

EXHIBIT B

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROBERT DAVIS,

Plaintiff,

No. 26-13454

v

HON. TERRENCE G. BERG

JOCELYN BENSON, in her official and individual capacities as the duly elected Secretary of State for the State of Michigan, JONATHAN BRATER, in his official and individual capacities as the duly appointed Director of Michigan Bureau Elections, WAYNE COUNTY ELECTION COMMISSION, and BRENDA GREEN, in her official capacity as the duly elected City Clerk for the City of Highland Park,

MAG. KIMBERLY G. ALTMAN

Defendants.

STATE DEFENDANTS' MOTION TO DISMISS

Defendants Michigan Secretary of State Jocelyn Benson and Michigan Director of Elections Jonathan Brater (“the State Defendants”), by and through their attorneys, move this Honorable Court to dismiss the complaint against them in its entirety under Fed. R. Civ. Proc. 12(b)(1) and (6) for the following reasons:

1. Plaintiff’s claims against the State Defendants in their official capacity are barred by the Eleventh Amendment.

2. Plaintiff's claims for money damages against the State Defendants are barred by immunity granted by law.

3. Plaintiff has not demonstrated his Article III standing for declaratory relief where he cannot show causation or redressability.

4. Plaintiff's claims alleging a violation of Procedural Due Process in Counts I fails to state a viable legal claim where the Amended Complaint fails to identify any property or liberty interest at stake.

5. Plaintiff's claims in Counts II and III alleging a violation of Equal Protection "Class of One" theory against the State Defendants fails to state a viable legal claim because he fails to make allegations comparing himself to another person who was similarly situated in all material respects, or otherwise failed to make allegations showing that there was no rational basis for the claimed difference in treatment.

6. Plaintiff's claim of conspiracy under 42 U.S.C. §1983 in Count IV fails to state a viable legal claim because he has not stated a violation of his constitutional rights in the other counts of the Amended Complaint.

7. Plaintiff's claim in Count V alleging that Michigan's Administrative Procedures Act is "void for vagueness" fails to state a viable legal claim challenging the constitutionality of the statute.

8. Plaintiff's claim in Count VI fails to state a plausible claim that the State Defendants' alleged "enforcement" of Mich. Comp. Laws § 24.264 creates a "forward-looking" denial of access to the courts where they do not administer the APA and Section 264 does not block Plaintiff's access to the courts where he did not attempt to file any action that was denied on that basis.

9. Plaintiff's claim raising a Supremacy Clause argument against Mich Admin Code, R. 168.48 fails to state a viable legal claim where the Supremacy Clause does not create a cause of action, where Plaintiff lacks standing to challenge a rule that only pertains to local clerks, where Plaintiff's claim is barred by laches, and where there is no conflict between Michigan's rule and federal law.

10. Concurrence in the relief sought through this motion was sought and denied on October 5, 2026.

RELIEF REQUESTED

For these reasons, Defendants Michigan Secretary of State Jocelyn Benson and Michigan Director of Elections Jonathan Brater respectfully request that this Honorable Court grant the motion and dismiss the complaint against them in its entirety and with prejudice.

Respectfully submitted,

/s/Erik A. Grill

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Dated: October 7, 2026

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MAG. KIMBERLY G. ALTMAN

Defendants.

**STATE DEFENDANTS' BRIEF IN SUPPORT OF THEIR MOTION TO
DISMISS**

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CONCISE STATEMENT OF ISSUE PRESENTED

1. Whether all of Plaintiff's claims against the State Defendants fail to state a viable claim and must be dismissed under Fed. R. Civ. Proc. 12(b)(1) or (6)?

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INTRODUCTION

Plaintiff Robert Davis raises a variety of claims alleging different theories that his constitutional rights were or are being violated because the Michigan Secretary of State and the Michigan Director of Elections failed to disqualify the Michigan Democratic Party's nominees for the offices of Michigan Attorney General and Michigan Secretary of State. Plaintiff raised a similar claim challenging these candidates' eligibility in state court, which remains pending on appeal. Davis also seeks to challenge parts of Michigan's Administrative Procedures Act (APA), alleging that it is "void for vagueness" and prevented him from filing a lawsuit in state court. Plaintiff further claims that a promulgated rule concerning the retention of data from electronic poll books conflicts with the Civil Rights Act of 1960, 52 U.S.C. § 20701, and is void under the Supremacy Clause. Plaintiff's amended complaint seeks declaratory relief, as well as monetary relief in the amount of \$250,000 for each count. Plaintiff does not seek any injunctive relief from the State Defendants, other than to enjoin their "enforcement" of Michigan's APA.

But Plaintiff's claims against the State Defendants fail for multiple reasons.

First, the Eleventh Amendment bars Plaintiff's claims against state officials, and state officials acting in their official capacity are not "persons" within the meaning of 42 U.S.C. §1983.

Second, Plaintiff's claims for money damages against the State Defendants in their individual capacities is barred by qualified immunity where Plaintiff has not demonstrated any clearly established constitutional rights that the State Defendants would have known at the time of the actions alleged in the amended complaint.

Third, Plaintiff lacks Article III standing for his claims seeking declaratory relief where he cannot show causation or redressability.

Fourth, all of Plaintiff's claims against the State Defendants fail to state plausible claims and must therefore be dismissed.

STATEMENT OF FACTS

AOI Filing Requirements

The Michigan Election Law requires that candidates for state offices, among others, file an Affidavit of Identity (AOI) with the relevant filing official to obtain ballot access. Mich. Comp. Laws § 168.558(1). The AOI must contain specific information, including "a signed and notarized statement that as of the date of the affidavit, all statements, reports, late filing fees, and fines required of the candidate or any candidate committee organized to support the candidate's election under the Michigan campaign finance act . . . have been filed or paid[.]" Mich. Comp. Laws § 168.558(4).

Finally, “[a]n officer shall not certify to the board of election commissioners the name of a candidate who fails to comply with this section, or the name of a candidate who executes an affidavit of identity that contains a false statement with regard to any information or statement required under this section.” Mich. Comp. Laws § 168.558(4).

Candidate Affidavits of Identity and Proceedings in State Court

On August 31, 2026, Eli Savit and Garlin Gilchrist II filed AOIs as Michigan Democratic Party nominees for attorney general and secretary of state, respectively. (ECF 20, PageID.179, PageID.183, Am. Cmplt., ¶¶38, 50.)

Plaintiff filed challenges to the AOIs of both Savit and Gilchrist with the Michigan Secretary of State on September 1, 2026. (ECF 20, PageID.179, Am. Cmplt., ¶45). Later that same day, Plaintiff filed a lawsuit in the Michigan Court of Claims seeking declaratory and injunctive relief regarding the eligibility of Savit and Gilchrist to appear on the November ballot based on Plaintiff’s claims that these candidates made false statements on their AOIs. (ECF 20, PageID.182, Am. Cmplt., ¶49).

The Michigan Court of Claims entered an emergency scheduling order requiring expedited briefing by the Secretary of State to be filed by the following day, September 2, 2026. (ECF 20, PageID.183, Am. Cmplt., ¶53.) On the morning of September 4, 2026, Judge Michael F. Gadola issued a final order

granting the Secretary's motion to dismiss Plaintiff's complaint on the basis that it was barred by Michigan's Campaign Finance Act, Mich. Comp. Laws § 169.215(17). (Defs' Ex 1, 26-187, Order 9/4/2026.) Plaintiff appealed to the Michigan Court of Appeals that same day. (ECF 20, PageID.184-185, Am. Cmplt., ¶58). On September 8, 2026, the Court of Appeals denied Plaintiff's motion to expedite the appeal. (ECF 20, PageID.185, Am. Cmplt., ¶60.) On September 10, 2026, the Michigan Supreme Court denied Plaintiff's application for leave to appeal the order denying his motion to expedite. (ECF 20, PageID.185-186, Am. Cmplt., ¶61-63.) As of the date of this brief, Plaintiff's appeal remains pending in the Court of Appeals.

Because of the timing of Plaintiff's state court lawsuit, the candidates could not have been notified of Davis's AOI challenges before the lawsuit and therefore they did not have an opportunity to respond to the challenges, as permitted under Mich. Admin. Code, Rule 168.6. (Defs' Ex 2, Fracassi Aff., ¶10.) Thus, there could not have been a determination by the Department as to the validity of the AOI challenges before Davis filed his lawsuits.

On September 16, 2026, the Michigan Bureau of Elections notified Plaintiff that, in light of the pending litigation, his AOI challenges to candidates Savit and Gilchrist would be held in abeyance until the litigation and any appeals are resolved. (ECF 20, PageID.191, Am. Cmplt., ¶84.)

Plaintiff's Request for Declaratory Ruling

On August 22, 2026, Plaintiff submitted a request with the Department of State for a declaratory ruling concerning the, “applicability of Mich. Admin. Code, R. 168.2(3) as to the ‘certification’ of candidates for the November 3, 2026 election.” (ECF 20, PageID.211-212, Am. Cmplt., ¶157.)

The Department issued a response to Plaintiff’s August 22, 2026 request on September 22, 2026. (Defs’ Ex 3, MDOS Resp. to 8.22.26 Request.) The response concluded that Plaintiff’s request failed to identify a specific filing official, or a specific candidate to whom the rule was allegedly incorrectly applied. (*Id.*, p 1.) The Department thus concluded that Plaintiff failed to make a request “as to the applicability to an actual state of facts of a statute administered by the agency or of a rule...of the agency,” as required under Mich. Comp. Laws § 24.263. *Id.* “Without any factual assertions, the Department is unable to issue a declaratory ruling.” *Id.*

Michigan requires the use of electronic pollbooks for elections.

The use of an electronic pollbook (EPB) to process voters on Election Day is a longstanding practice in Michigan and is required under the Michigan Election Law. Mich. Comp. Laws § 168.668b(1) (“Each city or township shall use the electronic poll book software developed, acquired, or approved by the bureau of elections in each election precinct in the city or township on election day to

process voters and generate election precinct reports.”) The Department of State promulgated administrative rules to provide further instruction for the use of the EPBs. *See* Mich. Admin. Code R. 168.41–168.48. This includes Rule 168.48, which provides for the deletion of materials from the EPBs and flash drives:

(1) Subject to subrule (2) of this rule, the electronic pollbook software and associated files must be deleted from all devices by the seventh day following the final canvass and certification of the election, unless a petition for recount has been filed and the recount has not been completed, a post-election audit has been scheduled, or the deletion of the data has been stayed by an order of the court or the secretary of state. If a precinct is selected for an audit, the electronic pollbook software and associated files must be deleted from all devices by the seventh day following completion of the audit.

(2) The electronic pollbook software and associated files must not be deleted from devices until the bureau of elections or county clerk, as applicable, issues the release of security memorandum pertaining to that election.

The Department recently issued a declaratory ruling explaining how the EPBs are used for elections, and how election data is retained and preserved to comply with state and federal retention laws, specifically Mich. Comp. Laws § 168.811 and 52 U.S.C. § 20701. (Defs’ Ex 4.) The ruling determined that Rule 168.48(1) complies with both laws. (*Id.*)

Presently, there is a pending state court action raising the same claim as Plaintiff. (Defs’ Ex 5, McQueer Compl w/o exs.) The plaintiff clerk in that case seeks to invalidate Rule 168.48 on three grounds; (1) that it is preempted by 52 U.S.C. § 20701, (2) that it exceeds the Secretary’s authority and conflicts with

other state statutes, and (3) that it was promulgated in violation of Michigan's Administrative Procedures Act (APA), Mich. Comp. Laws § 24.201 *et seq.* (*Id.*, ¶¶ 47-69.) The court granted a temporary restraining order permitting McQueer to retain her EBP materials for the August 4, 2026, primary election. (Defs' Ex 6, 8.13.26 Order.) Under the court's most recent order, Defendants' next brief is due October 7, the date of this Court's hearing on the TRO motion. (ECF No. 22-3, Plf's Brf, PageID.320-342, 9.22.26 Order.)

Summary of Federal Proceedings Against the State Defendants

Plaintiff initially filed this federal lawsuit seeking declaratory and monetary relief on September 11, 2026. Contemporaneously with the original complaint, Plaintiff also filed a motion for a preliminary injunction, describing this case as "an election-related matter" and seeking to enjoin the Secretary of State and Director of Elections from "enforcing the provision of Mich. Comp. Laws § 24.264 of the Administrative Procedures Act (APA) requiring the prior approval of the Defendant Secretary of State before Plaintiff can initiate a state-court lawsuit." (ECF 5, PageID.68-78, Mot. for PI; ECF 6, PageID.68-78).

Timeline of Election Processes

By the time Plaintiff filed this suit, nearly all ballot-related pre-election processes had concluded. The Secretary had to notify counties of the slate of candidates to appear on the November 3, 2026, ballot by the sixtieth day before the

election, which for this cycle was September 4, 2026, Mich. Comp. Laws § 168.648. (Def's Ex 2, ¶27.) The names of candidates appearing on ballots must be finalized by the same date. (Def's Ex 2, ¶28.) In addition to this being the statutory deadline, this was also the practical deadline to ensure that absent voter ballots were ready to be sent to military and overseas voters starting September 19, 2026 and to all other absentee voters starting September 24, 2026, as required by state and federal law. (Def's Ex 2, ¶28.)

ARGUMENT

I. Plaintiff's claims against the State Defendants in their official capacity are barred by the Eleventh Amendment.

Plaintiff's amended complaint expressly states that the Secretary of State and Director of Elections (State Defendants) are being sued in both their official and individual capacities. (ECF 20, PageID.186-187, PageID.202-203, PageID.210-211, PageID.219-221, PageID.232-233, PageID.240, PageID.246-247, Am. Cmplt., ¶¶65-69, 120-124, 151-155, 183-186, 212-215, 237-241, 259-262.)

The Eleventh Amendment to the United States Constitution prevents a state from being sued in federal court without its consent. *Alabama v. Pugh*, 438 U.S. 781, 782 (1978). An unconsenting state is immune from lawsuits brought in federal court by its own citizens, as well as by citizens of another state. *Alden v. Maine*, 527 U.S. 706, 712-713 (1999). The U.S. Supreme Court has consistently ruled that the Eleventh Amendment is a bar to lawsuits against states, state

agencies or state departments unless specifically overridden by an act of Congress, or unless the state has consented to be sued. *Id.*; *Pugh*, 438 U.S. at 782; *Edelman v. Jordan*, 415 U.S. 651 (1974). Further, state officials acting in their official capacity are also not “persons” under § 1983. *Will v. Michigan Dep’t of State Police*, 491 U.S. 58, 71 (1989).

Applying this well-established framework, Plaintiff’s claims against the Secretary of State and the Director of Elections in their official capacities are barred by the Eleventh Amendment. Further, because Plaintiff is not seeking prospective injunctive relief for his claims against the State Defendants (with the exception of Counts V and VI with respect the “enforcement” of the APA, and Count VII’s request to enjoin the application of Mich. Admin. Code, R. 168.48, which fail for other reasons described below), the *Ex Parte Young*, 209 U.S. 123 (1908) exception to the Eleventh Amendment does not apply to Plaintiff’s claims for declaratory and monetary relief. See *Russell v. Lundergan-Grimes*, 784 F.3d 1037, 1047 (6th Cir. 2015). Also, *Ex Parte Young* does not apply when a defendant state official, “has neither enforced nor threatened to enforce the allegedly unconstitutional state statute.” *Id.* (quoting *Children’s Healthcare is a Legal Duty v. Deters*, 92 F.3d 1412, 1415 (6th Cir. 1996)). As a result, Plaintiff’s claims against the State Defendants in their official capacities are barred by the Eleventh Amendment and must be dismissed under Fed. R. Civ. Proc. 12(b)(6).

II. Plaintiff's claims for money damages against the State Defendants in their individual capacity are barred by qualified immunity.

Plaintiff's Amended Complaint includes a claim for an "award [of] damages, including punitive damages" against the State Defendants in their "personal capacity." (ECF 20, PageID.186-187, PageID.202-203, PageID.210-211, PageID.219-221, PageID.232-233, PageID.240, PageID.246-247, Am. Cmplt., ¶¶65-69, 120-124, 151-155, 183-186, 212-215, 237-241, 259-262.) Counts I through VII each seek relief in the form of monetary damages "in excess of \$250,000." (ECF 20, PageID.201, 209, 218, 231, 238-239, 245-246, 251.) These claims must be dismissed based on qualified immunity.

The doctrine of qualified immunity affords protection against individual liability for civil damages when officials have not violated a clearly established statutory or constitutional right of which a reasonable person would have known. *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982); *Pearson v. Callahan*, 555 U.S. 223, 231 (2009). The qualified immunity analysis consists of two distinct inquiries: whether, when taken in a light most favorable to the plaintiff, the facts alleged demonstrate that the defendant violated a constitutional right; and second, even if the court determines that a constitutional deprivation has been properly alleged under these facts, whether the right was clearly established as viewed within the specific context of the facts of the case. *Saucier v. Katz*, 533 U.S. 194, 201–202 (2001). A court may review either prong of the analysis first, and "[i]f

either prong is not met, then the government officer is entitled to qualified immunity.” *Cahoo v. SAS Analytics Inc.*, 912 F.3d 887, 897 (6th Cir. 2019).

Under the “clearly established” prong, “[t]he right must have been ‘clearly established’ not just in an abstract sense, but in a ‘particularized’ sense.” *Cope v. Heltsley*, 128 F.3d 452, 458 (6th Cir. 1997). “The relevant, dispositive inquiry in determining whether a right is clearly established is whether it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted.” *Saucier*, 533 U.S. at 202. Moreover, the plaintiff must show that the right was clearly established “in light of the specific context of the case, not as a broad general proposition.” *Id.* at 201. If reasonable state officers could disagree about the lawfulness of the conduct in question, immunity must be recognized. *Key v. Grayson*, 179 F.3d 996, 1000 (6th Cir. 1999).

“‘[C]learly established law’ should not be defined ‘at a high level of generality’” but instead must be “particularized” to the case’s facts. *White v. Pauly*, 137 S. Ct. 548, 552 (2017) (quoting *Ashcroft v. al-Kidd*, 563 U.S. 731, 742 (2011)). The dispositive question is “whether the violative nature of particular conduct is clearly established.” This inquiry of whether the violative nature of a particular act is clearly established “‘must be undertaken in light of the specific context of the case, not as a broad general proposition.’” *Mullenix v. Luna*, 577 U.S. 7, 12 (2015) (quoting *Brosseau v. Haugen*, 543 U.S. 194, 198 (2004) (per

curiam)). The fundamental requirement is that there is a “fair and clear warning” to government officials, *Vanderhoef v Dixon*, 938 F.3d 271, 278 (6th Cir. 2019), meaning that “[a] right is clearly established only if its contours are sufficiently clear that ‘a reasonable official would understand that what he is doing violates that right,’” *Carroll v. Carman*, 574 U.S. 13, 16 (2014) (per curiam) (quoting *Anderson v. Creighton*, 483 U.S. 635, 640 (1987)).

Qualified immunity also covers “mere mistakes in judgment, whether the mistake is one of fact or one of law.” *Pearson*, 555 U.S. 227. *See also Ashcroft v. al-Kidd*, 563 U.S. 731, 743 (2011) (“Qualified immunity gives government officials breathing room to make reasonable but mistaken judgments about open legal questions. When properly applied, it protects ‘all but the plainly incompetent or those who knowingly violate the law.’”)

But here, Plaintiff has presented no legal authority whatsoever that establishes that the asserted rights to have immediate determinations of last-minute AOI challenges, immediate or even “expedited” determinations of declaratory rulings, to file lawsuits for declaratory judgments regarding the interpretation of administrative rules before first seeking a ruling from the agency, or the retention of EPB data were “clearly established” constitutional rights under existing and prevailing law such that these State Defendants would have understood that their alleged actions would violate Plaintiff’s constitutional rights. Accordingly, the

State Defendants are entitled to qualified immunity against Plaintiff's claims for money damages under §1983, and all such claims must be dismissed under Fed. R. Civ. Proc. 12(b)(6).

