UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

REPUBLICAN NATIONAL COMMITTEE, DONALD J. TRUMP FOR PRESIDENT 2024, INC., MICHIGAN REPUBLICAN PARTY, and RYAN KIDD,

Plaintiffs,

v

GRETCHEN WHITMER, in her official capacity as Governor of Michigan, 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, U.S. SMALL BUSINESS ADMINISTRATION, ISABEL GUZMAN, in her official capacity as Administrator of the Small Business Administration, DEPARTMENT OF VETERANS AFFAIRS, and, DENIS McDONOUGH, in his official capacity as Secretary of Veterans Affairs,

Defendants.

CASE NO. 1:24−cv−00720−PLM−SJB

HON. PAUL L. MALONEY

Plaintiffs' Reply to Defendants Governor Whitmer, Secretary of State Benson, and Director of Elections Brater's Response to Motion for Summary Judgment

*****Oral Argument Requested*****

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Plaintiffs' Reply to Defendants Governor Whitmer, et al.'s Response to Motion for Summary Judgement

The State Defendants argue that Plaintiffs are not entitled to summary judgment because (1) "Plaintiffs allege only a violation of state law against the State Defendants, [so] the Eleventh Amendment bars bringing this claim in federal court,"[1] (2) Plaintiffs lack standing, and (3) Plaintiffs' argument fails on the merits based on the State Defendants' belief that they can designate voter registration agencies ("VRAs") without input from the legislature. These arguments all lack merit.

A. The Eleventh Amendment does not bar Plaintiffs' claim.

Plaintiffs previously briefed the Eleventh Amendment in their Response to the State Defendants' Motion to Dismiss.[2] In short, Plaintiffs bring their claim within *Ex parte Young,* 209 U.S. 123; 28 S.Ct. 441 (1908),[3] and Plaintiffs have explained why the State Defendants' actions violate both Michigan *and federal* law.[4] Again, the National Voter Registration Act of 1993 ("NVRA") presupposes that state actors follow their own States' laws.[5] And, if States don't "establish procedures"[6] to designate VRAs, they are not in compliance with the Act.

The word "establish" means "[t]o set up on a secure or permanent basis; to found (a government, an institution; in modern use often, a house of business)," or "[t]o set up or bring about permanently (a state of things)."[7] And "the dictionary defines 'procedure' as a series of steps followed in a regular orderly definite way."[8] Other dictionary definitions of "procedure" include "a particular way of doing or of going about the accomplishment of something," a "particular course of action, a "particular step adopted for doing

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[1] ECF No. 38, PageID.448.
[2] See ECF No. 36, PageID.423-424.
[3] See *Id*.
[4] See ECF No. 36, PageID.435-438.
[5] See 52 U.S.C. § 20503(a).
[6] *Id.*
[7] *Ranchers Cattlemen Action Legal Fund United Stockgrowers of Am. v. United States Dep't of Agric.,* 35 F.4th 1225, 1242-1243 (10th Cir. 2022) (citation omitted).
[8] *Owen v. I.C. Sys., Inc.,* 629 F.3d 1263, 1272 (11th Cir. 2011) (cleaned up).

or accomplishing something," or a "traditional, customary, or otherwise established or accepted way of doing things."[9] This means that the State Defendants' failure to follow "established" State "procedures," in their attempts to designate Small Business Administration ("SBA") and Department of Veterans Affairs ("VA") as VRAs clearly violates the NVRA.

There is nothing "established" about the Michigan Governor dusting off a 28-year-old Executive Order that none of her predecessors had ever invoked and relying upon it to designate federal agencies as VRAs via Executive Directives. Designating VRAs in this matter – particularly where all prior VRAs had been designated pursuant to specific statutory authority - is not part of any "series of steps followed in a regular orderly definite way." It's completely ad hoc. So is the Secretary of State's contract with the SBA - something which wasn't contemplated or authorized by either ED 1995-1 or M.C.L. § 168.509n. This appears to have been a practice invented out of whole cloth in response to President Biden's 2021 Executive Order, not an act taken as part of any "established procedure."

