

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF KALAMAZOO

AMERICAN CIVIL LIBERTIES UNION OF
MICHIGAN, SHERIL KELLY, and SCOTT
KELLY,

Plaintiffs,

v

ROBERT FROMAN, in his official capacity
as Kalamazoo County Canvasser,

Defendant.

Case No. 2024-0533-CZ

Hon. Curtis J. Bell

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

/s/ Philip Mayor
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NOW COME the American Civil Liberties Union of Michigan (the “ACLU”), Sheril Kelly, and Scott Kelly (collectively, “Plaintiffs”), by and through their undersigned attorneys, and for their Complaint against Robert Froman, in his official capacity as Kalamazoo County Canvasser (“Defendant”), state as follows:

INTRODUCTION

1. Robert Froman is a member of the Kalamazoo Board of County Canvassers. That body is charged with certifying the results of all elections in Kalamazoo County, including Kalamazoo’s share of the vote for statewide and national offices, including the 2024 presidential election. It is a critical part of the electoral process.

2. In August 2024, Defendant Froman informed a *Detroit News* reporter that he believed that the 2020 election had “most definitely” been stolen from former President Trump. When asked if he would certify the 2024 presidential election results if they unfolded the same way, he responded succinctly: “No. And that’s why I’m there.”

3. While subsequently contending that he had not made these particular statements in a private message to the ACLU, Defendant Froman never denied the substance of these remarks and refused to seek a correction from the newspaper. Even when his legal obligation to vote to certify the results of the election was brought to his attention, at no point did he confirm that he would certify the results of the 2024 election regardless of allegations or evidence of election fraud.

4. The law could not be clearer. It is the ministerial, nondiscretionary duty of the members of a county board of canvassers to certify the presidential election based on the returns

from the precincts, absent voter counting boards, and early voting sites. See MCL 168.822(3); see also Const 1963, art 2, § 7(3).

5. This legal obligation is not new. Since at least 1892, Michigan courts have held that canvassers cannot “go behind” the returns and challenge the results based on allegations (or even evidence) of voter fraud. A failure to certify based on a canvasser’s belief or theory that the election was somehow “stolen” would be flatly impermissible.

6. There are other avenues in Michigan for issues of voter fraud to be litigated. The county boards of canvassers are not the fora for those disputes.

7. This makes good sense. The boards of county canvassers must work on a tight schedule. The canvassers are required by law to complete their task within fourteen days of the election. It is critical to the smooth functioning of the electoral system that the tabulation and certification of the election results not be disrupted by charges and counter-charges of alleged voter fraud.

8. Although boards of canvassers have traditionally behaved in ways consistent with their ministerial nature, given their composition, the boards of canvassers are potentially prone to partisan disruption. They are inherently partisan bodies, comprised of two Republicans and two Democrats. The canvassers are chosen from a list provided by their respective parties. To allow the county canvassers to engage in determinations regarding alleged voter fraud would invite bitter disagreements that risk deadlocking the tabulation and certification of the election results. That is why the ministerial and clerical task of tabulating the returns is the *only* task that the boards of county canvassers are charged with performing during the certification period.

9. This limited and specific role of the canvasser boards has been recognized for over 135 years. Thus, in *Attorney General v Board of County Canvassers*, the Michigan Supreme Court said of the canvassers:

They are not a judicial or quasi judicial body. They are not a permanent body with administrative functions. They are created for a single occasion and for a single object. *They have no means given them to inquire, and no right to inquire, beyond the returns of the local election boards. They have no right to raise outside issues to decide themselves, or to ask us to decide.* When they have figured up the returns exactly as handed over to them, they have completed their task, and exhausted their powers. [64 Mich 607, 611; 31 NW 539 (1887) (emphasis added).]

10. Kalamazoo County is not the only county in Michigan where there is a genuine threat of a certification dispute. In fact, other counties in Michigan have already experienced certification disputes. In 2020, the issue dramatically flared in Wayne County, a dispute in which former President Trump was personally involved. And just this year, a dispute arose in Delta County where the county canvass was initially deadlocked along partisan lines. Certification only proceeded following an intervention by the Director of the Bureau of Elections.

11. Since 2020, election deniers have increasingly been appointed to positions in various county boards, including at least in Wayne, Antrim, Muskegon, Berrien, and Kalamazoo counties. The threat of a disruption of the electoral system in Michigan this November is very real. A failure to certify in even a single county imposes significant costs and difficulty for the Board of State Canvassers and the Secretary of State. Such a failure also gives oxygen to conspiracy theories and promotes a false narrative that Michigan's election are unreliable, untrustworthy, and not free and fair exercises in democracy. And, for taxpayers of Kalamazoo County, including the Kellys and nearly one thousand other ACLU members in Kalamazoo County, a failure to certify imposes significant financial costs, squandering taxpayer dollars on what amounts to a partisan political stunt.

12. In this way, Michigan is part of an emerging national controversy regarding the role of canvassing boards. Throughout the country, election deniers are poised to disrupt the certification process, seeking to place the results of the presidential election in doubt.

13. To prevent this threat to the electoral system, Plaintiffs seek an unequivocal declaration from this Court. Boards of county canvassers must be put on notice of their obligation to certify the results of the election, notwithstanding allegations (or even evidence) of voter fraud. Such a declaration is necessary to deter the injury to the electoral process that election deniers would inflict on the voters of Michigan.

I. JURISDICTION

14. This Court has jurisdiction over this action because it is a civil action, no other court has exclusive jurisdiction over this action, and no law denies the circuit court's jurisdiction over this action.

15. This Court also has jurisdiction over this civil action as “the circuit court for the county in which a plaintiff resides” because this is “an action for declaratory, injunctive, and/or monetary relief to enforce” “[t]he fundamental right to vote.” Const 1963, art 2, § 4(1)(a).

16. This Court has authority to grant a declaratory judgment as provided by MCR 2.605 because this case presents an actual controversy. As outlined below, there exists substantial uncertainty about whether Defendant Froman and, thus, the Kalamazoo Board of County Canvassers (the “Kalamazoo County Board”) will fulfill its legal obligation to certify the results of the November 2024 general election.

17. Uncertainty as to whether the Kalamazoo County Board will comply with its constitutional and statutory obligation to certify the results must be resolved ahead of the November 2024 election. According to *The Detroit News*, Defendant Froman has openly declared his willingness to defy his legal obligations and his oath of office in contravention of the Michigan

Constitution and centuries of legal precedent. And publicly reported comments by Tony Lorentz, another member of the Kalamazoo County Board, also call into question his willingness to perform his legal obligations. Yet, as explained below, statutory deadlines will make it impractical for this Court to grant plaintiffs meaningful relief during the short 14-day period after the election when the Kalamazoo County Board is required to perform its duties. A declaratory judgment is therefore necessary, as it would set out Defendant's legal obligation and direct the future conduct of the parties prospectively. Accordingly, this Complaint "plead[s] and prove[s] facts which indicate an adverse interest necessitating the sharpening of the issues raised," and declaratory relief is appropriate. *Lansing Sch Educ Ass'n v Lansing Bd of Educ*, 487 Mich 349, 372 n 20; 792 NW2d 686 (2010).

18. Venue is proper in this Court pursuant to MCL 600.1621, MCL 600.1615, MCR 3.305(A)(2), and Const 1963, art 2, § 4. Members of Plaintiff American Civil Liberties Union of Michigan reside in Kalamazoo County, Plaintiffs Sheril Kelly and Scott Kelly reside in Kalamazoo County, Defendant Robert Froman conducts business in Kalamazoo County, and the Kalamazoo County Board exercises its governmental authority in Kalamazoo County.

II. PARTIES

19. Established in 1959, Plaintiff American Civil Liberties Union of Michigan ("ACLU") is the Michigan affiliate of the American Civil Liberties Union. The ACLU is a domestic, nonpartisan, and nonprofit corporation organized for the civic, protective, or improvement purpose of protecting rights guaranteed by the United States and Michigan Constitutions. The mission of the ACLU is to realize the promise of the Bill of Rights for all citizens and expand the reach of its guarantees to new areas through public education, advocacy, and organization.

20. The ACLU seeks to ensure an easy and equal right to vote for every citizen and encourages its members and the people of Michigan to exercise their right to vote. The ACLU works to shape public policy and promotes full and fair access to the ballot, including, for example, by supporting and advocating for the 2022 ballot proposal that expanded protections for the fundamental right to vote in the Michigan Constitution and added text to Article 2, § 7 of that Constitution that is central to this lawsuit.

21. The ACLU is also a membership organization. At present, the ACLU has approximately 987 members in Kalamazoo County, most or all of whom, on information and belief, are registered to vote. The ACLU dedicates substantial time, effort, and resources to voter education and the protection of voting rights. Defendant's refusal to commit to certify the results of the election as required by law harms the ACLU's ability to fulfill its mission to educate and encourage voting. It diverts ACLU resources from other aspects of its mission. The ACLU has organizational standing and associational standing to represent its members who vote in Kalamazoo County and who do not want their vote to be ignored, discarded, exploited, and undermined by a failure to certify the election in Kalamazoo County.

22. Plaintiff Sheril Kelly is a registered voter in Kalamazoo, Michigan. She has lived in Kalamazoo County for over thirty years. She plans to vote in the November 2024 election.

23. Plaintiff Scott Kelly is a registered voter in Kalamazoo, Michigan. He has lived in Kalamazoo County his entire life. He plans to vote in the November 2024 election.

24. Defendant Robert Froman is a member of the Kalamazoo County Board of Canvassers. Defendant Froman and the other county canvassers are responsible for canvassing and certifying election returns for Kalamazoo County. As set forth below, it is his "ministerial, clerical, and nondiscretionary duty . . . [as a] member[] of the board of county canvassers, to certify

election results based solely on the statements of returns from the election day precincts, early voting sites, and absent voter counting boards in the county and any corrected returns.” MCL 168.822(3); Const 1963, art 2, § 7(3). Defendant Froman is sued in his official capacity.

25.

