

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

to Antrim County. This delay limited Antrim County from having significant time to perform appropriate LAT activity before the election. No log entries were created between October 7 and 13; the Project File was archived on October 13. No further log entries were created until October 22, when four scripts were run by unknown individuals. No details regarding the scripts' function or functions appears in the log files.

61. Defendant Election Source turned off ballot saving images settings to preserve the ballots for an accurate audit.

62. The Dominion EMS that sits in the office of Antrim County includes a multitude of problems found within the system that amount to gross error by Defendants. One of the most important discoveries is detailed on page 15 of the Cyber Ninja's report [Exhibit 6]. Here, Cyber Ninjas discovered a Microsoft SQL Server Management Studio implant on the system. This piece of software is not approved by the Election Assistance Commission ("EAC") and allows a user to actually circumvent security protocol and make "direct[] edit entries within the database" which "could potentially be utilized to change vote values." Perhaps most importantly, this software is a "separate install." In other words, it should not be on the system. It is, by its very definition, a hacking tool.

63. Benjamin Cotton has also prepared an affidavit after review of the Antrim County system [Exhibit 7]. He states that he reviewed the forensic image of the Dominion system "utilized in the November 2020 election and discovered evidence of internet communications to a number of public and private IP addresses." One connection in particular traced back to "the Ministry of Education Computer Center, 12F, No 106, Sec 2, Hoping E. Rd., Taipei Taiwan 106." Further, "[t]his IP address resolves to a cloud provider in Germany." Mr. Cotton's findings show that the Antrim County system was connected to the internet. Of course, Sheryl Guy

deleted system files that would allow further review. For this reason, review of other systems in other counties is critical.

64. James Penrose also explains internet connectivity on both Dominion and ES&S machines [Exhibit 8]. The Dominion Voting Systems proposal for Antrim County shows a quote for procurement of wireless transmission capabilities. Dominion representatives also confirmed performance issues with wireless transmission of vote totals and even went as far as disabling the saving of ballot images without explicit authorization during the 2020 primary. In addition, a forensic examination of a Dominion ICX machine has shown the existence of Taiwan and Germany-based IP addresses in unallocated space, implying there were international communications via the Internet. In addition, ES&S DS200 machines in Michigan utilized wireless 4G network adapters for vote transmission over the commercial Verizon network. The company that manufactures the 4G wireless modems is named Telit. Telit has recently taken investment from a major Chinese firm and according to press reporting the UK government is monitoring the situation with concern that the Chinese government is in a position to exercise influence over Telit.

65. The ASOG report [Exhibit 9] issued on December 14, 2020 also details multiple instances of negligence, fraud, and bad faith:

I. SERVER OVERVIEW AND SUMMARY

1. Our initial audit on the computer running the Democracy Suite Software showed that standard computer security best practices were not applied. These minimum-security standards are outlined the 2002 HAVA, and FEC Voting System Standards – it did not even meet the minimum standards required of a government desktop computer.
2. The election data software package USB drives (November 2020 election, and November 2020 election updated) are secured with bitlocker encryption software, but they were not stored securely on-site. At the time of our forensic examination, the election data package files were already

moved to an unsecure desktop computer and were residing on an unencrypted hard drive. This demonstrated a significant and fatal error in security and election integrity. Key Findings on Desktop and Server Configuration: - There were multiple Microsoft security updates as well as Microsoft SQL Server updates which should have been deployed, however there is no evidence that these security patches were ever installed. As described below, many of the software packages were out of date and vulnerable to various methods of attack.

- a) Computer initial configuration on 10/03/2018 13:08:11:911
 - b) Computer final configuration of server software on 4/10/2019
 - c) Hard Drive not Encrypted at Rest
 - d) Microsoft SQL Server Database not protected with password.
 - e) Democracy Suite Admin Passwords are reused and share passwords.
 - f) Antivirus is 4.5 years outdated
 - g) Windows updates are 3.86 years out of date.
 - h) When computer was last configured on 04/10/2019 the windows updates were 2.11 years out of date.
 - i) User of computer uses a Super User Account.
3. The hard drive was not encrypted at rest – which means that if hard drives are removed or initially booted off an external USB drive the files are susceptible to manipulation directly. An attacker is able to mount the hard drive because it is unencrypted, allowing for the manipulation and replacement of any file on the system.
4. The Microsoft SQL Server database files were not properly secured to allow modifications of the database files.
5. The Democracy Suite Software user account logins and passwords are stored in the unsecured database tables and the multiple Election System Administrator accounts share the same password, which means that there are no audit trails for vote changes, deletions, blank ballot voting, or batch vote alterations or adjudication.
6. Antivirus definition is 1666 days old on 12/11/2020. Antrim County updates its system with USB drives. USB drives are the most common vectors for injecting malware into computer systems. The failure to

properly update the antivirus definition drastically increases the harm cause by malware from other machines being transmitted to the voting system.

7. Windows Server Update Services (WSUS) Offline Update is used to enable updates the computer – which is a package of files normally downloaded from the internet but compiled into a program to put on a USB drive to manually update server systems.
8. Failure to properly update the voting system demonstrates a significant and fatal error in security and election integrity.
9. There are 15 additional updates that should have been installed on the server to adhere to Microsoft Standards to fix known vulnerabilities. For the 4/10/2019 install, the most updated version of the update files would have been 03/13/2019 which is 11.6.1 which is 15 updates newer than 10.9.1

This means the updates installed were 2 years, 1 month, 13 days behind the most current update at the time. This includes security updates and fixes. This demonstrated a significant and fatal error in security and election integrity.

- Wed 04/10/2019 10:34:33.14 - Info: Starting WSUS Offline Update (v. 10.9.1)
- Wed 04/10/2019 10:34:33.14 - Info: Used path "D:\WSUSOFFLINE1091_2012R2_W10\cmd\" on EMSSERVER (user: EMSADMIN)
- Wed 04/10/2019 10:34:35.55 - Info: Medium build date: 03/10/2019
- Found on c:\Windows\wsusofflineupdate.txt
- *WSUS Offline Update (v.10.9.1) was created on 01/29/2017

*WSUS information found here <https://download.wsusoffline.net/>

10. Super User Administrator account is the primary account used to operate the **Dominion Election Management System** which is a major security risk. The user logged in has the ability to make major changes to the system and install software which means that there is no oversight to ensure appropriate management controls – i.e. anyone who has access to the shared administrator user names and passwords can make significant changes to the entire voting system. The shared usernames and passwords mean that these changes can be made in an anonymous fashion with no tracking or attribution

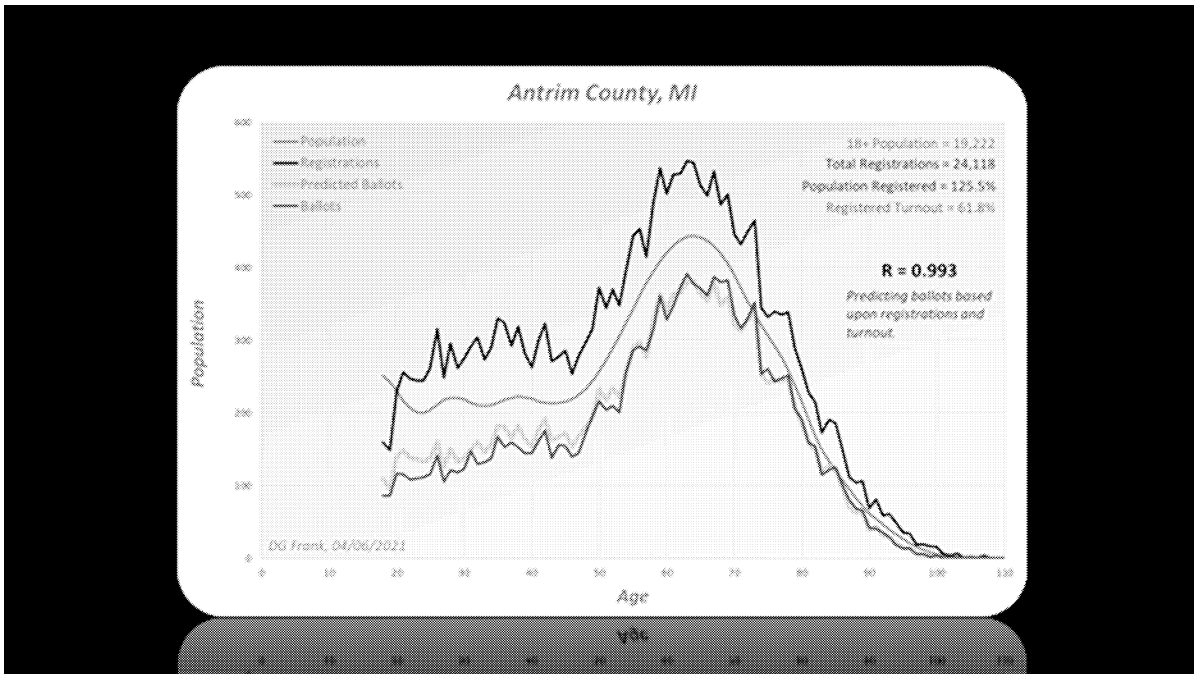
66. Douglas G. Frank, PhD, has conducted a study to show an algorithm at work in Michigan [Exhibit 10]. Dr. Frank concludes the following:

- Voter registration is consistently near, or exceeding county population demographics.
- **There are over 66,000 ballots recorded that are not associated with a registered voter.**
- The ability to predict ballot demographics with such remarkable precision (average correlation coefficient of **R = 0.997**) demonstrates the activity of a regulating algorithm.
- **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.**
- The degree of precision observed confirms that algorithms had access to voting databases and voting activity before, during, and following the November 3, 2020 election.

