

**STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF ANTRIM**

WILLIAM BAILEY

Plaintiff

Case No. 20-9238-CZ

v.

ANTRIM COUNTY

HON. KEVIN A. ELSENHEIMER

Defendant

SECRETARY OF STATE JOCELYN  
BENSON

Intervenor-Defendant.

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Matthew S. DePerno (P52622)  
DEPERNO LAW OFFICE, PLLC  
Attorney for Plaintiff  
951 W. Milham Avenue  
PO Box 1595  
Portage, MI 49081  
(269) 321-5064

---

Haider A. Kazim (P66146)  
CUMMINGS, MCCLOREY, DAVIS & ACHO, PLC  
Attorney for Defendant  
319 West Front Street  
Suite 221  
Traverse City, MI 49684  
(231) 922-1888

Peter R. Wendling (P48784)  
Bryan E. Graham (P35708)  
YOUNG, GRAHAM & WENDLING, PC  
Attorneys for Non-Party Kearney, Custer, Echo,  
Banks, Central Lake, Chestonia and Warner  
PO Box 398  
Bellaire, MI 49615  
(231) 533-8635

Heather S. Meingast (P55439)  
Erik A. Grill (P64713)  
Assistant Attorneys General  
Attorneys for Intervenor-Defendant Benson  
PO Box 30736  
Lansing, MI 48909  
(517) 335-7659

William F. Derman, Jr. (P24048)  
WILLIAM F. DERMAN, JR., PLLC  
Attorney for Non-Party Milton, Forest Home, Elk  
Rapids, and Jordan  
PO Box 815  
Elk Rapids, MI 49629  
(231) 498-2378

Christopher Bzdok (P53094)  
Abigail Hawley (P82343)  
OLSON, BZDOK & HOWARD, PC  
Attorney for Non-Party Helena  
420 E. Front Street  
Traverse City, MI 49686  
(231) 946-0044

Alyse M. Tarbutton (P77635)  
TARBUTTON LEGAL SERVICES, PLLC  
Attorney for Non-Party Mancellona  
PO Box 330  
Mancelona, MI 49659  
(231) 587-8351

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**PLAINTIFF'S COLLECTIVE RESPONSE TO DEFENDANTS' and NON-PARTY  
TOWNSHIPS' MOTIONS TO QUASH AND FOR PROTECTIVE ORDERS**

**TABLE OF CONTENTS**

	<u>Page</u>
1. Motions at issue .....	1
2. Plaintiff and his team of expert have now broken the Dominion code used to commit fraud in Antrim County and the State of Michigan .....	2
3. 1,061 phantom ballots discovered in Antrim County (out of 15,962) .....	3
4. The subpoenas are relevant.....	14
5. The subpoenas are not overbroad .....	14
6. The subpoenas are not unduly burdensome .....	14
7. Objections can be satisfied.....	16
8. Conclusion and relief requested.....	17

Plaintiff, WILLIAM BAILEY ("Plaintiff"), by and through his attorney, DePerno Law Office, PLLC, submits the following for his collective response to Defendants' joint motion for protective order and the motions to quash subpoena filed by Banks, Central Lake, Chestonia, Custer, Echo, Elk Rapids, Forest Home, Helena, Jordan, Kearney, Mancelona, Milton, Warner (collectively "Non Party Objecting Townships").<sup>1</sup> This brief is collectively because many of the issues are intertwined. It makes more sense to file a combined brief rather than two separate briefs that repeat the same concepts and arguments. For the reasons stated herein Plaintiff respectfully requests this Court deny Defendants' and Non Party Objecting Townships motions, or in the alternative, limits the scope of the discovery and subpoenas.

**1. Motions at issue**

Plaintiff has validly and timely served subpoenas on the Antrim County Townships.<sup>2</sup> Plaintiff requested the information in the attached Exhibit 1. In response, Defendants and 12 of those non-party counties have filed motions to quash and for protective orders. This brief collectively responds to the motions filed in this court. They are:

- a. Defendant Secretary of States Jocelyn Benson and Antrim County's Joint Motion to Quash Non-Party Subpoenas to Dominion Voting Systems and the Townships of Banks, Central Lake, Chestonia, Custer, Echo, Rapids, Forest Home, Helena, Jordan, Kearney, Mancelona, Milton, Star, Torch Lake, and Warner,, dated April 23, 2021.
- b. Non-Party Townships' Motion to Quash Subpoenas and Alternative Motion for Protective Order, dated April 27, 2021

Defendants and Non Party Objecting Townships object with a litany of arguments that are without merit. In reality, there is not much to their arguments. Indeed, Defendants have consumed the entirety of discovery by forcing delays and refusing to respond to discovery.

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<sup>1</sup> Torch Lake and Star Township have not filed motions to quash.

<sup>2</sup> Copies of the Subpoenas were attached to the motions to quash.

1. 12/16/2020: Plaintiff served First Discovery Requests on Defendants.
2. 01/04/2021: Plaintiff filed a motion to compel discovery.
3. 02/08/2021: Defendants Benson waited until February 8, 2021 to respond.
4. 02/26/2021: Plaintiff served Second Discovery Requests on Defendants. Responses were due on March 5, 2021. Defendants missed the deadline and then filed a motion to extend the response time to 28 days, claiming they needed more time to respond.
5. 03/05/2021: Plaintiff served Third Discovery Requests on Defendants. This included requests for admissions. Responses were due on March 12, 2021. Defendants missed the deadline and then filed a motion to extend the response time to 28 days.
6. 03/11/2021: Plaintiff served Fourth Discovery Requests on Defendants Responses were due on March 18, 2021.
7. 03/15/2021: Defendants filed their joint motion for protective order to stop all discovery served on them.
8. 03/26/2021: Defendants served their "Analysis of the Antrim County, Michigan November 2020 Election Incident."
9. 04/16/2021: Plaintiff served his revised discovery on Defendants. Their responses are due May 10, 2021.