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Under the NVRA, "each State *shall* establish procedures…."[10] When used in a statute, the word "shall" creates "an obligation impervious to judicial discretion."[11] "Unlike the word 'may,' which implies discretion, the word 'shall' usually connotes a requirement."[12] Indeed, the use of "shall" leaves "no place for the exercise of discretion…."[13] This only leaves two possibilities. Either the designations of the SBA and VA violated the NVRA because they were not made pursuant to the procedures established by the Michigan Legislature. Or, if the ultra vires actions of the Governor and Secretary of State are allowed to stand, it would mean that Michigan has no "established procedures" for designating VRAs, which is still a violation § 20503(a).

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[9] *Jennison v. Providence St. Vincent Med. Ctr.,* 174 Or. App. 219, 225 n.9; 25 P.3d 358 (2001).
[10] 52 U.S.C. § 20503(a) (emphasis added).
[11] *Smith v. Spizzirri,* 601 U.S. 472, 476; 144 S. Ct. 1173 (2024) (cleaned up).
[12] *Id.* (citation omitted).
[13] *Id.* (citation omitted).

These designations also violate the NVRA because § 20503(a) and § 20506 require "each *State*" to make the designations. The word "State" must read in light of the fact that when it enacted the NVRA, Congress was exercising its power under the Elections Clause.[14] The Elections Clause "imposes" on "state *legislatures* the 'duty' to prescribe rules governing federal elections."[15] It follows that, for purposes of the NVRA, "each *State*" means the legislature of each state, and not executive officers or officials. So, unless designated by the Legislature – or pursuant to a grant of authority from the Legislature – the designation has not been made by the "State" as required by the NVRA. Consequently, the State Defendants' attempt to designate SBA and VA as VRAs without any grant of authority from the Legislature means that the attempted designations violate both Michigan law *and the NVRA*.

B. Plaintiffs have standing.

Plaintiffs also briefed standing in their Response to the State Defendants' Motion to Dismiss.[16] In response, the State Defendants conflate the various motions that are before this Court. For example, the State Defendants assert that "mere allegations" of injury are "insufficient to carry [Plaintiffs] past summary judgment."[17] But no Defendant has moved for summary judgment; both groups of Defendants have filed Motions to Dismiss.

To the extent the State Defendants - in response to *the Plaintiffs'* motion for summary judgment - improperly call for standing proofs, there is ample evidence in the public record that these are calculated political maneuvers, designed to increase *Democrat* votes (and thus injure the Plaintiffs). As Rep. María Elvira Salazar (R-FL) explained in a June 2024 press release, "the House Committee on Small Business retrieved a video recording of an SBA Special Advisor alleging that SBA Administrator Isabel Guzman

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[14] *Miller,* 129 F.3d at 836.
[15] *Moore v. Harper,* 600 U.S. 1, 10; 143 S. Ct. 2065 (2023) (emphasis added).
[16] See ECF No. 36, PageID.418-422.
[17] ECF No. 38, PageID.462.

was indirectly campaigning for President Joe Biden."[18] "At the same time, SBA press releases also indicated Administrator Guzman traveled to several critical battleground states, including Michigan, and invited Democratic Members of Congress nearly 8 times more frequently than Republican Members."[19] "The Committee also released maps that overlay former SBA events, census data, Michigan Department of State data, and publicly reported information of Democrat-targeted voter blocs."[20] An investigation by the House Small Business Committee also found "that 22 out of 25 SBA outreach events from January to April have taken place in counties with the highest population of Democratic National Committee (DNC) target demographics."[21] Again, this is something that the SBA has never done before,[22] and they are doing it in response to President Biden's Executive Order 14019,[23] and in conjunction with Michigan's Democratic Governor and Secretary of State.

