challenger leaves a polling place prior to the close of polls, the challenger shall inform the challenger liaison of their departure. A challenger may not leave an absent voting ballot processing facility prior to the close of polls on Election Day. The challenger's departure and time of departure should be noted in the poll book.

Communication with Election Inspectors and Election Officials

Challengers must communicate only with the challenger liaison unless otherwise instructed by the challenger liaison or a member of the clerk's staff. Challengers must not communicate with election inspectors who are not the challenger liaison unless otherwise instructed by the challenger liaison or a member of the clerk's staff. Challengers may not communicate with voters.

Challenger liaisons must be readily accessible to communicate with challengers, to answer questions about the voting and tabulating procedures, and to record any challenges made.

Challengers at Clerks' Offices

Each credentialing organization may assign one challenger to observe the issuance and receipt of absent voter ballots at a clerk's office or a satellite location maintained by the clerk. A challenger may be present only in areas of the clerk's office where an absent voter ballot may be requested. A

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challenger may be present in the clerk's office only when the office is open for business and during the period prior to an election when voters may request or return an absent voter ballot at the office. A challenger present in a clerk's office may not view the Qualified Voter File.

Challengers at Polling Places

Only two challengers from any political party or other credentialing organization may be present at a precinct conducting in-person voting on Election Day. If two challengers from the same credentialing organization are present, both challengers enjoy the rights afforded to challengers, except that at any given time only one of the two challengers can be designated to make challenges. The challengers must make known to the challenger liaison which of the two challengers is designated to make challenges. The challengers may agree to change which challenger is designated to make challenges at any time, but the challengers must inform the challenger liaison of that change.

Challengers at Absent Voter Ballot Processing Facilities

Challengers have a right to be present at locations where absent voter ballots are removed from envelopes and tabulated. These locations are referred to as absent voter ballot processing facilities in this publication. Absent voter ballot processing facilities do not include a clerk's office or other locations where absent voter ballots are stored, signatures appearing on absent voter ballot envelopes are checked, or other activities are conducted prior to absent voter ballots being removed from absent voter ballot envelopes and prepared for tabulation.

An absent voter ballot processing facility may contain a single absent voter counting board, multiple absent voter counting boards, a single combined absent voter counting board, or multiple combined absent voter counting boards. The Michigan Election Law uses the term "absent voter counting board" simultaneously to refer to a single absent voter counting board corresponding to an individual in-person precinct; a station within a facility processing absent voter ballots for multiple in-person precincts; the entire facility at which all absent voter ballots are processed for a jurisdiction; and an entire facility at which combined absent voter ballots are processed for multiple jurisdictions in a county. The Michigan Election Law does not expressly state how many challengers may be present at an absent voter

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counting board or combined absent voter counting board in each of these scenarios.

When determining how many challengers each credentialing organization is allowed to have in an absent voter ballot processing facility, clerks must balance the rights of challengers to meaningfully observe the absent voter ballot counting process and the clerk's responsibility to ensure safety and maintain orderly movement within the facility. Clerk considerations in setting the number of challengers each credentialing organization may field in the absent voter ballot processing facility should include:

- The number of processing teams and the number of election inspectors;
- The number of tables or discrete stations at which ballots are processed;
- The physical size and layout of the facility; and
- The number of rooms and areas used to process absent voter ballots within the facility.

The clerk must make publicly available the number of challengers each credentialing organization will be allowed to field in the absent voter ballot processing facility at least seven calendar days prior to the election.

The challenger liaison serving at an absent voter ballot processing facility must administer an oath to any challenger wishing to serve in that facility:

> "I (name of person taking oath) do solemnly swear (or affirm) that I shall not communicate in any way any information relative to the processing or tallying of votes that may come to me while in this counting place until after the polls are closed."

A challenger may not enter the absent voter ballot processing facility without taking this oath and signing a document acknowledging the oath. Any person who violates this oath is guilty of a felony.

