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STATE OF MICHIGAN
IN THE SUPREME COURT

APPEAL FROM THE MICHIGAN COURT OF APPEALS

WILLIAM BAILEY

Plaintiff

v.

ANTRIM COUNTY

Defendant

SECRETARY OF STATE JOCELYN BENSON

Intervenor-Defendant,

_____/

Supreme Court No. _____

COA Case No: 357838

LC Case No. 20-9238-CZ

APPLICATION FOR LEAVE TO APPEAL

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APPENDIX OF PLAINTIFF-APPELLANT

VOLUME 3

TABLE OF CONTENTS

Volume 1

Ex 1: Court of Appeals Opinion, per curiam, dated April 21, 2022.....1

RECEIVED by MSC 6/2/2022 1:49:42 AM

Ex 2: Errata Order, dated May 25, 2021 14

Ex 3: Order Denying Plaintiff's Motion for Rehearing or Reconsideration Under MCR 2.119(F)(3), dated June 25, 2021 17

Ex 4: Transcript, May 10, 2021 (Defendants' Joint Motion for Summary Disposition 20

Ex 5: Transcript, May 18, 2021 (Ruling on Defendants' Motion for Summary Disposition)....135

Ex 6: Response to Motion for Summary Disposition....157

Ex 1. Testimony of Sheryl Guy 195

Ex 2. Benson Press Release, Nov 23, 2020 208

Ex 3. Benson Press Release, Dec 9, 2020....210

Ex 4. Benson Press Release, Dec 14, 2020....213

Ex 5. Benson Press Release, Dec 18, 2020....217

Ex 6, Benson Press Release, Mar 2, 2021....220

Ex 7. Allied Security Operations Group, Preliminary Antrim Michigan Forensics Report 224

Ex 8. Dismissals....248

Ex 9. Errata – Order Setting Aside Dismissal....251

Ex 10. James Penrose, *Preliminary Assessment of Wireliess Communications Technology for Michigan Voting Systems*, Apr 9, 2021....254

Volume 2

Ex 11. Affidavit of Benjamin R. Cotton, Apr 8, 2021 263

Ex 12. Cyber Ninjas, *Antrim County, MI Election Management System Application Security Analysis*, Apr 9, 2021 270

Ex 13. James Penrose, May 2, 2021 289

Ex 14. Jeffrey Lenberg, May 3, 2021 315

Ex 15. NOTICE: All County Audit, Dec 15, 2020....333

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RECEIVED by MSC 6/2/2022 1:49:42 AM

Ex 16. Email....336

Ex 17: Hand Count Calculation Sheet....337

Volume 3

Ex 18. Post-Election Audit Manual....339

Ex 19. *Ryan et al v Benson*, Michigan Court of Claims, *Opinion and Order Regarding Plaintiff's Emergency Motion for Immediate Declaratory Judgment*, Case No. 20-000198-MZ....353

Ex 7: Plaintiff's Supplemental Brief....363

Ex 1. Jeffrey Lenberg, *Preliminary Report of Subversion in the Antrim County Election Management System, Results Tallying and Reporting Application*, May 9, 2021....368

Ex 8: Plaintiff's Motion for Reconsideration....386

Ex 1. Errata Order....432

Ex 2. Jeffrey Lenberg, *Case Study Banks Township – Antrim County Election Management Server Found to be Subverted*, Jun 9, 2021....435

Ex 3. Sample ballot....474

Ex 4. Jeffrey Lenberg, *Centralized Subversion of Election Vote Totals and Paper Tapes*, Jun 9, 2021....477

Ex 5. Jeffrey Lenberg, *Central Lake Township Reversals Make Ballots Impossible to Count, Helena Township 21% Ballot Reversal Rate, 20% Higher Reversal Rate for Republican voters and Mancelona Late Night Ballot Processing*, Jun 9, 2021....494

Volume 4

Ex 6. Judy Koslowski affidavit....504

Ex 7. Affidavit of Benjamin R. Cotton, Jun 8, 2021....507

Ex 8. Jeffrey Lenberg, *Missing Evidence for Evaluation of Antrim County Election, Official Ballots are Easily Fabricated, and Official Ballot PDFs Flawer Making for Errors in Processing*, Jun 9, 2021....516

Ex 9: Order Staying All Matters, dated Sep 3, 2021....525

Ex 10: Election Results Chart #1....528

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RECEIVED by MSC 6/2/2022 1:49:42 AM

Ex 11: Election Results Chart #2 529

Ex 12: *Genetski v Benson*, Michigan Court of Claims, *Opinion and Order Granting Summary Disposition in Part to Plaintiffs and Granting Summary Disposition in Part to Defendants*, Case No. 20-000216-MM 530

Ex 13: Transcript, April 12, 2021 (Motions) 547

Ex 14: Notice of Hearing, Defendants' Joint Motion for Summary Disposition 675

Ex 15: Plaintiff's Motion to Adjourn 677

Ex 1. Transcript, April 12, 2021 684

Ex 2. Notice of Hearing 705

Ex 3. Email 707

Ex 16: Notice of Hearing, Plaintiff's Motion to Adjourn 710

Ex 17: Transcript, May 25, 2021 (Motions) 712

Ex 18: Motion to Amend Complaint 750

Ex A. Amended Verified Complaint 756

Ex 19: Supplement to Motion to Amend Complaint 825

Ex A. Amended Verified Complaint (Exhibits in court file) 834

Ex 20: Second Supplement to Motion to Amend Complaint 916

Ex 1. Jeff Lenberg, May 18, 2021 919

Ex 21: Notice of Hearing, Plaintiff's Motion to Amend Complaint 923

Ex 22: Transcript, April 23, 2021 (Motions) 925

Ex 23: Transcript, April 26, 2021 (Motions) 943

Respectfully submitted

DePERNO LAW OFFICE, PLLC

Dated: June 2, 2022

/s/ Matthew S. DePerno
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Exhibit 18

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Post-Election Audit Manual

Michigan Department of State
Bureau of Elections

January 2020

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Post-Election Audits Manual - Table of Contents

This manual is designed to assist with the conduct of post-election audits.

Introduction to Post-Election Audits 3
Selection Process 3
Clerk Preparation 4
Conducting the Post-Election Audit 4
- Pre-Election Requirements 4
- ePollbook Evaluation 5
- Voting System Review – Test Procedure Manual for Tabulators & Voter Assist Terminals 6
- Test Deck Completion 6
- Voter Assist Terminal 7
- Application to Vote & Military and Overseas Voter Review 8
- Absent Voter Information Posting 8
- Receiving Board Checklist 8
- Paperwork Assessment 8
- Provisional Ballot Form Review 11
- Ballot Container Examination 11
- Voted Ballot Hand Count Audit 12
- Final Review 12

Appendix 13
- Additional Test Deck Charts 13

RECEIVED by MSC 6/2/2022 1:49:42 AM

Introduction to Post-Election Audits

MCL 168.31a instructs the Secretary of State to develop an election audit program that details the documents to be inspected and the procedures used in preparation for and during an election. The post-election audit process will thoroughly review procedures performed before, during, and after the conduct of an election, including a review of voted ballots with a hand tally of select contests. The review of voted ballots will verify the equipment used to count votes worked properly and yielded the correct result. Information collected as part of the post-election audit process will be used as an educational tool for all levels of election administration. Assignments will be made in the eLearning Center to reinforce deficiencies found of the local and/or county clerks.

Key Points

☆ *Audit Process*
Following the canvass of an election, counties and Bureau of Elections staff will conduct a thorough review of pre-election and election day documents to determine if procedures were properly followed according to state law and established procedure.

☆ *Selection Process*
The Bureau of Elections will randomly select precincts and contests for counties following each election and may select additional precincts and contests to be audited at the state level.

☆ *Focus of the Audit*
Election notices, election inspector appointments and training, ePollbook security, test deck procedures, military and overseas voter applications, and a review of the *Pollbook* and ballot containers used on election day will be the primary focus of the audit. In addition, an audit of the results of up to three contests in a General election and one contest in other elections on the ballot in each precinct will be conducted.

☆ *Audit Findings*
Discrepancies and deficiencies found as a result of the post-election audit will be used as training points for the local clerk who is participating in the audit as well as aid in the determination of future training needs to be provided at both the county and state level. The audit of voted ballots will reinforce accuracy and security of the voting system.

Important Considerations

Those subject to a post-election audit should continue to maintain the security of their election day materials until the post-election audit has been conducted. The goal of the post-election audit process is to enhance election administrators' understanding of required elections procedures and practices and ensure the accuracy of the voting system and tabulation process.

Selection Process

The Bureau of Elections will randomly select precincts and contests for county audits the day after an election. The Bureau of Elections may select additional precincts to be audited at the state level as well. Participants will be contacted by their County Clerk or the State depending on who is conducting the audit. The list of those being audited will also be announced in a News Update following the election.

Participants must maintain security on all of their election day materials until the post-election audit has been conducted. Further, the participants should ensure the ePollbook (EPB) and associated encrypted flash drive for the precinct selected are kept secure and data is ***not*** deleted until the audit is completed. (Note: Per the EPB user agreement, data must be deleted seven days post canvass; this deadline is extended for precincts involved in post-election audits.

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Clerk Preparation

County clerks conducting audits will coordinate the scheduling of the audit with the local jurisdiction. The audit should take place in a public location and when possible in a location agreeable to the local clerk. As a subject of the audit, the local clerk and county clerk must provide all materials needed to conduct the audit of the specified precinct **and** associated absent voter counting board.

	Materials needed to conduct a Post-Election Audit
❒	Noticer of Registration (Affidavit of Publication)
❒	Election Notice (Affidavit of Publication)
❒	Public Accuracy Test Notice (Affidavit of Publication)
❒	Election Commission's election inspector appointment record (minutes or signed resolution from meeting)
❒	Listing of appointed election inspectors
❒	Election Inspector applications for all inspectors appointed
❒	Confirmation that election inspectors attended training (dated or signed certificate or sign in sheet)
❒	Confirmation that election inspector appointments were sent to the major political parties (fax or email verification or certified mail receipt) [partisan elections only]
❒	ePollbook laptop used in the precinct and encrypted flash drive
❒	Absent Voter Ballot Posting [partisan elections only]
❒	Sealed container that contains all testing materials; including: ❒ Test deck ❒ Chart of pre-determined results ❒ Tabulator zero and results tapes
❒	Tabulator Testing and Security Certification Form (may be sealed in the test container)
❒	Election Commission Certification - Public Accuracy Test (if applicable)
❒	Voter Assist Terminal Preparation Checklist and Test Certification Form
❒	*Pollbook*
❒	Applications to Vote
❒	Affidavits of Voter Not in Possession of Picture Identification
❒	AV apps for Military and Overseas Voters and confirmation of ballot sent (e.g., email or fax receipt, proof of mailing if available)
❒	Sealed ballot container with ballots
❒	Program container certificate (if applicable)
❒	Provisional Ballot Forms
❒	Master card for any voter issued an Affidavit or Envelope ballot
❒	Final Canvass Report
❒	Receiving Board Checklist

Conducting the Post-Election Audit

The post-election audit must be conducted *within 30 days of Canvass completion unless a recount has been ordered*. The post-election audit will require the inspection of election documents and the procedures used prior to the election and on election day. A comprehensive worksheet will be used to uniformly conduct the post-election audit for precincts throughout the state. Detailed instructions on the use of the worksheet follow. All discrepancies should be documented on the back side of the worksheet. ***Note:*** If the Board of Canvassers corrected any item reviewed during the conduct of the post-election audit at the Canvass, the information provided by the election inspectors should be used to answer the appropriate questions. Corrections made by the Board of Canvassers should be noted on the reverse side of the worksheet.

Pre-Election Requirements

Public Notices
Michigan Election Law requires a number of notices to be published in a local newspaper prior to an upcoming election. The newspaper should supply an Affidavit of Publication to the publisher to confirm publication. Review the following notices:

Notice of Registration (MCL 168.498(3) – Ch. 16. Election Officials' Manual)

- Publication date must be no later than 30 days before the election.

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- Must include: name of the jurisdiction, date of the election, listing of the offices to be elected/nominated, a brief description of ballot proposals and where to find the full text, locations where registrations will be accepted, and days and hours when an authorized person will be available to accept the registration.

Notice of Election (MCL 168.653a – Ch. 16. Election Officials' Manual)

- Publication date must be no later than the seventh calendar day before the election.
- Must include: date of the election and polling place hours, listing of the offices to be elected/nominated, a brief description of ballot proposals and where to find the full text, a listing of polling place locations, a statement regarding accessibility in the polling place, and if a millage increase is on the ballot, a tax rate limitation statement.

Public Logic and Accuracy Test (MCL 168.798(1) Ch. 16 Election Officials' Manual)

- Publication date must be at least 48 hours prior to the conduct of the test.
- Test date must be conducted no later than the fifth day prior to the election.
- Must include: date of the election, date, time, and location of the test and a statement regarding the purpose of the test.

When reviewing these items, place a checkmark in the *Yes* box when all of the above criteria are met. If a component is missing, place a checkmark in the *No* box and explain the discrepancy on the backside of the worksheet.

Weekend Hours in QVF
Using QVF, verify the eight hours the clerk's office is required to be open the Saturday and/or Sunday prior to the election was entered into the Clerk Contacts tab *(MCL 168.761b).*

Election Inspectors – Ch. 13 Election Officials' Manual
The Election Commission of each jurisdiction must appoint precinct and receiving board inspectors at least 21 days but not more than 40 days before each election *(MCL 168.674)*. Review Election Commission minutes and/or resolutions to ensure these appointments took place. Place a checkmark in the appropriate box to indicate if the Election Commission made the appointments. Ensure at least one Republican and one Democrat was appointed to the precinct.

Next, review the Election Inspector applications provided. Ensure there is an application for every inspector appointed *(MCL 168.677)*. Place a checkmark in the appropriate box to indicate if all applications are available. Then verify each election inspector attended a training class *(MCL 168.683)*. Place a checkmark in the appropriate box to indicate if proof was provided for each inspector appointed. Lastly, place a checkmark in the appropriate box to indicate if proof that the election inspector appointments were sent to the local major political parties if evaluating a partisan election *(MCL 168.674).*

ePollbook Evaluation *(if applicable)*

Certain security features must be employed in the ePollbook software and on the encrypted flash drive in order to maintain security of sensitive voter information *(Reference User Agreement and ePollbook User Manual)*. Using the laptop and flash drive used in the precinct on election day, evaluate the following:

1. Open the EPB software and verify the encryption password is a strong password and not QVFSecure08. *A strong password contains a combination of at least eight upper and lower case characters with at least one number or symbol.*

2. Login to the software using the ADMIN username. Click on Sys Admin and User Administration. Verify additional usernames were created. Check *Yes or No* next to "Unique User/Pwd" on the worksheet.

3. Plug the encrypted flash drive in and ensure the V-Safe100 software is listed or Bitlocker is installed (check the BL box and skip to step 4 if the latter). If V-Safe 100 was used, double click on V-Safe 100. If a password is requested, answer *Yes* to the

File Name	File Type
EPB Back Up	ACCDB file
EPB_History	CSV file
rptBallot Summary	PDF file
rptRemarks	PDF file
rptVoter List	PDF file

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"PrivacyZone Active" question on the worksheet. Otherwise answer *No.*

4. Request the Password from the local Clerk and enter into the V-Safe 100 or Bitlocker pop-up box. Verify the five files listed in the image to the right were saved. You may need to open a folder to verify. If all seven files are listed, mark *Yes* on the worksheet for "Docs Saved in PZ." If some of the files are listed but not all, indicate which files are missing on the back side of the worksheet.
5. Record the date the hostservice.zip file was modified.

Voting System Review – Test Procedure Manual for Tabulators & Voter Assist Terminals

A vital component to a successful election is the conduct of the preliminary and public Logic and Accuracy Testing prior to the election. All Logic and Accuracy Testing materials should have been placed under seal in an approved ballot container (separate from the precinct container) after testing was completed. Verify the container containing the testing material is sealed and indicate *Yes or No* on the worksheet. Verify that the seal number on the container is the seal number that was recorded on the *Tabulator Program Testing and Security Certification Form* (which may be sealed in the container) and record the answer on the worksheet.

A record of the tabulator serial number and the seal number must also be recorded on the *Tabulator Program Testing and Security Certification* form after the preliminary accuracy test. When performing this portion of the audit, verify that the *Tabulator Program Testing and Security Certification Form* lists the seal and serial number for the tabulator. Verify the seal and serial numbers listed on the *Tabulator Program Testing and Security Certification Form* match the seal and serial numbers listed in the corresponding precinct's Clerk's Preparation Certificate portion of the *Pollbook*. Place appropriate checkmarks on the worksheet to indicate whether these seals and serial numbers matched. If the jurisdiction used a vendor for testing and that same vendor programmed the memory cards, verify that the *Election Commission Certification* form was also completed and place a checkmark in the appropriate EC Addendum box. If the ballot marks were printed by a vendor using non-precinct ballot stock, ensure at least three ballots were hand marked and place a checkmark in the appropriate Pre-printed TD – HM box.

Next write the dates the Preliminary and Public Tests were conducted on the appropriate line of the worksheet. Public Tests should have been conducted at least five days prior to the election. Preliminary tests should be conducted as soon after receiving ballots as possible and well before the public test.

Test Deck Completion

Next review the Logic and Accuracy Testing "test deck" and chart of pre-determined results. There are initially thirteen ballot creation instructions required to be marked on to test ballots and then additional test ballots must be created to ensure the vote totals are different for each candidate in a race. Place a checkmark in the appropriately numbered box on the checkbox to indicate proper completion of each test ballot. *(MCL 168.798(1), R 168.773 and R 168.776).* See Appendix for other election type charts.

Instruction	Pre-determined result – General Election
1	All positions on the ballot voted.
2	All unused positions on the ballot voted.
3	A blank ballot.
4	One straight party vote cast (no other partisan votes).
5	Two straight party votes cast resulting in an overvote (no other partisan votes).
6	In a different office for each instruction: (a) One straight party vote, plus: (b) In a "vote for 1" partisan office, 1 vote for 1 candidate of the same party used in (a) (c) In a "vote for 1" partisan office, 1 vote for 1 candidate of a different party than used in (a) (d) In a "vote for 2" partisan office, 1 vote for 2 candidates, each from different parties (e) No votes in a partisan office where a candidate appears under the party selected in (a) (f) A vote for 1 write-in candidate in either a partisan or non-partisan office (g) Non-partisan offices and proposals voted
7 (Ballot 1)	No straight party vote and votes correctly voted in the partisan section with overvotes in the non-partisan and proposal sections

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7 (Ballot 2)	No straight party vote and votes correctly voted in the non-partisan section with overvotes in the partisan and proposal sections
7 (Ballot 3)	No straight party vote and votes correctly in the proposal section with overvotes in the partisan and non-partisan sections
8	In a different office for each instruction: (a) Two straight party votes cast (b) In two "vote for 1" offices, 1 vote for 1 candidate listed under the first party selected in (a) and a vote for 1 candidate listed under second party selected in (a) (c) In two "vote for 1" offices, 1 vote for 1 candidate of the first party selected (d) In a "vote for 1" office, 1 vote for 1 candidate of the second party selected *Additional ballots may be required to complete (c) and (d).
9	In a different office for each instruction: (a) One straight party vote where 2 candidates of that party are in a "vote for 2" partisan race (b) In the first "vote for 2" office, where there are 2 candidates from the party used in (a), 2 votes for candidates of a different party than used in (a) (c) In a second "vote for 2" office, where there are 2 candidates from the party used in (a), 2 votes for candidates of two different parties than used in (a) *if a ballot contains a "vote for 3" office and there are 3 candidates from that party running, an additional test ballot must be included following this same instruction but subbing 3 for 2.
10	In a different office for each instruction: (a) One straight party vote where 2 candidates of that party are in a "vote for 2" partisan race (b) In the first "vote for 2" office, where there are 2 candidates from the party used in (a), 1 vote for a candidate of a different party than used in (a) (c) In a second "vote for 2" office, where there are 2 candidates from the party used in (a), 1 vote for a candidate of the party used in (a) and 1 vote for a candidate of a different party (d) In a third "vote for 2" office, where there are 2 candidates from the same party used in (a), 1 vote for a candidate of the same party used in (a) *Additional ballots may be required to complete this test
11	(a) One straight party vote where only 1 candidate of the same party is in a "vote for 2" partisan race (b) In a second "vote for 2" office, where there is only 1 candidate from the party used in (a), 1 vote for a candidate of a different party than used in (a) *Additional ballots may be required to complete this test
12	One straight party vote and individual votes for each candidate in that same party. Repeat for each party.
13	A ballot voted from a different precinct (if applicable).
Dif. Totals	Additional ballots voted to ensure at least 2 straight party votes have been cast for each party and a different total number of valid votes are cast for each party in the straight party section, each candidate within an office, and for and against each proposal.

Once each ballot and the chart of pre-determined results have been reviewed, compare the chart of pre-determined results with the tabulator tape. Check *Yes or No* on the worksheet provided to indicate whether the results from the chart of pre-determined results matched the tabulator tape or not. Lastly, indicate on the worksheet whether or not a zero tape for the test was provided.

Voter Assist Terminal

1. Review the *Voter Assist Terminal Preparation Checklist and Test Certification Form* and verify it was properly completed.
2. Locate the VAT Test Deck to verify the VAT was tested before the Election.
3. Locate the blank "test" ballot used to test the VAT on Election Day (if any).
4. Count the number of voters that used the VAT by:
    a. Reviewing the precinct list for an alternate ballot number (if stubbed stock was used); or by
    b. Opening the VAT envelope used to invalidate precinct ballots (if regular ballot numbers were used); or by
    c. Counting the number of VAT ballots found in the ballot container

PLAINTIFF-APPELLANT's Appendix 000346

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Application to Vote & Military and Overseas Voter Review

Review the *Applications to Vote*. Physically count the *Applications to Vote* and determine if there is the same number of *Applications to Vote* as voters in the *Pollbook*. Next, spot check the *Applications to Vote* to ensure they were properly completed by voters and election inspectors. Check *Yes or No* on the worksheet provided to indicate the answers to these questions.

Record the number of *Affidavits of Voter Not in Possession of Picture Identification* completed.

If absentee ballots were processed in the precinct, use the *AV Applications to Vote* to determine whether the precinct processed any Military or Overseas voters. Then review the applications to ensure those ballots were sent within 24 hours of receipt of the application or if the application was received more than 45 days prior to the election the ballot was sent by the 45th day prior to the election (e.g., email or fax receipt, proof of mailing if available). Answer the appropriate questions on the worksheet and note any discrepancies on the backside of the worksheet. **NOTE**: In a precinct with no or minimal military and overseas absentee ballots, the local Clerk should bring all military and overseas absent voter ballot applications for the jurisdiction. Conduct a thorough review of those applications using the guidelines above. *(MCL 168.759a and Military and Overseas Voter for Election Administrators Manual)*

Absent Voter Information Posting

If auditing an election with a state or federal office, review the absent voter information posting required to be posted before and on election day. Prior to 8 a.m. on election day the number of AV ballots distributed to absent voters, the number of absent voter ballots returned, and the number of absent voter ballots being delivered must be recorded and posted. Before 9 p.m. the number of absent voter ballots issued to same day registrants on election day, returned on election day, number of absent voter ballots returned and delivered for processing on election day and the grand totals for each must be recorded and posted. Finally, once all returns are complete, the total number of absent voter ballots returned by voters and the total number processed should be recorded and posted. Indicate completion on the worksheet. *(MCL 168.765(5) and Ch. 6 Election Officials' Manual).*

Receiving Board Checklist

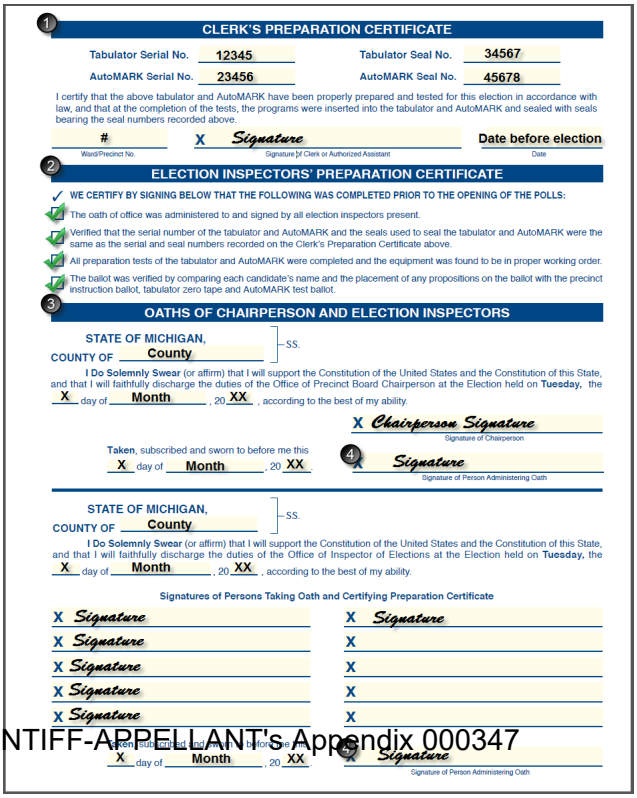
Verify the completion of a Receiving Board checklist on election day. Indicate completion of the worksheet. *(MCL 168.679a and Receiving Board Guide)*

Paperwork Assessment

Finally, review the remaining components of the *Pollbook*. The following images are examples of properly completed *Pollbooks*. Please note, there are many styles of *Pollbooks* in use throughout the state and the layout may be different from what is displayed below.

Pollbook

Items 1-4 are generally found on the front and inside cover of the *Pollbook*.



1 CLERK'S PREPARATION CERTIFICATE

Tabulator Serial No. 12345 Tabulator Seal No. 34567
AutoMARK Serial No. 23456 AutoMARK Seal No. 45678

I certify that the above tabulator and AutoMARK have been properly prepared and tested for this election in accordance with law, and that at the completion of the tests, the programs were inserted into the tabulator and AutoMARK and sealed with seals bearing the seal numbers recorded above.

Ward/Precinct No. X Signature of Clerk or Authorized Assistant Date before election Date

2 ELECTION INSPECTORS' PREPARATION CERTIFICATE

WE CERTIFY BY SIGNING BELOW THAT THE FOLLOWING WAS COMPLETED PRIOR TO THE OPENING OF THE POLLS:

- The oath of office was administered to and signed by all election inspectors present.
- Verified that the serial number of the tabulator and AutoMARK and the seals used to seal the tabulator and AutoMARK were the same as the serial and seal numbers recorded on the Clerk's Preparation Certificate above.
- All preparation tests of the tabulator and AutoMARK were completed and the equipment was found to be in proper working order.
- The ballot was verified by comparing each candidate's name and the placement of any propositions on the ballot with the precinct instruction ballot, tabulator zero tape and AutoMARK test ballot.

3 OATHS OF CHAIRPERSON AND ELECTION INSPECTORS

STATE OF MICHIGAN, COUNTY OF County } SS.

I Do Solemnly Swear (or affirm) that I will support the Constitution of the United States and the Constitution of this State, and that I will faithfully discharge the duties of the Office of Precinct Board Chairperson at the Election held on Tuesday, the X day of Month, 20 XX, according to the best of my ability.

X Chairperson Signature — Signature of Chairperson

Taken, subscribed and sworn to before me this X day of Month, 20 XX

4 X Signature — Signature of Person Administering Oath

STATE OF MICHIGAN, COUNTY OF County } SS.

I Do Solemnly Swear (or affirm) that I will support the Constitution of the United States and the Constitution of this State, and that I will faithfully discharge the duties of the Office of Inspector of Elections at the Election held on Tuesday, the X day of Month, 20 XX, according to the best of my ability.

Signatures of Persons Taking Oath and Certifying Preparation Certificate

X Signature
X Signature
X Signature
X Signature
X Signature
X Signature
X
X
X
X
X

Taken, subscribed and sworn to before me this X day of Month, 20 XX

5 X Signature — Signature of Person Administering Oath

PLAINTIFF-APPELLANT's Appendix 000347

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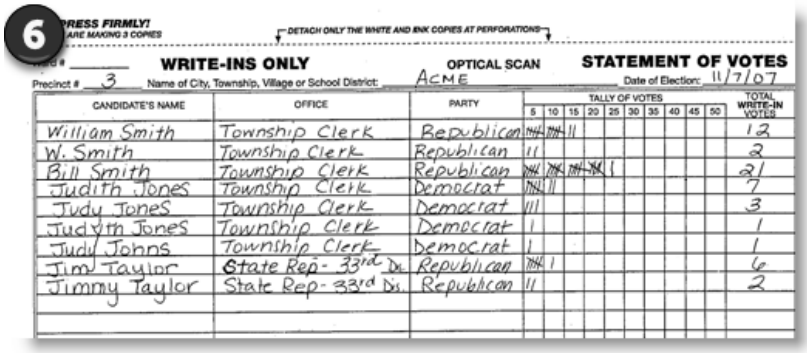
1. Review the Clerk's Preparation Certificate. A completed Clerk's Preparation Certificate includes serial and seal numbers for both the tabulator and the Voter Assist Terminal. In addition, a signature and date prior to the election should be included.
2. Ensure all checkboxes are completed in the Election Inspectors' Preparation Certificate and that the inspectors signed. Many *Pollbooks* combine the signatures with step 3.
3. Ensure all inspectors (including the chairperson) subscribed to the Constitutional Oath of Office.
4. Ensure the oath administrator signed in the appropriate location(s).
5. Compare the signatures of the election inspectors with the Election Commission appointments to ensure all that signed the oath were appointed.
6. If applicable, ensure the write-in portion of the *Pollbook* was completed. Votes should be properly totaled after the tally marks.



6

PRESS FIRMLY! ARE MAKING 3 COPIES — DETACH ONLY THE WHITE AND PINK COPIES AT PERFORATIONS

WRITE-INS ONLY — **OPTICAL SCAN** — **STATEMENT OF VOTES**

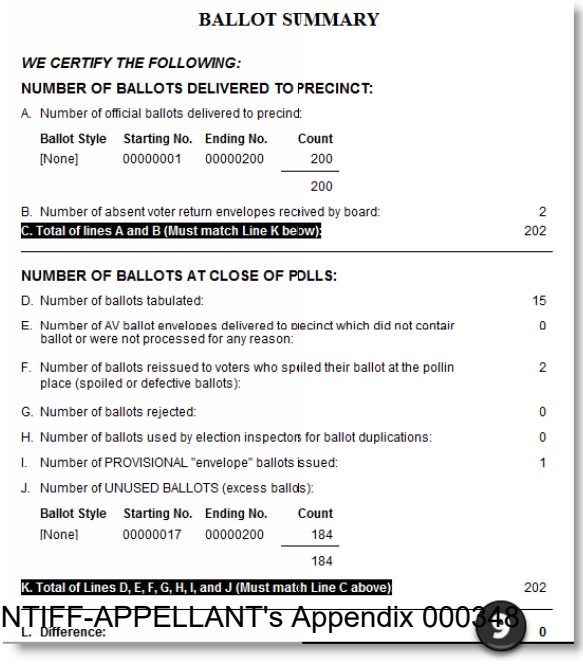
Precinct # 3 — Name of City, Township, Village or School District: ACME — Date of Election: 11/7/07

CANDIDATE'S NAME	OFFICE	PARTY	TALLY OF VOTES (5 10 15 20 25 30 35 40 45 50)	TOTAL WRITE-IN VOTES
William Smith	Township Clerk	Republican	12	12
W. Smith	Township Clerk	Republican	2	2
Bill Smith	Township Clerk	Republican	21	21
Judith Jones	Township Clerk	Democrat	7	7
Judy Jones	Township Clerk	Democrat	3	3
Judyth Jones	Township Clerk	Democrat	1	1
Judi Johns	Township Clerk	Democrat	1	1
Jim Taylor	State Rep - 33rd Dt.	Republican	6	6
Jimmy Taylor	State Rep - 33rd Dt.	Republican	2	2

7

ATTACH PRECINCT TABULATOR STATEMENT OF VOTES TAPE HERE.

7. Ensure the tabulator tape/statement of votes (should be affixed to the Statement of Votes signature page in the back of *Pollbook*) was signed by all election inspectors.
8. Ensure the number of ballots tabulated on the totals tape matches the number of voters listed in the *Pollbook*.



BALLOT SUMMARY

WE CERTIFY THE FOLLOWING:

NUMBER OF BALLOTS DELIVERED TO PRECINCT:

A. Number of official ballots delivered to precinct:

Ballot Style	Starting No.	Ending No.	Count
[None]	00000001	00000200	200
			200

B. Number of absent voter return envelopes received by board: 2

C. Total of lines A and B (Must match Line K below): 202

NUMBER OF BALLOTS AT CLOSE OF POLLS:

D. Number of ballots tabulated: 15

E. Number of AV ballot envelopes delivered to precinct which did not contain ballot or were not processed for any reason: 0

F. Number of ballots reissued to voters who spoiled their ballot at the polling place (spoiled or defective ballots): 2

G. Number of ballots rejected: 0

H. Number of ballots used by election inspectors for ballot duplications: 0

I. Number of PROVISIONAL "envelope" ballots issued: 1

J. Number of UNUSED BALLOTS (excess ballots):

Ballot Style	Starting No.	Ending No.	Count
[None]	00000017	00000200	184
			184

K. Total of Lines D, E, F, G, H, I, and J (Must match Line C above): 202

L. Difference: 0

9. Ensure the Ballot Summary (found in the *Pollbook*) is completed, balanced, and totals are accurate. The **Difference** should always be zero. If there is a valid discrepancy, was it remarked? If so, check the Remark box.

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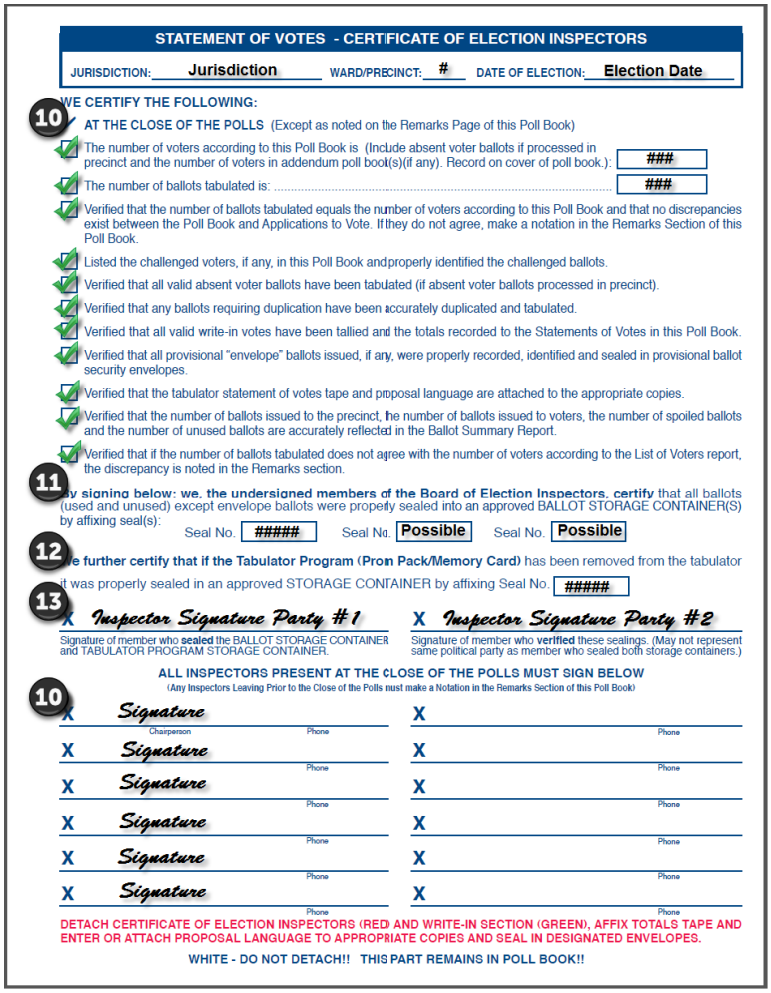
Items 10-13 are usually found on the last page or two in the *Pollbook*.

10. Ensure all checkboxes are completed in the Election Inspectors' Completion Certificate and that the inspectors signed.

11. Ensure the ballot container seal number is properly recorded. Most containers only require one seal.

12. Ensure the program container seal number is properly recorded (if applicable).

13. Ensure one inspector of each major political party signed the seal certification.



STATEMENT OF VOTES - CERTIFICATE OF ELECTION INSPECTORS

JURISDICTION: Jurisdiction WARD/PRECINCT: # DATE OF ELECTION: Election Date

WE CERTIFY THE FOLLOWING:

10 AT THE CLOSE OF THE POLLS (Except as noted on the Remarks Page of this Poll Book)

- The number of voters according to this Poll Book is (Include absent voter ballots if processed in precinct and the number of voters in addendum poll book(s)(if any). Record on cover of poll book.): ###
- The number of ballots tabulated is: ###
- Verified that the number of ballots tabulated equals the number of voters according to this Poll Book and that no discrepancies exist between the Poll Book and Applications to Vote. If they do not agree, make a notation in the Remarks Section of this Poll Book.
- Listed the challenged voters, if any, in this Poll Book and properly identified the challenged ballots.
- Verified that all valid absent voter ballots have been tabulated (if absent voter ballots processed in precinct).
- Verified that any ballots requiring duplication have been accurately duplicated and tabulated.
- Verified that all valid write-in votes have been tallied and the totals recorded to the Statements of Votes in this Poll Book.
- Verified that all provisional "envelope" ballots issued, if any, were properly recorded, identified and sealed in provisional ballot security envelopes.
- Verified that the tabulator statement of votes tape and proposal language are attached to the appropriate copies.
- Verified that the number of ballots issued to the precinct, the number of ballots issued to voters, the number of spoiled ballots and the number of unused ballots are accurately reflected in the Ballot Summary Report.
- Verified that if the number of ballots tabulated does not agree with the number of voters according to the List of Voters report, the discrepancy is noted in the Remarks section.

11 By signing below: we, the undersigned members of the Board of Election Inspectors, certify that all ballots (used and unused) except envelope ballots were properly sealed into an approved BALLOT STORAGE CONTAINER(S) by affixing seal(s): Seal No. ##### Seal No. Possible Seal No. Possible

12 We further certify that if the Tabulator Program (Pron Pack/Memory Card) has been removed from the tabulator it was properly sealed in an approved STORAGE CONTAINER by affixing Seal No. #####

13 X Inspector Signature Party #1
Signature of member who **sealed** the BALLOT STORAGE CONTAINER and TABULATOR PROGRAM STORAGE CONTAINER.

X Inspector Signature Party #2
Signature of member who **verified** these sealings. (May not represent same political party as member who sealed both storage containers.)

ALL INSPECTORS PRESENT AT THE CLOSE OF THE POLLS MUST SIGN BELOW
(Any Inspectors Leaving Prior to the Close of the Polls must make a Notation in the Remarks Section of this Poll Book)

10

X Signature (Chairperson) Phone	X Phone
X Signature Phone	X Phone
X Signature Phone	X Phone
X Signature Phone	X Phone
X Signature Phone	X Phone
X Signature Phone	X Phone

DETACH CERTIFICATE OF ELECTION INSPECTORS (RED) AND WRITE-IN SECTION (GREEN), AFFIX TOTALS TAPE AND ENTER OR ATTACH PROPOSAL LANGUAGE TO APPROPRIATE COPIES AND SEAL IN DESIGNATED ENVELOPES.

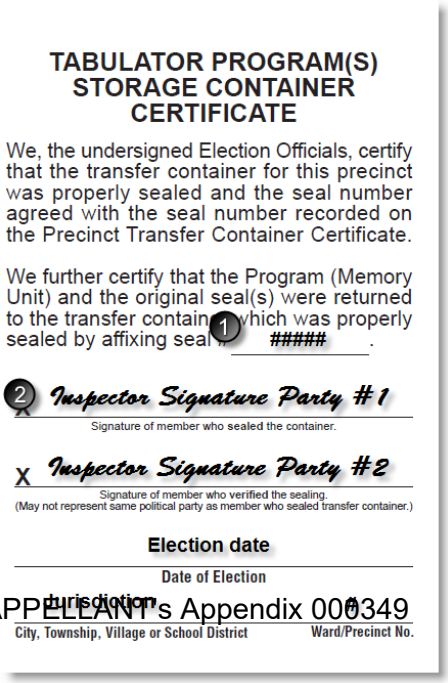
WHITE - DO NOT DETACH!! THIS PART REMAINS IN POLL BOOK!!