The VA has likewise never been involved in voter registration prior to its recent collaboration with Michigan's Democratic Governor and Secretary of State – a step also taken in response to President Biden's Executive Order 14019.[24] "For VA's entire existence, it has never operated as a voter registration agency, until this executive order."[25] As the House Committee on Veterans' Affairs recently noted, "in 2008 California asked V.A. to become a voter registration agency. [The VA declined] because becoming a voter registration agency would … diminish the agency's ability to fulfill its mission of providing medical care

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[18] <https://salazar.house.gov/media/press-releases/salazar-exposes-sbas-voter-registration-scheme-michigan-2024-elections> (accessed October 2, 2024).
[19] *Id.*
[20] *Id.*
[21] *Id.* See also <https://www.congress.gov/event/118th-congress/house-event/LC73100/text> (accessed October 2, 2024) (statement by Rep. Celeste Maloy (R-UT), "[t]hey are registering voters, not nationwide but in swing states and specifically in very blue parts of those swing states.").
[22] <https://www.sba.gov/article/2024/03/19/sba-administrator-guzman-announces-agencys-first-ever-voter-registration-agreement-michigan> (accessed October 2, 2024).
[23] *Id.* A court may take judicial notice of congressional testimony and House Committee reports. See *Dingle v. Bioport Corp.,* 388 F.3d 209, 211 (6th Cir. 2004).
[24] See ECF No. 34, Vet Voice's Amicus Brief, PageID.385.
[25] <https://veterans.house.gov/news/documentsingle.aspx?DocumentID=6540> (accessed October 2, 2024).

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and benefits to veterans…."[26] "If this was not concerning enough, the Biden-Harris Administration, which planned and executed all aspects of the executive order, refuses to share the strategic plans that V.A., and every other agency, submitted to the Biden-Harris administration."[27] Committee Chairman Mike Bost (R-IL) "question[ed] why Michigan is VA's focus despite [Michigan] having the 4th highest percentage of registered voters as a share of the voter population in the 2022 election."[28] "Michigan is of course a crucial swing state in the 2024 election," but the VA "isn't doing voter registration in all of Michigan."[29] Rather, Rep. Bost explained that the "VA is only registering voters in Saginaw and Detroit at facilities that cater to veterans living in the swing counties that have historically determined whether Michigan will go red or blue on November 5th."[30] The VA "is not focused on registering veterans to vote in … in northern Michigan, or the west side of the state outside Grand Rapids."[31] The comments of Rep. Salazar & Rep. Bost illustrate that Plaintiffs' injuries are far more than speculative. Rather, Defendants' actions are putting the Trump Campaign—and the Republican Party—at a distinct competitive disadvantage. Indeed, these facts are beyond reasonable dispute.

Against this backdrop, it is understandable why the Plaintiffs view the State Defendants' designation of these new VRAs with a jaundiced eye. Indeed, in just the last few months the State Defendants have (1) tried to significantly change Michigan election laws under the guise of a "manual," (2) sought to immediately enact administrative rules that would limit recounts, even though the enabling legislation won't take effect until months after the election, (3) resisted, on mootness and standing grounds, litigation to clean up the voter rolls, and (4) taken extraordinary measures to keep certain Presidential candidates off and

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[26] *Id.*
[27] *Id.*
[28] *Id.*
[29] *Id.*
[30] *Id.*
[31] *Id.*

certain candidates on the ballot.[32] And all of this is happening in the midst of unprecedented "border crisis" and the resulting concerns about ineligible persons casting votes.[33]

As Plaintiffs noted previously, "[g]etting standing right is particularly important in election cases."[34] An overly narrow view of standing, like the one espoused by the State Defendants, "threatens to create dangerous precedent which would improperly prevent full consideration of the merits of future meritorious voting rights and election suits."[35] For reasons previously explained, this Court should reject that approach.[36] In any event, the State Defendants' standing arguments fail because Plaintiffs pled cognizable theories of "organizational standing"/resource allocation, "competitive standing," "associational standing" and Mr. Kidd's "particularized" injury in his capacity as the elected clerk of Georgetown Township.[37]

Finally, the State Defendants' position largely "begs the question"[38] by presupposing that Plaintiffs' are wrong on the merits.[39] They aren't, for the reasons explained below.