Once tallying of votes has begun on Election Day, challengers serving at an absent voter ballot processing facility, like all persons present in an absent voter ballot processing facility, are sequestered at the facility and cannot leave until the close of polls at 8 p.m. on Election Day. If absent voter ballot processing or tabulation continues after the close of polls, challengers must be permitted to remain in the absent voter ballot processing facility at any time when absent voter ballots are being processed until processing and tabulation is complete.

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No electronic devices capable of sending or receiving information, including phones, laptops, tablets, or smartwatches, are permitted in an absent voter ballot processing facility while absent voter ballots are being processed until the close of polls on Election Day. A challenger who possesses such an electronic device in an absent voter ballot processing facility between the beginning of tallying and the close of polls may be ejected from the facility.

A challenger who is ejected from an absent voter ballot processing facility after the tallying has begun but before the close of polls is still bound by their legal obligation to remain sequestered until the close of polls. To avoid breaching that obligation, the challenger liaison or the clerk should direct the challenger to remain in a room or area of the location containing the absent voter ballot processing facility, but which is separated from the area where absent voter ballots are being processed.

A challenger who breaks sequestration by prematurely leaving the location containing an absent ballot processing facility before the close of polls – whether or not due to an ejection from the facility itself – violates the oath they took upon entering the facility.

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Excess Challengers at an Election-Related Location

A credentialing organization may field no more than the number of challengers set out in the above sections at any clerk's office, in-person precinct, or absent voter ballot processing facility. If the credentialing organization already has the total number of challengers allowed present in a particular location, additional challengers credentialed by that organization cannot act as challengers in that location. At the clerk or challenger liaison's discretion, additional challengers seeking access to the location may be given the option to serve as poll watchers in that location. Challengers who agree to act as poll watchers have none of the rights specifically afforded to challengers and must adhere to the same standard of conduct and observe the same rules as any other poll watcher. The rights and duties of poll watchers are set out at the end of this document.

Generally, a credentialing organization will be allowed to replace challengers credentialed by that organization with other challengers credentialled by that organization so long as the replacement process does not disrupt the work of election inspectors or clerk staff present in the location. Because of the sequester, credentialing organizations cannot replace challengers present in facilities processing absent voter ballots prior to the close of polls on Election Day, but credentialing organizations may replace challengers in those locations after the close of polls. In no case during the replacement process

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may a credentialing organization have more challengers present in a particular location than would be allowed by the other provisions of this document.

Making Challenges

A challenge must be made to a challenger liaison. The challenger liaison will determine if the challenge is permissible as explained below. Assuming the challenge is permissible, the substance of the challenge, the time of the challenge, the name of the challenger, and the resolution of the challenge must be recorded in the poll book. If the challenge is rejected, the reason for that determination must be recorded in the poll book.

An impermissible challenge, as explained below, need not be noted in the poll book.

Adjudicating and Recording Challenges

There are three categories of challenges: impermissible challenges, rejected challenges, and accepted challenges. The challenger liaison is responsible for adjudicating each challenge by categorizing each challenge and determining what, if any, action should be taken in response to the challenge.

Impermissible Challenges

Impermissible challenges are challenges that are made on improper grounds. Because the challenge is impermissible, the challenger liaison does not evaluate the challenge to accept it or reject it. Impermissible challenges are:

- Challenges made to something other than a voter's eligibility or an election process;
- Challenges made without a sufficient basis, as explained below; and
- Challenges made for a prohibited reason.

Election inspectors are not required to record an impermissible challenge in the poll book. If it is possible to make a note without slowing down the voting or absent voter ballot tabulation process, the election inspector is encouraged to note the content of an impermissible challenge in the poll book, as well as any warning given to the challenger making that impermissible challenge. If the challenger makes multiple impermissible challenges, the election inspector is likewise encouraged to note the general basis of those challenges and the approximate number of challenges, if the election inspector can make that note without slowing down the election

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process. In all circumstances, however, the election inspector should prioritize the orderly and regular administration of the election process over noting an impermissible challenge.

