STATE OF MICHIGAN
IN THE 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 the duly elected **SECRETARY OF STATE**, and **JONATHAN BRATER**, in his official capacity as the **DIRECTOR OF ELECTIONS**,

Defendants.

Case No. 24-000041-MZ

Hon. Christopher P. Yates

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[05/06/2024] PROPOSED AMICUS CURIAE BRIEF OF THE DEMOCRATIC NATIONAL COMMITTEE

STATEMENT OF AMICUS INTEREST[1]

The Democratic National Committee ("DNC"), a national political party committee as defined in 52 USC 30101, represents a diverse group of Democrats, including elected officials, candidates for elected office, state committee members, advisory caucuses, affiliate groups, grassroots activists, and voters. Its mission is to elect Democratic Party candidates to positions across the country, including in Michigan, up and down the ticket. The DNC's organizational purposes and functions also include protecting the legal rights of voters, ensuring that eligible voters can easily and securely cast their votes, including through absent voter ballots, and making sure that voters who wish to vote for Democratic candidates are not unfairly disenfranchised by inconsistent or inequitable application of laws relating to the verification of signatures on absent voter ballots and ballot applications.

The DNC has an interest in preserving and promoting the existence of free and fair elections that ensure that all eligible voters can have their votes counted, including voters who vote absentee. Since Michigan voters overwhelmingly approved major voting rights amendments to the state Constitution in 2018 and 2022, millions of Michiganders have used the absentee voting system to cast their votes safely and securely for Democratic candidates, including during the 2020 presidential contest. The DNC anticipates that many voters will do the same during the November 2024 general election. To that end, the DNC has an interest in supporting the uniform application of standards for evaluating signatures on absent voter ballots and ballot applications, which in turn promotes a fair and efficient voting process. The DNC also supports the Secretary's ability to issue and promulgate instructions regarding review of signatures consistent with Michigan's

[1] No counsel for a party to this action has authored this brief in whole or in part, and no party or counsel for a party or any individual other than the amicus curiae, its members, or its counsel, has made a monetary contribution intended to fund the preparation or submission of this brief.

Election Law, which facilitates the review and processing of absent voter ballots and applications by local clerks in a consistent manner.

INTRODUCTION

Plaintiffs' challenge to the Secretary of State's signature matching guidance depends on a fundamental misrepresentation. Rather than creating an extra-statutory "presumption of validity," the guidance instructs local clerks to fulfill their statutory and constitutional obligation to independently review and examine each signature. Indeed, the guidance instructs (in no uncertain terms) that signatures are "*not* … 'presumed valid' without further review" and that "clerks *must* review *all* signatures" to conduct the requisite comparison. (Compl Ex. A, Guidance at 3 (emphases added)). And Michigan Administrative Rule 168.24 simply elaborates on the types of factors that clerks should consider when evaluating signatures. Neither represents more than a modest explanation of what the statute on signature matching already requires: that clerks "review[]" the signature for any "significant and obvious" discrepancies and resolve "[s]light dissimilarities … in favor of the elector." MCL 168.766a.

Plaintiffs' lawsuit is, in reality, an obvious collateral attack on election administration generally, intended to undermine confidence in elections and designed to sow doubt about the outcome of the 2024 presidential contest. Because if Plaintiffs position were correct, the Secretary's authority to issue guidance and direction on election administration would essentially be limited to parroting back the text of the statutes—which would, of course, be of little help to local clerks attempting to conduct elections in a manner that is both consistent and lawful. Swift dismissal is thus necessary to avoid perpetuating the RNC's efforts to undermine public confidence in Michigan's electoral system.

The Court should thus grant the Secretary's motion for summary disposition and dismiss Plaintiffs' Complaint with prejudice.

ARGUMENT

I. The Secretary of State's Signature Matching Guidance Is Consistent with the Michigan Constitution and Election Law and Within the Secretary's Authority to Issue.

