

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF ANTRIM

WILLIAM BAILEY

Plaintiff

Case No. 20-9238-CZ

v.

ANTRIM COUNTY, SECRETARY OF STATE JOCELYN BENSON, in her official and individual capacity, JONATHAN BRATER, in his official and individual capacity, SHERYL GUY, in her official and individual capacity, and MILLER CONSULTATIONS & ELECTIONS, INC., d/b/a ELECTION SOURCE, a Michigan corporation

HON. KEVIN A. ELSENHEIMER

Defendants.

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AMENDED VERIFIED COMPLAINT

NOW COMES Plaintiff, WILLIAM BAILEY, by and through his attorney, DePERNO LAW OFFICE, PLLC and for his Amended Complaint against ANTRIM COUNTY, SECRETARY OF STATE JOCELYN BENSON, in her official and individual capacity, JONATHAN BRATER, in his official and individual capacity, SHERYL GUY, in her official

and individual capacity, and MILLER CONSULTATIONS & ELECTIONS, INC., d/b/a ELECTIONSOURCE, a Michigan corporation, states the following:

JURISDICTION and VENUE

1. Plaintiff WILLIAM BAILEY ("Plaintiff") is an individual residing at 1592 N. Intermediate Lake Road, Central Lake, Michigan 49622, Antrim County, Michigan. Plaintiff is a registered voter and Antrim County, Michigan. On November 3, 2020 Plaintiff voted in person in the 2020 presidential election at the polling location in Central Lake Township, Antrim County.

2. Defendant ANTRIM COUNTY ("Defendant Antrim County") is a public agency with its registered office located at 203 E. Cayuga St., Bellaire, MI 49615.

3. Defendant Antrim County is tasked with the obligation to hold all elections in Antrim County in a fair and legal manner. Antrim County is made up of 15 precincts.

4. Defendant SECRETARY OF STATE JOCELYN BENSON ("Defendant Benson") is the Secretary of State in Michigan and is charged with administering election laws, election training workers throughout the state, and maintaining the qualified voter registration list ("QVR"). MCL 168.21 ("The secretary of state shall be the chief election officer of the state and shall have supervisory control over local election officials in the performance of their duties under the provisions of this act."); 168.31(1)(a) (the "Secretary of State shall . . . issue instructions and promulgate rules . . . for the conduct of elections and registrations in accordance with the laws of this state"). Defendant Benson is the public official with authority and responsibility for the conduct of elections in the State of Michigan. In this capacity, Defendant BENSON had both legal and actual responsibility for the conduct of the November 3, 2020 election in the State of Michigan and Antrim County.

5. Michigan law provides that Secretary Benson "[a]dvice and direct local election officials as to the proper methods of conducting elections." MCL 168.31(1)(b). *See also Hare v. Berrien Co Bd. of Election*, 129 N.W.2d 864 (Mich. 1964); *Davis v. Secretary of State*, 2020 Mich. App. LEXIS 6128, at *9 (Mich. Ct. App. Sep. 16, 2020).

6. Secretary Benson is responsible for assuring Michigan's local election officials conduct elections in a fair, just, and lawful manner. *See* MCL 168.21; 168.31; 168.32. *See also League of Women Voters of Michigan v. Secretary of State*, 2020 Mich. App. LEXIS 709, *3 (Mich. Ct. App. Jan. 27, 2020); *Citizens Protecting Michigan's Constitution v. Secretary of State*, 922 N.W.2d 404 (Mich. Ct. App. 2018), *aff'd* 921 N.W.2d 247 (Mich. 2018); *Fitzpatrick v. Secretary of State*, 440 N.W.2d 45 (Mich. Ct App. 1989).

7. Defendant JONATHAN BRATER ("Defendant Brater") is Michigan's Director of Elections and is being sued in his official capacity

8. Defendant SHERYL GUY ("Defendant Guy") is the Clerk of Antrim County and is charged with administering all elections and training election workers within Antrim County. Defendant GUY is the public official with authority and responsibility for the conduct of elections in Antrim County. In this capacity, Defendant GUY had both legal and actual responsibility for the conduct of the November 3, 2020 election in Antrim County.

9. Defendant MILLER CONSULTATIONS & ELECTIONS, INC. ("Defendant Election Source") is a domestic profit corporation incorporated in Michigan with a principal address of 2615 Danvers Drive SE, Grand Rapids, MI 49512, and doing business under the registered fictitious name "ElectionSource."