III. Plaintiff lacks standing where he cannot satisfy Article III's injury-in-fact, causation and redressability components.

When plaintiffs lack standing, the Court lacks jurisdiction and dismissal is warranted under Fed. R. Civ. P. 12(b)(1). *Taylor v. KeyCorp.*, 680 F.3d 609, 612–13 (6th Cir. 2012). “[T]he standing requirement limits federal court jurisdiction to actual controversies so that the judicial process is not transformed into a ‘vehicle for the vindication of the value interests of concerned bystanders.’ ” *Coal Operators & Assocs., Inc. v. Babbitt*, 291 F.3d 912, 915–16 (6th Cir. 2002) (quoting *Coyne v. Amer. Tobacco Co.*, 183 F.3d 488, 494 (6th Cir. 1999) (internal citations and quotations omitted)).

Here, Plaintiff's claims against the State Defendants are not cognizable where he has not demonstrated his standing to raise them. It is well-established that the plaintiff has the burden of proving jurisdiction in order to survive a motion to dismiss. *RMI Titanium Co. v. Westinghouse Elec. Corp.*, 78 F.3d 1125, 1134 (6th Cir. 1996) (quoting *Rogers v. Stratton Indus.*, 798 F.2d 913, 915 (6th Cir. 1986)) (emphasis omitted). As this Court is well aware, Article III of the Constitution limits the “judicial Power” of federal courts to “Cases” and “Controversies.” U.S. Const. art. III, § 2, cl. 1. Standing is one component of

Article III jurisdiction. If a plaintiff lacks Article III standing, then a court has no subject matter jurisdiction to hear the claim. *Imhoff Inv., LLC v. Alfoccino, Inc.*, 792 F.3d 627, 631 (6th Cir. 2015); *Central States Se. & Sw. Areas Health & Welfare Fund v. Merck-Medco Managed Care, LLC*, 433 F.3d 181, 198 (2d Cir. 2005) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)). District courts have no authority to render advisory opinions, issue opinions on abstract principles, or hear generalized grievances. See *Allen v. Wright*, 468 U.S. 737, 751 (1984); *Preiser v. Newkirk*, 422 U.S. 395, 401 (1975); *North Carolina v. Rice*, 404 U.S. 244, 246 (1971).

The “irreducible constitutional minimum” for standing requires (1) an injury-in-fact that is concrete and particularized, and actual or imminent; (2) a causal connection between the injury and the conduct complained of; and (3) that the injury will likely be redressed by a favorable decision. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992). In the Amended Complaint, Plaintiff has failed to satisfy any of these requirements.

First, an injury-in-fact requires “‘an invasion of a legally protected interest’ that is ‘concrete and particularized’ and ‘actual or imminent, not conjectural or hypothetical.’” *Spokeo*, 578 U.S. at 339 (quoting *Lujan*, 504 U.S. at 560). The alleged harm “‘must affect the plaintiff in a *personal and individual way*.’” *Id.* (quoting *Lujan*, 504 U.S. at 560 n. 1)(emphasis added). These elements are “not

mere pleading requirements,” but an “indispensable part of plaintiff’s case[.]”

Lujan, 504 U.S. 555, 561–62 (1992).

To meet Article III’s “concrete injury” requirement, the “injury must be ‘*de facto*’; that is, it must actually exist.” *Spokeo*, 578 U.S. at 340. Both tangible and intangible harms can satisfy this requirement. *TransUnion LLC v. Ramirez*, 594 U.S. 413, 425 (2021). “[T]raditional tangible harms, such as physical harms and monetary harms,” “readily qualify as concrete injuries under Article III.” *Id.* In the Amended Complaint, Plaintiff did not allege any bodily harm or financial loss. So, Plaintiff could only be asserting an intangible harm, which requires more analysis.

To identify intangible harm for Article III purposes, the Court in *Spokeo* found it useful to consider whether the asserted harm “has a close relationship to a harm that has traditionally been regarded as providing a basis for a lawsuit in English or American courts.” 578 U.S. at 340–41. Examples include “reputational harms, disclosure of private information, and intrusion upon seclusion.”

TransUnion, 594 U.S. at 425. Some constitutional harms, such as free speech or free exercise violations, may also qualify. *Id.* (citing *Spokeo*, 578 U.S. at 340 (citing *Pleasant Grove City v. Summum*, 555 U.S. 460 (2009), and *Church of Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520 (1993))). The U.S. Supreme Court has also clarified that, “we have never held a litigant who asserts [a procedural] right is excused from demonstrating that it has a ‘concrete interest that

is affected by the deprivation’ of the claimed right.” *Dep’t of Educ v. Brown*, 600 U.S. 551, 562 (2023)(quoting *Summers v. Earth Island Institute*, 555 U.S. 488, 496-497 (2009)).

But Plaintiff’s claims against the State Defendants in the Amended Complaint fail to demonstrate any concrete, particularized harm to him. Instead, Plaintiff’s complaint generally complains that his AOI challenges or request for declaratory ruling were not decided quickly enough, or—in Count VII—that voter data might not be retained in the manner he believes to be required by federal law, but his allegations fail to show how he was actually harmed as a result.

Further, to the extent that Plaintiff asserts an interest in the law being followed or the proper administration of elections, he fails to state an injury that is personal to him. Federal courts have repeatedly rejected claims to standing based on such subjective fears or abstract concerns regarding the integrity of elections. *See Ladies Mem’l Ass’n, Inc. v. City of Pensacola, Fla.*, 34 F.4th 988, 993 (11th Cir. 2022) (“purely psychic injuries, like disagreeing with government action, are not concrete, so they do not give rise to standing.”) (citing *Diamond v. Charles*, 476 U.S. 54, 67 (1986); *Lance v. Coffman*, 549 U.S. 437, 439 (2007) (a plaintiff who is “claiming only harm to his and every citizen’s interest in proper application of the Constitution and laws, and seeking relief that no more directly and tangibly benefits him than it does the public at large ... does not state an Article III case or

controversy.”); *Hotze v. Hudspeth*, 16 F.4th 1121, 1124 (5th Cir. 2021) (generalized grievance where “plaintiffs asserted ... that drive-thru voting hurt the ‘integrity’ of the election process”). Simply put, Plaintiff has failed to allege any concrete injury that is specific to him. As a result, he lacks Article III standing to raise these claims against the State Defendants.

Next, Plaintiff has failed to make allegations showing that the State Defendants are the cause for any possible injury to him. “To establish causation, a plaintiff must show a ‘causal connection between the injury and the conduct complained of,’ or, in other words, that the injury alleged is ‘fairly . . . trace[able] to the challenged action of the defendant.’” *Durham v. Martin*, 905 F.3d 432, 434 (6th Cir. 2018). The injury alleged cannot be the result of “the independent action of some third party.” 504 U.S. at 560.

While Counts V, VI, and VII request injunctions preventing the State Defendants from “enforcing” Michigan’s APA and Rule 168.48, they fail to demonstrate causation between any act by the State Defendants and any claimed injury to Plaintiff. He had to allege specific facts showing a causal connection between his injury and the State Defendants’ conduct. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992). “[I]f a plaintiff’s injury does not derive from the purportedly unlawful conduct or provision, but instead from some other source, a plaintiff will lack standing because the injury will not be ‘fairly traceable

to enforcement of the allegedly unlawful provision.’ ” *Carman v. Yellen*, 112 F.4th 386, 399 (6th Cir. 2024) (quoting *California v. Texas*, 593 U.S. 659, 679 (2021)).

First, with respect to Count V and VI, Plaintiff is simply barking up the wrong tree. Plaintiff does not cite any authority vesting these State Defendants with the duty or authority to “enforce” Michigan’s Administrative Procedures Act, Mich. Comp. Laws § 24.201, *et seq.*, generally or Mich. Comp. Laws § 24.264 specifically. Rather, the plain text of § 64 provides simply:

Unless an exclusive procedure or remedy is provided by a statute governing the agency, the validity or applicability of a rule, including the failure of an agency to accurately assess the impact of the rule on businesses, including small businesses, in its regulatory impact statement, may be determined in an action for declaratory judgment if the court finds that the rule or its threatened application interferes with or impairs, or imminently threatens to interfere with or impair, the legal rights or privileges of the plaintiff. The action shall be filed in the circuit court of the county where the plaintiff resides or has his or her principal place of business in this state or in the circuit court for Ingham county. The agency shall be made a party to the action. An action for declaratory judgment may not be commenced under this section unless the plaintiff has first requested the agency for a declaratory ruling and the agency has denied the request or failed to act upon it expeditiously. This section shall not be construed to prohibit the determination of the validity or applicability of the rule in any other action or proceeding in which its invalidity or inapplicability is asserted.

Nothing in this section describes any duty assigned to the Secretary of State or the Director of Elections.¹ Instead, whether Plaintiff complied with this section would be something raised through a motion and ruled upon by the court once Plaintiff filed an action in the appropriate court. In short, Plaintiff has not shown that any injury arising from § 64 is “fairly traceable” to the State Defendants’ actions. And, to whatever extent Plaintiff’s claims might rely on the rulings of state court judges applying § 64 of the APA, such claims could only assert an injury caused by state court judgments, which would be precluded by the *Rooker-Feldman* doctrine. See *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 291 (2005) (“[T]his Court’s appellate jurisdiction over state-court judgments . . . precludes a United States district court from exercising subject-matter jurisdiction.”)

Second, Count VII fails to demonstrate any actual injury at all, let alone one caused by the State Defendants. As argued further below, Plaintiff lacks standing to raise a challenge to Mich. Admin. Code, R. 168.48 at all, where the rule only applies to clerks and their staff, and neither imposes any duty upon nor restricts the actions of ordinary citizens like Plaintiff. Instead, Plaintiff’s claim is based upon allegations that he is “concerned” that unspecified data might be deleted. (ECF 20,

¹ Insofar as neither the Secretary of State nor Director of Elections are charged with administering the APA, it is arguable whether they are even proper parties to defend the constitutionality of the Act.

PageID.249-250, ¶ 276). That is insufficient to establish a concrete injury, and so Plaintiff has failed to make allegations showing that he has suffered any injury that is fairly traceable to the State Defendants' actions.

Lastly, to meet the redressability requirement for constitutional standing, a plaintiff must show that it is "likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision" by the court. *Int'l Outdoor, Inc. v. City of Southgate*, 556 F. App'x 416, 418–19 (6th Cir. 2014). That cannot happen here.

Counts I, II, III, and IV do not seek any injunctive relief, and request only declarations that the State Defendants violated Plaintiff's constitutional rights and an award of monetary damages. But for the reasons discussed above, Plaintiff's claims for money damages are barred by the Eleventh Amendment and the State Defendants' entitlement to qualified immunity. That leaves only Plaintiff's requests for declaratory relief, disconnected from any substantive remedy.

However, under Article III, the relief sought by a plaintiff also "must provide redress for the injury." *Parsons v. United States DOJ*, 801 F.3d 701, 715 (6th Cir. 2015). "Redress is sought *through* the court, but *from* the defendant. . . . The real value of the judicial pronouncement—what makes it a proper judicial resolution of a 'case or controversy' rather than an advisory opinion—is in the settling of some dispute *which affects the behavior of the defendant towards the plaintiff.*" *Id.*

(quoting *Hewitt v. Helms*, 482 U.S. 755, 761 (1987)). Plaintiff's Amended Complaint does not allege that the declarations are necessary for any purpose, or that they would result in any concrete change in his circumstances. Instead, the declarations Plaintiff seeks would have no effect on him and would therefore be akin to advisory opinions. Because the requested declarations would not redress any claimed injury, all of Plaintiff's claims for declaratory relief fail to satisfy the requirement for redressability. Plaintiff lacks standing to bring these claims for declaratory relief on their own, and so they must be dismissed.

Because Plaintiff has not demonstrated an injury-in-fact, redressability or causation, he has failed to establish standing to raise his claims against the State Defendants, and so those claims must be dismissed under Fed. R. Civ. Proc. 12(b)(1).

IV. Plaintiff's claims against the State Defendants fail to state a plausible claim and must be dismissed.

When considering a 12(b)(6) motion to dismiss for failure to state a claim, although the Court should presume that all well-pleaded material allegations of the complaint are true, see *Total Benefits Planning Agency v. Anthem Blue Cross & Blue Shield*, 552 F.3d 430, 434 (6th Cir. 2008), "a plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quotations omitted). Moreover,

the court need not accept as true legal conclusions or unwarranted factual inferences. *Total Benefits*, 552 F.3d at 434.

To survive dismissal, the plaintiff's claim must be plausible. *Bell Atl. Corp.*, 550 U.S. at 555. The inquiry as to plausibility is "a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.... [W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not 'show[n]'—'that the pleader is entitled to relief.' " *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009) (quoting Fed. R. Civ. P. 8(a)(2)). However, "a legal conclusion couched as a factual allegation" need not be accepted as true. *Bell Atl. Corp.*, 550 U.S. at 555. Thus, in evaluating the sufficiency of a plaintiff's pleadings, this Court may make reasonable inferences in the non-moving party's favor, "but [this Court is] not required to draw [P]laintiffs' inference." *Aldana v. Del Monte Fresh Produce, N.A., Inc.*, 416 F.3d 1242, 1248 (11th Cir. 2005). This "plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Iqbal*, 556 U.S. at 678. (quoting *Bell Atl. Corp.*, 550 U.S. at 556). "Where a complaint pleads facts that are 'merely consistent with' a defendant's liability, it 'stops short of the line between possibility and plausibility of "entitlement to relief."'" *Id.* (citation omitted).

A. Plaintiff has failed to state a plausible Procedural Due Process claim in Count I of the Amended Complaint.

A procedural due process analysis contains two questions: “the first asks whether there exists a liberty or property interest which has been interfered with by the State, the second examines whether the procedures attendant upon that deprivation were constitutionally sufficient.” *Kentucky Dep’t of Corr. v. Thompson*, 490 U.S. 454, 460 (1989) (citations omitted). “Procedural due process rules are meant to protect persons not from the deprivation, but from the mistaken or unjustified deprivation of life, liberty, or property.” *Carey v. Piphus*, 435 U.S. 247, 259 (1978).

For the first question, a protected right may arise from the Constitution itself, or through “an expectation or interest created by state laws or policies.” *Wilkinson v. Austin*, 545 U.S. 209, 221 (2005). “The range of deprivations implicating a cognizable state-created liberty interests is narrow.” *Memphis A. Phillip Randolph Inst. v. Hargett*, 482 F. Supp. 3d 673, 686 (M.D. Tenn.), *aff’d on other grounds* 978 F.3d 378 (6th Cir. 2020); *see also id.* at 687 (“[I]t is no small thing for a court to say that something is a cognizable liberty interest, such that procedural due process is applicable.”).

Similarly, “Property interests...are not created by the Constitution. Rather they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law — rules or

understandings that secure certain benefits and that support claims of entitlement to those benefits.” *Bright v. Gallia Cnty., Ohio*, 753 F.3d 639, 656 (6th Cir. 2014), cert. denied, 135 S. Ct. 1561 (2015) (quoting *Board of Regents of State Colls. v. Roth*, 408 U.S. 564 (1972)).

As the U.S. Supreme Court has previously held:

“[a] liberty interest is of course a substantive interest of an individual; it cannot be the right to demand needless formality.” Process is not an end in itself. Its constitutional purpose is to protect a substantive interest to which the individual has a legitimate claim of entitlement.

Olim v. Wakinekona, 461 U.S. 238, 250 (1983) (quoting *Shango v. Jurich*, 681 F.2d 1091, 1100-1101 (1982)).

Here, Plaintiff has not identified any legal authority recognizing a protected liberty or property interest in filing a challenge to candidate AOI’s. For that matter, Plaintiff also cites no authority holding that there is a liberty interest in having a determination issued in response to such challenges immediately or within the time a plaintiff demands. The State Defendants are further unaware of any cases in the Sixth Circuit where a court has recognized a liberty interest at stake in these activities. While state law may allow citizens to initiate actions in state court to enforce the Michigan Election Law, there is simply no authority recognizing a protected liberty or property interest in such claims under federal law or the U.S. Constitution.

Moreover, even if Plaintiff could establish a protected interest that invoked Procedural Due Process guarantees, the allegations of the amended complaint fail to demonstrate any deficient procedures. Again, Plaintiff's challenges to the AOIs of candidates Savit and Gilchrist were filed only hours before his state court litigation, which remains pending at the time of this motion. It would hardly have been possible for the State Defendants to even notify the candidates of Plaintiff's challenges and receive any response from them (as they are allowed to do under Mich. Admin. Code, R. 168.6) in that time, let alone reach a final determination. And, as memorialized in the Bureau of Elections' September 16, 2026 letter, that still-pending litigation necessitated holding Plaintiff's AOI challenges in abeyance. (ECF 20, PageID.191.) That letter was sent only six days after the Michigan Supreme Court denied Plaintiff's application for leave, at which point it was then clear that there would not be a resolution of Plaintiff's litigation on an expedited basis. So, it was Plaintiff's decision to pursue a state-court lawsuit that has delayed determination of his AOI challenges, and not any act of the State Defendants. Plaintiff does not allege or explain what the State Defendants could have done differently in light of his state-court litigation.

Because Plaintiff has failed to identify a protected liberty or property interest, and because he has not made allegations showing any constitutionally

deficient procedures, he has failed to state a plausible Procedural Due Process claims and Count I must be dismissed under Fed. R. Civ. Proc. 12(b)(6).

B. Plaintiff has failed to state plausible Equal Protection “Class of One” claims in Counts II and III of the Amended Complaint.

Counts II and III each attempt to raise an Equal Protection claim based on a “class of one” theory,” with Count II alleging that his AOI challenges to candidates Savit and Gilchrist were not determined before the statutory certification deadline, and Count III premised upon allegations that his August 22 declaratory ruling request was answered slower than others. Neither claim has merit.

“[A] plaintiff must overcome a ‘heavy burden’ to prevail based on the class-of-one theory.” *Loesel v. City of Frankenmuth*, 692 F.3d 452, 462 (6th Cir. 2012). “[T]he Supreme Court has recognized that a ‘class-of-one’ may bring an equal protection claim where the plaintiff alleges that: (1) he or ‘she has been intentionally treated differently from others similarly situated’; and (2) ‘there is no rational basis for the difference in treatment.’ ” *United States v. Green*, 654 F.3d 637, 651 (6th Cir. 2011) (quoting *Vill. of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000)).

Neither Count II nor Count III satisfy the first element. A plaintiff must allege that he is similarly situated to the comparator party(ies) “in all material respects.” *Loesel*, 692 F.3d at 462. See also *Perry v. McGinnis*, 209 F.3d 597, 601 (6th Cir. 2000). First, with respect to Plaintiff’s AOI challenges under Count II,

Plaintiff does not identify any similarly situated comparators. As discussed above, Plaintiff chose to file a lawsuit in state court before any determination could have been made as to his challenge and thereby short-circuited the AOI challenge process. Plaintiff does not allege that the challenger to whom he compares himself—Andrea Ellen Karpinski—filed a lawsuit demanding declaratory and mandamus relief *before* the State Defendants could make a determination on the challenge. See ECF 20, PageID.203-204, Am. Cmplt, ¶127-129. Plaintiff also does not allege that any other AOI challenges were determined *after* a lawsuit had been filed against the State Defendants regarding the same issues, and while that lawsuit remained pending.