C. Plaintiffs' Complaint states violations of federal law by the State Defendants.

The State Defendants' interpretation of the statutory and Constitutional scheme is simply incorrect. Under Michigan's Constitution, "the legislative power of the State of Michigan is vested in a senate and a house of representatives."[40] Consistent with this arrangement, "the Legislature has the constitutional authority under Const. 1963, art. 2, § 4(2) to enact laws to preserve the purity of elections, to guard against

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[32] See ECF No. 36, PageID.411, gathering cases.
[33] See *Id*.
[34] Mulroy, *Baby & Bathwater: Standing in Election Cases After 2020,* 126 Dick. L. Rev. 9, 10 (2021).
[35] *Baby & Bathwater,* 126 Dick. L. Rev. at 9-10.
[36] See ECF No. 36, PageID.418-422.
[37] ECF No. 1, PageID.6, ¶ 22. M.C.L. § 168.509w(1)-(2) states that Mr. Kidd "shall do all of the following": "[v]alidate [an] application in the manner prescribed by the secretary of state," "[i]ssue a receipt to the applicant verifying the acceptance of the application," and "transmit the application … to the clerk of the county, city, or township where the applicant resides."
[38] "The fallacy of begging the question consists in taking for granted precisely what is in dispute, in passing off as an argument what is really no more than an assertion of your position." *Wilburn v. Kentucky*, 312 S.W.3d 321, 334 (Ky. 2010) (Noble, J., dissenting).
[39] Standing in no way depends on the merits of the Plaintiffs' case. See ECF No. 36, PageID.422.
[40] Michigan Const. 1963, art. 4, § 1.

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abuses of the elective franchise, and to provide for a system of voter registration and absentee voting."[41] This is consistent with federal law; under the Elections Clause, state legislatures are the entities "assigned particular authority by the Federal Constitution."[42]

Under Michigan's Constitution, "[t]he executive power is vested in the governor."[43] But "[t]he governor has no power to make laws."[44] The governor only has the authority to it given by the Michigan Constitution or the Legislature.[45] "The apportionment of power, authority and duty to the governor, is either made by the people in the constitution, or by the Legislature in making laws under it."[46]

After Congress enacted the NVRA in 1993, the Michigan Legislature adopted laws to conform with the voter registration requirements of the NVRA.[47] "On January 5, 1995, Michigan enacted Public Act 441 of 1994 in order to conform its voter registration procedure to the requirements of the National Voter Registration Act."[48] Public Act 441 was codified as M.C.L. § 168.509m-509gg. The stated purpose of these statutes was to "increase the integrity of the voting process" and to apply technology and information gathered by state and local governments "in a matter that ensures that accurate and current records of qualified voters are maintained."[49] The Legislature specifically defined "[d]esignated voter registration agency" as "an office designated under [M.C.L. § 168.509u] to perform voter registration activities in this state."[50] M.C.L. § 168.509u provides the only avenue by which a government office can be a "designated voter registration agency" under Michigan law and, by extension, properly designated to conduct voter registration activities in Michigan under the NVRA.

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[41] *Promote the Vote v. Sec'y of State,* 333 Mich. App. 93, 123; 958 N.W.2d 861 (2020).
[42] *Moore,* 600 U.S. at 27.
[43] Michigan Const. 1963, art. 5, § 1.
[44] *People v. Dettenhaler,* 118 Mich. 595, 602; 77 N.W. 450 (1898).
[45] *People ex rel Sutherland v. Governor*, 29 Mich. 320, 328-329 (1874).
[46] *Id.*
[47] *Ass'n. of Cmty. Organizations for Reform Now v. Miller,* 129 F.3d 833, 835 (6th Cir. 1997).
[48] *Id.*
[49] M.C.L. § 168.509m.
[50] M.C.L. § 168.509m(2)(a).