	Wayne County	Oakland County	Macomb County	Kent County	Livingston County	Grand Traverse County	Barry County	Charlevoi x County	Antrim County
<i>Total Population</i>	1,749,284	1,257,532	873,922	656,900	191,938	93,030	61,489	26,089	23,266
<i>Total 18+ Population</i>	1,339,405	999,630	694,156	500,078	152,390	74,536	48,094	21,337	19,222
Current Registered (4/6/2021)	1,383,669	1,016,125	685,385	492,643	159,774	79,954	49,724	23,576	21,935
Total Registrations (October Database)	1,365,392	1,011,669	670,592	489,234	157,667	79,537	48,628	23,279	24,118
<i>Total Ballots in Database</i>	840,810	750,232	477,718	348,880	123,642	57,888	34,913	16,574	14,901
<i>Ballots not found in October Database</i>	20,124	17,551	13,596	8,782	3,240	1,295	914	380	312

67. Dr. Frank further concluded that there were 312 ballots in Antrim County not found in the October database of the Qualified Voter File.

68. Dr. Frank further concluded that there were more registered voters in Antrim County than eligible voters, demonstrating negligence and a failure to properly maintain the QVF.



69. Jim Penrose and Jim Lenberg each issued additional reports on May 2, 2021.

These reports collectively reveal the direct ability to manipulate the election by Defendants.

70. Jim Penrose [Exhibit 11] reveals the following fraudulent conduct on behalf of Defendants:

- ElectionSource technicians responsible for the creation and deployment of project files have supreme power in creating configurations that can be used to modify the votes in the EMS and the output of the tabulator paper tapes. Upon review of the Lenberg report dated May 2nd, 2021, ElectionSource technicians create project files for their clients and as a result can access, control, and modify any election they support.
- ElectionSource configured and deployed Antrim County's project files that resulted in the modification of the votes during the general election. The Lenberg report indicates that vote modification in Antrim County was consistent with technical manipulation of the project file. This project file was generated and deployed by ElectionSource for the November 3rd, 2020 general election.

- In order to research and investigate the Antrim County vote modification it is necessary to perform a full forensic examination and testing of all equipment utilized during the election. Michigan clerks take an oath to faithfully discharge the duties of a clerk including to hold fair and accurate elections. ElectionSource has issued a threat to Michigan clerks interested in conducting independent forensic examinations and testing of election equipment. See Exhibit A.
- ElectionSource has the responsibility to review the log files on the Dominion Voting Systems, Election Management System (EMS), the log files are typically viewed by trained technicians with the appropriate experience to properly interpret the software prompts/warnings. During the preparation for the general election their were prompts/warnings ignored by ElectionSource.
- ElectionSource failed to utilize version control. Version control is defined as the task of keeping a software system consisting of many versions and configurations well organized. Failure to utilize version control can lead to incorrect vote tally during an election. The lack of policy, procedures, and technical implementation on the part of ElectionSource led to a situation where an inaccurate tally could occur.
- An ElectionSource whistleblower has also publicly spoke out about his concerns of fraud over technicians having access to a broad array of ballots from across the State of Michigan via ElectionSource thumb drives. The evidence of what occurred in Antrim County along with the statements of an ElectionSource whistleblower illustrate the multiple avenues for fraud.
- ElectionSource performed a number of functions on behalf of Antrim County in order to prepare for and conduct the November 3, 2020 general election. When examining the historic steps taken by the ElectionSource configuring the Antrim County EMS one of the actions taken was to set the default technician passcode for the entirety of Antrim County to a weak

passcode. The weak passcode was "123456" set by ElectionSource as found in the configuration files used for the election. Moreover, the UserLog file on the EMS also indicated that the election password to open and close the polls was set to "1234678" for more than 19 months prior to the election at which time it was updated to a similarly weak and guessable passcode "11032020", the date of the general election. These passcodes work to give access to the tabulators to open/close, reopen, and rezero the tabulators.

- A malicious actor seeking to commit fraud would need to know these passcodes to gain access to the tabulators and enable their operations. ElectionSource provisioned passcodes that were easily guessable and simple trial and error would reveal the correct passcodes with a tractable number of attempts, even done manually by hand by an attacker.
- On January 8, 2019 the default passcode to open/close the polls was set by ElectionSource to be "12345678". This default passcode remained the same until August 3, 2020 when it was changed to "11032020" which was the passcode used during the Antrim County general election in November of 2020.
- ElectionSource also hardcoded into the election project files for Antrim County the passcode of "123456" as the "technician passcode." The technician passcode allows for the polls to be re-opened and the tabulators to be re-zeroed. This weak passcode was set by ElectionSource.
- ElectionSource set the "DCF File Version Number" associated with the Antrim County election to the same value, "50401," regardless of the updates that were being deployed to the Antrim County Election Project Files and ballot definitions. There was no distinction made between the ICX, ICP, and ICC configurations that were deployed. This lack of version control resulted in ElectionSource's failure to track that incompatible

election configurations and ballot definitions were being deployed in Antrim County on election day.

- The original election/ballot configuration provisioned by ElectionSource on September 29th, 2020 for use in Antrim County for their ICPs. Figure 3 shows the final, corrected revision from October 23, 2020, of the election/ballot configuration for use in Antrim County ICPs. There is no evidence of a versioning process either technical or manual applied by ElectionSource to ensure that the proper version of the configuration would be deployed throughout the entirety of Antrim County. ElectionSource's failure to employ version control led to vote manipulation during the November 3rd, 2020 election.
- ElectionSource made substantive modifications to the election and ballot definitions that triggered the EMS to provide a number of "prompt" notifications that were acknowledged by the ElectionSource technician performing the updates. The technician failed or elected not to take action on the notification messages and request a wholesale redeployment of all compact flash cards for all precincts that would be required to proceed with a fully updated election package. Table 2 below shows the notification messages that were generated from the EMS when the technician updated the configuration. The specific message directed to the technician states, "All previously created and deployed election files will be unusable." The technician is then presented with an option to click OK or Cancel based on whether or not they wish to proceed. The last record of this prompt in the log was on October 5, 2020 when the technician selected, "OK" acknowledging that new election files, provisioned on compact flash cards, would need to be deployed as the previously deployed versions will be unusable. ElectionSource failed to address the aforementioned prompts resulting in a modified vote tally.

- The final update to the election files prior to the general election was performed by ElectionSource on October 22nd, however, to truly complete the deployment of all the new election files to all precincts, completely new compact flash cards would need to be provisioned containing the new election files. From October 24th to November 2nd there were no entries in the UserInfo log file, indicating that there were no attempts made by either ElectionSource to complete this compact flash card update process during the crucial weeks ahead of the general election.
- The Lenberg report indicates that manipulation of the project files can circumvent the canvassing process. ElectionSource technicians responsible for the creation and deployment of project files have supreme power in creating configurations that can be used to modify the votes in the EMS and the output of the tabulator paper tapes. ElectionSource technicians create project files for their clients and as a result can access, control, and modify any election they support.
- ElectionSource configured and deployed Antrim County's project files that resulted in the modification of the votes during the general election. The Lenberg report indicates that vote modification in Antrim County was consistent with technical manipulation of the project file.

71. Jeff Lenberg [Exhibit 12] reveals the following fraudulent conduct on behalf of Defendants:

Testing of Antrim County project files indicates that modification of the project files can replicate the election inaccuracies observed in the November 3, 2020 election. In addition, further testing revealed that selective modification of the project files resulted in tailored manipulation of the votes tallied. The manipulation can be tailored to modify a specific

county, precinct, or race. The steps used to manipulate the vote tally are listed below:

- Modify the specific precinct election files
 - Edit the VIF_BALLOT_INSTANCE.DVD
 - Note: Technical access to ElectionSource corporate resources would allow for these types of manipulations to the elections.
- Burn Compact Flash cards with the configurations for the tabulators
- Run the Election (Process the Ballots through the Tabulator)

The results of the modifications to the project file will show vote totals changed on the tabulator's printed tape as well as modified vote totals in the Results Tally Reporting (RTR) system.

In order to validate these findings; two test cases were run:

1. The swap of Trump and Jorgenson vote totals on both the paper tape and the RTR results
2. The swap of Biden and Trump (Presidential Race) and Ferguson and Bergman (Congressional) while leaving the Senate race unmodified on both the paper tape and the RTR results

Exhibit A contains photos of all the ballots that were run for test case number 2 as well as the paper tapes and RTR tallies showing the manipulations.

Both test cases were successful in that the modifications were made without any alerts or error messages being generated by the EMS or the tabulator. The test cases would not have been detected during the canvassing process because both the paper tapes and the RTR results matched.

