

# EXHIBIT 1

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**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

REPUBLICAN NATIONAL COMMITTEE,  
JORDAN JORRITSMA and EMERSON  
SILVERNAIL,

Plaintiffs,

v.

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

Defendants.

Case No. 1:24-cv-00262

Hon. Jane M. Beckering  
Magistrate Judge Ray Kent

**BRIEF OF *AMICUS CURIAE* DEMOCRATIC NATIONAL COMMITTEE IN SUPPORT  
OF DEFENDANTS' MOTION TO DISMISS**

Scott R. Eldridge (P66452)  
Wendolyn W. Richards (P67776)\*  
Erika L. Giroux (P81998)  
MILLER, CANFIELD, PADDOCK  
AND STONE, P.L.C.  
One Michigan Ave., Suite 900  
Lansing, Michigan 48933  
(517) 487-2070  
eldridge@millercanfield.com

*\*Admission to W.D. Mich. pending*

Seth P. Waxman  
Christopher E. Babbitt  
Derek A. Woodman (P79205)  
Gary M. Fox  
Julie A. Welly  
WILMER CUTLER PICKERING  
HALE AND DORR LLP  
2100 Pennsylvania Avenue NW  
Washington, DC 20037  
(202) 663-6000  
seth.waxman@wilmerhale.com

*Counsel for Democratic National Committee*

May 6, 2024

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## **INTEREST OF AMICUS**

The Democratic National Committee (DNC) is the oldest continuing party committee in the United States. It is a “national committee” within the meaning of 52 U.S.C. § 30101(14) and represents a diverse group of Democrats, including elected officials, candidates for elected office, state committee members, advisory caucuses, affiliate groups, grassroots activists, and voters. The DNC’s organizational purposes and functions include protecting the legal rights of voters, ensuring that eligible voters can easily register and vote.

The DNC supports the active and accurate maintenance of voter rolls in conformity with the National Voter Registration Act (NVRA) and the Help America Vote Act (HAVA), which were enacted on a bipartisan basis and have, for decades, provided important safeguards to ensure that no eligible voter is improperly denied the right to vote. The DNC thus has a strong interest in this case.

The DNC also brings a helpful perspective to this case given its significant experience combatting previous efforts to undermine public confidence in our elections. Notably, the DNC participated in many of the over 60 lawsuits in 2020 in which conservative political candidates and organizations sought to cast doubt on election integrity and results. The DNC’s experience allows it to provide insight into how this lawsuit fits into a broader attempt to reduce confidence in the 2024 elections.

## **INTRODUCTION**

This is the latest in a series of meritless lawsuits filed by Republican candidates over the last several years alleging voter fraud or other election impropriety, which serve only to undermine faith in our electoral system. After the 2020 election alone, judges across the country—and across the ideological spectrum—roundly rejected over 60 such challenges. Yet

the baseless challenges continue. Indeed, this Court recently disposed of a similar case involving the same basic allegations the Republican National Committee (RNC) makes here. *See Public Int. Legal Found. v. Benson*, 2024 WL 1128565 (W.D. Mich. Mar. 1, 2024) (*PILF*), *appeal docketed*, No. 24-1255 (6th Cir.).

The timing of the RNC's case speaks volumes. The NVRA prohibits systematic removal of voters from the rolls within 90 days of a federal election (other than in the case of a voter's death, criminal conviction, mental incapacitation, or upon the voter's request), which means that Michigan must suspend any such program by May 8 because of the state's August 6 primary. Yet the RNC waited until March 13—after this Court's *PILF* decision—to bring this lawsuit, and it did not seek expedited relief. Those circumstances make clear this case has nothing to do with the integrity of the upcoming election, and everything to do with providing talking points to undermine confidence in the election's results. Indeed, former President Trump is already asserting interference with the 2024 election—months before a single vote has been cast or counted.

As this Court concluded only two months ago, there is nothing unlawful about Michigan's voter-roll maintenance program. Instead, it is the RNC's requested relief here that contravenes the NVRA and threatens to improperly disenfranchise voters. Contrary to the RNC's rhetoric, the true threat to our electoral system comes not from voter-roll maintenance like Michigan's, but from baseless lawsuits like this one. Only swift dismissal will avoid perpetuating the RNC's efforts to undermine public confidence in our elections.

### **STATUTORY BACKGROUND**

Congress enacted the National Voter Registration Act to advance two goals:

(1) increasing registration among eligible voters and (2) protecting the integrity and accuracy of



electoral systems, including voter rolls. 52 U.S.C. § 20501(b). To accomplish the first goal, the NVRA mandates that states “ensure that any eligible applicant is registered to vote.” *Id.* § 20507(a)(1). The NVRA requires states to implement specific procedures for voter registration, including simultaneous application for voter registration and a driver’s license, *id.* § 20504, and registration to vote by mail, *id.* § 20505. To accomplish the second goal, the NVRA mandates that states “conduct a general program that makes a reasonable effort to remove the names of ineligible voters” who have died or moved out of their voting jurisdiction. *Id.* § 20507(a)(4). However, consistent with “promot[ing] the exercise” of the right to vote, *id.* § 20501(a)(2), the NVRA prohibits states from removing registered voters from the rolls except through the aforementioned “general program,” at the registrant’s “request,” or if the registrant is criminally convicted or mentally incapacitated, *id.* § 20507(a)(3)-(4).

Congress struck this balance intentionally. The Senate Report accompanying the NVRA explained that “one of the guiding principles” of the NVRA is “to ensure that once registered, a voter remains on the rolls so long as he or she is eligible to vote in that jurisdiction.” S. Rep. No. 103-6, at 19 (1993). Congress acted to make voter registration “as automatic as possible” in light of “[t]he declining numbers of voters who participate in Federal elections.” *Id.* at 2, 6. Congress also imposed safeguards on state removal of registered voters out of concern over “selective purging of the voter rolls.” *Id.* at 3. For example, states may not remove a voter on change-of-residence grounds unless the registrant either confirms that change in writing or fails to vote in two consecutive federal general elections after failing to respond to notice from state or local voting authorities. 52 U.S.C. § 20507(d). Congress added these safeguards knowing that they increased the “risk[] of inflated voter rolls,” 139 Cong. Rec. 4835, 4850 (Mar. 11, 1993), but concluded that fears about fraud and registration maintenance would be adequately addressed by

the procedural safeguards accompanying automatic voter registration and by the prospect of “[f]ederal criminal penalties,” S. Rep. No. 103-6, at 11-13.

At the same time, Congress gave states considerable flexibility to develop general programs they deem reasonable in the context of their particular electoral systems. The NVRA does not mandate that state programs include specific mechanisms or obtain certain results. Instead, Congress intentionally left the details of these “general program[s]” to state discretion. The Senate Report explained that the NVRA “would not require a specific mandatory procedure for verifying or confirming voter rolls” or “mandate any specific time periods for when such list cleaning mechanisms must be used.” S. Rep. No. 103-6, at 2, 20. Congress reasoned that the automatic-registration programs established by the NVRA would assist states in “updating the addresses of registered voters” on an “ongoing” basis such that “large scale purges and list cleaning systems” would be “superfluous.” *Id.* at 18. Congress explained that overbroad voter-purging systems “unnecessarily place[] additional burdens on the registration system because persons who are legitimately registered must be processed all over again.” *Id.* at 17-18.