Next, with regard to Plaintiff's August 22, 2026 declaratory ruling request, Plaintiff similarly fails to identify any similarly situated requests that were treated differently. Instead, Plaintiff points to two requestors: Attorney Dan Wholihan and Bridgewater Township Clerk Michelle McQueer. But Plaintiff's comparison misses the mark both times. Plaintiff admits that Mr. Wholihan's declaratory ruling request was submitted on November 27, 2023 and that the Department issued a determination on February 16, 2024. (ECF 20, PageID.213-214). So, by Plaintiff's own admission, the Department responded *three months* after Wholihan's request. But the Department responded to Plaintiff's August 22, 2026 request on September 22—barely a month after Plaintiff's request. To the extent

Plaintiff seeks to compare himself to Wholihan based on the determination coming before the candidate filing deadline, he is not similarly situated where Wholihan filed his request months in advance of that deadline and Plaintiff filed his request less than two weeks before the September 4 certification deadline.

Plaintiff's comparison to Clerk McQueer is also inapt. While Plaintiff refers to McQueer's July 6, 2024, request for declaratory ruling, he omits a considerable portion of the procedural history in that matter. (ECF 20, PageID.215). As noted by Court of Claims Judge Michael J. Riordan in his September 22, 2026 opinion and order, McQueer—and others—originally submitted a declaratory ruling request on October 25, 2025, which was one day before the rule took effect. (Ex 7, 9/22/2026 Order, p 4). The Department responded to that request just over a month later, on November 25, 2025, stating the request could not be answered until after related Help America Vote Act complaints had been concluded. (Ex 7, 9/22/2026 Order, p 5). That span of time is essentially identical to the time in which the Department responded to McQueer then filed another request on July 6, 2026. (Exhibit 7, 9/22/2026 Order, p 6). The Department ultimately issued a ruling on the October 22, 2025 and July 6, 2026 declaratory ruling requests on September 30, 2026. At best, McQueer's July 6 request was determined almost three months after it was submitted. So, it is not clear on what facts Plaintiff claims that McQueer received more expeditious treatment than Plaintiff did, where

his August 22 request was answered in one month. The facts in McQueer are simply not at all similar.

Plaintiff is not similarly situated to either Wholihan or McQueer, and if anything Plaintiff received a response to his August 22 request in roughly the same amount of time as they did—if not sooner. As a result, his claims asserting that he has been treated differently from them as a “class of one” simply fail.

Moreover, even if Plaintiff could show that he was similarly situated to the other individuals to whom he seeks to compare himself, there are readily-apparent reasons for any superficial differences in treatment. For example, regarding Plaintiff’s AOI challenges and why they were not determined before the deadline to certify candidates, Plaintiff fails entirely to recognize that his challenges were not filed in the same time relative to that deadline. Karpinski’s AOI challenge was filed on April 28 against a candidate seeking to appear on the August primary. In contrast, Plaintiff’s challenge was filed 3 days before the September 4 deadline to certify candidates for the November general election. While it is true that candidates Savit and Gilchrist filed their AOIs as Michigan Democratic Party nominees for attorney general and secretary of state, respectively, on August 31, 2026, this only underscores that the situation is not at all similar to that with Karpinski’s challenge.

Plaintiff has thus failed to state plausible equal protection claims and Counts II and III must be dismissed under Fed. R. Civ. Proc. 12(b)(6).

C. Plaintiff has failed to state a plausible claim for conspiracy under 42 U.S.C §1983 in Count IV of the Amended Complaint.

“A claim for civil conspiracy under § 1983 exists only where the plaintiff has established a separate and actionable constitutional injury.” *Rapp v. Dutcher*, 557 F. App'x 444, 450 (6th Cir. 2014) (citing *Bauss v. Plymouth Twp.*, 233 Fed. Appx. 490, 500 (6th Cir. 2007)).

For the reasons already stated above, however, Plaintiff has failed to raise any cognizable protected rights or valid constitutional claims in Counts I through III. Consequently, there can be no “conspiracy” to violate Plaintiff’s constitutional rights where the rights claimed are either not recognized under the law, or have not been violated in the manner alleged. As a result, Count IV fails to state a claim for which relief may be granted, and so must also be dismissed pursuant to Fed. R. Civ. P. 12(b)(6).

D. Plaintiff has failed to state a plausible constitutional challenge to Mich. Comp. Laws §24.264 in Counts V or VI of the Amended Complaint.

In Count V of the Amended Complaint, Plaintiff alleges that Mich. Comp. Laws §24.264 is “void for vagueness” because it does not define a time period for an agency to respond to a request for a declaratory ruling. (ECF 20, PageID.232-239). Count VI invokes 42 U.S.C. §1983, similarly refers to Mich. Comp. Laws §

24.264 and its requirement to first request a declaratory ruling from the agency, and vaguely alleges that the State Defendants actions have “denied Plaintiff ‘effective’ and ‘meaningful’ access to the court,” because the September 4, 2026 deadline for certifying candidates for the November general election has already passed. (ECF 20, PageID.239-257). The title for Count VII and the relief requested for that count both refer to “the forward-looking doctrine,” but there are no allegations addressing the doctrine, citing any authority, or explaining its application to this claim. *Id.* But, however they are framed, Plaintiff’s challenge to the validity or application of § 64 of Michigan’s APA simply fails to state a plausible claim.

As a threshold matter, Plaintiff’s claims fail outright where the Department of State already issued a determination regarding his August 22, 2026 request, and did so within a month of the request. By almost any measure, that is reasonably expeditious for a government agency. It is also worth noting that while Plaintiff repeatedly refers to “expedited” requests for declaratory rulings, there is no such thing. There is **no** provision for accelerated or “expedited” requests for declaratory rulings in the APA. While Plaintiff might subjectively expect an instant or immediate response, he is not entitled to one under Michigan law.

Indeed, declaratory rulings are not intended to be informal or impulsive answers to spur-of-the-moment questions. Instead, Mich. Comp. Laws § 24.263

provides that declaratory rulings are supposed to determine, “the applicability to an actual state of facts of a statute administered by the agency or of a rule or order of the agency,” and that the rulings are *binding* on the agency unless set aside by a court. Agencies must, as a result, be afforded a reasonable amount of time to review the request and consider the circumstances before making a determination.

But more pointedly, Plaintiff’s attacks are misdirected. The State Defendants do not administer the APA, and instead they—like all state officials—are bound to follow it. Plaintiff’s Amended Complaint cites no law or authority making the Secretary of State or Director of Elections responsible for “enforcing” any part of the APA generally, or § 64 specifically. More pointedly, the portion of the statute with which Plaintiff appears to take issue—the requirement that: “An action for declaratory judgment may not be commenced under this section unless the plaintiff has first requested the agency for a declaratory ruling and the agency has denied the request or failed to act upon it expeditiously”—imposes no duty upon or grant any authority to the Secretary or Director.

Simply put, if Plaintiff believed that the Department of State was not responding “expeditiously” to his request for a declaratory ruling, he was free to file an action for declaratory judgment with the state courts making that argument. There would have been nothing the State Defendants could have done to stop him from doing so and could have at most merely made an argument to the court in

opposition. But Plaintiff's claim presumes that a court would reject an argument that the agency did not act "expeditiously," without his having made it to the state courts. But Plaintiff does not offer any allegation explaining why such an argument would have been "futile" if—as he claims in Count VII—the State Defendants were dilatory in order to prevent him from bringing suit.

Consequently, Plaintiff has failed to state a plausible claim either that § 64 of the APA or any actions of the State Defendants obstructed or prevented him from filing an action in the state courts for declaratory relief.

But ultimately, Plaintiff's claims simply fail under the legal theories Plaintiff raises. First, Plaintiff claims that § 64 is "void for vagueness." The Sixth Circuit has held that a statute should not be struck as facially vague only if the plaintiff has 'demonstrated that the law is impermissibly vague in all of its applications.'

Green Party v. Hargett, 700 F.3d 816, 825 (6th Cir. 2012) (quoting *Vill. Of Hoffman Estates v. Flipside, Hoffman Estates Inc.*, 455 U.S. 489, 497 (1982).) The purpose of this doctrine is, "to ensure that both those who enforce a statute and those who must comply with it know what is prohibited," and not "to convert into a constitutional dilemma the practical difficulties of crafting a law that is general enough to take into account a variety of human conduct yet specific enough to provide fair warning." *Id.* (quoting *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972) and *Colten v. Kentucky*, 407 U.S. 104, 110 (1972) (internal quotation

marks omitted)). Federal courts must construe challenged state statutes, whenever possible, so as “to avoid constitutional difficulty.” *Id.*, (quoting *Davet v. City of Cleveland*, 456 F.3d 549, 554 (6th Cir. 2006)). Every reasonable construction must be resorted to, in order to save a statute from unconstitutionality. *Id.* (quoting *Chapman v. United States*, 500 U.S. 453, 464 (1991)).

Courts apply a two-part test to determine whether a law is unconstitutionally vague: first, the law must give a person of “ordinary intelligence a reasonable opportunity to know what is prohibited, so that [they] may act accordingly[;]” and second, the standards of enforcement must be precise enough to avoid “involving so many factors of varying effect that neither the person to decide in advance nor the jury after the fact can safely and certainly judge the result.” *Grayned*, 408 U.S. at 108 (internal citation omitted); *Columbia Natural Resources v. Tatum*, 58 F.3d 1101, 1105 (6th Cir. 1995). Also, any words not expressly defined in the statute are interpreted according to their ordinary, contemporary, and common meaning. *Deutsche Bank National Trust Co. v. Tucker*, 621 F.3d 460, 463 (6th Cir. 2010).

Count V fails entirely under this standard. Most notably, the phrase, “the agency has denied the request or failed to act upon it expeditiously,” does not impose any duty or obligation on the Plaintiff. Instead, it is a limit on the agency designed to avoid the precise scenario imagined by Plaintiff’s allegations—an agency refusing to issue a declaratory ruling in order to block a legal action.

Merriam-Webster defines “expeditious” as meaning, “marked by or acting with prompt efficiency.”² Although “prompt efficiency” may vary depending on the circumstances of a request, that is likely by design, and Plaintiff cites no authority requiring that every word in a statute have only one meaning. A person of ordinary intelligence is more than capable of having an understanding of how “expeditious” may apply in a given set of circumstances, and a person can file an action for declaratory judgment in state court if they believe an agency has exceeded it. So, Plaintiff has not stated a plausible claim that § 64 is unconstitutionally vague, and Count V must be dismissed.

Count VI, in turn, purports to raise a claim based upon the “forward-looking doctrine.” The Amended Complaint, however, cites no authority as the basis for the doctrine, or how it could or should apply to this case. But, in *Flagg v. City of Detroit*, 715 F.3d 165, 173 (6th Cir. 2013), the Sixth Circuit described “forward-looking” claims alleging a denial of access to the Courts, where “the plaintiff accuses the government of creating or maintaining some ‘frustrating condition,’ that stands between the plaintiff and ‘the courthouse door.’” *Id.* The Sixth Circuit quoted *Christopher v. Harbury*, 536 U.S. 403, 413 (2002), which itself described such claims as a category of denial-of-access which, “claim[] that systemic official

² See <https://www.merriam-webster.com/dictionary/expeditious> (last accessed October 6, 2026).

action frustrates a plaintiff or plaintiff class in preparing and filing suits at the present time.” The examples the Supreme Court used was prisoner-litigation seeking access to a law library or simply a lawyer, of challenging fees that a poor plaintiff cannot afford to pay. *Id.* The Supreme Court then summarized, stating, “the essence of the access claim is that official action is presently denying an opportunity to litigate for a class of potential plaintiffs. The opportunity has not been lost for all time, however, but only in the short term; the object of the denial-of-access suit, and the justification for recognizing that claim, is to place the plaintiff in a position to pursue a separate claim for relief once the frustrating condition has been removed.” *Id.*

Again, Plaintiff’s allegations fail to meet this standard. There was no official action blocking Plaintiff’s access to the courts, and Plaintiff was able to file any action at any time. Instead, Plaintiff’s claim is based on a belief that—if he had filed an action for declaratory relief—his claim might be rejected by the court based on whether he had exhausted the remedies available to him under the APA. But that claim is entirely speculative, and Plaintiff could have made the same allegations to a state court asserting that the Department had delayed, that there was a need for urgency, and why under those circumstances the Department had failed to act on his request “expeditiously.” Plaintiff did not do so, and so he cannot now establish that there was any official obstacle when he made no attempt

to file an action. Moreover, Plaintiff has not made allegations showing that there is a “class of plaintiffs” being denied “an opportunity to litigate.” Plaintiff had the opportunity, he simply chose not to take it.

So, Plaintiff has also failed to state a plausible “forward-looking” denial of access to courts claim and Count VI must be dismissed under Fed. R. Civ. Proc. 12(b)(6).

E. Plaintiff has failed to state a plausible Supremacy Clause challenge to Rule 168.48 in Count VII of the Amended Complaint.

Pursuant to Fed. R. Civ. Proc. 10(c), the State Defendants adopt and incorporate by reference here the arguments raised in their response to Plaintiff’s emergency motion for temporary restraining order as to the merits of Count VII of Plaintiff’s Amended Complaint, as well as the pertinent exhibits. The pertinent arguments are found at ECF 37, PageID.648-660, and the exhibits are at ECF 37, PageID.665-770.

For the same reasons presented in that earlier brief, Plaintiff has failed to state a plausible claim for relief that Mich. Admin. Code, R. 168.48 is preempted by the Supremacy Clause, and so Count VII must be dismissed under Fed. R. Civ. Proc. 12(b)(6).

CONCLUSION AND RELIEF REQUESTED

For these reasons, Defendants Michigan Secretary of State Jocelyn Benson and Michigan Director of Elections Jonathan Brater respectfully request that this

Honorable Court grant the motion and dismiss the complaint against them in its entirety and with prejudice.

Respectfully submitted,

/s/Erik A. Grill

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Heather S. Meingast (P55439)
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Dated: October 7, 2026

PROOF OF SERVICE

I hereby certify that on October 7, 2026, I electronically filed the above document(s) with the Clerk of the Court using the ECF System, which will provide electronic copies to all parties and counsel of record.

/s/Erik A. Grill

Erik A. Grill (P64713)
Assistant Attorney General

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROBERT DAVIS,

Plaintiff,

No. 26-13454

v

HON. TERRENCE G. BERG

JOCELYN BENSON, in her official and
individual capacities as the duly elected
Secretary of State for the State of Michigan,
JONATHAN BRATER, in his official and
individual capacities as the duly appointed
Director of Michigan Bureau Elections,
WAYNE COUNTY ELECTION
COMMISSION, and BRENDA GREEN, in
her official capacity as the duly elected City
Clerk for the
City of Highland Park,

MAG. KIMBERLY G. ALTMAN

Defendants.

**STATE DEFENDANTS' BRIEF IN SUPPORT OF THEIR MOTION TO
DISMISS**

EXHIBIT LIST

1. *Davis v. Benson*, 09/04/2026 Order
2. Affidavit of Adam Fracassi
3. MDOS Response to 08/22/2026 Request
4. 09/21/2026 and 09/22/2026 Requests and 09/30/2026 Response
5. *McQueer v. Benson, et al* Complaint
6. *McQueer v. Benson, et al* 08/13/2026 Order
7. *McQueer v. Benson, et al* 09/22/2026 Order

EXHIBIT 1

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STATE OF MICHIGAN
COURT OF CLAIMS

ROBERT DAVIS,

Plaintiff,

v

Case No. 26-000187-MB

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

Hon. Michael F. Gadola

Defendant.

_____ /

OPINION AND ORDER

On September 1, 2026, at 10:42 a.m., plaintiff, Robert Davis, filed this declaratory and mandamus action against defendant, Secretary of State Jocelyn Benson (the SOS), challenging the candidacies of Democratic Party nominees for Attorney General (Eli Savit) and Secretary of State (Garlin Gilchrist II). Plaintiff asserts that both candidates made false statements in their affidavits of identity (AOIs) relating to outstanding campaign finance reports under the Michigan Campaign Finance Act (MCFA), MCL 169.201 *et seq.*, and the SOS therefore cannot certify either candidate for purposes of the November 3, 2026 general election. Plaintiff also moved, on an emergency basis, for an ex parte temporary restraining order (TRO) to prevent the SOS from certifying either Savit or Gilchrist. Both parties agree that September 4, 2026, is the practical deadline for resolving this dispute as it is the deadline by which the SOS must certify to counties the slate of candidates to appear on the general election ballot. On September 2, 2026, this Court issued an expedited

scheduling order, requiring that plaintiff serve the complaint and other documents on the challenged candidates and that briefing be completed by noon on September 3, 2026.

The SOS timely responded to the complaint by moving for summary disposition under MCR 2.116(C)(8) and (10), arguing that (1) the MCFA explicitly bars private causes of action to enforce its provisions, (2) plaintiff did not file an MCFA complaint with the SOS, and (3) there is no indication in the Bureau of Elections' campaign finance records that either candidate owes any late reports to substantiate plaintiff's allegations.

Plaintiff responded to the motion for summary disposition, arguing, in relevant part, that he is not seeking enforcement of the MCFA but is seeking to enforce MCL 168.558(4), which he asserts mandates that the SOS not certify a candidate whose AOI contains a false statement. Plaintiff requested summary disposition in his favor under MCR 2.116(I)(2). Plaintiff also filed an amended complaint, purportedly as a matter of right under MCR 2.118(A)(1). Plaintiff also moved to strike the affidavit of Deputy Director of Elections Adam Fracassi, which is attached as an exhibit supporting the SOS's motion for summary disposition under MCR 2.116(C)(10). Finally, on September 4, plaintiff moved, on an emergency basis, to file a supplemental response in opposition to the motion for summary disposition.

Because time is of the essence, the Court dispenses with a hearing. Because there is no private right of enforcement of the MCFA and plaintiff has not pursued an MCFA complaint in relation to either candidate, the Court GRANTS the SOS's motion for summary disposition, DENIES AS MOOT plaintiff's motions for a TRO and to strike Fracassi's affidavit, DENIES plaintiff's emergency motion to file a supplemental response in opposition to the motion for summary disposition, and DISMISSES the complaint, as amended, WITH PREJUDICE.

I. BACKGROUND

The Michigan Democratic Party held its nominating convention on August 29, 2026. Plaintiff asserts that he is a registered Democrat, was present at the nominating convention, and openly voted in opposition of Savit's and Gilchrist's nominations. Under the Michigan Election Law, MCL 168.558(1), Savit and Gilchrist were required to file their AOIs within one business day after nomination. Savit and Gilchrist timely filed AOIs on August 31, 2026.

Plaintiff contends that under Mich Admin Code, R 168.2(3), the SOS had a duty to examine the campaign finance records before certifying the candidates. According to plaintiff, Savit and Gilchrist were required to file additional MCFA statements or reports. Therefore, plaintiff asserts that both candidates made false statements in their AOIs when they certified, as required under MCL 168.558(2), that "[a]t this date, all statements, reports, late filing fees, and fines required of me or any candidate committee organized to support my election under the [MCFA] have been filed or paid[.]"

On September 1, 2026 (the same day he filed this complaint), plaintiff submitted challenges to Savit's AOI and Gilchrist's AOI, as required under Mich Admin Code, R 168.5. Due to the timing of this lawsuit, the SOS has not yet issued a determination on the AOI challenges. Plaintiff does not assert that he has filed an MCFA complaint in relation to either Savit or Gilchrist.

Starting with Savit, plaintiff premises his claims on his own search of the Washtenaw County Clerk's and the SOS's campaign finance databases. He asserts that those searches revealed that the campaign committee associated with Savit's campaign to serve as Washtenaw County Prosecutor (The Friends of Eli Savit Candidate Committee) was improperly dissolved on October 17, 2025. Plaintiff asserts that The Friends of Eli Savit Candidate Committee has not filed

any campaign statements since the improper dissolution, which he maintains is required under the MCFA. Plaintiff alleges that, more recently, Savit's Attorney General campaign committee reported several improper campaign contributions from entities that were either dissolved or not registered as Political Action Committees (PACs), in violation of the MCFA.