COUNT 1
CONSTITUTIONAL RIGHT TO ACCURACY AND INTEGRITY OF ELECTIONS

Michigan Constitution – Article 2, Section 4, Paragraph 1(h)

(in-person ballots)

(as to all Defendants)

72. Plaintiff restates and incorporates as if set forth fully herein all preceding allegations contained in this Amended Complaint.

73. Plaintiff's constitutional rights have been violated. Plaintiff brings this action to vindicate his constitutional right to a free and fair election ensuring the accuracy and integrity of the process pursuant to the Michigan Constitution, art. 2, sec. 4, par. 1(h), which states all Michigan citizens have:

"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."

74. The Mich. Const., art. 2, sec. 4, further states, "All rights set forth in this subsection shall be self-executing. This subsection shall be liberally construed in favor of voters' rights in order to effectuate its purposes."

75. Michigan's Constitution gives its citizens "[t]he right, once registered, to vote an absent voter ballot without giving a reason, during the forty (40) days before an election, and the right to choose whether the absent voter ballot is applied for, received and submitted in person or by mail." Const 1963, art II, § 4(1)(g).

76. Although the Election Law directs the Secretary of State to prescribe the procedures for election audits, the Post-Election Audit Procedures prescribed by the Secretary of State entirely fail to provide for the review of absentee ballot signatures. Thus, the audits announced by the Secretary of State will not review whether the signatures on absentee ballots

were properly reviewed or whether ballots were properly accepted, even though the Secretary of State acknowledges the outsized role absentee ballots played in the 2020 Presidential Election and the limited time election officials had to process those ballots.

77. Based upon all the allegations of fraud, statutory violations, and other misconduct, as stated herein, it is necessary to permit Plaintiff to continue to collect forensic images of the 17 precinct tabulators, thumb drives, related software, the Clerk's "master tabulator," other equipment and computers used in the November 3, 2020 general election, and conduct an investigation of those images, after which a manual recount of the election results and an independent audit of the November 3, 2020 election may be ordered to ensure the accuracy and integrity of the election.

78. The audit must permit a review of all election tapes from the November 3, 2020, election; all paper ballots for the November 3, 2020 election; all system logs for the November 3, 2020 election; any vote tabulators and modems in Antrim County; all election media, including but not limited to, all compact flash cards and poll books and USB drives used in the November 3, 2020 election; all election reports and tallies, .pdf files, and spreadsheets used in the November 3, 2020 election; and all canvasser paperwork and notes used in the November 3, 2020 election.

79. As discussed in the Lenberg and Penrose reports, the Dominion voting system is designed in a way that allows Election Source or any county employee to modify the project files and manipulate or switch the votes at the tabulator and EMS.

80. By performing an election using a system with these inherent vulnerabilities, the Defendants engaged in fraud and compromised the accuracy and integrity of the November 3, 2020 general election.

81. By failing to properly investigate the cause of the inaccurate results on November 3, 2020, but instead falsely telling the voters of Antrim County and citizens of the State of Michigan that the election was the secure and the safest in this country's history, or by failing to correct such statements, Defendants engaged in fraud and compromised the accuracy and integrity of the November 3, 2020 general election.

COUNT 2
CONSTITUTIONAL RIGHT TO ACCURACY AND INTEGRITY OF ELECTIONS

Michigan Constitution – Article 2, Section 4, Paragraph 1(h)

(mail-in and absentee ballots)

(as to all Defendants)

82. Plaintiff restates and incorporates as if set forth fully herein all preceding allegations contained in this Amended Complaint.

83. During the past election cycle, Michigan's voters cast an unprecedented 3.3 million absentee ballots in the 2020 general election.⁶

84. The absentee voting process, however, lacks many of the traditional safeguards that protect against voter fraud.

85. For example, in-person voting allows for poll challengers to "[c]hallenge the voting rights of a person who the challenger has good reason to believe is not a registered elector," MCL 168.733(1)(c), and to "[e]xamine without handling each ballot as it is being counted," MCL 168.733(1)(g). Likewise, election inspectors "shall challenge an applicant" when

⁶ See Mich Dep't of State, *Rejected ballot data from Nov. 3 election demonstrates integrity of election* (Dec. 2, 2020), available at <https://www.michigan.gov/sos/0,4670,7-127--546413--,00.html>; Rejected Ballots by Jurisdiction, Microsoft Excel Spreadsheet, available at same under "A breakdown by jurisdiction can be found here." [Collectively referred to hereinafter as "*Rejected Ballot Data*"].

"the inspector knows or has good reason to suspect that the applicant is not a qualified and registered elector of the precinct." MCL 168.727(1).

86. With absentee voting, there is no opportunity to inspect or challenge ballots at the time they are cast. Instead, local clerks and election officials can only examine the ballots after the fact. Without this added layer of protection, the statutory safeguards that do exist to prevent voter fraud become all the more important.

87. In addition to the right to vote by absent voter ballots, the same section of Michigan's Constitution gives voters "[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." Const 1963, art II, § 4(1)(h).

88. The Election Law also directs Defendant Benson to "prescribe procedures for election audits that include reviewing the documents, ballots, and procedures used during an election as required in section 4 of article II of the state constitution of 1963" and requires Defendant Benson and county clerks to "conduct election audits . . . as set forth in the prescribed procedures." MCL 168.31a(2).

89. Because the right to audit election results under Article II, Section 4 was added to Michigan's Constitution in 2018, there is no precedent regarding a voter's ability to exercise this right or the nature and scope of this right. Nonetheless, in a November 23, 2020 decision by the Michigan Supreme Court, Justice Viviano analyzed the right to audit election results under art II, § 4(1)(h) and concluded "that no such showing is required" for a voter to obtain an audit because "neither the constitutional text nor MCL 168.31a expressly provide for it[,] none of the neighboring rights listed in Article 2, § 4, such as the right to vote by absentee ballot, requires citizens to present any proof of entitlement for the right to be exercised," and the constitutional

provision is "self-executing." *Constantino v City of Detroit*, ___ Mich ___; ___ NW2d ___; 2020 Mich LEXIS 2013, at *8-9 (Nov. 23, 2020) (Viviano, J., dissenting). Justice Viviano also noted that Michigan courts have yet to determine "the nature and scope of the audit provided for in Article 2, § 4" nor have they "considered whether MCL 168.31a accommodates the full sweep of the Article 2, § 4 right to an audit or whether it imposes improper limitations on that right." *Id.* at *9, *15.

90. Given the limited traditional safeguards applicable to the absentee voting process, Defendant Benson's inconsistent guidance, and the unprecedented number of absentee ballots cast during the 2020 Presidential election, an audit of the absentee ballots cast during the 2020 Presidential election is imperative to ensure the accuracy and integrity of that election and future elections.

91. In October 2019, Priorities USA sued Defendant Benson to prevent the State from enforcing its "signature matching laws," which Priorities USA acknowledged were "mandated by outdated Michigan election laws." *Priorities USA v Benson*, Case No 3:19-cv-13188 (ED Mich).

92. Before obtaining an absentee ballot, these "outdated" laws required city or township clerks to compare a voter's signature on the absentee ballot application with their signature that was previously on file. The clerk was required to ensure that "the signature on the application agrees with the signature for the person contained in the qualified voter file or on the [voter's] registration card," and to "determine the genuineness of a signature on an application for an absent voter ballot." See 2018 PA 129.

93. If the signature on the application was determined to be genuine, an absentee ballot would be delivered to the voter. When the voter returned the ballot, the signature "on the absent voter ballot return envelope" would again be compared with the signature on record.

94. If the local clerk was satisfied, then the ballot would be forwarded to the State board of election inspectors to "verify the legality of the vote" by "[e]xamining the digitized signature for the absent voter included in the qualified voter file . . . to see that . . . the signature on the statement agrees with the signature on the registration record." MCL 168.766(1)(a).

95. Priorities USA alleged that under this framework, "Michiganders who attempt to vote absentee can be denied the franchise outright based solely on an election official's determination, during any one of the several stages of signature review, that a voter's signature on the ballot envelope does not sufficiently resemble a signature that she provided to election officials at some point in the past."

96. Priorities USA took issue with the lack of direction given to clerks, alleging that "no one really knows how Michigan officials decide whether a signature on an absentee ballot or ballot application is sufficiently similar to the previously designated signature to withstand scrutiny. Here, election officials have unfettered discretion." Further, it noted that Michigan "law provides no mechanism by which voters whose ballots are wrongfully discarded for alleged signature mismatches may challenge that determination or cure their rejected ballots . . . Michigan law does not even require election officials to notify voters that their ballots or absentee ballot applications have been rejected for an alleged signature mismatch."

97. Rather than defend the law Michigan's Legislature enacted, the Secretary of State first moved to dismiss the complaint on procedural grounds.

98. When that failed, the Defendant Benson again declined to defend State law. Instead, as Priorities USA's Motion to Voluntarily Dismiss its case explained, just two days after Priorities USA moved for a preliminary injunction, "the Secretary issued guidance to city and township officials that largely tracks the relief requested" by Priorities USA.

99. As relevant here, this guidance introduced "new signature review guidelines."

These Guidelines – untethered to the Election Law or Constitution – provided provided as follows:

Signature Review

Signature review begins with the presumption that the voter's AV application or envelope signature is his or her genuine signature.