10. Defendant Election Source is a subcontractor of Dominion Voting Systems, Inc. or one of its affiliates (collectively "Dominion").

11. Election Source is a governmental actor. As a result of its contract with Dominion and government entities, Election Source is delegated responsibility to administer public elections; a core governmental function. By contracting to provide comprehensive voting solutions for public elections, including the election of individuals to serve in constitutionally prescribed offices, Election Source is a governmental actor.

12. Election Source's involvement in running the presidential election amounts to state action. Election Source willfully participates in joint activity with the state during voting, including by supplying its products and services coextensively with election officials to carry out the election. There is pervasive entwinement between Election Source and the state.

13. In its capacity as – and using its authority as – a governmental actor, Election Source allowed manipulation or changing of votes in the 2020 election. As a result of systemic and widespread vulnerabilities in Dominion's software and hardware, and Election Source's negligence and fraud in programming elections and mapping ballots, votes can be altered in elections.

14. Defendant Antrim County contracted with Defendant Election Source for services related to the conduct of the November 3, 2020 election, including but not limited to: the creation of the Antrim County November 3, 2020 project file compact flash card configuration; ballot design; programming for the Antrim County ICP, ICX, and ICC; the conducting of logic and accuracy tests; the performance of database changes; and the provision of thumb drives with election material.

15. Defendant Election Source provided election services for Antrim County related to this election, including ballot changes on October 5 and 7, 2020.

16. The transactions that give rise to this cause of action occurred in Antrim County, State of Michigan.

17. Plaintiff respectfully requests that this Honorable Court grant injunction relief, for all the reasons stated in his complaint, motion for temporary restraining order, supporting affidavit, exhibits, and accompanying brief, which are all incorporated herein by reference.

18. Pursuant to MCL 600.4545(1), "[a]n action may be brought in the circuit court of any county of this state whenever it appears that material fraud or error has been committed at any election in such county at which there has been submitted any constitutional amendment, question, or proposition to the electors of the state or any county, township, or municipality thereof."

19. Michigan's Constitution declares that "[n]o person shall be denied the equal protection of the laws" Mich. Const. 1963, art 1, §2.

20. The Michigan Constitution's "purity of elections" clause states that "the legislature shall enact laws to regulate the time, place and manner of all nominations and elections, to preserve the purity of elections, to preserve the secrecy of the ballot, to guard against abuses of the elective franchise, and to provide for a system of voter registration and absentee voting." Mich. Const. 1963, art 2, §4(2).

21. Plaintiff requests relief as recognized in *Shoemaker v City of Southgate*, 24 Mich App 676; 180 NW2d 815 (1970).

22. This action is properly filed in Antrim County Circuit Court pursuant to MCR 3.306(A)(2), Mich. Const. art. 1, §2 and art. 2, §4, MCL 600.4545, and MCL 600.605.

23. Plaintiff requests this Court order "a speedy hearing" of this action and "advance it on the calendar" as provided by MCR 2.605(D).

24. Venue is proper pursuant to MCR 3.306(D).

COMMON ALLEGATIONS

25. The general election was held on Tuesday, November 3, 2020.

26. Antrim County uses the Dominion Voting Systems election management system and voting machines (tabulators). These tabulators were shown to miscount votes cast for President Donald Trump and instead count them for Presidential Candidate Joe Biden.

27. Antrim County is just one of 47 counties in Michigan that uses the Dominion voting system to process ballots. As noted in the letter attached hereto from Senate President Pro Tempore Aric Nesbitt [Exhibit 1], "[t]his is particularly concerning when at least one other secretary of state, specifically in Texas, refused to certify Dominion Voting Systems for use because the examiner could not verify that the system was 'safe from fraudulent or unauthorized manipulation.'" This letter is signed by 40 Michigan State Senators and Representatives.

28. The letter references that the allegations are "backed up by sworn affidavits of over 100 Michigan citizens, real people, willing to face legal consequences to their lives and livelihoods to stand by their assertions.

29. In addition, the letter attached hereto from 22nd District Representative Lana Theis [Exhibit 2] expresses similar concerns about the issue in Antrim County with Dominion voting systems.

30. At 9:30 am on Wednesday, November 4, 2020, unofficial results posted by the Antrim County Clerk showed that 16,047 voters had cast a ballot in the presidential election.