It is clear from this timeline that Defendants have done everything possible to delay and "run out the clock" on discovery. Now they complain that "discovery has ended."

**2. Plaintiff and his team of expert have now broken the Dominion code used to commit fraud in Antrim County and the State of Michigan.**

Notwithstanding the delays, Plaintiff and his team of experts have broken the Dominion code used to commit fraud in Antrim County and the State of Michigan. We are not saying this is the only way to do "flip" votes, but it is certainly one way to circumvent all the weak Dominion protocol and affect an election in Michigan. Certainly, this investigation would have been easier if Defendants had engaged in good faith discovery and actually turned over information rather than obfuscate and hide data and falsely tell the world "THE BIG LIE" that "this was the safest



election in the history of the world" and "human error."<sup>3</sup> Indeed, there was no "human error." This brief details how votes can easily be transferred from one candidate to another using the tools available on the Antrim County election management system ("EMS"). Our tests confirm that the vote tally errors observed in Antrim County on November 3, 2020 were most likely the result of technical manipulation of the election project file; not human error and not a computer glitch. By conducting a series of tests, Plaintiff's experts were able to replicate the vote tally errors through a method wholly contrary to the "human error" narrative proposed by Alex Halderman.

You can view the video here:

<https://www.depernolaw.com/dominion.html>



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<sup>3</sup> In part, these false statements are one reason Plaintiff is amending his complaint to sue Sheryl Guy, Election Source, Jocelyn Benson, and Jonathan Brater. Elected officials are charged with following the law, not hiding information and lying to their constituents in order to defraud and marginalize their right to vote. See MCL 750.505, *Misconduct in Office*.

These tests show the following:

1. Ballots were fed into the tabulator at the precinct/township level [See [Exhibit 2](#)].

BIDEN ballots: 2

TRUMP ballots: 4

JORGENSON ballots: 1

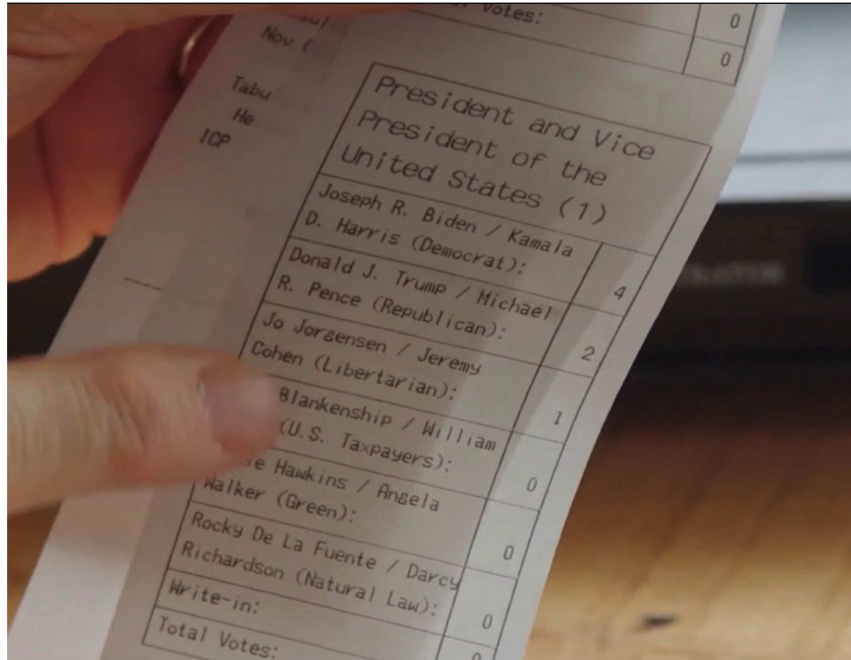
2. Ballots were counted by the tabulator without error.

3. The election was then closed and the tally tape printed from the tabulator. It shows the following results [See Ex 2]:

BIDEN: 4 votes

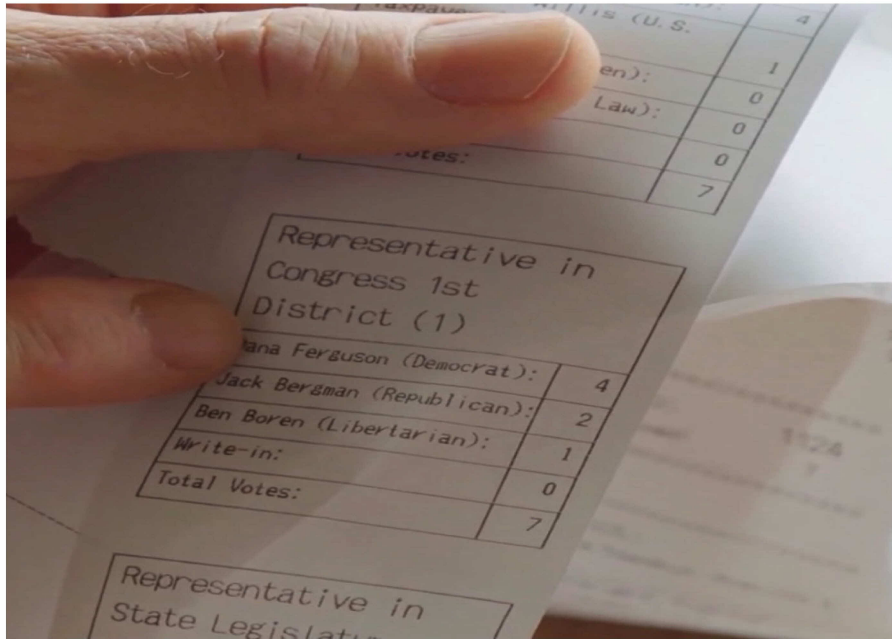
TRUMP: 2 votes

JORGENSON: 1 vote

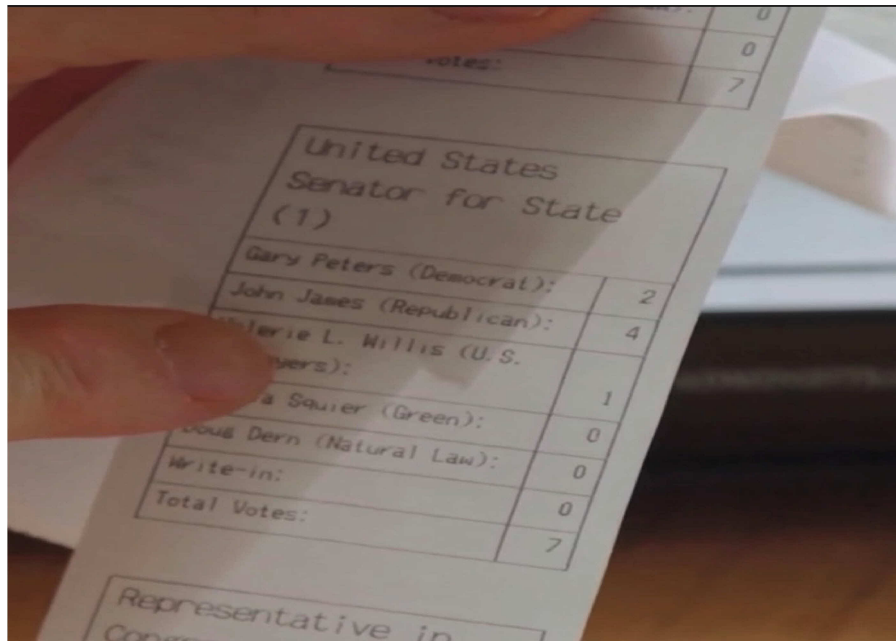


4. But even more interesting, we can "flip" the votes in any manner within the same race. We can give all the votes to Jorgenson. We can give all of the votes to Trump. We can give all of the votes to Biden.
5. The system and election can be entirely compromised utilizing an easy and quick bypass of all security protocol.
6. The manipulated vote count can then be transferred to the EMS [See [Exhibit 2](#)].
7. This means that the "flip" will never be caught by the canvass board. There will be no reason to doubt the election results because the number of votes on the printed tape will match the number of votes in the poll pad.

8. We also intentionally swapped the votes in the Congressional race



9. We intentionally kept clean results in the US Senate race



We did this demonstration to show that we can swap votes in any race we want; up-ballot or down-ballot. We can pick and choose which races we affect.<sup>4</sup>

<sup>4</sup> If Matt DePerno and his "band of misfits" (a term coined used by a local government official) can figure out the Dominion voting system over several weeks, do you think foreign bad actors know how to do it?

**3. 1,061 phantom ballots discovered in Antrim County (out of 15,962)**

Plaintiff is entitled to an audit of the county. As amended, Const 1963, art 2, §4(1)(h) now provides, in pertinent part:

(1) Every citizen of the United States who is an elector qualified to vote in Michigan shall have the following rights:

(h) The right to have the results of statewide elections audited, in such a manner as prescribed by law, to ensure the accuracy and integrity of elections. [Emphasis added.]

This provision was amended effective December 22, 2018. According to the Michigan Constitution, there is no threshold requirement that must first be met in order for a citizen to request an audit of an election. This right is self-executing. Const 1963, art 2, § 4. Indeed, the Michigan Constitution requires that the "results" of the election be audited in order to ensure the "accuracy and "integrity" of the election. Under the plain language of MCL 168.31a, it is possible to conduct such an audit so long as the procedures and parameters of the audit are sufficiently broad enough in scope to comply with the constitutional requirements to determine the accuracy and integrity of the election. In *Costantino v City of Detroit*<sup>5</sup> stated:

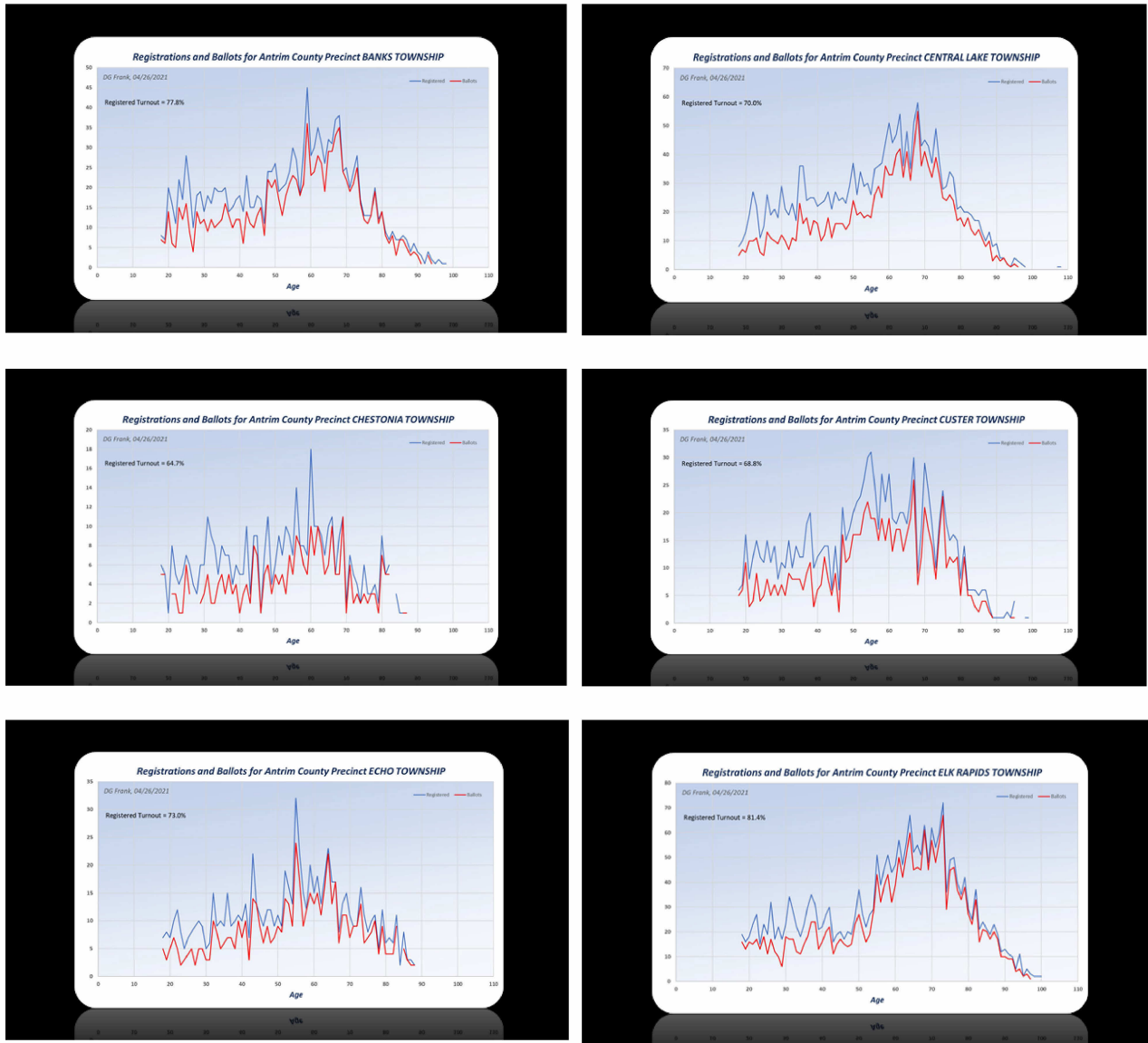
The constitutional provision at issue in this case, which the people of Michigan voted to add in 2018 through Proposal 3, guarantees to "[e]very citizen of the United States who is an elector qualified to vote in Michigan . . . [t]he right to have the results of statewide elections audited, in such a manner as prescribed by law, to ensure the accuracy and integrity of elections." *Id.* The provision is self-executing, meaning that the people can enforce this right even without legislation enabling them to do so and that the Legislature cannot impose additional obligations on the exercise of this right. *Wolverine Golf Club v Secretary of State*, 384 Mich 461, 466 (1971).

Plaintiff has repeatedly asked Defendants Antrim County and Benson to turn over the ballots to permit a meaningful audit. But they have refused; instead claiming they do not control the ballots. Therefore, Plaintiff has not subpoenaed the information.