As for Gilchrist, plaintiff asserts that Gilchrist filed a July 25, 2025 Quarterly Campaign Statement in connection with his campaign for Governor, which allegedly listed contributions from dissolved PACs in violation of the MCFA. Plaintiff further alleges that, in early 2025, Gilchrist filed Statements of Organization for his gubernatorial and SOS campaign committees, which listed nonresidents as Treasurers of those campaign committees, again in violation of the MCFA.

In both Counts I and II of the complaint, plaintiff requests a declaratory judgment under MCR 2.605 that declares that (1) the SOS has a legal duty under MCL 168.558(4), and the corresponding administrative rules, to not certify Savit or Gilchrist to appear on the November 3, 2026 general election ballot as the Democratic Party nominees for Attorney General and Secretary of State, respectively, because their candidate committees failed to submit campaign finance statements or reports required under the MCFA; (2) Savit's and Gilchrist's candidate committees failed to file campaign statements or reports under the MCFA; and (3) Savit's and Gilchrist's AOIs contained false statements in violation of MCL 168.558(4). In Count III, plaintiff seeks a writ of mandamus to compel the SOS not to certify Savit or Gilchrist as Democratic Party nominees on the November 3, 2026 general election ballot.

II. ANALYSIS

The Court will resolve the motion for summary disposition under MCR 2.116(C)(8).¹ A motion for summary disposition under MCR 2.116(C)(8) examines the legal sufficiency of the plaintiff's claims on the basis of the factual allegations raised in the complaint. *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 159; 934 NW2d 665 (2019). The Court must accept the factual allegations in the complaint as true and will decide the motion on the pleadings. *Id.* at 160. The motion will be granted if the claim is so clearly unenforceable as a matter of law that no factual development could justify recovery. *Id.*

Plaintiff requests a declaratory judgment under MCR 2.605. MCR 2.605 governs declaratory actions in civil cases and provides, in relevant part, "In a case of actual controversy within its jurisdiction, a Michigan court of record may declare the rights and other legal relations of an interested party seeking a declaratory judgment, whether or not other relief is or could be sought or granted." MCR 2.605(A)(1). Plaintiff also seeks a writ of mandamus. A writ of mandamus is an extraordinary remedy falling within the Court's discretion. *Berry v Garrett*, 316 Mich App 37, 41; 890 NW2d 882 (2016).

To obtain the extraordinary remedy of a writ of mandamus, the plaintiff must show that (1) the plaintiff has a clear, legal right to performance of the specific duty sought, (2) the defendant has a clear legal duty to perform, (3) the act is ministerial, and (4) no other adequate legal or equitable remedy exists that might achieve the same result. [*Id.* (quotation marks and citation omitted).]

Plaintiff's claims fail on the pleadings because each claim would require this Court to adjudicate whether Savit and Gilchrist failed to submit campaign finance statements or reports, in

¹ Because the Court will decide the motion under MCR 2.116(C)(8), it need not consider Fracassi's affidavit. Therefore, plaintiff's motion to strike Fracassi's affidavit is DENIED AS MOOT.

violation of the MCFA. The MCFA expressly provides that, with one limited exception that does not apply in this case, there is no private right of action to enforce the statute. The statute explains, “[T]here is no private right of action, either in law or in equity, under this act.” MCL 169.215(17). The MCFA further clarifies, “[T]he remedies provided in this act are the exclusive means by which this act may be enforced and by which any harm resulting from a violation of this act may be redressed.” *Id.* MCL 169.215(5) through (12) outline the administrative procedures under the MCFA. MCL 169.215(12) provides that only a final decision and order of the SOS is subject to judicial review.

Plaintiff’s claims for declaratory relief in Counts I and II seek enforcement of the MCFA, in violation of MCL 169.215(17). Plaintiff attempts to circumvent this provision of the MCFA by alleging that the SOS did not comply with her legal obligation to compare statements in the AOI to campaign finance records before certifying the candidate to appear on the general election ballot. But plaintiff’s claim that the SOS did not fulfill her obligation to ensure the legitimacy of the statements in the AOIs assumes there will be a finding in plaintiff’s favor that Savit and Gilchrist owed additional reports or violated the MCFA in other respects, thus requiring a decision on the issue whether the candidates violated the MCFA. The MCFA precludes a direct cause of action and requires that plaintiff pursue his claims through the administrative procedures outlined in the statute. Because plaintiff never filed an MCFA complaint, the factual allegations underlying his claims were not investigated or decided by the SOS, and so the claims are not ripe for judicial review.² The SOS is entitled to summary disposition of Counts I and II under MCR 2.116(C)(8).

² The Court acknowledges that two of plaintiff’s allegations in relation to Savit are for alleged improper campaign contributions made in mid-to-late August 2026, leaving limited time to pursue

Because plaintiff's claim for mandamus relief in Count III is premised on the success of his claims for declaratory relief, the SOS is entitled to summary disposition of Count III under MCR 2.116(C)(8).

Additionally, on September 3, at 11:01 a.m., Davis sought to file an amended complaint as a matter of right under MCR 2.118(A)(1). Davis attests within the amended complaint that the pleading does not render the motion for summary disposition moot, does not change the legal theories or substantive facts pleaded in the original complaint, and only seeks to correct errors and add additional facts for Count I.³ For practical reasons, there is insufficient time for the SOS to respond to the new allegations by September 4, which both parties have agreed is the practical deadline to resolve this dispute. Nevertheless, upon the Court's review, the amendment will not change the outcome of this case. Summary disposition of the amended complaint is warranted under MCR 2.116(C)(8). Because the SOS is entitled to summary disposition, plaintiff's emergency motion for an ex parte TRO is DENIED AS MOOT.

Finally, on September 4, plaintiff moved, on an emergency basis, to supplement his response in opposition to the SOS's motion for summary disposition to incorporate an argument that MCL 168.558(4) must control over MCL 169.215(17) as the more specific statutory provision governing the disqualification of a candidate. That motion is DENIED. Plaintiff has requested

an MCFA complaint through decision. However, these allegations once again relate to the truthfulness of the reports and do not allege that Savit failed to file any statements, reports, late filing fees, or fines for purposes of MCL 168.558(4).

³ Specifically, Davis seeks to add facts regarding the alleged failure of The Friends of Eli Savit Candidate Committee's failure to file a July 2026 Quarterly Campaign Statement to report an alleged July 20, 2026 expenditure. Again, this allegation relates back to plaintiff's claim that this committee did not dissolve properly and asserts an alleged MCFA violation. Plaintiff did not file an MCFA complaint in the weeks leading up to his filing of the complaint.

relief on the same day he filed his motion, and the scheduling order did not permit any additional briefing beyond the response to the complaint and a single response to the SOS's motion for summary disposition, if filed, due by noon on September 3.

IT IS ORDERED:

1. The SOS's motion for summary disposition is GRANTED.
2. Plaintiff's countermotion for summary disposition is DENIED.
3. Plaintiff's emergency motion for an ex parte TRO is DENIED AS MOOT.
4. Plaintiff's emergency MOTION TO STRIKE Fracassi's affidavit is DENIED AS MOOT.
5. Plaintiff's emergency motion to file a supplemental response brief is DENIED.
6. Plaintiff's complaint and amended complaint are DISMISSED WITH PREJUDICE.
7. This is a final order that resolves the last pending claim and closes the case.

Date: September 4, 2026



Hon. Michael F. Gadola
Chief Judge, Court of Claims



EXHIBIT 2

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROBERT DAVIS,

Plaintiff,

No. 26-13454

v

HON. TERRENCE G. BERG

JOCELYN BENSON, in her official and individual capacities as the duly elected Secretary of State for the State of Michigan, JONATHAN BRATER, in his official and individual capacities as the duly appointed Director of Michigan Bureau Elections, WAYNE COUNTY ELECTION COMMISSION, and BRENDA GREEN, in her official capacity as the duly elected City Clerk for the City of Highland Park,

MAG. KIMBERLY G. ALTMAN

Defendants.

**AFFIDAVIT OF DEPUTY DIRECTOR OF ELECTIONS ADAM
FRACASSI**

I, Adam Fracassi, being duly sworn, voluntarily state as follows:

1. I can testify competently to the facts contained within this affidavit based upon my personal knowledge.

2. I am the Deputy Director of Elections with the Michigan Bureau of Elections (Bureau). I have served in this capacity since September 16, 2024. The Bureau of Elections is an agency within the Michigan Department of State

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(Department). I have been with the Bureau since May 6, 2018, and have served in a variety of different capacities.

3. I bring this affidavit in support of Defendants Jocelyn Benson and Jonathan Brater (“Defendants”)’ Motion to Dismiss. If called as a witness, I could testify truthfully and accurately as to the information contained within this affidavit.

4. I am personally knowledgeable about provisions of the Michigan Campaign Finance Act (MCFA), which regulates campaign financing, requires campaign statements and reports, and prescribes penalties and provides remedies for violations.

The Secretary’s Responsibilities Under The MCFA and MEL

5. The Secretary of State’s responsibilities under the MCFA are twofold, and both functions are served by members of Department’s Bureau of Elections staff.

6. First, the Secretary is required to make available and furnish to county clerks, appropriate forms, instructions, and manuals required by the Act. MCL 169.215.

7. Second, relevant here, the Secretary serves as filing official for campaign finance purposes for candidates seeking statewide office. In that capacity, the Secretary receives all statements and reports required to be filed with

the Secretary. MCL 169.215. For offices contained wholly within the county, such as county prosecutor, campaign finance reports are filed with the county clerk.

8. In addition to county clerks, who are also charged with receiving statements and reports, in her capacity as filing official, the Secretary must determine whether a required statement or report complies on its face with the requirements of the MCFA and related administrative rules. Within four business days after a statement or report's filing deadline, the filing official must give notice of an error or omission or the failure to file a report or statement. MCL 169.216(6).

9. Under the Michigan Election Law, a candidate nominated for a federal, state, county, city, township, or village office at a political party convention or caucus shall file an affidavit of identity (AOI) within 1 business day after being nominated with the secretary of state. MCL 168.558(1). In the AOI, the candidate must attest that on the date of the affidavit, "all statements, reports, late filing fees, and fines required of the candidate or any candidate committee organized to support the candidate's election under the [MCFA] have been filed or paid; and a statement that the candidate acknowledges that making a false statement in the affidavit is perjury, punishable by a fine up to \$1,000.00 or imprisonment for up to 5 years, or both." MCL 168.558(4).

10. On September 1, 2026 at 10:25 am, Plaintiff emailed the Bureau challenging the affidavit of identity of Garlin Gilchrist for Secretary of State. The

same day, at 10:31 am, Plaintiff emailed the Bureau challenging the affidavit of identity of Eli Savit for Attorney General. Approximately two hours later, at 12:29 pm, the Bureau was notified that Plaintiff filed in the Michigan Court of Claims. The Bureau has not yet notified the candidates of the challenges, as required by the Rule given the pending litigation.

11. On September 10, 2026, the Michigan Supreme Court denied Plaintiff's application for leave to appeal the Court of Appeals' denial of his motion to expedite. Currently, Plaintiff's appeal remains pending in the Court of Appeals.

12. On September 16, 2026, the Michigan Bureau of Elections notified Plaintiff that, in light of the pending litigation, his challenges to candidates Savit and Gilchrist would be held in abeyance until the litigation and any appeals are resolved.

Candidate Eli Savit

13. On August 31, 2026, Eli Savit timely submitted an affidavit as the Democratic nominee for the office of Attorney General with the Bureau.

14. At the time of filing the Bureau reviewed the committee records of Eli Savit for Attorney General (ID #0606504) and the committee had no outstanding reports or fees owed to the Bureau.

15. On September 2, 2026, the Bureau reviewed the campaign filing records of Friends of Eli Savit (ID #C-2019-005) filed with Washtenaw County for his office as Washtenaw County Prosecutor. According to Washtenaw County, Friends of Eli Savit is currently on a reporting waiver and was placed on the reporting waiver after filing an amended statement of organization on October 17, 2025, and does not have any outstanding reports or fees owed to Washtenaw County.

16. The Bureau's review of the campaign finance records for Eli Savit for Attorney General and Friends of Eli Savit indicate that he did not owe any campaign reports or fees at the time of signing his affidavit on August 29, 2026.

Candidate Garlin Gilchrist

17. On August 31, 2026, Garlin Gilchrist timely submitted an affidavit as the Democratic nominee for the office of Secretary of State with the Bureau.

18. At the time of filing the Bureau reviewed the committee records of Garlin Gilchrist for Lt Governor (ID #519074), Garlin Gilchrist for Governor (ID #521896), and Garlin Gilchrist for Michigan (ID #0612275). None of the committees associated with Garlin Gilchrist had outstanding reports or fees owed to the Bureau at the time of filing his affidavit of identity.

19. On September 2, 2026, the Bureau reviewed the campaign filing records of Friends of Garlin Gilchrist (ID #82-156752) filed with Wayne County.

According to Wayne County, the Friends of Garlin Gilchrist committee was dissolved on June 4, 2019, and committees are unable to dissolve if they owe outstanding reports or campaign fees.

20. The Bureau's review of the campaign finance records for known committees associated with Garlin Gilchrist indicate that he did not owe any campaign reports or fees at the time of signing his affidavit on August 29, 2026.

21. The Bureau has a strict timeline for investigating alleged campaign finance violations filed under the MCFA. MCL 169.215. The MCFA requires the Bureau to begin the investigation within 5 business days of receiving a complaint. *Id.*

22. When Eli Savit and Garlin Gilchrist signed their respective AOIs and submitted them to the Bureau on August 31, 2026, based on the review of the materials submitted with the respective county clerks, I do not believe either candidate owed reports or had any unpaid late filing fees. Therefore, the AOI signed by Eli Savit and Garlin Gilchrist did not contain a false statement.

Plaintiff's Declaratory Ruling Request

23. The Department received a request for an expedited declaratory ruling under the Administrative Procedures Act (APA) from Plaintiff on August 22, 2026.

24. The Department responded to the request on September 22, 2026 by denying the request for failing to state a set of facts as required by the APA for the

Bureau to issue a declaratory ruling. The Department further rejected Plaintiff's request as not being from an interested person since a declaratory ruling was not necessary to guide any of his conduct.

25. In responding to the Plaintiff's request for a declaratory ruling, the Department provided a copy of the declaratory ruling issued which explained how the EPBs are used for elections, and how election data is retained and preserved to comply with both state and federal retention laws. A copy of the ruling that was provided to Plaintiff is included as Defendant's Exhibit 4.

26. To my knowledge, there are no outstanding declaratory ruling requests from Plaintiff.

Election Administration Timelines

27. Under Michigan Election Law, the Secretary of State must certify to counties the slate of candidates to appear on the November 3, 2026 ballot at least 60 days before the election, which was September 4, 2026 for this cycle. MCL 168.648.

28. It is critical for the successful administration of the election that the names of candidates appearing on ballots be finalized no later than 60 days before the election. In addition to being the statutory deadline, this is also the practical deadline to ensure that ballots are ready for military/overseas voters on September

19, 2026 and all other absentee voters on September 24, 2026 as required by state and federal law.

29. The deadline for absent voter ballots to be printed and made available to voters has therefore passed.

30. As of the date of this affidavit, more than 2.03 million absentee ballots were sent to voters by the local clerks and more than 252,000 absentee ballots have already been returned to local clerks across the state.

31. A decision or determination by this Court removing Savit or Gilchrist as candidates in the general election will therefore create enormous confusion and difficulty for local election officials and voters, necessitating the Department to create a new way to inform voters and officials that the ballots are no longer accurate. The local clerks would have to re-issue more than 2.03 million ballots to voters which would cause an enormous cost to be incurred by the State.

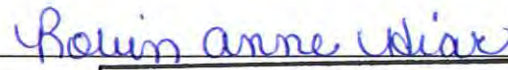
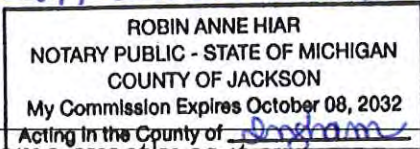
32. Additionally, I do not believe that it would be possible at this stage to reprint ballots in time for early voting. Jurisdictions will begin early voting in approximately two weeks with mandatory early voting period beginning no later than October 24, 2026. It is not possible to reprint ballots statewide and reprogram all the election equipment in two weeks.

AFFIANT SAYS NOTHING FURTHER.

 10/7/26
Adam Fracassi
Deputy Director of Elections
Michigan Department of State

Subscribed and sworn to before me, a Notary Public,

on the 7th day of October, 2026.



Acting in the County of Ingham

Print name exactly as it appears on application for commission as a notary public.

Notary Public, State of Michigan, County of Jackson

My Commission Expires: October 8, 2032

Acting in the County of: Ingham

EXHIBIT 3

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STATE OF MICHIGAN
BUREAU OF ELECTIONS
LANSING

September 22, 2026

Robert Davis
davisrobert854@gmail.com

Dear Robert Davis:

The Department of State (Department) acknowledges receipt of your August 22, 2026 email, in which you sought a declaratory ruling under the Administrative Procedure Act (APA), 1969 PA 306, MCL 24.201 *et seq.*

“On request of an interested person, an agency may issue a declaratory ruling as to the applicability to an actual state of facts of a statute administered by the agency or of a rule or order of the agency.” MCL 24.263. You seek a declaratory ruling under MCL 24.264, which allows the validity or applicability of a rule to be determined in an action for declaratory judgment, but only if “the plaintiff has first requested the agency for a declaratory ruling and the agency has denied the request or failed to act upon it expeditiously.” MCL 24.264.

In your request, you state: “[c]ontrary to popular belief, whether a candidate’s affidavit of identity complies with the mandatory requirements under MCL 169.558 does NOT end when that candidate is certified to appear on a primary election ballot.” Your request goes on to argue that MCL 168.558 and R 168.2(3) and (4) apply to all elections but are not being applied to the November General Election by filing officials. Your request does not specify which filing official has failed to properly apply the statute or rule, or how, nor does it specify which candidates are being improperly, in your opinion, certified to the November ballot. Your conclusion requests only that the Department issue a ruling “concerning the Secretary of State and local election officials’ statutory legal duty under MCL 168.558 to apply Mich Admin Code, R 168.2(3) and (4) before certifying a candidate’s name to appear on the November 3, 2026 general election ballot.” (Emphasis omitted).

Because your request appears to rely on unexplained assumptions about how filing officials apply R 168.2, fails to identify a specific filing official who allegedly incorrectly applied the rule, fails to identify a specific candidate to whom the rule was allegedly incorrectly applied, and fails to assert any facts upon which your request is based, the Department finds you have failed to make a request “as to the applicability to **an actual state of facts** of a statute administered by the agency or of a rule ... of the agency.” MCL 24.263 (emphasis added). Without any factual assertions, the Department is unable to issue a declaratory ruling.

Sincerely,

A handwritten signature in blue ink, appearing to read "Adam Fracassi".

