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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,



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⁴ Supra note 1.