Program Container Certificate (if applicable)
Finally, the Program Container Certificate should be reviewed. Ensure proper completion by:

1. Verifying the seal number was properly recorded.

2. Verifying one inspector of each major political party signed the seal certification.

NOTE: If the Certificate is not available, the *Pollbook* may be used.



TABULATOR PROGRAM(S) STORAGE CONTAINER CERTIFICATE

We, the undersigned Election Officials, certify that the transfer container for this precinct was properly sealed and the seal number agreed with the seal number recorded on the Precinct Transfer Container Certificate.

We further certify that the Program (Memory Unit) and the original seal(s) were returned to the transfer container which was properly sealed by affixing seal # 1 #####.

2 X Inspector Signature Party #1
Signature of member who sealed the container.

X Inspector Signature Party #2
Signature of member who verified the sealing.
(May not represent same political party as member who sealed transfer container.)

Election date
Date of Election

Jurisdiction
City, Township, Village or School District Ward/Precinct No.

PLAINTIFF-APPELLANT's Appendix 000349

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Provisional Ballot Form Review

Review the *Provisional Ballot Forms* with the *Pollbook* to ensure the number issued matches the number in the Ballot Summary.

- For a voter issued an Affidavit ballot, review the *Provisional Ballot Form* and verify the election inspector marked Question 3 *Yes*.
- For a voter issued an Envelope ballot, review the *Provisional Ballot Form* and verify the election inspector marked Question 3 *No*.

Without researching the registration of each voter, review the uncounted Envelope ballot *Provisional Ballot Forms*.

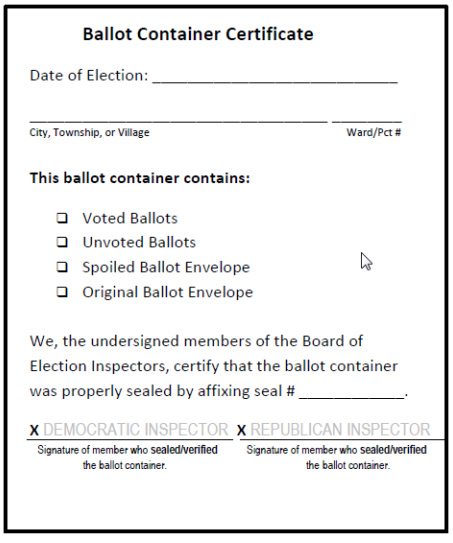
- Determine based on the information provided on the form if the Envelope ballot was appropriately processed by the election inspector and/or the local Clerk.

Ensure a master card is available for each voter issued an Affidavit or Envelope ballot verifying the voter was registered to vote after the election. Finally, if an envelope ballot was counted, verify it was sealed in an approved ballot container.

Answer the appropriate questions on the worksheet after review of all *Provisional Ballot Forms*. Explain any discrepancies on the backside of the worksheet *(MCL 168.523a and Ch. 11 Election Officials' Manual)*.

Ballot Container Examination

Locate the ballot container seal number recorded in the *Pollbook* and enter it on to the worksheet. Then examine the ballot container. Record the seal number found on the *Ballot Container Certificate* (below left) and then the seal number on the actual container on to the worksheet. Indicate on the worksheet whether the *Ballot Container Certificate* was signed by one election inspector of each major political party. Now verify the container was properly sealed. A properly sealed container is one in which the seal has been affixed securely and the ballot container is unable to be opened. The last check in this section is to ensure the Board of Canvassers approval certificate (below right) is affixed to the ballot container. Record the answer to these questions on the worksheet by selecting the appropriate *Yes or No* boxes. *(Ch. 12 Election Officials' Manual).*



Ballot Container Certificate

Date of Election: _____

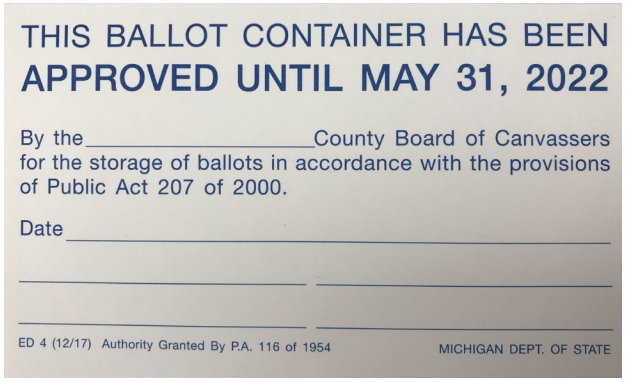
_____ _____
City, Township, or Village Ward/Pct #

This ballot container contains:

- ❑ Voted Ballots
- ❑ Unvoted Ballots
- ❑ Spoiled Ballot Envelope
- ❑ Original Ballot Envelope

We, the undersigned members of the Board of Election Inspectors, certify that the ballot container was properly sealed by affixing seal # _____.

X DEMOCRATIC INSPECTOR X REPUBLICAN INSPECTOR
Signature of member who sealed/verified the ballot container. Signature of member who sealed/verified the ballot container.



THIS BALLOT CONTAINER HAS BEEN
APPROVED UNTIL MAY 31, 2022

By the _____ County Board of Canvassers for the storage of ballots in accordance with the provisions of Public Act 207 of 2000.

Date _____

_____ _____

_____ _____

ED 4 (12/17) Authority Granted By P.A. 116 of 1954 MICHIGAN DEPT. OF STATE

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Spoiled & Duplicated Ballots
Open the ballot container and pull out the Spoiled and Original Ballot Envelopes. Does the number of spoiled ballots in the *Spoiled Ballot Envelope* equal the number of spoiled ballots listed in the *Pollbook*? Answer the appropriate question on the worksheet. Next, open the Original Ballot Envelope. If the envelope contains ballots, attempt to locate the matching duplicate with the voted ballots in the ballot container. Verify the ballots were properly duplicated and indicate that verification on the worksheet. Finally, indicate whether any of the duplicated ballots were electronic (MOVE) or FWAB ballots and if they were duplicated properly as well on the worksheet. Do this in a manner which avoids identifying the voter. *(Ch. 12 Election Officials' Manual).*

Voted Ballot Hand Count Audit

The final step in the post-election audit is a review of voted ballots with a hand tally of select contests. As done in a recount, two people should count to ensure the number of ballots matches the number tabulated and/or the number of voters. One person will count the ballots, placing them in a stack while the second person looks on to ensure two ballots aren't stuck together and the count is accurate. Count ballots one at a time and place them in stacks of 25 as you count. Then ballots should be separated into piles based on the vote cast in the contest being audited. This should be done in the same manner as the initial count and the vote cast should be determined based on Michigan Validity Standards. Add up the totals for:

Each Candidate (if applicable)
Yes (if applicable)
No (if applicable)
Write-ins (if applicable)
Overvotes
Undervotes

Record both the hand counted totals and the totals provided in the Board of Canvassers Report on the Worksheet (attach additional pages if necessary). Note any changes from the tabulator tape totals. Repeat these steps for other contests if applicable.

Final Review

Ensure all aspects of the worksheet have been completed and that any discrepancies have been explained on the backside of the worksheet. Once the verification is complete, replace the *Pollbook* and Statement of Votes into the appropriate envelopes and reseal as necessary. Each auditor should sign the backside of the worksheet verifying the completion of the process. After the post-election audit is conducted, the worksheet should be reviewed with the local Clerk.

The worksheet data must then be entered electronically in the eLearning Center using the Post-Election Audit Online Form within two days of audit completion. Auditors should retain the worksheet for 2 years post-election in case clarification is needed. Once the data has been submitted electronically, the Bureau of Elections will make assignments in the eLearning Center to those jurisdictions with deficiencies. The assignments could be a manual, reference document, online course, and/or video tutorial reinforcing proper procedures.

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Appendix

Additional Test Deck Charts

Instruction	Pre-determined result – Proposal Only Election
1	All positions on the ballot voted.
2	All unused positions on the ballot voted.
3	A blank ballot.
4	One ballot voted correctly
5	A ballot voted from a different precinct.
Dif. Totals	Additional ballots voted to ensure a different total number of valid votes are cast for and against each proposal.

Exhibit 19

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STATE OF MICHIGAN

COURT OF CLAIMS

DAN RYAN, PAUL DRISCOLL, JOELLEN M. PISARCZYK, and MYRON ZOLKEWSKY.

Plaintiffs,

v

JOCELYN BENSON,

Defendants.
_____/

OPINION AND ORDER REGARDING PLAINTIFFS' EMERGENCY MOTION FOR IMMEDIATE DECLARATORY JUDGMENT

Case No. 20-000198-MZ

Hon. Christopher M. Murray

This matter is before the Court on plaintiffs' October 7, 2020 emergency motion for immediate declaratory judgment under MCR 2.605.[1]

I. BACKGROUND

Plaintiffs bring this action against defendant Jocelyn Benson, Michigan's Secretary of State. As Secretary of State, defendant is "the chief election officer of the state and has supervisory authority over local election officials." *Citizens Protecting Michigan's Const v Secretary of State*, 324 Mich App 561, 566; 922 NW2d 404 (2018), citing MCL 168.21. In her

[1] Two quick procedural points. First, contrary to defendant's argument, an expedited or "emergency" motion for declaratory relief is permissible under the court rules. MCR 2.605(D). Second, plaintiffs' reply brief, consisting of 20 pages, although not in violation of the court rules, is excessive. Although LCR 2.119(C)(4) incorporates MCR 2.116(G)(1)(a)(iii), and that latter rule only applies to motions for summary disposition, given that rule and the expedited nature of this proceeding, the Court counsels plaintiffs from filing such lengthy reply briefs in the future.

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role as chief election officer, defendant shall "[a]dvise and direct local election officials as to the proper methods of conducting elections." MCL 168.31(1)(b). Defendant shall also investigate the administration of election law and report suspected violations of the same to the state's attorney general. MCL 168.31(1)(h).

Plaintiffs' verified complaint alleges that defendant failed to exercise her duty to regulate the conduct of the 2020 general election by failing to prohibit partisan interest groups from funneling grant money to certain local jurisdictions. In particular, plaintiffs allege that a private organization with a partisan agenda, the Center for Tech and Civic Life (CTCL), awarded grants to a select group of Michigan election jurisdictions in an effort to influence the outcome of the November 3, 2020 general election. According to links provided by the parties to the CTCL grant application process, the grants can cover the cost of things like hand sanitizer, personal protective equipment for election officials, voter education, poll workers, and training for poll workers. The complaint alleges that these private funds have been used to pay for printing and distributing absentee ballots and for ballot drop-boxes. The ballot boxes allegedly secured by this funding do not, according to plaintiffs, comply with the requirements mandated by this state's election law.

Specifically, plaintiffs assert MCL 168.666(a) (explaining that the Secretary of State "shall furnish" certain items, including metal seals suitable for sealing ballot boxes "at state expense") and MCL 168.669(b) (requiring cities and township to provide, at their own expense, an approved ballot container) does not permit private organizations to fund the cost of conducting an election. Plaintiffs allege that defendant allowed CTCL to provide funding contrary to this election law, and also did so primarily in electoral jurisdictions that favor one political party over another. And by doing so, plaintiffs allege that defendant has improperly favored the voting rights of individuals based on political preference.

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Plaintiffs ask the Court to declare that defendant violated Const 1963, art 2, § 4's "purity of elections" clause, as well as Const 1963, art 1, § 2 (equal protection), by allowing certain jurisdictions to accept private funds for use in the upcoming general election. Meanwhile, other jurisdictions that have not received grant funding must rely on taxpayer funding to conduct the election. Plaintiffs also allege a violation of this state's election law with respect to what they contend are improper absentee ballot boxes. Further, citing media reports, the complaint alleges that the CTCL sent money to the City of Lansing and the City of East Lansing, which those cities used to send absent voter ballot applications to voters. Plaintiffs ask that the Court enjoin defendant from allowing local jurisdictions to accept private funds from groups such as CTCL. Finally, plaintiffs ask the Court to issue a writ of mandamus compelling defendant to "require all contributions of private funds received by local election jurisdictions to be returned to the donor," or to have these purportedly illegal funds distributed on an "equal basis to all election jurisdictions in Michigan on a pro rata basis by the number of registered voters in each jurisdiction."

II. ANALYSIS

Plaintiffs have asked the Court for declaratory, injunctive, and mandamus relief, each of which require the exercise of significant discretion. See *Van Buren Charter Twp v Visteon Corp*, 319 Mich App 538, 545; 904 NW2d 192 (2017); *Berry v Garrett*, 316 Mich App 37, 41; 890 NW2d 882 (2016); *Martin v Murray*, 309 Mich App 37, 45; 867 NW2d 444 (2015). As will be discussed below, given the numerous material factual disputes surrounding plaintiffs' allegations, the Court declines to exercise its discretion *at this time* to issue the requested relief, particularly with the general election fast approaching. But before addressing those two points that are dispositive of this emergency motion, the Court turns to two potentially dispositive defenses to the case: standing and laches.

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A. STANDING

Defendant argues that plaintiff lacks standing. A litigant "may have standing . . . if the litigant has a special injury or right, or substantial interest, that will be detrimentally affected in a manner different from the citizenry at large or if the statutory scheme implies that the Legislature intended to confer standing on the litigant." *Lansing Schs Ed Ass'n v Lansing Bd of Ed*, 487 Mich 349, 372; 792 NW2d 686 (2010). One injury alleged by plaintiffs is that their votes will be diluted or diminished. Defendant argues that plaintiff does not have a special injury or right that will be detrimentally affected in a manner that is different than the citizenry at large. In support, defendant cites cases concerning "vote dilution" and Article III standing in federal court, with some federal district courts explaining that generalized and speculative grievances of "vote dilution" will not suffice to confer standing. See, e.g., *Carson v Simon*, __ F Supp 3d __ (D Minn, 2020).

The difficulty with defendant's argument is that the *LSEA* Court held that Michigan standing jurisprudence is not coterminous with federal standing doctrine, *LSEA*, 487 Mich at 362, and thus the federal decisions under Article III provide no useful guidance. The standards for determining standing in a Michigan court are, for better or worse, much less stringent than the federal standard. *League of Women Voters of Michigan v Secretary of State*, __ Mich App __, __; __ NW2d __ (2020) (Docket Nos 350938 & 351073) (BOONSTRA, J., *concurring*) ("In sum, the restoration of the limited, prudential approach to standing in *Lansing Sch Ed Ass'n* made it *easier* to establish standing, or at least transformed the previously-existing *requirement* of standing into a *discretionary* consideration for the courts."). Here, because plaintiffs have a cause of action for a violation of the equal protection clause, and their rights could be substantially and

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detrimentally affected differently than others within the general public,[2] they have standing to bring these claims.

B. LACHES

Plaintiffs' complaint is also not barred by laches, though one issue is. "If a plaintiff has not exercised reasonable diligence in vindicating his or her rights, a court sitting in equity may withhold relief on the ground that the plaintiff is chargeable with laches." *Knight v Northpointe Bank*, 300 Mich App 109, 114; 832 NW2d 439 (2013). "For laches to apply, inexcusable delay in bringing suit must have resulted in prejudice." *Tenneco Inc v Amerisure Mut Ins Co*, 281 Mich App 429, 457; 761 NW2d 846 (2008).

Plaintiffs did not engage in an unreasonable delay in filing this action. In arguing otherwise, defendant directs the Court's attention to CTCL's website, but the information gleaned from that source does not support the application of laches. According to the website, jurisdictions were invited to apply for grants "beginning the week of Tuesday, September 8, 2020." Center for Tech and Civil Life, https://www.techandciviclife.org/our-work/election-officials/grants/ (accessed October 16, 2020). The website indicates that applications would be processed in "about two weeks." *Id*. Disbursement of funds would then ostensibly occur after approval is received. Based on this information,[3] and *assuming* the jurisdictions at issue applied on the first possible day, i.e., September 8, 2020, *presumably* the jurisdictions would have received decisions on their

[2] In their verified complaint plaintiffs allege that the counties in which they reside have not had access to the grant monies that other counties have, thus at least facially meeting this standard.

[3] Relying almost exclusively on what is contained on a website does not give the Court great confidence on what was required at the time any applications from Michigan jurisdictions were made.

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applications, at the earliest, sometime around September 22, 2020.[4] Money would have *presumably* been awarded shortly after that, and any purchases of the at-issue equipment or other expenditures would have taken place sometime after that as well. Thus, the expenditures and purchases that are the subject of plaintiffs' complaint would have *most likely* occurred in late September or early October. However, all of this is uncertain because the parties have not provided the Court with more precise and reliable information.

Nevertheless, plaintiffs filed their complaint on or about October 5, 2020. Based on the above timeline, it is not immediately apparent—with one exception noted below—that plaintiffs unnecessarily delayed in bringing this action. And where defendant has raised the issue of laches but has otherwise failed to give the Court meaningful information to analyze the defense, the Court declines to conclude that the entire action should be dismissed based on laches.

However, this conclusion does not apply to plaintiffs' allegations about absent voter ballot applications being sent in the City of Lansing and the City of East Lansing. According to the media report cited in plaintiffs' complaint,[5] the mailing of these ballots was reported to the public on September 11, 2020.[6] It is possible that recipients of those applications filled them out, received their absent voter ballots, and returned them already. The decision to wait nearly a month after

[4] Despite raising laches as a defense, defendant has provided no information about when the applications were approved, or when grant money was awarded.

[5] Again, not the most trustworthy pieces of "evidence", if it can even be properly considered evidence as to the truthfulness of what is contained in the reports. *Baker v Gen Motors Corp*, 420 Mich 463, 511; 363 NW2d 602 (1984).

[6] Given the timeline noted above regarding applications to CTCL and the application process opening on or about September 8, 2020, it is not apparent whether Lansing and East Lansing even received CTCL funding for the absent voter ballot applications.

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the applications were sent out, and potentially even after voters returned their ballots, suggests a lack of reasonable diligence. The Court notes that the complaint does not specify the specific relief sought with regard to these applications, if defendant was even involved[7] in sending them, or if the ballot applications were even secured with grant funding, given that they were sent to registered voters mere days after grant applications could even be submitted to the CTCL. Nevertheless, the Court concludes that any relief granted with respect to these would be prejudicial at this late stage, and that laches bars any claim arising out of the absent voter ballot applications.

C. MATERIAL FACTUAL DISPUTES

As to the remaining issues, it is certainly true that both MCL 168.666 and MCL 168.669 require public sources of funding for ballot boxes. However, plaintiffs have asked the Court to grant emergency relief without offering undisputed proof that: (1) ballot boxes were purchased with private grant money and (2), if they were, how many were purchased and by whom. Evidence on at least those issues would likewise help determine whether the state, by disparate treatment, valued one person's vote over another's, *Bush v Gore*, 531 US 98, 104-105; 121 S Ct 525; 148 L Ed 2d 388 (2000), as would evidence about the similarity between the counties receiving private funding and those that did not.[8] Thus, as to the statutory funding claim and equal protection claim as plead, plaintiffs have not identified the extent of the private funding (or really any verification,

[7] Nor does the complaint take stock of the recent decision affirming defendant's own ability to send absent voter ballot applications. See *Davis v Secretary of State*, __ Mich App __, __ ; __ NW2d __ (2020) (Docket No. 354622).

[8] In their reply brief plaintiffs quoted statements purportedly from defendant that could suggest that defendant *encouraged* private funding for certain parts of the state (the specific local jurisdictions outlined by plaintiffs), which *if true* could also be relevant to at least the equal protection claim.

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outside of the allegations), and the allegations and limited evidence do not entitle them to the *immediate* relief requested.

The same holds true with respect to plaintiffs' claim rooted in the "purity of elections clause" contained within art 2, § 4. The "purity of elections clause embodies two concepts: " 'first, that the constitutional authority to enact laws to preserve the purity of elections resides in the Legislature; and second, 'that any law enacted by the Legislature which adversely affects the purity of elections is constitutionally infirm.' " *Taylor v Currie*, 277 Mich App 85, 96; 743 NW2d 571 (2007), quoting *Socialist Workers Party v Secretary of State*, 412 Mich 571, 596; 317 NW2d 1 (1982) (further citation omitted). As explained in *Currie*, the phrase "requires . . . fairness and evenhandedness in the election laws of this state." *Id*. at 97.

Here, plaintiffs' claims are purportedly rooted in notions of "fairness and evenhandedness." As noted, plaintiffs quoted statements purportedly from defendant that could suggest that defendant encouraged private funding for the specific local jurisdictions outlined by plaintiffs (as well as for other states such as Ohio, Pennsylvania, Wisconsin and Arizona). Additionally, plaintiffs purport to quote defendant speaking about the "outcome" of the election when addressing the use of private funding of local election apparatus, which again, if true, could lend support to a purity of elections problem. But additional facts, and possibly fact-finding by the Court, is necessary before any legal conclusions can be made.

D. COURT INTERFERENCE WITH AN ON-GOING ELECTION

Aside from the material factual issues precluding the grant of the request for an immediate ruling on the merits, another important principle precludes the request for emergency relief. That principle is that, in the context of election-related litigation, courts must be ever-mindful of the

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potential for prejudice resulting from court rulings in the days and weeks before an election. This principle has been stated years ago, *Purcell v Gonzalez*, 549 US 1, 4-5; 127 S Ct 5; 166 L Ed 2d 1 (2006), and repeatedly this year. *Republican Nat'l Comm v Democratic Nat'l Comm*, __ US __; 140 S Ct 1205; 206 L Ed 2d 452 (2020) (per curiam); *Andino v Middleton*, __ US __, __; __ S Ct __; __ L Ed 2d __ (U.S. Oct. 5, 2020) (KAVANAUGH, J., concurring in grant of stay); *Little v Reclaim Idaho*, __ US __, __; 140 S Ct 2616, 2616-17; __ L Ed 2d __ (2020) (ROBERTS, C.J., concurring in the grant of stay); *New Democratic Coalition v Austin*, 41 Mich App 343, 356-357; 200 NW2d 749 (1972) (refusing to grant relief where doing so would "result in immense administrative difficulties for election officials" before an upcoming election). Voting is underway, drop-boxes (which are permissible under Michigan law) have allegedly already been dispersed in some parts of the state, and to interfere with that process when the election is less than three weeks away would be imprudent. As a result, the Court declines to grant any immediate relief. See *Purcell*, 549 US at 4-5. A scheduling order will soon issue.[9]

Plaintiffs' emergency motion for declaratory judgment is DENIED.

Date: October 16, 2020

Christopher M. Murray
Judge, Court of Claims

[9] These issues will likely not be moot after the election given the shortness of time to actually litigate these important issues. See, e.g., *Castner v Grosse Pointe Park*, 86 Mich App 482, 487; 272 NW2d 693 (1978) ("We will state only briefly that the present controversy is not moot, even though the primary election has since been held, since the issue raised is one that is capable of repetition yet may evade review for the reason that the time period between when nominating petitions are filed and the subsequent election held is normally too short to allow the case to progress fully through the appellate system.").

Exhibit 7

Plaintiff's Supplemental Brief

May 10, 2021

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FILED
Sheryl Guy
Antrim 13th Circuit Court
05/10/2021

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

WILLIAM BAILEY Plaintiff	Case No. 20-9238-CZ
v.	
ANTRIM COUNTY Defendant	HON. KEVIN A. ELSENHEIMER
SECRETARY OF STATE JOCELYN BENSON Intervenor-Defendant.	

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PLAINTIFF'S SUPPLEMENTAL BRIEF

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Plaintiff, WILLIAM BAILEY ("Plaintiff"), by and through his attorney, DePerno Law Office, PLLC, submits the following Supplemental Brief for the following matters:

1. Plaintiff's Brief in Support of Plaintiff's Response to Joint Motion for Summary Disposition Pursuant to MCR 2.116(C)(4) and (8)
2. Plaintiff's Motion to Amend Complaint
3. Plaintiff's Collective Response to Defendant' and Non-Party Townships' Motions to Quash and for Protective Order

Plaintiff submits for consideration the report attached as Exhibit 1 by expert witness Jeffrey Lenberg dated 05/09/2021 titled *Preliminary Report of Subversion in Antrim County Election Management System, Results Tallying and Reporting Application.*

On November 3, 2020, in 9 of the 16 precincts in Antrim County the votes flipped directly from Jorgenson to Trump, Trump to Biden, and Biden's votes went into an under vote category for adjudication.

On March 26, 2021, J. Alex Halderman authored a report and provided an explanation of the vote shift. Continued testing by Plaintiff's expert Jeffrey Lenberg demonstrates the shift to "undervote" occurred as a result of fraud and subversion. Therefore, the J Alex Halderman report is DEBUNKED. Indeed, the ballot mapping and election program does not permit a shift to "undervote," but instead requires the vote to be placed in the next in a series of 5,744 mapped ballot coordinates for the Antrim County election. In the presidential election, for example, this new report makes clear that the November 3, 2020 results "should have resulted in Biden's votes being shifted to the Natural Law Party, Straight Party Vote, which in turn would have resulted in

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Rocky De La Fuente (the Natural Law Party Candidate) receiving a large number of votes as a result." This did not occur. Instead, the votes shifted to an unmapped "undervote" category.

This new report further states that under normal conditions a transfer of votes to the "undervote" category would have "properly reported a critical error and shut down the tabulator when there were votes shifted between contests." That did not happen. Instead, the tabulators continued to function and shift votes improperly to "undervote." Mr. Lenberg explains that the critical errors are being intercepted and subverted to undervote.

> 'Testing of related scenarios has shown the ImageCast Precinct (ICP) tabulator properly reported a critical error and shut down the tabulator when there were votes shifted between contests. However, when the EMS/RTR was presented with the same results file processed on the tabulator, it reported no errors, but instead erroneously reported those vote choices as blanks (undervotes) instead of generating a critical error."

Lenberg Report, (05/09/2021), at 1

It is important to note that this subversion affected every single race on the entire ballot, from Presidential election, through Michigan Supreme Court election, and continuing to the bottom of the ticket and the local school board races and Proposals 20-1 and 20-2. Every race was subverted.

This discovery of subversion demonstrates that the Defendants and Election Source understand the boundaries of each race category. If they did not, the critical errors would have shut down the election. Instead, the critical errors were dealt with internally and discarded, allowing the election to continue. The subversion is, by its very definition, FRAUD; fraud in the coding, fraud in the election process, and fraud in the election results reporting. The election errors were readily known and publicized on November 4, 2020. Defendant Benson holds the source code in trust and must have (or should have) tested the errors against the source code in order to understand the error handling routines. Instead of advising the county, state, and country

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that subversion occurred in the ballot mapping routines and election coding and processing, both her and Antrim County Clerk Sheryl Guy fraudulently stated that this was the result of "human error" and was "the safest election in the country's history." These statements demonstrate fraud in the investigation and reporting process.

Respectfully submitted

DePERNO LAW OFFICE, PLLC

Dated: May 10, 2021

/s/ Matthew S. DePerno
Matthew S. DePerno (P52622)
Attorney for Plaintiff

PROOF OF SERVICE

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

1. Plaintiff's Supplemental Brief

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

Dated: May 10, 2021

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

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

WILLIAM BAILEY Plaintiff	Case No. 20-9238-CZ
v.	
ANTRIM COUNTY Defendant	HON. KEVIN A. ELSENHEIMER
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EXHIBIT 1

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PLAINTIFF'S SUPPLEMENTAL BRIEF

Respectfully submitted

DePERNO LAW OFFICE, PLLC

Dated: May 10, 2021

/s/ Matthew S. DePerno
Matthew S. DePerno (P52622)
Attorney for Plaintiff

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Subject: Preliminary Report of Subversion in the Antrim County Election Management System, Results Tallying and Reporting Application
Date: 5/9/2021
Analyst: Jeffrey Lenberg

Executive Summary

The Antrim County Dominion Democracy Suite, Election Management System (EMS), Results Tallying and Reporting (RTR) application has been found to be subverted. Numerous error conditions that are identified by the tabulator are ignored by the EMS/RTR. The error conditions are easily reproduced and displayed on the tabulator, yet the EMS/RTR has been subverted in a fashion to purposefully ignore vote manipulation. This technical behavior is consistent with a subversion being deployed in the Antrim County EMS/RTR and is designed to mute such error reporting. This subversion technique is common among malicious actors seeking to proactively handle error conditions that would jeopardize their ability to modify software's performance.

The J Alex Halderman expert report dated March 26, 2021 does not accurately describe the conditions that occurred in the Antrim election. The shifting of votes described by Halderman during the November 3, 2020 election should have resulted in Biden's votes being shifted to the Natural Law Party, Straight Party Vote, which in turn would have resulted in Rocky De La Fuente (the Natural Law Party Candidate) receiving a large number of votes as a result, or an error condition should have occurred on the EMS/RTR for a vote shift outside of the Presidential contest. Neither of these scenarios occurred because the EMS/RTR was subverted in a fashion to handle such an error silently and treat that situation as an undervote (no vote for the Presidential race at all).

Testing of related scenarios has shown the ImageCast Precinct (ICP) tabulator properly reported a critical error and shut down the tabulator when there were votes shifted between contests. However, when the EMS/RTR was presented with the same results file processed on the tabulator, it reported no errors, but instead erroneously reported those vote choices as blanks (undervotes) instead of generating a critical error.

The evidence of a subversion in the EMS/RTR is sufficient that an expert review of the source code for the EMS/RTR is warranted to determine the extent of the subversion and breadth of the configuration options available to the malicious actors that would employ it.

This assessment is based on the review of the Antrim County EMS/RTR and testing with an ICP tabulator. If more forensic information and source code becomes available for review, this assessment will be reevaluated in the light of the new

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evidence available. Upon receipt of the source code a specific evaluation of the error handling routines will be conducted along with static and dynamic code analysis to definitively determine the specific behavior of the software.

Details

Discovery of Subversion of the Antrim County EMS/RTR

A specific test was designed to determine how the Antrim County EMS/RTR along with the tabulator would handle the swap of Biden votes with the Natural Law Party (Straight Ticket Vote from the Contest Above on the ballot).

The rationale for making this test was the fact that Halderman indicated that the shift of votes that occurred would have changed the index of the candidate selection to cross the boundary from the Presidential contest to the Straight Party Ticket contest. This shifting across the boundary of a contest should have created a critical error condition during the processing of votes, however, in the case of Antrim County election it did not.

The test scenario is as follows:

Ballot Style: Helena Township, Precinct 1 (1124)
DVD File Name: 1120_8_8_0_DETAIL.DVD
internalMachineID for Biden: 3016
internalMachineID for Natural Law Party: 3015

Votes Cast on Test Ballots (See Appendix A):
Biden: 2
Trump: 4
Jorgenson: 1

Both the EMS/RTR and the ICP tabulator used exactly the same DVD file listed above.

The test scenario implemented a swap between the internalMachineID fields of Biden and the Natural Law Party in the VIF_BALLOT_INSTANCE.DVD file to attempt to cause Biden's votes to be swapped with the Straight Party/Natural Law Party.

The expected outcome was that Biden's votes would be assigned to the Natural Law Party (Straight Party Vote) and the result would be Biden's votes being tallied for the Natural Law Party Presidential Candidate Rocky De La Fuente.

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The test revealed the following:

- The ICP reported a critical error and does not finish processing the vote file, does not print a paper tape, writes the error to the log file, and forces a mandatory shutdown of the tabulator
- The EMS/RTR loads the same file with no errors and takes all of the Biden votes and treats them as undervotes

The 1120_8_8_0_DETAIL.DVD file is a result file containing the votes that are cast on the ICP. When the poll is closed, the ICP software processes the file containing the votes and produces a paper tape with the tallies for each candidate. This process works normally as long as the internalMachineID is not modified or the modification stays within the boundaries of the those "expected" for the specific contest, for example the Presidential Contest. In other words, a malicious actor can swap internalMachineIDs within the same Contest for any candidate so long as the index remains in the correct range for that same contest.

However, for the purposes of this test the internalMachineIDs were swapped between different Contests, the software in the ICP reports a critical error (see Figure 1). The ICP does not finish processing the vote file (Figure 1), does not print a paper tape, requires the operator to shut-down the tabulator (see Figure 2), and records details of the error in the slog.txt file (Figure 3) on the compact flash card. The tabulator takes drastic action to inform the operator that a very serious problem has been encountered. Note that the vote result file 1120_8_8_0_DETAIL.DVD is still correctly stored on the compact flash card.

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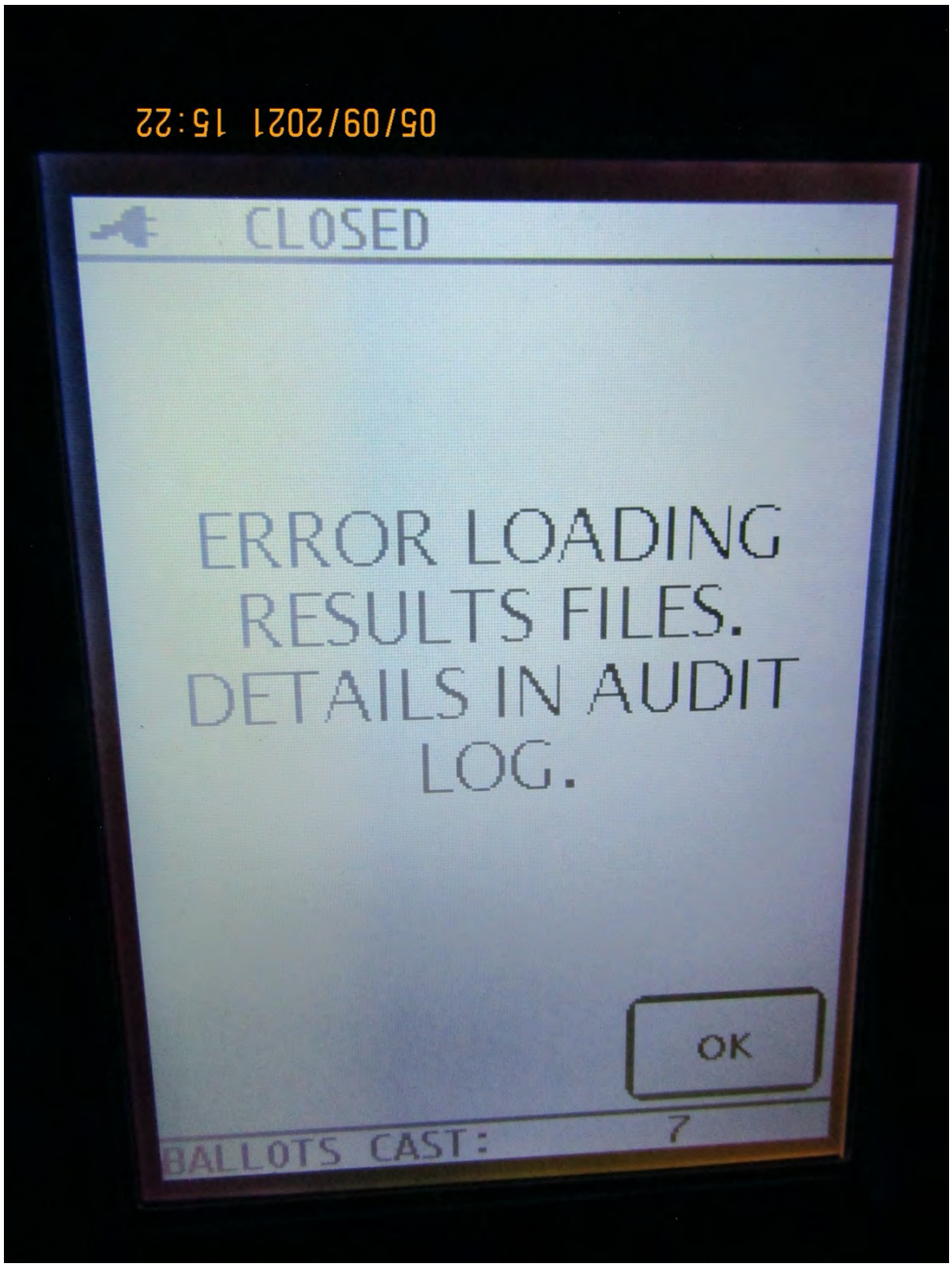

Figure 1 - ICP Error Loading Results File

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Figure 2 - ICP Critical Error - Shutdown Required

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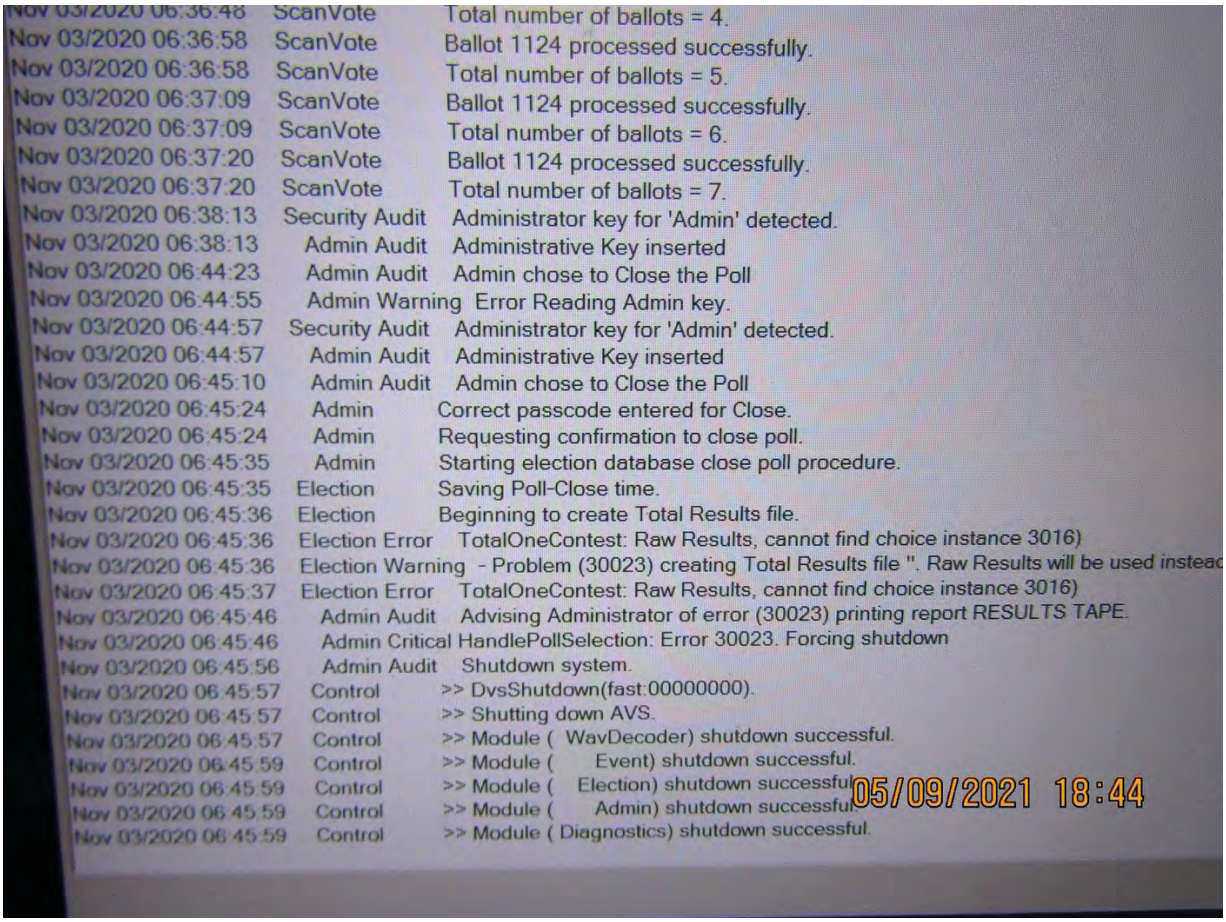

Figure 3 - slog.txt File Contents from Compact Flash Card

The same compact flash card is then loaded on to the Antrim EMS/RTR software. The card reports that it loaded successfully both the vote results and the log file (See Figure 4). Prior to loading this compact flash card the EMS database is directly manipulated in the same way that the file sent to the tabulator was manipulated by swapping 3015 and 3016 internalMachineID in the ChoiceManifestion table of 5744 vote choices spanning all of the contests on all of the 49 ballots types.