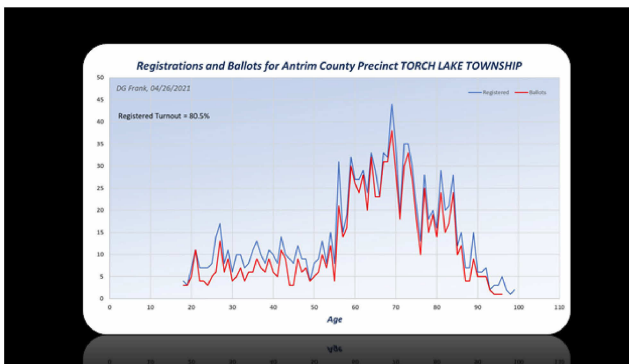
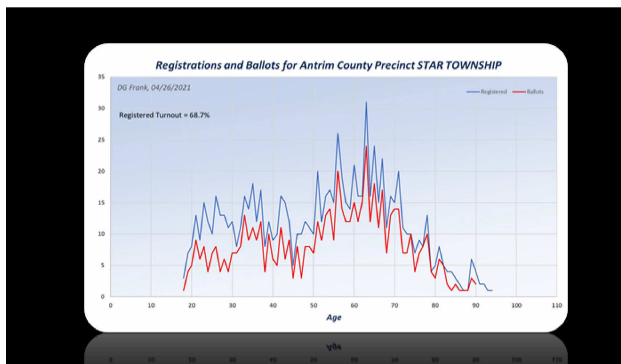
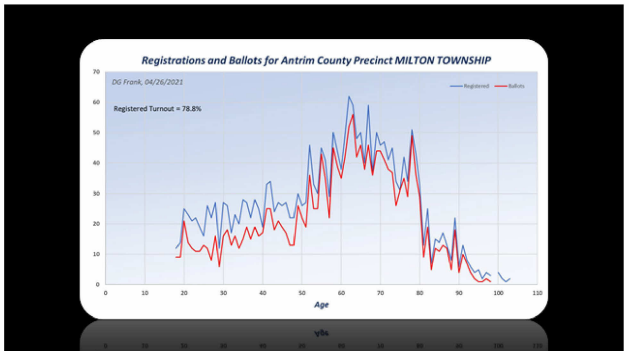
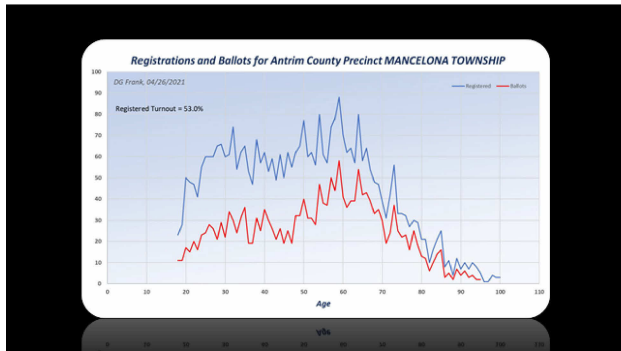
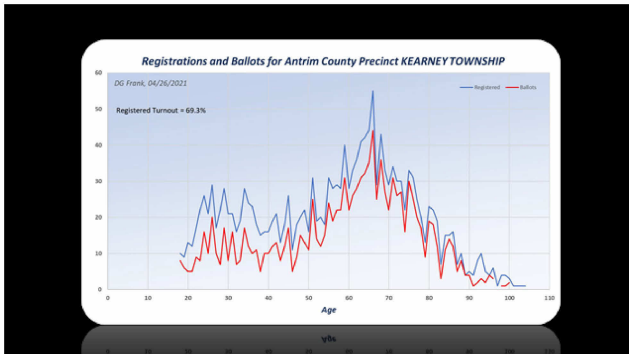
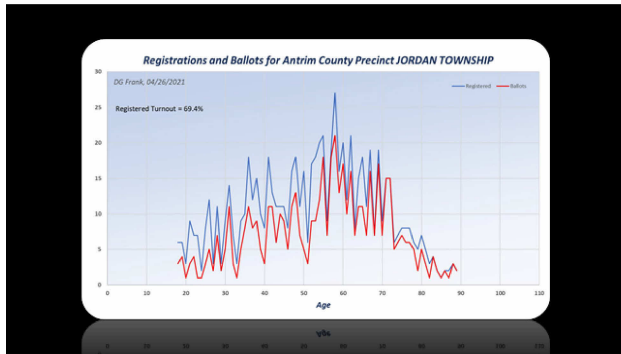
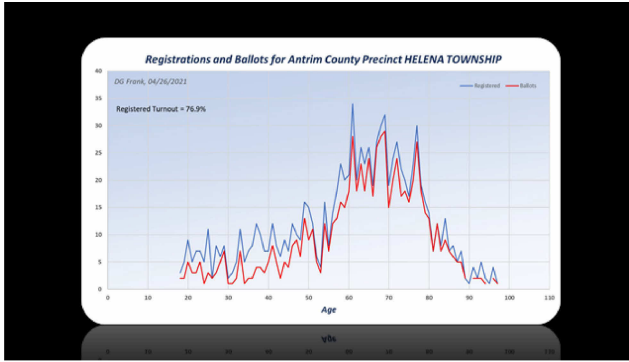
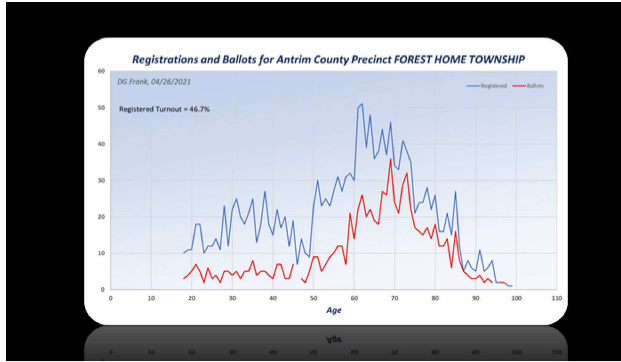
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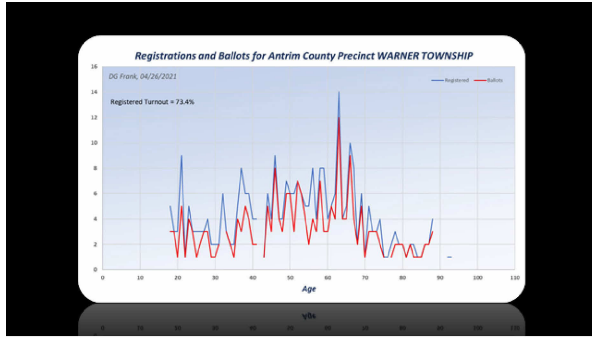
<sup>5</sup> Michigan Court of Appeals #344443 and Michigan Supreme Court 162245

Plaintiff also needs this information to counter J. Alex Halderman's report, which was not delivered until March 26, 2021. Plaintiff did not delay, but after reviewing the report, issued these subpoenas on April 16, 2021. Plaintiff's expert witness Dr. Douglas G. Frank has now studied each township and created the following graphs:









Larger images are in attached Exhibit 3. These graphs confirm Dr. Franks' earlier conclusion that ballots are harvested at the precinct level.