1. If there are any redeeming qualities in the AV application or return envelope signature as compared to the signature on file, treat the signature as valid. Redeeming qualities may include but are not limited to similar distinctive flourishes, more matching features than nonmatching features, and Examples 1-5 in the chart below.

2. A voter's signature should be considered questionable only if it differs in multiple, significant, and obvious respects from the signature on file. Slight dissimilarities should be resolved in favor of the voter whenever possible.

100. The guidance was promulgated without any formal rulemaking or process. Instead, it just appeared on the Bureau of Elections website, and for two months, not even Priorities USA was made aware of this shift in signature review guidelines.

101. By filing its complaint, even Priorities USA acknowledged that the existing "signature review guidelines" were "mandated by" the Michigan Election Law, and could therefore only be overturned through a finding that certain provisions in the Election Law were unconstitutional.

102. Without any court intervention, however, Defendant Bensonupended this framework, creating presumptions out of thin air, and instructing local clerks to count signatures if "there are any redeeming qualities."

103. What's worse, Defendant Benson did so without any process at all. There is no indication of who drafted this new guidance, or the considerations that went into this new

guidance. See generally Josh Blackman, *Government by Blog Post*, 111 FIU L. Rev. 389, 416 (2016) (taking issue with similar informal processes and explaining that "ad hoc, random" amendments made in online posts authored by unknown persons in administrative agencies "should not be afforded the same presumption of constitutionality as other laws, duly enacted by Congress, and faithfully executed by the Chief Executive").

104. Months later, the law was changed the right way. On October 6, 2020, Governor Whitmer signed Senate Bill 757.

105. Similar to its predecessor, under this Bill, "[t]he qualified voter file must be used to determine the genuineness of a signature on an application for an absent voter ballot. Signature comparisons must be made with the digitized signature in the qualified voter file." MCL 168.761(1).

106. As we have learned in this litigation, Defendant Benson and Defendant Guy have been entirely negligent in how they maintain their voting record and the QVF. See *Dr. Frank Report*, generally.

107. However, the Legislature added safeguards to protect against voter disenfranchisement. The law now provides that:

If before 8 p.m. on the day before election day the clerk of a city or township rejects an absent voter ballot application because the signature on the absent voter application does not agree sufficiently with the signature on the master card or the digitized signature contained in the qualified voter file so as to identify the elector or because the elector failed to sign the absent voter ballot application, the city or township clerk shall as soon as practicable, but in no event later than 48 hours after determining the signatures do not agree sufficiently or that the signature is missing, or by 8 p.m. on the day before election day, whichever occurs first, notify the elector of the rejection by mail, telephone, or electronic mail.

MCL 168.761(2).

108. The same notice requirements apply to returned absent voter envelopes:

If before 8 p.m. on the day before election day the clerk of a city or township rejects an absent voter ballot return envelope because the signature on the absent voter ballot return envelope does not agree sufficiently with the signature on the master card or the digitized signature contained in the qualified voter file so as to identify the elector or because the elector failed to sign the absent voter ballot return envelope, the city or township clerk shall as soon as practicable, but in no event later than 48 hours after determining the signatures do not agree sufficiently or that the signature is missing, or by 8 p.m. on the day before election day, whichever occurs first, notify the elector of the rejection by mail, telephone, or electronic mail. The clerk shall also comply with section 765(5).

MCL 168.765a(6).

109. Given the unprecedented number of absentee ballots cast during the 2020 Presidential election, which represent 60% of all voters,⁷ and the Defendant Benson's improper guidance to election officials regarding review of signatures, a post-election audit that fails to review whether absentee ballots were properly reviewed and rejected pursuant to MCL 168.761(2), MCL 168.765a(6), and MCL 168.766 cannot possibly ensure the accuracy and integrity of the election and violates Plaintiff's constitutional right to audit the results of the election.

110. An audit in Antrim County should collect all absentee ballots cast during the 2020 Presidential election and compare the signatures on those ballots with the signatures on file. This is essentially the same method employed by the Bureau of Elections when checking the validity of signatures on statewide petitions pursuant to other section of the Election Law (see, e.g., MCL 168.476 (requirement to canvass signatures on an initiative petition)).

111. Second, the audit should review the number of people with the same home address who were registered to vote absentee via third-party voter registration drives. This information is necessary to identify and further investigate situations where a person may have

⁷ See David Eggert, *Record 5.5M voted in Michigan; highest percentage in decades*, AP NEWS (Nov. 5, 2020), <https://apnews.com/article/record-votes-michigan-highest-turnout-1f7802d2a2e67966ba8ccb02e3d1cbcd>.

illegally signed on behalf of voter such that the signature on the voter's ballot would not match the signature on file.

112. Finally, under the Michigan Election Law, absentee voters must now be informed if their signature is called into question, and they will have the opportunity to verify or remedy their signatures and make sure their votes are counted.⁸ The concern in *Priorities USA* that the Secretary of State sought to remedy through her signature verification guidance therefore no longer exists.

COUNT 3
VIOLATION OF "PURITY OF ELECTIONS" CLAUSE

Michigan Constitution – Article 2, Section 4, Paragraph 2

(as to all Defendants)

113. Plaintiff restates and incorporates as if set forth fully herein all preceding allegations contained in this Amended Complaint.

114. The Michigan Constitution's "purity of elections" clause states, "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 ballot, to guard against abuses of elective franchise, and to provide for a system of voter registration and absentee voting. Const. 1963, art 2, §4(2).

115. "The phrase 'purity of elections' does not have a single precise meaning. But it unmistakably requires fairness and evenhandedness in the election laws of this state." *Barrow v Detroit Election Comm'n*, 305 Mich App 649, 676; 854 NW2d 489 (2014).

⁸ See Bob Campbell, *Signature errors ruin thousands of Michigan ballots. Don't be that voter*, BRIDGE MICHIGAN (Oct. 6, 2020), available at <https://www.bridgemi.com/michigan-government/signature-errors-ruin-thousands-michigan-ballots-dont-be-voter> (explaining that a "bipartisan measure signed into law Tuesday aims to give voters a better chance at correcting such mistakes in November," and that "state policymakers hope the signature measure signed Tuesday reduces the number of disqualified ballots").

116. The purity of elections clause has been successfully raised in cases, like this one, where state officials favor one group of voters. *See Fleming v. Macomb Cty. Clerk*, 2008 Mich. App. LEXIS 1325, at *21-24 (Mich. Ct. App. June 26, 2008) ("the purity of elections has been violated in this case because the mailing of absent voter ballot applications to only a select group of eligible absent voters undermines the fairness and evenhandedness of the application of election laws in this state.").

117. Plaintiff, a resident of Antrim County, does not have the benefit of private funding paid by CTCL, but instead relies on the state and local budgets providing taxpayer funds to pay for the cost of conducting the election. Defendant Benson allocates funds based on her own will, and as we have learned in this case, Defendant Benson has actually failed to utilize taxpayer funds to train election workers in Antrim County.

118. By allowing selected predominantly urban and Democrat election jurisdictions to receive and spend millions of dollars of private money to conduct the election while Michigan voters in jurisdictions that are rural and suburban and are not predominantly Democrat do not receive the benefit of these additional recourses, Defendant Benson has diminished the voting rights of one disfavored group of citizens (Michigan voters living in election jurisdictions that are rural and are not predominantly Democrat) and enhanced the access to the ballot for another favored group of voters (those in urban, progressive, and heavily-Democrat jurisdictions). The purity of elections clause forbids Defendant Benson from conducting the election in this manner. Doing so violates Michigan voters' right to equal protection. *See also Bush v. Gore*, 531 U.S. 98, 104 (2000); *Harper v. Virginia Bd. of Elections*, 383 U.S. 663, 665 (1966).

119. Defendant Benson is a Democrat and would prefer to see Joe Biden elected President instead of Donald Trump. But Defendant Benson has a higher calling – that of assuring

that Michigan's general election is conducted according to the provisions of the Michigan Constitution and Michigan law. Absent this, public confidence in the integrity of the election and the legitimacy of the general election is undermined. *See Carter-Baker Commission Report, Building Confidence in U.S. Elections: Report of the Commission on Federal Election Reform* (September 2005).⁹

120. To be fair and just, Michigan elections must be conducted according to uniform laws and rules that apply equally to all eligible voters and to all election officials, both those from urban and predominantly Democrat jurisdictions as well as to those voters in rural and suburban jurisdictions that are not predominantly Democrat. Defendant Benson is charged with the responsibility of assuring Michigan elections are administered equally throughout Michigan. And, when she does not do so, it is the task of this Court to affirm this principle and enjoin conduct of an election that is contrary to the Michigan Constitution and law.

121. Elections are to be paid for with public funds appropriated through the budget process. Elections are not to be paid for with private funds paid by an ideologically-oriented special interest group that, in exchange for paying money to local election jurisdictions, dictates how the money is spent and how the local election officials conduct the election.

122. Michigan statutes also protect the purity of elections by allowing one person to cast one vote and not permitting manipulation of votes through mechanical means or otherwise.

123. Based upon the above allegations of fraud, statutory violations, and other misconduct, as stated herein, it is necessary to permit Plaintiff to continue to collect forensic images of the 17 precinct tabulators, thumb drives, related software, the Clerk's "master tabulator," other equipment and computers used in the November 3, 2020 general election, and

⁹ Available at: <https://www.legislationline.org/download/id/1472/file/3b50795b2d0374cbef5c29766256.pdf>.

conduct an investigation of those images, after which a manual recount of the election results and an independent audit of the November 3, 2020 election may be ordered to ensure the accuracy and integrity of the election.