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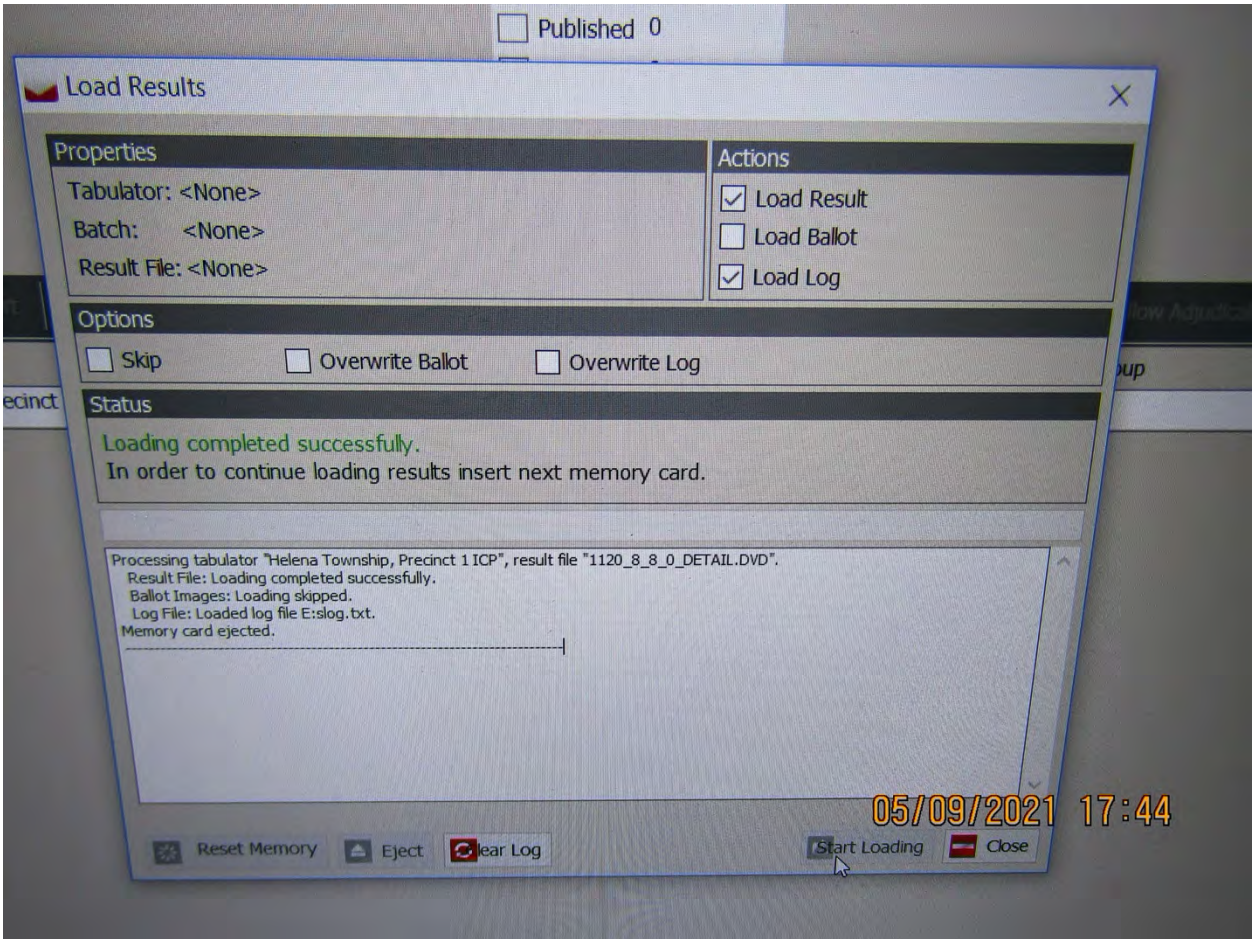

Figure 4 - EMS Successfully Loads Results File

The displayed results indicated that Biden is missing his votes and they are reported as blank ballots and undervotes for that contest (See Figure 5). One of two things should have happened. Either Biden's votes should have been assigned to the Straight Party/Natural Law (internalMachineID = 3015) in which case Bidens vote for President would have been assigned to De La Fuente and note that this did not occur. The other possibility is that the software was able to check the range for internalMachineID range for the contest in which case it would not have found the reference for the Biden vote choice and it should have created an error very similar to what the ICP output. This would be a critical error that should have stopped the application from further processing the compact flash card. Because the Biden vote choice must exist and it did not exist, the application should have stopped loading the results with an error message as to the fact that the results were corrupted. However, no errors were indicated of any kind by the EMS/RTR. The Biden votes just became blank votes (no choice) when there clearly is a choice on the ballot. In summary, either the shifted votes should have gone to De La Fuente (via Straight Party – Natural Law Party) or the application should have created a critical error that would have kept the votes from being tallied and reported.

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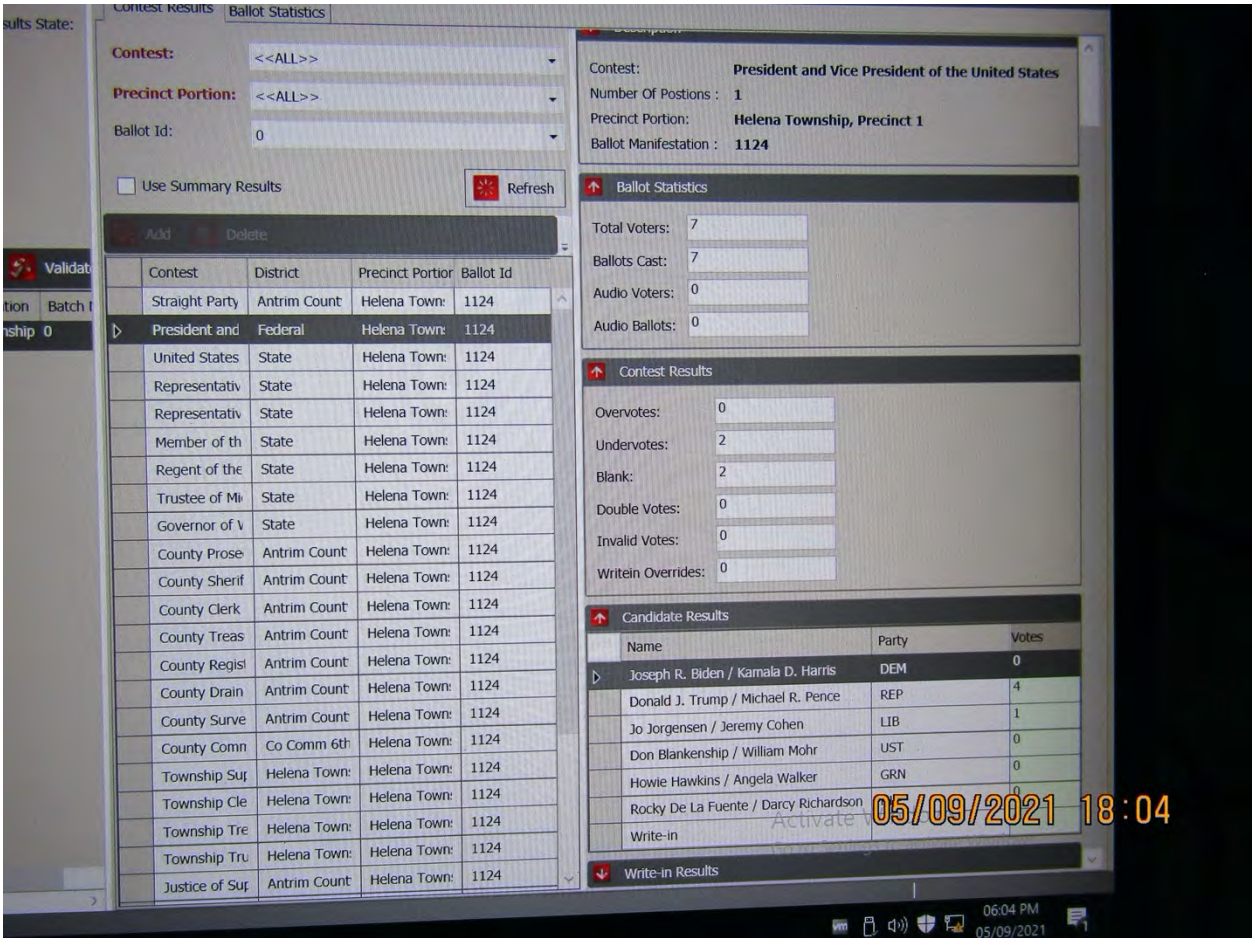

Figure 5 - Biden Undervotes Results

The conclusion of this test indicates EMS/RTR technical behavior consistent with a technical subversion. Further in-depth analysis of source code would be required to gain definitive clarity on the specific nature of the subversion. This would include analysis of the error handling routines, code traces, static and dynamic code analysis.

Under the penalties of perjury, I declare that I have read the foregoing report and that the fact stated in it are true.

Jeffrey Lenberg
Date: 5/9/2021

STATE OF MICHIGAN

COUNTY OF OAKLAND

The foregoing instrument was acknowledged before me this 9th of May, 2021 by Jeffrey Lenberg.

Ann M. Howard

Notary Public

Printed Name: Ann M. Howard

My Commission Expires: 2/24/2023

ANN M. HOWARD
Notary Public, State of Michigan
County of Oakland
My Commission Expires 02-24-2023
Acting in the County of Oakland

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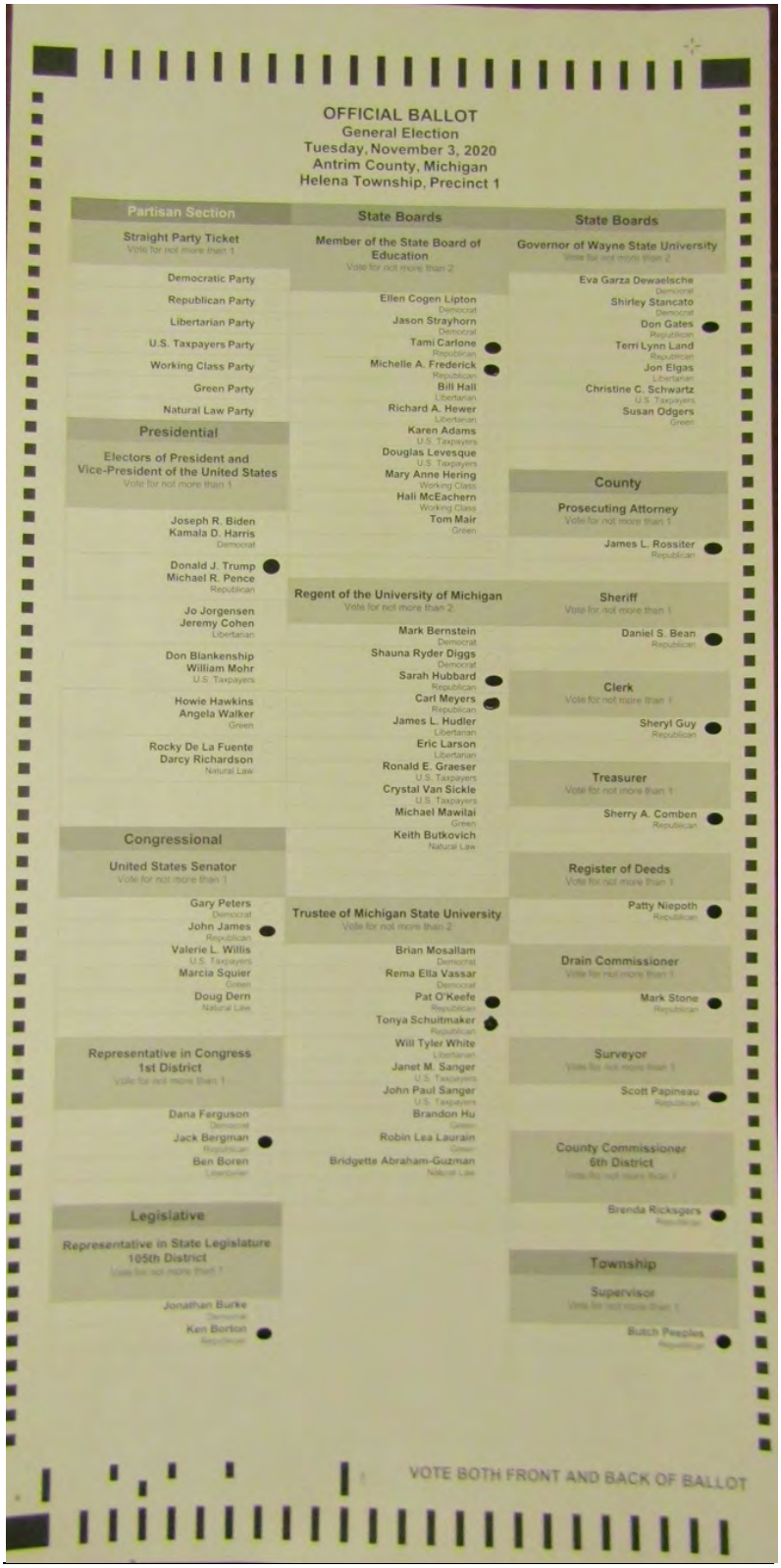
Appendix A – Ballots Used in Test



OFFICIAL BALLOT
General Election
Tuesday, November 3, 2020
Antrim County, Michigan
Helena Township, Precinct 1

Partisan Section

Straight Party Ticket
Vote for not more than 1

- Democratic Party
- Republican Party
- Libertarian Party
- U.S. Taxpayers Party
- Working Class Party
- Green Party
- Natural Law Party

Presidential

Electors of President and Vice-President of the United States
Vote for not more than 1

- Joseph R. Biden / Kamala D. Harris — Democrat
- Donald J. Trump / Michael R. Pence — Republican ●
- Jo Jorgensen / Jeremy Cohen — Libertarian
- Don Blankenship / William Mohr — U.S. Taxpayers
- Howie Hawkins / Angela Walker — Green
- Rocky De La Fuente / Darcy Richardson — Natural Law

Congressional

United States Senator
Vote for not more than 1

- Gary Peters — Democrat
- John James — Republican ●
- Valerie L. Willis — U.S. Taxpayers
- Marcia Squier — Green
- Doug Dern — Natural Law

Representative in Congress 1st District
Vote for not more than 1

- Dana Ferguson — Democrat
- Jack Bergman — Republican ●
- Ben Boren — Libertarian

Legislative

Representative in State Legislature 105th District
Vote for not more than 1

- Jonathan Burke — Democrat
- Ken Borton — Republican ●

State Boards

Member of the State Board of Education
Vote for not more than 2

- Ellen Cogen Lipton — Democrat
- Jason Strayhorn — Democrat
- Tami Carlone — Republican ●
- Michelle A. Frederick — Republican ●
- Bill Hall — Libertarian
- Richard A. Hewer — Libertarian
- Karen Adams — U.S. Taxpayers
- Douglas Levesque — U.S. Taxpayers
- Mary Anne Hering — Working Class
- Hali McEachern — Working Class
- Tom Mair — Green

Regent of the University of Michigan
Vote for not more than 2

- Mark Bernstein — Democrat
- Shauna Ryder Diggs — Democrat
- Sarah Hubbard — Republican ●
- Carl Meyers — Republican ●
- James L. Hudler — Libertarian
- Eric Larson — Libertarian
- Ronald E. Graeser — U.S. Taxpayers
- Crystal Van Sickle — U.S. Taxpayers
- Michael Mawilai — Green
- Keith Butkovich — Natural Law

Trustee of Michigan State University
Vote for not more than 2

- Brian Mosallam — Democrat
- Rema Ella Vassar — Democrat
- Pat O'Keefe — Republican ●
- Tonya Schuitmaker — Republican ●
- Will Tyler White — Libertarian
- Janet M. Sanger — U.S. Taxpayers
- John Paul Sanger — U.S. Taxpayers
- Brandon Hu — Green
- Robin Lea Laurain — Green
- Bridgette Abraham-Guzman — Natural Law

State Boards

Governor of Wayne State University
Vote for not more than 2

- Eva Garza Dewaelsche — Democrat
- Shirley Stancato — Democrat
- Don Gates — Republican ●
- Terri Lynn Land — Republican
- Jon Elgas — Libertarian
- Christine C. Schwartz — U.S. Taxpayers
- Susan Odgers — Green

County

Prosecuting Attorney
Vote for not more than 1

- James L. Rossiter — Republican ●

Sheriff
Vote for not more than 1

- Daniel S. Bean — Republican ●

Clerk
Vote for not more than 1

- Sheryl Guy — Republican ●

Treasurer
Vote for not more than 1

- Sherry A. Comben — Republican ●

Register of Deeds
Vote for not more than 1

- Patty Niepoth — Republican ●

Drain Commissioner
Vote for not more than 1

- Mark Stone — Republican ●

Surveyor
Vote for not more than 1

- Scott Papineau — Republican ●

County Commissioner 6th District
Vote for not more than 1

- Brenda Ricksgers — Republican ●

Township

Supervisor
Vote for not more than 1

- Butch Peeples — Republican ●

VOTE BOTH FRONT AND BACK OF BALLOT

Figure 6 - Trump/James/Bergman

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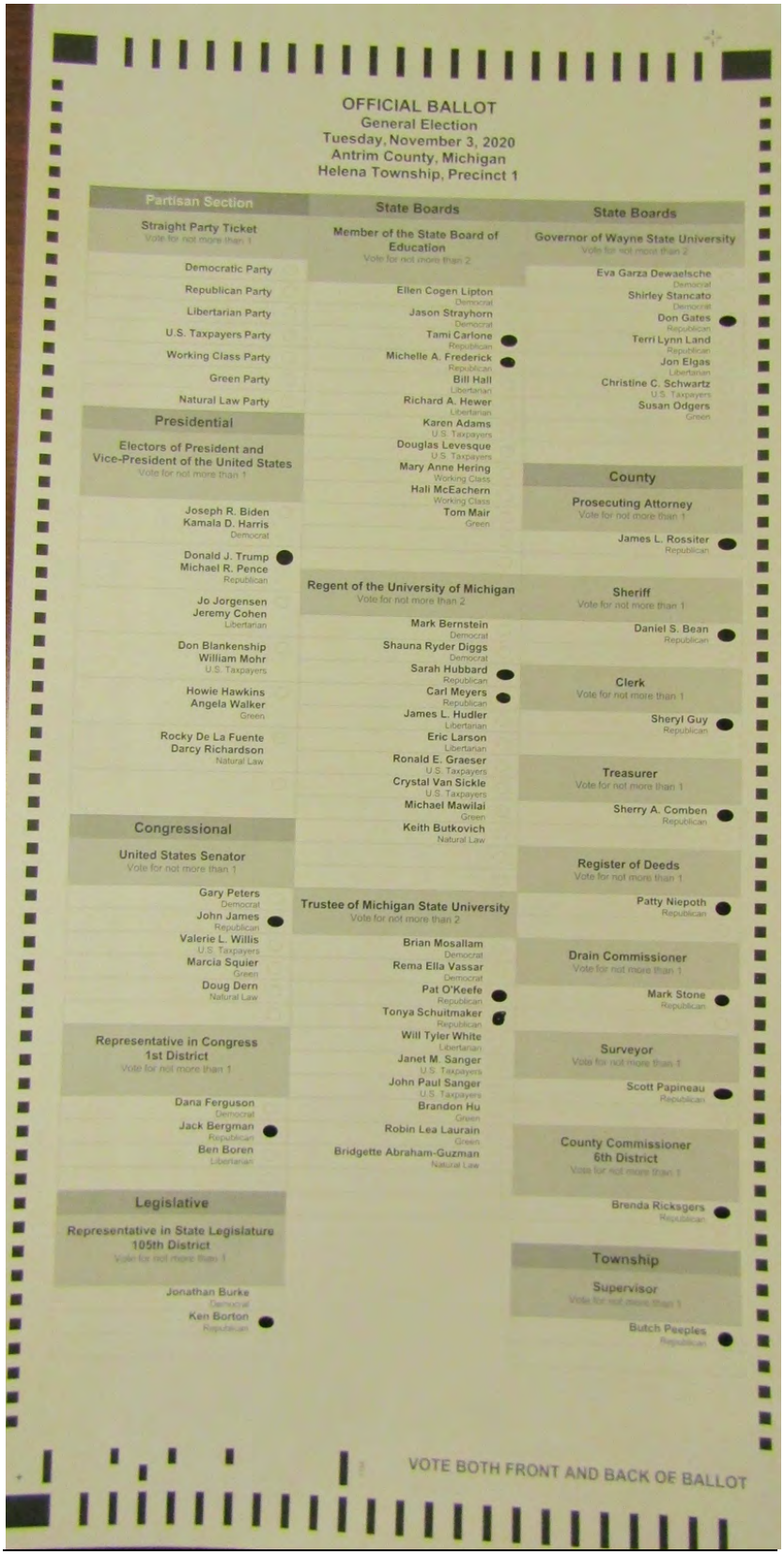

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- Working Class Party
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Presidential

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Vote for not more than 1

- Joseph R. Biden / Kamala D. Harris — Democrat
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- Howie Hawkins / Angela Walker — Green
- Rocky De La Fuente / Darcy Richardson — Natural Law

Congressional

United States Senator
Vote for not more than 1

- Gary Peters — Democrat
- John James — Republican
- Valerie L. Willis — U.S. Taxpayers
- Marcia Squier — Green
- Doug Dern — Natural Law

Representative in Congress
1st District
Vote for not more than 1

- Dana Ferguson — Democrat
- Jack Bergman — Republican
- Ben Boren — Libertarian

Legislative

Representative in State Legislature
105th District
Vote for not more than 1

- Jonathan Burke — Democrat
- Ken Borton — Republican

State Boards

Member of the State Board of Education
Vote for not more than 2

- Ellen Cogen Lipton — Democrat
- Jason Strayhorn — Democrat
- Tami Carlone — Republican
- Michelle A. Frederick — Republican
- Bill Hall — Libertarian
- Richard A. Hewer — Libertarian
- Karen Adams — U.S. Taxpayers
- Douglas Levesque — U.S. Taxpayers
- Mary Anne Hering — Working Class
- Hali McEachern — Working Class
- Tom Mair — Green

Regent of the University of Michigan
Vote for not more than 2

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- Bridgette Abraham-Guzman — Natural Law

State Boards

Governor of Wayne State University
Vote for not more than 2

- Eva Garza Dewaelsche — Democrat
- Shirley Stancato — Democrat
- Don Gates — Republican
- Terri Lynn Land — Republican
- Jon Elgas — Libertarian
- Christine C. Schwartz — U.S. Taxpayers
- Susan Odgers — Green

County

Prosecuting Attorney
Vote for not more than 1

- James L. Rossiter — Republican

Sheriff
Vote for not more than 1

- Daniel S. Bean — Republican

Clerk
Vote for not more than 1

- Sheryl Guy — Republican

Treasurer
Vote for not more than 1

- Sherry A. Comben — Republican

Register of Deeds
Vote for not more than 1

- Patty Niepoth — Republican

Drain Commissioner
Vote for not more than 1

- Mark Stone — Republican

Surveyor
Vote for not more than 1

- Scott Papineau — Republican

County Commissioner
6th District
Vote for not more than 1

- Brenda Ricksgers — Republican

Township

Supervisor
Vote for not more than 1

- Butch Peeples — Republican

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Figure 7 - Trump/James/Bergman

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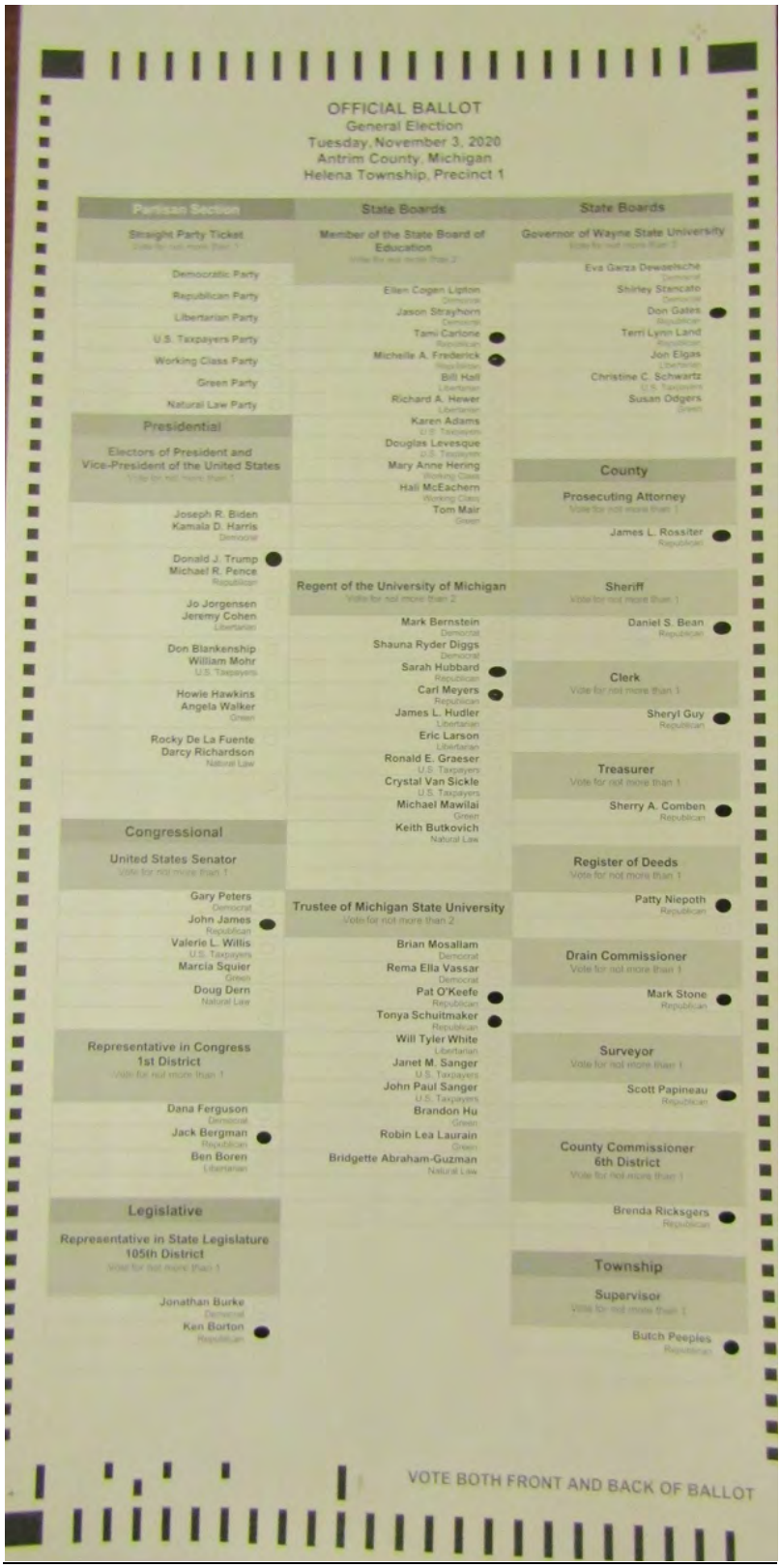

OFFICIAL BALLOT
General Election
Tuesday, November 3, 2020
Antrim County, Michigan
Helena Township, Precinct 1

Partisan Section

Straight Party Ticket
Vote for not more than 1

Democratic Party
Republican Party
Libertarian Party
U.S. Taxpayers Party
Working Class Party
Green Party
Natural Law Party

Presidential

Electors of President and Vice-President of the United States
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Joseph R. Biden
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United States Senator
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Republican

Valerie L. Willis
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Marcia Squier
Green

Doug Dern
Natural Law

Representative in Congress
1st District
Vote for not more than 1

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Ben Boren
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Legislative

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105th District
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Ken Borton ●
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U.S. Taxpayers

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Clerk
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Sherry A. Comben ●
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Register of Deeds
Vote for not more than 1

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Republican

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Mark Stone ●
Republican

Surveyor
Vote for not more than 1

Scott Papineau ●
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6th District
Vote for not more than 1

Brenda Ricksgers ●
Republican

Township

Supervisor
Vote for not more than 1

Butch Peeples ●
Republican

VOTE BOTH FRONT AND BACK OF BALLOT

Figure 8 - Trump/James/Bergman

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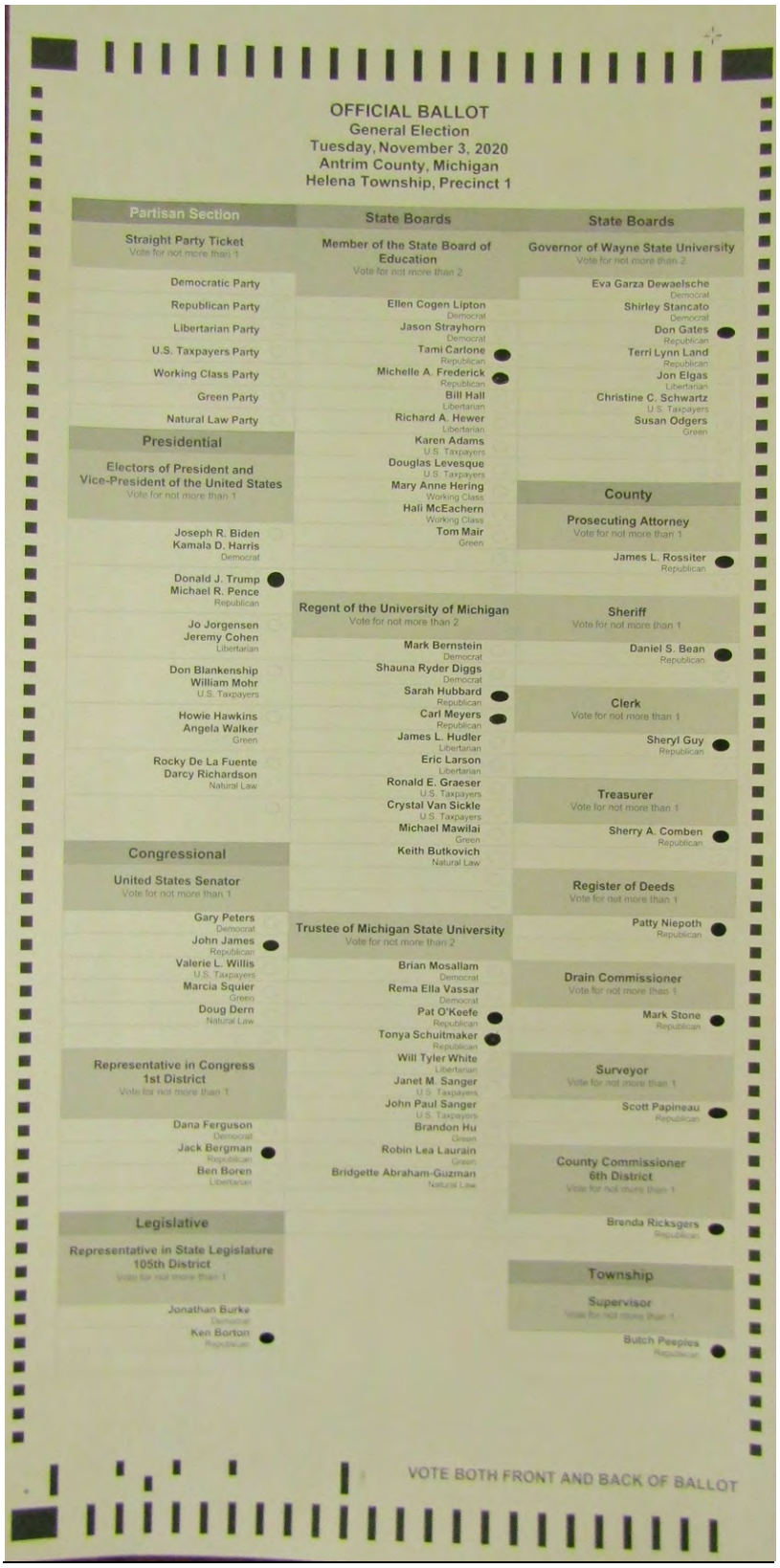

OFFICIAL BALLOT
General Election
Tuesday, November 3, 2020
Antrim County, Michigan
Helena Township, Precinct 1

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Straight Party Ticket
Vote for not more than 1

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United States Senator
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Representative in Congress 1st District
Vote for not more than 1

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- Jack Bergman — Republican
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Legislative

Representative in State Legislature 105th District
Vote for not more than 1

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- Ken Borton — Republican

State Boards

Member of the State Board of Education
Vote for not more than 2

- Ellen Cogen Lipton — Democrat
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Township

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Figure 9 - Trump/James/Bergman

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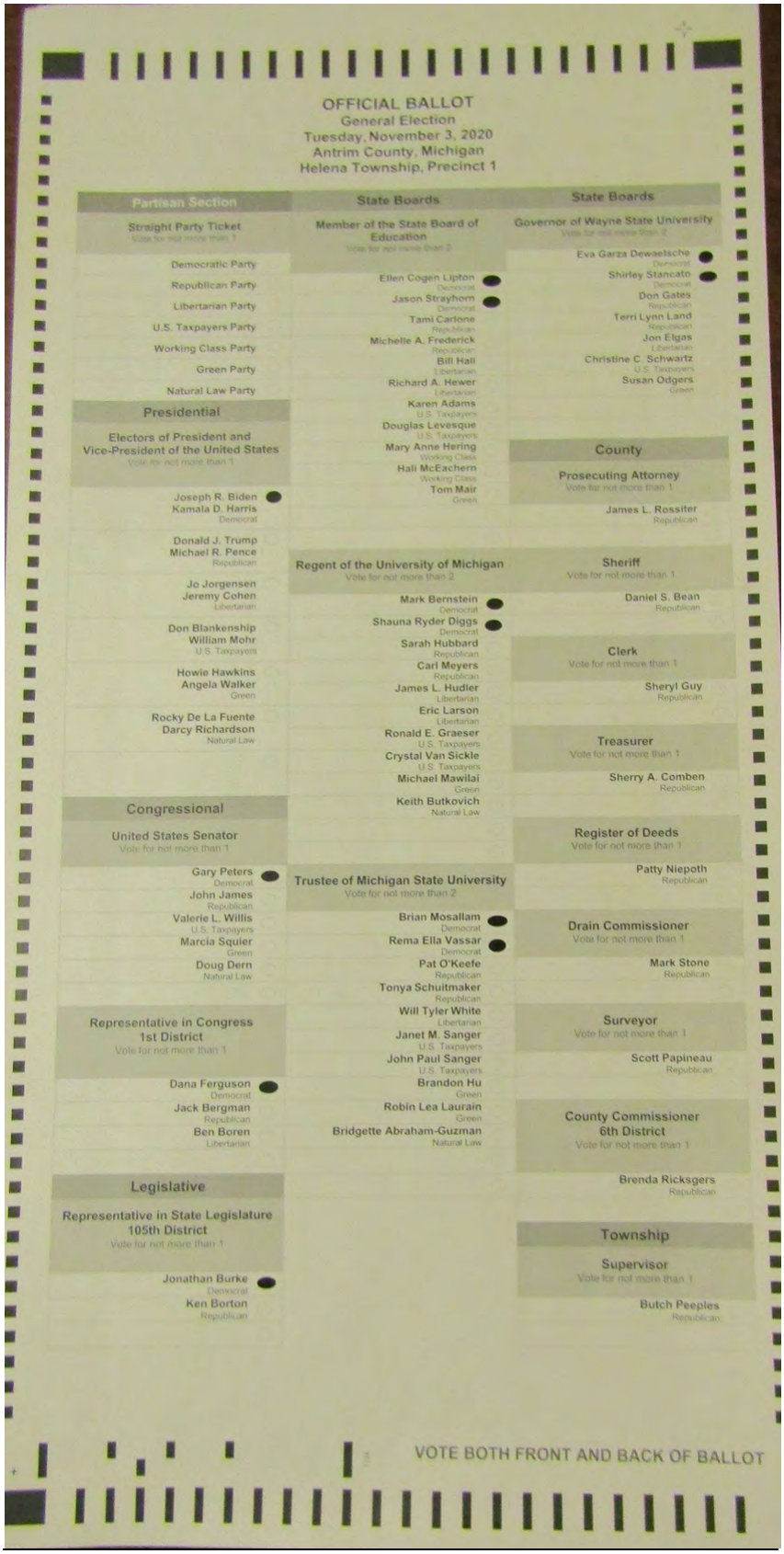

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County Commissioner
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Vote for not more than 1

Brenda Ricksgers
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Township

Supervisor
Vote for not more than 1

Butch Peeples
Republican

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Figure 10 - Biden/Peters/Ferguson

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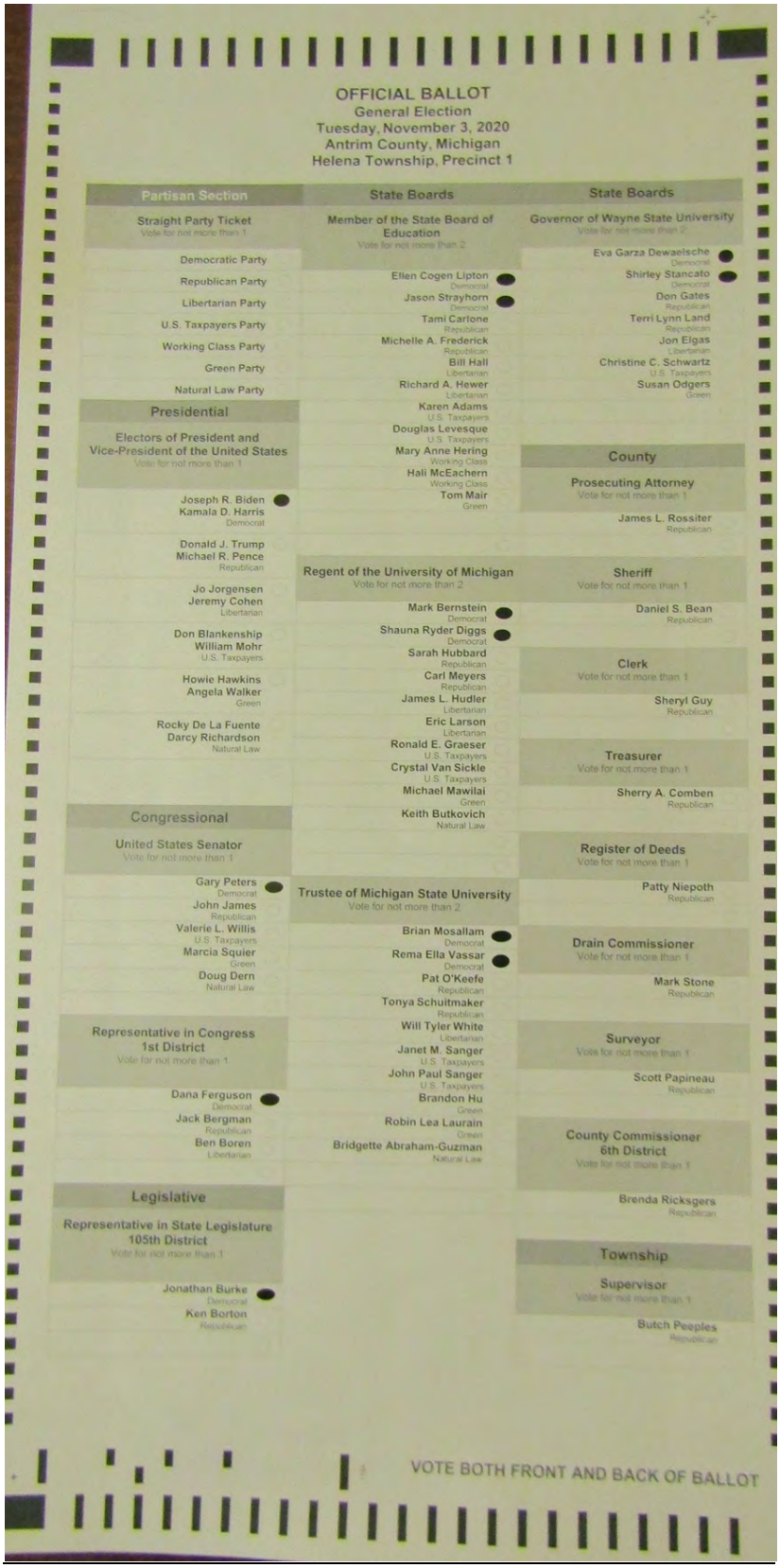

OFFICIAL BALLOT
General Election
Tuesday, November 3, 2020
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Straight Party Ticket
Vote for not more than 1

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- Valerie L. Willis — U.S. Taxpayers
- Marcia Squier — Green
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Representative in Congress 1st District
Vote for not more than 1

- Dana Ferguson — Democrat ●
- Jack Bergman — Republican
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Legislative

Representative in State Legislature 105th District
Vote for not more than 1

- Jonathan Burke — Democrat ●
- Ken Borton — Republican

State Boards

Member of the State Board of Education
Vote for not more than 2

- Ellen Cogen Lipton — Democrat ●
- Jason Strayhorn — Democrat ●
- Tami Carlone — Republican
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Township

Supervisor
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Figure 11 - Biden/Peters/Ferguson

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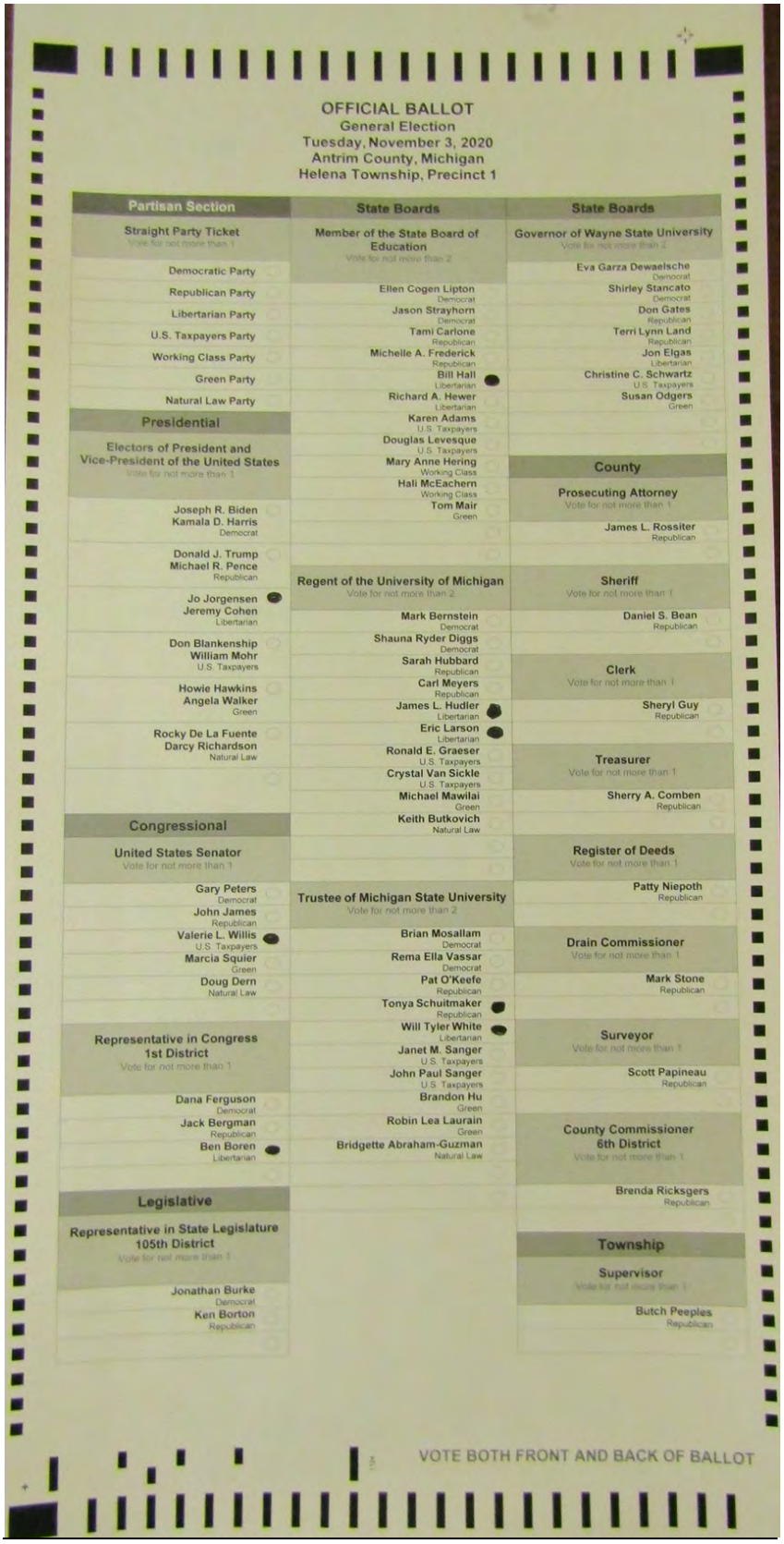

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Township

Supervisor
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VOTE BOTH FRONT AND BACK OF BALLOT

Figure 12 - Jorgenson/Willis/Boren

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Exhibit 8

Motion for Reconsideration

June 9, 2021

FILED
Sheryl Guy
Antrim 13th Circuit Court
06/10/2021

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF ANTRIM

WILLIAM BAILEY Plaintiff 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 Defendants.	Case No. 20-9238-CZ HON. KEVIN A. ELSENHEIMER

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

Haider A. Kazim (P66146)
Allan C. Vander Laan (P33893)
CUMMINGS, MCCLOREY, DAVIS & ACHO, PLC
Attorneys for Defendant Antrim County
319 West Front Street
Suite 221
Traverse City, MI 49684
(231) 922-1888

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

PLAINTIFF'S MOTION FOR RECONSIDERATION OR, ALTERNATIVELY, REHEARING PURSUANT TO MCR 2.119(F)

Plaintiff, WILLIAM BAILEY ("Plaintiff"), by and through his attorney, DePerno Law Office, PLLC, moves this HIonorable Court to reconsider its Errata Order dated May 19, 2021, regarding Defendants' joint motion for summary disposition, for the following reasons:

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1. This motion is filed pursuant to MCR 2.119(F).