In the Help America Vote Act of 2002, Congress recommitted itself to the balance struck nearly a decade before in the NVRA. As its name suggests, HAVA reinforced the NVRA’s mandate that states must “ensure that eligible voters are not removed in error from the official list of [registered] voters” and directed that registered voters may only “be removed from the computerized list” of voters only “in accordance with the provisions of the [NVRA].” 52 U.S.C. § 21083(a)(4)(B), (a)(2)(A)(i). Especially relevant here, HAVA made clear that, like the NVRA, it “left to the discretion of the state” the “methods of complying with” federal election-administration requirements. *Id.* § 21085. As a congressional report about HAVA explained, “[t]he goal of the minimum standards is to improve our election system without issuing dictates

that would rob states of the ability to craft their own solutions.” H.R. Rep. No. 107-329 at 35 (2001).

## ARGUMENT

### I. THE RNC FAILS TO STATE A VIABLE CLAIM THAT MICHIGAN’S VOTER-ROLL MAINTENANCE PROGRAM VIOLATES THE NVRA

Given the broad discretion afforded to the states, this Court should reject the RNC’s claim that Michigan “fail[s] to make a reasonable effort to conduct appropriate list maintenance” as required by the NVRA, ECF No. 1, PageID.3 (Compl. ¶ 9), as it did in *PILF*.

The RNC identifies nothing unreasonable about Michigan’s voter-roll maintenance program. It fails to identify any deficiencies or offer any examples of what Michigan could or should do differently consistent with the NVRA. *See* ECF No. 19, PageID.296-301 (Sec’y Br. 26-31). Read charitably, the complaint at most alleges “substandard list maintenance.” ECF No. 1, PageID.12 (Compl. ¶ 55). But that does not rise to an NVRA violation. As this Court explained in *PILF*, “[e]ven assuming arguendo that [Plaintiffs’] suggestions have merit, the NVRA requires only a ‘reasonable effort,’ not a perfect effort, to remove registrants” who should no longer be enrolled. 2024 WL 1128565, at \*11. Michigan’s program easily satisfies the NVRA: the State’s removal processes, combined with its maintenance history, demonstrate that there is nothing unlawful or even surprising about the current state of Michigan’s voter rolls. *See id.* at \*3, \*11; ECF No. 19, PageID.296-301 (Sec’y Br. 26-31).

Beyond that fundamental deficiency—which independently warrants dismissal—the RNC relies on (1) flawed data analysis and (2) irrelevant (and isolated) instances of voter fraud, both of which further undermine its case, and (3) seeks relief that itself would violate the NVRA.

**A. The RNC’s Data Analysis Is Flawed And Does Not Remotely Suggest Unreasonable Voter-Roll Maintenance**

The RNC mistakenly compares 2024 voter-registration rates to 2022 population data to conclude that certain Michigan counties have either “impossibly” or “suspiciously” high rates of registered voters relative to the population. ECF No. 1, PageID.11-12 (Compl. ¶¶ 47-55). The RNC also suggests that Michigan is not canceling registrations quickly enough because, it alleges, Michigan canceled fewer voter registrations from 2020 to 2022 than the number of residents who changed houses during that same time. *Id.* at PageID.14 (Compl. ¶¶ 64-65). The RNC’s methodology is flawed many times over.

*First*, the RNC relies on unreliable population data “gathered from the U.S. Census Bureau’s 2022 American Community Survey,” known as the “ACS.” ECF No. 1, PageID.11 (Compl. ¶ 47). Unlike the decennial census, which “[c]ounts every person living” in the territorial United States, U.S. Census Bureau, *The Importance of the American Community Survey and the Decennial Census*,<sup>1</sup> the ACS relies on mere “*estimates* of ... the entire population,” and is particularly susceptible to “[s]ampling error,” U.S. Census Bureau, *American Community Survey Accuracy of the Data 20* (2022) (emphasis added).<sup>2</sup> Additionally, when a population is smaller than 65,000 people—as with “the vast majority of geographic areas,” including approximately two-thirds of the Michigan counties the RNC identifies<sup>3</sup>—the ACS does

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<sup>1</sup> <https://www.census.gov/programs-surveys/acs/about/acs-and-census.html>. All websites last visited May 6, 2024.

<sup>2</sup> [https://www2.census.gov/programs-surveys/acs/tech\\_docs/accuracy/ACS\\_Accuracy\\_of\\_Data\\_2022.pdf](https://www2.census.gov/programs-surveys/acs/tech_docs/accuracy/ACS_Accuracy_of_Data_2022.pdf).

<sup>3</sup> *Compare* ECF No. 1, PageID.11-12 (Compl. ¶¶ 48-49), *with* U.S. Census Bureau & Michigan Dep’t of Management and Budget, Office of the State Demographer, *Michigan Population, by County: Selected Years 1990-2022* (Apr. 19, 2023), <https://www.senate.michigan.gov/sfa/economics/michiganpopulationbycounty.pdf>.

not even rely on 1-year population estimates, but rather “5-year estimates” in which “several years of data are pooled together” over a 60-month period. U.S. Census Bureau, *Understanding and Using American Community Survey Data* 13-15 (2020).<sup>4</sup> For all these reasons, courts have rightly rejected attempts to rely on such “misleading” ACS data in NVRA cases, which can result in “artificially low” population estimates and, by extension, “artificially high” voter “registration rate[s].” *Bellitto v. Snipes*, 935 F.3d 1192, 1208 (11th Cir. 2019). Indeed, the 2022 ACS was even less reliable than usual because it had a response rate of only 84.4%—the second lowest in over two decades—due to lingering effects from the COVID-19 pandemic. *See* U.S. Census Bureau, *Response Rates*.<sup>5</sup>

*Second*, even if accurate, the RNC’s population estimates are anywhere from two to seven years older than “the most up-to-date count of registered active voters available from the Michigan Bureau of Elections” that the RNC relies upon to conclude, in 2024, that registered voter numbers are “suspiciously” high. ECF No. 1, PageID.11 (Compl. ¶ 47); *see* Michigan Dep’t of State, Michigan Voter Information Center, *Voter Registration Statistics*.<sup>6</sup> Without accounting for this incongruity, the RNC fails to plausibly allege that the current number of registered voters is significantly higher than the current number of Michigan residents.<sup>7</sup>

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<sup>4</sup> [https://www.census.gov/content/dam/Census/library/publications/2020/acs/acs\\_general\\_handbook\\_2020.pdf](https://www.census.gov/content/dam/Census/library/publications/2020/acs/acs_general_handbook_2020.pdf).

<sup>5</sup> <https://www.census.gov/acs/www/methodology/sample-size-and-data-quality/response-rates/>.

<sup>6</sup> <https://mVIC.sos.state.mi.us/VoterCount/Index> (data updated daily).

<sup>7</sup> The RNC’s other data separately undermine any inference of nefarious voting activity. The RNC admits that “[t]here is no evidence that” the counties it identifies “experienced above-average voter participation compared to the rest of the country or State.” ECF No. 1, PageID.12 (Compl. ¶ 55). The RNC also admits that Michigan’s 2022 inactive registration rate of 11.3% is just “slightly above the national average of 11.1%,” save ten counties (out of 83) that were slightly higher. *Id.* at PageID.13 (Compl. ¶ 60).

*Third*, the RNC does not allege that any of its “residency change[]” data involved voters moving *out of their voting jurisdiction*. That matters because the NVRA permits voters who move within a jurisdiction to update their registration at a polling place or with the registrar directly. 52 U.S.C. § 20507(e), (d)(2)(A). Thus, the fact that some voters may have moved but were not removed from voter rolls, *see* ECF No. 1, PageID.15 (Compl. ¶ 69), does not suggest non-compliance with the NVRA.