Repeated impermissible challenges may result in a challenger's removal from the polling place or absent voter ballot processing facility.

Rejected Challenges

Rejected challenges are challenges which are not impermissible, but which the challenger liaison does not accept. Whether a challenge is permissible but rejected is a context-specific determination that depends on the type of challenge being made. The process for determining whether a challenge to an election process or a voter's eligibility is rejected is set out below in the relevant sections. If a challenge is permissible but rejected, the following information must be included in the poll book:

- The challenger's name;
- The time of the challenge;
- The substance of the challenge; and
- The reason why the challenge was rejected.

Accepted Challenges

Accepted challenges are challenges which are permissible and which the challenger liaison deems correct. If a challenge is accepted, the following information must be included in the poll book:

- The challenger's name;
- The time of the challenge;
- The substance of the challenge; and
- The actions taken by the election inspectors in response to the challenge.

Challenges to a Voter's Eligibility

A challenger may make a challenge to a voter's eligibility to cast a ballot only if the challenger has a good reason to believe that the person in question is not a registered voter. There are four reasons that a challenger may challenge a voter's eligibility; **a challenge made for any other reason than those listed below is impermissible**. The four permissible reasons to challenge a voter's eligibility are:

1. The person is not registered to vote;

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2. The person is less than 18 years of age;
3. The person is not a United States citizen; or
4. The person has not lived in the city or township in which they are attempting to vote for 30 or more days prior to the election.

The challenger must cite one of the four listed permissible reasons that the challenger believes the person is not a registered voter, and the challenger must **explain the reason the challenger holds that belief**. If the challenger does not cite one of the four permitted reasons to challenge this voter's eligibility, or cannot provide support for the challenge, the challenge is impermissible.

A challenger may challenge a voter's eligibility only by making a challenge to the challenger liaison or the challenger liaison's designee. **The challenger must make the challenge in a discrete manner not intended to embarrass the challenged voter, intimidate other voters, or otherwise disrupt the election process.** An election inspector will warn a challenger who violates any of these prohibitions; if a challenger repeatedly violates any of these prohibitions, the challenger may be ejected from the polling place.

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Impermissible Challenge to Voter's Eligibility: Improper Reason for Challenge

A challenger may not challenge a voter's eligibility for any reason other than the four reasons above. Any challenge made for a reason other than those four reasons is impermissible and should not be considered by the challenger liaison or recorded by the election inspectors. Improper reasons for making a challenge to a voter's eligibility include, but are not limited to, the following:

- the voter's race or ethnic background;
- the voter's sexual orientation or gender identity;
- the voter's physical or mental disability;
- the voter's inability to read, write, or speak English;
- the voter's need for assistance in the voting process;
- the voter's manner of dress;
- the voter's support for or opposition to a candidate, political party, or ballot question;
- the appearance or the challenger's impression of any of the above traits; or
- any other characteristic or appearance of a characteristic that is not relevant to a person's qualification to cast a ballot.

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Impermissible Challenge to Voter's Eligibility: Non-Specific Challenge

A challenge to a voter's eligibility is impermissible and should not be recorded by the election inspectors if the challenger cannot specify under which of the four permissible reasons the challenger believes the voter to be ineligible to vote, or if the challenger refuses to provide a reason for the challenge to the voter's eligibility.

Impermissible Challenge to Voter's Eligibility: No Explanation for Challenge

A challenge to a voter's eligibility is impermissible and should not be recorded by the election inspectors if the challenger cannot provide a reason for their belief that the voter is ineligible to vote. For example, a challenger cannot simply state that they believe a voter to be ineligible because of their age or citizenship status; the challenger must explain why they believe the voter to be underage or why they believe the voter is not a United States citizen. The challenger liaison may deem the reason for the challenger's belief impermissible if the reason provided bears no relation to criteria cited by the challenger, or if the provided reason is obviously inapplicable or incorrect.