III. FACTUAL ALLEGATIONS

26. There is a clear danger that members of Michigan’s various boards of county canvassers will refuse to certify the 2024 general election results, and Kalamazoo County appears to have turned into an epicenter for this danger. In August 2024, Defendant Froman, a member of the Kalamazoo County Board, was reported by *The Detroit News* to have stated that he believed that the 2020 election had been “most definitely” stolen from former President Trump. When asked if he would certify the 2024 presidential election results if they unfolded the same way, he responded, “No. And that’s why I’m there [i.e., serving on the Kalamazoo County Board].” See Ex. 1¹.

27. At no point has Defendant Froman stated that he would comply with his legal obligation to certify.

A. **The Legacy of the 2020 Election**

28. On November 17, 2020, in response to completely baseless allegations and rumors about election fraud in Detroit during the 2020 election, two members on the four-member Wayne County Board of Canvassers (the “Wayne County Board”)—Monica Palmer and William

¹ Mauger, *Most Election Officials Who Certified Michigan’s 2020 Race Are Gone. Expert Sees Trouble*, *The Detroit News* (August 5, 2024) <<https://www.detroitnews.com/story/news/politics/2024/08/05/michigan-election-county-canvassers-boards-vote-certification-donald-trump-kamala-harris/74610733007/>>.

Hartman—initially voted against certifying county vote totals in the 2020 general election, resulting in a 2-2 deadlock preventing certification.²

29. The two board members failing to certify pointed to what they alleged were irregularities in Detroit and surrounding suburban communities.³ Palmer told the *Washington Post*, “I believe we do not have complete and accurate information in those poll books.”⁴

30. This initial refusal to certify election results sparked a local and national firestorm.

31. The initial deadlock of that board was highlighted by former President Trump, who stated on social media that “Michigan just refused to certify the election results” and praised the “courage” of the board members who voted against certification on social media.⁵

32. Trump legal adviser Jenna Ellis—who has since had her law license suspended and pleaded guilty in a Georgia election subversion criminal case—trumpeted the initial certification deadlock on social media as the first step in a plan to have the Michigan Legislature select the presidential electors and overturn the will of Michigan voters.⁶

33. The certification dispute in Wayne County was just one of many unprecedented certification disputes around the country, and the *New York Times* reported that the deadlock “was

² Cheney & Montellaro, *In Abrupt Reversal, Michigan’s Largest County Certifies Election Results*, Politico (November 17, 2020) <<https://www.politico.com/news/2020/11/17/wayne-county-michigan-election-certification-437181>>.

³ Brewster, *Michigan’s Wayne County Certifies Election Results After Initially Deadlocking*, CBS News (November 18, 2020) <<https://www.cbsnews.com/news/michigan-election-results-wayne-county-certifies-deadlock/>>.

⁴ Ruble & Hamburger, *Board in Key Michigan County Fails, Then Agrees, To Certify Vote Totals By Deadline*, Washington Post (November 17, 2020) <https://www.washingtonpost.com/politics/michigan-vote-canvassing-board/2020/11/17/12141222-287c-11eb-8fa2-06e7cbb145c0_story.html>.

⁵ *In Abrupt Reversal, Michigan’s Largest County Certifies Election Results*, *supra*.

⁶ Jenna Ellis (@realJennaEllis), X.com (November 17, 2020, 6:37 PM) <<https://x.com/realJennaEllis/status/1328844700883808260>>.

among the starkest examples of how previously routine aspects of the nation’s voting system have been tainted by [former President] Trump’s monthslong effort to undermine confidence in the election.”⁷

34. After the failed initial certification vote, the Wayne County Board heard several hours of public comment from residents of Wayne County, as well as non-partisan poll observers. The board members who refused to certify faced particular criticism for their singling out of purported irregularities in the majority-Black city of Detroit—drawing accusations of both partisan and racial bias.⁸

35. Following hours of criticism, the Wayne County Board reversed course and certified the county election results.⁹

36. The Wayne County Board’s initial failure to certify was despite the fact that, even in 2020, Michigan law was clear that canvassing boards have a ministerial duty to certify election based only on the returns.

37. In the days following the certification of the Wayne County election results, two board members tried and failed to “rescind” their votes to certify after being pressured directly by former President Trump and Republican National Committee Chairwoman Ronna McDaniel to block certification in a phone call in which former President Trump told them “[w]e can’t let these people take our country away from us.”¹⁰

⁷ *Presidential Transition: Georgia Nears Its Recount Deadline, With Biden Ahead by Over 12,000 Votes*, New York Times (November 18, 2020) <<https://www.nytimes.com/live/2020/11/18/us/joe-biden-trump-updates>>.

⁸ *Michigan’s Wayne County Certifies Election Results After Initially Deadlocking*, *supra*.

⁹ *In Abrupt Reversal, Michigan’s Largest County Certifies Election Results*, *supra*.

¹⁰ Mauger, *Trump Recorded Pressuring Wayne County Canvassers Not to Certify 2020 Vote*, The Detroit News (December 22, 2023) (continued...)

38. On November 20, 2020, former President Trump held a meeting in the White House with the two Republican leaders of the Michigan Legislature, Senate Majority Leader Mike Shirkey and House Speaker Lee Chatfield. According to CNN, “Trump . . . had invited the lawmakers to the White House this week, as he seeks to subvert the will of voters in a long-shot effort to overturn the results of an election he lost,” reportedly urging them to overturn the results of the election.¹¹

39. The meeting was held three days before the Board of State Canvassers was scheduled to vote on the certification of the presidential election. On November 23, 2020, notwithstanding the White House meeting, the Board of State Canvassers narrowly voted to certify the results of the election with one of the members of the board abstaining after “he asked questions about Detroit and clearly indicated he did not trust the Michigan election system.”¹²

40. In light of the disruption caused by anti-democracy forces in 2020 and the threatened misuse of the canvass process, Michigan’s voters in 2022 forcefully re-emphasized the limited role of canvassers, voting by an overwhelming majority to enshrine such principles in the Michigan Constitution—as well as including a fundamental right to vote in the Constitution and

<<https://www.detroitnews.com/story/news/politics/2023/12/21/donald-trump-recorded-pressuring-wayne-canvassers-not-to-certify-2020-vote-michigan/72004514007/>>.

¹¹ Grayer, Kelly, & Vazquez, *Michigan Lawmakers Who Met with Trump Say They See Nothing to Change Election Outcome*, CNN (November 21, 2020) <<https://www.cnn.com/2020/11/20/politics/michigan-house-speaker-will-meet-trump/index.html>>.

¹² Boucher, *Michigan Board Votes to Certify Election Results Despite GOP Calls to Delay*, Detroit Free Press (November 23, 2020) <<https://www.freep.com/story/news/politics/elections/2020/11/23/did-michigan-certify-election-results-board-canvassers/6388768002/>>.

establishing a right of action against anyone who attempts to unreasonably burden or interfere with that right.¹³

41. As a result, the Michigan Constitution was amended and the Michigan election law revised by the Legislature to codify what was already established in the case law—that the canvassers’ role is a purely ministerial, clerical, and nondiscretionary one. See Const 1963, art 2, § 7(3) (stating members of boards of canvassers have “the ministerial, clerical, nondiscretionary duty . . . to certify election results”); see also MCL 168.822 (similar).

B. The Threat in 2024 in Michigan

42. In 2024, there are strong indicators that certain members of the boards of county canvassers, citing baseless allegations of election fraud or other election defects as their justification, will refuse to certify election results.

1. Numerous County Canvass Board Members Continue to Question the Legitimacy of the 2020 Election

43. Across the state, there has been significant turnover of individuals serving on boards of county canvassers. In August 2024, *The Detroit News* reported that 55% of the 332 current Michigan county canvassers had not served as canvassers in November 2020, including 63% of the current Republican county canvassers.¹⁴

44. Among the new county canvassers are multiple individuals who have (i) publicly expressed the false view that the 2020 presidential election in Michigan was tainted by election

¹³ *Voters Approve Proposal 2, a Constitutional Amendment Expanding Voting Rights*, Michigan Public (November 9, 2022) <<https://www.michiganpublic.org/politics-government/2022-11-09/voters-approve-proposal-2-a-constitutional-amendment-expanding-voting-rights>>.

¹⁴ *Most Election Officials Who Certified Michigan’s 2020 Race Are Gone. Expert Sees Trouble*, *supra*.

fraud and/or (ii) publicly called into question whether President Biden prevailed over former President Trump in Michigan.

45. An April 21, 2021 audit of the 2020 presidential election conducted by the Michigan Secretary of State “found no examples of fraud or intentional misconduct by election officials and no evidence that equipment used to tabulate or report election results did not function properly when properly programmed and tested.”¹⁵ And the Wayne County Circuit Court found such claims to be “incorrect and not credible.” Ex. 2.

46. Despite the audit results, multiple new county canvassers have publicly pushed discredited theories questioning the integrity and security of the 2020 election in Michigan. For example:

- a. Two members of the Wayne County Board—neither of whom served on the Board in 2020—have each made public statements casting doubt on the legitimacy of the 2020 election. One canvasser said that he would not have certified the results of the 2020 election; in October 2021, he claimed, without basis, that the vote was “inaccurate.”¹⁶ The other has also repeatedly denied the results of the 2020 election.¹⁷

¹⁵ Secretary of State, *Audits of the November 3, 2020 General Election* (April 21, 2021), p 2, available at <https://www.michigan.gov/-/media/Project/Websites/sos/30lawens/BOE_2020_Post_Election_Audit_Report_04_21_21.pdf>

¹⁶ Hendrickson, *New GOP Canvassers Who Embrace Election Lies Raise Prospects of Chaotic Certification*, Detroit Free Press (January 24, 2022) <<https://www.freep.com/story/news/local/michigan/detroit/2022/01/24/michigan-gop-canvassers-election-misinformation/6584205001/>>.

¹⁷ Shah, *Election Deniers Are Embedded in Michigan Canvassing Boards – Advocates Say They’re Ready*, Salon (November 8, 2022) <<https://www.salon.com/2022/11/08/deniers-are-embedded-in-michigan-canvassing-boards--advocates-say-theyre-ready/>>.