Plaintiffs' arguments against the Secretary's guidance fall flat. Contrary to Plaintiffs' contentions, the Secretary's signature matching guidance does not create an ultimate presumption of validity or otherwise run afoul of the Michigan Constitution or Election Law. Rather, the guidance simply clarifies the starting point for local clerks in conducting the signature review and verification they are already required to perform. The specific provision of the guidance at issue provides, in full:

> Clerks must determine whether the signature being validated agrees sufficiently with the signature on file. Voter signatures are entitled to an *initial* presumption of validity. **An initial presumption of validity does *not* mean that all signatures are "presumed valid" without further review. Instead, clerks must review all signatures and should determine that a signature does not agree sufficiently on file only after completing review of the signature as described in these instructions and in Michigan election law**, MCL 168.766a, et seq.; and R 168.21, et seq.

(Compl Ex. A, Guidance at 3 (emphasis added)).

This guidance is entirely consistent with Michigan law. The voting rights amendments to Michigan's Constitution recently approved by Michigan voters provide that clerks "shall … verify the identity of a[ny] voter who" applies for or votes an absent voter ballot "by comparing the voter's signature on the absent voter ballot" or "ballot application" to the signature on file to see if they "sufficiently agree." Const 1963, art 2, § 4(1)(h). Recent legislation elaborates on and clarifies this process: for absent voter ballot applications, "[i]f the clerk of a city or township receives an application for an absent voter ballot, the clerk must immediately determine … if the

signature on the application agrees sufficiently with the signature on file for the individual," "using the procedures required under section 766a." MCL 168.761(1), (2). Similarly, for absent voter ballots, "[t]he city or township clerk shall …. verify[] the signature on each absent voter ballot return envelope in accordance with section 766a." MCL 168.765(2); see also MCL 168.766(1)(b).

Section 766a then provides more detail on the procedures the clerks are to follow:

> (1) A clerk may determine that a signature on an elector's absent voter ballot application or absent voter ballot envelope does not agree sufficiently with the signature on file **only after reviewing** the signature using the process set forth in this section.
>
> (2) **An elector's signature is invalid only if it differs in significant and obvious respects from the elector's signature on file. Slight dissimilarities must be resolved in favor of the elector. Exact signature matches are not required to determine that a signature agrees sufficiently with the signature on file.**

MCL 168.766a (emphases added).

To put it simply, upon receiving an absent voter ballot application or returned ballot, local clerks must verify the elector's signature by comparing it to their signature on file and reject that ballot or application only if the signatures differ "in significant and obvious respects." What is more, the Legislature has expressly made clear that, during that evaluation process, minor differences "***must be resolved in favor of the elector***." MCL 168.766a(2) (emphasis added). Thus, *the Legislature*—not the Secretary—has already made the determination to give voters the benefit of the doubt.[2]

With that context, it becomes clear that the Secretary's December 2023 guidance does not create or impose new or different standards from the extant law. Rather, the guidance simply states, using only slightly different words, the same process that the Michigan Constitution and

[2] Michigan's Constitution does the same. See Const 1963, art 2, § 4 (requiring that voting rights provisions "shall be liberally construed in favor of voters' rights" and protected by state elections officials).

Election Law already specify: clerks must review signatures on absent voter ballot envelopes and ballot applications and compare them with the signatures on record before determining whether the signatures are invalid, and resolve minor differences in favor of the voter. The guidance makes clear that clerks should not start their review by presuming fraud but must instead conduct an independent review based on the information available to them, *i.e.*, the signature on the application or return envelope, the signature on file, and the procedures in Article 2, Section 4(1)(h) of the Michigan Constitution and Sections 761, 765, 766, and 766a of the Michigan Election Law. The guidance thus embodies Section 766a's mandate that "[a] clerk may determine that a signature on an elector's absent voter ballot application or absent voter ballot envelope does not agree sufficiently with the signature on file ***only after*** reviewing the signature" per the statutory procedures. MCL 168.766a(1) (emphasis added).