Impermissible Challenge to Voter's Eligibility: Lack of Photo ID

A voter who signs an *Affidavit of Voter Not In Possession of Picture ID* cannot be challenged on the grounds that the voter is not in possession of photo identification. Any challenge on these grounds must be deemed an impermissible challenge, should not be recorded by the election inspectors, and the challenger must be warned that no such challenge is allowed.

Processing Challenges to a Voter's Eligibility

If a challenge to a voter's eligibility made at an in-person polling location is determined to be permissible, the challenge must be handled using the following process:

1. The voter is sworn in by the precinct chairperson or another election inspector using the following oath:

   "I swear (or affirm) that I will truly answer all questions put to me concerning my qualifications as a voter."

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2. The election inspector who administered the oath asks the voter to confirm that they meet the criteria to be eligible to cast a ballot. The election inspector may ask the voter only the questions necessary to confirm that they meet the criteria disputed by the challenger; the election inspector may not ask the voter any other questions.
3. If, after questioning under oath, the voter confirms they are eligible to vote, the challenge is rejected and the voter is permitted to vote a challenged ballot. A challenged ballot is prepared by writing the voter's ballot number on the ballot and then covering the number with tape or a slip of paper. **The voter then completes the ballot and casts the ballot by feeding the ballot into the tabulator in the same manner as an unchallenged voter.**
4. If the voter does not confirm they are eligible to vote after questioning under oath, the challenge is accepted and voter is not allowed to cast a ballot.

The election inspector should take the challenged voter aside to administer the oath and ask the required questions. Election inspectors should administer the oath and ask the required questions in a manner that does not humiliate, degrade, or embarrass the challenged voter. The oath and questioning process should be carried out in a manner that does not unduly delay the challenged voter.

If a voter whose eligibility is permissibly challenged refuses to take the above oath or answer questions designed to verify the voter's eligibility, the challenge is accepted, and the voter cannot cast a ballot.

A challenger cannot appeal a determination that a challenged voter is eligible to vote on Election Day. Outstanding challenges to a voter's eligibility after Election Day may be adjudicated through the judicial process.

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Recording a Challenge to a Voter's Eligibility

Permissible challenges to a voter's eligibility are recorded in both the electronic poll book and the paper poll book. When a voter's eligibility is permissibly challenged, the election inspector selects "Challenged Voter" in the electronic poll book, which automatically creates a notation of the challenge and the challenge's outcome. In addition, the election inspector should also record the challenge on the "Challenged Voters" page of the physical poll book. Finally, the election inspector should make a comment in the electronic poll book recording:

- The challenger's name;

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- The time of the challenge;
- The substance of the challenge; and either
- If the challenge was rejected, the reason why the challenge was rejected; **or**
- If the challenge was accepted, the reason the challenge was accepted.

Because the only action taken by an election inspector in response to an accepted challenge to a voter's eligibility is to disallow that person from casting a ballot, and that denial is automatically recorded in in the poll book when the voter is not issued a ballot, the election inspector does not need to record any additional information about an accepted challenge to a voter's eligibility.

Challenges by an Election Inspector to a Voter's Eligibility

An election inspector shall make a challenge to a voter's eligibility if the election inspector knows or has good reason to suspect that the voter is not eligible to cast a ballot. Such a challenge is treated identically to a challenge made by a credentialed challenger as explained above – the election inspector must provide a specific and permissible reason that the election inspector believes the voter is ineligible to cast a ballot, and there must be some explanation for the election inspector's belief. If an election inspector wishes to challenge a voter's eligibility, the election inspector must make that challenge to the challenger liaison. If the election inspector making the challenge is the challenger liaison, the challenger liaison must make the challenge to another election inspector and the local clerk must be notified of the challenge. A challenge made to a voter's eligibility by an election inspector is recorded and resolved using the same process as a challenge made to a voter's eligibility by a credentialed challenger.

Challenges by a Voter to Another Voter's Eligibility

A registered voter of a precinct who is present at that precinct on Election Day may challenge the eligibility of another person to vote in that precinct if the challenging voter either knows or has good reason to suspect that the challenged person is not eligible to cast a ballot in that precinct.

