

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

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

Plaintiffs,

Case No. 2024-0533-CZ

v

Hon. Curtis J. Bell

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

COMPLAINT FOR DECLARATORY  
RELIEF

Defendant.

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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  
Philip Mayor (P81691)

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. 1<sup>1</sup>.

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

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<sup>1</sup> 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.<sup>2</sup>

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

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.<sup>5</sup>

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.<sup>6</sup>

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

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<sup>2</sup> 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>>.

<sup>3</sup> 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/>>.

<sup>4</sup> 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](https://www.washingtonpost.com/politics/michigan-vote-canvassing-board/2020/11/17/12141222-287c-11eb-8fa2-06e7cbb145c0_story.html)>.

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

<sup>6</sup> 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.”<sup>7</sup>

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.<sup>8</sup>

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

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.”<sup>10</sup>

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<sup>7</sup> *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>>.

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

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

<sup>10</sup> 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.<sup>11</sup>

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.”<sup>12</sup>

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

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

<sup>11</sup> 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>>.

<sup>12</sup> 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.<sup>13</sup>

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.<sup>14</sup>

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

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<sup>13</sup> *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>>.

<sup>14</sup> *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.”<sup>15</sup> 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.”<sup>16</sup> The other has also repeatedly denied the results of the 2020 election.<sup>17</sup>

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<sup>15</sup> 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](https://www.michigan.gov/-/media/Project/Websites/sos/30lawens/BOE_2020_Post_Election_Audit_Report_04_21_21.pdf)>

<sup>16</sup> 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/>>.

<sup>17</sup> 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.”<sup>18</sup>
- 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.”<sup>19</sup>
- 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.”<sup>20</sup>

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.

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

<sup>19</sup> 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/>>.

<sup>20</sup> 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](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.<sup>21</sup>

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.<sup>22</sup> 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%.”<sup>23</sup>

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

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<sup>21</sup> 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/>>.

<sup>22</sup> 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/>>.

<sup>23</sup> 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.<sup>24</sup> 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.<sup>25</sup> 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.”<sup>26</sup>

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.<sup>27</sup> The other canvasser abstained from the final certification vote without any legal basis for doing so.<sup>28</sup>

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.”<sup>29</sup> He added that it could be a “real problem” if certification issues persisted during the 2024 presidential election.<sup>30</sup>

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<sup>24</sup> 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”).

<sup>25</sup> *Id.*, p 3.

<sup>26</sup> *Id.*, p 4.

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

<sup>28</sup> *Id.*

<sup>29</sup> 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/>>.

<sup>30</sup> *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.<sup>31</sup>

### 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.<sup>32</sup> 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].”<sup>33</sup>

60. Later in the article, Defendant Froman is reported to have added, “I am not going to do anything that’s illegal.”<sup>34</sup> 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.

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<sup>31</sup> 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/>>.

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

<sup>33</sup> *Id.*

<sup>34</sup> *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.”<sup>35</sup>

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.”<sup>36</sup>

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;

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<sup>35</sup> *Id.*

<sup>36</sup> *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.”<sup>37</sup>

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

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<sup>37</sup> *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."<sup>38</sup>

**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.<sup>39</sup>

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.<sup>40</sup>

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.<sup>41</sup>

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

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<sup>38</sup> *Id.*

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

<sup>40</sup> 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/>>.

<sup>41</sup> *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.<sup>42</sup>

**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.”<sup>43</sup> 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.<sup>44</sup> Nevada faced certification issues again this cycle when Washoe County declined to certify the 2024 primary results.<sup>45</sup>

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<sup>42</sup> *Id.*

<sup>43</sup> 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”).

<sup>44</sup> 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).

<sup>45</sup> 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.”<sup>46</sup> 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.<sup>47</sup>

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.”<sup>48</sup>

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.”

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<sup>46</sup> 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>>.

<sup>47</sup> 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>>).

<sup>48</sup> 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 inspectors<sup>49</sup> “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

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<sup>49</sup> 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).<sup>50</sup>

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.

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<sup>50</sup> 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](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.<sup>51</sup>

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.<sup>52</sup>

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.

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<sup>51</sup> See Michigan Department of State, *2020 Biennial Precinct Report* <[https://www.michigan.gov/-/media/Project/Websites/sos/02mcalpine/Biennial\\_Precinct\\_Report\\_for\\_2020.pdf](https://www.michigan.gov/-/media/Project/Websites/sos/02mcalpine/Biennial_Precinct_Report_for_2020.pdf)>.

<sup>52</sup> 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.”<sup>53</sup> 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

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<sup>53</sup> “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](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.<sup>54</sup> 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.

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<sup>54</sup> *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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\* *Pro hac vice* motions forthcoming