*Finally*, even if all the RNC’s data were reliable and current (and setting aside the above flaws), they still would not indicate that Michigan is violating the NVRA. The NVRA prohibits states from removing voters suspected of moving until at least two federal general elections have passed since those voters failed to respond to an official notice. 52 U.S.C. § 20507(d)(1)(B). For that reason, even if certain Michigan counties canceled fewer than “2% of [registrations] for residency changes” from 2020-2022 despite population data showing that anywhere from 12% to 23.5% of residents changed houses during that time, ECF No. 1, PageID.14 (Compl. ¶¶ 64-66), that cancellation rate over such a short period of time would not offend the NVRA.

Accordingly, the RNC’s data analysis fails to support a claim of unreasonable voter-roll maintenance under the NVRA.

**B. The RNC’s Three Irrelevant Voter-Fraud Cases Do Not Suggest Unreasonable Voter-Roll Maintenance**

The RNC offers three cases of voter fraud to support its contention that ““registration lists lie at the root of most problems encountered in U.S. elections.”” ECF No. 1, PageID.8-9 (Compl. ¶¶ 36, 38). But none of those cases involved registration lists or had anything to do with Michigan’s compliance with the NVRA. Instead, all three involved individuals who fraudulently submitted absentee-ballot or voter-registration applications without the knowledge or consent of the registered voters. Berg, *Oak Park Guardian Pleads Guilty to 7 Counts of Voter Fraud in*

2020 Election, Detroit News (July 3, 2023);<sup>8</sup> Mukomel, *Macomb County Nursing Home Employee Pleads Guilty in Attempted Election Fraud Case*, Michigan Department of Attorney General (Feb. 24, 2022);<sup>9</sup> Cook, *Former Sterling Heights Candidate Admits to Falsifying Absentee-Voter Ballots*, Macomb Daily (Oct. 16, 2023).<sup>10</sup> Rather than undermining confidence in the state’s elections, these isolated instances are a testament to the efficacy of Michigan’s election-fraud detection programs, as all three perpetrators were caught.

### C. The RNC’s Requested Relief Contravenes The NVRA

The RNC’s requested relief is inconsistent with the NVRA’s text and the careful balance struck by Congress.

*First*, while nothing in the NVRA obligates Michigan to “ensure that ineligible registrants are not on the voter rolls,” ECF No. 1, PageID.20 (Compl., p.20), both the NVRA and HAVA obligate Michigan to “ensure” that “any eligible applicant *is registered to vote*,” 52 U.S.C. § 20507(a)(1) (emphasis added); *see also id.* § 21083(a)(4)(B). Michigan would actively *violate* both the NVRA and HAVA if it were to remove voters suspected of moving any sooner than two federal general elections after the voter fails to respond to notice, which typically creates a two- to four-year lag. *Id.* § 20507(d); *see also id.* § 21083(a)(2)(A)(i). By demanding removals faster than permitted by the NVRA and HAVA, the RNC’s requested relief threatens to unlawfully disenfranchise Michigan voters.

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<sup>8</sup> <https://www.detroitnews.com/story/news/local/wayne-county/2023/07/03/oak-park-guardian-pleads-guilty-to-voter-fraud-in-2020-election/70380130007/>.

<sup>9</sup> <https://www.michigan.gov/ag/news/press-releases/2022/02/24/macomb-county-nursing-home-employee-pleads-guilty-in-attempted-election-fraud-case>.

<sup>10</sup> <https://www.macombdaily.com/2023/10/16/former-sterling-heights-candidate-admits-to-falsifying-absentee-voter-ballots/>.

*Second*, the RNC requests that this Court mandate an *outcome*: it seeks “[a]n order instructing [Michigan] to ... ensure that ineligible registrants are not on the voter rolls.” ECF No. 1, PageID.20 (Compl., p.20). The NVRA, however, requires only that states undertake a *process*: to “conduct a general program that makes a reasonable effort to remove the names of ineligible voters.” 52 U.S.C. § 20507(a)(4). Indeed, Congress did not mandate particular “list cleaning systems” or “any specific time periods” for removals in deference to the NVRA’s “guiding principle[]” that states ensure voters “remain[] on the rolls so long as [they are] eligible to vote.” S. Rep. No. 103-6, at 18-20. Congress instead deferred to states’ considerable experience to determine how best to implement the balance struck in the NVRA. *Id.* at 3. The Supreme Court has explained that “[r]equiring additional” processes not mandated by the NVRA “not only second-guesses the congressional judgment embodied in [the NVRA’s] removal process, but it also” improperly “second-guesses the judgment of” state legislatures. *Husted v. A. Philip Randolph Inst.*, 584 U.S. 756, 774 (2018). The RNC’s request for additional or faster removals would flout those policy judgments and is no different from the flawed demand by the plaintiff in *PILF* that any voter-roll imperfections “be fixed now.” 2024 WL 1128565, at \*11. This Court should similarly reject the RNC’s complaint as inconsistent with the NVRA.

Ultimately, the RNC’s quarrel is not with Michigan’s processes for voter removal, but with Congress’s legislative judgment in granting states significant discretion to craft removal programs consistent with the NVRA. But all that “matters” under the NVRA is that no statutory provision “prohibits” Michigan’s existing removal programs. *Husted*, 584 U.S. at 776-777. The RNC should not be permitted to undermine those policy judgments through baseless accusations of impropriety, supported only by its flawed analysis of unreliable data and irrelevant voter-fraud cases.



**II. THIS LAWSUIT IS YET ANOTHER BASELESS ATTEMPT TO SOW DOUBT ABOUT OUR ELECTIONS AND THEIR OUTCOMES**

**A. This Case Follows A Pattern Of Baseless Claims About Widespread Voter Fraud And Election Improprieties**

In recent years, Republican entities have brought a series of meritless election-related challenges, including some targeting states' voter-roll maintenance programs and other election processes. In recently rejecting a similar challenge to Michigan's voter-roll maintenance program, this Court explained that even after "nine months of discovery into the many facets of Michigan's program for the removal of deceased registrants, PILF ha[d] identified no genuine issue for trial regarding its claim that the program" violates federal law. *PILF*, 2024 WL 1128565, at \*12.

Efforts to undermine confidence in our elections have been extensive and wide-ranging. After former President Trump lost the 2020 election, his campaign filed over 60 cases—including several in Michigan—seeking to invalidate election results. *See Campaign Legal Center, Results of Lawsuits Regarding the 2020 Elections*.<sup>11</sup> Judges from across the ideological spectrum resoundingly rejected these voter-fraud claims and other allegations of election improprieties. *See id.* (former Representative Liz Cheney: "[J]udges appointed by President Trump and 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 F.4th 511, 521 (6th Cir. 2023). Because these claims were "entirely baseless," the Sixth Circuit affirmed the

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<sup>11</sup> <https://campaignlegal.org/results-lawsuits-regarding-2020-elections>.

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.

As a second example from Michigan, this Court dismissed a case seeking to undo President Biden’s victory based on alleged vote dilution from the casting of supposedly unauthorized ballots. *Ickes v. Whitmer*, No. 1:22-cv-00817-PLM-PJG (W.D. Mich. Aug. 2, 2023), ECF No. 26, PageID.1684. As the Court explained, 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.* The plaintiffs there relied on “tired examples of alleged malfeasance” that were “without proof.” *Id.* Other examples of meritless election-related cases filed by Republicans in Michigan abound.<sup>12</sup>

Those efforts extend beyond Michigan. In Arizona, Republican plaintiffs asserted that the 2020 election results were “so riddled with fraud, illegality and statistical impossibility ...