Such a challenge is treated and resolved identically to a challenge made by a credentialed challenger as explained above. If a voter wishes to challenge a person's eligibility to vote under this mechanism, the election inspector must make that challenge to the challenger liaison.

A voter who is not credentialed as a challenger may only challenge the eligibility of persons attempting to vote in the precinct in which the

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challenging voter is registered to vote. A voter who is not credentialed as a challenger cannot challenge persons attempting to vote in any other precinct, nor can they challenge the conduct of election processes. A voter making challenges to the eligibility of other voters in their own precinct may not make challenges designed to harass, annoy, or delay voters. A voter making challenges to the eligibility of other voters in their own precinct, like all persons present in the precinct, must follow the directions of the election inspectors assigned to the precinct.

Challenge to an Absent Voter in the Polls

A voter who requested an absent voter ballot may vote in person so long as their local clerk has not received their absent voter ballot by Election Day. In some situations these voters may be subject to challenge as an absent voter in the polling place. **A voter is subject to challenge as an absent voter in the polling place only if the poll book indicates that an absent voter ballot was sent to the voter and only if the voter does not surrender the absent voter ballot at the polling place on Election Day.**

Voters Who Surrender Their Absent Voter Ballot at the Precinct On Election Day

A voter who received an absent voter ballot but who surrenders that absent voter ballot to election inspectors at the polling place on Election Day may vote a regular ballot. **Such a voter is not subject to challenge as an absent voter in the polling place and a challenge on those grounds is impermissible.**

Voters Who Do Not Surrender Their Absent Voter Ballot at the Precinct on Election Day

A voter for whom the poll book indicates an absent voter ballot was sent may not have received the ballot, may have lost or destroyed the ballot, or may have mailed the ballot back to the clerk so close to Election Day that the ballot may not arrive in time to be counted. **In these situations, the election inspector must always call the local clerk to verify that the voter's absent voter ballot has not been returned to the clerk.** Once the clerk verifies to the election inspector that the absent voter ballot was not returned to the clerk, the voter must sign an affidavit of lost or destroyed absentee ballot stating that the voter did not successfully return

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the ballot. Absent a challenger issuing a challenge against that voter, the voter is then permitted to cast a regular ballot.

A voter for whom the poll book indicates an absent voter ballot was mailed may be challenged as an absent voter in the polling place even after the clerk verifies the absent voter ballot has not been returned and after the voter signs the affidavit stating that the voter did not return the ballot; if such a voter is challenged, that voter is permitted to cast a challenged ballot. **So long as the clerk confirms that they have not received the voter's absent voter ballot, the voter is permitted to vote in the polling place on Election Day.** A challenged ballot is prepared by writing the voter's ballot number on the ballot, then covering the number with tape or a slip of paper. The voter then completes the ballot and casts the ballot by feeding the ballot into the tabulator in the same manner as an unchallenged voter.

A voter may only be challenged as an absent voter in the polling place if the poll book indicates that the voter was mailed an absent voter ballot. If the poll book does not indicate that the voter was mailed an absent voter ballot, the voter may not be challenged as an absent voter in the polling place.

Voter Eligibility Challenges Are Not Permissible at an Absent Voter Ballot Processing Facility

Challengers at absent voter ballot processing facilities may make challenges to election processes as described below. Permissible challenges at absent voter ballot processing facilities include challenges to ensure that the review of any portion of the absent voter ballot envelope reviewed at the absent voter ballot processing facility is properly completed. City and township clerks review the portion of the absent voter ballot envelope containing the absent voter's signature prior to Election Day, or when the ballot envelope is received by the clerk on Election Day, to ensure that the signature is genuine and the absent voter is eligible to cast a ballot. If the clerk has verified the signature and the absent voter's eligibility prior to the ballot envelope being transmitted to the absent voter ballot processing facility, neither challenges to the voter's signature nor to the voter's eligibility made at the absent ballot processing facility on Election Day are permissible.