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M.C.L. § 168.509u expressly designated "a recruitment office of the armed forces of the United States [as] a designated voter registration agency." It also authorized the Governor to "provide a list to the secretary of state designating the executive departments, state agencies, or other offices that will perform voter registration activities in this state."[51] However, that authority had to be exercised "[n]ot later than the thirtieth day after the effective date of [M.C.L. § 168.509u]." M.C.L. § 168.509u became effective January 10, 1995. Therefore, under the plain language of § 168.509u, the Michigan Legislature did not grant the Governor authority to designate any VRAs after February 9, 1995. It follows that the Governor of Michigan has lacked any statutory authority to designate additional VRAs since that date.

This conclusion is buttressed by the canon of statutory construction known as "*expressio unius est exclusio alterius,*" the "express mention of one thing in a statutory provision implies the exclusion of similar things."[52] So, M.C.L. § 168.509u's express mention of the Governor's authority to designate VRAs *through February 9, 1995* implies that no such authority existed *after* that date. Michigan's Legislature knows how to give open-ended authority to designate VRAs – in 2023 PA 263, it granted authority to designate *state* agencies as VRAs to the Secretary of State *effective June 30, 2025* (more on that below).[53]

Public Act 441 also included M.C.L. § 168.509n, which gives the Michigan Secretary of State specific responsibilities "for the coordination of the requirements imposed under this chapter, the National Voter Registration Act of 1993…." It authorizes the Michigan Secretary of State to do three things: (a) develop and disseminate a mail registration form, (b) give instruction to designated VRAs and clerks, and (c) report to the relevant "committees of the senate and house of representatives…."[54] It does not authorize the *designation* of additional VRAs; rather, it authorizes the Secretary to coordinate with *existing* VRAs.

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[51] M.C.L. § 168.509u(1).
[52] *People v. Carruthers,* 301 Mich. App. 590, 604; 837 N.W.2d 16 (2013).
[53] M.C.L. § 168.493b(1). And, even when it becomes effective, the Secretary's authority under that subpart will be limited to designating "state agencies." Even if that statute were in effect, it wouldn't authorize the Secretary to designate *federal* agencies as VRAs under the NVRA.
[54] M.C.L. § 168.509n.

When a voter registration application is "submitted in person at … a designated voter registration agency," the person processing the application shall "[v]alidate the application in the manner prescribed by the secretary of state" and "[i]ssue a receipt to the applicant verifying the acceptance of the application."[55] Then, within 7 days of receiving the application, "the designated voter registration agency … shall transmit the application … to the clerk of the county, city, or township where the applicant resides."[56] However, if the application is made 2-3 weeks before an election, the designated voter registration agency "shall transmit the application not later than 1 business day to the clerk of the county, city, or township where the applicant resides."[57] If the designated voter registration agency transmits "a completed application…to a county clerk," the Secretary of State "shall compensate the county clerk for the cost of forwarding the application to the proper city or township clerk of the applicant's residence from funds appropriated to the secretary of state for that purpose."[58] Thus, when an individual applies to register to vote at a designated voter registration agency, even if the application is initially sent to the applicable county clerk, it is the clerk of the city or township where that individual resides that will ultimately be responsible for processing the application and registering that individual to vote.

As noted above, in January 1995, M.C.L. § 168.509u authorized the then-Governor of Michigan to designate VRAs but required him to do so "not later than" February 6, 1995. In January 1995, Governor John Engler complied with that statutory directive by issuing EO 1995-1.[59] EO 1995-1 recognized that "the NVRA requires that additional state offices be designated as voter registration agencies for applicants and recipients of public assistance…."[60] So, Governor Engler specifically designated four local, county and state offices "to accept applications for voter registration.[61] Additionally, Governor Engler purported to

[55] M.C.L. § 168.509w(1).
[56] M.C.L. § 168.509w(2).
[57] M.C.L. § 168.509w(3).
[58] M.C.L. § 168.509w(4).
[59] ECF No. 1, PageID.11, ¶ 53 n.7.
[60] See *Id.*, ¶ 54.
[61] See *Id.*, PageID.12, ¶ 55.