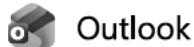
Adam Fracassi, Deputy Director of Elections
Michigan Bureau of Elections

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EXHIBIT 4

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Expedited Request for Declaratory Ruling Under MCL 24.264 of APA Regarding Validity and Applicability of Mich Admin Code, R 168.48

From Robert Davis <[REDACTED]>
Date Mon 9/21/2026 5:35 PM
To MDOS-BOERegulatory <MDOS-BOERegulatory@michigan.gov>; Brater, Jonathan (MDOS) <[REDACTED]>; Fracassi, Adam (MDOS) <[REDACTED]>; Benson, Jocelyn (MDOS) <[REDACTED]>; Meingast, Heather (AG) <[REDACTED]>; [REDACTED]

CAUTION: This is an External email. Please report suspicious emails via the "Report to Abuse" button in Outlook

Dear SOS Benson, Director Brater, Ms. Meingast and Mr. Fracassi:

Pursuant to MCL 24.264 of the Administrative Procedures Act (APA), as a duly registered and qualified voter of the County of Wayne, State of Michigan, I am respectfully submitting this expedited request for a declaratory ruling concerning the validity and applicability of Mich Admin Code, R 168.48 with respect to the upcoming November 3, 2026 general election.

As a duly registered and qualified voter of the State of Michigan, I will be voting in the upcoming November 3, 2026 general election. I intend to vote in person at the polls on November 3, 2026 in the state-wide general election.

However, on October 23, 2025, the Secretary of State's promulgated rule, Mich Admin Code, R 168.48 went into effect. Mich Admin Code, R 168.48 requires and mandates **"the electronic pollbook software and associated files must be deleted from all devices by the seventh day following the final canvass and certification of the election,** unless a petition for recount has been filed and the recount has not been completed, a post-election audit has been scheduled, or the deletion of the data has been stayed by an order of the court or the secretary of state." (emphasis supplied).

Mich Admin Code, R 168.48, however, contravenes and conflicts with 52 U.S.C. §20701, which governs state elections where federal offices appear on the ballot.

52 U.S.C. §20701 provides:

"Every officer of election shall retain and preserve, for a period of twenty-two months from the date of any general, special, or primary election of which candidates for the office of President, Vice President, presidential elector, Member of the Senate, Member of the House of Representatives, or Resident Commissioner from the Commonwealth of Puerto Rico are voted for, all records and papers which come into his possession relating to any application, registration, payment of poll tax, or other act requisite to voting in such election, except that, when required by law, such records and papers may be delivered to another officer of election and except that,

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if a State or the Commonwealth of Puerto Rico designates a custodian to retain and preserve these records and papers at a specified place, then such records and papers may be deposited with such custodian, ***and the duty to retain and preserve any record or paper so deposited shall devolve upon such custodian.*** Any officer of election or custodian who willfully fails to comply with this section shall be fined not more than \$1,000 or imprisoned not more than one year, or both." [emphasis supplied.]

In Michigan, on the November 3, 2026 general election ballot, the office of U.S. Senator and Members of the U.S. House of Representatives will appear. On November 3, 2026, I will be voting for his preferred candidate for U.S. Senator and Member of the U.S. House of Representatives for the 13th Congressional District, which is where Plaintiff resides and is registered to vote.

I am concerned, however, that my properly cast votes for U.S. Senator and Member of the U.S. House of Representatives for the 13th Congressional District will be unlawfully deleted and unpreserved under the provisions of the Mich Admin Code, R 168.48.

268. Because candidates for the offices of U.S. Senator and Members of the U.S. House of Representatives will be voted for in the November 3, 2026 general election in the State of Michigan, 52 U.S.C. §20701 controls.

Because time is of the essence in this election-related matter, I am respectfully requesting a written response to this expedited request for declaratory ruling is issued within 7 calendar days of the date of this expedited request.

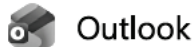
Please send all written responses to this expedited request for declaratory ruling to my email address:

[REDACTED]

Please confirm and acknowledge receipt of this email with a reply email.

Respectfully submitted,
/s/ ROBERT DAVIS
ROBERT DAVIS
180 Eason
Highland Park, MI 48203

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Outlook

Expedited Request for Declaratory Ruling Under MCL 24.264 of APA Regarding Validity and Applicability of Mich Admin Code, R 168.48 Conflicting With MCL 168.811 of Michigan Election Law

From Robert Davis <[REDACTED]>

Date Tue 9/22/2026 8:13 PM

To MDOS-BOERegulatory <MDOS-BOERegulatory@michigan.gov>; Brater, Jonathan (MDOS) [REDACTED]; Fracassi, Adam (MDOS) [REDACTED]; Benson, Jocelyn (MDOS) [REDACTED]; [REDACTED]; [REDACTED]; Meingast, Heather (AG) [REDACTED]

📎 1 attachment (55 KB)

Secretary of State Promulgated Rules R 168.41 to R 168.48 regarding Voter Data Retention Elections.pdf;

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Dear SOS Benson, Director Brater, Ms. Meingast, and Mr. Fracassi:

This expedited request for declaratory ruling MCL 24.264 of Administrative Procedures Act (APA) is **separate and distinct from the expedited request for declaratory ruling I submitted on Monday, September 21, 2026.**

Pursuant to MCL 24.264 of the Administrative Procedures Act (APA), as a duly registered and qualified voter of the County of Wayne, State of Michigan, I am respectfully submitting this expedited request for a declaratory ruling concerning the validity and applicability of Mich Admin Code, R 168.48 with respect to the upcoming November 3, 2026 general election considering it conflicts with MCL 168.811 of Michigan Election Law.

As a duly registered and qualified voter of the State of Michigan, I will be voting in the upcoming November 3, 2026 general election. I intend to vote in person at the polls on November 3, 2026 in the state-wide general election.

However, on October 23, 2025, the Secretary of State's promulgated rule, Mich Admin Code, R 168.48 went into effect. Mich Admin Code, R 168.48 requires and mandates "the electronic pollbook software and associated files must be deleted from all devices by the seventh day following the final canvass and certification of the election, unless a petition for recount has been filed and the recount has not been completed, a post-election audit has been scheduled, or the deletion of the data has been stayed by an order of the court or the secretary of state." (emphasis supplied).

Mich Admin Code, R 168.48, however, contravenes and conflicts with MCL 168.811 of Michigan Election Law, which governs preservation of ALL election-related data and documents pertaining to

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any state, county or local primary and/or general elections held in this state.

MCL 168.811 of Michigan Election Law provides:

"All election returns, including poll lists, statements, tally sheets, absent voters' return envelopes bearing the statement required by section 761, absent voters' records required by section 760, and other returns made by the election inspectors of the several precincts must be carefully preserved and may be destroyed after the expiration of 22 months following the primary or election at which the same were used. All applications executed under section 523, all voter registration applications executed by applicants under section 497(3) and (4), and all absent voters' applications must be carefully preserved and may be destroyed after the expiration of 6 years following the primary or election at which those applications were executed. All ballots used at any primary or election, other than ballots containing a federal office, may be destroyed after 30 days following the final determination of the board of canvassers with respect to the primary or election unless a petition for recount has been filed and not completed or unless the destruction of the ballots is stayed by an order of a court. **All ballots containing a federal office, and all presidential primary ballot selection forms, may be destroyed after the expiration of 22 months following the primary or election at which those ballots were cast or forms were used.**" [emphasis supplied.]

Because time is of the essence in this election-related matter, I am respectfully requesting that a written response to this expedited request be issued within 7 calendar days of the date of this expedited request.

Please send all written responses to this expedited request for declaratory ruling to my email address:

Please confirm and acknowledge receipt of this email with a reply email.

Respectfully submitted,

/s/ ROBERT DAVIS

ROBERT DAVIS

180 Eason

Highland Park, MI 48203

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From: [MDOS-BOERegulatory](#)
To: [Robert Davis](#)
Subject: Declaratory ruling requests
Date: Wednesday, September 30, 2026 4:20:51 PM
Attachments: [2026.9.30 McQueer.pdf](#)

Dear Robert Davis,

The Department acknowledges receipt of your declaratory ruling requests dated September 21, 2026 and September 22, 2026, in which you sought a declaratory ruling regarding the validity and applicability of R 168.48. The Department denies your request to issue a declaratory ruling because you are not an interested person under MCL 24.263. R 168.48 governs the conduct of clerks and their staff. Because you are not a clerk or a member of a clerk's staff, R 168.48 does not apply to you. However, the Department received a declaratory ruling request from an interested person addressing the same subject as your two requests. The Department's response to that request was in the process of being finalized when your requests were received. That declaratory ruling was issued today, and in the spirit of cooperation, is attached to this email.

Bureau of Elections, Regulatory Division

Michigan Department of State

P.O. Box 20126

Lansing, Michigan 48901

/ATB

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EXHIBIT 5

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**STATE OF MICHIGAN
IN THE COURT OF CLAIMS**

MICHELLE McQUEER, individually
and in her official capacity as Clerk of
the Township of Bridgewater,

Plaintiff,

Case No. 2026-

-MZ

v

HON.

JOCELYN BENSON, in her official
capacity as Michigan Secretary of State,
JONATHAN BRATER, in his official
capacity as Director of Elections, and
the **MICHIGAN DEPARTMENT OF
STATE**,

Defendants.

KDK LAW

KEVIN KIJEWSKI (P74153)

Attorney for Plaintiff

950 East Maple Road, Suite 204

Birmingham, MI 48009

(248) 971-0476

kevin@kdklawoffice.com

<http://www.kdklawoffice.com>

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KDKLAWOFFICE.COM – P: (248) 971-0476 – F: (248) 282-8998

**PLAINTIFF'S VERIFIED COMPLAINT FOR DECLARATORY JUDGMENT
AND INJUNCTIVE RELIEF**

IMMEDIATE AND EXPEDITED CONSIDERATION REQUESTED

There is no other pending or
resolved civil action arising out of
the transaction or occurrence alleged
in the complaint.

NOW COMES Plaintiff Michelle McQueer, individually and in her official

capacity as Clerk of the Township of Bridgewater, by and through her attorney, Kevin



Kijewski, and for her Complaint against Defendants Jocelyn Benson, in her official capacity as Michigan Secretary of State, Jonathan Brater, in his official capacity as Director of Elections, and the Michigan Department of State, states as follows:

INTRODUCTION

1. This action asks the Court to resolve a direct conflict between one administrative rule and three higher sources of law: federal statute, the Michigan Election Law, and the Michigan Constitution. Plaintiff seeks declaratory and injunctive relief against the State and its officers.
2. Plaintiff is a Michigan clerk, an officer of election, and a custodian of election records. The Secretary of State has promulgated R 168.48 of Rule Set 2025-014. That rule directs clerks to delete the electronic poll book software and associated files within seven days after the election is certified.
3. The seven-day command conflicts with each higher source. Under 52 USC 20701, Plaintiff must preserve voting records for twenty-two months, and 52 USC 20702 makes their willful destruction a crime. State law bars destruction of election returns and federal-office ballots before twenty-two months elapse. MCL 168.811. The Constitution requires election officials to keep ballots and election materials secure during an audit. Const 1963, art 2, § 4(1)(l).
4. Plaintiff does not seek to enjoin any election. Plaintiff seeks only a declaration that R 168.48 is invalid, or must be read narrowly, where it commands destruction of records the law requires be kept, and an injunction barring its enforcement against those records.

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5. Plaintiff brings two claims. Each is independently sufficient to grant relief, and Plaintiff prevails if either one is sustained.

PARTIES

6. Plaintiff Michelle McQueer is the duly elected Clerk of the Township of Bridgewater, Washtenaw County. The law charges her with conducting the township's elections, operating the electronic poll book under MCL 168.668b, and keeping the election records in her custody. R 168.48 operates on her directly. She sues in her official capacity, in her own right and not on behalf of the township as a corporate entity, because the conflicting duties the rule creates and the exposure it imposes run to her as the officer.

7. Defendant Jocelyn Benson is the Secretary of State and the State's chief election officer. MCL 168.21. The Secretary, through the Department, promulgated and enforces Rule Set 2025-014. She is sued in her official capacity, so this action is against the State.

8. Defendant Jonathan Brater is the Director of Elections. He directs the Bureau of Elections and, under the Secretary's supervision, administers the election laws, including the electronic poll book program and the data deletion R 168.48 requires. He is sued in his official capacity.

9. Defendant Michigan Department of State is the principal department housing the Bureau of Elections, through which the Secretary administers the election laws.

JURISDICTION AND VENUE

10. This Court has exclusive jurisdiction. MCL 600.6419(1)(a) gives the Court of Claims exclusive jurisdiction over claims for declaratory and equitable relief

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against the State and its officers, notwithstanding any other law that confers jurisdiction on the circuit court. An official-capacity suit against the Secretary is a suit against the State. *See Mays v Snyder*, 323 Mich App 1, 89 (2018), *aff'd sub nom Mays v Governor*, 506 Mich 157 (2020).

11. This Court may grant declaratory relief under MCR 2.605 and injunctive relief under MCL 600.6419(1)(a) and MCR 3.310. Plaintiff's claims arise under the Supremacy Clause, the Michigan Constitution, and the Michigan Election Law, and seek relief against state officers. They fall within this Court's exclusive jurisdiction.

12. Plaintiff has satisfied any prerequisite to suit. On July 6, 2026, Plaintiff herself asked the Secretary in writing, in a request for a declaratory ruling under MCL 24.263, whether R 168.48 requires her to delete these records, how she can comply with both the rule and the retention statutes, and for a stay of the deletion under the rule's own stay provision, and she asked for a response by July 27, 2026. **Exhibit 1.** As of the filing of this complaint, thirty-seven days after the request, the Department has not ruled, granted the stay, or otherwise responded, and the deletion deadline is imminent; the agency has failed to act expeditiously upon the request.

13. That silence is a pattern in this case: written testimony presented to the Joint Committee on Administrative Rules on September 10, 2025 raised the conflict between the proposed rule and 52 USC 20701, and on October 22, 2025 the Speaker Pro Tempore of the Michigan House of Representatives asked the Secretary in writing, in a request for a declaratory ruling under MCL 24.263, how a local clerk can comply with both R 168.48 and the twenty-two month retention

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requirement of 52 USC 20701; on information and belief, neither has ever been answered. **Exhibit 2.** In any event, an agency may rule only on how a rule applies to facts; it cannot declare its own rule invalid, preempted, or unconstitutional, which is the relief Plaintiff seeks, so any further request would be futile. The Administrative Procedures Act preserves the right to assert a rule's invalidity in any proceeding. MCL 24.264, and Plaintiff's constitutional claims stand apart from that Act.

14. Venue is proper in this Court under MCL 600.6419 and the rules governing claims against the State and its officers.

15. Plaintiff has satisfied the Court of Claims Act. This claim arose on or about October 23, 2025, when Rule Set 2025-014 took effect, in Washtenaw County, where Plaintiff administers elections and would be compelled to delete the records the rule reaches. **Exhibit 3.** The state department involved is the Michigan Department of State, acting through the Bureau of Elections. The nature of the claim is that R 168.48 is preempted by federal law and exceeds the Secretary's authority under, and conflicts with, Michigan law, as set forth below. Plaintiff seeks only declaratory and injunctive relief and claims no money damages. Plaintiff files this verified complaint within one year of accrual, and it satisfies the notice and verification requirements of MCL 600.6431 and MCL 600.6434.

STANDING AND ACTUAL CONTROVERSY

16. Plaintiff has standing. A litigant has standing who holds a special right or a substantial interest harmed differently from the public at large. *Lansing Schools Ed Ass'n v Lansing Bd of Ed*, 487 Mich 349, 372 (2010).

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17. R 168.48 is directed at Plaintiff. She sues individually as well as in her official

capacity because the retention duties, the rule's command, and the criminal exposure run to her personally as the officer of election. Plaintiff bears the very federal, statutory, and constitutional duties to preserve the records the rule orders her to destroy, including the custody duty the Constitution places on election officials. Const 1963, art 2, § 4(1)(l). Because the rule commands her, by virtue of her office, to delete records the law requires her to keep, it impairs her own legal rights and duties as the officer it regulates, an interest different in kind from the citizenry's general interest in lawful elections. She need not be the only clerk the rule reaches; the test is whether her interest differs from the public's, and it does.

18. An actual controversy exists. A declaratory action needs no completed injury; it lets a litigant fix rights before acting at peril. *Shavers v Attorney General*, 402 Mich 554, 588-589 (1978). *Accord MedImmune, Inc v Genentech, Inc*, 549 US 118, 128-129 (2007) (where threatened action by government is concerned, a plaintiff need not expose herself to liability before suing to challenge the basis for the threat).

19. Plaintiff faces that dilemma now. The rule and the retention laws give her contradictory commands she cannot both obey. Comply with R 168.48 and destroy records, risking federal criminal exposure under 52 USC 20702 and the destruction of public records outside an approved schedule contrary to MCL 750.491; or keep the records and face the Secretary's enforcement, including the misdemeanor mechanism of MCL 168.931. Without a declaration she must choose which binding authority to obey, and a declaration of rights resolves the conflict.

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20. The controversy is ripe and immediate. The August 4, 2026 primary elected nominees for the United States Senate and House, so it generated records subject to the twenty-two-month federal retention period, and Plaintiff holds those records now. Under MCL 168.822(1) the Board of County Canvassers of Washtenaw County must canvass and certify the primary within fourteen days, and R 168.48 then requires Plaintiff to delete the electronic poll book and its associated files by the seventh day after that certification. **Exhibit 4.**

21. Deletion is therefore certain and only days away. No recount, scheduled post-election audit, or stay applies or is anticipated, so none of R 168.48's exceptions will excuse it. Because deletion is irreversible, Plaintiff cannot wait for the clock to run before seeking relief; once the records are destroyed the controversy can no longer be remedied. Plaintiff therefore brings this action now, while the records still exist, and asks the Court to preserve them pending judgment.

22. The rule's exceptions do not dissolve the controversy. The recount, audit, and stay exceptions operate only on a contingency or an act of the Department or a court. In the ordinary election with no recount, audit, or stay, they preserve nothing as of right. The deletion bar lifts only when the Department issues its own release of security memorandum, and the Department issues that release as a matter of course. To keep federal records past day seven, then, Plaintiff must win discretionary relief the rule does not guarantee.

23. An informal promise not to enforce would not moot the dispute. The rule stays in force, backed by the Secretary's supervisory authority and the misdemeanor

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mechanism of MCL 168.931. Guidance the Department can withdraw at will is no substitute for a binding declaration.

GENERAL ALLEGATIONS

A. The Electronic Poll Book and the Records at Issue

24. Each city and township uses electronic poll book software supplied by the Bureau of Elections to process voters and generate precinct reports. MCL 168.668b. On election day the poll book records who was processed, the ballots issued, each voter's processing time, and entries for challenges, spoiled ballots, and other irregularities.

25. After the election, the clerk generates reports, transfers data to approved media, uploads voter history to the qualified voter file, and, under R 168.48, deletes the poll book software and associated files.

26. The electronic poll book and its associated files hold records relating to acts requisite to voting in elections that include federal candidates. During voting the software maintains an Activity Log Report that records every action taken in the poll book: the issuance, spoiling, rejection, and challenge of each ballot, and every entry that reverses or corrects a prior action, each stamped with its time and the operator who took it. The poll book also records the time each voter was processed.

These records document each elector's statutorily required application to vote: under MCL 168.523(1) every registered elector must execute an application before being given a ballot, and under MCL 168.523(3) the number of the ballot issued is noted on the approved application, which serves as one of the two poll lists required to be kept as a record of a person who has voted. The electronic poll book

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is the instrument through which those applications are processed and the resulting ballot transactions are recorded. Those records come into the clerk's possession from the electors themselves in the course of voting; the clerk does not create them. Each such action is an act requisite to voting, and the Activity Log Report is the record of those acts and of the custody and handling of the poll book and the ballots it controls.