- b. A January 2022 article reported that a member of the Antrim County Board of Canvassers who began his term in 2023 has deemed former President Trump’s contention that the 2020 election was stolen from him a “credible accusation.”¹⁸
- c. A member of the Muskegon County Board of Canvassers who began her term in 2023 shared a false news story in November 2020 headlined “Breaking Down the Greatest Electoral Heist in American History.”¹⁹
- d. A member of the Berrien County Board of Canvassers who began her term in 2023 has shared multiple social media posts calling into doubt the legitimacy of the 2020 election, including re-posting on Facebook a post that reads, “January 6th will be forever remembered as the day the government setup a staged riot to cover up the fact that they certified a fraudulent election.”²⁰

47. Public assertions of uncertainty regarding who won the presidential election in Michigan in 2020, made despite the fact that those assertions have been conclusively discredited, indicates that many canvassers will be inclined to improperly refuse to certify the results of the 2024 election based on their belief that election fraud may have occurred during the election.

¹⁸ *New GOP Canvassers Who Embrace Election Lies Raise Prospects of Chaotic Certification, supra.*

¹⁹ Glawe, *These Swing State Election Officials are Pro-Trump Election Deniers*, Rolling Stone (July 29, 2024) <<https://www.rollingstone.com/politics/politics-features/trump-swing-state-officials-election-deniers-1235069692/>>.

²⁰ Deb Frank, *They Know it. We know it.*, Facebook (June 2, 2023) <https://www.facebook.com/permalink.php?story_fbid=pfbid02HEoYB7RQkTEWHpDotqhsnsFaHoqGbYFK5RNHmptNfXiDyBbCvy1AYVzn5UT28iDul&id=1183871593&rdid=e7Blv2sReHePioEB>.

2. Delta County: A Recent Certification Dispute

48. The threat of county canvassing boards refusing to fulfill their legal and constitutional duty to certify elections is demonstrably real. County canvassers recently abrogated their legal duties following the May 2024 election for the Delta County Board of Commissioners.

49. On May 7, 2024, three incumbents on the Delta County Board of Commissioners faced a recall election. All three of these incumbents lost by significant margins.²¹

50. On May 14, 2024, two members of the Delta County Board of Canvassers (the “Delta County Board”) voted against certifying the May 7 recall election results, resulting in a 2-2 deadlock.

51. The canvassers who opposed certification contended that there were irregularities in the vote counts, a supposition that they apparently based on the similarities in vote totals across the three races that they inexplicably found suspicious.²² However, Nancy Przewrocki, the county clerk in Delta County, said, “we matched the numbers of voters . . . to the numbers of ballots counted by tabulators—all the numbers match 100%.”²³

52. Two days after the Delta County Board failed to certify, Michigan Bureau of Elections Director Jonathan Brater wrote a letter to the Delta County Board members in which he urged the canvassers to fulfill their “ministerial, clerical, [and] nondiscretionary” duty to certify

²¹ Lobo, *After Initial Deadlock, Delta County Board Votes to Certify Recall Election Results*, Detroit Free Press (May 20, 2024) <<https://www.freep.com/story/news/politics/elections/2024/05/20/michigan-delta-county-certifies-election-results/73731427007/>>.

²² LeBlanc, *In Delta County, Canvassers Decline to Certify Election, Delay Start for New Commissioners*, The Detroit News (May 16, 2024) <<https://www.detroitnews.com/story/news/politics/2024/05/16/delta-county-canvassers-reject-certification-of-recall-election/73716383007/>>.

²³ May, *Michigan County Refused to Certify Vote, Prompting Fears of a Growing Election Threat This Fall*, CBS News (May 21, 2024) <<https://www.cbsnews.com/news/michigan-county-refuses-to-certify-vote-growing-election-threat/>>.

the results of the election.²⁴ Brater explained the consequences if the Delta County Board failed to certify, including that it would be required to personally deliver to the Secretary of the Board of State Canvassers all information pertaining to the election and that Delta County would be responsible for covering the “substantial” costs associated with the state certification.²⁵ Finally, Brater reminded the Delta County Board that while “there are multiple separate, independent ways for election records to be reviewed and investigations to be conducted,” the job of the Delta County Board “is to review the election returns and certify the election solely based on the returns.”²⁶

53. On May 17, 2024, one of the members of the Delta County Board who had refused to certify relented, and the election was certified by a vote of 3-0.²⁷ The other canvasser abstained from the final certification vote without any legal basis for doing so.²⁸

54. Following the certification, another member of the Delta County Board called on one of the members who initially voted against certification to step down, noting that she “didn’t follow our oath—[she] didn’t do her job.”²⁹ He added that it could be a “real problem” if certification issues persisted during the 2024 presidential election.³⁰

²⁴ Letter from Jonathan Brater, Michigan Bureau of Elections Director, to Delta County Board of Canvassers (May 16, 2024), available at <<https://www.michigan.gov/ag/-/media/Project/Websites/AG/releases/2024/May/Delta-County-Canvassers-Letter-05-16-2024.pdf>> (hereinafter “Brater Letter”).

²⁵ *Id.*, p 3.

²⁶ *Id.*, p 4.

²⁷ *After Initial Deadlock, Delta County Board Votes to Certify Recall Election Results*, *supra*.

²⁸ *Id.*

²⁹ Minor, *Calls Out to Remove Board of Canvassers Member*, Daily Press (May 24, 2024) <<https://www.dailypress.net/news/local-news/2024/05/calls-out-to-remove-board-of-canvassers-member/>>.

³⁰ *Id.*

55. A subsequent partial audit of the Delta County Board of Commissioners election found no irregularities and confirmed the accuracy of the vote totals.³¹

3. The Threat at the Kalamazoo County Board

56. The risk of non-certification in the November 2024 is now perhaps most pronounced in Kalamazoo County.

57. Neither Republican appointee on the Kalamazoo County Board served in 2020. Both have made statements casting doubt on whether they will exercise their constitutional and statutory mandate to certify elections based solely on the returns.

58. Defendant Froman began his term on November 1, 2023.

59. According to an August 5, 2024 article by *The Detroit News*, Defendant Froman expressed the view that the 2020 election was “most definitely” stolen from former President Trump.³² When asked if he would certify the 2024 presidential election if it unfolded the same way as the 2020 election, he responded, “No. And that’s why I’m there [i.e., serving on the Kalamazoo County Board].”³³

60. Later in the article, Defendant Froman is reported to have added, “I am not going to do anything that’s illegal.”³⁴ But this obviously must be read in context of his prior reported statements that the reason he now serves on the Kalamazoo County Board is to not certify if the election unfolds in the same way as the 2020 election.

³¹ Minor, *Vote Audit Shows No Irregularities*, Daily Press (May 31, 2024) <<https://www.dailypress.net/news/local-news/2024/05/vote-audit-shows-no-irregularities/>>.

³² *Most Election Officials Who Certified Michigan’s 2020 Race Are Gone*, *supra*.

³³ *Id.*

³⁴ *Id.*

61. Indeed, Defendant Froman is further quoted in the same article as saying that he sees his intended actions as part of a commitment to preventing a replay of the 2020 election. Defendant Froman is quoted as saying: “Many people within the framework or ideology of the Republican Party have realized that they have been sitting in their living rooms way too long, and the country that they know and love is being stolen out from under them . . . And they’re not willing to sit in their living rooms any longer.”³⁵

62. Defendant Froman has reportedly acted in just that manner. Per *The Detroit News*: “Concerns about the 2020 election spurred Froman to get more actively involved in politics” and he “started attending Kalamazoo County Republican Party meetings and volunteering with an entity named Check My Vote, which has been trying to examine and verify addresses used by Michigan residents in the state’s official list of registered voters.”³⁶

63. Following *The Detroit News* reporting, on August 15, 2024, the ACLU wrote a letter to Defendant Froman (the “ACLU Letter”) in which the ACLU reminded Defendant Froman of his certification responsibilities under the Michigan Constitution and Michigan election law, and pointed out that a refusal to certify would be an illegal act. See Ex. 3.

64. The ACLU Letter raised key points about the responsibility of county canvassers. Specifically, it included:

- a. A reminder that “[t]he law does not authorize members of boards of canvassers to withhold certification based upon speculation, theories, or even evidence pertaining to the accuracy of the reported returns,” *id.* p 1;

³⁵ *Id.*

³⁶ *Id.*

- b. Reference to the Brater Letter which “emphasize[d] that members of county canvassing boards are not permitted to refuse to certify election results based on claims by third parties of alleged election irregularities, or a desire to conduct election fraud investigations,” *id.* p 2;
- c. Cases establishing that even before the 2022 constitutional and statutory changes to Michigan election law, the Michigan Supreme Court held that “it is the settled law of this State that canvassing boards are bound by the return, and cannot go behind it, especially for the purpose of determining frauds in the election. Their duties are purely ministerial and clerical,” *id.* (collecting cases); and
- d. A reminder that “it is a nondiscretionary legal duty for a Board of County Canvassers member to certify the election based on election returns, to refuse to do so because of rumors, allegations, or even evidence of fraud would expose that member to criminal liability,” *id.*

65. The ACLU Letter asked Defendant Froman to clarify his position regarding the role of county canvassers, including (i) if he was misquoted, to notify *The Detroit News* that he was misquoted in the article and request a retraction of his statements, or (ii) if he was not misquoted, to rescind his statements and issue a public statement concerning the role of county canvassers in the election certification process.

66. Defendant Froman responded to the ACLU Letter via email the next day. He stated, “I did not make any of the statements you say I did. I have not seen or approved any article by the Detroit News. I will make no public statement about what the Detroit News published. I believe

the first amendment to the Constitution allows the press to publish any information they deem necessary.” See Ex. 4.

67. Critically, Defendant Froman provided no assurances that he would certify the election if faced with allegations or evidence of fraud, even after being confronted with repeated statements regarding his legal duties in this regard.

68. Defendant Froman’s claim that he did not make the statements quoted in *The Detroit News* lacks credibility given his simultaneous refusal to contact *The Detroit News* to seek a retraction. If a public official were inaccurately quoted in a major publication declaring their intention to violate their constitutional and legal obligations, it is highly unlikely that the official would not seek a retraction, particularly under threat of litigation.