**"This confirms, as seen in several other states, that ballots are being harvested at the precinct level, regulated at the county level, and determined at the state level."**

***-- Douglas G. Frank, PhD, 04/06/2021***

We can clearly see in each of these graphs that there is a near perfect turnout consistently between the ages of 65 to 80<sup>6</sup>

<i>(Database)</i>			
<b>Voting Jurisdiction</b>	<b>Total Ballots</b>	<b>PO Box</b>	<b>% PO Box</b>
CHESTONIA TOWNSHIP	289	98	33.9%
CENTRAL LAKE TOWNSHIP	1,441	456	31.6%
KEARNEY TOWNSHIP	1,192	323	27.1%
HELENA TOWNSHIP	737	189	25.6%
TORCH LAKE TOWNSHIP	977	237	24.3%
BANKS TOWNSHIP	1,093	262	24.0%
CUSTER TOWNSHIP	759	177	23.3%
WARNER TOWNSHIP	221	47	21.3%
MANCELONA TOWNSHIP	1,931	404	20.9%
ELK RAPIDS TOWNSHIP	1,989	374	18.8%
FOREST HOME TOWNSHIP	794	138	17.4%
STAR TOWNSHIP	602	88	14.6%
ECHO TOWNSHIP	581	50	8.6%
JORDAN TOWNSHIP	521	44	8.4%
MILTON TOWNSHIP	1,774	132	7.4%
<i>totals</i>	<b>14,901</b>	<b>3,019</b>	<b>20.3%</b>
			<i>(Average % PO Box)</i>
Dr DG Frank, 5/7/2021			

<sup>6</sup> Except Forest Home and Mancelona.

One may wonder what is causing a near 100% turnout in these age groups. We believe it directly correlates to the fact that 20.3% of all ballots in Antrim County were sent to PO Boxes as demonstrated in the chart above. As we see in the charts below, there were 15,962 ballots present at the hand recount on December 17, 2020.

**HAND COUNT CALCULATION SHEET**

OFFICE: President of the United States  
 COUNTY: Antrim

Jurisdiction	Biden Democratic Party			Trump Republican Party			Ingrosson Libertarian Party			Maukows Green Party			Blankenship U.S. Taxpayers Party			De La Fuente Natural Law Party		
	Original	Hand Count	Net	Original	Hand Count	Net	Original	Hand Count	Net	Original	Hand Count	Net	Original	Hand Count	Net	Original	Hand Count	Net
<b>TOTAL VOTES</b>	<b>7769</b>	<b>5959</b>	<b>-1810</b>	<b>4509</b>	<b>9759</b>	<b>5250</b>	<b>99</b>	<b>196</b>	<b>97</b>	<b>29</b>	<b>28</b>	<b>-1</b>	<b>22</b>	<b>17</b>	<b>-5</b>	<b>12</b>	<b>9</b>	<b>-3</b>
<b>TOTAL CHANGE</b>	<b>-1810</b>			<b>5250</b>			<b>97</b>			<b>-1</b>			<b>9</b>			<b>-3</b>		

Banks Township, Precinct 1	345	349	4	756	758	2	13	13	0	1	2	0	1	1	0	1	1	0
Central Lake Township, Precinct 1	549	549	0	908	906	-2	16	16	0	6	6	0	1	1	0	0	0	0
Chestonia Township, Precinct 1	197	93	-104	3	197	194	0	1	3	0	0	0	0	0	0	1	0	-1
Custer Township, Precinct 1	523	240	-283	11	531	510	4	11	7	0	1	1	1	2	1	0	0	0
Echo Township, Precinct 1	392	198	-194	8	392	384	1	8	7	0	2	2	2	1	1	0	0	0
Elk Rapids Township, Precinct 1	1198	984	-214	625	1029	404	8	17	9	5	9	4	5	4	-1	0	0	0
Forest Home Township, Precinct 1	755	610	-145	19	731	734	1	19	18	1	0	1	0	1	1	2	1	-1
Helena Township, Precinct 1	432	306	-126	4	430	426	0	4	4	1	1	0	1	0	-1	0	1	1
Jordan Township, Precinct 1	372	182	-190	13	369	356	1	14	11	0	1	1	1	1	0	2	0	2
Kearney Township, Precinct 1	744	470	-274	16	743	727	0	16	16	0	3	1	3	0	-3	8	0	-6
Mancelona Township, Precinct 1	276	277	1	835	835	0	20	20	0	0	0	0	0	0	0	1	1	0
Mancelona Township, Precinct 2	247	247	0	646	646	0	18	18	0	1	1	0	2	3	1	0	0	0
Milton Township, Precinct 1	686	767	81	484	1023	539	16	36	4	3	0	0	1	2	1	3	4	3
Star Township, Precinct 1	462	166	-296	10	468	458	0	10	10	0	0	0	0	0	0	0	0	0
Torch Lake Township, Precinct 1	527	461	-66	8	526	518	1	7	6	1	2	1	1	1	0	1	1	1
Warner Township, Precinct 1	60	60	0	163	163	0	1	1	0	0	0	0	0	0	-3	0	0	0

COUNTY: Antrim

Jurisdiction	Biden Democratic Party			Trump Republican Party		
	Original	Hand Count	Net	Original	Hand Count	Net
<b>TOTAL VOTES</b>	<b>7769</b>	<b>5959</b>	<b>-1810</b>	<b>4509</b>	<b>9759</b>	<b>5250</b>
<b>TOTAL CHANGE</b>	<b>-1810</b>			<b>5250</b>		