27. The Bureau's own poll book manual describes what the closing procedure retains.

The Activity Log Report may be viewed and printed on the device, but it is not among the reports the closing procedure requires the clerk to retain, and whether a clerk separately prints or keeps it is a matter of local practice the rule does not require. At closing the procedure prints the ballot summary, the list of voters, and the remarks reports into the paper binder pollbook, and the voter history enters the qualified voter file. In Plaintiff's township, the poll book inspector also backs up the election day electronic pollbook to a secure USB drive every hour during election day; the final backup at the close of the polls is saved to the same drive, an encrypted drive of the kind the rules themselves designate for storing election files, R 168.41(b); and that drive remains in the Clerk's records after the election. The contents of that drive are subject to the same deletion requirement: R 168.48 requires deletion of the pollbook software and every associated electronic file from all devices by the seventh day, the drive is such a device, and neither the rule nor the closing procedure retains the electronic records themselves in any form.

Exhibit 5.

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28. The nonpartisan House Fiscal Agency's analysis likewise recognizes that the contents of the electronic poll book are unique to each precinct. **Exhibit 6.**

29. The printed precinct reports do not capture this detail. The printed list of voters shows only each voter's name, address, voting category, and summary status flags. It omits the per-voter processing times, the ballot-transaction and reversal log, the operator login and failed-login audit, and the device security metadata that reside in the electronic poll book.

30. The qualified voter file does not fill the gap. On information and belief, whether the poll book uploads its data after the election or transmits it over a secure live connection during voting, the qualified voter file records only that a voter participated and does not preserve the transaction-level detail above. The Department has confirmed related limits in writing. In a December 8, 2025 response to a Freedom of Information Act request for the list of voters in the November 5, 2024 general election, the Bureau stated that its report omits the precinct in which the voter voted, omits any column showing whether the voter voted absentee or in person, and is limited to persons who remain active registered voters. **Exhibit 7.** The qualified voter file thus provides, in the reports the Department produces, no fixed precinct-level record of who voted in a given federal election, and its contents change as voters move or are cancelled.

31. The retention duties imposed by 52 USC 20701 and MCL 168.811 attach to the records themselves. Deleting the electronic poll book and its associated files destroys those records regardless of what any printed report contains. The printed reports are outputs generated from the poll book database; they are not the

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electronic records and are not complete copies of the data those records hold, just as the Department's own qualified voter file reports omit fields the database contains. Retaining a printed output is not retaining the electronic record. R 168.48 orders deletion of the software and all associated files without requiring that any electronic copy of the poll book's records be retained by any office, so in the ordinary cycle the electronic records are destroyed in their entirety.

B. The Federal Retention Requirement

32. 52 USC 20701 makes every officer of election keep, for twenty-two months after any federal election, all records that come into the officer's possession relating to an act requisite to voting. Under 52 USC 20706, an "officer of election" is anyone who, under color of state law, performs a function connected to such an act.

33. 52 USC 20702 makes it a federal crime, punishable by fine and imprisonment, for any person to willfully steal, destroy, conceal, mutilate, or alter any record or paper required to be retained under 52 USC 20701.

34. Section 20701 is not limited to paper; its text reaches all records. The United States Department of Justice, which enforces the statute, has published guidance stating that the covered materials extend beyond papers to include other records, that jurisdictions must therefore retain and preserve records created in digital or electronic form, and that the retention duty requires election officials to maintain the security and integrity of those records and their chain of custody so that a complete and uncompromised record of federal elections remains available. On information and belief, that guidance remains published as current policy of the Department's Civil Rights Division. The electronic poll book files are records

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relating to acts requisite to voting, including each elector's application to vote, and they fall within 52 USC 20701.

35. The Department's own instructions to clerks state the same duty. The Bureau of Elections' current Election Officials' Manual instructs that if the office of President, United States Senator, or Representative in Congress appears on the ballot, all documents relating to the election, including ballots and tabulator programs, must be retained for twenty-two months. The electronic poll book files are documents relating to the election. **Exhibit 5.**

C. The Michigan Retention Statute

36. The Legislature has fixed how long election records survive. MCL 168.811 bars destruction of election returns, including poll lists, statements, and tally sheets, and of federal-office ballots, until twenty-two months pass. The statute sets a twenty-two-month floor.

D. The Records Retention and Disposal Scheme

37. Michigan law fixes the exclusive path for disposing of a public record. A public record may be disposed of only as an approved records retention and disposal schedule provides. MCL 750.491(1); MCL 399.811. A schedule that governs the disposal of records is submitted to the State Administrative Board, which approves or disapproves it and orders the destruction of valueless records accordingly. MCL 399.811(3). Willful destruction of a public record outside an approved schedule is a misdemeanor. MCL 750.491(2).

38. The electronic poll book and the records it holds are public records subject to that scheme. The challenged rule itself confirms as much: R 168.42(1) declares that the

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voter data contained in the electronic poll book are public records subject to the Freedom of Information Act. The Bureau of Elections publishes an Election Document Retention Schedule that treats poll books and their component lists, statements, and tally sheets as records governed by MCL 168.811, preserves them for years after the election, and preserves federal-office records for twenty-two months. **Exhibit 8.**

39. Retention does not turn on the medium of the record. A record must be kept for its full retention period whatever the format in which it exists, and the office must keep it accessible throughout that period. A clerk does not satisfy the retention duty by keeping a paper summary while deleting electronic records that exist nowhere else.

40. The State's approved retention schedule does contain a seven-day item for electronic pollbook data. Item 23.339 of General Schedule #23, with a county counterpart at item 23.242, approved October 24, 2023, permits destruction of electronic pollbook data seven days after the canvass, but only after the data is uploaded into the qualified voter file or converted to paper. That approval does not authorize this destruction, for two reasons. First, the item's own condition is not satisfied: the electronic records the rule destroys are neither uploaded into the qualified voter file, into which R 168.47 directs the upload of the voting history and other required files, extracts generated from the poll book rather than the poll book's records, nor converted to paper, because the printed reports are field-limited outputs rather than conversions of the records. Second, the same schedule retains ballots from federal elections for twenty-two months, expressly citing 52 USC

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20701, item 23.306, while giving the electronic pollbook data seven days; a schedule, like a rule, is subordinate to the statutes and cannot shorten the retention that MCL 168.811 and 52 USC 20701 command.

E. The Constitutional Audit Right

41. The Constitution guarantees audits of statewide elections and requires public election officials to maintain the security and custody of all ballots and election materials during an audit. Const 1963, art 2, § 4(1)(I). The right is self-executing and is construed in favor of voters. The Legislature implemented it in MCL 168.31a(2), which makes audits review the documents, ballots, and procedures used in an election. Deleting the electronic poll book on day seven, within the retention and audit windows, removes from any audit the documents and data the audit exists to review.

F. The Challenged Rule

42. Rule Set 2025-014, Mich Admin Code R 168.41 to R 168.48, governs the use of the electronic poll book. The rule defines the electronic poll book to include the early voting electronic poll book, the election day vote center electronic poll book, and the election day electronic poll book, or any combination of them. R 168.41. The deletion command therefore reaches every electronic poll book a clerk uses. The Department filed the rule set with the Secretary of State on October 23, 2025, under the authority of MCL 168.31, and it took effect on filing. R 168.48(1) requires that the electronic poll book software and associated files "must be deleted from all devices by the seventh day following the final canvass and certification of

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the election," subject to exceptions for a pending recount, a scheduled post-election audit, and a stay ordered by a court or the Secretary of State. **Exhibit 9.**

43. The rule bars deletion until the Bureau of Elections or county clerk issues a release of security memorandum. R 168.48(2). The rule's own audit exception extends retention whenever a precinct is selected for a post-election audit, and the Department's manual identifies the electronic poll book among the subjects of those audits; the State's own oversight process uses the records the rule otherwise destroys.

44. The rule has already operated in Plaintiff's township. Following at least one election conducted since the rule took effect on October 23, 2025, the electronic pollbook files for that election were deleted as the rule requires, and they cannot be recovered. No election involving a federal office was conducted under the rule before the August 4, 2026 primary; this primary presents the first collision between the rule's deletion command and the federal retention duty.

45. R 168.48's exceptions reach only recounts, scheduled audits, and stays. They do not reach the ordinary election that generates twenty-two-month records under 52 USC 20701 and MCL 168.811 but draws no recount, audit, or stay. In that ordinary case, including the August 4, 2026 primary, the rule orders deletion on day seven, far short of the twenty-two months federal and state law require.

**COUNT I. DECLARATORY JUDGMENT: FEDERAL PREEMPTION OF
R 168.48 BY 52 USC 20701 AND 20702 UNDER THE SUPREMACY CLAUSE
(AS APPLIED)**

46. Plaintiff realleges and incorporates the preceding paragraphs.

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47. A state rule that conflicts with federal law is void to the extent of the conflict. US

Const, art VI, cl 2. Conflict preemption arises when a party cannot obey both commands at once, or when the state rule obstructs the purposes of Congress.

48. As an officer of election, Plaintiff must keep all voting records from a federal election for twenty-two months. 52 USC 20701. Their willful destruction is a federal crime. 52 USC 20702. The August 4, 2026 primary is such an election.

49. R 168.48 makes destruction the default, ordering that the files "must be deleted" by day seven absent a recount, audit, or stay. R 168.48(1). Federal law sets the opposite default: under 52 USC 20701 the officer "shall retain and preserve" the records for twenty-two months, and 52 USC 20702 makes their destruction a crime. The federal duty attaches to the records that come into the officer's possession, the poll book files themselves, not to substitutes the officer might generate, so deleting those files violates the federal duty even if some of the same information survives in another form. R 168.48 inverts the federal command and orders destruction of what federal law requires be kept.

50. The discretionary stay does not cure the conflict. The federal duty is mandatory and self-operative; it does not wait on a clerk persuading the Secretary or a court to suspend a state deletion order. A rule that forces destruction unless the clerk wins relief each cycle to do what federal law already requires obstructs the purpose of 52 USC 20701: preserving records for the full twenty-two months for federal inspection. A State may not make a mandatory federal duty hinge on a discretionary state dispensation.

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51. In the ordinary election with no recount, audit, or stay, R 168.48 and 52 USC 20701 give Plaintiff opposite commands as to the same records, and Plaintiff cannot obey both. To that extent R 168.48 is preempted, invalid, and unenforceable.

WHEREFORE, Plaintiff requests judgment declaring that R 168.48 is preempted by 52 USC 20701 and 20702, and is invalid and unenforceable, to the extent it requires deletion of records within the twenty-two-month federal retention period, together with the further relief set forth below.

**COUNT II. DECLARATORY JUDGMENT: R 168.48 EXCEEDS THE
SECRETARY'S AUTHORITY AND CONFLICTS WITH MICHIGAN
RETENTION LAW**

52. Plaintiff realleges and incorporates the preceding paragraphs.

53. Statute both grants and limits the Secretary's rulemaking power. MCL 168.31(1)(a) lets her promulgate rules for the conduct of elections and registrations in accordance with state law. A rule is valid only if it falls within the enabling statute, fits the legislative intent, and is not arbitrary or capricious. *Ins Institute of Mich v Comm'r of Financial & Ins Services*, 486 Mich 370, 385 (2010); *see also Luttrell v Dep't of Corrections*, 421 Mich 93, 100 (1984). When a rule conflicts with the governing statute, the statute controls. *Brighmoore Gardens, LLC v Marijuana Regulatory Agency*, 337 Mich App 149, 161 (2021).

54. A rule that conflicts with a statute is invalid to that extent, and an agency may not swap its policy for the Legislature's. *Slis v State*, 332 Mich App 312, 335-336 (2020). An agency's interpretation cannot conflict with the plain meaning of the statute. *In re Complaint of Rovas Against SBC Mich*, 482 Mich 90, 108 (2008).

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55. The Legislature has fixed how long these records survive. MCL 168.811 bars destruction of election returns, poll lists, and federal-office ballots before twenty-two months pass. Outside its narrow exceptions, R 168.48 orders deletion on day seven. Where the poll book files are or contain election returns or poll lists under MCL 168.811, the rule shortens the statutory period and conflicts with it. It is invalid to that extent.

56. R 168.48 also collides with the statutes governing how a public record may be destroyed. A public record may be disposed of only as an approved retention and disposal schedule provides, through the process the Legislature prescribed, MCL 750.491(1); MCL 399.811, and only to the extent the schedule is itself lawful.

Exhibit 10. The schedule item that purports to authorize seven-day deletion, General Schedule #23 item 23.339, authorizes destruction only of data uploaded into the qualified voter file or converted to paper, a condition the electronic records do not meet, and neither that item nor R 168.48 can authorize destruction the retention statutes forbid.

57. That the Department directed similar deletion through its election manuals in earlier cycles, and obtained a schedule item reflecting the practice, does not cure the defect. A retention and disposal schedule is an administrative instrument subordinate to the statutes; it can no more shorten the twenty-two months that MCL 168.811 and 52 USC 20701 require than the rule can, because neither an agency nor the records-management process can change a period the Legislature and Congress fixed. To the extent R 168.48 orders destruction those statutes forbid, it conflicts with MCL 168.811, MCL 750.491, and MCL 399.811 and is invalid.

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58. That a clerk may keep a paper summary does not save the rule. The retention duty attaches to the record in whatever medium it exists. The electronic poll book files are records, and deleting them destroys those records whatever paper remains.

59. A rule ordering the destruction of election records is also not a rule for the "conduct of elections and registrations" under MCL 168.31(1)(a). By ordering destruction the Legislature never authorized and the retention statute forbids, R 168.48 exceeds the Secretary's delegated power, intrudes on the records-retention-schedule process the Legislature committed to the State Administrative Board, and is ultra vires. MCL 168.668b authorizes the Secretary to prescribe procedures for using the electronic poll book, but not to destroy records the retention statutes require be kept; regulating how the poll book is used is not authority to erase the records it holds.

WHEREFORE, Plaintiff requests judgment declaring that R 168.48 exceeds the Secretary's authority under MCL 168.31 and conflicts with MCL 168.811, MCL 750.491, and MCL 399.811, and is invalid and unenforceable to the extent it requires deletion of records within the statutory retention period, together with the further relief set forth below.

**COUNT III. IN THE ALTERNATIVE: R 168.48 IS INVALID FOR FAILURE
OF SUBSTANTIAL COMPLIANCE WITH THE ADMINISTRATIVE
PROCEDURES ACT**

60. Plaintiff realleges and incorporates the preceding paragraphs.

61. A rule is not valid unless it is processed in compliance with MCL 24.242 and in substantial compliance with MCL 24.241(2), (3), (4), and (5). MCL 24.243(1).

Among the requirements is that the notice of the public hearing include a statement

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of the terms or substance of the proposed rule, a description of the subjects and issues involved, and the proposed effective date. MCL 24.241(2)(c).

62. The notice of public hearing for the rule set that became R 168.41 through R 168.48 was published in three newspapers on June 14 and 15, 2025 and in the Michigan Register on July 1, 2025. Its entire statement of the substance of the proposed rules read: "The proposed rules would provide that an electronic pollbook must have a secure live connection to the Qualified Voter File while voting is taking place, if the site has internet access. Further, the proposed rules would provide that the electronic pollbook software download provided in MCL 168.668b must still take place and serve as a backup to the live connection." **Exhibit 11.** The notice added that the proposed rules were published on the State of Michigan's website and in the July 1, 2025 issue of the Michigan Register. **Exhibit 12.**

63. Deletion of the electronic poll book appears nowhere in that statement and nowhere in any description of the subjects and issues involved. A reader of the notice was told that the rule set concerned a secure live connection to the qualified voter file and the retention of the statutory download as a backup. The reader was not told that the rule set would order the destruction of the poll book's records seven days after certification.

64. The omission pervades the rulemaking record. The request for rulemaking that opened the docket, approved March 6, 2025, described the purpose as clarifying the electronic pollbook rules in light of technological advances, early voting, and the security benefits of a live connection, and certified that the rules do not conflict with any similar rules, requirements, or standards. The regulatory impact statement

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stated that there are no parallel federal rules or standards, the comparison MCL 24.245(3)(a) requires, and that no laws, rules, or other legal requirements duplicate,

overlap, or conflict with the proposed rules; it contains no demonstration that the deletion requirement is necessary and suitable to achieve its purpose in proportion to its burdens, MCL 24.245(3)(k), no identification of any harm the deletion requirement addresses, and no estimate of its benefits. The agency's report to the

Joint Committee on Administrative Rules summarized the rules in the same terms.

65. No individual attended or testified at the July 15, 2025 public hearing; the only two written comments supported the live connection proposal and addressed nothing else; and the clerk feedback the agency relied on concerned only live connectivity.

Exhibits 13, 14, and 15.

66. The notice requirement exists to invite public participation, to prevent precipitous agency action, and to notify affected persons of the subjects and issues involved so that they may be heard. As to the deletion command, that purpose failed completely: no member of the public, no clerk, and no organization commented on, testified about, or was told of the requirement that election records be destroyed, and the first public opposition came only after the comment period closed.

67. A notice whose affirmative statement of substance omits the rule set's most consequential command is not in substantial compliance with MCL 24.241(2)(c), and R 168.48 is therefore invalid. MCL 24.243(1). This claim is brought within two years after the rules' October 23, 2025 effective date. MCL 24.243(2).

68. In the alternative and at minimum, the regulatory impact statement's certifications were inaccurate as to R 168.48, and its failure to analyze the deletion requirement

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at all deprived the rulemaking of the analysis the Administrative Procedures Act requires, which independently supports declaratory relief in this action. MCL 24.264.

69. R 168.48 is severable from R 168.41 through R 168.47. The notice described the live connection and download provisions those rules contain, the defect identified in this count is specific to the deletion requirement, and the remaining rules operate independently of it.

WHEREFORE, Plaintiff requests judgment declaring that R 168.48 was not processed in substantial compliance with MCL 24.241(2) and is invalid under MCL 24.243(1), together with the further relief set forth below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Michelle McQueer respectfully requests that this Honorable Court:

- A. Declare that R 168.48 is preempted by 52 USC 20701 and 20702, and is invalid and unenforceable, to the extent it requires deletion of records within the twenty-two-month federal retention period;
- B. Declare that R 168.48 exceeds the Secretary's authority under MCL 168.31 and conflicts with MCL 168.811, MCL 750.491, and MCL 399.811, and is invalid and unenforceable to the extent it requires deletion of records within the statutory retention period;
- C. In the alternative to the foregoing declarations of invalidity, declare that R 168.48 must be construed so as not to require deletion of any records within the retention periods established by 52 USC 20701 and MCL 168.811;

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D. Enter preliminary and permanent injunctive relief restraining Defendants, their officers, agents, and employees from enforcing R 168.48 against Plaintiff, and from deleting or requiring the deletion of the electronic poll book and its associated files, insofar as they hold records within the retention periods established by 52 USC 20701 and MCL 168.811;

E. Order a speedy hearing of this action and advance it on the Court's calendar under MCR 2.605(D);

F. Award Plaintiff her costs and, to the extent authorized by applicable law, her reasonable attorney's fees; and

G. Grant such other and further relief as this Honorable Court deems just and equitable.

Respectfully submitted by:

Dated: August 12, 2026

/s/ Kevin Kijewski
KEVIN KIJEWSKI (P74153)
Attorney for Plaintiff

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VERIFICATION

STATE OF MICHIGAN)
) ss
 COUNTY OF WASHTENAW)

Michelle McQueer, being first duly sworn, deposes and states that she is the Plaintiff in the above-captioned action; that she has read the foregoing Complaint; and that the factual allegations contained in it are true to her own knowledge, except as to those matters alleged on information and belief, and as to those matters, she believes them to be true.

Michelle McQueer
 Michelle McQueer

Subscribed and sworn to before me this 12th day of August, 2026.

Lydia Tannis
 Notary Public, State of Michigan
 County of Washtenaw
 My commission expires: 02/12/2030
 Acting in the County of Washtenaw



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EXHIBIT 6

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STATE OF MICHIGAN
COURT OF CLAIMS

MICHELLE MCQUEER, individually and in her
official capacity as Clerk of the Township of
Bridgewater,

Plaintiff,

v

Case No. 26-000172-MZ

JOCELYN BENSON, in her official capacity as
Michigan Secretary of State, JONATHAN
BRATER, in his official capacity as Director of
Elections, and MICHIGAN DEPARTMENT OF
STATE,

Hon. Michael J. Riordan

Defendants.