Plaintiffs rely on the 2021 decision in *Genetski* about an earlier version of signature matching guidance. But the Court in that case struck down the guidance because of how extensive that guidance was above and beyond the then-existing law. (See Compl Ex. B, Opinion at 3). By contrast, the Secretary's guidance at issue here contains far more modest instructions for evaluating signatures. (Compare Compl Ex. A, Guidance at 3, with Compl Ex. B, Opinion at 3). More fundamentally, though, the guidance at issue in *Genetski* was published *before* the Legislature enacted Section 766a, which now instructs that "[e]xact signature matches are not required" and that only "significant and obvious" differences, as compared to "[s]light dissimilarities," are grounds to reject a ballot or application; those are the standards the guidance explicates. See MCL 168.766a(2).

For similar reasons, the signature matching guidance does not violate the Administrative Procedures Act, since it does not create or impose any new, mandatory substantive standard. See,

e.g., *Faircloth v Family Indep Agency*, 232 Mich App 391, 403-405; 591 NW2d 314 (1998) (concluding that policy elaborating on "Standard for Determining Disability" under statute was an interpretive statement and not a rule subject to APA formal rulemaking); *Kent Co Aeronautics Bd v Dep't of State Police*, 239 Mich App 563, 583-584; 609 NW2d 593 (2000); *Auto Club Ins Ass'n v Sarate*, 236 Mich App 432, 436; 600 NW2d 695 (1999).

The Court should therefore uphold the signature matching guidance as an interpretive statement consistent with the Michigan Election Law and Constitution.

II. Rule 168.24 Is Consistent with the Michigan Constitution and Election Law, and Neither Arbitrary nor Capricious.

Plaintiffs' challenge to Rule 168.24 likewise lacks merit. Plaintiffs largely take issue with Rule 168.24 because it elaborates upon the standards in Article 2, Section 4(1)(h) of the Constitution and the Michigan Election Law. But "[r]ules need not be mere reiterations of a statute." *Chrisdiana v Dep't of Cmty Health*, 278 Mich App 685, 689; 754 NW2d 533 (2008). Indeed, the point of an administrative rule is to "fill in the interstices of the statute" and to "carry out its intent in greater detail." *Clonlara, Inc v State Bd of Ed*, 442 Mich 230, 240; 501 NW2d 88 (1993). That is exactly what Rule 168.24 does.

Rule 168.24 implements Section 766a's directive by providing clear guidance to local clerks on factors that may result in "[s]light dissimilarities" versus "significant and obvious" differences between signatures—for example: "[e]vidence of trembling or shaking in a signature could be health-related or the result of aging"; "[t]he voter may have used a diminutive of their full legal name … or the rearrangement of components of their full legal name"; or "[t]he signature may have been written in haste." Mich Admin Code, R 168.24(1). The rule goes on to note that clerks have discretion to consider other factors that may be relevant to a particular voter, including "the age of the voter, the age of the signature or signatures contained in the voter's record, the

possibility that the voter is disabled, the voter's primary language, and the quality of any digitized signature or signatures contained in the voter's record, and any other plausible reason given by the voter that satisfies the clerk when following up on a questionable signature" during the notification and cure process required by the Michigan Constitution and Election Law. Const 1963, art 2, § 4(1)(h); MCL 168.766a(3); MCL 168.766(3); MCL 168.761(2); MCL 168.765(2).

Rule 168.24 is thus entirely consistent with Article 2, Section 4 of the Michigan Constitution and Section 766a of the Election Law and easily withstands scrutiny as a valid administrative rule. See *Mich Farm Bureau v Dep't of Envtl Quality*, 292 Mich App 106, 129; 807 NW2d 866 (2011).

III. The Signature Matching Guidance and Rule 168.34 Protect the Fundamental Right to Vote and Promote the Efficient Administration of Elections by Local Clerks.