124. Despite this legislative fix, the Secretary of State issued new guidance on October 6, 2020 to local clerks that in large part remains the same: when determining whether a signature is valid, there is a presumption in favor of validity, and so long as there "are any redeeming qualities in the AV application or return envelope signature as compared to the signature on file," the signature must be treated as valid. (See Oct. 6 Guidance, [Ex 3].)

125. The combination of the Election Law's new notice requirements and the Secretary of State's guidance means that absentee voters must be notified if their signature is found to be invalid, and that they will have an opportunity to correct any alleged errors.

126. There will, however, be plenty of instances where local clerks – following the Secretary of State's unlawful guidance – strain to find "any redeeming qualities" in the application and, applying a presumption in favor of validity, allow an invalid vote to be counted.

127. In fact, the raw data released to date by the Secretary of State regarding the 2020 Presidential election indicates that local clerks and elections officials continue to diverge substantially when applying the Election Law.

128. While the data indicates that 1,400 absentee ballots were rejected in Michigan out of approximately 3.3 million absentee ballots cast—for a the rejection rate of 0.04%—the number of absent voter ballots rejected and the rejection rate vary enormously depending on the jurisdiction that processed the ballots. A particularly poignant example is Lansing, one of

Michigan's largest cities by population, which, despite receiving more than 38,000 absentee ballots, rejected not a single one of them due to signature mismatch.¹⁰

129. Further, as learned on December 17, 2020, Antrim County also had no ballot rejections based on signature mismatch.

130. Following the 2020 Presidential election, the Secretary of State announced that the Michigan Bureau of Election will conduct "the most comprehensive post-election audits of any election in state history."⁵ The audits will be "a statewide risk-limiting audit, a complete zero- margin risk-limiting audit in Antrim County, and procedural audits in more than 200 jurisdictions statewide." The statewide risk-limiting audit is limited to "confirm[ing] the accuracy of ballot tabulation machines," which "entails hand-counting thousands of randomly selected ballots statewide."

131. However, the Secretary of State's statements on the matter make no mention, nor provide any assurance, that any of the three audits will involve a review of absentee ballots to determine whether local clerks and election officials properly rejected ballots where the signature did not match the voter's signature on file.

132. Moreover, the Secretary of State's manual and material for post-election audits contain scant mention of absentee ballots and altogether fail to provide for any review of absentee ballot signatures.¹¹

¹⁰ See City of Lansing, November 3, 2020 Election Results, available at <https://ingham.box.com/shared/static/icj9frqxgiybwm1s596y6ridcdfy0fp7.pdf>; City of Ann Arbor, November 3, 2020 Election Results, available at <https://electionresults.ewashtenaw.org/electionreporting/nov2020/index.jsp>; *Rejected Ballot Data*, *supra*. This is more unusual given the number of ballots rejected for signature mismatch in comparably-sized jurisdictions, such as Sterling Heights (125), Dearborn (71), and Saginaw (39). *See id.*

¹¹ See MICH DEPT OF STATE, POST-ELECTION AUDIT MANUAL (updated Jan. 15, 2020), https://www.michigan.gov/documents/sos/Post_Election_Audit_Manual_418482_7.pdf; MICH DEPT OF STATE, POST-ELECTION AUDIT PRINTABLE WORKSHEET (updated Jan. 15, 2020),

133. That no audit of absentee ballots will be conducted is both surprising and troubling given the Secretary of State's assertion that the 2020 Presidential election saw "more than double the absentee ballots ever before cast in our state," and the Secretary of State's criticism that local clerks and election officials were allowed only "10 hours for pre-processing of absentee ballots."

134. Defendants failure to properly conduct the election resulted in illegitimate and phantom votes being counted. *In re Request*, 479 Mich at 20 (recognizing the "Legislature's constitutional obligation to preserve the purity of elections and to guard against abuses of the elective franchise, *including ensuring that lawful voters not have their votes diluted*").

COUNT 4
VIOLATION OF MCL 168.761(2); MCL 168.765a(6); MCL 168.766

(as to all Defendants)

135. Plaintiff restates and incorporates as if set forth fully herein all preceding allegations contained in this Amended Complaint.

136. Under the Michigan Election Law, local clerks and state election official must reject absentee ballot applications and absentee ballot return envelopes when the signatures on those items do not "agree sufficiently" with the "signature on the master card or the digitized signature contained in the qualified voter file."

137. Defendant Benson's guidance conflicts with these statutory requirements. The guidance instructs local clerks to apply a presumption that the signature is valid, and to approve the signature so long as there "are any redeeming qualities in the AV application or return envelope signature as compared to the signature on file."

https://www.michigan.gov/documents/sos/Post_Election_Audit_Checklist_418481_7.pdf [collectively referred to hereinafter as "Post-Election Audit Procedures."]

138. Based on the guidance issued by the Defendant Benson, Defendants Antrim County and Benson failed to properly review and reject absentee ballots. This undoubtedly resulted in invalid ballots being counted.

139. Plaintiff is entitled to a proper review and audit of the 2020 general election results to ensure invalid ballots did not dilute the election and his constitutional right to have his vote counted.

140. Pursuant to MCR 168.761, any voter who votes by absentee ballot will be notified of any potential issue with the validity of their signatures.

COUNT 5
VIOLATION OF THE ADMINISTRATIVE PROCEDURES ACT

(as to Defendants Benson and Brater)

141. Plaintiff restates and incorporates as if set forth fully herein all preceding allegations contained in this Amended Complaint.

142. Under MCL 168.31, Defendants Benson and Bater are required to "issue instructions and promulgate rules pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, for the conduct of elections and registrations in accordance with the laws of this state."). Indeed, Defendants Benson and Bater, under the powers conferred to them by Michigan's Administrative Procedure Act ("APA"), have promulgated rules in the past. And, as this Court recently held, Defendants Benson and Bater just weeks ago issued a rule in violation of the APA. See *Davis v Benson*, Opinion of the Court of Claims, issued October 27, 2020 (Case No. 20-000207-MZ).

143. Defendants Benson and Bater also wrongly exercised their legislatively delegated authority when they issued a rule and ordered election officials to presume that a signature on a absent voter ballot is genuine.

144. Defendants Benson's act of imputing a presumption of genuineness into the process by which a absent voter ballot signature is reviewed fits within the definition of a "rule" because it is an instruction of general applicability, imposing a requirement on all local election officials to implement the procedure of validating signatures. See MCL 24.207.

145. Defendants Benson and Bater issued this rule without following the procedures required under the Administrative Procedures Act. In fact, it is unclear whether Defendants followed any procedures at all.

146. The Court of Claims has already ruled that Defendant Benson violated the APA when issuing guidance requiring local election officials to presume the signature on an absent voter ballot is genuine. See *Genetski v Benson et al*, Opinion of the Court of Claims, issued March 9, 2021 (Case No. 20-000216-MM).

147. Therefore, this Court must require that the text of the Election Law be enforced and order a mandatory review of all absentee ballots in Antrim County.

COUNT 6
ELECTION FRAUD; VIOLATION OF MCL 168.24j

(as to all Defendants)

148. Plaintiff restates and incorporates as if set forth fully herein all preceding allegations contained in this Amended Complaint.

149. Michigan does not allow private individuals or interest groups (no matter their partisan affiliation) to fund the cost of conducting an election. Rather, the cost of conducting an election in Michigan is to be paid with public funds allocated to local election jurisdictions as provided by Michigan law. This includes the cost of printing ballots, buying ballot containers and other election expenses. *See, e.g.*, MCL 168.666, 168.669 (reprinted in Appendix).

150. Michigan's Constitution and Michigan election law make no provision allowing private partisan or ideologically-oriented organizations to fund or direct the conduct of a Michigan election.

151. Michigan elections are not for sale. That is why Michigan law specifies that the funding and conduct of Michigan elections is governed by the provisions of the Michigan Constitution and Michigan election law and that the cost of conducting an election is to be paid with public funds appropriated according to Michigan law.

152. Defendant Benson violated the Michigan Constitution and Michigan election law (and thereby violated these Michigan voters' constitutional rights) by allowing a private outside special-interest organization to pay millions of dollars to predominantly Democrat election jurisdictions to influence the conduct of the 2020 general election and, as a condition of accepting these funds, allowed a private organization to direct how the election jurisdiction spends those funds and conducts the election.

153. By allowing an outside organization with a declared political agenda to selectively and privately fund how election authorities in predominantly Democrat precincts conduct the election, Defendant Benson has diminished the voting rights of one group of Michigan voters (those who live in rural and suburban precincts not receiving private outside funding) and has enhanced the voting rights of another group of Michigan voters (those in urban, progressive, and predominantly Democrat precincts where outside groups pay the election jurisdiction private funds to conduct the election).

154. A private group paying millions of dollars to local election jurisdictions in only predominantly Democrat precincts and directing how those jurisdictions will use these funds to conduct the election (essentially a partisan get-out-the-vote campaign) and directing what the

election authorities must do as a consequence of receiving these private funds undermines the integrity and honesty of Michigan elections and undermines public confidence in the fairness and outcome of Michigan elections.