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designate "[a]ny other public office…which the Governor may from time to time designate by Executive Directive."[62]

Since January 1995, the Legislature has not granted any further authority to the Michigan Governor to designate VRAs. Although Governor Engler claimed the ability to designate additional VRAs via Executive Directives, that purported authority has no basis in Michigan's Election Law. Further, Michigan law does not give executive directives the force and effect of law, as they are not subject to legislative review.[63] Moreover, the ongoing authority that Governor Engler purported to reserve in 1995 had no basis in the statute. Again, the statute only gave the governor a narrow window to designate VRAs, which expired almost thirty years ago. So, under Michigan's constitutional and statutory scheme, designating new VRAs would require a legislative act.[64]

For almost three decades after EO 1995-1, there were no attempts to further designate any other agencies – state, federal, or local – as VRAs in Michigan.[65] But on May 1, 2022, Governor Whitmer issued Executive Directive 2022-4. Claiming authority "under sections 1 and 8 of Article 5 of the Michigan Constitution of 1963," Governor Whitmer then directed, among other things, the Department of State to "review Michigan's compliance with the requirements of the NVRA, in particular, the requirement in section 7 that all state offices that provide either public assistance or state-funded programs primarily engaged in providing services to persons with disabilities are offering voter registration services."[66] Governor Whitmer claimed that "[t]o the extent that the Department of State recommends additional offices be designated as voter registration agencies to comply with the NVRA, [she] expect[ed] to take appropriate

[62] See *Id.*, ¶ 56.
[63] ECF No. 26-8, PageID.318.
[64] See, for example, M.C.L. § 168.493b.
[65] See ECF No. 9, PageID.65.
[66] See ECF No. 1, PageID.13, ¶ 64.

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action expeditiously."[67] She also indicated a desire to take additional action "including but not limited to designating additional offices as voter registration agencies" under the NVRA.[68]

On December 18, 2023, Governor Whitmer issued Executive Directive 2023-6 which, among other things, designated several "state departments, agencies, and offices" as VRAs.[69] ED 2023-6 also purported to designate "the U.S. Department of Veterans Affairs" as a VRA "subject to the agreement it has signed with the State of Michigan."[70] For her alleged authority to make these designations, Governor Whitmer relied on "Section 1 of Article 5 of the Michigan Constitution of 1963" and "Section 8 of Article 5 of the Michigan Constitution of 1963."[71] Then, in June 2024, Governor Whitmer issued Executive Directive 2024-3 ("ED 2024-3"),which designated the SBA as a VRA.[72]

Here's the bottom line: Governor Whitmer's attempts to designate the SBA and VA as VRAs violate both Michigan law and the NVRA because they were improper exercises of legislative authority.[73] While the Governor of Michigan has the power to enforce the laws enacted by the Legislature, she lacks the authority to change or extend them.[74] But designating new VRAs though Executive Directives attempts to do just that. So, Governor Whitmer's purported designations of the SBA and VA as VRAs are ultra vires and contrary to both Michigan law and the NVRA.

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Similarly, the Secretary of State acted ultra vires when she attempted to designate the SBA and VA as VRAs. In September 2023, the Michigan Secretary of State and the VA announced the signing of an interagency agreement that purported to designate the Department, the Saginaw VA Medical Center, the Detroit VA Medical Center, and the Detroit Regional Office as voter registration agencies and offices.[75]

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[67] *Id.*, ¶ 65.
[68] *Id.*
[69] ECF No. 1, PageID.14, ¶ 68.
[70] ECF No. 1, PageID.15, ¶ 69.
[71] See *Id.*, ¶ 70.
[72] ECF No. 26-7, PageID.316-317.
[73] See ECF No. 36, PageID.432.
[74] See *Id.*
[75] See ECF No. 1, PageID.14, ¶ 66.