Because an absent voter's eligibility is verified by the clerk prior to the absent voter ballot envelope being processed at the absent voter ballot processing facility on Election Day, election inspectors serving at the absent voter ballot processing facility are not responsible for verifying voter eligibility at the facility. Instead, election inspectors serving at the absent

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voter ballot processing facility confirm that the clerk has verified the absent voter's eligibility to cast a ballot by confirming that the clerk has reviewed the signature section of the absent voter ballot envelope. Additionally, because the voters are not present at the absent voter ballot processing facility, the oath administration and questioning process set out in the Michigan Election Law and explained above cannot be carried out at an absent voter ballot processing facility and a challenged voter would have no chance to refute the challenge leveled against them. For these reasons, challenges to voter eligibility at absent voter ballot processing facilities are not permissible and need not be recorded.

Individuals who wish to contest the eligibility of an absent voter should raise those concerns with the clerk of the city or township in which the voter is registered to vote prior to Election Day as prescribed by the Michigan Election Law; no information about a particular voter's eligibility would be available to a challenger serving in an absent voter ballot processing facility which would not have also been available to the challenger prior to Election Day.

Challenges to an Election Process

A challenger may challenge a voting process, including the way that election inspectors are operating a polling place or processing absent voter ballots at an absent voter ballot processing facility. A challenge to an election process must **state the specific element or elements of the process that the challenger believes are being improperly performed** and **the basis for the challenger's belief**.

Impermissible Challenge to an Election Process

A challenge to an election process is impermissible and should not be recorded by the election inspectors if the challenger cannot identify a specific element or multiple elements of the process whose performance the challenger believes improper. A challenge to an election process is also impermissible if the challenger cannot adequately explain why the election process is being performed in a manner prohibited by state law. An explanation for a challenge to an election process must include an explanation of the proper performance of the element or elements in question but need not take the form of a direct citation to statute or election administration materials.

Rejecting a Challenge to an Election Process

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A permissible challenge to an election process will be rejected if the challenger liaison determines that the specific element or elements of the election process being challenged are being carried out in accordance with state law. A challenger liaison's determination that a challenge to an election process is rejected may be appealed using the process laid out at the end of this document.

Accepting a Challenge to an Election Process

A permissible challenge to an election process will be accepted if the challenger liaison determines that the challenger is correct and that the specific element or elements of the election process being challenged are not being carried out in accordance with state law. The challenger liaison shall inform the relevant election inspectors how to properly carry out the process and take any other remedial action necessary to correct the error.

Recording Challenges to an Election Processes

A permissible challenge to an election process should be recorded in both the remarks section of the electronic poll book and on the "Challenged Procedures" section of the physical poll book. The record should include:

- The challenger's name;
- The time of the challenge;
- The substance of the challenge; and either
- If the challenge was rejected, the reason why the challenge was rejected; **or**
- If the challenge was accepted, the reason the challenge was accepted, and any remedial actions taken in response to the challenge.

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Challenges to Recurring Election Processes: Blanket Challenges

If a challenger wishes to challenge recurring elements of the election process, the challenger must make a blanket challenge. The blanket challenge shall be treated as a challenge to each occurrence of the process but need only be made and recorded in the poll book once. **A challenger may only challenge recurring processes through a blanket challenge; a challenger may not challenge every occurrence of a recurring process in lieu of making a blanket challenge.**

Rights of Challengers

A challenger who has made themselves known to the challenger liaison and who is in possession of a valid credential has the right to:

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- Be present in the polling place;
- Make challenges to the challenger liaison or the challenger liaison's designee as provided in these instructions;
- Be treated with respect by election inspectors;
- Be provided with reasonable assistance in performing their duties as a challenger;
- Inspect applications to vote, registration lists, and other printed materials used to conduct elections, so long as the challenger does not touch or handle any of those materials and so long as the inspection does not impede the voting process;
- Observe election inspectors' preparation of voting equipment at the polling place before the opening of the polls on Election Day, and observe election inspectors' handling of voting equipment after the close of polls on Election Day, so long as the challenger does not touch or handle any of that equipment and so long as that observation does not impede the election inspectors in completion of their duties;
- Observe the election process from a reasonable distance, so long as election inspectors have sufficient room to perform their duties and voters are not impeded in any way;
- If serving in a polling place on Election Day, to use electronic devices, so long as the device is not disruptive and so long as the device is not used to make video or audio recordings of the polling place;
- Observe election-related activities at a polling place on Election Day at any time the polling place is open to the public, including prior to the opening of polls or after the closing of polls;
- Take notes about the election process;
- Notify the challenger liaison of perceived violations of election laws by third parties, including electioneering within 100 feet of the precinct, improper handling of a ballot by a voter, or other issues;
- Remain in the precinct after the close of polls or the end of tabulation and until the election inspectors complete their duties;
- If serving in a polling place where ballots are being issued, stand behind the processing table and close enough to view the poll book as ballots are issued to voters and the voters' names are entered into the poll book, so long as the challenger does not touch or handle the poll book or otherwise interfere with the work of the election inspectors; and
- If serving at an absent voter ballot processing facility, to stand in a location where the tabulation of absent voter ballots can be observed, or to stand in a location where the entry of the names of voters whose ballots are being processed into the poll book can be viewed, so long as the challenger does not touch or handle any election-related materials.

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Restrictions on Challengers

Challengers may not:

- Speak with or interact in any way with voters;
- Threaten or intimidate voters or election inspectors, or attempt to threaten or intimidate voters or election inspectors at any stage of the voting process;
- Speak with or interact with election inspectors who are not the challenger liaison or the challenger liaison's designee, unless given explicit permission by the challenger liaison or a member of the clerk's staff;
- Make repeated impermissible challenges;
- Make a challenge indiscriminately or without good cause, or for the purpose of harassing, delaying, or annoying voters, election inspectors, or any other person;
- Physically touch or interact with ballots, absent voter ballot envelopes, electronic poll books, physical poll books, or any other election materials;
- Stand so close to the poll book or other materials that the challenger's proximity to those materials interferes with the election inspectors' ability to perform their duties;
- Use a device to make video or audio recordings in a polling place, clerk's office, or absent voter ballot processing facility;
- Provide or offer to provide assistance to voters;
- Wear any clothing or other apparel relating to any party, candidate, or proposition on the ballot or which disrupts the peace or order of the polling place, unless the challenger is serving at an absent voter ballot processing facility and is given permission or instructed to wear such an identifier;
- Wear clothing or other apparel expressly advocating for or against the election of a candidate or advocating the passage or defeat of a ballot measure;
- Set up a table or other furniture in the polling place;
- If serving at an absent voter ballot processing facility, possess a mobile phone or any other device capable of sending or receiving information between the opening and closing of polls on Election Day; or
- Take any actions to disrupt or interfere with voting, ballot tabulation, or any other election process.

Warning and Ejecting Challengers

If a challenger acts in a way prohibited by this instruction set or fails to follow a direction given by an election inspector serving at the location at

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which the challenger is present, the challenger will be warned of their prohibited action and of their responsibility to adhere to the instructions in this manual and to directions issued by election inspectors. The warning and the reason that the warning was issued should be noted in the poll book. The warning requirement is waived if the prohibited action is so egregious that the challenger is immediately ejected.

A challenger who repeatedly fails to follow any of the instructions or directions set out in this manual or issued by election inspectors may be ejected by any election inspector. A challenger who acts in a manner that disrupts the peace or order of the polling place or absent voter ballot processing facility, who acts to delay the work of any election inspector, or who threatens or intimidates a voter, election inspector, or election staff, may also be ejected by any election inspector. The ejection should be noted in the poll book. If the challenger refuses to leave after being informed of their ejection by an election inspector, the election inspector may request law enforcement remove the challenger from the polling place or absent voter ballot processing facility.