155. The Center for Tech and Civic Life (CTCL) is an entity headquartered at 233 North Michigan Avenue in Chicago, Illinois. CTCL told the Internal Revenue Service in 2018 that the Center had only about a half-million dollars in assets. *See* [Exhibit 13] (CTCL's 2018 Form 990). In 2018 CTCL told the Internal Revenue Service that it had "contributions and grants" of about a half-million dollars and paid "Salaries, other compensation" of almost \$900,000. *See id.*

156. The Obama Foundation quoted CTCL director Tiana Epps-Johnson in 2016 as stating, "CTCL provides technology and data to boost voter turnout" [Exhibit 14].

157. CTCL is the successor to the partisan Democrat organization, the New Organizing Institute (NOI). At the time NOI disbanded and CTCL was formed, NOI issued a press release announcing that CTCL was being formed to continue the work of NOI. *See* [Exhibit 15] (*Announcing the Center for Technology and Civic Life*, April 8, 2015).¹² All three of CTCL's "founders" previously served in leadership roles at NOI, including Tiana Epps-Johnson, the Executive Director of CTCL, who served as the head of NOI's "election administration department." *See* CTCL website at: <https://www.techandciviclelife.org/our-team/>. The *Washington Post* described NOI as "the left's think tank for campaign know-how." [Exhibit 16] (Brian Fung, *Inside the Democratic Party's Hogwarts for Digital Wizardry*, *The Washington Post*, July 8,

¹² Available at: <http://neworganizing.wellstone.org/2015/04/announcing-the-center-for-technology-and-civic-life/>.

2014).¹³ Infamous among NOI's projects was NOI's annual "boot camp" for Democrat campaign operatives, which focused on training in "[d]igital strategy, or the use of data, new media and randomized controlled experiments to enhance a campaign's performance." *Id.*

158. When NOI ended operations in 2015, NOI announced:

Following their 2014 successes delivering civic information to millions of voters and connecting hundreds of election officials across the country, *NOI's Election Administration team is transitioning into its own organization, The Center for Technology and Civic Life. ...*

CTCL will continue a number of programs focused on supporting institutions and developing infrastructure for civic participation. *Current NOI programs that are moving to the Center include: The Governance Project ... The Ballot Information Project, [and] . . . ELECTricity.*

[Ex 15] (emphasis added). NOI also announced:

The Center for Technology and Civic Life is headed by Executive Director Tiana Epps-Johnson, formerly the head of NOI's Election Administration department. Also joining from NOI are co-founders Whitney May, who leads the ELECTricity project, and Donny Bridges, who heads CTCL's civic data programs.

Id.

159. CTCL's founders, Epps-Johnson, Bridges, and May, were all employees of, or worked for, NOI as department or project leaders. NOI was a center dedicated to training progressive groups and Democratic campaigns in digital campaign strategies. See [Ex 16]. NOI's executive director, Ethan Roeder, led the data departments for the Obama presidential campaigns of 2008 and 2012.

160. Funders of CTCL include progressive groups such as the Skoll Foundation, the Democracy Fund, the John S. and James L. Knight Foundation, and the Rockefeller Brothers Foundation. CTCL is also associated with Rock the Vote, which despite its non-partisan claims,

¹³ Available at: <https://www.washingtonpost.com/news/the-switch/wp/2014/07/08/inside-the-democratic-partys-hogwarts-for-digital-wizardry/?arc404=true/>

has regularly featured progressive policies in its efforts to turn out pro-Democrat voters.¹⁴ Along with Rock the Vote and The Skoll Foundation, CTCL also lists Facebook as a partner in its efforts. *See id.*

161. CTCL is not a "nonpartisan" organization interested in enhancing voter participation. Rather CTCL is an activist organization seeking to promote the election of Democrat candidates, including Joe Biden and Kamala Harris, and CTCL is managed and operated by former Democrat party operatives who are using the funds to further a Democrat "get-out-the-vote" effort in Democrat precincts.

162. In September CTCL announced that Mark Zuckerberg and his wife, Pricilla Chan, paid \$300 million to CTCL and the affiliated Center for Election Innovation and Research, including "\$250 million to CTCL ... which will regrant funds to local election jurisdictions." *See [Exhibit 17]* (CTCL September 1, 2020 press release).

163. CTCL then used these funds to pay local election authorities in predominantly Democrat election jurisdictions to increase the votes cast in urban, historically Democrat jurisdictions.

164. CTCL has paid, and continues to pay, millions of dollars to Michigan election authorities which have a predominantly-Democrat electorate. The funds CTCL has paid to these election officials have been selectively distributed to only election jurisdictions in Democratic precincts. In other words, CTCL selectively pays money to only those Michigan election jurisdictions with a documented history of casting ballots for Democrat candidates. CTCL paid millions of dollars to election officials in Wayne County-Detroit and the cities of Flint, Ann

¹⁴ *See* CTCL website at: <https://www.techandciviclelife.org/key-funders-and-partners>.

Arbor, Lansing, East Lansing, Kalamazoo, Muskegon, and Saginaw.¹⁵ *See, infra*, ¶35. All of these are historically Democrat precincts that voted between sixty and ninety percent in favor of Hillary Clinton in the 2016 presidential election. The votes cast in these jurisdictions in the 2016 presidential election are summarized on [Exhibit 18] (table of 2016 presidential election results for CTCL Michigan grant recipients).

165. CTCL says "[e]lection offices [to whom CTCL pays money] can use the funds to cover certain expenses incurred between June 15, 2020 and December 31, 2020." [Exhibit 19] (CTCL "grant" application instructions).¹⁶

166. CTCL requires the election officials to whom it gives money to spend that money on specified election activities, including activities to "Expand Voter Education & Outreach Efforts" and "Support Early In-Person Voting and Vote by Mail." *See* [Ex 19]. CTCL requires the local election officials CTCL pays to "submit a report that indicates how you spent the grant funds." *Id.* Thus, a local election authority must now report to, and follow, CTCL's directions as opposed to the Secretary of State's directions and Michigan Constitution and law.

167. CTCL says that, in exchange for this money, these election jurisdictions must pay for media campaigns to encourage voters to mail in their ballots, buy and distribute additional ballot drop boxes, and adopt a drive-thru voting program.

168. CTCL seeks to increase unsecured mail-in voting and unverified absentee voting by having local election officials establish illegal ballot drop boxes.

¹⁵ Michigan law provides that elections are conducted by counties, cities, villages, and townships under the supervision of the Michigan Secretary of State. *See* MCL 168.21, 168.31.

¹⁶ Available at: <https://www.techandciviclelife.org/our-work/election-officials/grants/>.

169. gain, the election jurisdictions CTCL has funded have one thing in common: they are all jurisdictions where the voters have historically cast ballots for Democrat candidates. *See* [Ex 16].

170. CTCL's payment of millions in cash to election jurisdictions in predominantly Democrat precincts is not authorized by federal or state law. CTCL has paid at least \$3,512,000 to Wayne County-Detroit, \$467,625 to the City of Flint, \$417,000 to the City of Ann Arbor, \$443,000 to the City of Lansing, \$433,580 to the City of Muskegon, \$402,878 to the City of Saginaw, \$218,869 to the City of Kalamazoo, and \$8,500 to the City of East Lansing, for a total of at least \$5,903,452.

171. Michigan (like other states) has a profound interest in protecting the integrity of Michigan elections and securing Michigan citizens' ballots. MCL 168.24j provides very specific requirements for a "ballot container" and requires that ballots only be deposited into these approved containers that are sealed and under the supervision of election officials.¹⁷ The

¹⁷ MCL 168.24j, requires:

- (1) A ballot container includes a ballot box, transfer case, or other container used to secure ballots, including optical scan ballots and electronic voting systems and data.
- (2) A manufacturer or distributor of ballot containers shall submit a nonmetal ballot container to the secretary of state for approval under the requirements of subsection (3) before the ballot container is sold to a county, city, township, village, or school district for use at an election.
- (3) A ballot container shall not be approved unless it meets both of the following requirements:
 - (a) It is made of metal, plastic, fiberglass, or other material, that provides resistance to tampering.
 - (b) It is capable of being sealed with a metal seal.
- (4) Before June 1 of 2002, and every fourth year after 2002, a county board of canvassers shall examine each ballot container to be used in any election conducted under this act. The board shall designate on the ballot container that the ballot container does or does not meet the requirements under

Secretary of State's Manual for Boards of County Canvassers provides an entire chapter governing the requirements for ballot containers. *See* Appendix.

172. [Exhibit 20] is a photograph of a Ballot Drop Box located in Lansing and a photograph of another Drop Box located at 1150 Giddings Avenue in Grand Rapids.¹⁸ These Ballot Drop Boxes do not comply with Michigan law and could result in lawfully cast ballots by Michigan voters being rejected or result in ballots being cast by individuals or organizations not legally entitled to cast a ballot.

173. Upon information and belief, similar drop boxes were strategically placed in select counties in northern Michigan, at select locations, including Torch Lake township in Antrim County.

174. Election officials may not put privately funded ballot drop-boxes on street corners when these ballot drop-boxes do not comply with the requirements of Michigan law requiring "ballot containers" to be secured and sealed.