**ORDER GRANTING EXPEDITED CONSIDERATION, SETTING INITIAL
SCHEDULE, AND TEMPORARILY PRESERVING EVIDENCE**

On August 12, 2026, plaintiff filed a complaint, motion for temporary restraining order, and motion for a preliminary injunction challenging Mich Admin Code, R 168.48's requirement that "the electronic pollbook software and associated files must be deleted from all devices by the seventh day following the final canvass and certification of the election." Because that date is fast approaching, the Court will consider this matter on an expedited basis. To that end:

1. The Court DIRECTS plaintiff to serve on defendants all material filed in this Court along with this order by **2:00 p.m. on Thursday, August 13, 2026.**
2. The Court DIRECTS defendants to file responses to plaintiff's complaint and motions by **4:00 p.m. on Thursday, August 20, 2026.**
3. If defendants respond to the complaint with a motion for summary disposition, plaintiff's response to that motion must be filed by **4:00 p.m. on Monday,**

August 24, 2026. Defendants may file a reply brief by **4:00 p.m. on Wednesday, August 26, 2026.**

4. Plaintiff may only file reply briefs in support of the motions for a preliminary injunction and temporary restraining order upon leave of the Court.
5. The Court will schedule oral argument or an evidentiary hearing if deemed necessary upon reviewing the pleadings.
6. The Court DIRECTS defendants to preserve “the electronic pollbook software and associated files” in a secure manner pending the resolution of this matter.

Date: August 13, 2026



Michael J. Riordan
Judge, Court of Claims



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EXHIBIT 7

RETRIEVED FROM DEMOCRACYDOCKET.COM

STATE OF MICHIGAN
COURT OF CLAIMS

MICHELLE McQUEER, individually and in her
capacity as Bridgwater Township Clerk,

Plaintiff,

v

Case No. 26-000172-MZ

JOCELYN BENSON, in her official capacity as
Michigan Secretary of State, JONATHAN
BRATER, in his Official Capacity as Director of
Elections, and MICHIGAN DEPARTMENT OF
STATE,

Hon. Michael J. Riordan

Defendants.

OPINION AND ORDER DENYING DEFENDANTS' 8/20/26 AND PLAINTIFF'S 8/24/2026
MOTIONS FOR SUMMARY DISPOSITION

Plaintiff, Michelle McQueer, is the Clerk of the Township of Bridgewater. After filing two requests for declaratory rulings with (and not receiving responses from) defendants—Secretary of State (SOS) Jocelyn Benson, Director of the Bureau of Elections (BOE) Jonathan Brater, and the Michigan Department of State (MDOS)—regarding the application of the newly promulgated Mich Admin Code, R 168.48 (the Rule), which requires local clerks to delete electronic pollbook (EPB) software and associated files within seven days after an election is certified, plaintiff filed this lawsuit on August 12, 2026, challenging the validity of R 168.48. Plaintiff argues that the

Rule conflicts with first 52 USC 20701 and 20702 of the federal Civil Rights Act (CRA),¹ which collectively require a state's preservation of voting records for 22 months after the relevant election involving federal offices and make the willful destruction of those records a federal offense; second MCL 168.811 of the Michigan Election Law (MEL), which prohibits destruction of election records and federal-office ballots for 22 months after an election; and third Const 1963, art 2, § 4(1)(l), which requires that election officials keep ballots and other election material secure during an audit.

The Court is considering this election-related matter on an expedited basis. The parties filed cross motions for summary disposition, the Court ordered supplemental briefing, and then the Court heard oral argument on September 16, 2026. In the meantime, following the BOE's memorandum directing all local clerks to delete the EPB by August 31, 2026, the Court entered a temporary restraining order (TRO) directing plaintiff to maintain the EPB from the August 4, 2026 primary and preventing the enforcement of Rule 168.48 against her pending the resolution of this suit. This TRO will remain in place until further order of the Court.

For the reasons stated in this Opinion and Order, the Court DENIES the parties' motions for summary disposition at this time. However, the parties must notify the Court within 24 hours of defendants' issuance of the declaratory rulings resolving the requests made by plaintiff on October 22, 2025, and July 6, 2026. Also, as noted, the TRO prohibiting the enforcement of Rule 168.48 against plaintiff will remain in place.

¹ These provisions of the Help America Vote Act of 2002 (HAVA), Pub L 107-252, Title III, § 302, 116 Stat. 1706 (originally codified at 42 USC 15301 *et seq.*), were originally located at 42 USC 1974 and 1974a, before being transferred to a chapter of the CRA

I. BACKGROUND

Under Michigan Election Law, MCL 168.1 *et seq.*, each city or township must use EPB software approved and provided by the BOE in each election precinct on election day to process voters and generate precinct reports. MCL 168.668b(1). Plaintiff describes the EPB as “software on a laptop computer that election inspectors under [the clerk’s] supervision use to process each voter at the polls, including recording the ballot number and ballot style issued to each voter.” Township and city clerks download the EPB software from the MDOS-maintained qualified voter file (QVF) software shortly before the election. MCL 168.668b(2), (3). According to defendants, the election officials in each jurisdiction download current voter data from the QVF onto an encrypted flash drive, which populates the data into the EPB on one laptop per precinct, which is set in “airplane mode” for security purposes. Each precinct also maintains a backup paper pollbook.

According to defendants, after an election is complete, a voter history file is uploaded from the EPB into the QVF to update voter history. According to plaintiff, once an EPB and its associated files are deleted, the process is irreversible, and the electronic records in the form used in the EPB cannot be recovered. However, defendants maintain that the data from the EPB can be accessed from the QVF using specific reporting data. They argue that removal of EPB data from flash drives and laptops following each election ensures security of voter information and aids in preventing multiple data sets.

For over a decade, defendants provided “administrative guidance” requiring the deletion of EPBs following an election. In early March 2025, to address changes in the election process prompted by a constitutional amendment allowing early in-person voting in Michigan, MDOS submitted a request for rulemaking to the Michigan Office of Administrative Hearings and Rules

(MOAHR). MOAHR approved the request for rulemaking on March 6, 2025, a regulatory impact statement was filed in April 2025, and several draft rules were approved on May 27, 2025. A notice of public hearing was published in several newspapers but failed to mention that the proposed rules would require clerks to delete EPB files and software within seven days of election certification. Following a public hearing, the draft rules were transmitted to the Joint Committee on Administrative Rules (JCAR), on July 28, 2025. As a result of JCAR's inaction, the draft rules were deemed approved and became effective immediately upon filing with the SOS on October 23, 2025.

Relevant to this matter, the newly promulgated Rule 168.48 provides:

(1) Subject to subrule (2) of this rule, the [EPB] software and associated files must be deleted from all devices by the seventh day following the final canvass and certification of the election, unless a petition for recount has been filed and the recount has not been completed, a post-election audit has been scheduled, or the deletion of the data has been stayed by an order of the court or the [SOS]. If a precinct is selected for an audit, the [EPB] software and associated files must be deleted from all devices by the seventh day following completion of the audit.

(2) The [EPB] software and associated files must not be deleted from devices until the [BOE] or county clerk, as applicable, issues the release of security memorandum pertaining to that election.

On October 22, 2025—one day before the Rule took effect—plaintiff and six other local clerks and deputy clerks joined the Speaker Pro Tempore of the Michigan House of Representatives, Rachelle Smit, in requesting from defendants a declaratory ruling under Section 63 of the Administrative Procedures Act (APA), MCL 24.263, on the following question: “How can a local clerk comply with both proposed rule R 168.48’s requirement that [EPBs] be deleted shortly after certification of a given election and 52 USC 20701’s requirement that election records be retained for twenty-two months?”

On November 25, 2025, the BOE responded to the declaratory ruling request, stating, “The [MDOS] will consider requests regarding this rule after the [MDOS’s] related HAVA complaints are concluded.” The mentioned HAVA complaints were filed on September 11, 2025 and October 8, 2025 by private citizens—Stephanie Beltnick and Shelly Lake—under an enforcement mechanism outlined in 52 US 21112(a), allowing a person who believes there has been a violation of HAVA’s Title III to file a complaint under state-based administrative complaint procedures. It is important to note that plaintiff was not a party to the HAVA complaints or the subsequent review process. According to defendants, both private-citizen HAVA complaints alleged that the instruction to delete the EPB data following an election violates the federal 22-month retention requirements (an issue that is substantially similar to the issue raised in this case regarding 52 USC 20701). SOS Benson is the respondent to those complaints and under the administrative review process adopted by MDOS, Director Brater adjudicates the complaints.²

According to defendants, there have been significant delays in resolving the private-citizen HAVA complaints because the complainants filed a federal lawsuit challenging Michigan’s administrative HAVA-review process, *Beltnick v Benson*, United States District Court for the Western District of Michigan Case No. 25-cv-1374. That suit was ultimately dismissed on April 8, 2026, for lack of jurisdiction. Thus, the HAVA hearing before Director Brater was not conducted until July 9, 2026. Director Brater ultimately issued his final decision in that matter on August 31, 2026.

² Defendants implemented an isolation wall between staff designated to assist the SOS in responding to the HAVA complaints and staff assisting Director Brater with adjudicating those complaints.

In the meantime, on July 6, 2026, plaintiff, in her individual capacity, submitted a second request for a declaratory ruling from defendants pursuant to MCL 24.263. Plaintiff outlined a set of facts for consideration and requested an administrative declaratory ruling on the following questions:

1. Does R 168.48(1) require me to delete the [EPB] software and its associated electronic files for the August 4, 2026 primary by the seventh day following the final canvass and certification of that election?
2. May I instead retain those electronic files for the retention period described in MCL 168.811 and 52 USC 20701 without violating R 168.48?
3. If the rule requires deletion on these facts, how do I comply with both R 168.48 and the retention requirements of MCL 168.811 and 52 USC 20701?

Plaintiff also requested that the SOS stay the deletion of the EPB for the August 4, 2026 primary in Bridgewater Township pending the resolution of her declaratory ruling requests. Plaintiff recognized that “[t]he timing is short,” and acknowledged that the Board of County Canvassers was required to certify the primary within 14 days after the election and that Rule 168.48 required deletion of the EPB within seven days after certification. Plaintiff asked for a response by July 27, 2026. According to defendants, plaintiff’s request “did not make its way to the relevant staff at the [MDOS], and only became known upon the filing of Plaintiff’s complaint” in this Court. However, defendants represent that the request would have been stayed pending resolution of the HAVA complaints, just as with the October 22, 2025 request.

The 2026 primary election occurred on August 4. The Washtenaw County Board of County Canvassers certified the primary results on August 12, 2026. The Court takes judicial notice of the fact that the results were certified by the Board of State Canvassers at its August 24, 2026 meeting. The BOE issued a memorandum on August 26, 2026, directing clerks to delete the EPBs for the August 2026 primary on August 31. Regardless of that BOE memo, this Court has

required plaintiff to preserve the EPB and defendants to refrain from enforcing the EPB-deletion requirement against her until further order of the Court.

On the same day the County Board of Canvassers certified the results, and having not received responses from defendants regarding her declaratory ruling requests, plaintiff filed this three-count lawsuit on August 12, 2026, requesting a series of declaratory judgments from the Court. As noted above, Count I is a request for a declaratory judgment that Rule 168.48 is preempted by federal statutes 52 USC 20701 and 20702 under the Supremacy Clause of the United States Constitution, US Const, art VI, cl 2. Count II requests a declaratory judgment that Rule 168.48 exceeds the SOS's authority and conflicts with MCL 168.811. Count III is a claim for a declaratory judgment, in the alternative, that Rule 168.48 is invalid for failure to substantially comply with the APA in the promulgation process. On the same day she filed the complaint, plaintiff moved for a TRO and a preliminary injunction to prevent defendants from enforcing Rule 168.48 or requiring the deletion of the EPB software and associated files as it relates to the August 4, 2026 primary election pending a final judgment on the merits.

This Court issued an expedited scheduling order requiring that defendants respond to the complaint and motions by August 20, 2026. Defendants timely moved for summary disposition under MCR 2.116(C)(4), (7), and (10) in lieu of filing an answer and incorporated a response to the motion for a TRO and preliminary injunction. As discussed in more detail later, defendants argue, in part, that (1) plaintiff failed to exhaust her administrative remedies because she failed to seek a declaratory ruling from defendants that the Rule is invalid; (2) plaintiff's claims are barred by laches because she did not file this lawsuit until August 12, 2026—eight days after the primary election in question—causing prejudicial delay; (3) the doctrine of primary jurisdiction applies in this case as an ongoing federally mandated administrative proceeding is occurring that requires

this Court to abstain; and (4) plaintiff has not demonstrated a substantial likelihood that she will prevail on the merits of her claims or a particularized showing of irreparable harm to support her motions for a TRO and preliminary injunction. Because the HAVA complaints have now been resolved, some of defendants' concerns have been eliminated and the Court will not consider them.

Plaintiff responded to the motion for summary disposition, arguing that by not challenging the merits of plaintiff's claims, defendants left them unopposed. At oral argument, defendants explained that they could not provide a substantive argument without prematurely revealing how Director Brater planned to resolve the HAVA complaints or how defendants planned to resolve the declaratory ruling requests or without inadvertently making statements inconsistent with the administrative rulings. Plaintiff argues that she was not actually required to make a declaratory ruling request in this case but she had submitted two requests even so. Plaintiff contends that her claims are not barred by laches because she filed suit weeks before she was required to delete the EPB, and notes that deletion guidance had not yet been issued when she filed her complaint. She argues defendants cannot demonstrate prejudice because preservation of the EPB will not place a financial burden on MDOS or change its legal positions detrimentally in this case.

On the issue of primary jurisdiction, plaintiff argues that the doctrine is discretionary and would not apply in this case because 52 USC 20701 is codified within Title III of the CRA (and not in HAVA). Plaintiff argues that she can demonstrate a likelihood of success on the merits, as well as irreparable harm. She notes that she is the custodian of the records that, once deleted, cannot be recovered. Plaintiff asserts that more than 1,500 clerks face potential criminal liability

if the destruction is found to violate federal law.³ Plaintiff argues that the notice provided of the administrative hearing on the proposed rule was inadequate to notify the public about the destruction of the backup files. She also seeks judgment in her favor under MCR 2.116(I)(2).

Defendant has replied, and this Court accepted an amicus curiae brief filed by the Republican National Committee, which aligns with plaintiff's position on the merits and argues that Rule 168.48 conflicts with both federal and state law.

On August 31, 2026, Director Brater issued a final determination in the HAVA administrative proceeding following the filing of HAVA complaints by Beltnick and Lake. Director Brater first summarized Beltnick's and Lake's arguments regarding the deletion of EPBs, revealing a general overlapping issue with the current lawsuit—whether Rule 168.48's provision requiring the deletion of EPBs within seven days of the canvass violates the “federal 22-month retention requirements and Michigan law.” Director Brater also summarized the SOS's response to this argument much like defendants' position in this suit as asserting that the EPBs are not deleted completely; “rather, the records are kept in multiple formats and the removal from one format is not a violation of HAVA.” Brater's final decision, however, made no findings or resolutions regarding the questions involved in this case, resolving the Beltnick and Lake matters and dismissing their HAVA complaints on other grounds.

³ Such a finding also possibly could trigger the SOS's derivative federal criminal liability for forcing local clerks to prematurely delete EPBs connected with federal office elections. However, defendants contend the possibility of criminal liability is speculative as the United States Department of Justice has not brought an action to enforce the applicable statutes in 14 years. The Court finds this contention to be quite remarkable and reckless.

Following the conclusion of the HAVA administrative proceeding, this Court directed the parties to appear for a hearing on defendants' motion for summary disposition on September 16, 2026. The Court also directed the parties to provide supplemental briefing:

on topics including 1) the application of Director Brater's August 31, 2026 final decision to this case; 2) the proper level of deference to be given to the August 31, 2026 final decision, taking into consideration *Loper Bright Enterprises v Raimondo*, 603 US 369; 144 S Ct 2244; 219 L Ed 2d 832 (2024); *In re Complaint of Rovas*, 482 Mich 90; 754 NW2d 259 (2008), and similar cases; 3) whether the Supremacy Clause of US Const, art VI, cl 2, impacts this case; 4) whether this challenge should be brought in federal court; and 5) what would be the harm or cost to any parties of retaining or storing the [EPB] software and data.

Defendants argue that the Supremacy Clause comes into play in this case because plaintiff contends that Rule 168.48 conflicts with provisions in Title III of the CRA. Thus, this is a case of conflict preemption. Accordingly, defendants argue, if the Court reaches the merits in this matter, the Court will be required to consider whether Title III conflicts with, and therefore preempts, Rule 168.48. However, defendants contend that the Court cannot reach the merits because plaintiff cannot bring her challenge in any court—state or federal—as there is no private cause of action under Title III. Defendants concede that plaintiff “is not using Title III as a cause of action per se,” but claim “she is essentially seeking to compel compliance with Title III, and that she cannot do.” As to the applicability of Brater's HAVA decision to the current proceeding, defendants admit they originally believed it could “shed light on the claims or issues presented in this case,” but that Brater's ultimate decision did not extend that far, rendering it inapplicable. Also, because plaintiff is not alleging a HAVA violation, this Court need not consider the HAVA final determination. But if the Court does so, it must give Brater's interpretation respectful deference.

Defendants further contend that the failure to delete EPB data following the certification of an election will harm voters in the district or force them to incur additional costs. Plaintiff

represents a small district with only one voting precinct. It requires only one laptop and one encrypted flash drive to run an election. If the EPB is not deleted before the general election, defendants argue, taxpayer funds will need to be used to purchase another laptop and another encrypted flash drive, which defendants assert will incur a cost of \$100 to the clerk. The harm will be even greater in larger districts with many precincts and, extrapolated over the 5,000 voting precincts identified by defendants, will accumulate to a substantial cost. Such separate equipment is required to eliminate the risk of duplicate or incorrect data being uploaded to the QVF.

Plaintiff agrees with defendants that the final HAVA decision has no effect in this case and suggests that defendants improperly refused to answer the requests for declaratory ruling knowing that the HAVA decision never would have an effect. Even if the HAVA decision was relevant to the questions presented in this suit, plaintiff argues that the Court would owe no deference to Brater's administrative interpretation, only respectful consideration. Plaintiff further contends that the doctrine of primary jurisdiction was rendered inapplicable by the final resolution of the HAVA proceeding. Plaintiff also notes that despite defendants' assertion that it could not resolve the declaratory ruling requests until the completion of the HAVA proceeding, 14 days had elapsed by the date of this Court's hearing and yet defendants had not issued declaratory rulings.

Plaintiff continues that there is a dispute about whether the information that survives the EPB deletion requirement—printed reports and a partial upload from the EPB to the QVF—satisfy the federal 22-month record retention requirement. Plaintiff points to a document prepared by defendants that identifies items from the EPB that are not part of the voter list, including the precinct where the voter cast their ballot. Brater, in an affidavit filed in this matter, attested that the uploaded EPB data can be queried in the QVF and that printed reports are retained elsewhere but does not indicate that the EPB files survive. Plaintiff argues that 52 USC 20701 requires the

retention of “all records and papers” that relate to “any application, registration, . . . or other act requisite to voting in such election.” The Department of Justice, which enforces 52 USC 20701, has interpreted the statute as extending beyond papers to include other records, even those created in digital and electronic form. This would include the EPB, plaintiff contends. In plaintiff’s estimation, the only complete record is the EPB and the upload to the QVF and the paper reports are derivative and, therefore, are not the “record” that must be retained under the federal statute.