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<sup>12</sup> See *Costantino v. City of Detroit*, No. 20-14780-AW, slip op. at 4 (Mich. 3d Jud. Cir. Ct., Wayne Cnty. Nov. 13, 2020) (Amicus Ex. A) (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 (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 (another affiant’s allegations were 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. City Election Comm’n of Detroit*, No. 20-14604-CZ, slip op. at 3-4 (Mich. 3d Jud. Cir. Ct., Wayne Cnty. Nov. 6, 2020) (Amicus Ex. B) (there was “no evidence to support accusations” that “[h]undreds or thousands of ballots were duplicated solely by Democratic party inspectors and then counted”); *Donald J. Trump for President, Inc. v. Benson*, No. 20-225-MZ, slip op. at 3-4 (Mich. Ct. Cl. Nov. 6, 2020) (Amicus Ex. C) (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”).

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*, 477 P.3d 1124 (Table), 2020 WL 7240299, at \*2 (Nev. 2020) (trial court decision attached to Supreme Court affirmance). In disposing of the case, the court did not mince words: there was “no credible or reliable evidence that the 2020 General Election in Nevada was affected by fraud.” *Id.* at \*10. The court expressly rejected arguments suggesting that faulty voter-roll maintenance undermined the election’s results, concluding that “[t]he record [did] not support a finding that Nevada failed to cure its voter lists to reflect returned ballots during the 2020 primary election and that, as a result, ballots were delivered to addresses where no known voter lives and were cast and counted.” *Id.* at \*13. Overall, these 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 proof. We have neither here.” *Donald J. Trump for President, Inc. v. Secretary of Pennsylvania*, 830 F. App’x 377, 381 (3d Cir. 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., Mordowanec, Trump Already Claiming Interference in 2024 Election*, Newsweek (May 17, 2023).<sup>13</sup> 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 Timms, Trump Claims 2024 Will Be Rigged*, Wall St. J.

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<sup>13</sup> <https://www.newsweek.com/trump-already-claiming-interference-2024-election-1800976>.

(updated Mar. 20, 2024) (“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[.]”).<sup>14</sup> 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. Information about voter registrations in Michigan has long been available on the Secretary of State’s website.<sup>15</sup> Yet the RNC waited until March of a presidential election year to file its complaint and did so only after this Court rejected an analogous NVRA claim in *PILF*. Moreover, given the RNC’s delay, it cannot obtain any systematic relief before the 2024 elections regarding voters who may have moved. Federal law forbids canceling voter registrations based on a potential change of residence within 90 days of a federal election, 52 U.S.C. § 20507(c)(2), and Michigan has upcoming federal elections on August 6 and November 5, *see* ECF No. 19, PageID.274 (Sec’y Br. 4 n.2). Consequently, any systematic removals must be completed by May 8. *See id.* The RNC did not, however, seek preliminary or expedited relief. Thus, despite the RNC’s insistence that it brings this lawsuit to “protect[] the ability of ... voters” to “cast ... effective votes,” ECF No. 1, PageID.3 (Compl. ¶ 15), the only practical effect of this litigation is to sow doubt about the integrity of Michigan’s elections and generate talking points for future claims of voter fraud.

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<sup>14</sup> <https://www.wsj.com/politics/elections/trump-claims-2024-will-be-rigged-putting-republican-turnout-at-risk-830b213d>.

<sup>15</sup> *See* Michigan Dep’t of State, Michigan Voter Information Center, *Voter Registration Statistics*, <https://mvic.sos.state.mi.us/VoterCount/Index>.

**B. Meritless Claims Of Voter Fraud And Election Impropriety Themselves Undermine Public Confidence In Our Elections**

In reality, the greatest threat to public confidence in the integrity of our elections is not fraud or voter-roll maintenance, but unfounded attacks on our elections themselves. The recent “explosion of disinformation ... disrupt[s] the democratic process” because it “confuses and overwhelms voters.” Sanchez & Middlemass, *Misinformation Is Eroding the Public’s Confidence in Democracy*, Brookings Institution (July 26, 2022).<sup>16</sup> Accordingly, although Republican proponents of restrictive registration and voting laws “have traditionally argued that such laws are needed to police rampant voter fraud—a claim most experts call unfounded—some are now saying the perception of fraud, real or otherwise, is an equally serious problem, if not worse.” Wines, *One Rationale for Voter ID Debunked, G.O.P. Has Another*, N.Y. Times (Mar. 23, 2017).<sup>17</sup>

Recent research confirms the danger posed by these groundless claims. One recent peer-reviewed study “provide[d] new evidence” from a nationwide survey “demonstrating the corrosive effect of fraud claims ... on trust in the election system.” Berlinski et al., *The Effects of Unsubstantiated Claims of Voter Fraud on Confidence in Elections*, 10 J. Experimental Pol. Sci. 34, 34 (2023). Specifically, “unsubstantiated voter-fraud claims undermine confidence in elections, particularly when the claims are politically congenial.” *Id.* Unfortunately, “corrective messages from mainstream sources do *not* measurably reduce the damage these accusations inflict.” *Id.* As other researchers have likewise explained, one might expect that strengthening election security would reduce distrust in elections, but “public opinion is only weakly

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<sup>16</sup> <https://www.brookings.edu/articles/misinformation-is-eroding-the-publics-confidence-in-democracy/>.

<sup>17</sup> <https://www.nytimes.com/2017/03/23/us/election-fraud-voter-ids.html>.

responsive to changes in policy or outcomes,” making rhetorical changes by well-known public figures “crucial.” Bergeron-Boutin et al., *Communicating with Voters to Build Trust in the U.S. Election System*, MIT Election Data + Science Lab, at 1, 4 (Oct. 2023).<sup>18</sup> In other words, the spreading of misinformation about election integrity “has lasting implications on voters’ trust in election outcomes.” Sanchez & Middlemass, *supra* n.16.

Additional studies underscore how baseless fraud claims have a deleterious effect on the public’s confidence. Research shows that “[p]erceived problems in election administration, especially if these problems are highly advertised, exaggerated, or outright false, negatively affect voter confidence.” Suttman-Lea & Merivaki, *The Impact of Voter Education on Voter Confidence*, 22 Election L.J. 145, 147 (2023). The Court should reject the RNC’s manufactured claims of election impropriety.

### CONCLUSION

The Court should grant Defendants’ motion and dismiss the complaint with prejudice.

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<sup>18</sup> <https://electionlab.mit.edu/sites/default/files/2023-10/voter-trust.pdf>.

Date: May 6, 2024

Respectfully submitted,

/s/ Seth P. Waxman

Seth P. Waxman  
Christopher E. Babbitt  
Derek A. Woodman (P79205)  
Gary M. Fox  
Julie A. Welly  
WILMER CUTLER PICKERING  
HALE AND DORR LLP  
2100 Pennsylvania Avenue NW  
Washington, DC 20037  
(202) 663-6000  
seth.waxman@wilmerhale.com

Scott R. Eldridge (P66452)  
Wendolyn W. Richards (P67776)\*  
Erika L. Giroux (P81998)  
MILLER, CANFIELD, PADDOCK  
AND STONE, P.L.C.  
One Michigan Ave., Suite 900  
Lansing, Michigan 48933  
(517) 487-2070  
eldridge@millercanfield.com

*Counsel for Democratic National Committee*

*\*Admission to W.D. Mich. pending*

RETRIEVED FROM DEMOCRATIC NATIONAL COMMITTEE

## CERTIFICATE OF COMPLIANCE

In accordance with Local Rule 7.2(b)(ii), I certify that this brief complies with the word-count limitation set forth in Local Rule 7.2(b)(i). This brief contains 4,574 words as counted by Microsoft Word 365 processing software, version 2402.