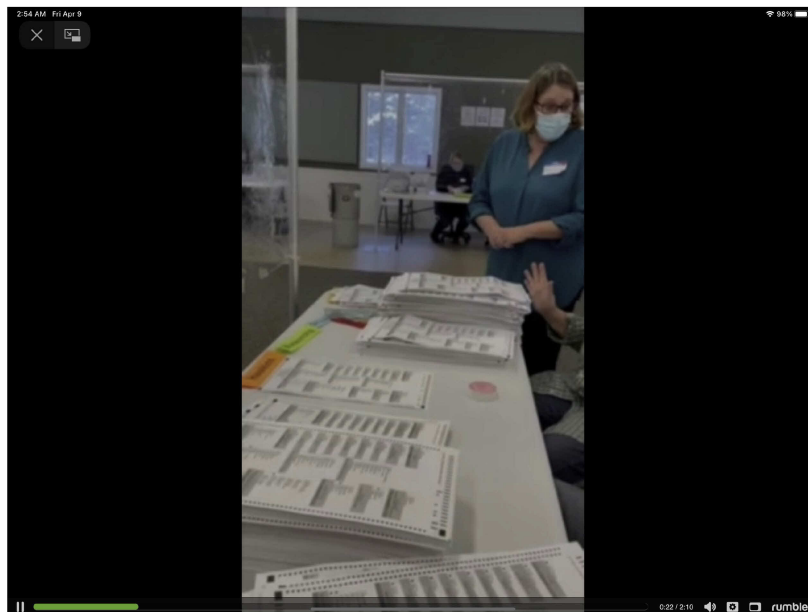
Banks Township, Precinct 1	349	349	0	756	758	2
Central Lake Township, Precinct 1	549	549	0	908	906	-2
Chestonia Township, Precinct 1	197	93	-104	3	197	194
Custer Township, Precinct 1	523	240	-283	11	521	510
Echo Township, Precinct 1	392	198	-194	8	392	384
Elk Rapids Township, Precinct 1	1198	984	-214	625	1029	404
Forest Home Township, Precinct 1	755	610	-145	19	753	734
Helena Township, Precinct 1	432	306	-126	4	430	426
Jordan Township, Precinct 1	372	182	-190	13	369	356
Kearney Township, Precinct 1	744	470	-274	16	743	727
Mancelona Township, Precinct 1	276	277	1	835	835	0
Mancelona Township, Precinct 2	247	247	0	646	646	0
Milton Township, Precinct 1	686	767	81	484	1023	539
Star Township, Precinct 1	462	166	-296	10	468	458
Torch Lake Township, Precinct 1	527	461	-66	8	526	518
Warner Township, Precinct 1	60	60	0	163	163	0

However, in the chart above from Dr. Frank (showing 20.3% of ballots sent to PO Boxes), we see that there are only 14,901 ballots in Defendants Benson's official database (*i.e.* only 14,901



people actually voted). This means that of the actual 15,962 ballots counted in December, there 1,061 that are not in the database, meaning they do not exist on the voter rolls, meaning they are most likely phantom ballots. Where did they come from? The actual ballots must be audited

We must also consider what actually happened at the "hand recount" on December 17, 2020, when the Secretary of State official stated that people could challenge ballots later. As previously report, a Secretary of State official told two of the volunteers to count approximately 138 ballots with the very same signature in Central Lake Township.<sup>7</sup>



SOS official: "So, you need to move forward with the audit, so we can get the numbers, so we can see how many ballots are here."

The female counter asks, "So when we're done with the audit, there's still the opportunity to challenge the fact that we have multiple ballots with the very same signature?" she asks.

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<sup>7</sup> <https://www.thegatewaypundit.com/2020/12/mi-sec-state-official-caught-video-telling-volunteers-count-multiple-ballots-signature-audit-votes-antrim-county/>

"I don't know if 'challenge' is the right word," the SOS official says.

"But we're challenging—" the volunteer says.

The male volunteer tells the SOS, "We'll go ahead and count the ballots moving forward, but we will separate out, and count those— there's going to be an asterisk, saying 'these ballots have the same signature.'"

"And again, we know that you have a concern with this precinct," she tells them, explaining, "That's not your role at this very moment," as she continues to push for them to ignore the multiple matching signatures and only count the ballots.

"What I need you to do right now is finish the audit," she tells them again. Both of the volunteers explain that they are going to make a note of the ballots, to which the SOS official replies, "Again, that is not the process."

The SOS official implores them to continue to count the presidential ballots.

At no point does the SOS official assure them that the issue of the multiple potentially fraudulent ballots will be addressed, but instead demands that they count them as if they were all legitimate ballots.

School Board Member for Central Lake Schools (3)	
Melanie Eckhardt:	852
Keith Shafer:	846
Write-in:	112
Total Votes:	1810

School Board Member for Central Lake Schools (3)	
Melanie Eckhardt:	519
Keith Shafer:	525
Write-in:	24
Total Votes:	1068

**Recount 11/6**                      **Election 11/3**



The above pictures also demonstrate significant errors that should not occur in this system. Without a proper, scientific and nonpolitical explanation by Defendants, and based on their refusal to answer discovery, we must assume fraud.

We know that Antrim County never performed any pre-election "accuracy test," "stress test," or "test deck." The scope of the recount was limited to presidential race which is insufficient to validate the explanations provided by the Defendants or satisfy any criteria above. If their argument were valid, it would be evident in down ballot races not simply the presidential race. The recount also did not analyze election records with sufficient rigor to determine if the election record chain of custody (QVF, Poll Books, Ballots, Vote Tallies) was maintained. Indeed, Antrim County failed to comply with every single benchmark set forth above. According to Benson's own "audit" manual, this presents enormous complications and is most likely the reasons she converted the scheduled audit to the hand recount. In truth, based on the failures to perform the tests above and the deletion of vital election records, the Antrim County results are not auditable and decertification is required. Antrim County Clerk Sheryl Guy committed gross negligence or fraud when she failed to perform these pre and post-election tests. Instead, she just

"winged it." Defendant Benson committed gross negligence or fraud when she failed to catch the 1,061 phantom ballots that are not in the database; but voted in the 2020 general election.