Presidential Candidate Joe Biden received 7,769 votes in the county and President Donald Trump received 4,509 [Exhibit 3].¹

31. Antrim County voted 62% in favor of President Trump in 2016.

32. Democratic candidates Gary Peters and Dana Ferguson also outperformed their Republican opponents in the county.

33. On Wednesday morning, November 4, 2020, Plaintiff turned on the television to watch the local news and was shocked to see an election map showing Antrim County in bright blue – meaning that the majority of voters in Antrim County had voted Democrat. Plaintiff immediately contacted Jim Gurr (who worked for Helena Township (Antrim County) election. Upon information and belief, Jim Gurr then contacted Defendant Guy's office and asked her office to review the results, which appeared skewed and incorrect.

34. On November 5, 2020, Defendant Guy released amended results which showed that 18,059 residents had cast a ballot in the election [Exhibit 4].² Of those, Presidential Candidate Joe Biden received 7,289 votes in the county and President Donald Trump received 9,783; resulting in President Donald Trump receiving 54%, still significantly less than 2016.

35. On November 21, 2020, Defendant Guy released second amended results³ which now show 16,044 residents had cast a ballot in the election [Exhibit 5].⁴ Of those, Presidential Candidate Joe Biden received 5,960 votes in the county and President Donald Trump received

¹ Only including pages 1-14 (results for President, Senator, Congress 1st District, State Legislature 105th District

² Only including pages 3-14. Pages 1-2 not available on Antrim County website.

³ <http://www.antrimcounty.org/elections.asp>

⁴ Only including pages 1-14.

9,748; resulting in President Donald Trump receiving 60.75%, which was more in line and consistent with 2016.

36. Of serious concern is why Presidential Candidate Joe Biden had more than 7,700 votes on election night.

37. Of equal concern is why Presidential Candidate Joe Biden had 7,289 votes on November 5, 2020.

38. Of equal concern is why Presidential Candidate Joe Biden's vote count dropped to 5,960 votes on November 21, 2020. What happened to the mysterious 1,740+ overvotes registered on election night?

39. Of equal concern is why Defendant Antrim County's vote count for registered voters dropped from 18,059 on November 5, 2020 to 16,044 on November 21, 2020. That is a startling 11.2% reducing in total voters.

40. It is an obvious fact that Presidential Candidate Joe Biden received more votes than actually cast for him, including an extra 2,015 "phantom votes." But for Plaintiff contacting Jim Gurr, who contacted Defendant Guy's office, this mistake would not have been corrected.

41. There are many other questions that remain unanswered, including but not limited to (1) whether the Dominion tabulators in Antrim County were tampered with, (2) whether they have the capacity to connect to the internet, (3) whether they had any open VPN ports during the election, (4) if connected to the internet, was the connection secure, (5) whether the machines were accessed via the use of removable media to transfer voting information, (6) whether the ballot images were preserved in every precinct per federal and state election law, (7) whether the audit logs were preserved and synchronized, (8) whether the audit logs were altered or edited by any person operating the system, (9) whether Dominion pre-loaded any algorithms and

configurations on the machines that alter the results, and if so, what algorithms and configurations were pre-loaded, and (10) whether the "purge option" that is built into Dominion utilized to cancel, switch, or manipulate votes, in the same way it has historically been utilized in Venezuela and Cuba.

42. Michigan's Constitution guarantees all Michigan citizens the right of equal protection, due process, and "the purity of elections." Const. 1963, art 1, §2; art. II, §4(2) (reprinted in Appendix). Every Michigan citizens who is an "elector . . . qualified to vote in any election" is guaranteed the right to cast a ballot. *Id.*

43. Plaintiff and others seek to learn the answers to these questions, including why Defendant initially registered "phantom voters" for Presidential Candidate Joe Biden and why the Dominion machines altered and switched votes for him.

44. Defendant Benson released a statement blaming the county clerk for not updating certain "media drives," but her statement failed to provide any coherent explanation of how the Dominion Voting Systems software and vote tabulators produced such a massive miscount.⁵

45. Defendant Benson continued: "After discovering the error in reporting the unofficial results, the clerk worked diligently to report correct unofficial results by reviewing the printed totals tape on each tabulator and hand-entering the results for each race, for each precinct in the county." *Id.*

46. What Defendant Benson fails to address is what would have happened if no one "discover[ed] the error." Indeed, when Defendant Guy testified before Michigan's Joint

⁵ https://www.michigan.gov/documents/sos/Antrim_Fact_Check_707197_7.pdf

(emphasis in original).