Respectfully submitted,

/s/ Seth P. Waxman

Seth P. Waxman  
Christopher E. Babbitt  
Derek A. Woodman (P79205)  
Gary M. Fox  
Julie A. Welly  
WILMER CUTLER PICKERING  
HALE AND DORR LLP  
2100 Pennsylvania Avenue NW  
Washington, DC 20037  
(202) 663-6000  
seth.waxman@wilmerhale.com

Scott R. Eldridge (P66452)  
Wendolyn W. Richards (P67776)\*  
Erika L. Giroux (P81998)  
MILLER, CANFIELD, PADDOCK  
AND STONE, P.L.C.  
One Michigan Ave., Suite 900  
Lansing, Michigan 48933  
(517) 487-2070  
eldridge@millercanfield.com

*Counsel for Democratic National Committee*

*\*Admission to W.D. Mich. pending*

Date: May 6, 2024



### EXHIBIT LIST

- A. *Costantino v. City of Detroit*, No. 20-14780-AW (Mich. 3d Jud. Cir. Ct., Wayne Cnty. Nov. 13, 2020) (slip opinion).
- B. *Stoddard v. City Election Comm'n of Detroit*, No. 20-14604-CZ (Mich. 3d Jud. Cir. Ct., Wayne Cnty. Nov. 6, 2020) (slip opinion).
- C. *Donald J. Trump for President, Inc. v. Benson*, No. 20-225-MZ (Mich. Ct. Cl. Nov. 6, 2020) (slip opinion).

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# EXHIBIT A

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STATE OF MICHIGAN

IN THE THIRD JUDICIAL CIRCUIT COURT FOR THE COUNTY OF WAYNE

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

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

City of Detroit; Detroit Election  
Commission; Janice M. Winfrey,  
in her official capacity as the  
Clerk of the City of Detroit and  
the Chairperson and the Detroit  
Election Commission; Cathy Garrett,  
In her official capacity as the Clerk of  
Wayne County; and the Wayne County  
Board of Canvassers,  
Defendants.

\_\_\_\_\_ /

**OPINION & ORDER**

At a session of this Court  
Held on: November 13, 2020  
In the Coleman A. Young Municipal Center  
County of Wayne, Detroit, MI

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

This matter comes before the Court on Plaintiffs' motion for preliminary injunction, protective order, and a results audit of the November 3, 2020 election. The Court having read the parties' filing and heard oral arguments, finds:

With the exception of a portion of Jessy Jacob affidavit, all alleged fraudulent claims brought by the Plaintiffs related to activity at the TCF Center. Nothing was alleged to

have occurred at the Detroit Election Headquarters on West Grand Blvd. or at any polling place on November 3, 2020.

The Defendants all contend Plaintiffs cannot meet the requirements for injunctive relief and request the Court deny the motion.

When considering a petition for injunction relief, the Court must apply the following four-pronged test:

1. The likelihood the party seeking the injunction will prevail on the merits.
2. The danger the party seeking the injunction will suffer irreparable harm if the injunction is not granted.
3. The risk the party seeking the injunction would be harmed more by the absence an injunction than the opposing party would be by the granting of the injunction.
4. The harm to the public interest if the injunction is issued. *Davis v City of Detroit Financial Review Team*, 296 Mich. App. 568, 613; 821 NW2nd 896 (2012).

In the *Davis* opinion, the Court also stated that injunctive relief "represents an extraordinary and drastic use of judicial power that should be employed sparingly and only with full conviction of its urgent necessity." *Id.* at 612 fn 135 quoting *Senior Accountants, Analysts and Appraisers Association v Detroit*, 218 Mich. App. 263, 269; 553 NW2nd 679 (1996).

When deciding whether injunctive relief is appropriate MCR 3.310 (A)(4) states that the Plaintiffs bear the burden of proving the preliminary injunction should be granted. In cases of alleged fraud, the Plaintiff must state with particularity the circumstances constituting the fraud. MCR 2.112 (B) (1)

Plaintiffs must establish they will likely prevail on the merits. Plaintiffs submitted seven affidavits in support of their petition for injunctive relief claiming widespread voter

fraud took place at the TCF Center. One of the affidavits also contended that there was blatant voter fraud at one of the satellite offices of the Detroit City Clerk. An additional affidavit supplied by current Republican State Senator and former Secretary of State Ruth Johnson, expressed concern about allegations of voter fraud and urged “Court intervention”, as well as an audit of the votes.

In opposition to Plaintiffs’ assertion that they will prevail, Defendants offered six affidavits from individuals who spent an extensive period of time at the TCF Center. In addition to disputing claims of voter fraud, six affidavits indicated there were numerous instances of disruptive and intimidating behavior by Republican challengers. Some behavior necessitated removing Republican challengers from the TCF Center by police.

After analyzing the affidavits and briefs submitted by the parties, this Court concludes the Defendants offered a more accurate and persuasive explanation of activity within the Absent Voter Counting Board (AVCB) at the TCF Center.

Affiant Jessy Jacob asserts Michigan election laws were violated prior to November 3, 2020, when City of Detroit election workers and employees allegedly coached voters to vote for Biden and the Democratic Party. Ms. Jacob, a furloughed City worker temporarily assigned to the Clerk’s Office, indicated she witnessed workers and employees encouraging voters to vote a straight Democratic ticket and also witnessed election workers and employees going over to the voting booths with voters in order to encourage as well as watch them vote. Ms. Jacob additionally indicated while she was working at the satellite location, she was specifically instructed by superiors not to ask for driver’s license or any photo ID when a person was trying to vote.

The allegations made by Ms. Jacob are serious. In the affidavit, however, Ms. Jacob does not name the location of the satellite office, the September or October date these

acts of fraud took place, nor does she state the number of occasions she witnessed the alleged misconduct. Ms. Jacob in her affidavit fails to name the city employees responsible for the voter fraud and never told a supervisor about the misconduct.

Ms. Jacob's information is generalized. It asserts behavior with no date, location, frequency, or names of employees. In addition, Ms. Jacob's offers no indication of whether she took steps to address the alleged misconduct or to alter any supervisor about the alleged voter fraud. Ms. Jacob only came forward after the unofficial results of the voting indicated former Vice President Biden was the winner in the state of Michigan.