**4. The subpoenas are relevant.**

The relevance has already been addressed above. The voter rolls don't match the actual ballots.

**5. The subpoenas are not overbroad.**

The subpoenas are not are "overbroad." Rather, the subpoenas are tailed specifically to conduct a real audit of the townships. That is not "overbroad."

**6. The subpoenas are not unduly burdensome.**

The movants appear to argue that the burden is time, labor, cost, and a fear regarding the procedure. Plaintiff can satisfy each of these objections. Nothing done will interfere with the security and preparedness of the election system. There is nothing invasive that occurs during the process. A forensic image is done using a baffle type procedure and using equipment that only permits a download. No upload can happen. Our forensic team only needs access to the tabulators and ballots. The only cost to the townships will be the labor required to provide access, which Plaintiff is willing to share. No township will need to replace any tabulator. There is no security risk.

As stated in *State Farm Mut. Auto Ins. v. Elite Health Ctrs., Inc.*, 364 F. Supp. 3d 758, 767 (E.D. Mich. 2018), "[t]he Court recognizes that responding to discovery is generally *bothersome* , and may indeed be, at least to some extent, burdensome. It also recognizes that only the rare recipient of a discovery request would relish the task of responding, particularly if it also entailed a privilege review. But the fact that it will be either bothersome or burdensome to

respond to a discovery request does not necessarily mean that it will be *unduly* so." Further, "it is clear that 'undue burden' for purposes of nonparty discovery does not mean no burden at all." *Id.*

As stated in *Cahoo v SAS Inst Inc*, 377 F Supp 3d 769, 774-77 (ED Mich. 2019), "FAST's request here is broad, but the likelihood of discovering important information is great. And the information sought is simply not available from other sources. The UIA maintains the information for the precise purpose of administering its unemployment compensation system, which is the system the plaintiffs allege it wrongfully administered, causing the injuries in this case. All of the parties to this case will benefit in having the information available to them, as the files presumably will illustrate the manner in which MiDAS was used to make the fraud determinations as to the claimants."

Plaintiff has no ability to obtain the information other than as requested in the subpoenas. The likelihood of discovering important information is great. All parties to this case will benefit, as the files will illustrate what was deleted from the Antrim County system and whether fraud occurred in the election, and why there are extra ballots. As stated in *Cahoo*, "The UIA also says it should not be required to produce the information because it would be costly to assemble. The thrust of this argument, however, is not so much that it should be relieved from compliance altogether, but that it should not be required to shoulder the costs of production." *Id.* at 776. The court in *Cahoo* went on to discuss whether the cost burden should be shifted at some length. Any integrity/security argument is very surface-level and doesn't hold up. Plaintiff is only asking that his experts to be allowed to make a forensic copy and examine ballots and some documents, such as paper tally rolls. Nevertheless, Plaintiff is willing to share the cost.

7. **Objections can be satisfied**

As previously stated, Plaintiff is willing to share in the cost. Plaintiff is willing to set a deadline. We estimate three days to conclude the audit. All analysis of devices will be performed in a manner that is in complete accord with the best practices of digital forensics. Beginning with the chain of custody, all devices and equipment will be accounted for and the evidentiary chain of command maintained. All original evidence will be digitally preserved and a forensic image created of the original device ensuring that write protection techniques and devices are employed to ensure that there is no change to the original device. This digital image will be a bit for bit copy of the original device and two copies will be made. One copy will be preserved as best evidence and the second copy will be utilized for analysis purposes. The initial analysis will follow traditional digital device analysis, leveraging keyword searching and artifact analysis to determine if, when and how this device was used during the electoral process. In addition to the traditional forensics, a copy of the evidence file will be leveraged to perform analysis of the system live. This live analysis allows for not only simulation of the device as it ran, but also allows for live analysis of the communications traffic through the capture of the TCP/IP of network packet traffic. Ideally, provided the completeness of the device discovery, the entire networked system and communications infrastructure of the voting system would be replicated, allowing for a complete analysis of the inter-device communications and dependencies can be analyzed and forensically recorded for further analysis to detect anomalies. All resumes of the experts have been provided. Plaintiff can guarantee that the inspection of election equipment will not alter, damage, or compromise any election equipment

**8. Conclusion and relief requested**

For the reasons stated above, Plaintiff respectfully requests this Court deny the motions for protective order and deny each township's motion to quash, or in the alternative limit the scope, and grant such other relief the Court deems just and proper.

Respectfully submitted

DePERNO LAW OFFICE, PLLC

Dated: May 7, 2021

/s/ Matthew S. DePerno

Matthew S. DePerno (P52622)

Attorney for Plaintiff

**PROOF OF SERVICE**

On the date set forth below, I caused a copy of the following documents to be served on all attorneys of record at the addresses listed above

1. Plaintiff's Collective Response to Defendants' and Non-Party Townships' Motions to Quash and for Protective Orders

Service was electronically using the MiFile system which will send notification of such filing of the foregoing document to all attorneys of record.

Dated: May 7, 2021

/s/ Matthew S. DePerno  
Matthew S. DePerno (P52622)