175. As noted below, it is improper and illegal for election officials to accept private funds from an organization seeking to influence the election outcome to achieve a partisan agenda and it is improper for Defendant Benson to oversee an election in which a private,

subsection (3). A ballot container that has not been approved by the board shall not be used to store voted ballots.

- (5) A city, village, or township clerk may procure ballot containers as provided in section 669 and as approved under this section.
- (6) A clerk who uses or permits the use of a ballot container that has not been approved under this section is guilty of a misdemeanor.

¹⁸ See (Sarah Lehr, *Lansing, East Lansing Clerks Mail Absentee Ballot Applications to All Registered Voters*, *Lansing State Journal*, September 11, 2020), available at: <https://www.lansingstatejournal.com/story/news/2020/09/11/some-local-clerks-mailing-av-ballot-applications-all-voters/3458749001>.

See also Drop Boxes for Absentee Ballots Placed Around City of Grand Rapids, FOX17 News, available at: <https://www.fox17online.com/news/election-2020/drop-boxes-for-absentee-ballots-placed-around-city-of-grand-rapids>.

partisan, special-interest organization pays private funds to local election officials to conduct the election in a manner the private, partisan organization favors.

176. MCL 168.666 provides, "At each federal, state, district, or county primary or election, the secretary of state shall furnish to each county clerk *at state expense* ... [the following election supplies]." (emphasis added). And, MCL 166.669 requires that "[f]or a federal, state, district, or county primary or election, a city or township board of election commissioners shall provide, *at the expense of the respective city or township*, each of the following (a) For each election precinct, *a ballot container approved under section24j* to be utilized in the precinct." (emphasis added).

177. The State of Michigan and local election jurisdictions adopted a budget to fund the 2020 general election. CTCL's private funds paid to select predominantly Democrat election jurisdictions circumvent and violate Michigan law.

178. There is no provision in federal law or Michigan law allowing a private organization with a stated partisan purpose (advancing progressive ideology) to pay private funds to local election authorities and direct how the local election officials will conduct the election.

179. Local election jurisdictions are spending private funds paid to them by CTCL to (among other activities) buy and establish ballot drop boxes (colloquially called "Zuckerberg Boxes") to collect absentee and mail-in ballots placed in Democrat- majority jurisdictions.

180. These "Zuckerberg Boxes" do not comply with Michigan law. Michigan strictly regulates the requirement of a "ballot container" to prevent the tampering with ballots and to protect the integrity of every ballot lawfully cast by a Michigan voter. *See, supra*, ¶¶36-42.

181. These Zuckerberg ballot drop-boxes do not satisfy the requirements Michigan law demands for a secure ballot container. *See* Secretary of State's Manual for Boards of County Canvassers chapter VI.

182. The "Zuckerberg Boxes" acquired with private funds cannot possibly meet the requirements of MCL 168.24j and, even if they did satisfy the requirements of MCL for a legal "ballot container," they are being disproportionately placed in Democrat precincts and not made equally available throughout the state.

183. Additionally, the City of Lansing and the City of East Lansing used CTCL money to mail applications for absent voter ballots even when the voter did not request an absentee ballot and despite the fact that the City of Lansing and the City of East Lansing have no legal authority to mail unsolicited absentee ballot applications to voters who have not requested such an application. *See* [Exhibit 21] (Sarah Lehr, *Lansing, East Lansing Clerks Mail Absentee Ballot Applications to All Registered Voters*, *Lansing State Journal*, September 11, 2020).¹⁹ Local election officials may not send out mass absent voter applications. *See Young*, 122 A.3d at 858.

184. Secretary Benson's actions and her failure to act have undermined the constitutional right of all Michigan voters to participate in fair and lawful elections. These Michigan citizens' constitutional rights have been violated by Secretary Benson's failure to prevent an out-of-state special interest organization from selectively paying local election authorities and directing how local election authorities will conduct the 2020 general election.

185. Plaintiff's vote has been diluted as a result of these policies.

186. Plaintiff asks this Court to order Defendant Benson to either (a) order all local election jurisdictions that have received these private funds to return the money or (b) pay the

¹⁹ Available at: <https://www.lansingstatejournal.com/story/news/2020/09/11/some-local-clerks-mailing-av-ballot-applications-all-voters/3458749001>.

funds to Secretary of State Benson and order Secretary Benson to equally distribute the funds to *all* Michigan election jurisdictions on a *pro rata* basis based upon the number of registered voters in each election jurisdiction.

COUNT 7
ELECTION FRAUD; MCL 600.4545(2); MCL 158.861

(as to all Defendants)

187. Plaintiff restates and incorporates as if set forth fully herein all preceding allegations contained in this Amended Complaint.

188. MCL 600.4545(1) permits an "[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."

189. Such action may be brought to remedy fraudulent or illegal voting or tampering with ballots or ballot boxes before a recount pursuant to MCL 168.861, which states,

"For fraudulent or illegal voting, or tampering with the ballots or ballot boxes before a recount by the board of county canvassers, the remedy by quo warranto shall remain in full force, together with any other remedies now existing."

190. Defendants had notice of significant misconduct and other legal irregularities committed by election officials during the election conducted on November 3, 2020. Defendants neither investigated nor prevented violations of the Michigan Elections Code that occurred during the general election. Specifically:

a. that a county computer was left on during the November 3, 2020 general election with an open VPN port;

- b. that the results of the Antrim County election were patently inaccurate and that after repeated attempts, they Antrim County election officials were unable to reconcile reported anomalies in the vote counts found during the election efforts;
- c. That Defendants Guy and Benson demanded certification of these patently inaccurate results from county officials and canvas boards, notwithstanding notice that there were anomalies that could not initially be reconciled;
- d. that, as a result, the numbers certified in the November 3 general election lack credibility and therefore place in doubt the resulting vote totals certified for Antrim County.

191. Defendants conducted the primary elections on March 10, 2020 and August 4, 2020 and general election on November 3, 2020 on electronic voting equipment whose use they knew, had notice or should have known, had been rejected or questioned by other states and experts for reasons of security and verifiability , and did not assure that such issues had been satisfactorily resolved in Michigan, specifically:

- a. The State of Texas rejected for security reasons a Dominion Democracy Suite system similar to that which was used in Michigan. [Exhibit 22]; and that evidence will show security breaches during the March, August, and November elections was sufficient "sufficient to . . . place in doubt the result;"
- b. The Dominion Democracy Suite 5.5.12.1 system used in Michigan accumulates votes that are unverifiable to the voter because they are hidden in a QR code that is unreadable by a voter and that the State of Colorado banned the use of the similar Dominion Democracy Ballot Marking Device (BMD) used in Michigan because of disqualifying verifiability and security concerns.

192. The creator of the Risk Limiting audit procedure used in Michigan for the Dominion voting machines has written to officials in other states (Georgia) explaining that widespread use of BMD's with the Dominion voting machines undermines election integrity and that the audit procedure cannot be used to meaningfully audit BMD systems. Defendants participated in or ratified actions that violate Michigan election law, specifically:

- a. Compact Flash cards were not properly programmed prior to the November 3, 2020 election.
- b. Test ballots were not properly secured as required during Antrim County ballot testing on live ballot stock for the November 3, 2020 election.
- c. Several tabulators in Antrim County did not have the proper security seals, making them uncertified for the elections [Exhibit 23],
- d. Defendants Guy and Benson then made misleading statements to the public and media, claiming this was the safest election in history.

193. Under Michigan law, including MCL 168.861, the Defendants had a duty to investigate all credible reports of misconduct, fraud, or irregularity by any primary or election official or officials in order to eliminate the possibility that such misconduct, fraud or irregularity would be sufficient to change or place in doubt the result. Defendants were informed , both formally and informally, of misconduct , irregularities , and potential fraud, but failed to investigat, specifically:

- a. Dr. Navid Keshavarz-Nia signed an affidavit disclosing significant problems with Dominion Voting Systems [Exhibit 24].
- b.. The Secretary of State signed a contract for voting machines and support services with Dominion knowing that it contained a provision preventing State officials from discharging their lawful required duties and preventing voters from their lawful right to a full forensic audit, including their right to have audited the software in the machine in order to determine whether the machine "accurately and securely" tabulates ballots, among other issues.
- c. On November 11, 2020, Attorney General Dana Nessel gave an interview with the Washington Post wherein she threatened legislators with who she disagreed with criminal prosecution.²⁰ She tweeted it out and gave an interview that those legislators who might not agree with certifying the election could be investigated criminally by the chief law enforcement officer of the State of Michigan. The corresponding and referenced tweet by Dana Nessel has since been deleted from the official government account.

²⁰ https://www.washingtonpost.com/politics/michigan-attorney-general-canvassing-board-lawmakers/2020/11/20/87d19ce6-2b65-11eb-8fa2-06e7cbb145c0_story.html

- d. As observed during the "hand recount" on December 17, 2020, there were (i) a substantial (but determinative) number of ballots included the same handwriting for the same write-in candidate, casting doubt on whether they were marked by a qualified Michigan elector; (ii) a substantial (but determinative) number of counterfeit or absentee ballots without the proper crease; and (iii) different stock of paper used, casting doubt on whether they were "official ballots" produced and distributed in accordance with Michigan law.