Ms. Jacob also alleges misconduct and fraud when she worked at the TCF Center. She claims supervisors directed her not to compare signatures on the ballot envelopes she was processing to determine whether or not they were eligible voters. She also states that supervisors directed her to "pre-date" absentee ballots received at the TCF Center on November 4, 2020. Ms. Jacob ascribes a sinister motive for these directives. Evidence offered by long-time State Elections Director Christopher Thomas, however, reveals there was no need for comparison of signatures at the TCF Center because eligibility had been reviewed and determined at the Detroit Election Headquarters on West Grand Blvd. Ms. Jacob was directed not to search for or compare signatures because the task had already been performed by other Detroit city clerks at a previous location in compliance with MCL 168.765a. As to the allegation of "pre-dating" ballots, Mr. Thomas explains that this action completed a data field inadvertently left blank during the initial absentee ballot verification process. Thomas Affidavit, #12. The entries reflected the date the City received the absentee ballot. *Id.*

The affidavit of current State Senator and former Secretary of State Ruth Johnson essentially focuses on the affidavits of Ms. Jacob and Zachery Larsen. Senator Johnson believed the information was concerning to the point that judicial intervention was needed and an audit of the ballots was required. Senator Johnson bases her assessment entirely on the contents of the Plaintiffs' affidavits and Mr. Thomas' affidavit. Nothing in Senator Johnson's affidavit indicates she was at the TCF Center and witnessed the established protocols and how the AVCB activity was carried out. Similarly, she offers no explanation as to her apparent dismissal of Mr. Thomas' affidavit. Senator Johnson's conclusion stands in significant contrast to the affidavit of Christopher Thomas, who was present for many hours at TCF Center on November 2, 3 and 4. In this Court's view, Mr. Thomas provided compelling evidence regarding the activity at the TCF Center's AVCB workplace. This Court found Mr. Thomas' background, expertise, role at the TCF Center during the election, and history of bipartisan work persuasive.

Affiant Andrew Sitto was a Republican challenger who did not attend the October 29<sup>th</sup> walk-through meeting provided to all challengers and organizations that would be appearing at the TCF Center on November 3 and 4, 2020. Mr. Sitto offers an affidavit indicating that he heard other challengers state that several vehicles with out-of-state license plates pulled up to the TCF Center at approximately 4:30 AM on November 4<sup>th</sup>. Mr. Sitto states that "tens of thousands of ballots" were brought in and placed on eight long tables and, unlike other ballots, they were brought in from the rear of the room. Sitto also indicated that every ballot that he saw after 4:30 AM was cast for former Vice President Biden.

Mr. Sitto's affidavit, while stating a few general facts, is rife with speculation and guess-work about sinister motives. Mr. Sitto knew little about the process of the absentee voter counting board activity. His sinister motives attributed to the City of Detroit were negated by Christopher Thomas' explanation that all ballots were delivered to the back of Hall E at the TCF Center. Thomas also indicated that the City utilized a rental truck to deliver ballots. There is no evidentiary basis to attribute any evil activity by virtue of the city using a rental truck with out-of-state license plates.

Mr. Sitto contends that tens of thousands of ballots were brought in to the TCF Center at approximately 4:30 AM on November 4, 2020. A number of ballots speculative on Mr. Sitto's part, as is his speculation that all of the ballots delivered were cast for Mr. Biden. It is not surprising that many of the votes being observed by Mr. Sitto were votes cast for Mr. Biden in light of the fact that former Vice President Biden received approximately 220,000 more votes than President Trump.

Daniel Gustafson, another affiant, offers little other than to indicate that he witnessed "large quantities of ballots" delivered to the TCF Center in containers that did not have lids were not sealed, or did not have marking indicating their source of origin. Mr. Gustafson's affidavit is another example of generalized speculation fueled by the belief that there was a Michigan legal requirement that all ballots had to be delivered in a sealed box. Plaintiffs have not supplied any statutory requirement supporting Mr. Gustafson's speculative suspicion of fraud.

Patrick Colbeck's affidavit centered around concern about whether any of the computers at the absent voter counting board were connected to the internet. The answer given by a David Nathan indicated the computers were not connected to the



internet. Mr. Colbeck implies that there was internet connectivity because of an icon that appeared on one of the computers. Christopher Thomas indicated computers were not connected for workers, only the essential tables had computer connectivity. Mr. Colbeck, in his affidavit, speculates that there was in fact Wi-Fi connection for workers use at the TCF Center. No evidence supports Mr. Colbeck's position.

This Court also reads Mr. Colbeck's affidavit in light of his pre-election day Facebook posts. In a post before the November 3, 2020 election, Mr. Colbeck stated on Facebook that the Democrats were using COVID as a cover for Election Day fraud. His predilection to believe fraud was occurring undermines his credibility as a witness.

Affiant Melissa Carone was contracted by Dominion Voting Services to do IT work at the TCF Center for the November 3, 2020 election. Ms. Carone, a Republican, indicated that she "witnessed nothing but fraudulent actions take place" during her time at the TCF Center. Offering generalized statements, Ms. Carone described illegal activity that included, untrained counter tabulating machines that would get jammed four to five times per hour, as well as alleged cover up of loss of vast amounts of data. Ms. Carone indicated she reported her observations to the FBI.

Ms. Carone's description of the events at the TCF Center does not square with any of the other affidavits. There are no other reports of lost data, or tabulating machines that jammed repeatedly every hour during the count. Neither Republican nor Democratic challengers nor city officials substantiate her version of events. The allegations simply are not credible.

Lastly, Plaintiffs rely heavily on the affidavit submitted by attorney Zachery Larsen. Mr. Larsen is a former Assistant Attorney General for the State of Michigan who alleged mistreatment by city workers at the TCF Center, as well as fraudulent activity by election workers. Mr. Larsen expressed concern that ballots were being processed without confirmation that the voter was eligible. Mr. Larsen also expressed concern that he was unable to observe the activities of election official because he was required to stand six feet away from the election workers. Additionally, he claimed as a Republican challenger, he was excluded from the TCF Center after leaving briefly to have something to eat on November 4<sup>th</sup>. He expressed his belief that he had been excluded because he was a Republican challenger.

Mr. Larsen's claim about the reason for being excluded from reentry into the absent voter counting board area is contradicted by two other individuals. Democratic challengers were also prohibited from reentering the room because the maximum occupancy of the room had taken place. Given the COVID-19 concerns, no additional individuals could be allowed into the counting area. Democratic party challenger David Jaffe and special consultant Christopher Thomas in their affidavits both attest to the fact that neither Republican nor Democratic challengers were allowed back in during the early afternoon of November 4<sup>th</sup> as efforts were made to avoid overcrowding.

Mr. Larsen's concern about verifying the eligibility of voters at the AVCB was incorrect. As stated earlier, voter eligibility was determined at the Detroit Election Headquarters by other Detroit city clerk personnel.

The claim that Mr. Larsen was prevented from viewing the work being processed at the tables is simply not correct. As seen in a City of Detroit exhibit, a large monitor was

at the table where individuals could maintain a safe distance from poll workers to see what exactly was being performed. Mr. Jaffe confirmed his experience and observation that efforts were made to ensure that all challengers could observe the process.

Despite Mr. Larsen's claimed expertise, his knowledge of the procedures at the AVCB paled in comparison to Christopher Thomas'. Mr. Thomas' detailed explanation of the procedures and processes at the TCF Center were more comprehensive than Mr. Larsen's. It is noteworthy, as well, that Mr. Larsen did not file any formal complaint as the challenger while at the AVCB. Given the concerns raised in Mr. Larsen's affidavit, one would expect an attorney would have done so. Mr. Larsen, however, only came forward to complain after the unofficial vote results indicated his candidate had lost.

In contrast to Plaintiffs' witnesses, Christopher Thomas served in the Secretary of State's Bureau of Elections for 40 years, from 1977 through 2017. In 1981, he was appointed Director of Elections and in that capacity implemented Secretary of State Election Administration Campaign Finance and Lobbyist disclosure programs. On September 3, 2020 he was appointed as Senior Advisor to Detroit City Clerk Janice Winfrey and provided advice to her and her management staff on election law procedures, implementation of recently enacted legislation, revamped absent voter counting boards, satellite offices and drop boxes. Mr. Thomas helped prepare the City of Detroit for the November 3, 2020 General Election.