The Secretary has a key responsibility and broad authority to secure and safeguard Michigan residents' "fundamental right to vote," as well as "to preserve the purity of elections, to preserve the secrecy of the ballot, to guard against abuses of the elective franchise, and to provide for a system of voter registration and absentee voting." Const 1963, art 2, § 4(1)(a), § 4(2); MCL 168.21; see also *Davis v Sec'y of State*, 333 Mich App 588, 595-598; 963 NW2d 653 (2020) (recognizing scope of Secretary's authority and duties under Michigan Election Law and Constitution); cf. *Socialist Workers Party v Sec'y of State*, 412 Mich 571, 598; 317 NW2d 1 (1982) (noting that purity of elections clause "unmistakably" demands "fairness and evenhandedness in the election laws of the state"). The Michigan Constitution and Election Law therefore assign to the Secretary broad authority to administer, and ensure the integrity of, elections in this State. E.g., MCL 168.21 ("The secretary of state shall be the chief election officer of the state and shall have supervisory control over local election officials in the performance of their duties under the provisions of this act.").

The Secretary has done precisely that through the guidance at issue here. That guidance is simply a modest exposition of the existing law that provides local clerks with a roadmap for conducting the signature match process in a consistent and efficient manner, thereby reducing ambiguity and freeing up time for clerks to attend to their myriad other election duties. Given that, the unavoidable conclusion is that this case is not really about the substance of the signature matching guidance at all. Instead, Plaintiffs' true aim is to whittle down to nothing the Secretary's ability to provide any type of practical or useful guidance about election administration to local clerks and election officials. And without guidance of this type, the decisions of local clerks become vulnerable to attack by unhappy voters and candidates who can claim that such decisions were made inconsistently across the state. Plaintiffs thus attempt through this lawsuit to lay the groundwork for their efforts to sow doubt about the presidential election. That tactic is far from novel, and one that this Court should quash at the outset, as so many others have done.

IV. This Case Follows a Pattern of Baseless Claims Aimed at Undermining Public Confidence in the Upcoming Election.

To be sure, Plaintiffs' lawsuit is just the latest installment of a now years-long campaign by Republicans to undermine public confidence in elections through a series of meritless court cases designed to cast doubt on the integrity of the electoral process from start to finish. After former President Trump lost the 2020 election, his campaign and Republicans filed over sixty cases—including several in Michigan—seeking to invalidate the election results. See Ex. 1, Campaign Legal Center, *Results of Lawsuits Regarding the 2020 Elections.*[3] Judges from across the ideological spectrum resoundingly rejected those claims of voter fraud and other improprieties. See *id*. (quoting former Representative Liz Cheney: "[J]udges appointed by President Trump and

[3] Available at https://campaignlegal.org/results-lawsuits-regarding-2020-elections (attached as Exhibit 1).

other Republican presidents[] looked at the evidence in many cases and said there is not widespread fraud.").

As just one example of that wide-ranging effort, Republican plaintiffs filed a lawsuit arguing that Michigan's 2020 election results had to be thrown out because of an international conspiracy that permitted "computerized ballot-stuffing." *King v Whitmer*, 71 F4th 511, 521 (CA 6, 2023). Because these claims were "entirely baseless," the Sixth Circuit affirmed the district court's determination that these fraud allegations were sanctionable. *Id.* at 521-522. Indeed, the "[p]laintiffs' own exhibits … refuted rather than supported" the fraud allegations. *Id.* at 522. And the plaintiffs engaged in "embellishment to the point of misrepresentation" by alleging that the arrival of two vans at an absent voter counting board was an "illegal vote dump" of tens of thousands of ballots. *Id.* at 525-526.

Another set of plaintiffs sought to undo President Biden's victory based on alleged vote dilution in Michigan from the casting of supposedly unauthorized ballots. *Ickes v Whitmer*, Opinion & Order Granting Mot to Dismiss, Case No. 1:22-cv-00817 (WD Mich, August 2, 2023), ECF No. 26 (Ex. 2). As the court explained in dismissing the plaintiffs' claims, that case was "yet another brought by misguided individuals" who sought to sow doubt about election integrity, including the "outcome of the 2020 presidential election." *Id.* at PageID.1684. The plaintiffs there

relied on "tired examples of alleged malfeasance" that were "without proof." *Id.* Other examples of meritless election-related cases in Michigan abound.[4]