194. The Defendants knew, or should have known, that other states had raised questions concerning the reliability and security of the voting system, and that its performance in the 2020 elections casts sufficient doubt on the reliability of the vote tallies it reports that county officials have publicly questioned not only the credibility of the numbers, but also their own ability to reconcile the anomalies produced in an effort to audit them.

195. Notwithstanding credible reports of both inaccuracies and security breaches, the Defendants have failed to exercise their duty to ensure that Michigan elections are fairly conducted and that the votes tallied reflect the intent of only qualified Michigan electors.

196. Based upon the allegations contained herein, material fraud or error occurred in this election so that the outcome of the election was affected.

197. Further, there were two ballot proposals in the 2020 general election: First, Proposal 20-1 regarding money from oil and gas mining. Second, Proposal 20-2 regarding search warrants to access a person's electronic data or electronic communications. Based on the evidence discovered that shows the unquestionable ability to manipulate the vote across Antrim County and the State of Michigan. Based on the fraud and corruption uncovered, Plaintiff challenges the results of the Proposals 20-1 and 20-2.

198. Based upon the above allegations of fraud, statutory violations, and other misconduct, as stated herein, it is necessary to permit Plaintiff to continue to collect the forensic image of the 17 precinct tabulators thumb drives, related software, and the Clerk's "master

tabulator," other equipment and computers used in the November 3, 2020 general election, and conduct an investigation of those images, after which a manual recount of the election results and an independent audit of the November 3, 2020 election may be ordered to ensure the accuracy and integrity of the election.

COUNT 8
COMMON LAW ELECTION FRAUD

(as to all Defendants)

199. Plaintiff restates and incorporates as if set forth fully herein all preceding allegations contained in this Amended Complaint.

200. MCR 3.306(B)(2) permits an action to request the issuance of a writ of quo warranto. An application to proceed by quo warranto must disclose sufficient facts and grounds and sufficient apparent merit to justify further inquiry.

201. Quo warranto is warranted whenever it appears that material fraud or error has been committed at any election. This type of action is brought to challenge the validity of the election itself. *Barrow v Detroit Mayor*, 290 Mich App 530, 543; 820 NW2d 658 (2010). For all the reasons stated herein material fraud or error was committed during the election as it relates to the Dominion voting systems used in Antrim County's 22 precincts.

202. This quo warranto claim is brought to remedy fraudulent or illegal voting or tampering with ballots via Dominion. Based upon the allegations contained herein, material fraud or error occurred in this election so that the outcome of the election was affected.

203. Based upon the above allegations of fraud, statutory violations, and other misconduct, as stated herein, it is necessary to permit Plaintiff to continue to collect the forensic images of the 17 precinct tabulators, thumb drives, related software, the Clerk's "master tabulator," other equipment and computers used in the November 3, 2020 general election, and

conduct an investigation of those images, after which a manual recount of the election results and an independent audit of the November 3, 2020 election may be ordered to ensure the accuracy and integrity of the election.

COUNT 9
EQUAL PROTECTION VIOLATION

Mich Const, art 1, § 2

(as to all Defendants)

204. Plaintiff restates and incorporates as if set forth fully herein all preceding allegations contained in this Amended Complaint.

205. The Equal Protection Clause of the Michigan Constitution provides that "[n]o person shall be denied the equal protection of the laws; nor shall any person be denied the enjoyment of his civil or political rights." Mich Const, art I, § 2.

206. This clause is coextensive with the United States Constitution's Equal Protection Clause. *Harville v State Plumbing & Heating*, 218 Mich App 302, 305-306; 553 NW2d 377 (1996). See also *Bush v Gore*, 531 US 98, 104 (2000) ("Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person's vote over that of another."); *Harper v Virginia Bd. of Elections*, 383 US 663, 665 (1966) ("Once the franchise is granted to the electorate, lines may not be drawn which are inconsistent with the Equal Protection Clause of the Fourteenth Amendment.")²¹

207. *Young v. Red Clay Consol. Sch. Dist.*, 122 A.3d 784, 858 (Del. Chan. Ct. 2015), demonstrates the dangers of a government scheme to target get-out-the-vote efforts on a favored demographic group. The school district wanted its referendum to pass; so, it targeted parents of

²¹ Most United States Supreme Court rulings concerning the right to vote frame the issue in terms of the Equal Protection Clause. Ronald D. Rotunda & John E. Nowak, *Treatise on Constitutional Law: Substance & Procedure* §18.31(a) (2012 & Supp. 2015).

school children and adult students for a get-out-to-vote campaign. In *Young*, the court identified the school district's scheme to get-out-the- vote of the parents and adult students as also violating election law. The court held that the school district's improper influence upon a demographic group interfered with the "full, fair, and free expression of the popular will" *Id.* The court stated that the government conducting the election in a manner that favored one group of voters was equivalent to the government disfavoring another group of voters.

Historically, the law has focused on forms of "improper influence" that have interfered with the voting rights of disfavored demographic groups by dissuading or preventing them from voting through blatant means like fraud, violence, and intimidation.

A government certainly violates the Elections Clause if it skews the outcome of an election in this manner. Parity of reasoning suggests that a government can violate the Elections Clause if it skews the outcome of an election by encouraging and facilitating voting by favored demographic groups. In both situations, the government has diminished the voting rights of one portion of the electorate and enhanced the voting rights of another portion of the electorate. In neither case is the election "free and equal."

Id.

208. The conduct of the election and the allocation of funds necessary to fairly and equally conduct an election must be "apportioned on a population basis." *Reynolds v. Sims*, 377 U.S. 533, 568 (1964). Michigan's allocation of funds necessary to conduct the 2020 general election (as governed and overseen by Secretary Benson) is (similar to the apportionment of legislative districts) subject to the federal Equal Protection Clause. *See id.* *See also Wesberry v. Sanders*, 376 U.S. 1 (1964), and *Evenwel v. Abbott*, 136 S.Ct. 1120 (2016). The United States Constitution and Michigan's Constitution forbid the Secretary of State and local election officials from selectively benefitting one group of Michigan voters (urban voters in predominantly Democrat jurisdictions) over another group of Michigan voters (suburban and rural voters in non-Democrat precincts).

209. When 3 votes were destroyed in Central Lake Township, the government Defendants, as state actors, along with other co-conspirators, including Election Source, acted arbitrarily or irrationally, and treated Plaintiff less favorably than those similarly situated.

210. The government Defendants and their co-conspirators (including Election Source) acted maliciously, recklessly, intentionally, or by reason of gross negligence or violation of the law in arbitrarily destroying some ballots or otherwise violating Michigan election laws.

211. Plaintiff seeks declaratory and injunctive relief requiring Defendant Benson to prevent local election jurisdictions from accepting millions of dollars paid by CTCL to tilt the playing field to advance a get-out-the-vote effort in only predominantly Democrat jurisdictions. Alternatively, Plaintiff asks this Court to order Defendant Benson to direct the local election officials who have received these private funds to remit those funds to Defendant Benson and order Defendant Benson to equally distribute the funds to all Michigan election jurisdictions on a *pro rata* basis according to the number of registered voters in each election jurisdiction.

212. The right to vote is a fundamental civil right and a political right. The Equal Protection Clause forbids election officials granting the right to vote on equal terms but later devaluing a person's vote through failing to use specific standards and uniform rules.

213. Every Michigan voter enjoys an equal right to participate in the 2020 general election. By allowing a privately-funded organization with an announced partisan agenda to fund public election authorities in get-out-the-vote efforts in only predominantly Democrat precincts, Secretary Benson has violated the Michigan Constitution and Michigan election law. Secretary Benson has diminished the voting rights of one group of Michigan citizens (those who are registered to vote in rural and non-Democrat jurisdictions) and enhanced the voting rights of another group of Michigan voters (those living in urban, progressive, and historically Democrat

jurisdictions). This unequal treatment of Michigan voters violates the Michigan Constitution's guarantee of equal protection.

214. Only specific standards and uniform rules provide sufficient guarantees of equal treatment. Every person has the right to vote, with their vote counted as one vote, and not have his or her vote diluted and voided out by the counting of an illegal vote.

215. Defendant's handling of the election, as described herein, establishes how rampant and systemic fraud devalued and diluted Plaintiff's civil and political rights.

216. The illegal procedures, illegal standards, and illegal treatment of the ballots and the counting of ballots in Antrim County unconstitutionally burden the fundamental right to vote.

217. Defendant Benson has no legitimate interest in counting illegal and improper ballots, counting ballots more than once, improperly handling the collection and counting of ballots, or using the Dominion voting system to do the same in a way that dilutes and cancels out rightfully and properly cast votes.

218. Based upon the above allegations of fraud, statutory violations, and other misconduct, as stated herein, it is necessary to permit Plaintiff to continue to collect the forensic images of the 17 precinct tabulators, thumb drives, related software, the Clerk's "master tabulator," other equipment and computers used in the November 3, 2020 general election, and conduct an investigation of those images, after which a manual recount of the election results and an independent audit of the November 3, 2020 election may be ordered to ensure the accuracy and integrity of the election.

219. Secretary Benson's failure to lawfully oversee this election and specifically allowing an ideologically-driven organization to pay private funds to only election jurisdictions in predominantly Democrat precincts cannot be sustained under any applicable level of scrutiny