As part of the City's preparation for the November 3<sup>rd</sup> election Mr. Thomas invited challenger organizations and political parties to the TCF Center on October 29, 2020 to have a walk-through of the entire absent voter counting facility and process. None of Plaintiff challenger affiants attended the session.

On November 2, 3, and 4, 2020, Mr. Thomas worked at the TCF Center absent voter counting boards primarily as a liaison with Challenger Organizations and Parties. Mr. Thomas indicated that he “provided answers to questions about processes at the counting board’s resolved dispute about process and directed leadership of each organization or party to adhere to Michigan Election Law and Secretary of State procedures concerning the rights and responsibilities of challengers.”

Additionally, Mr. Thomas resolved disputes about the processes and satisfactorily reduced the number of challenges raised at the TCF Center.

In determining whether injunctive relief is required, the Court must also determine whether the Plaintiffs sustained their burden of establishing they would suffer irreparable harm if an injunction were not granted. Irreparable harm does not exist if there is a legal remedy provided to Plaintiffs.

Plaintiffs contend they need injunctive relief to obtain a results audit under Michigan Constitution Article 2, § IV, Paragraph 1 (h) which states in part “the right to have the results of statewide elections audited, in such a manner as prescribed by law, to ensure the accuracy and integrity of the law of elections.” Article 2, § IV, was passed by the voters of the state of Michigan in November, 2018.

A question for the Court is whether the phrase “in such a manner as prescribed by law” requires the Court to fashion a remedy by independently appointing an auditor to examine the votes from the November 3, 2020 election before any County certification of votes or whether there is another manner “as prescribed by law”.

Following the adoption of the amended Article 2, § IV, the Michigan Legislature amended MCL 168.31a effective December 28, 2018. MCL 168.31a provides for the Secretary of State and appropriate county clerks to conduct a results audit of at least

one race in each audited precinct. Although Plaintiffs may not care for the wording of the current MCL 168.31a, a results audit has been approved by the Legislature. Any amendment to MCL 168.31a is a question for the voice of the people through the legislature rather than action by the Court.

It would be an unprecedented exercise of judicial activism for this Court to stop the certification process of the Wayne County Board of Canvassers. The Court cannot defy a legislatively crafted process, substitute its judgment for that of the Legislature, and appoint an independent auditor because of an unwieldy process. In addition to being an unwarranted intrusion on the authority of the Legislature, such an audit would require the rest of the County and State to wait on the results. Remedies are provided to the Plaintiffs. Any unhappiness with MCL 168.31a calls for legislative action rather than judicial intervention.

As stated above, Plaintiffs have multiple remedies at law. Plaintiffs are free to petition the Wayne County Board of Canvassers who are responsible for certifying the votes. (MCL 168.801 and 168.821 et seq.) Fraud claims can be brought to the Board of Canvassers, a panel that consists of two Republicans and two Democrats. If dissatisfied with the results, Plaintiffs also can avail themselves of the legal remedy of a recount and a Secretary of State audit pursuant to MCL 168.31a.

Plaintiff's petition for injunctive relief and for a protective order is not required at this time in light of the legal remedy found at 52 USC § 20701 and Michigan's General Schedule #23 – Election Records, Item Number 306, which imposes a statutory obligation to preserve all federal ballots for 22 months after the election.

In assessing the petition for injunctive relief, the Court must determine whether there will be harm to the Plaintiff if the injunction is not granted, as Plaintiffs' existing legal

remedies would remain in place unaltered. There would be harm, however, to the Defendants if the Court were to grant the requested injunction. This Court finds that there are legal remedies for Plaintiffs to pursue and there is no harm to Plaintiffs if the injunction is not granted. There would be harm, however, to the Defendants if the injunction is granted. Waiting for the Court to locate and appoint an independent, nonpartisan auditor to examine the votes, reach a conclusion and then finally report to the Court would involve untold delay. It would cause delay in establishing the Presidential vote tabulation, as well as all other County and State races. It would also undermine faith in the Electoral System.

Finally, the Court has to determine would there be harm to the public interest. This Court finds the answer is a resounding yes. Granting Plaintiffs' requested relief would interfere with the Michigan's selection of Presidential electors needed to vote on December 14, 2020. Delay past December 14, 2020 could disenfranchise Michigan voters from having their state electors participate in the Electoral College vote.

### Conclusion

Plaintiffs rely on numerous affidavits from election challengers who paint a picture of sinister fraudulent activities occurring both openly in the TCF Center and under the cloak of darkness. The challengers' conclusions are decidedly contradicted by the highly-respected former State Elections Director Christopher Thomas who spent hours and hours at the TCF Center November 3<sup>rd</sup> and 4<sup>th</sup> explaining processes to challengers and resolving disputes. Mr. Thomas' account of the November 3<sup>rd</sup> and 4<sup>th</sup> events at the TCF Center is consistent with the affidavits of challengers David Jaffe, Donna MacKenzie and Jeffrey Zimmerman, as well as former Detroit City Election Official, now contractor, Daniel Baxter and City of Detroit Corporation Counsel Lawrence Garcia.

Perhaps if Plaintiffs' election challenger affiants had attended the October 29, 2020 walk-through of the TCF Center ballot counting location, questions and concerns could have been answered in advance of Election Day. Regrettably, they did not and, therefore, Plaintiffs' affiants did not have a full understanding of the TCF absent ballot tabulation process. No formal challenges were filed. However, sinister, fraudulent motives were ascribed to the process and the City of Detroit. Plaintiffs' interpretation of events is incorrect and not credible.

Plaintiffs are unable to meet their burden for the relief sought and for the above mentioned reasons, the Plaintiffs' petition for injunctive relief is DENIED. The Court further finds that no basis exists for the protective order for the reasons identified above. Therefore, that motion is DENIED. Finally, the Court finds that MCL 168.31a governs the audit process. The motion for an independent audit is DENIED.

It is so ordered.

This is not a final order and does not close the case.

November 13, 2020

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

# EXHIBIT B

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STATE OF MICHIGAN

IN THE THIRD JUDICIAL CIRCUIT COURT FOR THE COUNTY OF WAYNE

Sarah Stoddard and  
Election Integrity Fund,

v

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

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

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**OPINION & ORDER**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

This Court finds that it is mere speculation by plaintiffs that hundreds or thousands of ballots have, in fact, been changed and presumably falsified. Even with this assertion, plaintiffs do have several other remedies available. Plaintiffs are entitled to bring their challenge to the Wayne County Board of Canvassers pursuant to MCL 168.801 *et seq.* and MCL 168.821 *et seq.* Additionally, plaintiffs can file for a recount of the vote if they believe the canvass of the votes suffers from fraud or mistake. MCL168.865-168.868. Thus, this Court cannot conclude that plaintiffs would experience irreparable harm if a preliminary injunction were not issued.

Additionally, this Court must consider whether plaintiffs would be harmed more by the absence of injunctive relief than the defendants would be harmed with one.


If this Court denied plaintiffs' request for injunctive relief, the statutory ability to seek relief from the Wayne County Board of Canvassers (MCL 168.801 *et seq.* and MCL 168.821 *et seq.*) and also through a recount (MCL 168.865-868) would be available. By contrast, injunctive relief granted in this case could potentially delay the counting of ballots in this County and therefore in the state. Such delays could jeopardize Detroit's, Wayne County's, and Michigan's ability to certify the election. This in turn could impede the ability of Michigan's elector's to participate in the Electoral College.

Finally, the Court must consider the harm to the public interest. A delay in counting and finalizing the votes from the City of Detroit without any evidentiary basis for doing so, engenders a lack of confidence in the City of Detroit to conduct full and fair elections. The City of Detroit should not be harmed when there is no evidence to support accusations of voter fraud.