2. This motion is filed within 21 days of entry of the Errata Order, pursuant to MCR 2.119(F).

3. The Court committed palpable error when it granted Defendants' motion for summary disposition pursuant to MCR 2.116(C)(4).

4. A copy of the Errata Order is attached hereto as Exhibit 1.

5. In support of this Motion, Plaintiff submits and relies on the accompanying Brief in Support of Motion for Reconsideration being filed herewith.

WHEREFORE, for the reasons stated in Plaintiff's accompanying brief, Plaintiff respectfully requests that this Honorable Court grant Plaintiff's motion for reconsideration, or in the alternative grant a rehearing, and reinstate all of the claims in his complaint.

Respectfully submitted
DePERNO LAW OFFICE, PLLC

/s/ Matthew S. DePerno
Matthew S. DePerno (P52622)
Attorney for Plaintiff

Dated: June 9, 2021

DePerno Law Office, PLLC • 951 W. Milham Avenue, PO Box 1595 • Portage, MI 49081
(269) 321-5064 (phone) • (269) 321-5164 (Fax)

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PROOF OF SERVICE

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

1. Plaintiff's Motion for Reconsideration

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

Dated: June 10, 2021

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

DePerno Law Office, PLLC • 951 W. Milham Avenue, PO Box 1595 • Portage, MI 49081
(269) 321-5064 (phone) • (269) 321-5164 (Fax)

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

WILLIAM BAILEY Plaintiff	Case No. 20-9238-CZ
v.	
ANTRIM COUNTY Defendant	HON. KEVIN A. ELSENHEIMER
SECRETARY OF STATE JOCELYN BENSON Intervenor-Defendant,	

Matthew S. DePerno (P52622)
DEPERNO LAW OFFICE, PLLC
Attorney for Plaintiff
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BRIEF IN SUPPORT OF PLAINTIFF'S MOTION FOR RECONSIDERATION OR, ALTERNATIVELY, REHEARING PURSUANT TO MCR 2.119(F)

RECEIVED by MSC 6/2/2022 1:49:42 AM

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

EXHIBIT LIST vi

1. Reconsideration or rehearing 1

2. The December 17, 2020 "hand recount" was insufficient and premised on fraud; Plaintiff has new evidence which the court must consider 1

3. The Court erred when it stated Plaintiff received the relief requested; What happened, what didn't happen, and what should happened 10

4. The Court erred when it stated Plaintiff's claims are moot 14

5. The Court erred when it concluded that Defendant Benson (as a defendant and accused of fraud) can be the person in charge of defining the audit 19

6. Plaintiff Stated a Legally Sufficient Claim Under the "Audits Clause" 19

7. Plaintiff Stated a Legally Sufficient Claim Under the "Purity of Elections" Clause 27

8. Plaintiff Stated a Legally Sufficient Claim Under the "Equal Protection" Clause 28

9. Plaintiff Stated a Legally Sufficient Claim for Quo Warranto Relief Under MCL 600.4545 32

10. The Court erred when it failed to consider the amended complaint 34

11. Conclusion and relief requested 35

PROOF OF SERVICE 35

RECEIVED by MSC 6/2/2022 1:49:42 AM

TABLE OF AUTHORITIES

Federal Cases Page

Ames v Kansas, 111 US 449; 4 S Ct 437; 28 L Ed 482 (1884) 32, 33

Bush v Gore, 531 US 98; 121 S Ct 525; 148 L Ed 2d 388 (2000).....28, 29, 31

Ex Parte Yarbrough, 110 US 651; 4 S Ct 152; 28 L Ed 274 (1884) 28, 29

Fed Land Bank of St Paul v Bismarck Lumber Co, 314 US 95; 62 S Ct 1; 86 L Ed 65 (1941) 20

Harper v Va State Bd of Elections, 383 US 663; 86 S Ct 1079; 16 L Ed 2d 169 (1966) 27

Helvering v Morgan's Inc, 293 US 121; 55 S Ct 60; 79 L Ed 232 (1934) 20

People ex rel Royce v Goodwin, 22 Mich 496; 2 Brown NPS 51 (1871).....33

Reynolds v Sims, 377 US 533; 84 S Ct 1362; 12 L Ed 2d 506, 527 (1964).....6

Richards v Jefferson County, 517 US 793; 116 S Ct 1761, 135 L Ed 2d 76 (1996) 32

South v Peters, 339 US 276; 70 S Ct 641; 94 L Ed 834 (1950) 28

Taylor v Sturgell, 553 US 880; 128 S Ct 2161; 171 L Ed 2d 155, 170 (2008).....32

United States v Classic, 313 US 299; 61 S Ct 1031; 85 L Ed 1368 (1941).....28

United States v Saylor, 322 US 385; 64 S Ct 1101; 88 L Ed 1341 (1944).....28

Yick Wo v Hopkins, 118 US 356; 6 S Ct 1064; 30 L Ed 220 (1886) 27

Michigan Supreme Court Cases

Adair v State, 470 Mich 105,; 680 NW2d 386 (2004).....16

Constantino v City of Detroit, ___ Mich ___; 950 NW2d 707, 709 (2020).....19

Durant v State, 456 Mich 175; 566 NW2d 272 (1997) 22, 23

El-Khalil v Oakwood Healthcare, Inc, 504 Mich 152; 934 NW2d 665 (2019).....15, 16, 18, 19 .....21, 24, 26

Feyz v Mercy Mem Hosp, 475 Mich 663; 719 NW2d 1 (2006).....16, 21

Grand Rapids City Clerk v Judge of Superior Court, 366 Mich 335; 115 NW2d 112 (1962) 8, 9, 10, 17, 33

Heurtebise v Reliable Business Computers, 452 Mich 405; 550 NW2d 243 (1996) 30

RECEIVED by MSC 6/2/2022 1:49:42 AM

In re Request for Advisory Opinion Regarding Constitutionality of 2005 PA 71, 479 Mich 1; 740 NW2d 444 (2007) 5, 6, 9

Lindquist v Lindholm, 258 Mich 152; 241 NW 922 (1932) 17, 32

Maiden v Rozwood, 461 Mich 109; 597 NW2d 817 (1999) 16

McDonald v Grand Traverse Co Election Comm, 255 Mich App 674; 662 NW2d 804 (2003) 27

Michigan Bell Tel Co v Dep't of Treasury, 445 Mich 470; 518 NW2d 808 (1994) 20

Millard ex rel Reuter v Bay City, 334 Mich 514; 54 NW2d 635 (1952) 9, 10, 33

Sharp v City of Lansing, 464 Mich 792; 629 NW2d 873 (2001).....30, 31

Socialist Workers Party v Secretary of State, 412 Mich 571; 317 NW2d 1 (1982) 26

Michigan Court of Appeal Cases

Attorney Gen v Michigan Pub Service Comm, 269 Mich App 473; 713 NW2d 290 (2005) 14

Blair v Checker Cab Co, 219 Mich App 667; 558 NW2d 439 (1996) 17, 18

Cork v Applebee's of Michigan, Inc, 239 Mich App 311; 608 NW2d 62 (2000) 14

Forest Hills Coop v City of Ann Arbor, 305 Mich App 572; 854 NW2d 172 (2014) 13

Grand Rapids v Harper, 32 Mich App 324; 188 NW2d 668 (1971).....8

Hill City of Warren, 276 Mich App 299; 740 NW2d 706 (2007) 1

Kolu v Bylenga, 24l Mich App 655; 617 NW2d 368 (2000) 1

Penn Sch Dist v Bd of Ed, 14 Mich App 109; 165 NW2d 464 (1968) 8

People v Walter, 266 Mich App 341; 700 NW2d 424 (2005) 1

Smith v Sinai Hospital of Detroit,152 Mich App 716; 394 NW2d 82 (1986) 1

SSC Assoc v Gen Retirement Sys of Detroit, 192 Mich App 360; 480 NW2d 275 (1991).....25

Unpublished Michigan Court of Appeal Cases

Constantino v City of Detroit, Wayne County Circuit Court Case No. 20-014780-AW (2020) 21, 23

Genetski, et al v Benson, Michigan Court of Claims, Case No. 20-000216 (2020) 12, 21, 23, 24

RECEIVED by MSC 6/2/2022 1:49:42 AM

Federal Statutes

52 USC § 20701 25

Michigan Constitution

Const 1963, art 1, § 1 7

Const 1963, art 1, § 2 ..... 7, 10

Const 1963, art 2, § 4(1)(h) 2, 8, 9, 10, 12, 15, 16, 17, 19, 20, 21, 22, 26, 33

Const 1963, art 2, § 4(2) 7, 10

Michigan Statutes

MCL 168.31a 9, 12, 13, 19, 20, 21, 22, 23, 26, 27, 33

MCL 168.765 10

MCL 168.846 33

MCL 168.861 10

MCL 168.932 25

MCL 600.4545 ..... 8, 10, 17, 31, 33

Michigan Court Rules

MCR 2.119(F)(3) 1, 9

MCR 2.116(C)(4) 9, 10, 13, 14, 26, 34

MCR 2.116(C)(8) 9, 10, 13, 15, 16, 17, 18, 19, 21, 22, 24, 26, 27, 31

MCR 2.116(C)(10) 16, 17, 19, 21, 24, 25, 26

MCR 2.116(G)(5) 14, 16

MCR 3.301 31

MCR 3.306 31

Other Citations

4 Honigman & Hawkins, Michigan Court Rules Annotated (2d Ed), Rule 715 8

Cooley, Treatise on the Constitutional Limitations (2d ed 1871) 6, 7, 22

New Haven Firebird Society v Board of Fire Commissioners of City of New Haven, 219 Conn 432, 436; 593 A 2d 1383, 1385 (Conn 1991).....32

RECEIVED by MSC 6/2/2022 1:49:42 AM

RECEIVED by MSC 6/2/2022 1:49:42 AM

EXHIBIT LIST

EXHIBIT 1: Errata Order .....

EXHIBIT 2: Jeffrey Lenberg report dated June 9, 2021 titled "*Case Study Banks Township – Antrim County Election Management Server Found to be Subverted*" 2

EXHIBIT 3: Sample ballot 3

EXHIBIT 4: Jeffrey Lenberg report dated June 9, 2021 titled "*Centralized Subversion of Election Vote Totals and Paper Tapes*" 3

EXHIBIT 5: Jeffrey Lenberg has prepared another report dated June 9, 2021 titled "*Central Lake Township Reversals Make Ballots Impossible to Count, Helena Township 21% Ballot Reversal Rate, 20% Higher Reversal Rate for Republican voters and Mancelona Late Night Ballot Processing*" 3, 4

EXHIBIT 6: Judy Koslowski affidavit 4

EXHIBIT 7: Ben Cotton report.....4

EXHIBIT 8: Jeffrey Lenberg report dated June 9, 2021 titled "*Missing Evidence for Evaluation of Antrim County Election, Official Ballots are Easily Fabricated, and Official Ballot PDFs Flawer Making for Errors in Processing.*" 5

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> ***[F]or that cannot be called an election or the expression of the popular sentiment where a part only of the electors have been allowed to be heard, and the others, without being guilty of fraud or negligence, have been excluded.***[1]

1. <u>Reconsideration or rehearing</u>.

MCR 2.119(F)(3) provides guidance to courts in stating that reconsideration is appropriate if there is a "palpable error by which the court and the parties have been misled and show that a different disposition of the [order] must result from correction of the error." MCR 2.119(F)(3). The palpable error provision is not mandatory; rather, it "only provides guidance to a court about when it may be appropriate to consider a motion for rehearing or reconsideration" *People v Walter*, 266 Mich App 341, 350; 700 NW2d 424 (2005). A trial court possesses considerable discretion in granting reconsideration to correct mistakes, to preserve judicial economy, and to minimize costs to the parties." *Kolu v Bylenga*, 24l Mich App 655, 659; 617 NW2d 368 (2000). Indeed, nothing in MCR 2.119(F)(3) restricts this court's discretion to grant a motion for reconsideration. *Smith v Sinai Hospital of Detroit*,152 Mich App 716, 723; 394 NW2d 82 (1986) ("If a trial court wants to give a 'second chance' to a motion it has previously denied, it has every right to do so, and this court rule does nothing to prevent this exercise of discretion. All this rule does is provide the trial court with some guidance on when it may wish to deny motions for rehearing."). Thus, "[a]s a general matter, courts are permitted to revisit issues they previously decided, even if presented with a motion for reconsideration that offers nothing new to the court." *Hill City of Warren*, 276 Mich App 299, 307; 740 NW2d 706 (2007).

2. <u>The December 17, 2020 "hand recount" was insufficient and premised on fraud; Plaintiff has new evidence which the court must consider that could not have been obtained sooner due to discover responses delivered after oral argument</u>.

[1] Cooley, Treatise on the Constitutional Limitations (2d ed 1871) pp 614-15.

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The Michigan Constitution [Const 1963, art 2] § 4(1)(h) permits a self-executing and liberally construed right to have the results of statewide elections audited, in such manner as prescribed by law, to ensure the accuracy and integrity of elections. Defendants argued that they have performed an "audit" when they conducted a "hand recount" on December 17, 2021. This is false for several reasons: (1) the hand recount only counted the presidential election and (2) it was wholly inadequate and premised on fraud. We know this based on previous expert reports filed with the Court. We also know this based on new information included within this motion.

Expert witness Jeffrey Lenberg has prepared a report dated June 9, 2021 titled "*Case Study Banks Township – Antrim County Election Management Server Found to be Subverted*" [Exhibit 2]. This report details a case study that "was performed on Banks Township to show the results of the manipulation of the project files on the EMS and how the EMS handled the errors introduced." *Id*. at 1. In this case, the Dominion software:

> "The software would typically show an error if the vote selections were shifted outside of a single contest, moreover, when all of the votes for all of the contests on the ballot are moved outside the indexes on that individual ballot the software would be expected to throw what is called an exception in software engineering. When an exception occurs, it must be handled by a programming routine that is designed for error handling (aka exception handling); if this does not occur, the result is typically a crash of the program, and immediate termination of the application."

Id. In this test, 210 ballots were fed into the tabulator. "The objective of the test was to illustrate that the paper tapes would accurately convey the totals of the vote while the EMS would show undervotes for all contests, the result is the categorical loss of all the votes due to the subversion." The results show that all the votes on the EMS went to undervotes, which should not happen. This is significant because all down ballot races are incorrectly tallied.

> In the case of the Antrim County EMS it does not produce any errors on the EMS because the exception is handled in a fashion to create an undervote and disregard the authentic vote. The subversion intentionally suppresses the errors that would likely occur in order to allow manipulation of the votes without detection.

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Id. The report clearly states that all down ballot races, including Proposal 20-1,[2] went to an undervote and had results shifted [Exhibit 3]. It is incredible unlikely that these results are correct considering the subversion because no votes were counted in down ballot races as reflected in the report. For this reason, an audit of all down ballot races is required.

Expert witness Jeffrey Lenberg has prepared another report dated June 9, 2021 titled "*Centralized Subversion of Election Vote Totals and Paper Tapes*" [Exhibit 4]. Simply editing this "file and modifying the mapping of the bullets on the ballots (vote selections) to the candidates allows for manipulation of the vote results." *Id.* at 3. Figure 4 of the report shows the *actual* "manipulation of the raw binary data that creates the modification of both the paper tapes and the results file." The output creates fraudulent paper tapes that do not match the ballots. "The results files on the compact flash cards are also fraudulent and will be processed normally by the EMS showing the same fraudulent vote totals matching the paper tape." *Id.* "This subversion is undetectable in the current canvassing process, as the paper tapes and the vote totals reported on the EMS will precisely match despite the fact they have been fraudulently manipulated." *Id.* The report details how the "VIF_BALLOT_INSTANCE.DVD" file can also be modified. The combination of modifications will "allow for an attacker to choose a variation where either paper tape of the results file [or] modified alone." *Id.* at 6. Essentially one modification to a single file can change the results of the paper tape and electronic total. The votes can be manipulated by a third-party actor, i.e. Election Source, at a central location remotely.

Expert witness Jeffrey Lenberg has prepared another report dated June 9, 2021 titled "*Central Lake Township Reversals Make Ballots Impossible to Count, Helena Township 21%*

[2] A proposed constitutional amendment to allow money from oil and gas mining on state-owned lands to continue to be collected in state funds for land protection and creation and maintenance of parks, nature areas, and public recreation facilities; and to describe how money in those state funds can be spent.

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Ballot Reversal Rate, 20% Higher Reversal Rate for Republican voters and Mancelona Late Night Ballot Processing" [Exhibit 5]. This report reveals actual manipulation of a file named "VIF_CHOICE_INSTANCE.DVD." Simply put, Central Lake Township had an 82% reversal rate. This occurred because "there were modifications made to the ballots outer markers that led to specific ballots being reversed by the ICP tabulator." *Id.* at 1. This means these ballots were *tampered with*. "Those tampered ballots are never actually counted because they always reverse, and therefore never record votes."

> Forensic analysis of the slog.txt file for Central Lake Township show there are specific irregularities found on outer markers on the physical ballots. The external markings along the edges of the ballots showed modification on blocks 15, 18, 28, 41, and 44. These irregularities were found on both the right and left side of the ballots. The physical ballots and the associated blocks around the perimeter of the ballot were tampered/modified, with either a pen, or some other marker to distort the shape of the block and make the ICP reverse the ballot instead of processing it normally.

Id. at 2-3.

This is the township in which Plaintiff Bill Bailey votes

We now know there is an 82% chance his vote did not count. Recall, Judy Koslowski stated that she was instructed to bring her tabulator and ballots to the county building on November 5, 2020 [Exhibit 6]. "Given the fact that the Central Lake Township ballots were re-processed on November 6, 2020 (three days after election day), this high reversal rate indicates an intentional injection of these tampered ballots in order to overshadow the ambient reversal rate of twenty percent." Plaintiff Bill Bailey is entitled to have his vote counted correctly and have an audit to ensure nobody's vote is disenfranchise because someone modified blocks 15, 18, 28, 41, and 44 on the ballots, causing an 82% reversal rate.

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Expert witness Ben Cotton has prepared an additional report [Exhibit 7] on June 8, 2021 that reveals the Antrim County EMS server was remotely logged into by an anonymous logon on November 5, 2020 and November 17, 2020.

> Antrim EMS failed to maintain windows security event logs before 4 November 2020. Consequently a full user logon activity analysis was not possible to perform. However, within the logs that were present on the system there were at least two successful logins to the EMS server by an Anonymous user. The first occurred on 11/5/2020 at 5:55:56 PM and the second occurred on 11/17/2020 at 5:16:49 PM EST. Both of these logons appeared to have escalated privileges at the time of logon. Given that this computer was supposed to be on a private network, this is very alarming. One would expect that any network logon, if authorized by the accreditation authority, would require specific usernames and passwords to be utilized, not anonymous users. Given the vulnerable state of the operating system and antivirus protections, this apparent unauthorized access is particularly alarming and certainly would not have been authorized on an accredited system.

Id. at 7. Interestingly, the CF card for Central Lake Township was programmed on November 5, 2020 at 10:22 AM. See [Ex 4] at 7. But rather than run the recount at that time, they allowed some anonymous user to remote into the system at 5:56 PM to change data. And then Defendants re-ran the election the next morning on November 6, 2020 at 9:18 AM. Taken as a whole, these reports show that a "hand recount" of just the presidential election is meaningless. Plaintiff is entitled to an audit of the entire ballot from top to bottom. Indeed, the hand recount conducted by Defendant Benson did not satisfy Plaintiff's requested relief in the original complaint, let alone the amended complaint.

Finally, expert witness Jeffrey Lenberg has prepared another report dated June 9, 2021 titled "*Missing Evidence for Evaluation of Antrim County Election, Official Ballots are Easily Fabricated, and Official Ballot PDFs Flawer Making for Errors in Processing.*" [Exhibit 8]. This report states that information is missing that must be turned over in order for the experts to complete their work. Therefore, Plaintiff's claims are not moot.

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This case is about protecting the individual constitutional rights of Plaintiff, and, by extension, every registered voter in the state of Michigan. Both the state and federal constitutions anchor the fundamental right of the people to govern themselves upon the prima facie assumption that the means by which they choose their representatives must be of ultimate purity and primary importance. If the right to vote is not protected, all other guarantees afforded by the Constitution are irrelevant because they are dependent upon the integrity of the franchise and the consecration of representative choice. The duty to protect this fundamental right must, of necessity, fall on the judiciary, for it is the only remaining barrier to degeneration of elections into mere contests of fraud rather than fair attribution of the will of the people to the designated representative of their sacred and sovereign choice. To that end, the courts have recognized that the judiciary must guarantee and protect the right to vote as *the* fundamental right preservative of all other rights. *In re Request for Advisory Opinion Regarding Constitutionality of 2005 PA 71*, 479 Mich 1, 16; 740 NW2d 444 (2007); *Reynolds v Sims*, 377 US 533, 562; 84 S Ct 1362; 12 L Ed 2d 506, 527 (1964).

The nation cannot survive as a constitutional republic if the government allows the transfer and adjudication of thousands of "votes" by non-delegated, unaccountable officials (without legally required oversight), the acceptance and counting of illegitimate or ghost votes, and the rank absence of *any semblance* of operational integrity in the electronic systems used to process ballots and tabulate votes. If we allow manipulation of ballots during and after they are processed, then who can guarantee that the fundamental constitutional rights of our citizenry are protected?

The last bastion to protect these rights is the judiciary. Justice Cooley instructed that *the manner* in which an election is conducted is "the substance of every election and a failure to

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comply with the law in these particulars is not generally to be treated as *a mere irregularity*." Cooley, Treatise on the Constitutional Limitations (2d ed 1871), p 619 (emphasis added). The law requires the judiciary to step in under circumstances where the two other branches of government have failed to carry out their constitutional duties to protect the rights of the citizenry. Justice Cooley stated long ago that the judiciary is the only safety net to ensure the integrity of an election.

In Michigan, the key above all is that in both theory and spirit of the Constitution and Laws only those votes which are given by qualified electors are valid. Quo warranto proceedings "may inquire into the qualifications of those who have voted…to test the right to a public office." *Id.* at 628. Though the election boards and canvassers might be bound in their decision by the number of votes deposited in accordance with the law regulating their actions, "where there is competent evidence that illegal votes have been admitted, the decision of the board can be challenged, because they were in such case "compelled to admit votes which they know to be illegal, and they cannot "constitute tribunals of last resort for the determination of the rights of parties claiming an election."." Cooley, *supra* at p 628 (emphasis supplied), quoting *People v Cicotte*, 16 Mich 283, 311 (1868) (Christiancy, J) (emphasis added), overruled on other grounds at *Petrie v Curtis*, 387 Mich 436, 440; 196 NW2d 761 (1972). "If this were so, and there were no legal redress…there would be much reason to apprehend that elections would degenerate into *mere contests of fraud*." *Id.* Indeed, where there is such evidence, Justice Christiancy "doubt[ed] the competency of the legislature, should they attempt it…to make the decision of inspectors or canvassers *final* under our constitution." *Id.* at 312 (emphasis added). This, of course, means that the Court must allow the citizens' challenge and refuse the attestations of the non-delegated as final arbiters with authority to ignore genuine and material evidence of abject fraud.

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To these ends, the Michigan Constitution first and foremost declares that "[a]ll political power is inherent in the people" and "Government is instituted for their equal benefit, security and protection." Const 1963, art 1, § 1 (emphasis added). It next declares that "[n]o person shall be denied the equal protection of the laws . . . ." Const 1963, art 1, § 2. Both the Michigan and Federal Constitutions guarantee equal protection to all qualified voters.

The Michigan Constitution also guarantees the sanctity of the vote in elections by charging the Legislature with the duty to enact laws regulating 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." Const 1963, art 2, § 4(2). Subsection 1(h) provides for the self-executing and liberally construed right to have the results of statewide elections audited, in such manner as prescribed by law, to ensure the accuracy and integrity of elections. Const 1963, art 2, § 4(1)(h).

An action at law is guaranteed *to anyone* by virtue of the provision under which this lawsuit has been filed upon a showing of material fraud or error. MCL 600.4545(1). As such an action proceeds *quo warranto*, it is inherent in the very nature of such an action that standing resides in the complainant to challenge the fraud and abuse committed by the official defendants. MCL 600.4545(3). Indeed, standing is secondary under such an action, the focus being on the merit of the claims assuming proper and formal presentation, which no one doubts here, and the malfeasance, abuse or fraud of the official defendants and those acting on their behalf, which have been proved in this case. *Grand Rapids v Harper*, 32 Mich App 324, 329; 188 NW2d 668 (1971), citing 4 Honigman & Hawkins, Michigan Court Rules Annotated (2d Ed), Rule 715, p 237. Accord *Penn Sch Dist v Bd of Ed*, 14 Mich App 109, 117-18; 165 NW2d 464 (1968), citing

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Honigman, *supra*, and stating that it is well-established under MCL 600.4545(3) that "a private citizen may bring a *quo warranto* action of the nature presented in this case, without *any showing of a special personal interest in the subject matter* at hand." (emphasis added). Under the quo warranto proceedings, standing is an inherent attribute and this Court has all the power and authority under that provision to rectify the abject fraud that occurred in the November 2020 election in Antrim County, Michigan. *Grand Rapids v Harper*, 32 Mich App at 329; *Penn Sch Dist v Bd of Ed*, 14 Mich App at 117-18; *Grand Rapids City Clerk v Judge of Superior Court*, 366 Mich 335, 340; 115 NW2d 112 (1962).

Finally, the Court has the further authority vested in it as the custodian of the constitutional rights guaranteed to the citizenry in the election process. Indeed, quo warranto proceedings under MCL 600.4545 provide a clear and adequate remedy to allow the plaintiff to "*test* the constitutional issue[s]" arising from an election." *Grand Rapids City Clerk*, 366 Mich at 340 (emphasis added), citing *Millard ex rel Reuter v Bay City*, 334 Mich 514, 517; 54 NW2d 635 (1952) (stating that "a writ in the nature of a quo warranto is the proper writ to test the validity of an election" and allowing the writ to be pursued directly in the Supreme Court under authority of its general "superintending control"). The constitutional issues in this case include the purity of the November 2020 election under § 4(2), the scope of an audit under § 4(1)(h), and the constitutionality of MCL 168.31a(2), to the extent that it is or has been interpreted as limiting the scope of an audit under § 4(1)(h).

Laws protecting voters' rights have been "a part of our constitution for almost as long as Michigan has been a state." *In re Request for Advisory Opinion Regarding Constitutionality of 2005 PA 71*, 479 Mich at 16-18. These laws exist "*for the purpose of preventing fraudulent voting*." *Id.* (emphasis in original). legally sufficient claims in accordance with the standard

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required under MCR 2.116(C)(8). He may pursue full litigation of the issues and seek an appropriate remedy under Michigan law upon proof of his case. At a minimum, this requires a judicial pronouncement of Plaintiff's constitutional rights and the legitimacy of any statutory or administrative limitations that might be imposed thereon. Upon a demonstration of the fraud uncovered, it will be clear to the Court that in fact the constitution requires a full complete and comprehensive audit to ensure the integrity of and preserve the purity of all elections, past, present and future.'

MCR 2.119(F)(3) provides a trial court with unrestricted discretion to consider a motion for reconsideration and such is warranted where palpable error is shown by which the court and the parties have been misled, and a different disposition is required to correct the error. The Court erred in dismissing *all* of Plaintiff's sufficiently pleaded claims under MCR 2.116(C)(4) or MCR 2.116(C)(8) without analyzing each of those claims and the relief that may be sought thereunder.

In addition to the viable constitutional and statutory claims that must be separately analyzed, Michigan law provides that the Circuit Court must exercise subject matter jurisdiction over a timely filed proceeding in quo warranto. MCL 600.4545. As Defendants conceded, Plaintiff has general standing under this provision, and according to Michigan case law, he may test and pursue his constitutional and statutory claims and relief available under the statute. *Grand Rapids City Clerk*, 366 Mich at 340; *Millard ex rel Reuter*, 334 Mich at 517. The Court's decision granting summary disposition to Defendants under (C)(4) was error. Plaintiff's claims are not moot, nor has he received all the relief sought or to which he is entitled.

3. <u>The Court erred when it stated Plaintiff received the relief requested; What happened, what didn't happen, and what should happened</u>.

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In its ruling from the bench the Circuit Court recited the counts pleaded in Plaintiff's complaint: (1) a right to an audit under Const 1963, art 2, § 4(1)(h) (the audits clause); (2) a claim for preserving the purity of elections under Const 1963, Jeffrey Lenberg has prepared another report dated June 9, 2021 titled "*Central Lake Township Reversals Make Ballots Impossible to Count, Helena Township 21% Ballot Reversal Rate, 20% Higher Reversal Rate for Republican voters and Mancelona Late Night Ballot Processing*"_art 2, § 4(2); (the purity of elections clause); (3) an equal protection claim under Const 1963, art 1, §2 (the equal protection clause); (4) a statutory claim under MCL 168.861 (retention of quo warranto remedies where fraudulent voting is discovered before recount); (5) an action in quo warranto under MCL 600.4545 (providing for filing of an action within 30 days where material fraud or error has been committed in an election and for such action to proceed in the nature of common law quo warranto); and (6) a statutory claim under MCL 168.765 (regarding the handling and processing of absentee ballots). (Transcript of Court's Ruling from the Bench (RTR), 05/18/21, pp. 9-10).

The Court concluded that the relief sought in Plaintiff's complaint was that a forensic image be taken of the precinct tabulators; that there be a non-partisan audit of the November 3, 2020 general election; that a protective order be issued for Defendants to preserve evidence; and such other relief that is equitable and just, which the Court described as "a catch all provision made in almost every civil lawsuit." (RTR, p. 10). Plaintiff never received a forensic image of the precinct tabulators. Defendants continuously blocked Plaintiff's efforts to schedule and collect forensic images of the tabulators. Plaintiff also never received all of the Antrim County equipment owned by the county. See [Ex 7]. Ben Cotton sums this up when he states that the following items were not produced:

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(a) ImageCast Listener Express Server

(b) ImageCast Express Firewall

(c) EMS Express Managed Switch

(d) ICP Wireless Modems (17)

(e) Image Cast Communications Manager Server

(f) ImageCast Listener Express RAS (remote access server) System

(g) ImageCast USB Modems (5)

(h) Network Netflow Data

(i) Router Configuration Data and Logs

The Court then addressed Defendants' "three main points" that Plaintiff's claims were moot, because all requested relief had been granted, and therefore the court stated that Plaintiff lacked standing; and that Plaintiff failed to state a claim upon which relief could be granted. (RTR, p. 11).

Regarding the first argument, the Court summarized that because the relief sought by Plaintiff had been granted, there was no longer a case or controversy, and Plaintiff's claims were moot. As such, as the argument goes, the Court lacked subject matter jurisdiction over the entire case. (RTR, p. 11).

After an incomplete recitation of the mootness doctrine, the Court concluded that it had allowed "a 'forensic audit' subject to protective order of the tabulator in the possession of Antrim County, limited the tabulator's connectivity to the Internet, and required Antrim County to preserve and protect records in its possession with regard to the tabulation of votes on November 3rd of 2020 . . . regarding that election." (RTR, p. 12). The Court concluded "[t]his relief is largely what the plaintiff asked for in bringing this litigation." *Id.*

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The Court essential ignored Plaintiff's remaining constitutional and statutory claims, and the additional relief sought and available thereunder. Rather, the Court questioned whether Plaintiff's request for an audit under the Constitution had been resolved. *Id.* The Court considered the selective process audits provided for in the latter sentences of MCL 168.31a(2), which were described in *Genetski, et al v Benson*, Michigan Court of Claims, Case No. 20-000216 (2020), and several press releases issued by the Secretary of State, as admissible evidence and proof that a constitutionally sufficient audit under § 4(1)(h) had occurred. (RTR, p. 16). These press releases were not admissible and were not sworn under oath. These audits, according to the Court, having been done so "pursuant to the authority set forth in 168.31a," satisfied the constitutional requirement. Without analyzing the events that were proffered by the Secretary of State as evidence of constitutionally sufficient "audits", the Court stated that "[t]here is no right either in the constitutional section or the statute, for the independent audit that [Plaintiff] seeks." (RTR, pp. 16-17). The Court concluded:

> There is no other relief available to the plaintiff in this – on this point. As the plaintiffs have either received all of the requested relief from this Court, or are not entitled to the relief requested as a matter of law, pursuant to my previous discussion, the plaintiff's claims are, in fact, moot. The Court granting judgment to plaintiff on its claim would have no practical legal effect, as the audit available under Article II, Section 4(1)(h) has already been done. There is no reason to do it twice. As the plaintiff has no additional relief available, there is no need to review the remaining counts that it has brought. The plaintiff's claims in this case are moot. No additional relief is available; and, therefore, no claim has been stated.

Id. The Court reasoned that because the Plaintiff's claims were moot, it had no subject matter jurisdiction within the meaning of MCR 2.116(C)(4). *Id.* The Court did not address any of the other specific constitutional or statutory claims pleaded in the Complaint under either MCR 2.116(C)(4) or MCR 2.116(C)(8), nor any other forms of relief pleaded or available thereunder.

The Court erred when it stated granting judgment to Plaintiff would have no legal effect. As stated herein, Plaintiff did not receive all the relief he requested. Additionally, the Court has

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to have a trial on whether fraud occurred. The hand recount does not address whether Defendants destroyed or modified ballots; whether results files were deleted; or whether the election was subverted up and down the ballot. Most definitely, these are issues that must be resolved by a trier of fact.

4. The court erred when it stated Plaintiff's claims are moot.

While Defendants' motion for summary disposition was filed pursuant to MCR 2.116(C)(4) (court lacks jurisdiction of the subject matter) and (C)(8) (failure to state a claim upon which relief can be granted), the Court's errata order, issued on May 19, 2021, states only that the Court granted summary disposition pursuant to MCR 2.116(C)(4). The Court's reasoning appears to rest on its sole conclusion that the selective process audit conducted by the Secretary of State was constitutionally sufficient under § 4(h)(1) and MCL 168.31a. Since, according to the Court, this was all the relief Plaintiff requested and received, the remainder of his claims were moot leaving the court with no subject matter jurisdiction over the controversy.

Summary disposition may be granted under (C)(4) when "[t]he court lacks jurisdiction of the subject matter." Subject-matter jurisdiction refers to a court's power to act and authority to hear and determine a case. *Forest Hills Coop v City of Ann Arbor*, 305 Mich App 572, 617; 854 NW2d 172 (2014) (cleaned up). In reviewing a motion under MCR 2.116(C)(4), it is proper to consider the pleadings and any affidavits or other documentary evidence submitted by the parties to determine if there is a genuine issue of material fact. *Cork v Applebee's of Michigan, Inc*, 239 Mich App 311, 315; 608 NW2d 62 (2000); see also MCR 2.116(G)(5).

"As a general rule, a case becomes moot when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome. However, MCR 2.116(C)(4) does not apply to moot claims. "A court does not *lose jurisdiction* over a case that has become moot.

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Instead, mootness reflects a policy of judicial self-restraint which prevents the litigation of issues whose outcome has ceased to be of any importance." *Smolen v Dahlmann Apartments, Ltd*, 127 Mich App 108, 119-20; 338 NW2d 892 (1983) (cleaned up) (emphasis supplied). Moreover, even if one claim is moot, the court must consider the remaining claims in light of the relief and remedies sought and available thereunder, respectively. Plaintiff's claims for permanent and other relief are still pending.