Oversight Committee on November 19, 2020, she failed to and was unable to answer this question.

47. Tabulator errors related to Dominion occurred elsewhere in Michigan on election night. For instance, Wayne County used the same Dominion voting system tabulators as did Antrim County.

48. These vote tabulator failures are a mechanical malfunction that, under MCL 168.831-168.839, requires a "special election" in the precincts affected.

49. Michigan's Election Code, MCL 168.831-168.839, provides the board of canvassers shall order a special election as governed by those precincts affected by the defect or mechanical malfunction. The board of county canvassers "is responsible for resolving any claims that malfunctioning voting equipment or defective ballots may have affected the outcome of a vote on an office appearing on the ballot." Michigan Manual for Boards of County Canvassers.

50. In the aftermath of the election failures, Defendant Guy deleted or directed her staff to delete certain system files from electronic election equipment used in the November 3, 2020 election.

51. On March 3, 2021, Defendant Guy dismissed or directed her staff to dismiss this instant case, *William Bailey v. Antrim County*, case no. 2020-9238-CZ. It was later determined by this Honorable Court that Defendant Guy had improperly dismissed *William Bailey v. Antrim County*, and the case was reinstated by this Honorable Court.

52. The log files in the election management system ("EMS") used by Antrim County confirm that Defendant Election Source's personnel performed updates to the ballot designs used in the election, made appropriate database changes, and performed follow-up procedures for the November 3, 2020 election.

53. The EMS reflects that technicians employed by Defendant Election Source made alterations to the ballot definitions and related project files. The Election Source Antrim County Project File was configured to allow Antrim County personnel to change the technician password. Election Source provided weak passwords that were identical at all precincts. Defendant Election Source produced project files with hardcoded passwords of 123456 to open or rezero the poll, and utilized the same password for all election officials. This resulted in significant security vulnerability in Antrim County's EMS on election day.

54. Defendant Election Source failed to use good development practices and configuration control processes. The Configuration Version Number corresponding to different iterations of the ICPs, ICXs, and ICCs remained identical or went unverified. Additionally, Defendant Election Source failed to identify that the election files and ballot files were incompatible due to providing incorrect compact flash card election files.

55. Defendant Election Source moreover introduced substantive election file errors caused by incompatible election files, and failed to address the notifications and/or warnings indicated in the EMS log files which would have been visible to Election Source technicians upon Antrim project file updates. Rather than remediate the errors, Election Source ignored notifications and/or warnings and proceeded to update the Antrim project file for tabulators with the system errors and associated misconfigurations unchanged.

56. Defendant Election Source failed to employ appropriate version control practices, resulting in a mismatch in configurations deployed to Antrim County precincts versus the central configuration of the Antrim County EMS. Lack of version of control makes it impossible to for local precincts to determine whether their compact flash cards have a proper configuration. Defendant Election Source then gave Defendant Guy exclusive possession of the Antrim project

file and compact flash card configuration along with the central EMS, and she failed to properly deploy updated compact flash cards to all precincts in Antrim County.

57. Defendant Election Source utilized thumb drives to carry ballot designs and ballots, which produced a significant security vulnerability which could be exploited by a single attacker given the same level of access as an ordinary poll worker. Such an attack could involve using the ballot and ballot design contained on a thumb drive to produce additional ballots which could then be cast for the attacker's preferred candidate. Upon information and belief, Defendant Election Source knew of this vulnerability and did not act to cure it. An Election Source whistleblower identified this practice as a major risk for fraud in the November 3, 2020 election because this Election Source practice and procedure made it incredibly easy to stuff the ballot box as a result of the easily accessible thumb drives.

58. Additionally, Defendant Election Source, and Defendant Guy failed to reprogram all CF cards providing ICPs and ICXs for all the precincts and townships served by Antrim County following a programming update. Specifically, the user information log pertaining to these systems shows no activity between September 25 to October 5, 2020, after Defendant Election Source delivered the update on October 22, 2020.

59. Defendant Election Source failed to use good development practices and configuration control processes. The Configuration Version Number corresponding to different iterations of the ICPs, ICXs, and ICCs remained identical or went unverified. Additionally, Defendant Election Source failed to identify that the election files and ballot files were incompatible due to providing incorrect compact flash card election files.

60. Following its provision of ballot changes to the Antrim County project file on October 5 and 7, 2020, Defendant Election Source waited two weeks to provide the Project File