69. The ACLU communicated Mr. Froman’s denial of his comments to *The Detroit News*. *The Detroit News* responded with a letter to the ACLU, dated August 29, indicating that they stand by their story. See Ex. 5.

70. Defendant Froman has now had a clear opportunity to clarify his understanding of the role of county canvassers and to affirm that the decision to certify must be based solely on the returns. And yet, his statements and subsequent dubious denial of those statements make it uncertain that he will lawfully carry out his duties as a county canvasser.

71. The other Republican on the Kalamazoo County Board, Tony Lorentz, has also expressed doubt about whether President Biden won the election in 2020. He has also made public comments raising concerns whether he will faithfully execute his duty to certify the elections based on the returns alone.

72. According to a January 2022 *Detroit Free Press* article, when asked whether he would vote to certify elections, Lorentz responded that it “depends how they look.”³⁷

73. In the event that these two canvassers on the Kalamazoo County Board fail to exercise their ministerial, clerical, and nondiscretionary duty to certify the 2024 election result in Kalamazoo County, it would likely result in a 2-2 deadlock at the Kalamazoo County Board.

74. A certification deadlock at the county level would shift responsibility to the Board of State Canvassers to complete the task of certifying the election for Kalamazoo County.

75. While Michigan election law empowers the Board of State Canvassers to carry out that responsibility, having to do so would increase the burden on the Board of State Canvassers at a time when it has other significant responsibilities of its own relating to administration of the election in Michigan and a narrow window of time to carry out those duties.

76. Moreover, the failure of county canvassers to carry out their ministerial, clerical, nondiscretionary duty to certify would sow confusion in the election process and increase distrust in the integrity of the election.

77. Such a failure would also impose significant costs on the taxpayers of Kalamazoo County, including the Kelly Plaintiffs and other ACLU members in Kalamazoo County, as they would be forced to fund the costs of having the Board of State Canvassers undertake the certification.

78. The prospect of certification issues is not merely an administrative inconvenience. As Aghogho Edevbie, Michigan Deputy Secretary of State, has previously stated before becoming

³⁷ *New GOP Canvassers Who Embrace Election Lies Raise Prospects of Chaotic Certification, supra.*

Deputy Secretary, county canvassers' failure to timely certify election results "would be tremendously destabilizing."³⁸

4. Check My Vote and Election Deniers on the Boards of County Canvassers.

79. The concerns regarding Defendant Froman's likely course of conduct are heightened by Defendant Froman's connections with Check My Vote ("CMV"). As reported in *The Detroit News*, Defendant Froman is a CMV "county leader" or "trainer" working with CMV to investigate the state's registered voter list.³⁹

80. CMV is a software tool supported by Election Eagle QC, LLC ("Election Eagle"). CMV's stated mission is to "help[] identify and rectify irregularities in voter rolls." To that end, CMV has created a software tool used by the election denial movement to identify supposedly questionable voters and prevent them from freely exercising their right to vote.

81. The articles of organization for Election Eagle identify two co-founders, one of whom failed to secure a position on the Oakland County Board of Canvassers after he declined to answer whether he believes that the 2020 election was properly certified.⁴⁰

82. Defendant Froman is not a passive member of CMV, as he has reportedly said that he had personally checked tens of thousands of addresses.⁴¹

83. Defendant Froman is not the only CMV activist now serving on a board of county canvassers. According to a July 2023 announcement from the Michigan Republican Party, other

³⁸ *Id.*

³⁹ *Most Election Officials Who Certified Michigan's 2020 Race Are Gone, supra.*

⁴⁰ Mackay, *Election Claims Led to Oakland County Struggle in Finding GOP Canvasser*, *The Detroit News* (November 2, 2023) <<https://www.detroitnews.com/story/news/politics/2023/11/01/election-claims-led-to-oakland-county-struggle-in-finding-gop-republican-canvasser-trump-2020/71303344007/>>.

⁴¹ *Most Election Officials Who Certified Michigan's 2020 Race Are Gone, supra.*

CMV “county leaders” who now serve on boards of county canvassers include Bonnie Kellog in Muskegon County, Maureen Hillary in Clinton County, and Ron Palmgren in Genesee County.⁴²

C. National Context: Election Denialism Has Created a Nationwide Movement Undermining the Apolitical Task of Vote Certification.

84. The movement by members of canvassing boards to refuse to perform their ministerial duties is not limited to Michigan and is part of a rising national tide of election denialist activity.

85. Citizens for Responsibility and Ethics in Washington (“CREW”) has identified eight states under threat of non-certification, including Michigan, and “35 rogue election officials across the country who have already refused to certify election results and may be in a position to do so again.”⁴³ Two salient examples illustrate the nature of this threat.

86. In Nevada, an official recommended against certifying a 2023 election and stated that “[t]he elections of 2024 will be an epic battle.” He suggested that election officials should “reject the corruption” in 2024 by declining to certify elections.⁴⁴ Nevada faced certification issues again this cycle when Washoe County declined to certify the 2024 primary results.⁴⁵

⁴² *Id.*

⁴³ CREW, *Election Certification Under Threat* (updated August 15, 2024) <<https://www.citizensforethics.org/reports-investigations/crew-investigations/election-certification-under-threat/>> (accessed August 30, 2024) (hereinafter the “Crew Report”).

⁴⁴ Hanks, *Statement to 2023 Election Canvass Boards*, available at <<https://www.documentcloud.org/documents/24955894-cogop-ballot-and-election-security-chairman-letter-to-canvass-boards>> (accessed August 30, 2024).

⁴⁵ Stern, *Nevada County Reverses Controversial Vote and Certifies Two Recounts While Legal Action Looms*, Associated Press (July 16, 2024) <<https://apnews.com/article/washoe-county-cisco-aguilar-aaron-ford-427cb4cbb840f6f9d995403d52e63419>>.

87. In Georgia, a new state rule changed the authority of election canvassers and will potentially “allow some local election boards to refuse to certify.”⁴⁶ This rule change is being challenged in court amid allegations that it increases the prospect of certification disputes in Georgia, which could cause “chaos” in November.⁴⁷

88. Additional public reporting confirms the trend and suggests coordination among these election deniers. Just last week, *USA Today* reported that leaders of the Republican Party in Colorado have sent notices to local canvassing board members urging them not to certify the vote in their regions. The Colorado GOP’s “election integrity unit” was quoted using language eerily similar to that from Nevada election officials: “The elections of 2024 will be an epic battle” and “Our standing and credibility will be upheld if we reject the corruption of the unchanged voting process—in Colorado and throughout the nation.”⁴⁸

89. As set forth in the CREW Report: “The threat of disruption looms large in this year’s elections. If county officials successfully obstruct certification, it could have a cascading effect on state and federal certification deadlines. It could also lead to mass disenfranchisement of qualified voters.”

⁴⁶ Gringlas, *A New Rule in Georgia Could Allow Local Election Boards to Refuse to Certify Results*, NPR (August 9, 2024) <<https://www.npr.org/2024/08/08/nx-s1-5065909/a-new-rule-in-georgia-could-allow-some-election-boards-to-refuse-to-certify-results>>.

⁴⁷ Petition for Declaratory Relief at 4, *Abhiraman v State Election Board*, Docket No. 24-CV-010786 (Sup Ct of Fulton County, Ga, Aug. 26, 2024) (available at <<https://s3.documentcloud.org/documents/25074852/georgia-state-election-board-rules-lawsuit.pdf>>).

⁴⁸ Mansfield & Lovato, *With Eyes on November, Colorado Republicans Keep Voting Against Certifying Elections*, USA Today (August 24, 2024) <<https://www.usatoday.com/story/news/politics/elections/2024/08/25/colorado-republicans-election-certification-2024/74872375007/>>.

IV. LEGAL CONTEXT AND RELEVANT PROCEDURES GOVERNING MICHIGAN'S ELECTIONS

A. The Canvass at the County Level

1. Precinct-Level Canvass

90. After the polls close on election day, election inspectors (the formal term for poll workers in Michigan) in each precinct immediately perform the precinct-level canvass. MCL 168.801. The election inspectors compare poll lists and correct any mistakes. *Id.* They seal all of the ballots in a designated container that is delivered to the township or city clerk. MCL 168.805.

91. The election inspectors then “prepare duplicate statements of the returns showing the whole number of votes cast for all offices voted that are to be canvassed by the board of county canvassers, the names of the persons for whom the votes were given, and the number each person received.” MCL 168.806(1). Each member of the board of election inspectors⁴⁹ “sign[s] the certificate on the statement of returns” attesting to the correctness of the returns and the packaging, sealing, and indorsing of the ballots. MCL 168.806(2). The results of the election inspectors’ canvass are immediately available to interested persons present at the precinct, including election challengers. MCL 168.807.

92. Two election inspectors from each precinct, one from each of the major political parties, then deliver the sealed ballot container, along with the poll book and statement of returns, to the city or town’s receiving board. MCL 168.679a. The receiving board ensures that the ballot container is properly sealed, that the seal number is properly recorded in the poll book and

⁴⁹ The term “board of election inspectors” is a term of art used throughout Michigan’s election law which refers to the group of election inspectors assigned to any particular precinct, counting board, or other location relating to election administration. See, e.g., MCL 168.677 (governing the appointment of boards of election inspectors).

statement of returns, and that the number of voters recorded in the poll book is equal to the number of ballots. MCL 168.679a(3).

93. The board of election inspectors seals one copy of the statement of returns and one tally return sheet in an envelope addressed to the board of county canvassers, care of the judge of probate. MCL 168.809(1). The board of election inspectors then delivers this envelope to the clerk of the township or city, which delivers it to the probate judge. *Id.* The probate judge provides the sealed envelope to the board of county canvassers when it meets. *Id.*

94. The other statement of returns and the precinct's poll list are sealed in an envelope addressed to the county clerk. MCL 168.809(2). The board of election inspectors delivers this envelope to the clerk upon completion of the count. *Id.* The clerk then opens the envelope, compiles unofficial returns, and makes the returns available to the public. *Id.*

95. Ballots, ballot boxes, and other election materials are kept in the possession of the city or township clerk until otherwise directed by the board of county canvassers. MCL 168.810a(1). Major political parties may designate individuals to monitor access points to the location where the materials are kept until 1:00 p.m. on the day after the election unless additional security is required by the board of county canvassers. MCL 168.810a(2).