There are also important qualifications to the question of mootness. As is consistent with the general standing a citizen has in quo warranto to challenge an election, test the constitutional issues arising therefrom, and question its results, such claims are not moot becuase they fall within the "capable of repetition yet evading review exception." *Attorney Gen v Michigan Pub Service Comm*, 269 Mich App 473, 485; 713 NW2d 290 (2005). Thus, even if there is no way to change election results or grant this Plaintiff retroactive relief, a point not conceded, a moot issue must still be reviewed "if it is publicly significant and is likely to recur, yet . . . evade judicial review." *Id.*

Plaintiff has revealed massive deficiencies in the conducting of elections in the state of Michigan. Without resolution, these issues remain of significant public interest and concern. A complete and comprehensive audit, which Plaintiff believes is required by § 4(1)(h) is the only way to guarantee that potential future elections will have adequate protections in place to remedy these deficiencies and protect the citizens of this state. *Id.* This includes, but is not limited to access to complete discovery; complete forensic analysis of Antrim equipment including routers, modems, and poll books; a recount of all races in the ballots; expert analysis of ballot paper to examine for photocopied ballots; and examination of voter role and poll books. The Secretary of

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State claims to have done a hand recount of only the presidential election which deprives Plaintiff of his constitutional rights under § 4(1)(h).

At oral argument, the Court appeared to at least be aware of this public significance when it asked "how would a concerned citizen go about challenging the purity" regarding "vote tabulation issues" or "the equipment" or "software that's used"? (Hearing Transcript on Defendants Motion for Summary Disposition (HTR), 05/10/21, pp 58-59, pp 58-59). Plaintiff's claims seeking relief in the way of requesting a complete and comprehensive audit to determine the accuracy and integrity of the election; and enforcing the constitution's promise to all Michigan citizens of fair elections free from corruption are the precise avenues for a court to pronounce prospective relief to ensure this mandate.

Because of its conclusion that it lacked subject matter jurisdiction on the basis that all relief had been granted and Plaintiff's claims were moot, the Court did not go on to analyze each of the other constitutional or statutory claims, nor did it recognize the additional relief available under these provisions. Plaintiff contends this was error. Each of his claims were required to be analyzed under MCR 2.116(C)(8). A motion for summary disposition under MCR 2.116(C)(8) must be decided on the pleadings alone and all factual allegations must be taken as true. *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 154-55; 934 NW2d 665 (2019). All well-pleaded factual allegations are accepted as true and construed in a light most favorable to the nonmovant." *Adair v State*, 470 Mich 105, 119; 680 NW2d 386 (2004), citing *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). A (C)(8) motion tests the *legal sufficiency* of a claim based on the factual allegations in the complaint. *Feyz v Mercy Mem Hosp*, 475 Mich 663, 672; 719 NW2d 1 (2006). See also MCR 2.116(G)(5). The motion may only be granted

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when a claim is so clearly unenforceable that no factual development could possibly justify recovery. *Adair*, *supra*. See also, *El-Khalil*, 504 Mich at 159-60.

In *El-Khalil*, *supra*, the Michigan Supreme Court clarified that a trial court assessing a party's motion for summary disposition under rule (C)(8) errs when it conducts what amount to analysis under another court rule, there (C)(10). By requiring evidentiary support for Plaintiff's allegations beyond the pleadings, or in assessing the sufficiency of proofs or other evidence submitted by the party filing a (C)(8) motion, the trial court's decision is subject to reversal on this basis. *El-Khalil*, 504 Mich at 166. "We emphasize that a motion for summary disposition under MCR 2.116(C)(8) must be decided on the pleadings alone and that all factual allegations must be taken *as true*." *Id.* at 155 (emphasis added). Considering the movant's evidence outside the pleadings or requiring evidentiary support from the non-moving party is error. Here, the Court went beyond the pleadings by accepting Defendants' false offering that there had been an audit and that said audit was constitutionally sufficient, and that this constituted the limits of the relief requested or allowed. Moreover, the Court erred because it did not specifically analyze each of Plaintiff's other claims under (C)(8), nor did it consider other forms of relief available under those claim

Putting aside its veracity, the factual evidence Defendants cited as proof of an audit raises a question of fact as to whether it was constitutionally sufficient under § 4(1)(h). These are separate inquiries. The former question is one properly assessed under MCR 2.116(C)(10) as a question of fact, and the latter presents an unresolved *legal issue* in the state of Michigan, as the Court acknowledged. See RTR, pp. 12-13. Plaintiff requested an audit by invoking § 4(1)(h). Clearly, a conclusion that an audit was conducted and that it was constitutionally sufficient are mixed questions of law and fact that cannot be resolved by a (C)(8) motion. Thus, to the extent

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the Court concluded that Plaintiff received the relief he requested because a sufficient audit had been conducted, that conclusion resulted from an analysis contrary to what is required under (C)(8) and beyond the limits imposed on that court rule by the Supreme Court in *El-Khalil*, *supra*.

The same (C)(8) analysis must apply to each separate claim. Relief other than an audit is available under Plaintiff's other constitutional and statutory claims, including the quo warranto proceedings under MCL 600.4545. The latter entitles the claimant to test the constitutional questions and to challenge the holder of an office even after he or she assumes title thereto. *Lindquist v Lindholm*, 258 Mich 152, 154; 241 NW 922 (1932). Indeed, such proceedings have historically provided for a *trial* to "*test* the constitutional issue[s]" arising from an election. *Grand Rapids City Clerk*, 366 Mich at 340 (emphasis added).

These requisite inquiries cannot be ignored in analyzing Plaintiff's motion for reconsideration. The Michigan Supreme Court's recent guidance on the proper analysis to be performed clearly demonstrates that the trial court is *not* to go beyond the standard of review applicable to the rule under which the moving party chooses to proceed. Interestingly, the Court in *El-Kahil* cautioned against applying the oft-cited rule that "where a party brings a summary-disposition motion *under the wrong subrule*, the trial court may proceed under the appropriate subrule as long as neither party is misled." *Id.* at 163, n 5, citing *Blair v Checker Cab Co*, 219 Mich App 667, 670-671; 558 NW2d 439 (1996). The Court's strict limitation upon trial courts to assess only the moving party's motion under (C)(8) when that is the rule advanced in support of summary disposition clearly means that lower courts are limited in their ability to *sua sponte* discern what they might deem a more appropriate rule or analysis to proceed under. In other words, the trial court can no longer make the moving party's case for it, and indeed, must strictly

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abide by the analysis required. The trial court has a duty to assess only the motions brought before it. A failure to do so is reversible error, as held in *El-Kahil*.

5. <u>The Court erred when it concluded that Defendant Benson (as a defendant and accused of fraud) can be the person in charge of defining the audit</u>.

The 2018 Constitutional amendment did not contemplate that Defendant Benson (as Secretary of State) could intervene as a party defendant in order to dictate the terms of discovery and the definition of an audit, especially when she has been accused of knowingly conducting a fraudulent election. This is not what the people of the State of Michigan intended when they voted for this amendment. Plaintiff is requesting an audit where the terms are not dictated by the same government agent who is violating the law and destroying evidence. Indeed, on May 14, 2021, Defendant Benson responded to discovery and stated that she does not possess the source code that she is required to maintain pursuant to MCR 168.797c

> 2. Produce a copy of Dominion voting system source code held in trust by the State of Michigan.
>
> RESPONSE: Neither Defendant Benson, the Michigan Department of State, the Bureau of Elections nor any employee, officer, or agent of the same, possess the requested information. Under MCL 168.797c and

The person who is accused of fraud cannot be permitted to be in charge of defining the audit in order to control whether she is granted to the keys to release herself from the jail cell.

6. <u>Plaintiff Stated a Legally Sufficient Claim Under the "Audits Clause"</u>.

The *legal issue* of what constitutes a constitutionally sufficient audit under § 4(1)(h) is unresolved in the state of Michigan. This is a purely legal question. Plaintiff's complaint clearly sufficed to state a legally sufficient claim under § 4(1)(h). If the Court's conclusion is that Defendant's performed a constitutionally sufficient audit and thus Plaintiff has received all the

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relief he requested, that is a *legal conclusion* that analyzes *factual sufficiency*, and thus goes beyond the limited analysis of what constitutes a sufficiently pleaded *claim* in accordance with (C)(8). While a motion for (C)(10) might be filed by Defendants, such a motion would require full analysis of the evidence submitted in support of and against such a motion. The Court cannot do that for Defendants. *El-Kahil*, *supra*.

Beyond this, Plaintiff has raised an important constitutional issue regarding the precise scope of Const 1963, art 2, § 4(1)(h), a provision that Justice Zahra indicated is "of striking breadth added to our Michigan Constitution just two years ago through the exercise of direct democracy and the constitutional initiative process". *Constantino v City of Detroit*, ___ Mich ___; 950 NW2d 707, 709 (2020). There, at least three justices of the Michigan Supreme Court agreed that this is a significant legal issue that has yet to be resolved.

Also unresolved is the legal issue of § 4(1)(h)'s interplay, if any, with MCL 168.31a. *Id.* This legal issue has been the subject of extensive debate and analysis. After Michigan citizens added § 4(1)(h) to the Constitution, the Legislature added the first sentence to MCL 168.31a(2) *to comply with* this provision, *apart from* the normal random selective process audit that might be conducted at the discretion of the Secretary of State described in the remainder of this subsection. To comply with the as yet undetermined limits of the Constitutional right, the first sentence of subsection 2 now *requires*, at a minimum, that the audit "include" a review of all "documents, ballots, and procedures used during an election *as required*" in § 4(h)(1).

Use of the word "include" in a statute "connotes simply an illustrative application of the general principle." *Fed Land Bank of St Paul v Bismarck Lumber Co*, 314 US 95, 100; 62 S Ct 1; 86 L Ed 65 (1941). It "imports a general class, *some of whose particular instances* are those specified" in the statute. *Helvering v Morgan's Inc*, 293 US 121, 125 n 1; 55 S Ct 60; 79 L Ed

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232 (1934) (emphasis added). It provides the antithesis to application of the rule of expression *unius est exclusio alterius* (mention of one thing excludes others). The Supreme Court of Michigan has likewise noted that the word is not "a word of limitation, but, rather, of enlargement." *Skillman v Abruzzo*, 352 Mich 29, 33; 88 NW2d 420 (1958). It is viewed as such because it "conveys the conclusion that there are *other items includable*, though not specifically enumerated." *Michigan Bell Tel Co v Dep't of Treasury*, 445 Mich 470, 479; 518 NW2d 808 (1994) (emphasis added). Its use supports "a construction broad enough to encompass other items not explicitly mentioned." *Id.*

Given that the election in Antrim County utilized voting machines, the constitutional mandate, which is self-executing and, by its own command, to be *liberally construed in favor of voters' rights*, would necessarily *include* full examination of the computer systems and software, all attached equipment, connections and communications, ballot images, ballots and the precise manner in which the latter were received, introduced, adjudicated, and tabulated. Const 1963, art 2, § 4(1)(h). This *broad* and *expansive* application is complemented, of course, by § 4(2)'s guarantee that the laws passed by the Legislature pursuant to § 4 (which would of course include the complimentary addition of the first sentence of MCL 168.31a(2)) shall, inter alia, "preserve the purity of elections, to preserve the secrecy of the ballot," and "to guard against abuses of the elective franchise."

To the extent that Defendants even conducted any kind of audit in Antrim County, or elsewhere, this by no means resolves the relief sought in Plaintiff's complaint in requesting a constitutionally sufficient audit under § 4(1)(h). Indeed, Defendants and the Court, like the lower courts that have addressed this issue, focus mostly on the language in MCL 168.31a that was already a part of the law before § 4(1)(h) was added to the Constitution and thus, before the first

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sentence of MCL 168.31a(2) was added. See Defendants' Brief, p. 7. However, the remaining language of MCL 168.31a(2) merely describes the *previous* random selective process audit procedures that might be conducted by the Secretary of State. Given that the first sentence was added to comply with § 4(1)(h), its plain language requires more. It certainly could not require less without suffering constitutional deficiency – a claim that is also presented in Plaintiff's complaint, but glossed over by the Court's ruling.

Perhaps Defendants' emphasis on the preexisting language indicates its desire to ignore the complementary and expansive nature of the language in the first sentence, a luxury this Court does not have in assessing the legal sufficiency of Plaintiff's claims. *Feyz*, 475 Mich at 672. See also *El-Khalil*, 504 Mich at 159 (a (C)(8) motion tests the legal sufficiency of a claim, while a (C)(10) motion tests its factual sufficiency). And despite what some lower courts have held, *i.e. Constantino v City of Detroit*, Wayne County Circuit Court Case No. 20-014780-AW (2020) and *Genetski, et al v Benson*, Michigan Court of Claims, Case No. 20-000216 (2020), and what Defendants have argued, the constitutional right to an audit would take precedence over and be superior to any limitation or restriction interpreted in a statutory provision that was drafted to comply with the constitutional guarantee in the first place. Indeed, the statute would be constitutionally infirm if it were interpreted to provide less. The very fact that the Supreme Court has not yet defined the scope of the audit provision means, de facto, that Plaintiff has stated a legally sufficient claim under (C)(8).

Moreover, the Constitution prevails if there is a conflict with the actuating statute. The primary rule of constitutional interpretation adhered to in Michigan is the "common understanding" described in 1 Cooley, Constitutional Limitations (8th ed), p 143. See also *Durant v State*, 456 Mich 175, 191-92; 566 NW2d 272 (1997). "A constitution is made for the

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people and by the people. The interpretation that should be given it is that which reasonable minds, the great mass of the people themselves, would give it. For as the Constitution does not derive its force from the convention which framed, but from the people who ratified it." Cooley, *supra* at 81. "The intent of the people . . . [was] not to enact a constitutional provision that could not be effectively enforced." *Durant*, 456 Mich at 206-07. Moreover, legislation cannot restrict or limit a right embodied in the Constitution itself, especially one that requires liberal construction to protect voters' rights.

Therefore, reference in § 4(1)(h) "as prescribed by law" could never mean that MCL 168.31a (2) *narrows* or *restricts* this right. And indeed, in accordance with the first sentence that was added to comply with § 4(1)(h), Plaintiff has argued that at a minimum, the audit *shall include* reviewing the documents, ballots and procedures used. MCL 168.31a(2) (first sentence). Liberally construed, as it must be to protect voters' rights, these items would "include" i.e. encompass, *all elements* from the election, including the ballots and the machines that were used to process them. To the extent that MCL 168.31a(2) would be interpreted as providing for anything less, it would infringe on the automatic rights and would be constitutionally infirm, which Plaintiff has also posited.

Constantino and *Genetski* offer no reprieve from this argument. In *Constantino*, Judge Kenney took the same position as Defendants, and did not consider the plain language of the first sentence of subsection 2, which was the only change to MCL 168.31a after § 4(h)(1) was added to the Constitution, and focusing instead on the selective process audits described in the remainder of the statute (which existed before § 4(h)(1)). Judge Murray, in *Genetski*, came to a similar conclusion. Skipping over the significance of the plain language of the first sentence of MCL 168.31a, and its necessary harmony with the constitutional amendment, Judge Murray

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assumed the Secretary of State could somehow singlehandedly and unilaterally define and limit the audit process at her discretion, despite the use of the aforementioned meaning of the word "include" in the first sentence, and the liberal interpretation required of all provisions to favor voters as commanded by the Constitution itself. See discussion, *supra*. Even if they were performed, a question that has been placed in grave doubt, partial and selective process audits conducted by the Secretary of State under her interpretation of "prescribed by law," cannot limit the citizen's right to an audit described in the first sentence of MCL 168.31a(2), just as much as that sentence cannot limit or restrict the entitlement to a full, constitutionally sufficient audit for the people that is engrained in the constitution by way of § 4(h)(1). It was not the intent of the people to enact a constitutional provision that could not be meaningfully and effectively enforced to preserve the integrity of elections and to ensure their purity. *Durant*, 456 Mich at 206-07. The Secretary of State does not fulfill this command by conducting random sample selective process audits. She cannot be the single arbiter of the constitutional rights of Michigan citizens and therefore she cannot define the scope of their rights under the audits clause, and by default the sufficiency of Plaintiff's claims in this regard.

In this regard, Defendants have demonstrated that the Secretary of State did not in fact conduct an audit in compliance even with her own guidelines, much less one that is constitutionally sufficient. Further, as alluded to *supra*, the Secretary of State, who is a defendant in this action, who has admitted, along with Sheryl Guy, of having withheld, secreted or destroyed evidence (source code and data, respectively), who has willfully ignored the law regarding signature verification of ballots, and who has overseen what can only be described as rank fraud in the November election, cannot be deemed a reliable source, either under law or in

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practical terms, to unilaterally define and approve what was or was not a constitutionally sufficient audit protective of the rights of Michigan's citizens.

What is appropriate at this stage based on the fraud Plaintiff has already exposed, is a hearing to allow the parties to present the evidence and litigate the case so that Plaintiff can prove his entitlement to a complete and comprehensive audit, among other relief to which he is entitled under the several claims he has lodged. To date, the only thing that was claimed to have been done was a hand recount of the presidential election conducted by the Secretary of State on December 17, 2020, which Defendants admit was not an audit, the selective process audits described in the *Genetski* case, and the press releases cited by the court and accepted as *factual evidence* of sufficiency – analysis of which could only be engaged under (C)(10), a rule which Defendants did not move under, and which this Court cannot *sua sponte* apply. *El-Kahlil*, *supra*.

Under MCR 2.116(C)(8) a trial court cannot rely on extraneous information from the moving party to support their motion, especially where such is not part of the record, but rather hearsay in the form of representations made by the Secretary of State to third parties and the news media. Even under (C)(10), where documentary evidence *can be* considered by the trial court when the moving party files the motion under that rule, see *El-Kahlil*, *supra*, "[o]pinions, conclusionary denials, unsworn averments, and inadmissible hearsay do not satisfy the court rule [MCR 2.116(C)(10)]; disputed fact (or the lack of it) must be established by admissible evidence." *SSC Assoc v Gen Retirement Sys of Detroit*, 192 Mich App 360, 364; 480 NW2d 275 (1991).

There has been no inspection of absentee ballots, the envelopes they supposedly came in, or the marks and signatures on those ballots. These ballots and the envelopes, including computer images of ballots on the machines and the data and information stored therein (*all*

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records) are required by state and federal law to be retained. See MCL 168.932(c) (making it a felony for any inspector of election, clerk, or other officer or person having custody of any record, election list of voters, affidavit, return, statement of votes, certificates, poll book, or of any paper, document, or vote of any description, which pursuant to this act is directed to be made, filed, or preserved, to willfully destroy, mutilate, deface, falsify, or fraudulently remove or secrete any or all of those items, in whole or in part, or fraudulently make any entry, erasure, or alteration on any or all of those items, or permit any other person to do so); 52 USC § 20701 (election officials must retain *all records* and penalizing those that willfully fail to comply with potential fines and imprisonment). Given the serious penalties imposed for these acts, which have been shown to have occurred in this case, these requirements *must exist* for a reason. Despite the nearly impenetrable wall that has been erected by Defendants (and those throughout the country aligned with them) to forbid any meaningful examination of ballots and the machines that process them, the law requires preservation of these items and punishes those who destroy, manipulate or secrete them because the citizens have a constitutional right to free and fair elections, and the only way the latter can be guaranteed is if all information about the former is made available for transparent and public examination.

How could it be otherwise? Conceptualize a system that allows the results on *any* paper ballot (whether authentic or not) to be completely modified, manipulated, changed at a multitude of points along the way once the image and data enters the machine (or even before), and remotely subverted. That is what Plaintiff has proved can and did occur. There was no integrity in this process.

Thus, the Court could not have granted Defendants' motion on this claim under (C)(4) or (C)(8) by concluding that he received the relief he requested under § 4(1)(h). The conclusion that

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what the Secretary of State did was sufficient does not take Plaintiff's allegations as true, but rather allows the Defendants' submissions and non-record evidence to suffice. The scope of the right to an audit under § 4(1)(h) has not been resolved. Nor has the constitutionality of MCL 168.31a(2) been addressed to the extent it can or has been construed or applied to *limit* that right. *Durant*, *supra*. This is a conclusion of law that this Court makes in its decision. (RTR, pp. 16-17). But these are purely questions of legal sufficiency, not of claim sufficiency. *El-Khalil*, *supra*. The parties can litigate this under (C)(10), but the Court cannot avoid Defendants' obligation to disprove Plaintiff's case by simply dismissing Plaintiff's legally sufficient and properly stated claims under (C)(8). *Id.*

7. Plaintiff Stated a Legally Sufficient Claim Under the "Purity of Elections" Clause.

Many of the same principles apply to the Court's analysis of Plaintiff's claim under the "purity of elections" clause. The Michigan Supreme Court has interpreted the "purity of elections" clause to embody at least *two concepts*: "first, that the constitutional authority to enact laws to preserve the purity of elections resides in the Legislature; and second, "that *any law* enacted by the Legislature *which adversely affects* the purity of elections is constitutionally infirm." *Socialist Workers Party v Secretary of State*, 412 Mich 571, 596; 317 NW2d 1 (1982) (emphasis added). The clause "unmistakably requires . . . fairness and evenhandedness in the election laws of this state." *McDonald v Grand Traverse Co Election Comm*, 255 Mich App 674, 692-693; 662 NW2d 804 (2003). As discussed *supra*, to the extent that MCL 168.31a is construed to restrict the scope of an audit and thereby subvert the constitutional purpose to "ensure the accuracy and integrity of elections" it would be a law that adversely affects the purity of elections clause and therefore constitutionally infirm. *Socialist Workers*, *supra*.

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Plaintiff stated a sufficient independent claim within the meaning of (C)(8) to contest the constitutionality of MCL 168.31a under both the "audits clause" and the "purity of elections clause."

8. Plaintiff Stated a Legally Sufficient Claim Under the "Equal Protection" Clause.

The equality of all citizens under the law is a lynch-pin of the modern notion of the rule of law. A revolutionary implication of this idea, well appreciated by Locke, was that to truly preserve this equality, even rulers and their magistrates had to operate under the "sovereignty of the law". Locke, Of Tyranny, Second Treatise of Civil Government, ch XVIII (1690). Locke concluded that when any member of the state exceeds his legal authority or in any way violates the law, he ceases "to be a magistrate; and, acting without authority, may be opposed, as any other man, who by force invades the right of another."

This is why the Supreme Court has referred to the "political franchise" of voting as a "fundamental political right, because preservative of all rights." *Yick Wo v Hopkins*, 118 US 356, 371; 6 S Ct 1064; 30 L Ed 220 (1886). "[T]he right . . . is a fundamental matter in a free and democratic society. Especially since the right to exercise the franchise *in a free and unimpaired manner* is preservative of other basic civil and political rights." *Harper v Va State Bd of Elections*, 383 US 663, 667; 86 S Ct 1079; 16 L Ed 2d 169 (1966) (emphasis added). Thus, "*any* alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized." *Id.* No other rights preserved by the Constitution can be guaranteed against encroachment if the one fundamental right to choose who shall govern is destroyed, because in such a case the governed is no longer bound by the sovereign's rule, which in America is "of the people, by the people, for the people." President Abraham Lincoln, Gettysburg Address, November 19, 1863.

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Equal protection of the law concerning voting rights does not just protect against voter suppression and it is not limited to racial discrimination, as Defendants asserted at oral argument. In fact, the scope of the equal protection afforded to citizens in a voting rights' case is perhaps the broadest of any that protect fundamental constitutional rights. Logically, it must be so. If a president is not legitimately elected, he exercises power that derives from something other than the will of the people, the only true sovereign in America.

What type of factual situations implicate equal protection concerns? It is more than just denial of voting rights to a class. As the Supreme Court elaborated, "the right . . . can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise." *South v Peters*, 339 US 276, 279; 70 S Ct 641; 94 L Ed 834 (1950), citing *United States v Classic*, 313 US 299, 315; 61 S Ct 1031; 85 L Ed 1368 (1941) (counting false ballots and certifying such count is a violation of the constitutional protections afforded and includes the right of qualified voters to both *cast their ballots* and *have them counted* properly). See also *Ex Parte Yarbrough*, 110 US 651, 657-658; 4 S Ct 152; 28 L Ed 274 (1884); *United States v Saylor*, 322 US 385, 387; 64 S Ct 1101; 88 L Ed 1341 (1944) (stating "the right to have one's vote counted is as open to protection . . . as the right to put a ballot in a box"). As the Supreme Court would later instruct, equal protection does not just ensure the initial equal allocation of the right to particular groups or individuals to vote, "equal protection applies as well to the manner of its exercise." *Bush v Gore*, 531 US 98, 104-05; 121 S Ct 525; 148 L Ed 2d 388 (2000). There, only a full, hand-conducted recount of the ballots that had been incorrectly processed by machines (albeit in a much more elementary way than what we are dealing with today) was deemed to satisfy "*the minimum* requirement for non-arbitrary treatment of voters necessary to secure the fundamental right" to equal protection. *Id.* at 105-06.

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The same concerns that implicate equal protection of the law are absolutely present in the instant case. Although here the lack of verifiable standards and *any* means to ascertain intent disappears not because discerning whether a "hanging chad" is or is not a vote is reverted to human observation, but because the ballots (whether authentic or not), and their ultimate adjudication disappears entirely in to the infinite ether of unreliable and fatally compromised machines. Through "error or deliberate omission" the ballots and the ballot images have not been sufficiently analyzed to ensure a legitimate count. *Bush*, 531 US at 105. Use of varying standards to count votes, widely disparate manner in the way votes were counted across different counties, and the arbitrary way in which some votes were counted and some were ignored is just as much a violation of equal protection as the "one person, one vote" principle. *Id*. at 109.

In the context of modern elections (at least as of this moment) machines instead of people are used to count votes. Those machines scan an "image" of the paper ballot. Those machines have been shown to accept false, counterfeit or illegal ballots (ballots cast by non-qualified voters). Those machines have been shown to reject or otherwise divert ballots for adjudication – making an unknown third person or entity responsible, without oversight, to review the ballot image and *decide* the vote on the ballot! Those machines and their installed hardware and software have also been shown to be vulnerable to a host of problems, including malicious intervention by foreign actors, who can cause and indeed *did cause* an incorrect vote tabulation.

All of these problems *cause* a violation of the constitutional right to equal protection of the law. If this Court is delegated with the jurisdiction to protect the constitutional rights of citizens, "it must have the power to protect the elections on which [their] existence depends from violence and corruption." *Yarbrough*, *supra* at 658. If it does not, then the people are "left

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helpless before the two great and natural historical enemies of all republics, open violence and corruption." *Id.*

The sole basis for dismissal, that the audit was conducted and therefore Plaintiff received all the relief requested does not address other relief available under the law. The reasoning that this Plaintiff cannot effectuate vindication of his own fundamental rights to equal protection, and by extension, that of the citizenry at large is incorrect. Injunctive and declaratory relief are also available to restrain any acts found to violate Michigan's equal protection clause. *Sharp v City of Lansing*, 464 Mich 792, 800; 629 NW2d 873 (2001). "As the scope of the equal protection provision has expanded, it has always included the private right to judicial remedies, whether expressly provided by statute or inferred by the judiciary." *Heurtebise v Reliable Business Computers*, 452 Mich 405, 434; 550 NW2d 243 (1996). "The right to pursue private judicial remedies has been recognized as fundamental to the enforcement of civil rights." *Id.* at 421. Thus, the Michigan Supreme Court has recognized that "whenever a particular equal protection right is recognized, whether by constitution, statute, or common law, then fused to that right is the right to pursue judicial relief." *Id.* at 422-23.

At oral argument, Defendants admitted availability of additional relief, but tried to downplay its viability. The judiciary absolutely has the authority to allow relief by way of private litigation that will result in remedial measures, e.g., a complete and comprehensive audit, and an injunction to prevent future unconstitutional processes that violate the constitutional rights of plaintiff and citizens of Michigan. *Sharp*, *supra*. Plaintiff has stated legally sufficient claims, which, if successful, entitle him to relief beyond that of a complete and comprehensive audit of the November 2020 election. Moreover, where issues of public significance demand the court's relief for protection of these constitutional rights and the future integrity of elections, the

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prudential doctrine of mootness gives way. *Attorney Gen v Michigan Pub Service Comm*, 269 Mich App at 485.

Plaintiff's separate and independent claim under the equal protection clause of the Michigan Constitution was legally sufficient to withstand dismissal under (C)(8). *El-Khalil, supra*. And it is of no moment that time has passed since the election, it has been certified and the ostensibly elected have taken up their duties within the regime. "The press of time does not diminish the constitutional concern. A desire for speed is not a general excuse for ignoring equal protection guarantees." *Bush*, 531 US at 109.

9. Plaintiff Stated a Legally Sufficient Claim for Quo Warranto Relief Under MCL 600.4545.

There is a misconception concerning the scope of relief and recognized causes of action under a timely filed action in quo warranto under MCL 600.4545. See also MCR 3.301 (distinguishing quo warranto as an extraordinary writ separate from mandamus, superintending, and habeas relief); MCR 3.306 (providing, inter alia, *jurisdiction* in the circuit court over quo warranto proceedings and allowing the circuit court to hear the matter or allow it to be tried by a jury).

Defendants recognize that Plaintiff has standing under MCL 600.4545. However, the claim that Plaintiff received all the relief to which he was entitled and that therefore the action is moot misconstrues the true purpose of the quo warranto proceeding, which, as the statute provides "shall conform as near as may be to that provided by law for actions for quo warranto." MCL 600.4545(3). Nowhere does the statute limit relief only to an audit, assuming for these purposes that there even was one, nor to what Plaintiff has already been afforded concerning the conduct of the November 2020 election. It refers to common-law quo warranto proceedings generally.

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The original common-law writ of quo warranto was a civil writ, at the suit of the crown. *Rex v Marsden*, 3 Burr 1812, 1817. It was in the nature of a writ of right by the king against one who usurped or claimed franchises or liberties, and to inquire by what right he claimed to assume them. There is no limitation at common law that would restrict such a challenge only to a time before the contested party assumes the title. See *Ames v Kansas*, 111 US 449, 460; 4 S Ct 437; 28 L Ed 482 (1884). In America, since the citizen replaced the crown, quo warranto actions may be brought by or on behalf of any citizen and they are pleaded "on behalf of the public at large." *Taylor v Sturgell*, 553 US 880, 895; 128 S Ct 2161; 171 L Ed 2d 155, 170 (2008) (emphasis added), citing *Richards v Jefferson County*, 517 US 793, 804; 116 S Ct 1761, 135 L Ed 2d 76 (1996). "A successful quo warranto action unseats an illegal office holder and declares the position vacant. It does not place the rightful claimant into the office. If the claimant can thereafter establish his clear right to the position, he may bring an action in mandamus to seek his own appointment." *New Haven Firebird Society v Board of Fire Commissioners of City of New Haven*, 219 Conn 432, 436; 593 A 2d 1383, 1385 (Conn 1991). Quo warranto, is "the only way to try titles to office finally and conclusively." *Lindquist*, 258 at 154 (emphasis supplied).

Modern usage retains these critical elements of quo warranto. It is a civil action to challenge the rights of public officials to hold the office to which they claim to be entitled and a means by which the public citizen can enforce civil rights "on behalf of the public at large." *Taylor*, *supra*; *Richards*, *supra*. "The right and the remedy are thus brought into harmony" in modern usage of the writ. *Ames*, *supra*.

These two points are critical. Plaintiff has standing, as Defendants acknowledge, and he has the right, on behalf of the citizenry, to challenge those claiming legitimacy in the offices they hold. Because it proceeds under the statute in the same manner as the writ at common law, quo

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warranto provides a conduit to all other legal remedies and claims provided by the Constitution and statutes, but certainly not limited thereby. It rather harmonizes the rights and the remedies available on behalf of the public at large. *Ames*, *supra*.

The state may not deprive rights over which it has no authority. MCL 168.846 is silent regarding quo warranto proceedings. Moreover, case law cited by the proponents of this view, e.g., *People ex rel Royce v Goodwin*, 22 Mich 496, 501-502; 2 Brown NPS 51 (1871), came well before the Constitution and MCL 168.31a were amended in harmony to empower citizens to litigate in toto the ostensible rights of one claiming title to an office by virtue of allowing an audit and seeking other available relief. See Const 1963, art 2, §4(1)(h)); MCL 168.31a(2) (first sentence).

Finally, quo warranto provides a vehicle to test the constitutional issues arising from an election. *Grand Rapids City Clerk*, 366 Mich at 340 (emphasis added), citing *Millard ex rel Reuter v Bay City*, 334 Mich 514, 517; 54 NW2d 635 (1952). This would of course include the question concerning the scope of the right to an audit under § 4(1)(h) and the related issue of the constitutionality of MCL 168.31a(2) to the extent that is advanced as a statutory limitation on the constitutional right. In addition to requesting an audit and challenging other aspects of the election process, Plaintiff has raised these constitutional issues. Plaintiff has stated an independent and sufficient legal claim under MCL 600.4545.

10. <u>The Court erred when it failed to consider the amended complaint</u>.

The court erred by failing to consider and rule on Plaintiff's motion to amend complaint which contained additional requested relief and additional findings of fact. Plaintiff would not have been able to request this relief at the time he filed the original complaint. Rather, he needed assistance from his expert witnesses (which takes time) in order to further articulate the relief

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requested. This was substantially delayed by Defendant Benson's failure to turn over discovery timely and by the destruction of evidence.

11. Conclusion and relief requested.

For the reasons stated herein, the Court's dismissal under MCR 2.116(C)(4) on grounds that *all of Plaintiff's* claims were moot ignored the still viable constitutional and statutory claims and relief available thereunder. The Court's order granting summary disposition was palpable error that warrants reinstatement of all of Plaintiff's claims. Therefore, Plaintiff respectfully requests that this Honorable Court grant Plaintiff's motion for reconsideration, or in the alternative grant a rehearing, and reinstate all of the claims in his complaint

Respectfully submitted

DePERNO LAW OFFICE, PLLC

Dated: June 9, 2021

/s/ Matthew S. DePerno
Matthew S. DePerno (P52622)
Attorney for Plaintiff

PROOF OF SERVICE

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

1. Plaintiff's Brief in Support of Motion for Reconsideration or, in the alternative, Rehearing Pursuant to MCR 2.119(F)

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

Dated: June 9, 2021

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

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

WILLIAM BAILEY Plaintiff	Case No. 20-9238-CZ
v.	
ANTRIM COUNTY Defendant	HON. KEVIN A. ELSENHEIMER
SECRETARY OF STATE JOCELYN BENSON Intervenor-Defendant,	

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Haider A. Kazim (P66146)
Allan C. Vander Laan (P33893)
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EXHIBITS 1

PLAINTIFF'S MOTION AND BRIEF FOR RECONSIDERATION OR, ALTERNATIVELY, REHEARING PURSUANT TO MCR 2.119(F)

Respectfully submitted

DePERNO LAW OFFICE, PLLC

Dated: June 9, 2021

/s/ Matthew S. DePerno
Matthew S. DePerno (P52622)
Attorney for Plaintiff

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF ANTRIM

WILLIAM BAILEY,

Plaintiff,

v

File No. 2020009238CZ
HON. KEVIN A. ELSENHEIMER

ANTRIM COUNTY,

Defendant,

and

SECRETART OF STATE
JOCELYN BENSON

Intervening Defendant.
_____/

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Attorney for Plaintiff

Haider A. Kazim
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Frank Krycia (P35383)
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Assistant Corporation Counsel

Allan C. Vander Laan (P33893)
Kristen L. Rewa (P73043)
Attorneys for Non-Party Palmer

Peter R. Wendling (P48784)
Attorney for Non-Party Townships

ERRATA ORDER

On May 18, 2021, the Court issued a bench decision pursuant to MCR 2.116(C)(4). The Court, at the end of the decision, stated that summary disposition was awarded to the Plaintiff. This was a misstatement. As is clear from the context of the decision, the Court granted Defendants' joint motion for summary disposition pursuant to MCR 2.116(C)(4). This Order therefore, grants summary disposition to the Defendants and dismisses Plaintiff's claims.

IT IS SO ORDERED.

05/19/2021
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KEVIN A. ELSENHEIMER, CIRCUIT COURT JUDGE, P49293

HONORABLE KEVIN A. ELSENHEIMER
Circuit Court Judge

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

WILLIAM BAILEY Plaintiff	Case No. 20-9238-CZ
v.	
ANTRIM COUNTY Defendant	HON. KEVIN A. ELSENHEIMER
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EXHIBITS 2

PLAINTIFF'S MOTION AND BRIEF FOR RECONSIDERATION OR, ALTERNATIVELY, REHEARING PURSUANT TO MCR 2.119(F)

Respectfully submitted

DePERNO LAW OFFICE, PLLC

Dated: June 9, 2021

/s/ Matthew S. DePerno
Matthew S. DePerno (P52622)
Attorney for Plaintiff

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Date: 6/9/2021
Subject: Case Study Banks Township - Antrim County Election Management Server Found to be Subverted
Analyst: Jeffrey Lenberg

Executive Summary

The Antrim County Dominion Democracy Suite 5.5.12.1 Election Management Server (EMS) has been found to be subverted. To illustrate the subversion, a case study was performed on Banks Township to show the results of the manipulation of the project files on the EMS and how the EMS handled the errors introduced.

When conducting an election with an election project file containing a shift (akin to the Antrim County incident) large enough to move all votes off the ballot, the EMS gives no error messages at all. The EMS has been programmed to suppress all error messages related to the shifting of indexes beyond the confines of the Banks ballot illustrating one of the factors indicating that the EMS has been subverted.

This case study on Banks Township shows that shifting of indexes for all the races entirely off the ballot nullifies the cast votes and changes the status of each contest to an undervote. An undervote occurs when no vote is cast for the contest, or an insufficient number of votes for a multi-vote contest. This kind of shift of the indexes must result in an error at the EMS due to routine error handling in modern software applications. Indeed, all modern programming languages would throw an exception that must be caught and handled by the programmer. In the case of the Antrim County EMS it does not produce any errors on the EMS because the exception is handled in a fashion to create an undervote and disregard the authentic vote. The subversion intentionally suppresses the errors that would likely occur in order to allow manipulation of the votes without detection.

Details

The Antrim County Dominion Democracy Suite Version 5.5.17 Election Management Server (EMS) is subverted to allow for the manipulation of votes. The subversion of the Antrim EMS is specific to the error handling procedures of the software. The software would typically show an error if the vote selections were shifted outside of a single contest, moreover, when all of the votes for all of the contests on the ballot are moved outside the indexes on that individual ballot the software would be expected to throw what is called an exception in software engineering. When an exception occurs, it must be handled by a programming routine that is designed for error handling (aka exception handling); if this does not occur, the result is typically a crash of the program, and immediate termination of the application. This would be very noticeable to the user as the entire program would stop running and it would appear to crash from the user's perspective.

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The Banks Township case study was designed to show what occurs on the Antrim County EMS when the database is manipulated to move all the votes for all contests outside of acceptable parameters. The indexes in the EMS database for Banks Township begin at the number 1 and then go to a top number of 552. Each index number represents the bullet for each possible vote choice in every contest on the Banks Township ballot, including every single choice for write-ins as well. Figure 1 shows the default configuration of the Antrim County EMS ChoiceManifestion Table that contains the vote index positions.

Testing for the Antrim County EMS Subversion

For the purposes of the Banks Township case study, the beginning index number for the Banks Township ballot was set to 561 and the top number in the range was set to 1,112. This was accomplished by adding 560 to all the internalMachineIds (see Figure 1) in the ChoiceManifestiation table and then proceeding with the election.

For the purposes of this case study, the Banks Township "ballot" will refer to all four ballot styles used in Banks Township. This is the reason there are 552 total vote choices due to the four different ballot styles.

The result is that the indexes for every single vote choice for the Banks Township ballot are outside of the range of indexes expected for the Banks Township ballot. Figure 1 shows the MS SQL command used to add 560 to each internalMachineId index. See Figure 2 showing the ranges for the test.