Clearly, every legitimate vote should be counted. Plaintiffs contend this has not been done in the 2020 Presidential election. However, plaintiffs have made only a claim but have offered no evidence to support their assertions. Plaintiffs are unable to meet their burden for the relief sought and for the above-mentioned reasons, the plaintiffs' petition for injunctive relief is denied.

It is so ordered.

November 6, 2020  
Date

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

# EXHIBIT C

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**STATE OF MICHIGAN**  
**COURT OF CLAIMS**

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

**OPINION AND ORDER**

Plaintiffs,

v

Case No. 20-000225-MZ

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

Hon. Cynthia Diane Stephens

Defendants.  
\_\_\_\_\_ /

Pending before the Court are two motions. The first is plaintiffs' November 4, 2020 emergency motion for declaratory relief under MCR 2.605(D). For the reasons stated on the record and incorporated herein, the motion is DENIED. Also pending before the Court is the motion to intervene as a plaintiff filed by the Democratic National Committee. Because the relief requested by plaintiffs in this case will not issue, the Court DENIES as moot the motion to intervene.

According to the allegations in plaintiffs' complaint, plaintiff Eric Ostegren is a credentialed election challenger under MCL 168.730. Paragraph 2 of the complaint alleges that plaintiff Ostegren was "excluded from the counting board during the absent voter ballot review process." The complaint does not specify when, where, or by whom plaintiff was excluded. Nor does the complaint provide any details about why the alleged exclusion occurred.

The complaint contains allegations concerning absent voter ballot drop-boxes. Plaintiffs allege that state law requires that ballot containers must be monitored by video surveillance. Plaintiff contends that election challengers must be given an opportunity to observe video of ballot drop-boxes with referencing the provision(s) of the statute that purportedly grant such access, . See MCL 168.761d(4)(c).

Plaintiffs' emergency motion asks the Court to order all counting and processing of absentee ballots to cease until an "election inspector" from each political party is allowed to be present at every absent voter counting board, and asks that this court require the Secretary of State to order the immediate segregation of all ballots that are not being inspected and monitored as required by law. Plaintiffs argue that the Secretary of State's failure to act has undermined the rights of all Michigan voters. While the advocate at oral argument posited the prayer for relief as one to order "meaningful access" to the ballot tabulation process, plaintiffs have asked the Court to enter a preliminary injunction to enjoin the counting of ballots. A party requesting this "extraordinary and drastic use of judicial power" must convince the Court of the necessity of the relief based on the following factors:

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

As stated on the record at the November 5, 2020 hearing, plaintiffs are not entitled to the extraordinary form of emergency relief they have requested.

#### I. SUBSTANTIAL LIKELIHOOD OF SUCCESS ON THE MERITS

#### A. OSTEGREN CLAIM

Plaintiff Ostegren avers that he was removed from an absent voter counting board. It is true that the Secretary of State has general supervisory control over the conduct of elections. See MCL 168.21; MCL 168.31. However, the day-to-day operation of an absent voter counting board is controlled by the pertinent city or township clerk. See MCL 168.764d. The complaint does not allege that the Secretary of State was a party to or had knowledge of, the alleged exclusion of plaintiff Ostegren from the unnamed absent voter counting board. Moreover, the Court notes that recent guidance from the Secretary of State, as was detailed in matter before this Court in *Carra et al v Benson et al*, Docket No. 20-000211-MZ, expressly advised local election officials to admit credentialed election challengers, provided that the challengers adhered to face-covering and social-distancing requirements. Thus, allegations regarding the purported conduct of an unknown local election official do not lend themselves to the issuance of a remedy against the Secretary of State.

#### B. CONNARN AFFIDAVIT

Plaintiffs have submitted what they refer to as “supplemental evidence” in support of their request for relief. The evidence consists of: (1) an affidavit from Jessica Connarn, a designated poll watcher; and (2) a photograph of a handwritten yellow sticky note. In her affidavit, Connarn avers that, when she was working as a poll watcher, she was contacted by an unnamed poll worker who was allegedly “being told by other hired poll workers at her table to change the date the ballot was received when entering ballots into the computer.” She avers that this unnamed poll worker later handed her a sticky note that says “entered receive date as 11/2/20 on 11/4/20.” Plaintiffs contend that this documentary evidence confirms that some unnamed persons engaged in



fraudulent activity in order to count invalid absent voter ballots that were received after election day.

This “supplemental evidence” is inadmissible as hearsay. The assertion that Connarn was informed by an unknown individual what “other hired poll workers at her table” had been told is inadmissible hearsay within hearsay, and plaintiffs have provided no hearsay exception for either level of hearsay that would warrant consideration of the evidence. See MRE 801(c). The note—which is vague and equivocal—is likewise hearsay. And again, plaintiffs have not presented an argument as to why the Court could consider the same, given the general prohibitions against hearsay evidence. See *Ykimoff v Foote Mem Hosp*, 285 Mich App 80, 105; 776 NW2d 114 (2009). Moreover, even overlooking the evidentiary issues, the Court notes that there are still no allegations implicating the Secretary of State’s general supervisory control over the conduct of elections. Rather, any alleged action would have been taken by some unknown individual at a polling location.

### C. BALLOT BOX VIDEOS

It should be noted at the outset that the statute providing for video surveillance of drop boxes only applies to those boxes that were installed after October 1, 2020. See MCL 168.761d(2). There is no evidence in the record whether there are any boxes subject to this requirement, how many there are, or where they are. The plaintiffs have not cited any statutory authority that requires any video to be subject to review by election challengers. They have not presented this Court with any statute making the Secretary of State responsible for maintaining a database of such boxes. The clear language of the statute directs that “[t]he city or township clerk must use video monitoring of that drop box to ensure effective monitoring of that drop box.” MCL 168.761d(4)(c). Additionally, plaintiffs have not directed the Court’s attention to any authority directing the

Secretary of State to segregate the ballots that come from such drop-boxes, thereby undermining plaintiffs' request to have such ballots segregated from other ballots, and rendering it impossible for the Court to grant the requested relief against this defendant. Not only can the relief requested not issue against the Secretary of State, who is the only named defendant in this action, but the factual record does not support the relief requested. As a result, plaintiffs are unable to show a likelihood of success on the merits.

## II. MOOTNESS

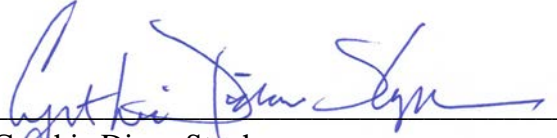
Moreover, even if the requested relief could issue against the Secretary of State, the Court notes that the complaint and emergency motion were not filed until approximately 4:00 p.m. on November 4, 2020—despite being announced to various media outlets much earlier in the day. By the time this action was filed, the votes had largely been counted, and the counting is now complete. Accordingly, and even assuming the requested relief were available against the Secretary of State—and overlooking the problems with the factual and evidentiary record noted above—the matter is now moot, as it is impossible to issue the requested relief. See *Gleason v Kincaid*, 323 Mich App 308, 314, 917 NW2d 685 (2018)

IT IS HEREBY ORDERED that plaintiff's November 4, 2020 emergency motion for declaratory judgment is DENIED.

IT IS HEREBY FURTHER ORDERED that proposed intervenor's motion to intervene is DENIED as MOOT.

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

November 6, 2020

  
Cynthia Diane Stephens  
Judge, Court of Claims

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