2. Absent Voter Counting Boards

96. Michigan law provides that “not less than 75 days before the day of an election, the clerk of a city or township may . . . [e]nter into an agreement with the clerk of the county . . . to establish an absent voter counting board to count the absent voter ballots for that city or township.” MCL 168.764d(1), (3).

97. Absent voter county boards (“AVCBs”) must consist of at least two election inspectors. MCL 168.764d(8)(a). Absent voter ballots must always be monitored by election inspectors during processing and tabulation. MCL 168.765a(8). During this early counting

process, election inspectors are charged with securing the tabulated ballots in sealed ballot containers at the end of each day. MCL 168.765a(15). Election inspectors are also charged with creating a “poll book ballot summary at the conclusion of each day to account for absent voter ballot return envelopes and absent voter ballots processed and tabulated on that day.” *Id.*

98. With a few exceptions, AVCBs are required to process ballots and returns in a manner that “as nearly as possible” reflects the manner that ballots are processed in election day precincts. MCL 168.765a(6). Jurisdictions with a population of at least 5,000 may begin processing and tabulating absentee votes up to eight days prior to the election, while smaller jurisdictions must tabulate them on election day. MCL 168.765a(6), (11).

99. “For each day of processing and tabulation of absent voter ballots before election day, a participating city or township clerk shall deliver the absent voter ballots approved for tabulation to an absent voter counting board.” MCL 168.765a(13).

3. The County Boards: How They Are Constituted

100. By law, every county must have a four-person board of canvassers. MCL 168.24a(1).⁵⁰

101. The participants in the four-member board are selected from “each of the 2 political parties casting the greatest number of votes for secretary of state at the preceding general November election in that county.” MCL 168.24c(1). In the ordinary course, each county board is comprised of two Democrats and two Republicans.

⁵⁰ See also Secretary of State, *Procedures and Duties of the Boards of County Canvassers* (July 2024), p 2, available at <https://www.michigan.gov/sos/-/media/Project/Websites/sos/02lehman/BCC_Manual.pdf> (hereinafter “County Canvassers Manual”).

4. The County Boards: What They Do

102. No later than 9:00 a.m. on the Thursday following election day, the board of county canvassers for each county begins the county-level canvass. MCL 168.821(1). The board of county canvassers must perform this canvass based solely on the statements of returns from the precincts and AVCB and any corrected returns. Const 1963, art 2, § 7(3); MCL 168.822(3).

103. “Statements of returns” refers to the statements prepared and certified by the precinct election inspectors showing the total number of votes cast, the names for whom those votes were cast, and the number of votes that each person received. MCL 168.806. The forms for these statements must be provided by the county election commissioners to each precinct and must be “as prescribed by the secretary of state for use by the precinct election inspectors in making returns of any primary or election to the boards of county canvassers.” MCL 168.667(a).

104. The county canvass must be completed “at the earliest possible time,” and no later than fourteenth day after the election. MCL 168.822(1).

105. Although these duties are clerical and ministerial in nature, they are time-consuming. In a large county such as Kalamazoo, for example, there were 107 precincts that had to be canvassed in 2020.⁵¹

106. For *each* precinct, the board must separately check the precinct’s pollbook for completion, check the statement of votes for internal consistency, and tally all write-in votes.⁵²

107. As such, it is not uncommon for large counties to require the entire 14-day period to complete the canvas, despite exercising their authority to employ the assistance of multiple election inspectors.

⁵¹ See Michigan Department of State, *2020 Biennial Precinct Report* <https://www.michigan.gov/-/media/Project/Websites/sos/02mcalpine/Biennial_Precinct_Report_for_2020.pdf>.

⁵² County Canvassers Manual, p 18.

5. The Post-Canvass Statements and Report

108. Upon completing the canvass, the board of county canvassers prepares a statement of votes showing the number of votes cast for each office, the names for whom the votes were cast, and the number of votes given to each person, “as shown by the returns of the boards of inspectors of election of the various voting precincts of the county.” MCL 168.824(1). The statement of votes must include the “total number of votes cast for each candidate for each office in the county.” See County Canvassers Manual, pp 58–59.

109. No later than twenty-four hours after the completion of the canvass, the clerk of the board of county canvassers must transmit a certified copy of these statements to the Secretary of State. MCL 168.828.

110. These statements are compiled into a “County Canvassers’ Report.” County Canvassers Manual, p 57. This report includes, *inter alia*, “[t]he votes cast for offices and ballot questions for which the Board of State Canvassers is responsible for certifying,” *id.*, p 58, which includes the President of the United States, *id.*, p 62.

111. If a board of county canvassers fails to certify by the fourteenth day after the election, it must immediately deliver all records pertaining to the election to the secretary of the Board of State Canvassers. MCL 168.82.

B. The Canvass at the State Level

112. The Board of State Canvassers consists of four members appointed by the Governor with the advice and consent of the Senate. The Board of State Canvassers consists of two members from each major political party. MCL 168.22(3). The Governor selects members from lists of nominees provided by the two major political parties. MCL 168.22a(1).

113. The Board of State Canvassers' duty includes the responsibility to "canvass the returns and determine the result of all elections for electors of president and vice president of the United States." MCL 168.841(1).

114. The Board of State Canvassers is required to meet as soon as practicable following the receipt of returns from the boards of county canvassers, but in no event later than twenty days after the date of the election. MCL 168.42(1).

115. During the Board of State Canvassers' meeting, the board is required to examine the certified statements of votes from the boards of county canvassers and prepare a statement showing the total number of votes cast for all candidates for each office and the number of votes for each such candidate. MCL 168.844.

116. When the boards of county canvassers have submitted a certified statement of votes, it is the "ministerial, clerical, [and] nondiscretionary duty" of the Board of State Canvassers to certify the election results based on such certified statements. Const 1963, art 2, § 7; MCL 168.842(4).

117. The results must be certified no later than the twentieth day after the election, which means that in instances where the Board of State Canvassers has to step in after the failure by a county board to certify, the state board has only six additional days to complete the county canvass in addition to performing its own statutorily mandated tasks. MCL 168.822(2).

118. Following the canvass, the Board of State Canvassers must "determine which persons have been duly elected." MCL 168.845. The Board of State Canvassers then certifies that determination and submits the certificate of determination along with the statement of votes to the Michigan Secretary of State. *Id.*

119. If the Board of State Canvassers is required to take over the duties of a board of county canvassers, “[a]ll costs associated with the completion of the canvass must be borne by the county involved.” MCL 168.822(2). These costs may include “costs needed for transportation, lodging, meals, [and] all costs incurred by the Michigan Department of State, Michigan Department of Attorney General, Michigan State Police, and any other state agency.” County Canvassers Manual, p 18; see also Brater Letter, p 3.

120. Because the Board of State Canvassers likely would have as little as six days following a board of county canvassers’ refusal to certify, and because of the time-intensive nature of the ministerial duties involved with certification, the refusal by a single board of county canvassers, including the Kalamazoo County Board, would foist an unjustified and cumbersome responsibility upon the Board of State Canvassers at a time when the Board of State Canvassers already has significant and critical obligations of its own to which it must attend. Should numerous county boards simultaneously refuse to certify, the burden on the Board of State Canvassers would increase exponentially, and would create a high-pressure environment that would present particularly fertile ground for the sprouting of election-related conspiracy theories. As Michigan, and the entire United States, have witnessed since 2020, such dangerous and febrile theories cannot be easily pruned once they have grown, no matter how many times they are proven false.

C. The County Canvassers Must Consider *Only* the Formal Returns and Have No Authority to Consider Claims of Fraud When Performing the Canvass.

121. Michigan election law states the obligation of the county boards when conducting the canvass. In particular, the county board is to limit the canvass to “the precinct returns, early voting returns, and absent voter counting board returns.” Per MCL 168.822(1):

The board of county canvassers shall . . . canvass the returns of votes cast for all candidates for offices voted for . . . according to the precinct returns, early voting returns, and absent voter counting

board returns filed with the probate judge or presiding probate judge by the several city and township clerks

122. These duties include “[c]anvassing each of the county’s precincts by carefully reviewing the vote totals reported and ensuring consistency across all election forms and certificates.”⁵³ County Canvassers Manual, p 1.

123. If, during the canvass, the board of county canvassers finds that the returns from any election precinct “are missing, incomplete, or incorrect, or for any other reason it is found necessary,” the board of county canvassers may “adjourn from day to day until the returns shall have been procured or corrected.” MCL 168.823(1).

124. The board of county canvassers may also require the person in possession of the ballots or the returns and poll lists to bring those materials before the county board. MCL 168.823(2). The members of the board may open the ballot boxes and remove “any books or papers bearing upon the count and return of the election inspectors of the election precincts.” *Id.* They may not, however, “remove or mark the ballots.” *Id.*

125. The board of county canvassers is obligated to “correct *obvious* mathematical errors in the tallies and returns.” MCL 168.823(3) (emphasis added). If the board of county canvassers determines, after examining the returns, poll lists, or tally sheets, that the returns are incorrect or incomplete, it may take one of two courses of action: It may “summon the election inspectors,” and require the election inspectors “to count any ballots that the election inspectors failed to count.” *Id.* Alternatively, it may “designate staff members from the county clerk’s office to count any

⁵³ “Canvass” is defined by the United States Election Assistance Commission as “[a]ggregating or confirming every valid ballot cast and counted.” United States Election Assistance Commission, *Glossary of Terms*, (July 26, 2021), p 18, available at https://www.eac.gov/sites/default/files/glossary_files/Glossary_of_Election_Terms_EAC.pdf.

ballots that the election inspectors failed to count.” *Id.* In either case, the board of county canvassers then canvasses the votes from the corrected returns. *Id.*

126. “It is the ministerial, clerical, and nondiscretionary duty of each board of county canvassers, and each of the members of the board of county canvassers, to certify election results based solely on the statements of returns from the election day precincts, early voting sites, and absent voter counting boards in the county and any corrected returns.” MCL 168.822(3). The “ministerial, clerical, [and] nondiscretionary” nature of these duties is confirmed and reinforced by the Michigan Constitution. Const 1963, art 2, § 7.