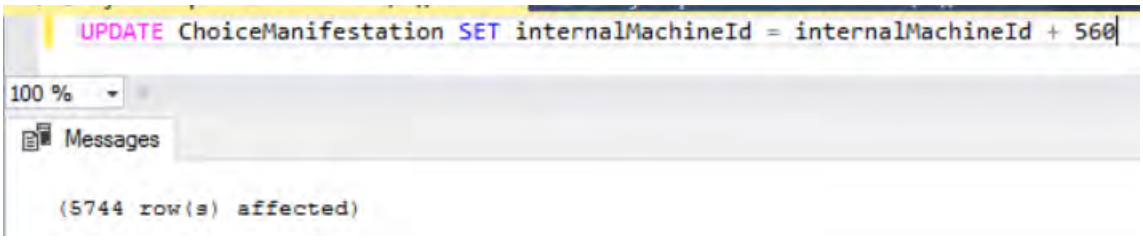

Figure 1 - Adding 560 to Every internalMachineId in the Antrim County EMS Database

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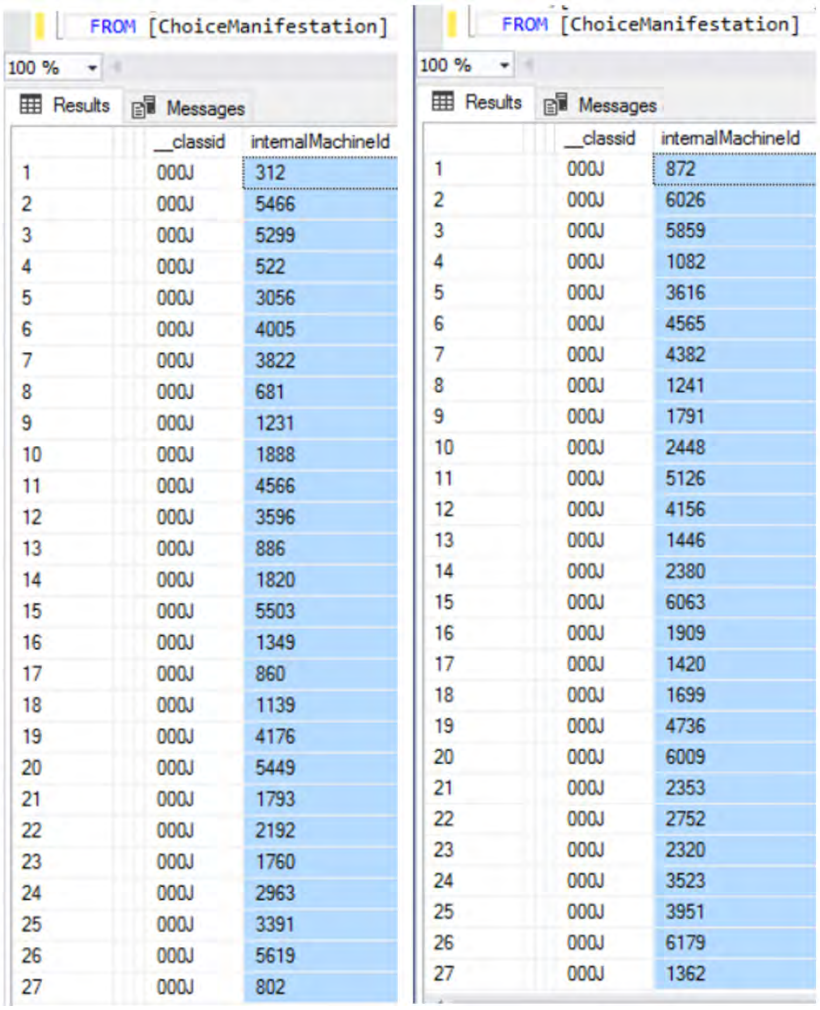

FROM [ChoiceManifestation]

100 %

Results | Messages

	__classid	internalMachineId
1	000J	312
2	000J	5466
3	000J	5299
4	000J	522
5	000J	3056
6	000J	4005
7	000J	3822
8	000J	681
9	000J	1231
10	000J	1888
11	000J	4566
12	000J	3596
13	000J	886
14	000J	1820
15	000J	5503
16	000J	1349
17	000J	860
18	000J	1139
19	000J	4176
20	000J	5449
21	000J	1793
22	000J	2192
23	000J	1760
24	000J	2963
25	000J	3391
26	000J	5619
27	000J	802

FROM [ChoiceManifestation]

100 %

Results | Messages

	__classid	internalMachineId
1	000J	872
2	000J	6026
3	000J	5859
4	000J	1082
5	000J	3616
6	000J	4565
7	000J	4382
8	000J	1241
9	000J	1791
10	000J	2448
11	000J	5126
12	000J	4156
13	000J	1446
14	000J	2380
15	000J	6063
16	000J	1909
17	000J	1420
18	000J	1699
19	000J	4736
20	000J	6009
21	000J	2353
22	000J	2752
23	000J	2320
24	000J	3523
25	000J	3951
26	000J	6179
27	000J	1362

Figure 2 Index Values in the Beginning of the ChoiceManifestion Table Before and After Addition of 560 to internalMachineId

The fact that every single vote choice is set to be outside the anticipated range of vote choices values means that the software must throw an exception that would likely result in a critical error for the EMS system and the inability to load the results from that particular compact flash card.

In order to show that the Antrim County EMS is subverted and that loading Banks Township results would not result in an EMS crash when loaded with the indexes entirely out of range for the ballot, a testing regime was followed where 210 ballots were run through the ImageCast Precinct (ICP) tabulator. See Appendix A for images of the ballots that were used for the test procedure. The objective of the test was to illustrate that the paper tapes would accurately convey the totals of the vote while the EMS would show undervotes for all contests, the result is the categorical loss of all the votes due to the subversion. All the votes on the EMS show undervotes. This means that for the 210 ballots cast there were 4,890 individual contest votes discarded by the EMS due to the subversion. Note that the 4,890

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discarded contest votes are based on the specific vote pattern on the ballots in Appendix A.

The fact that the Antrim County EMS does not reject the loading of the compact flash cards, generate any type of error, crash or otherwise indicate that there is an issue with the results processing shows the EMS is subverted. The error handling of the Antrim County EMS purposefully disregards the votes cast and labels them as undervotes instead of raising an error. The conclusion is that the Antrim County EMS has been purposefully subverted. Furthermore, the subversion of error handling is a primary tactic of any cyber attacker.

The vote totals on the tape are illustrated in Figure 4, the paper tape is not impacted by the large shift from the Banks case study. The Presidential contest results from the EMS are found in Figure 3 and there are no votes recorded for any of the candidates with all the votes being discarded and recorded as undervotes. The entire EMS output for Banks Township election showing undervotes for all races is included in Appendix B.

Contest: **President and Vice President of the United States**
Number Of Postions : **1**
Precinct Portion:
Ballot Manifestation : **0**

Ballot Statistics

Contest Results

Overvotes:	0
Undervotes:	210
Blank:	210
Double Votes:	0
Invalid Votes:	0
Writein Overrides:	0

Candidate Results

Name	Party	Votes
Joseph R. Biden / Kamala D. Harris	DEM	0
Donald J. Trump / Michael R. Pence	REP	0
Jo Jorgensen / Jeremy Cohen	LIB	0
Don Blankenship / William Mohr	UST	0
Howie Hawkins / Angela Walker	GRN	0
Rocky De La Fuente / Darcy Richardson	NLP	0
Write-in		0

Figure 3 - EMS/RTR Output for Presidential Contest - All Undervotes

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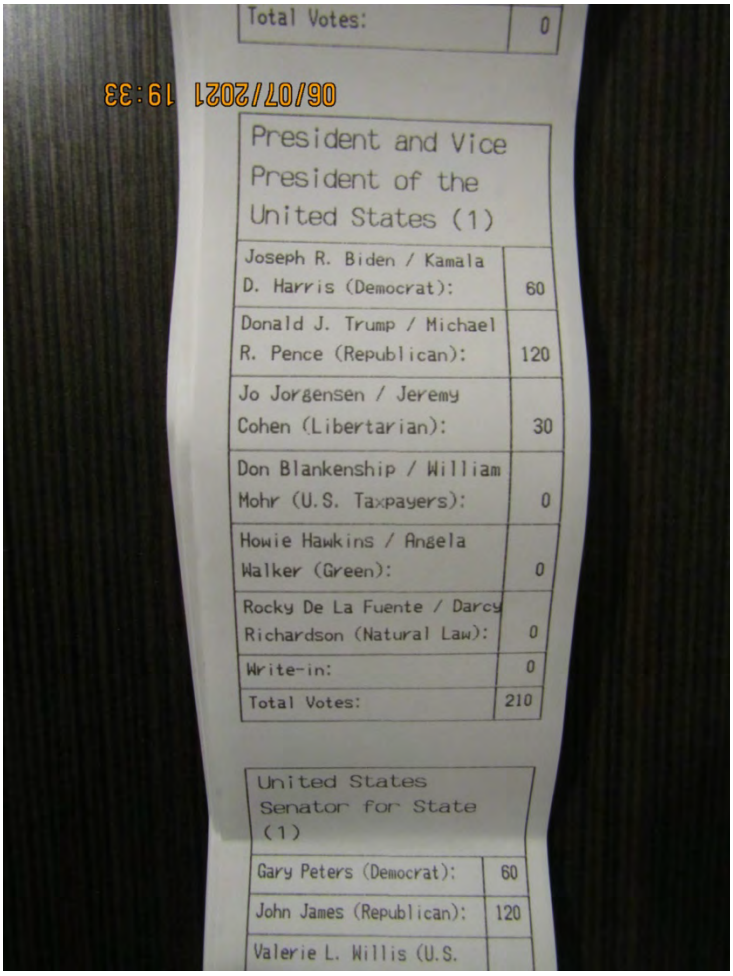

Figure 3 - Paper Tapes for Banks County - Results are Unmodified on the Tape

Successful Loading of Compact Flash Cards that Should Have Been Rejected

The expert report by Halderman dated March 26, 2021, indicated that only 4 townships' compact flash cards failed to load on the Antrim County EMS, see Figure 5. The subversion of the Antrim County EMS actually allowed twelve (12) additional townships compact flash cards to load successfully despite the flawed configuration that resulted in the shifting of votes.

These additional townships would have failed to load on the EMS if not for the subversion in the Antrim County EMS system that allowed for the cards to load normally and not trigger any rejection of the cards or errors in the EMS:

1. Chestonia Township
2. Echo Township
3. Helena Township

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4. Star Township
5. Custer Township
6. Elk Rapids, AV Board
7. Torch Lake Township
8. Forest Home Township
9. Milton Township, AV Board
10. Central Lake Township
11. Jordan Township
12. Kearney Township

The Antrim County EMS is capable of generating an error when attempting to load results from corrupt compact flash cards, but did not due to the subversion. An error from the EMS similar to this one should have been generated for corrupt data. Figure 4 gives an example of an error that would be expected from the EMS. In this case the slog.txt is loaded, meaning that there is a log entry accounting for the error, but no actual results are loaded into the EMS for reporting functions; therefore, inaccurate vote totals do not get reported if this proper error handling does occur.

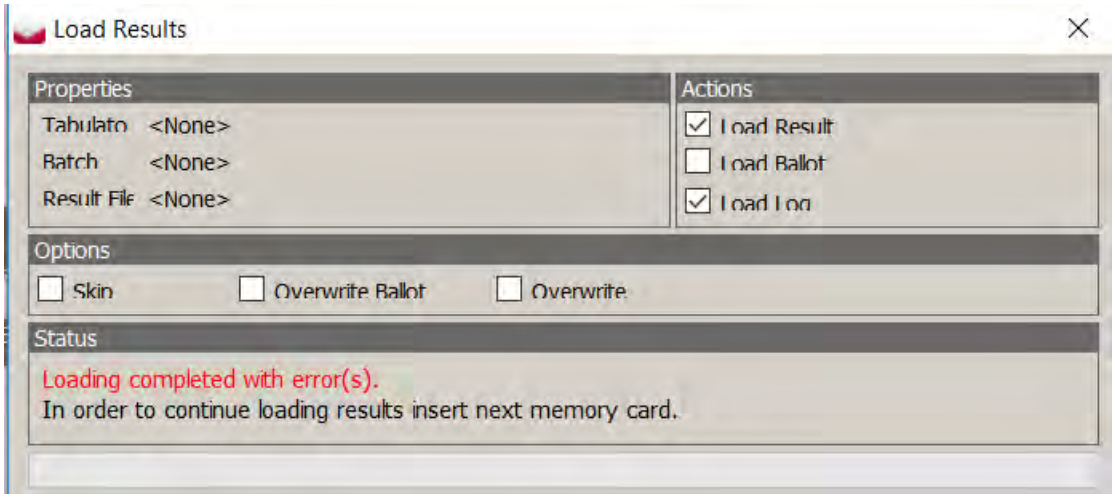

Figure 4 - Error Loading Compact Flash Card

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Nov. 3	21:48	*EMS begins loading results from scanner memory cards.*		
	21:49	Chestonia Township	Card loaded successfully.	Should not have loaded
	22:31–22:38	Warner Township	Failed to load, 7 attempts.	
	22:41	Banks Township	Card loaded successfully.	Should not have loaded
	22:53	Echo Township	Card loaded successfully.	
	22:56	Warner Township	Final failed loading attempt.	
	23:03–00:18	Warner Township	Manually entered from poll tape	Should not have loaded
Nov. 4	00:20	Helena Township	Card loaded successfully.	Should not have loaded
	00:23	Star Township	Card loaded successfully.	Should not have loaded
	00:26	Custer Township	Card loaded successfully.	
	00:28	Elk Rapids, Precinct 1	Failed to load.	Should not have loaded
	00:31	Elk Rapids, AV Board	Card loaded successfully.	Should not have loaded
	00:34	Torch Lake Township	Card loaded successfully.	Should not have loaded
	00:36	Forest Home Township	Card loaded successfully.	Should not have loaded
	00:38	Milton Township, AV Board	Card loaded successfully.	
	00:38	Milton Township, Precinct 1	Failed to load.	
	01:10–01:41	Elk Rapids, Precinct 1	Manually entered from poll tape	Should not have loaded
	01:43	Central Lake Township	Card loaded successfully.	
	01:48–02:04	Milton Township, Precinct 1	Manually entered from poll tape	Should not have loaded
	02:05	Jordan Township	Card loaded successfully.	Should not have loaded
	03:36	Kearney Township	Card loaded successfully.	
	03:43	Mancelona, Precinct 1	Card loaded successfully.	
	03:44	Mancelona, Precinct 2	Card loaded successfully.	
	03:51–04:09	*EMS produces unofficial results report for public distribution.*		

Table 4: **Election Night Timeline.** The EMS log shows that county staff worked through the night of Nov. 3–4 to load results from scanner memory cards. Three of 18 cards failed to load, and those results were entered manually from scanner poll tapes. At 4:09 a.m., the EMS produced the unofficial results report posted on Antrim's website. Officials learned hours later that the results were erroneous.

Figure 5 - Halderman Report Table 4

Under the penalties of perjury, I declare that I have read the foregoing report and that facts stated in it are true.

Jeffrey Lenberg

Jeffrey Lenberg

MICHIGAN NOTARY ACKNOWLEDGEMENT

State of Michigan
County of Oakland

The foregoing instrument was acknowledged before me on this 9th day of June, 2021 by Jeffrey Lenberg.

Notary Public Signature:

Notary Printed Name: Ann M. Howard
Acting in the County of: Oakland
My Commission Expires: 2/24/2023

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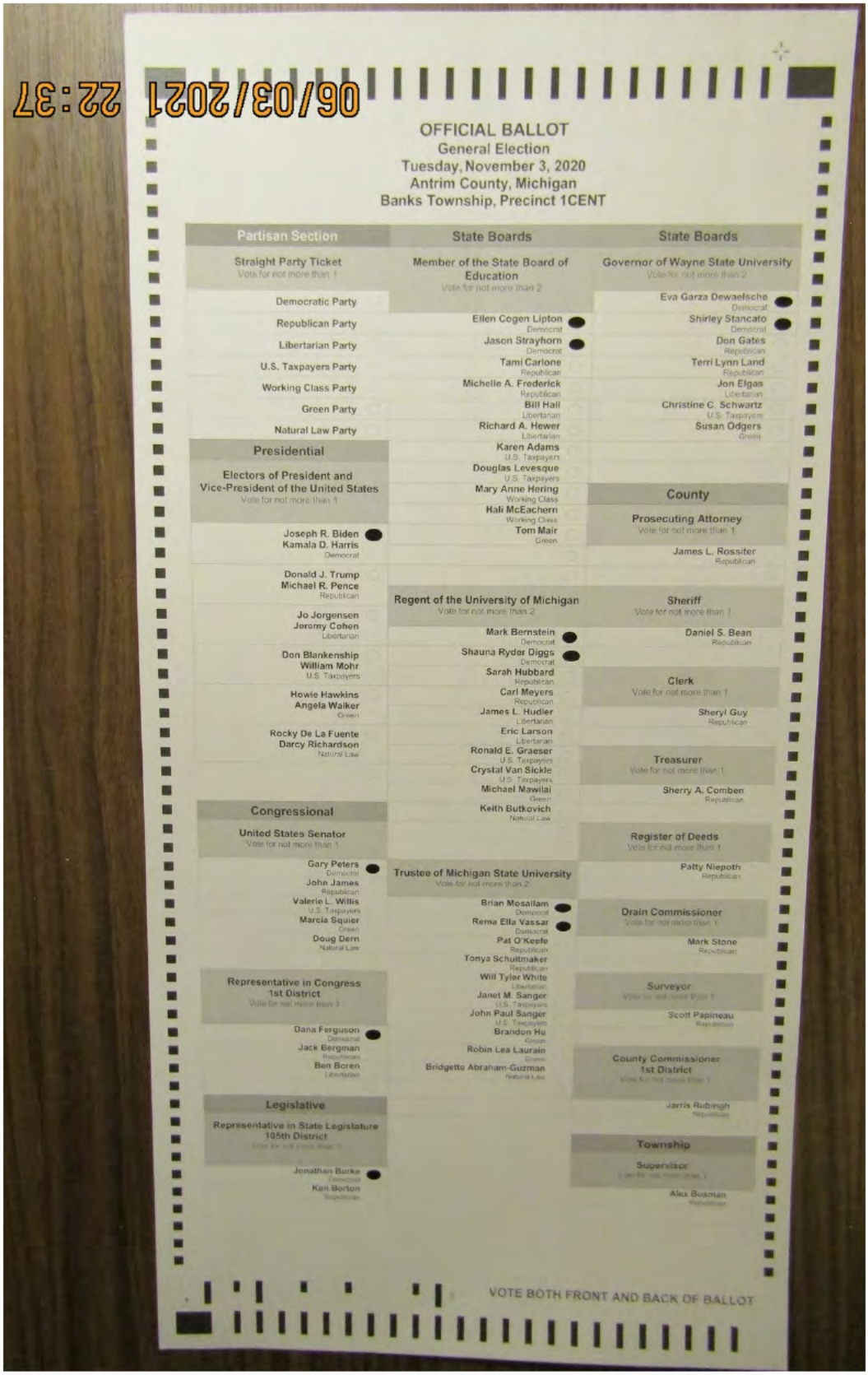

Figure 6 - Ballot #1 for Banks Township Case Study

Appendix A
Ballots used for the Banks Township Case Study

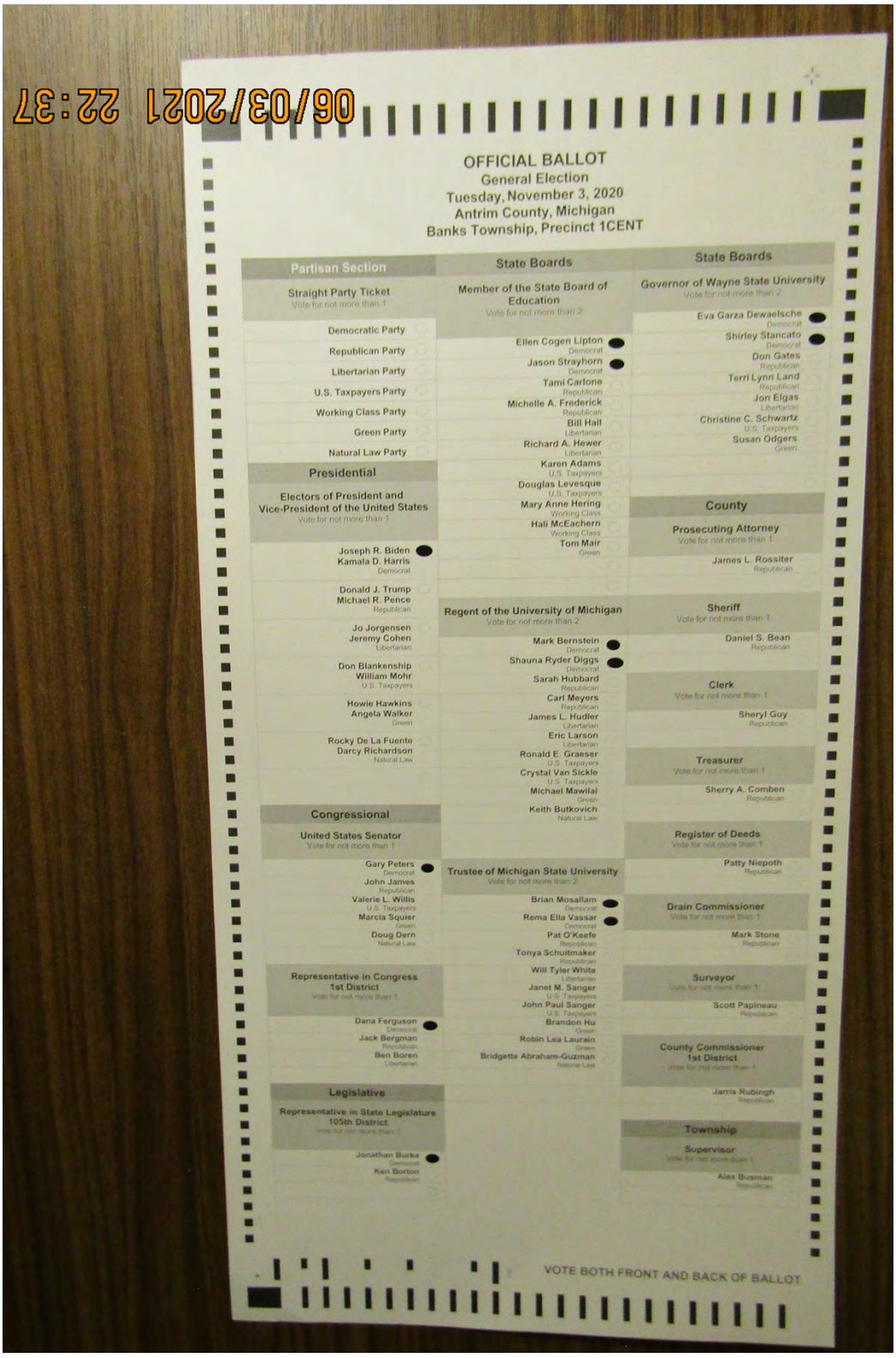

Figure 7 - Ballot #2 for Banks Township Case Study

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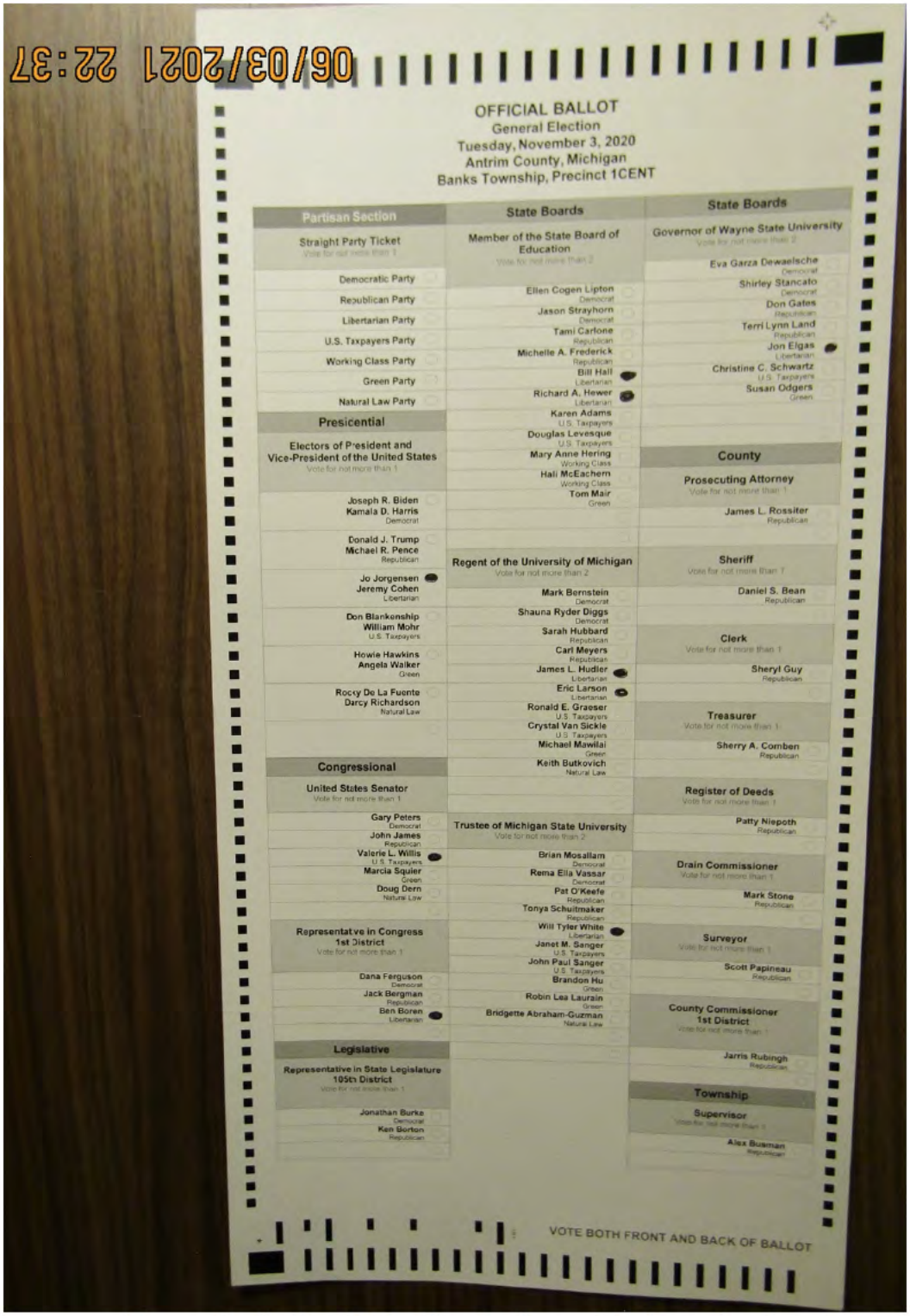
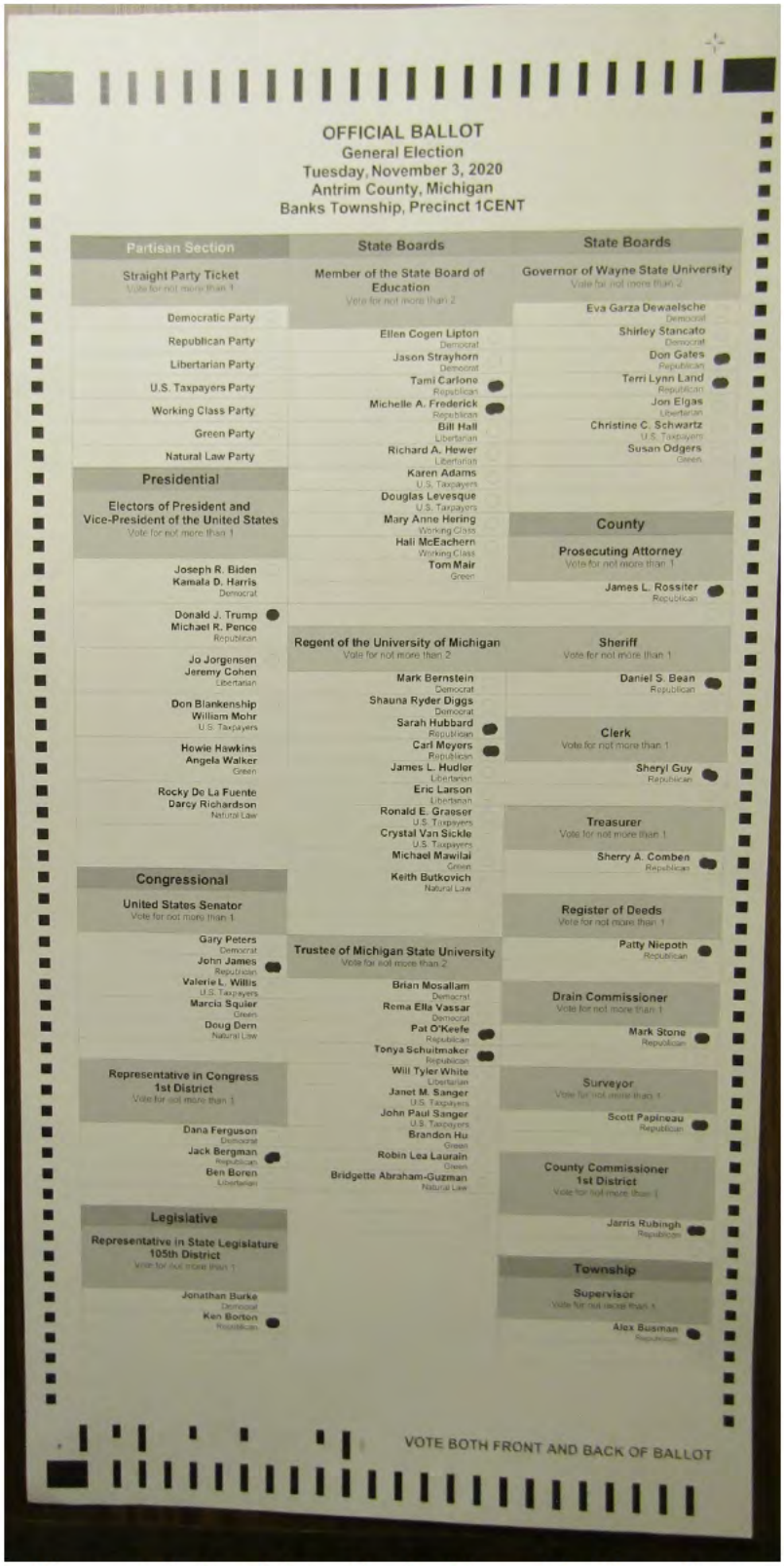


Figure 8 - Ballot #3 for Banks Township Case Study

Appendix A
Ballots used for the Banks Township Case Study



OFFICIAL BALLOT
General Election
Tuesday, November 3, 2020
Antrim County, Michigan
Banks Township, Precinct 1CENT

Partisan Section

Straight Party Ticket
Vote for not more than 1

Democratic Party
Republican Party
Libertarian Party
U.S. Taxpayers Party
Working Class Party
Green Party
Natural Law Party

Presidential

Electors of President and Vice-President of the United States
Vote for not more than 1

Joseph R. Biden / Kamala D. Harris — Democrat
Donald J. Trump / Michael R. Pence — Republican
Jo Jorgensen / Jeremy Cohen — Libertarian
Don Blankenship / William Mohr — U.S. Taxpayers
Howie Hawkins / Angela Walker — Green
Rocky De La Fuente / Darcy Richardson — Natural Law

Congressional

United States Senator
Vote for not more than 1

Gary Peters — Democrat
John James — Republican
Valerie L. Willis — U.S. Taxpayers
Marcia Squier — Green
Doug Dern — Natural Law

Representative in Congress 1st District
Vote for not more than 1

Dana Ferguson — Democrat
Jack Bergman — Republican
Ben Boren — Libertarian

Legislative

Representative in State Legislature 105th District
Vote for not more than 1

Jonathan Burke — Democrat
Ken Borton — Republican

State Boards

Member of the State Board of Education
Vote for not more than 2

Ellen Cogen Lipton — Democrat
Jason Strayhorn — Democrat
Tami Carlone — Republican
Michelle A. Frederick — Republican
Bill Hall — Libertarian
Richard A. Hewer — Libertarian
Karen Adams — U.S. Taxpayers
Douglas Levesque — U.S. Taxpayers
Mary Anne Hering — Working Class
Hali McEachern — Working Class
Tom Mair — Green

Regent of the University of Michigan
Vote for not more than 2

Mark Bernstein — Democrat
Shauna Ryder Diggs — Democrat
Sarah Hubbard — Republican
Carl Meyers — Republican
James L. Hudler — Libertarian
Eric Larson — Libertarian
Ronald E. Graeser — U.S. Taxpayers
Crystal Van Sickle — U.S. Taxpayers
Michael Mawilai — Green
Keith Butkovich — Natural Law

Trustee of Michigan State University
Vote for not more than 2

Brian Mosallam — Democrat
Rema Ella Vassar — Democrat
Pat O'Keefe — Republican
Tonya Schuitmaker — Republican
Will Tyler White — Libertarian
Janet M. Sanger — U.S. Taxpayers
John Paul Sanger — U.S. Taxpayers
Brandon Hu — Green
Robin Lea Laurain — Green
Bridgette Abraham-Guzman — Natural Law

State Boards

Governor of Wayne State University
Vote for not more than 2

Eva Garza Dewaelsche — Democrat
Shirley Stancato — Democrat
Don Gates — Republican
Terri Lynn Land — Republican
Jon Elgas — Libertarian
Christine C. Schwartz — U.S. Taxpayers
Susan Odgers — Green

County

Prosecuting Attorney
Vote for not more than 1

James L. Rossiter — Republican

Sheriff
Vote for not more than 1

Daniel S. Bean — Republican

Clerk
Vote for not more than 1

Sheryl Guy — Republican

Treasurer
Vote for not more than 1

Sherry A. Comben — Republican

Register of Deeds
Vote for not more than 1

Patty Niepoth — Republican

Drain Commissioner
Vote for not more than 1

Mark Stone — Republican

Surveyor
Vote for not more than 1

Scott Papineau — Republican

County Commissioner 1st District
Vote for not more than 1

Jarris Rubingh — Republican

Township

Supervisor
Vote for not more than 1

Alex Busman — Republican

VOTE BOTH FRONT AND BACK OF BALLOT

Figure 9 Ballot #4 for Banks Township Case Study

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Appendix A
Ballots used for the Banks Township Case Study

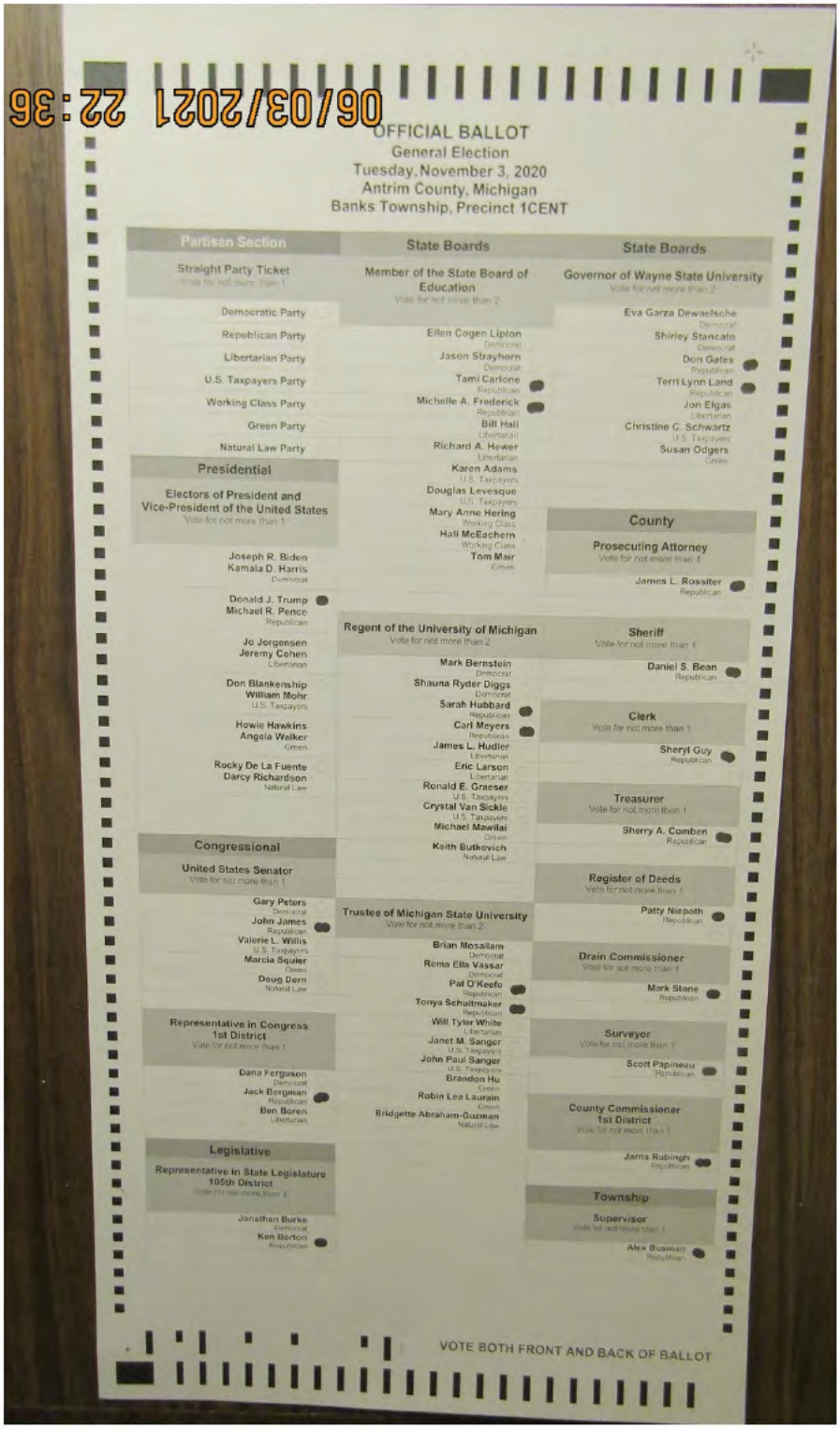

Figure 10 Ballot #5 for Banks Township Case Study

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Appendix A
Ballots used for the Banks Township Case Study

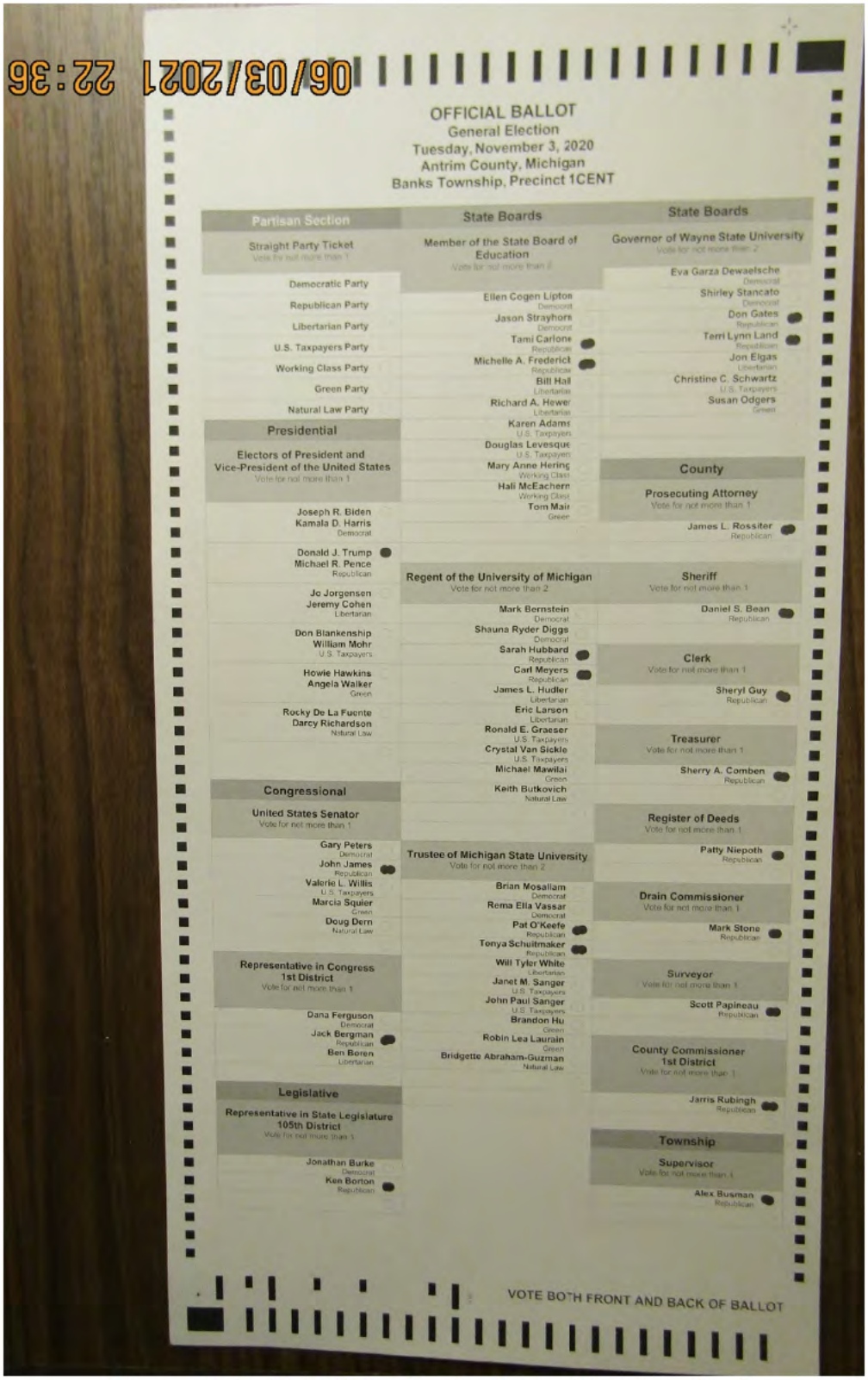

Figure 11 Ballot #6 for Banks Township Case Study

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Appendix A
Ballots used for the Banks Township Case Study