As explained above, a challenger who is ejected from an absent voter ballot processing facility before the close of polls and while the challenger is subject to sequestration should, in lieu of being removed from the area containing the facility, be directed to remain in a room or area of the location separate from the area where absent voter ballots are being processed.

Challenger Appeal of Election Inspector Determinations

A challenger may appeal a decision by the challenger liaison or any other election inspector relating to the validity of a challenge, to a challenger's conduct, or to a challenger's ejection to the city or township clerk of the jurisdiction in which the challenger is serving. At the request of a challenger, the challenger liaison must provide the contact information of the city or township clerk. The appeal must be made outside of the hearing of voters. If the challenger is appealing their ejection, the appeal must be made after the challenger has left the polling place or absent voter ballot processing facility. If the city or township clerk rejects the challenger's ejection as improper, the clerk shall inform the challenger liaison and the challenger shall be allowed to reenter the polling place or absent voter ballot processing facility.

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The challenger may appeal the decision of the local clerk to the Bureau of Elections.

A challenger may not appeal to the city or township clerk an election inspector's resolution to a challenge to a voter's eligibility to vote. Appeals of an election inspector's resolution to an eligibility challenge can only be adjudicated through the judicial process after Election Day.

IV. Poll Watchers

Members of the public who are not credentialed challengers have a right to observe elections. Members of the public wishing to observe elections, often referred to as poll watchers, do not enjoy the same rights as credentialed challengers. A person does not need to be registered to vote in Michigan to serve as a poll watcher in this state, but a candidate for elective office being voted on in the election cannot serve as a poll watcher. There is no particular number of poll watchers that must be admitted to any election-related location, but poll watchers must be permitted to observe the electoral process so long as the total number of poll watchers does not cause the process to be disrupted.

A poll watcher present in an absent voter ballot processing facility prior to the close of polls on Election Day is sequestered and cannot leave the facility between the time ballot tallying begins and the time that the polls close. Such a poll watcher must take the same oath as a challenger serving at the facility.

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Rights of Poll Watchers

Poll watchers are allowed to be present in a polling place or an absent voter ballot processing facility. Clerks or challenger liaisons must designate a Public Viewing Area from which poll watchers can observe the electoral process. The Public Viewing Area must be placed in a location that does not interfere in any way with the work of election inspectors present in the location. If the location is a polling place, the Public Viewing Area must be situated so that the presence of poll watchers does not interfere with voters participating in the voting process. If the Public Viewing Area for a particular election location is full and cannot accommodate more poll watchers, and if the Public Viewing Area cannot be enlarged without disrupting election processes, the clerk or challenger liaison may deny entry to additional poll watchers. If the location is an absent voter ballot processing facility, the poll watcher must take the same oath as a challenger present at such a facility

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and is bound by all the same restrictions as a challenger present at such a facility.

A poll watcher may request that the challenger liaison allow the poll watcher to view the poll book without handling it, but the challenger liaison may decline that request. A poll watcher may never handle the poll book or other election equipment or materials.

Restrictions on Poll Watchers

Poll watchers are subject to all of the same restrictions as credentialed challengers, including the prohibitions against speaking with voters and against speaking with election inspectors other than the challenger liaison without the challenger liaison's permission. In addition, poll watchers cannot:

- Issue challenges;
- Stand behind the election inspectors as voters are processed; or
- Be present in any part of the polling place, clerk's office, or absent voter ballot processing facility except the designated Public Viewing Area.

Ejection of Poll Watchers

A poll watcher who repeatedly fails to follow any of the above instructions, who acts in a manner that disrupts the peace or order of the polling place or absent voter ballot processing facility, who acts to delay the work of any election inspector, or who threatens or intimidates a voter, election inspector, or election staff, may be ejected by any election inspector. If the poll watcher refuses to leave after being informed of their ejection by an election inspector, the election inspector may request law enforcement remove the poll watcher from the polling place or absent voter ballot processing facility.

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