127. In Michigan, “[a] ministerial act . . . leave[s] nothing to the exercise of discretion or judgment.” *Barrow v Wayne Co Bd of Canvassers*, 341 Mich App 473, 486; 991 NW2d 610 (2022); *Taxpayers for Mich Constitutional Gov’t v Michigan*, 508 Mich 48, 82; 972 NW2d 738 (2021).

128. These provisions of the Michigan election law and the Michigan Constitution are consistent with the longstanding law in Michigan. As early as 1892, the Michigan Supreme Court held “it is the settled law of this state that canvassing boards are bound by the return, and cannot go behind it, especially for the purpose of determining frauds in the election. Their duties are purely ministerial and clerical. They must be governed by the return.” *McQuade v Furgason*, 91 Mich 438, 440; 51 NW 1073 (1892); see also *Attorney General v Bd of Co Canvassers*, 64 Mich 607, 611; 31 NW 539 (1887).

129. This view of the law has repeatedly been reaffirmed over the past 100 years. See *Johnson v Secretary of State*, 506 Mich 975, 975 (2020) (CLEMENT, J., concurring) (“At no point in this process is it even proper for [the county boards of canvassers] to investigate fraud, illegally cast votes, or the like.”); *McLeod v Kelly*, 304 Mich 120, 127; 7 NW2d 240 (1942) (similar).

130. Thus, boards of county canvassers “do not have any discretion to consider” evidence or information other than the returns. County Canvassers Manual, p 2. County boards cannot, for example “refuse to certify election results based on third party claims alleging election irregularities, or a general desire to conduct election investigations.” *Id.*

D. Michigan Election Law Provides Alternative Recourse for Investigating Fraud

131. While it is not within the boards of county canvassers’ mandate to investigate allegations of election fraud, Michigan election law provides appropriate legal avenues and recourse to candidates to pursue investigations into alleged fraud.

132. For example, an aggrieved candidate may petition for a recount, MCL 168.862; the Secretary of State may investigate violations of election laws, MCL 168.31(h); the Secretary of State can audit the results of an election, MCL 168.31a; the Attorney General can bring an action seeking quo warranto, MCL 600.4501, as may an aggrieved person in any election other than for the offices of electors of President or Vice President if the Attorney General refuses to do so, *id.*; and/or an aggrieved presidential candidate may seek review of the certification by the Board of State Canvassers by filing a mandamus action in the Supreme Court, MCL 168.845a.

133. What is clear under the law, however, is that investigations into allegations of election fraud are to occur post-county certification and have no role to play in the county certification process.

134. This action is necessary because Defendant Froman has been reported by *The Detroit News* to have publicly declared that he will act in defiance of these well-established principles, creating uncertainty as to whether the Kalamazoo County Board will carry out its legal duty under Michigan law.

V. CLAIMS FOR RELIEF

**COUNT I
Declaratory Judgment
Const 1963, art 2, § 7
MCR 2.605**

135. Plaintiffs hereby incorporate by reference all foregoing paragraphs as though fully set forth herein.

136. Pursuant to MCR 2.605, this Court has the authority to declare the rights and legal relations of the parties to this action.

137. There exists an actual case and controversy between the parties because Defendant has expressed an intent to violate the Michigan Constitution.

138. The Constitution establishes that “[i]t shall be the ministerial, clerical, nondiscretionary duty of a board of canvassers, and of each individual member thereof, to certify election results based solely on: . . . in the case of boards of county canvassers, statements of returns from the precincts and absent voter counting boards in the county and any corrected returns.” Const 1963, art 2, § 7(3). “A ministerial act is one in which the law prescribes and defines the duty to be performed with such precision and certainty as to leave nothing to the exercise of discretion or judgment.” *Taxpayers for Mich Constitutional Gov’t v Michigan*, 508 Mich 48, 82; 972 NW2d 738 (2021), quoting *Hillsdale Co Senior Servs, Inc v Hillsdale Co*, 494 Mich 46, 58 n 11; 832 NW2d 728 (2013).

139. By law, county canvassers must tally the vote counts reported in the returns and certify the results of the election. They may not consider any other evidence, including any allegations of suspected fraud, that they receive from precincts or any other source. See *McLeod v Kelly*, 304 Mich 120, 127; 7 NW2d 240 (1942).

140. Nonetheless, Defendant has stated that he will not certify the election if it unfolds in the same manner as 2020. Indeed, Defendant Froman is reported to have told *The Detroit News* that blocking certification of the election results is “why [he is] there,” meaning why he is on the Kalamazoo County Board.⁵⁴ While he denied making that statement in an unsworn email to the ACLU, he also did not contact *The Detroit News* to retract the statement, and did not deny that he actually would not certify the election in 2024 if it were to unfold in the same manner as it did in 2020. Defendant Froman’s denial as to what he actually said is simply not credible.

141. Defendant’s stated willingness to violate his constitutional and statutory duty creates an actual controversy that requires the Court to intervene. A declaratory judgment that county canvassers may not refuse to certify election results based on information extrinsic to the statements of returns—including any allegations of fraud—would direct the parties’ conduct prospectively and would ensure that Defendant Froman does not abuse his office to propagate baseless conspiracy theories and unlawfully foist his obligations onto members of the Board of State Canvassers at significant expense to Kalamazoo County’s taxpayers, including the Kelly Plaintiffs and nearly 1,000 other ACLU members residing in the county.

142. Accordingly, Plaintiffs are entitled to declaratory relief.

COUNT II
Declaratory Judgment
MCL 168.822
MCR 2.605

143. Plaintiffs hereby incorporate by reference all foregoing paragraphs as though fully set forth herein.

⁵⁴ *Most Election Officials Who Certified Michigan’s 2020 Race Are Gone, supra.*

144. Pursuant to MCR 2.605, this Court has the authority to declare the rights and legal relations of the parties to this action.

145. There exists an actual case and controversy between the parties because Defendant has expressed an intent to violate Michigan election law.

146. Michigan election law dictates that “[i]t is the ministerial, clerical, and nondiscretionary duty of each board of county canvassers, and each of the members of the board of county canvassers, to certify election results based solely on the statements of returns from the election day precincts, early voting sites, and absent voter counting boards in the county and any corrected returns.” MCL 168.822(3).

147. For the same reasons that Defendant’s planned course of action violates Article 2, § 7 of the Michigan Constitution, it also violates MCL 168.822.

148. Defendant’s stated willingness to violate Michigan election law creates an actual controversy that necessitates this Court’s intervention. A declaratory judgment that county canvassers may not refuse to certify election results based on extrinsic information outside the four corners of the statements of returns would direct the parties’ conduct prospectively and would ensure that Defendant Froman does not abuse his office to propagate baseless conspiracy theories and unlawfully foist his obligations onto members of the Board of State Canvassers at significant expense to Kalamazoo County’s taxpayers, including the Kelly Plaintiffs and nearly 1,000 other ACLU members residing in the county.

149. Accordingly, Plaintiffs are entitled to declaratory relief.

COUNT III
Violation of the Fundamental Right to Vote
Const 1963, art 2, § 4(1)(a)

150. Plaintiffs hereby incorporate by reference all foregoing paragraphs as though fully set forth herein.

151. The Michigan Constitution protects “[t]he fundamental right to vote,” and prohibits any person from “us[ing] any means whatsoever, any of which has the intent or effect of denying, abridging, interfering with, or unreasonably burdening the fundamental right to vote.” Const 1963, art 2, § 4(1)(a). It also provides that “[a]ny Michigan citizen or citizens shall have standing to bring an action for declaratory, injunctive, and/or monetary relief to enforce the rights created by this part (a) of subsection (4)(1) on behalf of themselves.” *Id.*

152. Defendant has asserted his willingness not to certify the results of the election if he suspects that the results were affected by fraud. Such a failure to certify would be contrary to both the Michigan Constitution and Michigan election law. It would also have the intent and effect of interfering with the fundamental right to vote of every citizen in Kalamazoo County. Indeed, by delaying and stonewalling the required certification, a refusal to certify would constitute an intent to disenfranchise all Kalamazoo County voters for an indeterminate period of time after the election. It would also unreasonably burden every Kalamazoo County voter’s fundamental right to vote by forcing them to foot the bill, through their taxpayer dollars, for the costs of having the Board of State Canvassers take over the duties of the Kalamazoo County Board.

153. Accordingly, this Court should declare that Defendant must abide by his statutory and constitutional duties and certify the results of the election.

154. This Court should also award Plaintiffs reasonable attorneys’ fees, costs, and disbursements, as required by Article 2, § 4 of the Michigan Constitution. Const 1963, art 2, § 4(1)(a).

VI. RELIEF REQUESTED

WHEREFORE, Plaintiffs respectfully requests that this Court:

- A. Enter judgment in favor of Plaintiffs and against Defendant;

- B. Declare that Article 2, § 7 of the Michigan Constitution requires Defendant to certify the results of the election based solely on the statements of returns from the precincts and absent voter counting boards in the county and any corrected returns, and that Defendant may not refuse to certify the results of the election based on any information extrinsic to the statements of returns;
- C. Declare that MCL 168.822(3) requires Defendant to certify the results of the election based solely on the statements of returns from the election day precincts, early voting sites, and absent voter counting boards in the county and any corrected returns, and that Defendant may not refuse to certify the results of the election based on any information extrinsic to the statements of returns;
- D. Declare that Defendant's stated willingness to refuse to certify the results of the election based on information extrinsic to the statements of returns violates Plaintiffs' fundamental right to vote protected by Article 2, § 4(1)(a) of the Michigan Constitution;
- E. Award Plaintiffs reasonable attorneys' fees, costs, and disbursements, as required by Article 2, § 4(1)(a) of the Michigan Constitution;
- F. Grant Plaintiffs any such further relief as the Court deems equitable and just under the circumstances.