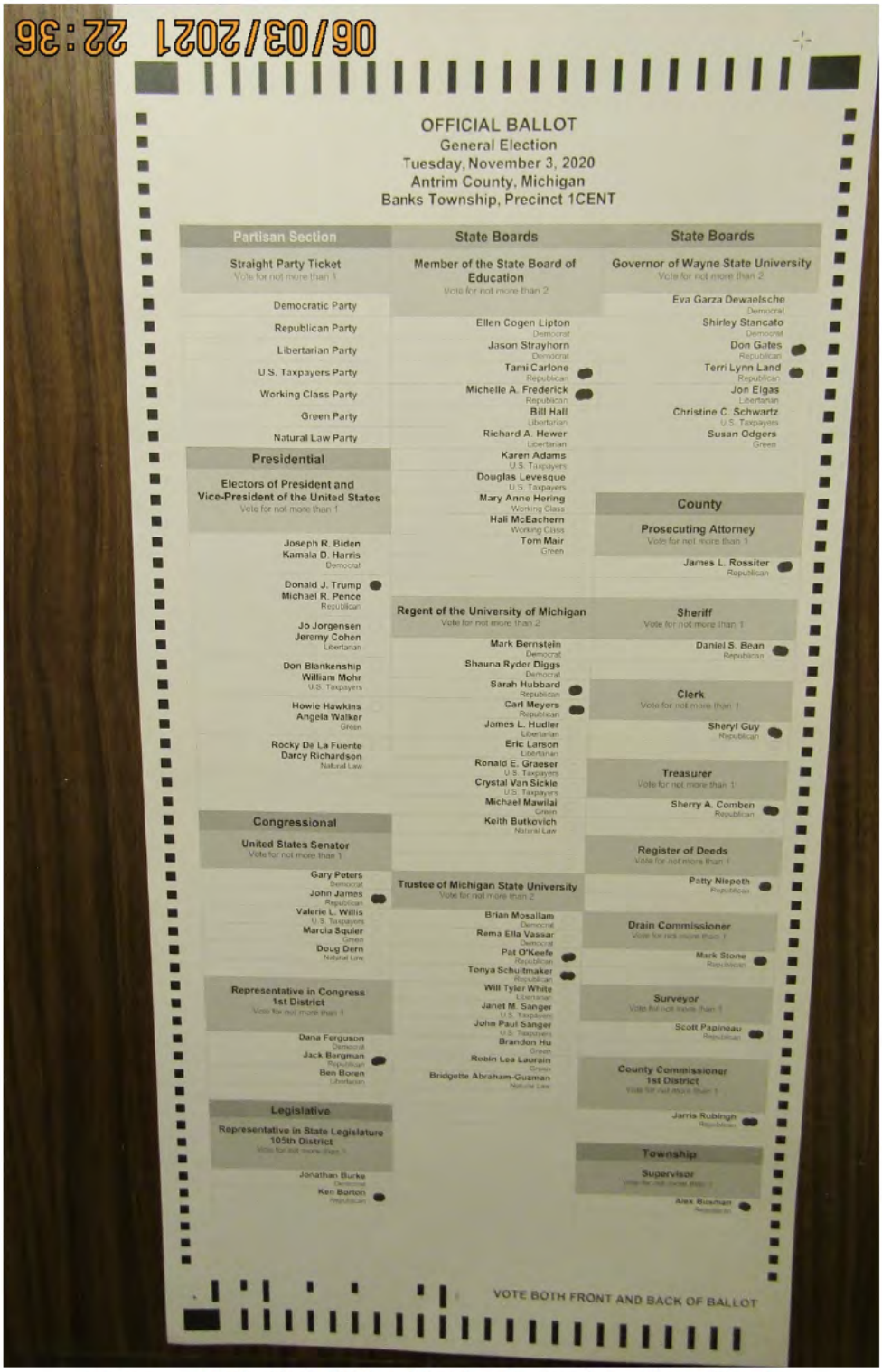

Figure 12 Ballot #7 for Banks Township Case Study

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Appendix B
Antrim County EMS Results from
Banks Township Case Study

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Contest: **Straight Party Ticket**
Number Of Postions : **1**
Precinct Portion:
Ballot Manifestation : **0**

Ballot Statistics

Contest Results

Overvotes:	0
Undervotes:	210
Blank:	210
Double Votes:	0
Invalid Votes:	0
Writein Overrides:	0

Candidate Results

Name	Party	Votes
Democratic Party	DEM	0
Republican Party	REP	0
Libertarian Party	LIB	0
U.S. Taxpayers Party	UST	0
Working Class Party	WCP	0
Green Party	GRN	0
Natural Law Party	NLP	0

Appendix B
Antrim County EMS Results from
Banks Township Case Study

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Contest: **President and Vice President of the United States**
Number Of Postions : **1**
Precinct Portion:
Ballot Manifestation : **0**

Ballot Statistics

Contest Results

Overvotes:	0
Undervotes:	210
Blank:	210
Double Votes:	0
Invalid Votes:	0
Writein Overrides:	0

Candidate Results

Name	Party	Votes
Joseph R. Biden / Kamala D. Harris	DEM	0
Donald J. Trump / Michael R. Pence	REP	0
Jo Jorgensen / Jeremy Cohen	LIB	0
Don Blankenship / William Mohr	UST	0
Howie Hawkins / Angela Walker	GRN	0
Rocky De La Fuente / Darcy Richardson	NLP	0
Write-in		0

Appendix B
Antrim County EMS Results from
Banks Township Case Study

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Contest: **United States Senator for State**
Number Of Postions : **1**
Precinct Portion:
Ballot Manifestation : **0**

Ballot Statistics

Contest Results

Overvotes:	0
Undervotes:	210
Blank:	210
Double Votes:	0
Invalid Votes:	0
Writein Overrides:	0

Candidate Results

Name	Party	Votes
Gary Peters	DEM	0
John James	REP	0
Valerie L. Willis	UST	0
Marcia Squier	GRN	0
Doug Dern	NLP	0
Write-in		0

Appendix B
Antrim County EMS Results from
Banks Township Case Study

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Contest: **Representative in Congress 1st District**
Number Of Postions : **1**
Precinct Portion:
Ballot Manifestation : **0**

Ballot Statistics

Contest Results

Overvotes:	0
Undervotes:	210
Blank:	210
Double Votes:	0
Invalid Votes:	0
Writein Overrides:	0

Candidate Results

Name	Party	Votes
Dana Ferguson	DEM	0
Jack Bergman	REP	0
Ben Boren	LIB	0
Write-in		0

Appendix B
Antrim County EMS Results from
Banks Township Case Study

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Contest: **Representative in State Legislature 105th District**
Number Of Postions : **1**
Precinct Portion:
Ballot Manifestation : **0**

Ballot Statistics

Contest Results

Overvotes:	0
Undervotes:	210
Blank:	210
Double Votes:	0
Invalid Votes:	0
Writein Overrides:	0

Candidate Results

Name	Party	Votes
Jonathan Burke	DEM	0
Ken Borton	REP	0
Write-in		0

Appendix B
Antrim County EMS Results from
Banks Township Case Study

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Contest: **Member of the State Board of Education**
Number Of Postions : **2**
Precinct Portion:
Ballot Manifestation : **0**

Ballot Statistics

Contest Results

Overvotes:	0
Undervotes:	420
Blank:	210
Double Votes:	0
Invalid Votes:	0
Writein Overrides:	0

Candidate Results

Name	Party	Votes
Ellen Cogen Lipton	DEM	0
Jason Strayhorn	DEM	0
Tami Carlone	REP	0
Michelle A. Frederick	REP	0
Bill Hall	LIB	0
Richard A. Hewer	LIB	0
Karen Adams	UST	0
Douglas Levesque	UST	0
Mary Anne Hering	WCP	0
Hali McEachern	WCP	0
Tom Mair	GRN	0
Write-in		0

Activate Windows
Go to Settings to activate Windows.

Appendix B
Antrim County EMS Results from
Banks Township Case Study

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Contest: **Regent of the University of Michigan**
Number Of Postions : **2**
Precinct Portion:
Ballot Manifestation : **0**

Ballot Statistics

Contest Results

Overvotes:	0
Undervotes:	420
Blank:	210
Double Votes:	0
Invalid Votes:	0
Writein Overrides:	0

Candidate Results

Name	Party	Votes
Mark Bernstein	DEM	0
Shauna Ryder Diggs	DEM	0
Sarah Hubbard	REP	0
Carl Meyers	REP	0
James L. Hudler	LIB	0
Eric Larson	LIB	0
Ronald E. Graeser	UST	0
Crystal Van Sickle	UST	0
Michael Mawilai	GRN	0
Keith Butkovich	NLP	0
Write-in		0

Activate Windows

Appendix B
Antrim County EMS Results from
Banks Township Case Study

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Contest: **Trustee of Michigan State University**
Number Of Postions : **2**
Precinct Portion:
Ballot Manifestation : **0**

Ballot Statistics

Contest Results

Overvotes:	0
Undervotes:	420
Blank:	210
Double Votes:	0
Invalid Votes:	0
Writein Overrides:	0

Candidate Results

Name	Party	Votes
Brian Mosallam	DEM	0
Rema Ella Vassar	DEM	0
Pat O'Keefe	REP	0
Tonya Schuitmaker	REP	0
Will Tyler White	LIB	0
Janet M. Sanger	UST	0
John Paul Sanger	UST	0
Brandon Hu	GRN	0
Robin Lea Laurain	GRN	0
Bridgette Abraham-Guzman	NLP	0
Write-in		0

Activate Windows

Appendix B
Antrim County EMS Results from
Banks Township Case Study

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Contest: **Governor of Wayne State University**
Number Of Postions : **2**
Precinct Portion:
Ballot Manifestation : **0**

Ballot Statistics

Contest Results

Overvotes:	0
Undervotes:	420
Blank:	210
Double Votes:	0
Invalid Votes:	0
Writein Overrides:	0

Candidate Results

Name	Party	Votes
Eva Garza Dewaelsche	DEM	0
Shirley Stancato	DEM	0
Don Gates	REP	0
Terri Lynn Land	REP	0
Jon Elgas	LIB	0
Christine C. Schwartz	UST	0
Susan Odgers	GRN	0
Write-in		0

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Contest: **County Prosecuting Attorney**
Number Of Postions : **1**
Precinct Portion:
Ballot Manifestation : **0**

Ballot Statistics

Contest Results

Overvotes:	0
Undervotes:	210
Blank:	210
Double Votes:	0
Invalid Votes:	0
Writein Overrides:	0

Candidate Results

Name	Party	Votes
James L. Rossiter	REP	0
Write-in		0

Contest: **County Sheriff**
Number Of Postions : **1**
Precinct Portion:
Ballot Manifestation : **0**

Ballot Statistics

Contest Results

Overvotes:	0
Undervotes:	210
Blank:	210
Double Votes:	0
Invalid Votes:	0
Writein Overrides:	0

Candidate Results

Name	Party	Votes
Daniel S. Bean	REP	0
Write-in		0

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Contest: **County Clerk**
Number Of Postions : **1**
Precinct Portion:
Ballot Manifestation : **0**

Ballot Statistics

Contest Results

Overvotes:	0
Undervotes:	210
Blank:	210
Double Votes:	0
Invalid Votes:	0
Writein Overrides:	0

Candidate Results

Name	Party	Votes
Sheryl Guy	REP	0
Write-in		0

Contest: **County Treasurer**
Number Of Postions : **1**
Precinct Portion:
Ballot Manifestation : **0**

Ballot Statistics

Contest Results

Overvotes:	0
Undervotes:	210
Blank:	210
Double Votes:	0
Invalid Votes:	0
Writein Overrides:	0

Candidate Results

Name	Party	Votes
Sherry A. Comben	REP	0
Write-in		0

Appendix B
Antrim County EMS Results from
Banks Township Case Study

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Contest: **County Register of Deeds**
Number Of Postions : **1**
Precinct Portion:
Ballot Manifestation : **0**

Ballot Statistics

Contest Results

Overvotes:	0
Undervotes:	210
Blank:	210
Double Votes:	0
Invalid Votes:	0
Writein Overrides:	0

Candidate Results

Name	Party	Votes
Patty Niepoth	REP	0
Write-in		0

Contest: **County Drain Commissioner**
Number Of Postions : **1**
Precinct Portion:
Ballot Manifestation : **0**

Ballot Statistics

Contest Results

Overvotes:	0
Undervotes:	210
Blank:	210
Double Votes:	0
Invalid Votes:	0
Writein Overrides:	0

Candidate Results

Name	Party	Votes
Mark Stone	REP	0
Write-in		0

Appendix B
Antrim County EMS Results from
Banks Township Case Study

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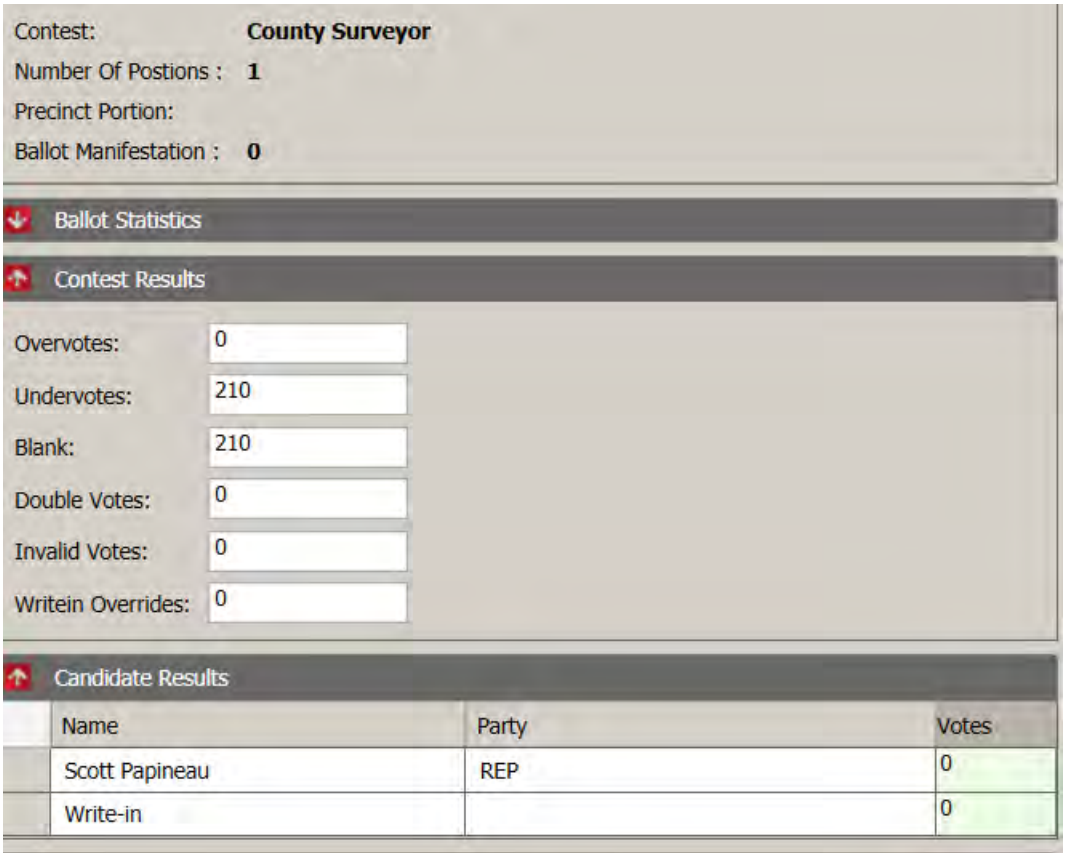

Contest: **County Surveyor**
Number Of Postions : **1**
Precinct Portion:
Ballot Manifestation : **0**

Ballot Statistics

Contest Results

Overvotes:	0
Undervotes:	210
Blank:	210
Double Votes:	0
Invalid Votes:	0
Writein Overrides:	0

Candidate Results

Name	Party	Votes
Scott Papineau	REP	0
Write-in		0

Appendix B
Antrim County EMS Results from
Banks Township Case Study

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Contest: **County Commissioner 1st District**
Number Of Postions : **1**
Precinct Portion:
Ballot Manifestation : **0**

Ballot Statistics

Contest Results

Overvotes:	0
Undervotes:	210
Blank:	210
Double Votes:	0
Invalid Votes:	0
Writein Overrides:	0

Candidate Results

Name	Party	Votes
Jarris Rubingh	REP	0
Write-in		0

Contest: **Township Supervisor for Banks Township**
Number Of Postions : **1**
Precinct Portion:
Ballot Manifestation : **0**

Ballot Statistics

Contest Results

Overvotes:	0
Undervotes:	210
Blank:	210
Double Votes:	0
Invalid Votes:	0
Writein Overrides:	0

Candidate Results

Name	Party	Votes
Alex Busman	REP	0
Write-in		0

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Contest: **Township Clerk for Banks Township**
Number Of Postions : **1**
Precinct Portion:
Ballot Manifestation : **0**

Ballot Statistics

Contest Results

Overvotes:	0
Undervotes:	210
Blank:	210
Double Votes:	0
Invalid Votes:	0
Writein Overrides:	0

Candidate Results

Name	Party	Votes
Donna L. Heeres	REP	0
Write-in		0

Contest: **Township Treasurer for Banks Township**
Number Of Postions : **1**
Precinct Portion:
Ballot Manifestation : **0**

Ballot Statistics

Contest Results

Overvotes:	0
Undervotes:	210
Blank:	210
Double Votes:	0
Invalid Votes:	0
Writein Overrides:	0

Candidate Results

Name	Party	Votes
Katherine Postmus	NPA	0
Write-in		0

Appendix B
Antrim County EMS Results from
Banks Township Case Study

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Contest: **Township Trustee for Banks Township**
Number Of Postions : **2**
Precinct Portion:
Ballot Manifestation : **0**

Ballot Statistics

Contest Results

Overvotes:	0
Undervotes:	420
Blank:	210
Double Votes:	0
Invalid Votes:	0
Writein Overrides:	0

Candidate Results

Name	Party	Votes
Tom L. Cooper	REP	0
Anita Hoeksema	NPA	0
David E. Rasmussen	NPA	0
Write-in		0

Appendix B
Antrim County EMS Results from
Banks Township Case Study

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Contest: **Justice of Supreme Court**
Number Of Postions : **2**
Precinct Portion:
Ballot Manifestation : **0**

Ballot Statistics

Contest Results

Overvotes:	0
Undervotes:	420
Blank:	210
Double Votes:	0
Invalid Votes:	0
Writein Overrides:	0

Candidate Results

Name	Party	Votes
Susan L. Hubbard		0
Mary Kelly		0
Bridget Mary McCormack		0
Kerry Lee Morgan		0
Katherine Mary Nepton		0
Brock Swartzle		0
Elizabeth M. Welch		0
Write-in		0

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Contest: **Judge of Court of Appeals 4th District Incumbent Position**

Number Of Postions : **2**

Precinct Portion:

Ballot Manifestation : **0**

Ballot Statistics

Contest Results

Overvotes:	0
Undervotes:	420
Blank:	210
Double Votes:	0
Invalid Votes:	0
Writein Overrides:	0

Candidate Results

Name	Party	Votes
Michael J. Kelly		0
Amy Ronayne Krause		0
Write-in		0

Appendix B
Antrim County EMS Results from
Banks Township Case Study

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Contest: **Judge of Court of Appeals 4th District Non-Incumbent Position**
Number Of Postions : **1**
Precinct Portion:
Ballot Manifestation : **0**

Ballot Statistics

Contest Results

Overvotes:	0
Undervotes:	210
Blank:	210
Double Votes:	0
Invalid Votes:	0
Writein Overrides:	0

Candidate Results

	Name	Party	Votes
	Michelle Rick		0
	Write-in		0

Contest: **Judge of Circuit Court 13th Circuit Incumbent Position**
Number Of Postions : **1**
Precinct Portion:
Ballot Manifestation : **0**

Ballot Statistics

Contest Results

Overvotes:	0
Undervotes:	210
Blank:	210
Double Votes:	0
Invalid Votes:	0
Writein Overrides:	0

Candidate Results

	Name	Party	Votes
	Kevin A. Elsenheimer		0
	Write-in		0

Appendix B
Antrim County EMS Results from
Banks Township Case Study

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Contest: **Board Member for Charlevoix-Emmet Intermediate School District 6 Yea**
Number Of Postions : **3**
Precinct Portion:
Ballot Manifestation : **0**

Ballot Statistics

Contest Results

Overvotes:	0
Undervotes:	630
Blank:	210
Double Votes:	0
Invalid Votes:	0
Writein Overrides:	0

Candidate Results

Name	Party	Votes
Thelma A. Chellis		0
Jean E. Frentz		0
Mary P. Jason		0
Write-in		0

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Contest: **Board Member for Charlevoix-Emmet Intermediate School District Partia**
Number Of Postions : **1**
Precinct Portion:
Ballot Manifestation : **0**

Ballot Statistics

Contest Results

Overvotes:	0
Undervotes:	210
Blank:	210
Double Votes:	0
Invalid Votes:	0
Writein Overrides:	0

Candidate Results

Name	Party	Votes
Larry Cassidy		0
Write-in		0

Contest: **Board Member for Charlevoix-Emmet Intermediate School District Partia**
Number Of Postions : **1**
Precinct Portion:
Ballot Manifestation : **0**

Ballot Statistics

Contest Results

Overvotes:	0
Undervotes:	210
Blank:	210
Double Votes:	0
Invalid Votes:	0
Writein Overrides:	0

Candidate Results

Name	Party	Votes
Write-in		0

Appendix B
Antrim County EMS Results from
Banks Township Case Study

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Contest: **School Board Member for Central Lake Schools**
Number Of Postions : **3**
Precinct Portion:
Ballot Manifestation : **0**

Ballot Statistics

Contest Results

Overvotes:	0
Undervotes:	630
Blank:	210
Double Votes:	0
Invalid Votes:	0
Writein Overrides:	0

Candidate Results

Name	Party	Votes
Melanie Eckhardt		0
Keith Shafer		0
Write-in		0

Appendix B
Antrim County EMS Results from
Banks Township Case Study

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Contest: **State Proposal 20-2**
Number Of Postions : **1**
Precinct Portion:
Ballot Manifestation : **0**

Ballot Statistics

Contest Results

Overvotes:	0
Undervotes:	210
Blank:	210
Double Votes:	0
Invalid Votes:	0
Writein Overrides:	0

Candidate Results

Name	Party	Votes
Yes		0
No		0

Contest: **State Proposal 20-1**
Number Of Postions : **1**
Precinct Portion:
Ballot Manifestation : **0**

Ballot Statistics

Contest Results

Overvotes:	0
Undervotes:	210
Blank:	210
Double Votes:	0
Invalid Votes:	0
Writein Overrides:	0

Candidate Results

Name	Party	Votes
Yes		0
No		0

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

WILLIAM BAILEY Plaintiff	Case No. 20-9238-CZ
v.	
ANTRIM COUNTY Defendant	HON. KEVIN A. ELSENHEIMER
SECRETARY OF STATE JOCELYN BENSON Intervenor-Defendant,	

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

Haider A. Kazim (P66146)
Allan C. Vander Laan (P33893)
CUMMINGS, MCCLOREY, DAVIS & ACHO, PLC
Attorney for Defendant
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Suite 221
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Heather S. Meingast (P55439)
Erik A. Grill (P64713)
Assistant Attorneys General
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PO Box 30736
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(517) 335-7659

EXHIBITS 3

PLAINTIFF'S MOTION AND BRIEF FOR RECONSIDERATION OR, ALTERNATIVELY, REHEARING PURSUANT TO MCR 2.119(F)

Respectfully submitted

DePERNO LAW OFFICE, PLLC

Dated: June 9, 2021

/s/ Matthew S. DePerno
Matthew S. DePerno (P52622)
Attorney for Plaintiff

OFFICIAL BALLOT
General Election
Tuesday, November 3, 2020
Antrim County, Michigan
Banks Township, Precinct 1CENT

Partisan Section

Straight Party Ticket
Vote for not more than 1

- Democratic Party
- Republican Party
- Libertarian Party
- U.S. Taxpayers Party
- Working Class Party
- Green Party
- Natural Law Party

Presidential

Electors of President and Vice-President of the United States
Vote for not more than 1

- Joseph R. Biden / Kamala D. Harris — Democrat
- Donald J. Trump / Michael R. Pence — Republican
- Jo Jorgensen / Jeremy Cohen — Libertarian
- Don Blankenship / William Mohr — U.S. Taxpayers
- Howie Hawkins / Angela Walker — Green
- Rocky De La Fuente / Darcy Richardson — Natural Law

Congressional

United States Senator
Vote for not more than 1

- Gary Peters — Democrat
- John James — Republican
- Valerie L. Willis — U.S. Taxpayers
- Marcia Squier — Green
- Doug Dern — Natural Law

Representative in Congress 1st District
Vote for not more than 1

- Dana Ferguson — Democrat
- Jack Bergman — Republican
- Ben Boren — Libertarian

Legislative

Representative in State Legislature 105th District
Vote for not more than 1

- Jonathan Burke — Democrat
- Ken Borton — Republican

State Boards

Member of the State Board of Education
Vote for not more than 2

- Ellen Cogen Lipton — Democrat
- Jason Strayhorn — Democrat
- Tami Carlone — Republican
- Michelle A. Frederick — Republican
- Bill Hall — Libertarian
- Richard A. Hewer — Libertarian
- Karen Adams — U.S. Taxpayers
- Douglas Levesque — U.S. Taxpayers
- Mary Anne Hering — Working Class
- Hali McEachern — Working Class
- Tom Mair — Green

Regent of the University of Michigan
Vote for not more than 2

- Mark Bernstein — Democrat
- Shauna Ryder Diggs — Democrat
- Sarah Hubbard — Republican
- Carl Meyers — Republican
- James L. Hudler — Libertarian
- Eric Larson — Libertarian
- Ronald E. Graeser — U.S. Taxpayers
- Crystal Van Sickle — U.S. Taxpayers
- Michael Mawilai — Green
- Keith Butkovich — Natural Law

Trustee of Michigan State University
Vote for not more than 2

- Brian Mosallam — Democrat
- Rema Ella Vassar — Democrat
- Pat O'Keefe — Republican
- Tonya Schuitmaker — Republican
- Will Tyler White — Libertarian
- Janet M. Sanger — U.S. Taxpayers
- John Paul Sanger — U.S. Taxpayers
- Brandon Hu — Green
- Robin Lea Laurain — Green
- Bridgette Abraham-Guzman — Natural Law

State Boards

Governor of Wayne State University
Vote for not more than 2

- Eva Garza Dewaelsche — Democrat
- Shirley Stancato — Democrat
- Don Gates — Republican
- Terri Lynn Land — Republican
- Jon Elgas — Libertarian
- Christine C. Schwartz — U.S. Taxpayers
- Susan Odgers — Green

County

Prosecuting Attorney
Vote for not more than 1

- James L. Rossiter — Republican

Sheriff
Vote for not more than 1

- Daniel S. Bean — Republican

Clerk
Vote for not more than 1

- Sheryl Guy — Republican

Treasurer
Vote for not more than 1

- Sherry A. Comben — Republican

Register of Deeds
Vote for not more than 1

- Patty Niepoth — Republican

Drain Commissioner
Vote for not more than 1

- Mark Stone — Republican

Surveyor
Vote for not more than 1

- Scott Papineau — Republican

County Commissioner 1st District
Vote for not more than 1

- Jarris Rubingh — Republican

Township

Supervisor
Vote for not more than 1

- Alex Busman — Republican

1101

VOTE BOTH FRONT AND BACK OF BALLOT

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Township

Clerk
Vote for not more than 1

- Donna L. Heeres — Republican
- ( )
- ( )

Treasurer
Vote for not more than 1

- Katherine Postmus — No Party Affiliation
- ( )
- ( )

Trustee
Vote for not more than 2

- Tom L. Cooper — Republican
- Anita Hoeksema — No Party Affiliation
- David E. Rasmussen — No Party Affiliation
- ( )
- ( )

Nonpartisan Section

Judicial

Justice of Supreme Court
Vote for not more than 2

- Susan L. Hubbard
- Mary Kelly
- Bridget Mary McCormack — Justice of Supreme Court
- Kerry Lee Morgan
- Katherine Mary Nepton
- Brock Swartzle
- Elizabeth M. Welch
- ( )
- ( )

Judge of Court of Appeals
4th District
Incumbent Position
Vote for not more than 2

- Michael J. Kelly — Judge of Court of Appeals
- Amy Ronayne Krause — Judge of Court of Appeals
- ( )
- ( )

Judge of Court of Appeals
4th District
Non-Incumbent Position
Vote for not more than 1

- Michelle Rick
- ( )

Judge of Circuit Court
13th Circuit
Incumbent Position
Vote for not more than 1

- Kevin A. Elsenheimer — Judge of Circuit Court
- ( )

Intermediate School District

Board Member
Charlevoix-Emmet Intermediate School District
6 Year Term
Vote for not more than 3

- Thelma A. Chellis
- Jean E. Frentz
- Mary P. Jason
- ( )
- ( )
- ( )

Intermediate School District

Board Member
Charlevoix-Emmet Intermediate School District
Partial Term Ending 12/31/2024
Vote for not more than 1

- Larry Cassidy
- ( )

Board Member
Charlevoix-Emmet Intermediate School District
Partial Term Ending 12/31/2022
Vote for not more than 1

- ( )

Local School District

Board Member
Central Lake Schools
Vote for not more than 3

- Melanie Eckhardt
- Keith Shafer
- ( )
- ( )
- ( )

Proposal Section

State

Proposal 20-1
A proposed constitutional amendment to allow money from oil and gas mining on state-owned lands to continue to be collected in state funds for land protection and creation and maintenance of parks, nature areas, and public recreation facilities; and to describe how money in those state funds can be spent

This proposed constitutional amendment would:

- Allow the State Parks Endowment Fund to continue receiving money from sales of oil and gas from state-owned lands to improve, maintain and purchase land for State parks, and for Fund administration, until its balance reaches $800,000,000.
- Require subsequent oil and gas revenue from state-owned lands to go into the Natural Resources Trust Fund.
- Require at least 20% of Endowment Fund annual spending go toward State park improvement.
- Require at least 25% of Trust Fund annual spending go toward parks and public recreation areas and at least 25% toward land conservation.

Should this proposal be adopted?

- Yes
- No

Proposal 20-2
A proposed constitutional amendment to require a search warrant in order to access a person's electronic data or electronic communications

This proposed constitutional amendment would:

- Prohibit unreasonable searches or seizures of a person's electronic data and electronic communications.
- Require a search warrant to access a person's electronic data or electronic communications, under the same conditions currently required for the government to obtain a search warrant to search a person's house or seize a person's things.

Should this proposal be adopted?

- Yes
- No

1101

VOTE BOTH FRONT AND BACK OF BALLOT

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

WILLIAM BAILEY Plaintiff	Case No. 20-9238-CZ
v.	
ANTRIM COUNTY Defendant	HON. KEVIN A. ELSENHEIMER
SECRETARY OF STATE JOCELYN BENSON Intervenor-Defendant,	

Matthew S. DePerno (P52622)
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Assistant Attorneys General
Attorneys for Intervenor-Defendant Benson
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(517) 335-7659

EXHIBITS 4

PLAINTIFF'S MOTION AND BRIEF FOR RECONSIDERATION OR, ALTERNATIVELY, REHEARING PURSUANT TO MCR 2.119(F)

Respectfully submitted

DePERNO LAW OFFICE, PLLC

Dated: June 9, 2021

/s/ Matthew S. DePerno
Matthew S. DePerno (P52622)
Attorney for Plaintiff

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Subject: Centralized Subversion of Election Vote Totals and Paper Tapes
Analyst: Jeffrey Lenberg
Date: 6/9/2021

Executive Summary

The Dominion Voting Systems Election Management System (EMS) and ImageCast Precinct (ICP) are susceptible to subversion by a modification of the election project files located in a repository at ElectionSource. ElectionSource technicians were responsible for provisioning the election project files for the November 3, 2020 general election in Antrim County along with at least twenty-two (22) other counties in Michigan according to the log files on the Antrim County Election Management System. The subversion can be accomplished through the modification of a single file for each tabulator contained in the ElectionSource repository of election project files. This subversion results in the manipulation of the votes recorded both in the county's results files on the compact flash (CF) cards and on the paper tapes printed by the ICP tabulators in each precinct. This subversion is undetectable using the routine canvassing process because the ICP paper tape matches the vote total reports from the EMS that are read from the CF cards.

The ElectionSource technicians responsible for provisioning and updating the election project files for Antrim County created the election project files on their corporate computing infrastructure (laptops, servers, cloud accounts, etc). The updated election project files deployed by the ElectionSource technicians were simply installed into Antrim County's election systems. It is likely that a complete repository exists at ElectionSource that contains all the election project files for the entire list of Michigan counties supported by ElectionSource.

The subversion of the EMS and ICP is accomplished by modifying a single file contained in the ElectionSource repository, and then having that specific file along with the rest of the election project files transferred onto the compact flash cards either at ElectionSource or the county running the election. Once the compact flash cards are provisioned containing the subversion, no additional modifications need to be made on the EMS or ICPs to modify the vote totals.

The ability to modify a single file in the ElectionSource repository used by their field technicians reveals a major attack vector for fraud to manipulate votes not just in Antrim County, but across all counties in Michigan where ElectionSource provides contractor support to the election process. To be clear, all of the counties in Michigan where ElectionSource provides pre-configured election project files are vulnerable to this attack and the resulting subversion of the vote totals at the EMS and paper tapes from the ICP tabulator would match precisely despite the vote totals being manipulated in a fraudulent fashion.

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Details

The Dominion Election Management System (EMS) and the ImageCast Precinct (ICP) are susceptible to subversion through the modification of a single file per tabulator. This single file is part of a package of files that are deployed on the compact flash cards that are used in each ICP tabulator in each individual precinct.

The name of the file is " VIF_CHOICE_INSTANCE.DVD" and it is contained in the directory for the specific precinct ICP it is meant to be deployed to. See an example in Figure 1 of the directory structure for the files stored on the compact flash cards. Note: the compact flash card contents are encrypted by default, however, Dominion or ElectionSource would have the tools and keys to decrypt, modify, and re-encrypt these election project files.

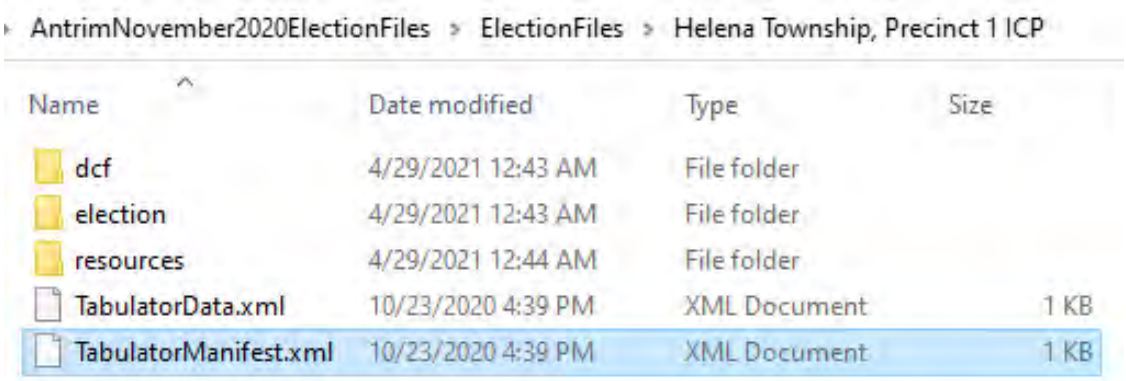

Figure 1 - Election Project File Directory Structure for Compact Flash Cards

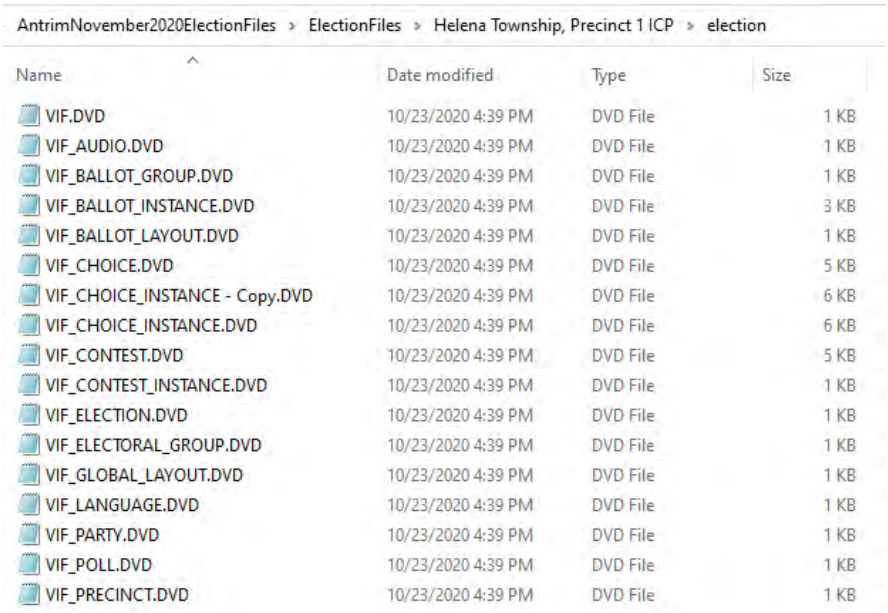

Figure 2 - Election Project DVD Files (Encrypted)

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In addition, the encryption algorithm used to protect the data on the compact flash cards is AES-128 which is known to be easily broken via ciphertext only attack. Moreover, the AES-128 keys for the election project files are stored on the EMS itself within the database (see Logan expert report 4/9/2021).

The VIF_CHOICE_INSTANCE.DVD file is a binary file that contains the instructions on how the tabulator will process ballots, how vote totals are assigned to each candidate, and ultimately how the paper tapes and results files are generated. Simply editing the VIF_CHOICE_INSTANCE.DVD file and modifying the mapping of the bullets on the ballots (vote selections) to the candidates allows for manipulation of the vote results.