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The State's press release stated that "[t]he official designation of VA as a voter registration site will come through an executive order by Governor Whitmer in the coming weeks."[76] Then, on March 18, 2024, the Michigan Secretary of State entered into the Memorandum of Understanding ("MOU") and Memorandum of Agreement ("MOA") with the SBA, purporting to designate the SBA's Michigan offices as VRAs.

The MOA states in Part III that the "SBA enters into this MOA under the legal authority of … the Small Business Act, 15 U.S.C. 637(b), and … section 20506 of the NVRA" as "referenced above in Part I." Part I cites § 20506(a)(2). But the Michigan Secretary of State's authority is not specifically mentioned. In Part II, entitled "Purpose," the MOA references "a 1994 state statute that directed the Governor to designate VRAs," and a 1995 Executive Order from Governor Engler that "allows the Governor to designate additional VRAs through an executive directive." The "Purpose" section of the MOA further claims that "Michigan law makes the Secretary of State 'responsible for the coordination of the requirements imposed under … the [NVRA].' These responsibilities include '[i]nstruct[ing] designated voter registration agencies and [local] clerks about the voter registration procedures and requirements imposed by law.'" But as explained above, neither ED 2023-6, the MOU, nor the MOA were authorized by the Michigan Legislature. Moreover, under Michigan law, Executive *Directives* do not have the force and effect of law and are not subject to legislative review.

Consistent with Michigan's state constitutional arrangement, "the Legislature has the constitutional authority under Const. 1963, art. 2, § 4(2) to enact laws to preserve the purity of elections, to guard against abuses of the elective franchise, and to provide for a system of voter registration and absentee voting."[77] Michigan's Legislature gave certain responsibilities over elections to the Secretary of State. Specifically, M.C.L. § 168.509n makes the Secretary of State responsible for (a) developing and distributing a mail registration form, (b) instructing VRAs and clerks about voter registration procedures and legal

[76] See *Id.*, ¶ 67 n. 11.
[77] *Promote the Vote v. Sec'y of State,* 333 Mich. App. 93, 123; 958 N.W.2d 861 (2020).

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requirements, and (c) submitting a report every other year on the qualified voter file." That's it – nothing about designating VRAs.

Contrary to the State Defendants' argument, the doctrine of "*expressio unius est exclusio alterius*" is again relevant – "the expression of one thing suggests the exclusion of all others…."[78] So, § 509n's expression of three specific responsibilities for the Michigan Secretary of State implies that any other responsibilities (such as designating VRAs) are excluded. This is especially true because, while § 509n authorizes the Secretary of State to instruct previously designated VRAs, the statute says nothing about the power to designate VRAs in the first place.

The fact that Michigan's Legislature *has not* granted the Secretary of State the authority to designate VRAs is underscored by 2023 PA 263, which grants the Secretary of State this authority (but only as to a "state agency") *effective June 30, 2025,* see M.C.L. § 168.493b – reflecting the fact that such authority *does not currently exist.* In construing a statute, district courts must "presume that every word has some meaning and should avoid any construction that would render any part of the statute surplusage or nugatory."[79] Reading § 168.509n to give Michigan's Secretary of State the authority *now* to designate *federal* agencies as VRAs would fail to give meaning to § 493b, rendering it nugatory and redundant.

The bottom line: the State Defendants' ultra vires actions violate both Michigan and federal law.[80] So this Court should grant Plaintiffs' Motion for Summary Judgment.

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[78] *Carruthers,* 301 Mich. App. at 604.
[79] *Hansen v. Williamson*, 440 F. Supp. 2d 663, 671 (E.D. Mich. 2006).
[80] See, e.g., ECF No. 36, PageID.425-426.

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