In regard to the harm retention of the EPB might cause, plaintiff contends that she has maintained the laptop and encrypted flash drive in a secure, locked location. The only cost retention could impose is a replacement encrypted drive for a future election, at a cost of only about \$100. The drives would not be reused and so there would be no danger of information not being accurately replaced.

II. RELEVANT STATUTES AND REGULATIONS

Resolution of this case involves the consideration, interpretation, and application of several statutes and one Michigan administrative regulation. First, relevant to the current proceedings are two election-related statutes within the federal Civil Rights Act. 52 USC 20701 states:

Every officer of election shall retain and preserve, for a period of twenty-two months from the date of any general, special, or primary election of which candidates for the office of President, Vice President, presidential elector, Member of the Senate, Member of the House of Representatives, . . . are voted for, all records and papers which come into his possession relating to any application, registration, payment of poll tax, or other act requisite to voting in such election, except that, when required by law, such records and papers may be delivered to another officer of election and except that, if a State . . . designates a custodian to retain and preserve these records and papers at a specified place, then such records and papers may be deposited with such custodian, and the duty to retain and preserve any record or paper so deposited shall devolve upon such custodian. Any officer of election or custodian who willfully fails to comply with this section shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

52 USC 20702 states:

Any person, whether or not an officer of election or custodian, who willfully steals, destroys, conceals, mutilates, or alters any record or paper required by section 301 [52 USCS 20701] to be retained and preserved shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

The federal statutes therefore require election officers to retain and preserve for 22 months “all records and papers” “relating to any application, registration, . . . or other act requisite to voting in such election” as related to federal office elections. And the willful failure to do so or to destroy such records and papers is a federal offense.

Consistent with 52 USC 20701, the Michigan Legislature enacted MCL 168.811, which states:

All election returns, including poll lists, statements, tally sheets, absent voters’ return envelopes bearing the statement required by section 761, absent voters’ records required by section 760, and other returns made by the election inspectors of the several precincts must be carefully preserved and may be destroyed after the expiration of 22 months following the primary or election at which the same were used. All applications executed under section 523, all voter registration applications executed by applicants under section 497(3) and (4), and all absent voters’ applications must be carefully preserved and may be destroyed after the expiration of 6 years following the primary or election at which those applications were executed. All ballots used at any primary or election, other than ballots containing a federal office, may be destroyed after 30 days following the final determination of the board of canvassers with respect to the primary or election unless a petition for recount has been filed and not completed or unless the destruction of the ballots is stayed by an order of a court. All ballots containing a federal office, and all presidential primary ballot selection forms, may be destroyed after the expiration of 22 months following the primary or election at which those ballots were cast or forms were used.

Plaintiff contends that defendants promulgated a rule with retention requirements inconsistent with the federal and state statutes. That rule—Rule 168.48—states:

(1) Subject to subrule (2) of this rule, the [EPB] software and associated files must be deleted from all devices by the seventh day following the final canvass

and certification of the election, unless a petition for recount has been filed and the recount has not been completed, a post-election audit has been scheduled, or the deletion of the data has been stayed by an order of the court or the [SOS]. If a precinct is selected for an audit, the [EPB] software and associated files must be deleted from all devices by the seventh day following completion of the audit.

(2) The [EPB] software and associated files must not be deleted from devices until the [BOE] or county clerk, as applicable, issues the release of security memorandum pertaining to that election.

Plaintiff also contends that requiring the deletion of EPBs violates the constitutional right to an election audit in Const 1963, art 2, § 4(1)(l), which provides that “[e]very citizen of the United States who is an elector qualified to vote in Michigan shall have the following rights,” including:

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 elections. The [SOS] shall conduct election audits, and shall supervise and direct county election officials in the conduct of such audits. No officer or member of the governing body of a national, state, or local political party, and no political party precinct delegate, shall have any role in the direction, supervision, or conduct of an election audit. Public election officials shall maintain the security and custody of all ballots and election materials during an election audit. Election audits shall be conducted in public based on methods finalized and made public prior to the election to be audited. All funding of election audits shall be publicly disclosed.

III. RELIEF SOUGHT

Plaintiff seeks a declaratory judgment that Rule 168.48 is invalid because it is preempted by the federal statutes cited above and it conflicts with MCL 168.811 and thus it was not in defendants’ authority to promulgate this rule. In the alternative, plaintiff seeks a declaratory judgment that the Rule is invalid because it was not promulgated in compliance with the APA.

MCR 2.605 governs a trial court’s power to enter a declaratory judgment. The court rule provides, in pertinent part, that “[i]n a case of actual controversy within its jurisdiction, a Michigan court of record may declare the rights and other legal relations of an interested party seeking a

declaratory judgment, whether or not other relief is or could be sought or granted.” MCR 2.605(A)(1). See also *Van Buren Charter Twp v Visteon Corp*, 319 Mich App 538, 545; 904 NW2d 192 (2017). The language in this rule is permissive, and the decision whether to grant declaratory relief is within the trial court’s sound discretion. *PT Today, Inc v Comm’r of Office of Fin & Ins Servs*, 270 Mich App 110, 126; 715 NW2d 398 (2006). An actual controversy exists “when a declaratory judgment is necessary to guide the plaintiff’s future conduct in order to preserve the plaintiff’s legal rights.” *Shavers v Attorney General*, 402 Mich 554, 588-589; 267 NW2d 72 (1978).

Plaintiff seeks both a preliminary and permanent injunction preventing the enforcement of Rule 168.48 against her. The Court recognizes that an injunction is an “extraordinary remedy that issues only when justice requires, there is no adequate remedy at law, and there exists a real and imminent danger of irreparable injury.” *Davis v Detroit Fin Review Team*, 296 Mich App 568, 613-614; 821 NW2d 896 (2012) (quotation marks and citation omitted); see also *Janet Travis, Inc v Preka Holdings, LLC*, 306 Mich App 266, 274; 856 NW2d 206 (2014). “The purpose of a preliminary injunction is to preserve the status quo pending a final hearing regarding the parties’ rights.” *Hammel v Speaker of House of Representatives*, 297 Mich App 641, 647; 825 NW2d 616 (2012) (quotation marks and citation omitted). The party seeking the preliminary injunction bears the burden of proving the existence of, and the Court must consider, four factors:

(1) whether the applicant has demonstrated that irreparable harm will occur without the issuance of an injunction, (2) whether the applicant is likely to prevail on the merits, (3) whether the harm to the applicant absent an injunction outweighs the harm an injunction would cause to the adverse party, and (4) whether the public interest will be harmed if a preliminary injunction is issued. [*Slis v Michigan*, 332 Mich App 312, 337; 956 NW2d 569 (2020).]

The Court of Appeals has outlined various factors relevant to a Court’s decision to enter a permanent injunction, including:

(a) the nature of the interest to be protected, (b) the relative adequacy to the plaintiff of injunction and of other remedies, (c) any unreasonable delay by the plaintiff in bringing suit, (d) any related misconduct on the part of the plaintiff, (e) the relative hardship likely to result to defendant if an injunction is granted and to plaintiff if it is denied, (f) the interests of third persons and of the public, and (g) the practicability of framing and enforcing the order or judgment. [*Janet Travis, Inc*, 306 Mich App at 274 (quotation marks and citations omitted).]

The Court must “balance the benefit of an injunction to a requesting plaintiff against the damage and inconvenience to the defendant, and will grant an injunction if doing so is most consistent with justice and equity.” *Id.* at 274-275.

IV. ANALYSIS OF DEFENDANTS’ GROUNDS IN SUPPORT OF DISMISSAL

Defendants contend that this Court lacks jurisdiction to consider plaintiff’s claims because she failed to exhaust her administrative remedies by seeking a declaratory ruling from the SOS. Defendants also assert that this action should be dismissed under the laches doctrine because plaintiff did not file this suit until August 12, 2026, eight days after the primary election for which she challenged the deletion of the EPB.⁴

⁴ In their August 20, 2026 motion for summary disposition, defendants also sought dismissal under the doctrine of primary jurisdiction. Defendants contended that any decision reached by this Court “would interfere with an ongoing administrative proceeding”—the HAVA proceeding presided over by Director Brater. That proceeding has now concluded, rendering this argument moot.

A. EXHAUSTION OF ADMINISTRATIVE REMEDIES

Both the October 22, 2025 request for declaratory ruling joined by plaintiff and the July 6, 2026 request for a declaratory ruling filed by plaintiff personally were submitted to defendants pursuant to MCL 24.263 of the APA. MCL 24.263 states, in relevant part:

On request of an interested person, an agency may issue a declaratory ruling as to the applicability to an actual state of facts of a statute administered by the agency or of a rule or order of the agency. . . . A declaratory ruling is binding on the agency and the person requesting it unless it is altered or set aside by any court. . . . A declaratory ruling is subject to judicial review in the same manner as an agency final decision or order in a contested case.

An additional provision of the APA, MCL 24.264, states:

Unless an exclusive procedure or remedy is provided by a statute governing the agency, the validity or applicability of a rule . . . may be determined in an action for declaratory judgment if the court finds that the rule or its threatened application interferes with or impairs, or imminently threatens to interfere with or impair, the legal rights or privileges of the plaintiff. . . . The agency shall be made a party to the action. An action for declaratory judgment may not be commenced under this section unless the plaintiff has first requested the agency for a declaratory ruling and the agency has denied the request or failed to act upon it expeditiously. This section shall not be construed to prohibit the determination of the validity or applicability of the rule in any other action or proceeding in which its invalidity or inapplicability is asserted.

In *Warren Consol Sch Dist v Sch Dist of the City of Hazel Park*, ___ Mich ___, ___; ___ NW3d ___ (2026) (Docket No. 167643), slip op at 13, the Michigan Supreme Court compared the two statutes and held that MCL 24.264 expressly requires exhaustion before filing suit, while MCL 24.263 does not:

[MCL 24.263] gives agencies the permissive authority to issue declaratory rulings regarding the applicability of a statute or a rule administered by an agency. [MCL 24.264] explicitly requires exhaustion of the [MCL 24.263] declaratory ruling provision only for actions challenging the validity or applicability of a rule. This eliminates the exhaustion requirement regarding issues involving the validity or applicability of a statute, likely because issues regarding the meaning of statutes are

more appropriately left to the courts and the validity of statutes is an issue reserved for the judicial branch. The language of [MCL 24.264] imposes the exhaustion requirement only when the action is brought “under this section,” meaning [MCL 24.264], which applies only to the validity or applicability of rules. [*Id.* at ____; slip op at 13, quoting LeDuc, Michigan Administrative Law (2025 ed), § 8:11, p 612.]

Both declaratory ruling requests questioned the applicability of Rule 168.48 to local clerks attempting to comply with 52 USC 20701, a question properly raised under MCL 24.263. However, plaintiff’s argument in this Court is distinct from that raised previously. Here, she argues that Rule 168.48 is invalid because it conflicts with federal and state statutes, and therefore it was not in the SOS’s authority to promulgate such a rule. Had plaintiff raised this same argument in the declaratory judgment requests, they would have fallen within the ambit of MCL 24.264 because they would have articulated a challenge to the validity of Rule 168.48 itself. Accordingly, the Court will treat the declaratory judgment requests as being submitted pursuant to MCL 24.264, making the exhaustion of remedies provision applicable.

The exhaustion of administrative remedies serves several purposes:

(1) an untimely resort to the courts may result in delay and disruption of an administrative scheme; (2) any type of appellate review is best made after the agency has developed a full record; (3) resolution of the issues may require the technical competence of the agency, and (4) the administrative agency’s settlement of the dispute may render a judicial resolution unnecessary. [*Genesis Ctr, PLC v Fin & Ins Servs Comm’r*, 246 Mich App 531, 543; 633 NW2d 834 (2001).]

In this case, plaintiff initiated the process for administrative review by joining the October 22, 2025 declaratory ruling request and then submitting her own request on July 6, 2026. The administrative review process has taken an unusually long time, at no fault of plaintiff. Initially, defendants informed plaintiff and her cohorts that they could not issue a declaratory ruling until the resolution of the HAVA proceeding because they did not want to make any inconsistent statements. Defendants did not respond to the July 6, 2026 request but have since indicated that

they would have delayed entering a declaratory ruling for the same reason. As a result, the August 4 primary came and went without plaintiff being given any instruction on how she could comply with both Rule 168.48 and 52 USC 20701.

Plaintiff filed this suit on August 12 without the benefit of an administrative decision. Essentially, plaintiff had no choice but to file the current lawsuit before the declaratory rulings entered. Plaintiff understood that she would be required to delete the EPBs by operation of Rule 168.48 before the declaratory rulings issued, a situation in which she played no part in creating. Indeed, on August 26, defendants notified plaintiff and all other local clerks that they were required to delete the EPBs from the August 4 primary on August 31. Director Brater did not issue his much-anticipated final decision in the HAVA proceeding until August 31, and ultimately, that decision resolved no issue raised in either declaratory ruling request. At the Court's September 16 hearing, defense counsel indicated that the declaratory rulings resolving the October 22, 2025 and July 6, 2026 requests have been drafted and would likely be released within the next two weeks. If plaintiff was required to adhere to the timeline advocated by defendants, by the time of these rulings, it certainly would be much too late for plaintiff to file an initial suit seeking the relief she now requests. Even if defendants are not at fault for the delay, the power to resolve the HAVA administrative proceedings and enter the declaratory rulings was completely in their hands. The Court will not support defendants delaying in resolving the administrative proceedings and then fault plaintiff for filing suit before her administrative remedies were exhausted. Accordingly, the Court rejects defendants' request to dismiss based on the failure to exhaust administrative remedies.

B. LACHES

The Court of Appeals described the doctrine of laches in *Davis v Secretary of State*, 346 Mich App 445, 462; 12 NW3d 653 (2023):

Laches is an equitable tool that may be used to remedy the inconvenience or prejudice to a party caused by an improper delay in asserting a right. *Public Health Dep't v Rivergate Manor*, 452 Mich 495, 507; 550 NW2d 515 (1996). The issue of whether relief will be withheld on the basis of laches is contingent upon the facts and circumstances of the particular case. *Henderson v Connolly's Estate*, 294 Mich 1, 19; 292 NW 543 (1940). When no acceptable explanation is proffered for a plaintiff's delay, a plaintiff's requested relief should be barred by unexcused laches. See *id.* Rather, equity will aid the vigilant, not those that "slumber on their rights." *Id.* The purpose of the rule is to promote diligence, discourage laches, and "prevent the enforcement of stale demands." *Id.* As the Court of Claims observed, legal challenges that affect elections are especially prone to causing profound harm to the public and to the integrity of the election process the closer in time those challenges are made to the election, making laches especially appropriate to apply in such matters. *Purcell v Gonzalez*, 549 US 1, 4-6; 127 S Ct 5; 166 L Ed 2d 1 (2006); *New Democratic Coalition v Secretary of State*, 41 Mich App 343, 356-357; 200 NW2d 749 (1972). "[E]lections require the existence of a reasonable amount of time for election officials to comply with the mechanics and complexities of our election laws." *Id.* at 356. "Courts can reasonably endeavor to avoid unnecessarily precipitate changes that would result in immense administrative difficulties for election officials." *Id.* at 357.

In seeking dismissal of this case based on laches, defendants note that the challenged rule took effect in October 2025 and yet plaintiff waited until August 12, 2026 to file suit. Again, the Court notes that plaintiff joined with other local clerks to seek a declaratory ruling on October 22, 2025—the day before the Rule went into effect. Defendants delayed in resolving that request because HAVA proceedings had been initiated by third parties and then a federal lawsuit related to the HAVA proceedings was filed. When no decision had been reached, plaintiff filed an individual request for a declaratory ruling on July 6, 2026. Defendants again indicated that it could not enter a declaratory ruling until the HAVA proceedings concluded. Plaintiff was not a party to the HAVA proceedings and played no part in their delay and ultimate inapplicability here. She

filed her suit on August 12 when she realized she soon would be required to delete the August primary EPB under Rule 168.48 without receiving an official answer to her declaratory ruling request.

Director Brater did not reach a final decision in the HAVA proceeding until August 31, 2026. Based on defendants' ultimately inaccurate statement in response to the October 22, 2025 declaratory ruling request that the HAVA final decision would likely resolve questions asked in that request, it would have been premature for this Court to consider plaintiff's challenges until the administrative HAVA proceedings were concluded. Accordingly, the Court cannot fault plaintiff for waiting until August 12 to file suit. Thus, the Court finds the doctrine of laches ill-suited to the current matter.

C. PRIVATE CAUSE OF ACTION

Although not raised as a separate ground for summary disposition, the Court notes that defendants also argue that plaintiff could not file this suit in any court because Title III of the HAVA does not provide a private cause of action. In support of this position, defendants cite a long list of unpublished federal court opinions and orders, as well as an opinion from a Michigan circuit court. In *Smith v DeBoyer*, unpublished opinion of the United States District Court for the Eastern District of Michigan, issued October 12, 2022 (Docket No. 2:22-cv-11572), for example, the Eastern District noted that 52 USC 20701 and 20702 are criminal statutes, and individuals could not bring private causes of action against the government officials tasked with implementing these statutes for their violation of the statutes.

Plaintiff does not contend that defendants violated the record retention provisions of 52 USC 20701 or 20702. Rather, plaintiff filed suit to ensure that she, as a local election official,

complies with state and federal law and therefore will not be criminally charged.⁵ Thus, the matter before this Court is not the type of private cause of action that is contemplated by and prohibited under the statutes.

V. PLAINTIFF'S MOTION FOR SUMMARY DISPOSITION

Plaintiff seeks summary disposition in her favor pursuant to MCR 2.116(I)(2), which states, "If it appears to the court that the opposing party, rather than the moving party, is entitled to judgment, the court may render judgment in favor of the opposing party." Plaintiff argues that this case involves purely legal questions that can be resolved without fact discovery. Review of this motion would be premature. Defendants represented at the September 16 hearing that declaratory rulings resolving the October 22, 2025 and July 6, 2026 requests regarding the interplay and application of Rule 168.48, MCL 168.811, and 52 USC 20701 and 20702 will be entered in the near future. Therefore, defendants' ability to argue the substantive merits in this case has been hampered by the ongoing administrative proceedings. The Court will not adjudicate the action in either party's favor, or enter an injunction, without full briefing on the merits from both sides.

VI. CONCLUSION

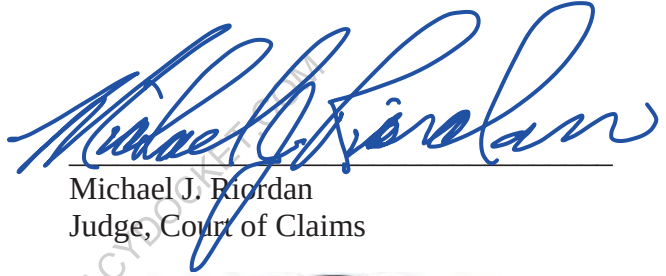
Accordingly:

1. The Court DENIES defendants' motion for summary disposition and plaintiff's cross-motion for summary disposition without prejudice to the parties seeking this relief later in the proceedings.

⁵ Plaintiff's suit also could derivatively save the SOS from being criminally charged federally.

2. The parties must notify the Court within 24 hours of the issuance of the declaratory rulings resolving the requests made on October 22, 2025, and July 6, 2026.
3. Within one week of the issuance of the declaratory rulings, the parties must file supplemental briefs and/or renewed summary disposition motions. The parties will be allowed one week to file responses. No reply may be filed without leave of the Court.
4. The TRO prohibiting the enforcement of Rule 168.48 against plaintiff and permitting plaintiff to retain the EPB from the August 4, 2026 primary remains in place.
5. This is not a final order resolving all issues in this case.

Date: 09/27/2026


Michael J. Riordan
Judge, Court of Claims