Respectfully submitted,

/s/


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Dated: September 3, 2024

* *Pro hac vice* motions forthcoming

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EXHIBIT 1

Mauger, Most Election Officials Who Certified Michigan's 2020 Race Are Gone. Expert Sees Trouble,
Detroit News (August 5, 2024)

POLITICS

Most election officials who certified Michigan's 2020 race are gone. Expert sees trouble



Craig Mauger
The Detroit News

Published 11:00 p.m. ET Aug. 5, 2024 | Updated 11:00 p.m. ET Aug. 5, 2024

Lansing — Widespread change has struck the group of officials whose job is to certify Michigan's elections, igniting concerns about whether the new class is willing to sign off on the results the same way county canvassers in the battleground state did four years ago.

A first-of-its-kind, weeks-long analysis by The Detroit News found 55% of the 332 county canvassers in Michigan were not serving in November 2020 when boards in all 83 counties approved the outcome despite Republican then-President Donald Trump's unsuccessful attempt to overturn his loss to Democrat Joe Biden.

The turnover has been driven by Republicans. While 48% of the Democratic canvassers are new since 2020, 63% — nearly two out of every three — are new on the GOP side, according to The News' analysis.

The numbers point to a Michigan Republican Party that's been focused on false claims of widespread fraud aimed at the 2020 election and GOP canvassers who might interfere with the election process this fall, according to Democrats. But Republicans, such as Kalamazoo County canvasser Robert Froman, said the analysis demonstrates an increased and renewed interest in how elections are administered.

"Many people within the framework or the ideology of the Republican Party have realized that they have been sitting in their living rooms way too long, and the country that they know and love is being stolen out from under them," Froman said. "And they're not willing to sit in their living rooms any longer."

Froman, a 72-year-old retired postal service employee from Oshtemo Township, is one of the 105 new Republican county canvassers who are serving in 2024 but weren't in their positions in 2020.

Each county in Michigan has a four-person canvassing board, featuring two Republicans and two Democrats, in charge of approving election tallies before they're forwarded to the state for final authorization. The panels rarely get attention and, former Michigan elections director Chris Thomas said, their members often held the posts for many years at a time, making vast changes like what's occurred recently unusual.

Concerns about the 2020 election spurred Froman to get more actively involved in politics, he said. Froman started attending Kalamazoo County Republican Party meetings and volunteering with an entity named Check My Vote, which has been trying to examine and verify addresses used by Michigan residents in the state's official list of registered voters.

Froman, whom Republicans nominated to serve on the Kalamazoo County canvassing board and whose term began last year, said he's personally checked tens of thousands of voters' addresses. He said he "most definitely" believes the 2020 election was stolen from Trump.

Asked if he would certify the 2024 presidential election if it unfolded the same way the 2020 one did, Froman replied, "No. And that's why I'm there."

Froman is one of four so-called "county leaders" or "trainers" who have been working with Check My Vote to investigate the state's registered voter list and who have recently gotten county canvassing positions. The others are Bonnie Kellogg in Muskegon County, Maureen Hillary in Clinton County and Ron Palmgren in Genesee County, according to a list of "county leaders" in a July 2023 announcement from the Michigan Republican Party.

The belief system that there was widespread fraud in 2020 and a series of attempts to reject results in Michigan over the last four years have some election officials in Michigan expecting that Republicans on some local canvassing boards might try to block the certification process in November if Trump loses to likely Democratic nominee Kamala Harris.

County canvassing boards must have a bipartisan 3-1 or 4-0 vote to certify election results and advance them to the Board of State Canvassers, another panel comprised of two Republicans and two Democrats.

"At this point, shockingly, it wouldn't surprise me to see several counties deadlock," said Thomas, who served as Michigan's elections director for more than three decades.

'I do worry'

Each of Michigan's 83 county canvassing boards has the responsibility of reviewing the local vote totals and reporting the results to the Board of State Canvassers, according to a manual published by the Michigan Bureau of Elections.

The county boards, featuring two Republican slots and two Democratic slots, have 14 days following Election Day to certify the results for each of their precincts.

The canvassers serve staggered four-year terms, are nominated by their local political party and are picked, from among the party nominees, by the local board of commissioners. However, there is no official state list that tracks who sits on the key elections boards across Michigan.

The News compiled the names of Michigan's county canvassers — those serving now and those serving in 2020 — through questionnaires sent to county clerks in June and July and examining board member lists that were posted on some county websites.

Boards with vacancies are considered by The News to have new members because the positions are expected to be filled before the November election.

Of Michigan's 83 counties, 11 have completely new canvassing boards with four new members from 2020: Alger, Arenac, Clare, Dickinson, Iosco, Mackinac, Manistee, Montmorency, Muskegon, Roscommon and Wayne — the state's most populous county and the site of a brief November 2020 certification deadlock.

In Iosco County, which is located in northeastern Michigan and has a population of about 25,000, Clerk Nancy Huebel said one past board member died, two resigned for personal reasons, and one, Democrat Patti Casey, wasn't reappointed.

In neighboring Arenac County, Janice Grier, 69, of Standish said Democrats were having trouble finding people to serve on the canvassing board a couple of years ago, so she stepped up. In 2020, 67% of the votes in the county went to Trump.

Grier said she hasn't seen anything that would make her concerned about the county board not certifying the upcoming presidential election, but she's not so certain about elsewhere in Michigan.

"I do worry about other parts of the state," Grier said.

Protect the vote?

Over the last four years, there have been three examples of canvassers in Michigan at least initially refusing to certify an election.

Most recently, in the spring, two Republicans on the Delta County canvassing board in the Upper Peninsula voted against certifying a May 7 recall election in which three incumbent Republican county commissioners lost their seats. However, days later, they changed course and approved the results.

"I am doing my best to protect the votes of all citizens of Delta County and to ensure free and fair elections by bringing transparency and reassurance to all Delta County citizens," one of the Republican canvassers, Bonnie Hakkola, said at the time.

Hakkola resigned from the board afterward.

The other Republican who initially voted against certification, LeeAnne Oman, was serving as an alternate for an absent GOP canvasser, Sema Deeds.

Jonathan Brater, Michigan's elections director, sent a letter to the Delta County canvassers on May 16, telling them that under the Michigan Constitution and state law, they had "a clear and nondiscretionary duty to certify election results based solely on election returns."

"The Constitution and Michigan election law do not authorize boards of county canvassers to refuse to certify election results based on claims made by third parties of alleged election irregularities or a general desire to conduct election investigations," Brater wrote in the letter.

In a statement in May, Attorney General Dana Nessel said "defying the will of the people based on conjecture, dissatisfaction in the results or any other reason not based on Michigan law" will not be tolerated.

"While the Delta County Board ultimately met their obligations, and as a result have avoided the legal consequences, let this serve as a warning to all of the boards of canvassers across the state that the willful neglect of your duties is a criminal act," added Nessel, a Democrat.

Canvassers' role

Asked about the statements from Nessel and Brater about the Delta County canvassers, new Republican Kalamazoo County canvasser Froman said he has a duty to ensure there is a free and fair election.

"I am not going to do anything that's illegal," Froman told The News.

Other new canvassers interviewed by The News in recent weeks made similar remarks.

Ron Palmgren, a Republican canvasser in Genesee County, has also served as a county leader for Check My Vote. Asked if the 2020 presidential election was stolen from Trump, Palmgren said he has "no idea whether it was stolen or not."

Biden won Michigan's election by 154,000 votes or 3 percentage points, 51%-48%. The outcome has been upheld by audits, a series of court rulings and an investigation by a Republican-controlled state Senate committee.

Palmgren, a 76-year-old retiree from Burton, said he views his role as a canvasser as being an "impartial arbiter."

"Based on my experience so far, there is no investigatory process," Palmgren said of his responsibilities. "It is strictly looking at the election results provided by all of the municipalities and making sure that all of the processes that were in place were followed."

Likewise, Jim Kargol, a 69-year-old from Petoskey who serves on the Emmet County Board of Canvassers, said he doesn't believe there's been fraud in local elections, but he questions what has happened in other places, such as Detroit.

Kargol mentioned a van dropping off loads of ballots in the night during the 2020 presidential election in Detroit, a Democratic stronghold. He appeared to be referencing about 16,000 ballots that had been delivered to the center where absentee ballots were being tallied in Detroit in the early morning hours of Nov. 4. The ballots had been verified by city Clerk Janice Winfrey's staff prior to delivery in a process prescribed by Michigan law, said Thomas, Michigan's former elections director who helped oversee voting in Detroit.

"I really think there was some foolishness that went on," said Kargol, a Republican.

Canvassing troubles

After the 2020 presidential election on Nov. 17, 2020, Wayne County's Republican then-canvassers Monica Palmer and William Hartmann questioned precincts in Detroit where the number of ballots cast and the number of votes tracked didn't match and initially voted against certifying the county's results.

But later in the meeting, they changed course and supported certifying the election based on the condition that an audit take place of some precincts within Wayne County.

Minutes after the meeting, Trump and Republican National Committee Chairwoman Ronna McDaniel called Palmer and Hartmann, and Trump personally pressured them not to sign the certification document, according to recordings previously reported on by The Detroit News.

"We've got to fight for our country," Trump said during the phone call, according to the recordings. "We can't let these people take our country away from us."

More: Trump recorded pressuring Wayne County canvassers not to certify 2020 vote

The Michigan Bureau of Elections determined the vote that occurred and the signatures of the chair or vice chair of the four-member canvassing board and the county clerk were the only things necessary to advance the certification to the Board of State Canvassers.

Hartmann died in 2021, and Republican Party officials didn't renominate Palmer to serve on the canvassing board when her term concluded in 2021. The new Republican canvassers are Katherine Riley and Robert Boyd.

Riley, who's now chair of the Wayne County Board of Canvassers, according to the county's website, didn't respond Monday to a request for comment.

There are also two new Democrats on the board, Richard W. Preuss and Frank Woods Jr.

Jonathan Kinloch, a Democrat who was serving on the Wayne County canvassing board in 2020 and is now a Wayne County commissioner, said the question of whether boards will certify the results this fall is at the forefront of his mind.

Wayne County Republicans initially denied that they were going to attempt to block certification in 2020, Kinloch said. Where there's smoke, people should be concerned, he said.

"I think this is a tactic of theirs to create chaos," Kinloch said.