Those efforts extend beyond Michigan. In Arizona, Republican plaintiffs asserted that the 2020 election results were "so riddled with fraud, illegality and statistical impossibility … that Arizona voters, courts and legislators" could not "rely on or certify" them. *Bowyer v Ducey*, 506 F Supp 3d 699, 706 (D Ariz, 2020). The court rejected those fraud claims as "largely based on anonymous witnesses, hearsay, and irrelevant analysis of unrelated elections." *Id.* at 721. In Nevada, Republican presidential elector candidates sued to have President Biden's victory in that state "declared null and void." *Law v Whitmer*, 136 Nev 840; 477 P3d 1124 (table op) (Ex. 6); 2020 WL 7240299, at *2 (2020) (trial court decision attached to Supreme Court affirmance). In disposing of the case, the court was eminently clear: there was "no credible or reliable evidence that the 2020 General Election in Nevada was affected by fraud." *Id*. at *10. Overall, Republican-aligned plaintiffs made an overwhelming number of baseless (and at times, sanctionable) fraud claims across the country in the wake of the 2020 election. As the Third Circuit explained: "[C]alling an election unfair does not make it so. Charges require specific allegations and then

[4] See also *Costantino v City of Detroit*, unpublished opinion of the Wayne Co Circuit Court, issued November 13, 2020 (Docket No. 20-014780-AW) (Ex. 3) (discrediting allegations of voter fraud because affiant "assert[ed] behavior with no date, location, frequency, or names of employees" and made allegations only "after the unofficial results"); *id.* at 6 (concluding that other allegations were "rife with speculation and guess-work about sinister motives," but there was "no evidentiary basis to attribute any evil activity"); *id.* at 7 (finding another affiant's allegations not credible because he "stated on Facebook that the Democrats were using COVID as a cover for Election Day fraud," showing his "predilection to believe fraud was occurring"); *Stoddard v Detroit Election Comm*, unpublished opinion of the Wayne Co Circuit Court, issued November 6, 2020 (Docket No. 20-014604-CZ) (Ex. 4) (concluding there was "no evidence to support accusations" that "'[h]undreds or thousands of ballots were duplicated solely by Democratic party inspectors and then counted'"); *Trump v Benson*, unpublished opinion of Mich Court of Claims, issued November 6, 2020 (Docket No. 20-225-MZ) (Ex. 5) (rejecting sticky note as "vague and equivocal" hearsay, which was offered to show that "some unnamed persons engaged in fraudulent activity in order to count invalid absent voter ballots").

proof. We have neither here." *Donald J Trump for President, Inc v Sec'y of Pa*, 830 F Appx 377, 381 (CA 3, 2020).

For his part, former President Trump has already asserted interference with the 2024 general election, which is still six months away. See, e.g., Nick Mordowanec, *Trump Already Claiming Interference in 2024 Election*, NEWSWEEK (updated May 17, 2023, 3:18 PM).[5] The former president seemingly believes that the election's results should not be trusted even though not a single vote has been cast or counted. *Id*.; see also Ex. 8, Mariah Timms, *Trump Claims 2024 Will Be Rigged*, WALL ST J (updated March 20, 2024, 5:15 PM) ("After making years of unfounded claims that the 2020 presidential election was stolen from him, Donald Trump is dialing up warnings that there could be an even bigger theft this time around[.]").[6] These new claims questioning the upcoming election's integrity are just as unfounded as the claims in 2020.

This case fits that dangerous pattern of unsubstantiated election-related claims, which serve only to undermine public confidence in the electoral process.

CONCLUSION

For all the reasons explained herein, the Court should conclude that the signature matching guidance and Michigan Administrative Rule 168.24 are consistent with the Michigan Election Law and Michigan Constitution. Since both the signature matching guidance and Rule 168.24 are validly adopted and consistent with the existing election law, the Court should dismiss Plaintiffs' Complaint in full with prejudice.

[5] Available at https://www.newsweek.com/trump-already-claiming-interference-2024-election-1800976 (attached as Exhibit 7).

[6] Available at https://www.wsj.com/politics/elections/trump-claims-2024-will-be-rigged-putting-republican-turnout-at-risk-830b213d (attached as Exhibit 8).

Respectfully submitted,

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Dated: May 6, 2024