Legal backstops

If a county canvassing board refuses to certify an upcoming election, Michigan has legal "backstops" in place to deal with the development, Thomas said. But such an attempt could also further undermine people's faith in electoral outcomes, he acknowledged.

Under state processes, if a county board fails to determine a result, the job moves to the Board of State Canvassers, according to the Michigan Bureau of Elections.

The county board is supposed to immediately deliver all records and other information, including all necessary forms, to the Board of State Canvassers. A court could get involved to make sure that step happens.

When the 2020 presidential election reached the state board, one of the two Republicans on the statewide panel abstained: Norm Shinkle of Ingham County. But the other Republican, Aaron Van Langevelde, cast the deciding vote with the two Democrats in favor of certification.

At the time, Shinkle called for the Republican-led Legislature to conduct an in-depth review of election procedures, and he promoted theories about problems in Wayne County.

"I do not plan on voting for certification. I believe Wayne County's certification needs to be looked at," Shinkle said before abstaining.

Van Langevelde and Shinkle are both no longer on the board. They've been replaced by Tony Daunt and Richard Houskamp.

Daunt and Houskamp voted to certify the 2022 gubernatorial election, which Republican Tudor Dixon lost to Democratic Gov. Gretchen Whitmer by about 10 percentage points. Daunt also has openly criticized Trump for spreading "lies" that the 2020 election was rigged.

cmarger@detroitnews.com

Staff Writer Beth LeBlanc contributed.

EXHIBIT 2

Costantino v Detroit,

Opinion and Order of the Third Judicial Circuit
Court, issued November 13, 2020
(Docket No. 20-014780-AW)

STATE OF MICHIGAN

IN THE THIRD JUDICIAL CIRCUIT COURT FOR THE COUNTY OF WAYNE

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

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

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

_____ /

OPINION & ORDER

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Conclusion

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

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

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

It is so ordered.

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

November 13, 2020



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

EXHIBIT 3

ACLU Letter
(August 15, 2024)

**State Headquarters**

2966 Woodward Avenue
Detroit, MI 48201
Phone 313.578.6800
Fax 313.578.6811
E-mail aclu@aclumich.org
www.aclumich.org

Legislative Office


115 West Allegan Street
Lansing, MI 48933
Phone 517.372.8503
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E-mail aclu@aclumich.org
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West Michigan Regional Office

1514 Wealthy St. SE, Suite 260
Grand Rapids, MI 49506
Phone 616.301.0930
Fax 616.301.0640
Email aclu@aclumich.org
www.aclumich.org

August 15, 2024

Sent via email and certified mail

Robert Froman
Member, Kalamazoo Board of County Canvassers
201 West Kalamazoo Ave.
Kalamazoo, MI 49007


Dear Mr. Froman:

We write to express our grave concerns about recent statements you made to the media regarding your duties and intentions as a duly appointed member of the Kalamazoo Board of County Canvassers. According to an article published in the Detroit News on August 5, 2024, you reportedly told the Detroit News that you “most definitely” believe that the 2020 election was stolen from former President Donald Trump. Further, when asked if you would certify the 2024 presidential election if it unfolded the same way the 2020 election did, you responded, “No. And that’s why I’m there.”¹

Your legal obligation, and the obligation of every member of a board of canvassers under the Michigan Constitution and under binding Michigan law is to certify any election based solely upon the returns. The law does not authorize members of boards of canvassers to withhold certification based upon speculation, theories, or even evidence pertaining to the accuracy of the reported returns. The Michigan Constitution provides:

It shall be the ministerial, clerical, nondiscretionary duty of a board of canvassers, and of each individual member thereof, to certify election results based solely on ... in the case of boards of county canvassers, statements of returns from the precincts and absent voter counting boards in the county and any corrected returns. Const. 1963, Art II, § 7(3).

Michigan Election Law parallels this requirement. MCL 168.822(3) provides:

It is the ministerial, clerical, and nondiscretionary duty of each board of county canvassers, and each of the members of the board of county canvassers, to certify election results based solely on the statements of returns from the election day precincts, early voting sites, and absent voter counting boards in the county and any corrected returns. MCL 168.822(3).

¹ Mauger, *Most election officials who certified Michigan’s 2020 race are gone. Expert sees trouble*, The Detroit News (August 5, 2024) <<https://www.detroitnews.com/story/news/politics/2024/08/05/michigan-election-county-canvassers-boards-vote-certification-donald-trump-kamala-harris/74610733007/>> (accessed August 14, 2024).

Thus, members of county canvassing boards have a clear, non-discretionary duty to certify election results based solely on election returns. As you are likely aware, on May 16, 2024, Jonathan Brater, Director of the Bureau of Elections, wrote a letter to the Delta County Board of Canvassers following their initial refusal to certify a May recall election in that county (the “Brater Letter”).² In this letter, Brater emphasizes that members of county canvassing boards are not permitted to refuse to certify election results based on claims by third parties of alleged election irregularities, or a desire to conduct election fraud investigations. Brater Letter 1. Canvassers are legally required to certify the election results that are brought before them once the legal requirements have been met.

Even before the people of Michigan enacted the constitutional language quoted above in the 2022 election, the Michigan Supreme Court consistently held that members of county and state canvassing boards have a clear, nondiscretionary legal duty to certify the election based solely on election returns. See *Johnson v Secretary of State*, 506 Mich 975; 951 NW2d 310, 311-312 (2020) (CLEMENT, J., concurring). Indeed, as early as 1892, the Michigan Supreme Court held that “it is the settled law of this State that canvassing boards are bound by the return, and cannot go behind it, especially for the purpose of determining frauds in the election. Their duties are purely ministerial and clerical.” *McQuade v Furgason*, 91 Mich 438, 440; 51 NW 1073 (1892). See also *People ex rel Attorney General v Van Cleve*, 1 Mich 362, 366 (1850) (“The duties of these [canvassing] boards are simply ministerial . . .”).

Your comments are directly contrary to the law. Not only do they demonstrate a willingness to violate your oath of office, the constitution, and the laws of the state of Michigan, but they also indicate a willingness to commit a criminal offense. On May 24, 2024, Attorney General Nessel issued a press release regarding the duty of canvassers to certify election results. In this release, Attorney General Nessel warned all members of Michigan Boards of County Canvassers that Willful Neglect of Duty is a criminal act.³ MCL 168.931(h) provides that “A person shall not willfully fail to perform a duty imposed upon that person by this act.” A person who fails to perform their duty as required by Michigan Election Law may be guilty of a misdemeanor. MCL 169.931(2). Consequently, as it is a nondiscretionary legal duty for a Board of County Canvassers member to certify the election based on election returns, to refuse to do so because of rumors, allegations, or even evidence of fraud would expose that member to criminal liability.

While we recognize that in the above cited Detroit News article you also stated that you would not do anything illegal, you evidently made that statement after openly declaring that the

² Michigan Department of State, *Letter to Delta County Board of Canvassers* <<https://www.michigan.gov/ag/-/media/Project/Websites/AG/releases/2024/May/Delta-County-Canvassers-Letter-05-16-2024.pdf>> (accessed August 15, 2024).

³ Michigan Department of Attorney General, AG Nessel, Secretary Benson on Duty of Canvassers to Certify Election Results <<https://www.michigan.gov/ag/news/press-releases/2024/05/24/ag-nessel-secretary-benson-on-duty-of-canvassers-to-certify-election-results>> (accessed August 14, 2024).

reason you were in your position on the canvassing board was, precisely, to do something that would be illegal.⁴ Accordingly, by this letter, we are requesting that you take the following action(s). If you were misquoted in the Detroit News, please notify the Detroit News, in writing, that this was the case and request a retraction, copying us at the email address below. If you were not, then your statements demonstrate a willingness to violate Michigan law that could subject you to legal liability both now and following the election. To avoid legal liability, you should rescind your statements immediately. We expect you to issue a public statement, to provide that statement to the Detroit News, and to copy us on any such communication by August 23, 2024. If you do not, we anticipate examining appropriate legal remedies and you may be liable for our attorneys' fees if we are forced to do so.

Sincerely,



Philip Mayor (P81691)
Delaney Barker (P87401)
American Civil Liberties Union
Fund of Michigan
2966 Woodward Ave.
Detroit, MI 48201
(313) 578-6803
pmayor@aclumich.org

cc: Robert Froman
[REDACTED]
Kalamazoo, MI 49009

⁴ Supra note 1.

EXHIBIT 4

Froman Email
(August 16, 2024)

From: [Robert Froman](#)
To: [Philip Mayor](#)
Subject: Re: [External] Letter from ACLU of Michigan
Date: Friday, August 16, 2024 1:44:17 PM
Attachments: [image001.png](#)

I did not make any of the statements you say I did. I have not seen or approved any article by the Detroit news. I will make no public statement about what the Detroit News published. I believe the first amendment to the Constitution allows the press to publish any information they deem necessary.

Robert

On Thu, Aug 15, 2024 at 4:55 PM Philip Mayor <pmayor@aclumich.org> wrote:

Mr. Froman,

Please find enclosed a letter from the ACLU of Michigan regarding your recent statements to the *Detroit News*. We look forward to receiving your response by next Friday, August 23, as provided in the concluding paragraph of the letter.

Sincerely,

Phil Mayor

Pronouns: he, him

Senior Staff Attorney

American Civil Liberties Union of Michigan

2966 Woodward Ave. Detroit MI 48201

(Offices in Detroit, Grand Rapids and Lansing)

313.578.6803 | pmayor@aclumich.org

“O! it is excellent

To have a giant’s strength; but it is tyrannous

To use it like a giant.”



This message may contain information that is confidential or legally privileged. If you are not the intended recipient, please immediately advise the sender by reply email that this message has been inadvertently transmitted to you and delete this email from your system.

EXHIBIT 5

The Detroit News letter
(August 29, 2024)

Aug. 29, 2024

Merissa Kovach, Political Director
American Civil Liberties Union of Michigan
2966 Woodward Ave. Detroit MI 48201

Regarding the article "Most election officials who certified Michigan's 2020 race are gone. Expert sees trouble" published on Aug. 5, 2024, we stand by our story.

Sincerely,



Kevin J. Hardy
Managing Editor