Figure 3 and Figure 4 are the output of a purpose-built forensics analysis program that decrypts and decodes the data in the compact flash results file and associates it with the controlling record in the VIF_CHOICE_INSTANCE.DVD configuration file. The highlighted area in Figure 4 shows the manipulation of the raw binary data that creates the modification of both the paper tapes and the results file.

```
Contest 689: 7 choices
            Over Votes: 0  |  Under Votes: 0  |  Cross Votes: 0  |  Double Votes: 0
          Choice  |  Marks  |  Config Index  |  Data
       Biden 3016         2  |           225  |  b'00000bc3000000000006001300004f1a0000a54800000000000000100000008'
       Trump 3017         4  |           256  |  b'00000bc3000000000006001500004f1a0000b35800000000000000200000021'
    Jorgensen 3018         1  |           287  |  b'00000bca0000000000006001700004f1a0000c16800000000000000300000079'
  Blankenship 3019         0  |           318  |  b'00000bcb0000000000006001900004f1a0000cf7800000000000000400000003c'
     Hawkings 3020         0  |           349  |  b'00000bcc0000000000006001b00004f1a0000dd8800000000000000500000095'
 De La Fuente 3021         0  |           380  |  b'00000bcd0000000000006001d00004f1a0000eb9800000000000000600000000ab'
```

Figure 3 - Run of 7 Ballots with No Manipulation

```
Contest 689: 7 choices
            Over Votes: 0  |  Under Votes: 0  |  Cross Votes: 0  |  Double Votes: 0
          Choice  |  Marks  |  Config Index  |  Data
       Biden 3016         4  |           256  |  b'00000bc8000000000006001500004f1a0000b35800000000000000200000021'
       Trump 3017         2  |           225  |  b'00000bc9000000000006001300004f1a0000a54800000000000000100000008'
    Jorgensen 3018         1  |           287  |  b'00000bca0000000000006001700004f1a0000c16800000000000000300000079'
  Blankenship 3019         0  |           318  |  b'00000bcb0000000000006001900004f1a0000cf7800000000000000400000003c'
     Hawkings 3020         0  |           349  |  b'00000bcc0000000000006001b00004f1a0000dd8800000000000000500000095'
 De La Fuente 3021         0  |           380  |  b'00000bcd0000000000006001d00004f1a0000eb9800000000000000600000000ab'
```

Figure 4 - Run of 7 Ballots with Manipulation

The output from this subversion results in the ICP tabulator creating fraudulent paper tapes that do not match the votes processed on the paper ballots along with results files written to the compact flash card that reflect the same manipulated vote totals. The results files on the compact flash cards are also fraudulent and will be processed normally by the EMS showing the same fraudulent vote totals matching the paper tape. This subversion is undetectable in the current canvassing

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process, as the paper tapes and vote totals reported on the EMS will precisely match despite the fact they have been fraudulently manipulated.

Simulated Election Validating Central Subversion

In order to validate the central subversion, a simulated election was run with the ballots listed in Appendix A. The breakdown of the Presidential contest votes on the ballots are:

2 for Biden
4 for Trump
1 for Jorgenson

Note that the same ballots were run twice in the same sequence, thus a total of 14 ballots were run in all.

Using the subversion in Figure 4 the following election results were generated.

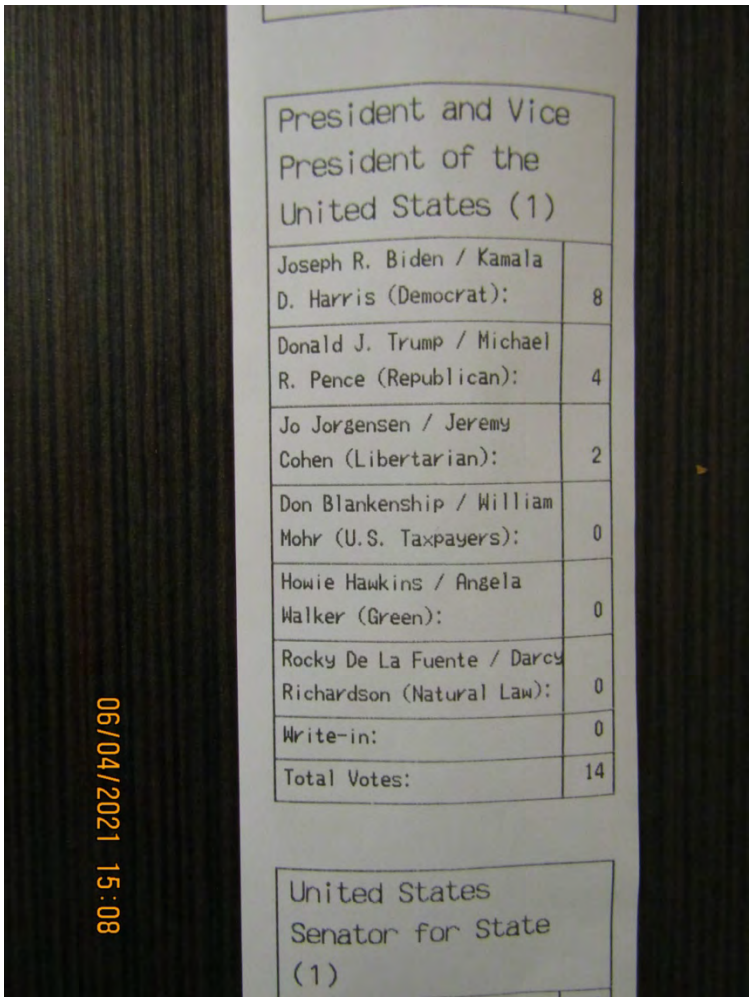

Figure 5 - The Tabulator Paper Tape Showing Modified Totals

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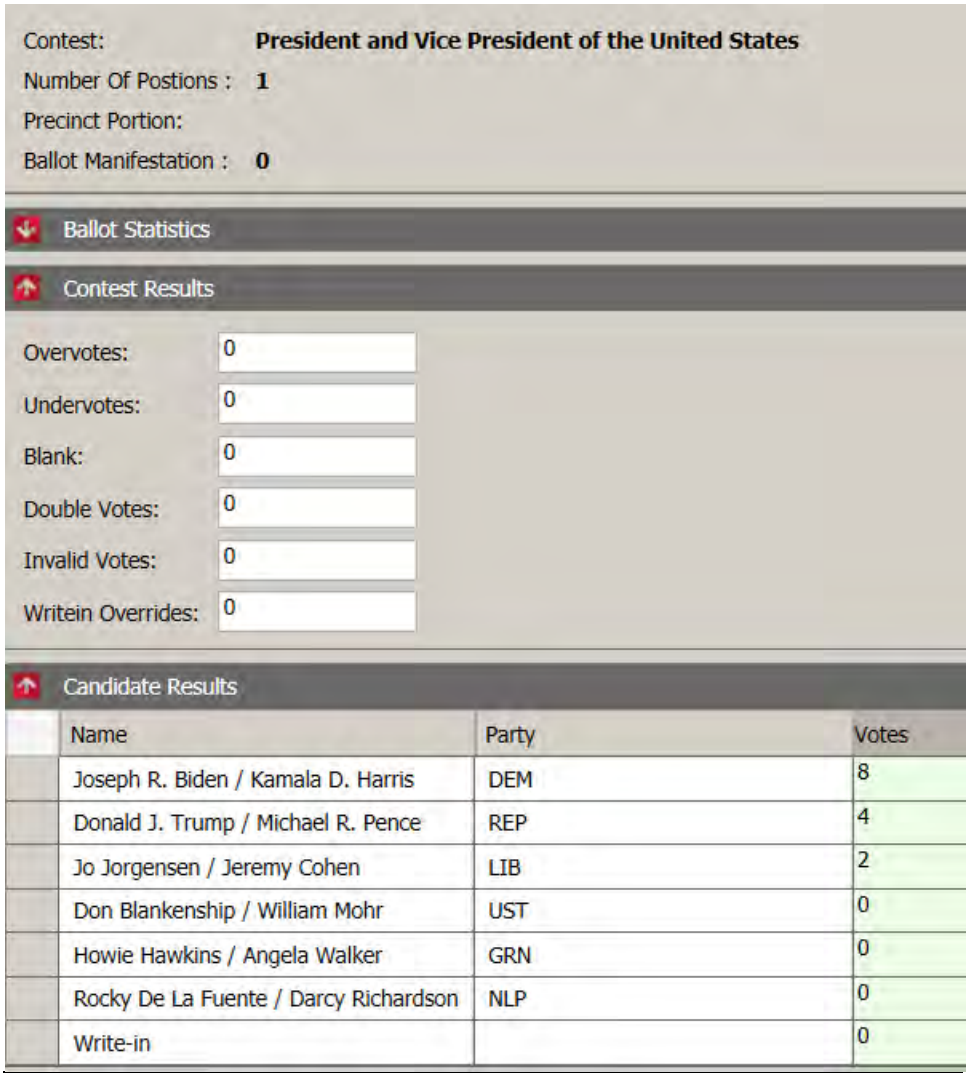

Contest: **President and Vice President of the United States**
Number Of Postions : **1**
Precinct Portion:
Ballot Manifestation : **0**

Ballot Statistics

Contest Results

Overvotes:	0
Undervotes:	0
Blank:	0
Double Votes:	0
Invalid Votes:	0
Writein Overrides:	0

Candidate Results

Name	Party	Votes
Joseph R. Biden / Kamala D. Harris	DEM	8
Donald J. Trump / Michael R. Pence	REP	4
Jo Jorgensen / Jeremy Cohen	LIB	2
Don Blankenship / William Mohr	UST	0
Howie Hawkins / Angela Walker	GRN	0
Rocky De La Fuente / Darcy Richardson	NLP	0
Write-in		0

Figure 6 - EMS Vote Total Modified

It is crucial to realize that no access to the EMS is required for an attacker to modify the election outcomes in any precinct for any tabulator. There is no need to modify the EMS database locally in any manner for this subversion to effectively modify both the paper tape and EMS results. This subversion does defeat the canvassing process that relies on discrepancies in the paper tape and EMS electronic totals to be found by human inspection. Only the original ballots would show the true votes during a one-hundred percent paper ballot audit process.

In addition, the access needed for an attacker to utilize this subversion would be confined to Election Source and their central repository of election files used for provisioning elections across the State of Michigan. The subversion could be used by

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a malicious insider or a remote cyber attacker to modify election results across the State of Michigan with impunity.

Other Subversion Outcomes

There are other variants of this same subversion that include the modification of the "VIF_BALLLOT_INSTANCE.DVD" file, the table below describes the possible outcomes when modifying the VIF_CHOICE_INSTANCE.DVD file and/or the VIF_BALLOT_INSTANCE.DVD file.

Note: Ballots are ground truth.	05/22/21		
		PAPER	RESULTS
VIF_CHOICE_INSTANCE	VIF_BALLOT_INSTANCE	TAPE	FILE
Modified	Unmodified	Modified	Modified
Unmodified	Modified	Modified	Unmodified
Modified	Modified	Unmodified	Modified

Figure 7 - Variants of Subversions

The combination of modifications to VIF_CHOICE_INSTANCE and VIF_BALLOT_INSTANCE allow for an attacker to choose a variation where either paper tape or the results file are modified alone, see Figure 7. While this report focuses on modifying both the paper tape and results file to match the manipulated vote totals, it is conceivable that an attacker may wish to employ a variant to provide plausible deniability that the subversion was a "technical glitch" versus a fraudulent activity.

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Provisioning the Compact Flash Cards in Antrim County

The UserLog table indicates there were very few compact flash cards provisioned using the EMS for Antrim County. In fact, the only compact flash card provisioning activities noted in the log files were for Central Lake Township, Precinct 1, by Election Source on September 25th, and Mancelona Township Precinct 1 and 2 by Antrim County on October 23rd. In addition, Antrim County provisioned Central Lake Township Precinct on November 5th, see Figure 8.

executedCommand	operationTimestamp
CF card for tabulator Central Lake Township, Precinct 1 ICP has been programmed.	2020-09-25 10:20:39.517
Backup CF card for tabulator Central Lake Township, Precinct 1 ICP has been initialized.	2020-09-25 10:21:07.440
CF card for tabulator Central Lake Township, Precinct 1 ICP has been programmed.	2020-09-25 10:24:36.527
Backup CF card for tabulator Central Lake Township, Precinct 1 ICP has been initialized.	2020-09-25 10:24:59.477
CF card for tabulator Mancelona Township, Precinct 1 ICP has been programmed.	2020-10-23 16:46:25.477
Backup CF card for tabulator Mancelona Township, Prec nct 1 ICP has been initialized.	2020-10-23 16:46:42.297
CF card for tabulator Mancelona Township, Precinct 2 ICP has been programmed.	2020-10-23 16:47:21.703
Backup CF card for tabulator Mancelona Township, Prec nct 2 ICP has been initialized.	2020-10-23 16:47:36.250
CF card for tabulator Central Lake Township, Precinct 1 ICP has been programmed.	2020-11-05 10:22:29.563
Backup CF card for tabulator Central Lake Township, Precinct 1 ICP has been initialized.	2020-11-05 10:22:46.097

Figure 8 - UserLog Table Showing Compact Flash Card Provisioning

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Only a small number of ImageCast-X (ICX) Ballot Marking Device Smart Cards were found to have been provisioned in the UserLog table on the Antrim County EMS including Custer Township Tabulator 20, Banks Township Tabulator 17, Chestonia Township Tabulator 19 by ElectionSource, see Figure 9. Mancelona Township Tabulator 27 was provisioned by Antrim County. All other smart cards have no log evidence of how or who provisioned them.

executedCommand	operationTimestamp
Smart Card for user Admin has been programmed for tabulator 20.Custer Township, Precinct 1 ICX.	2020-09-22 16:03:32.160
Smart Card for user Admin has been programmed for tabulator 17.Banks Township, Prec nct 1 ICX.	2020-09-23 13:58:38.893
Smart Card for user Admin has been programmed for tabulator 17.Banks Township, Prec nct 1 ICX.	2020-09-23 14:00:19.220
Smart Card for user Admin has been programmed for tabulator 19.Chestonia Township, Prec nct 1 ICX.	2020-09-23 14:47:09.553
Smart Card for user Admin has been programmed for tabulator 27.Mancelona Township, Prec ncts 1, 2 ICX.	2020-10-23 17:00:46.280

Figure 9 - UserLog Table Excerpt Showing ICX Smart Cards Provisioning

The conclusion regarding the provisioning of the compact flash/smart cards for Antrim County is that only a limited number are recorded in the user log. The remaining compact flash/smart cards could have been provisioned via ElectionSource using their own computing infrastructure as there is no evidence that function was performed using the Antrim County EMS.

Under the penalties of perjury, I declare that I have read the foregoing report and that facts stated in it are true.

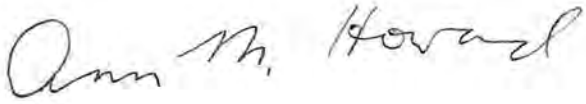
Jeffrey Lenberg

MICHIGAN NOTARY ACKNOWLEDGEMENT

State of Michigan
County of Oakland

The foregoing instrument was acknowledged before me on this 9th day of June, 2021 by Jeffrey Lenberg.

Notary Public Signature:



Notary Printed Name: Ann M. Howard
Acting in the County of: Oakland
My Commission Expires: 2/24/2023

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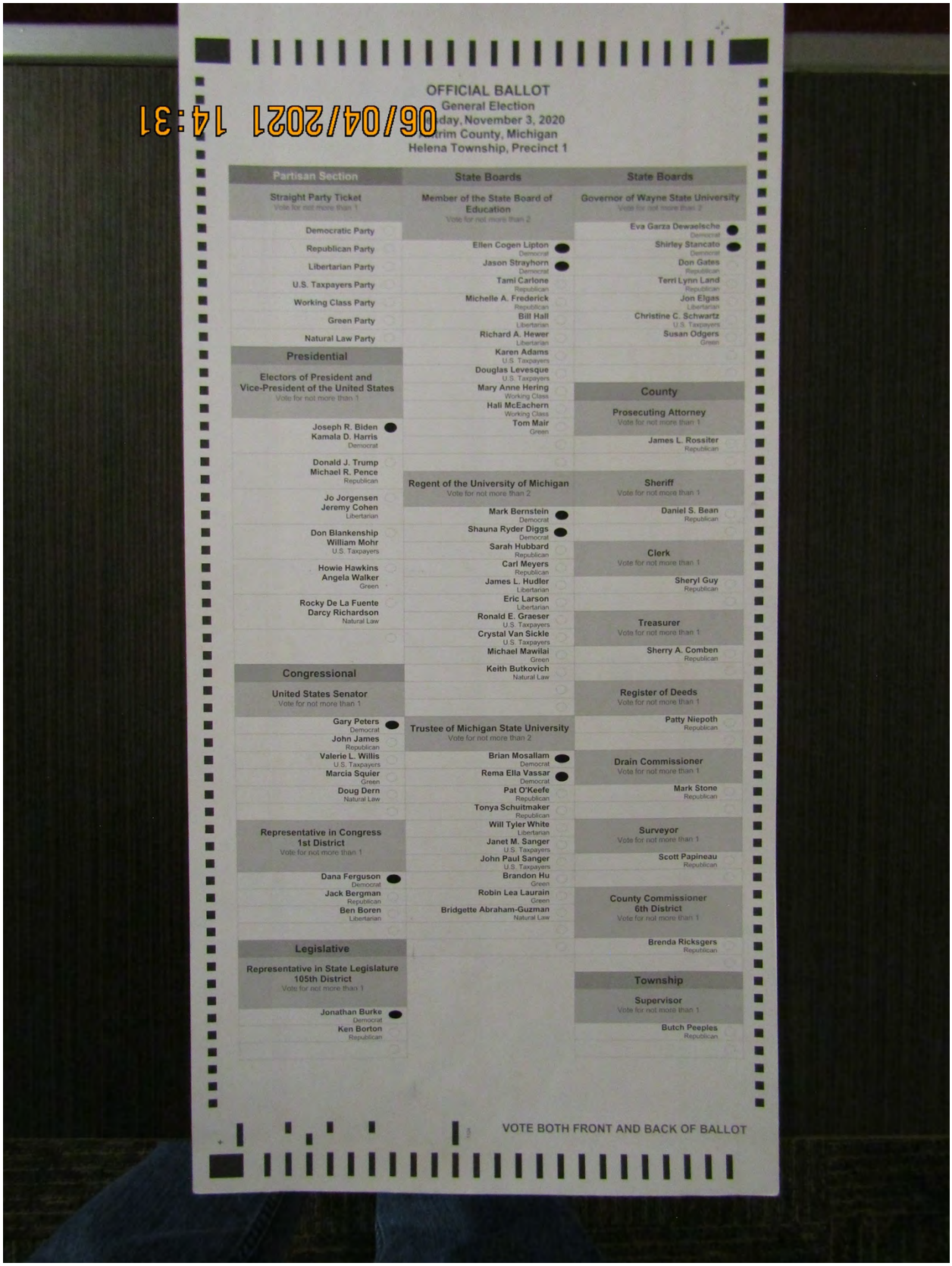
Appendix A
Ballots used for this test.



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OFFICIAL BALLOT
General Election
...day, November 3, 2020
...rim County, Michigan
Helena Township, Precinct 1

Partisan Section

Straight Party Ticket
Vote for not more than 1

Democratic Party
Republican Party
Libertarian Party
U.S. Taxpayers Party
Working Class Party
Green Party
Natural Law Party

Presidential

Electors of President and Vice-President of the United States
Vote for not more than 1

Joseph R. Biden / Kamala D. Harris — Democrat
Donald J. Trump / Michael R. Pence — Republican
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Howie Hawkins / Angela Walker — Green
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Congressional

United States Senator
Vote for not more than 1

Gary Peters — Democrat
John James — Republican
Valerie L. Willis — U.S. Taxpayers
Marcia Squier — Green
Doug Dern — Natural Law

Representative in Congress 1st District
Vote for not more than 1

Dana Ferguson — Democrat
Jack Bergman — Republican
Ben Boren — Libertarian

Legislative

Representative in State Legislature 105th District
Vote for not more than 1

Jonathan Burke — Democrat
Ken Borton — Republican

State Boards

Member of the State Board of Education
Vote for not more than 2

Ellen Cogen Lipton — Democrat
Jason Strayhorn — Democrat
Tami Carlone — Republican
Michelle A. Frederick — Republican
Bill Hall — Libertarian
Richard A. Hewer — Libertarian
Karen Adams — U.S. Taxpayers
Douglas Levesque — U.S. Taxpayers
Mary Anne Hering — Working Class
Hali McEachern — Working Class
Tom Mair — Green

Regent of the University of Michigan
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Shauna Ryder Diggs — Democrat
Sarah Hubbard — Republican
Carl Meyers — Republican
James L. Hudler — Libertarian
Eric Larson — Libertarian
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Crystal Van Sickle — U.S. Taxpayers
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Christine C. Schwartz — U.S. Taxpayers
Susan Odgers — Green

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Vote for not more than 1

James L. Rossiter — Republican

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Vote for not more than 1

Daniel S. Bean — Republican

Clerk
Vote for not more than 1

Sheryl Guy — Republican

Treasurer
Vote for not more than 1

Sherry A. Comben — Republican

Register of Deeds
Vote for not more than 1

Patty Niepoth — Republican

Drain Commissioner
Vote for not more than 1

Mark Stone — Republican

Surveyor
Vote for not more than 1

Scott Papineau — Republican

County Commissioner 6th District
Vote for not more than 1

Brenda Ricksgers — Republican

Township

Supervisor
Vote for not more than 1

Butch Peeples — Republican

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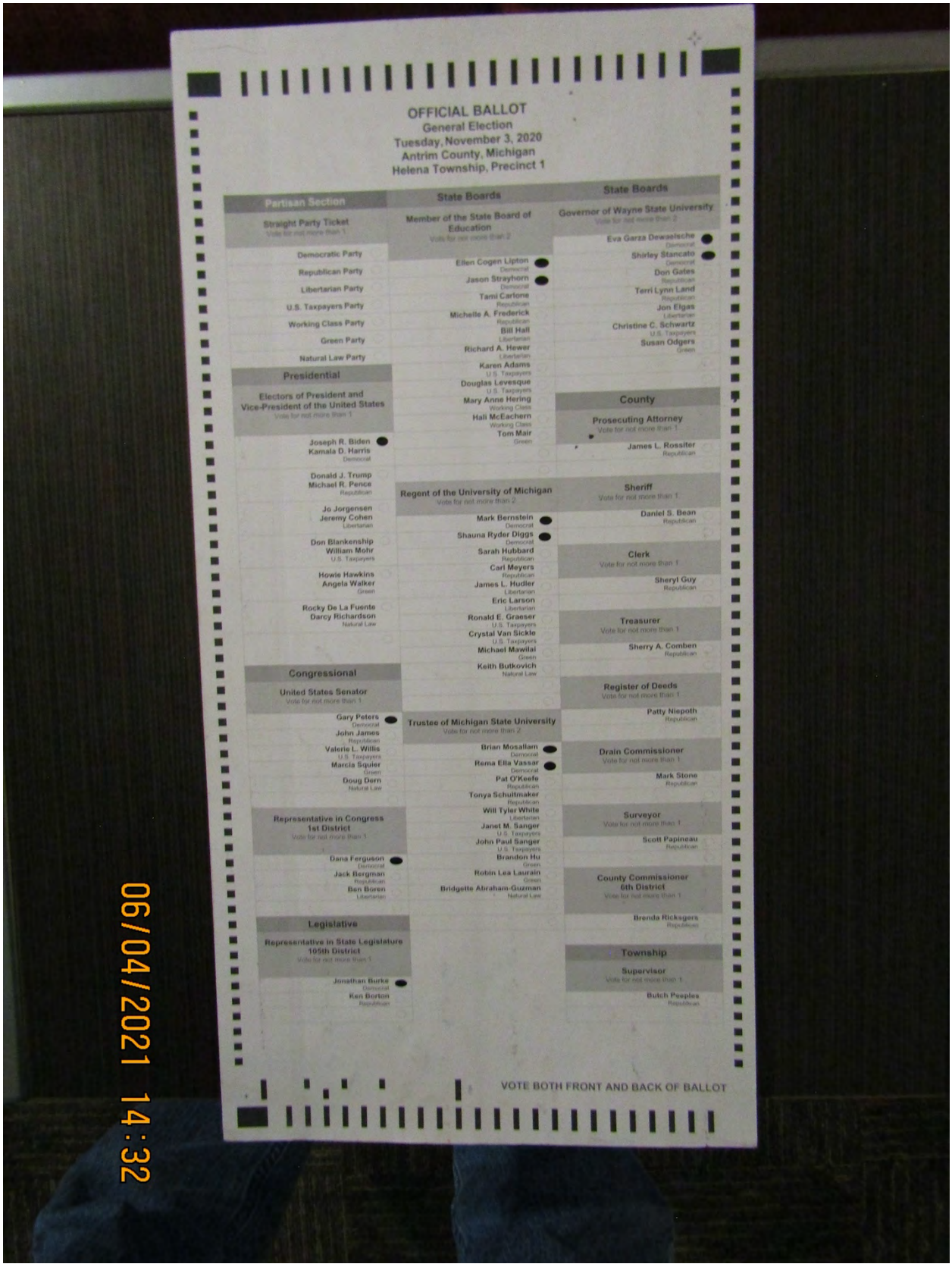

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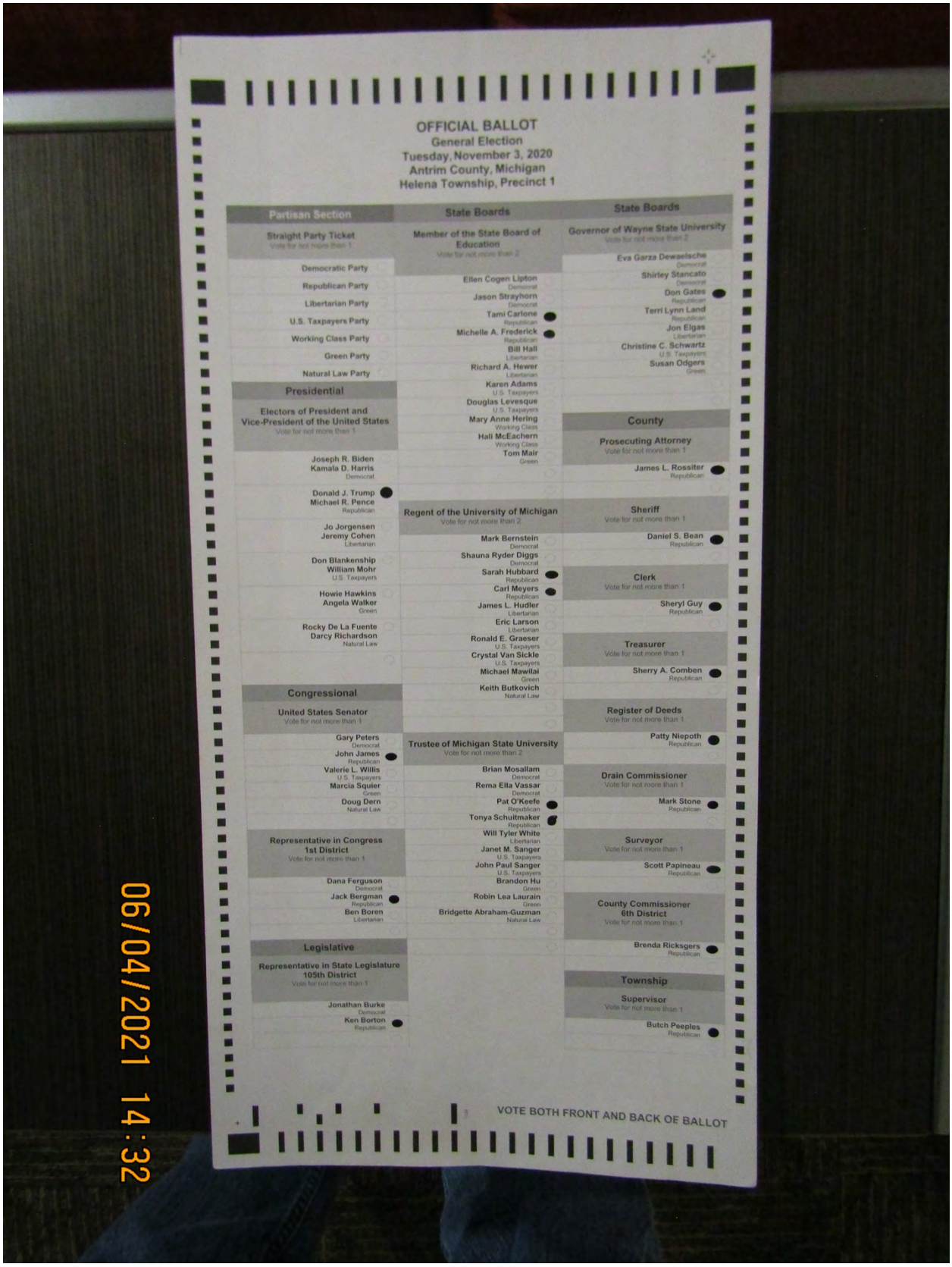

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Tuesday, November 3, 2020
Antrim County, Michigan
Helena Township, Precinct 1

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Straight Party Ticket
Vote for not more than 1

- Democratic Party
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- Libertarian Party
- U.S. Taxpayers Party
- Working Class Party
- Green Party
- Natural Law Party

Presidential

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Congressional

United States Senator
Vote for not more than 1

- Gary Peters — Democrat
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- Doug Dern — Natural Law

Representative in Congress 1st District
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- Dana Ferguson — Democrat
- Jack Bergman — Republican
- Ben Boren — Libertarian

Legislative

Representative in State Legislature 105th District
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- Ken Borton — Republican

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Member of the State Board of Education
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- Tami Carlone — Republican
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Clerk
Vote for not more than 1

- Sheryl Guy — Republican

Treasurer
Vote for not more than 1

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Register of Deeds
Vote for not more than 1

- Patty Niepoth — Republican

Drain Commissioner
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Township

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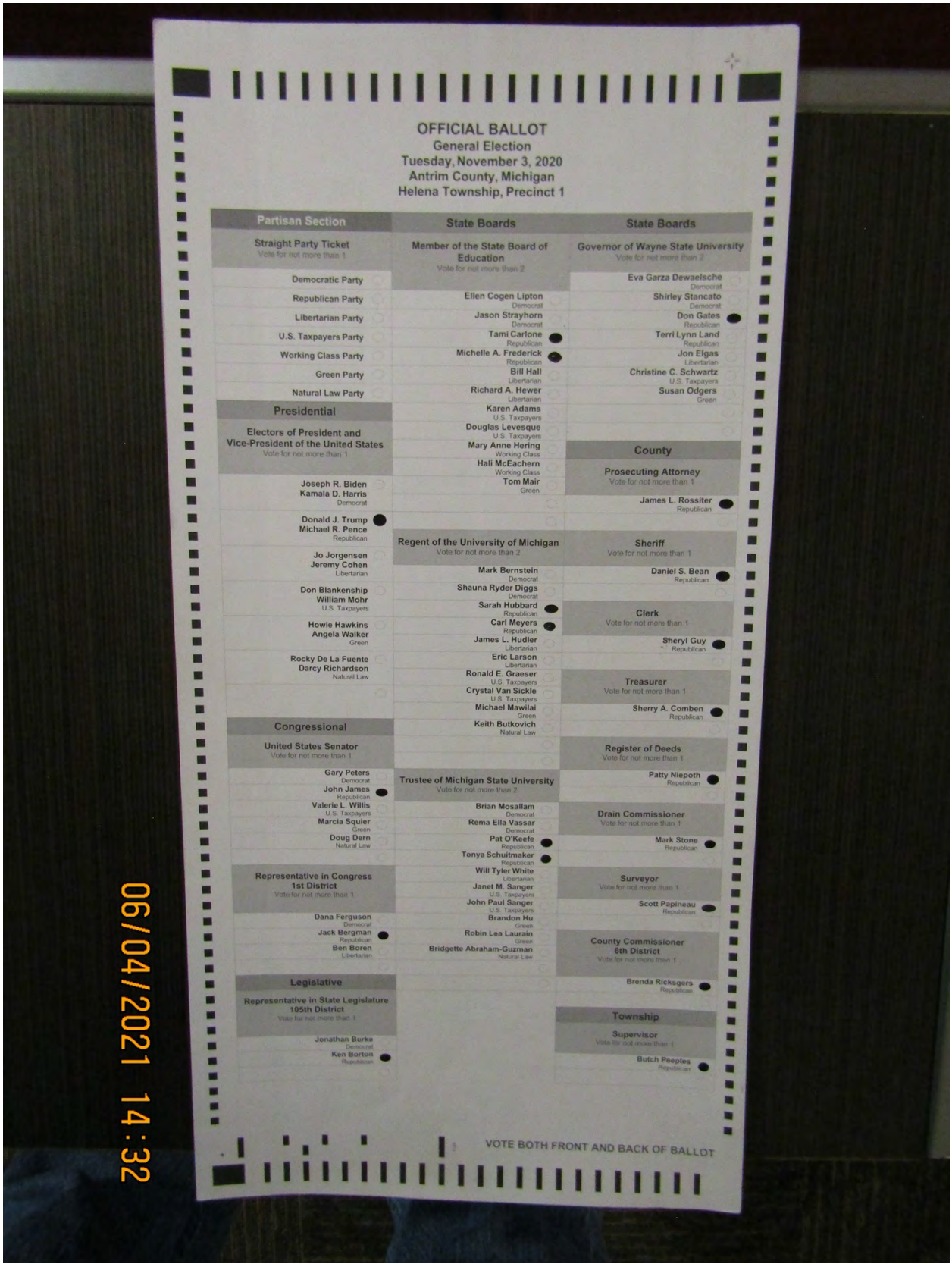

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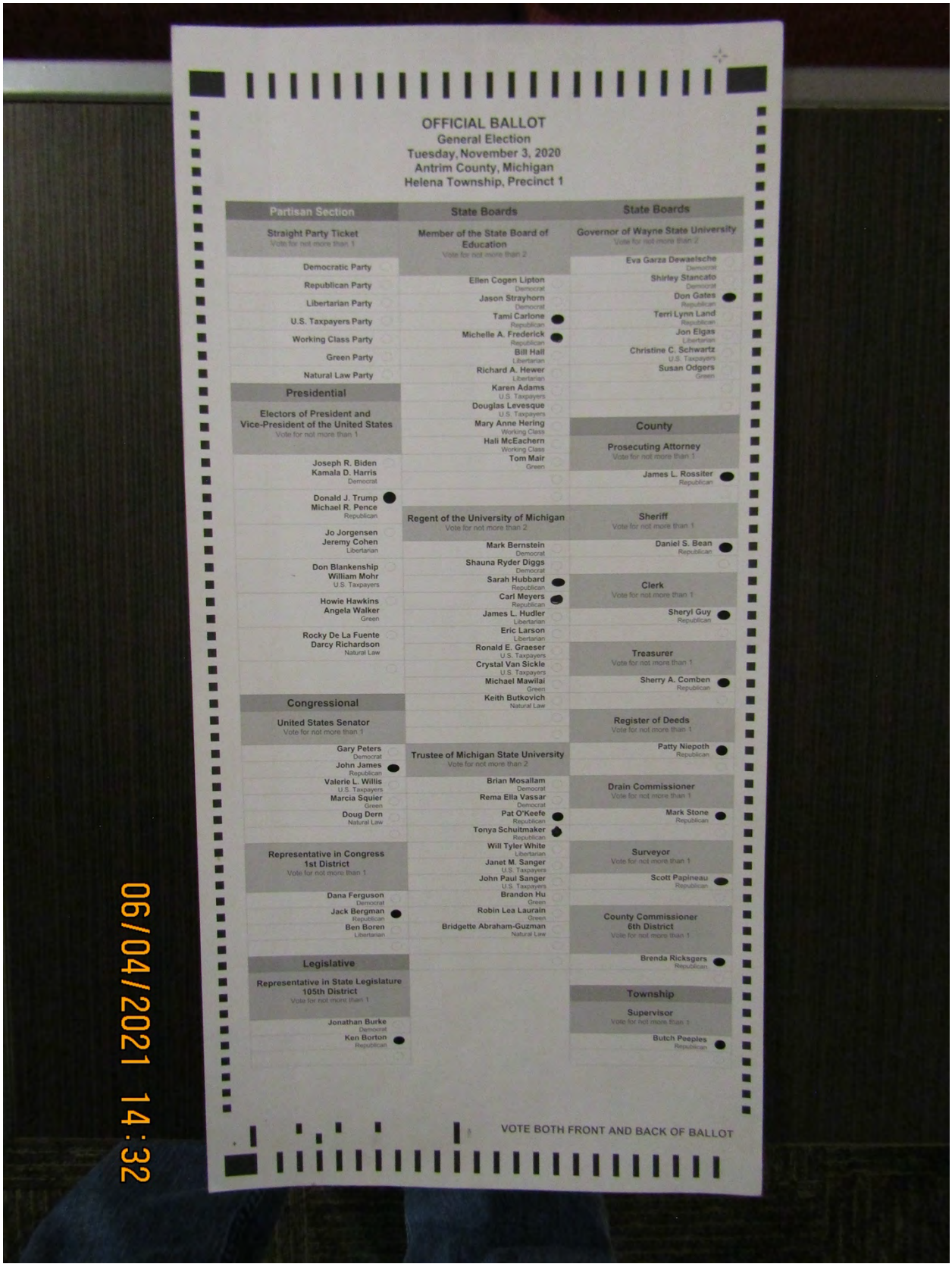

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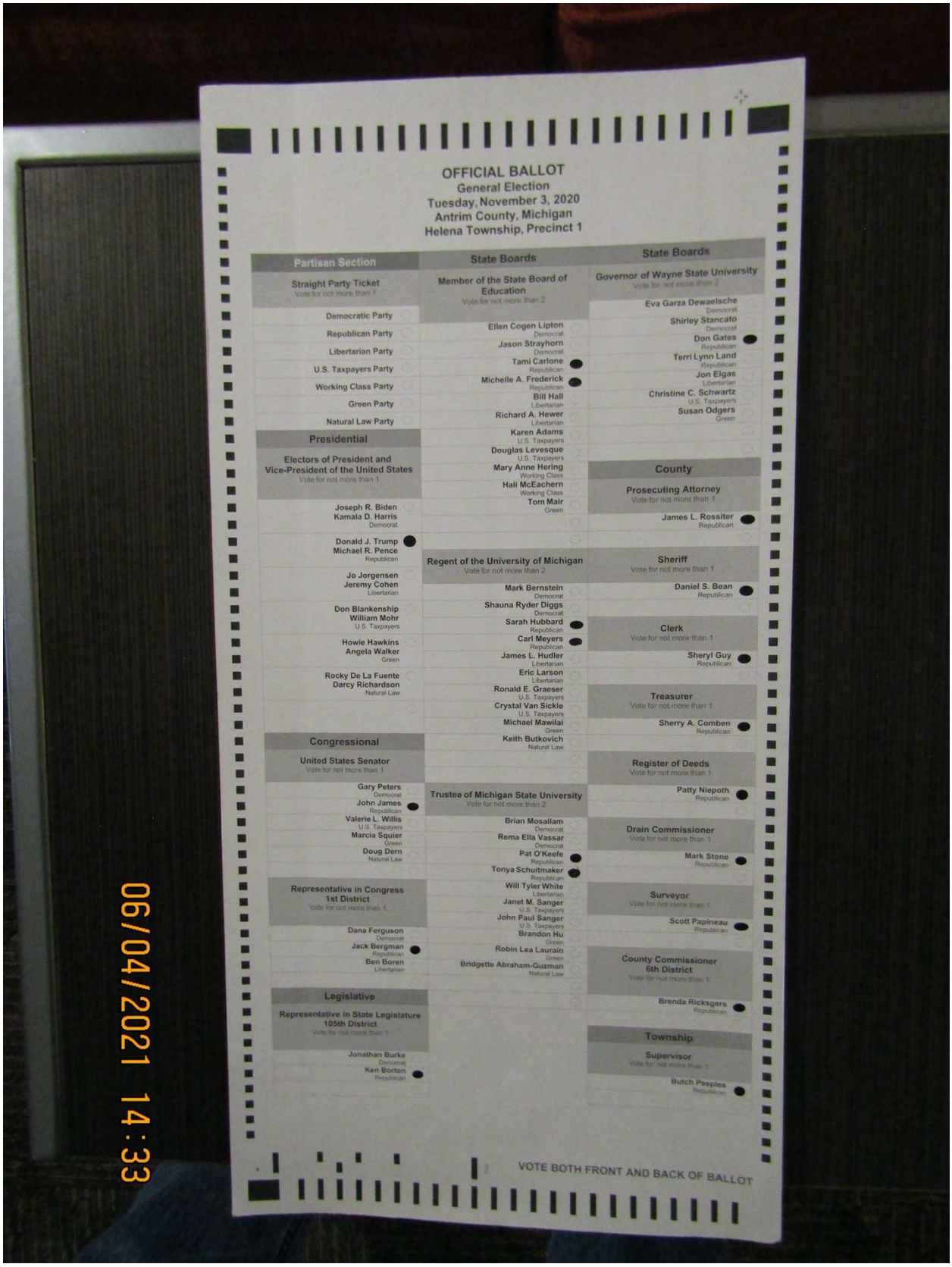

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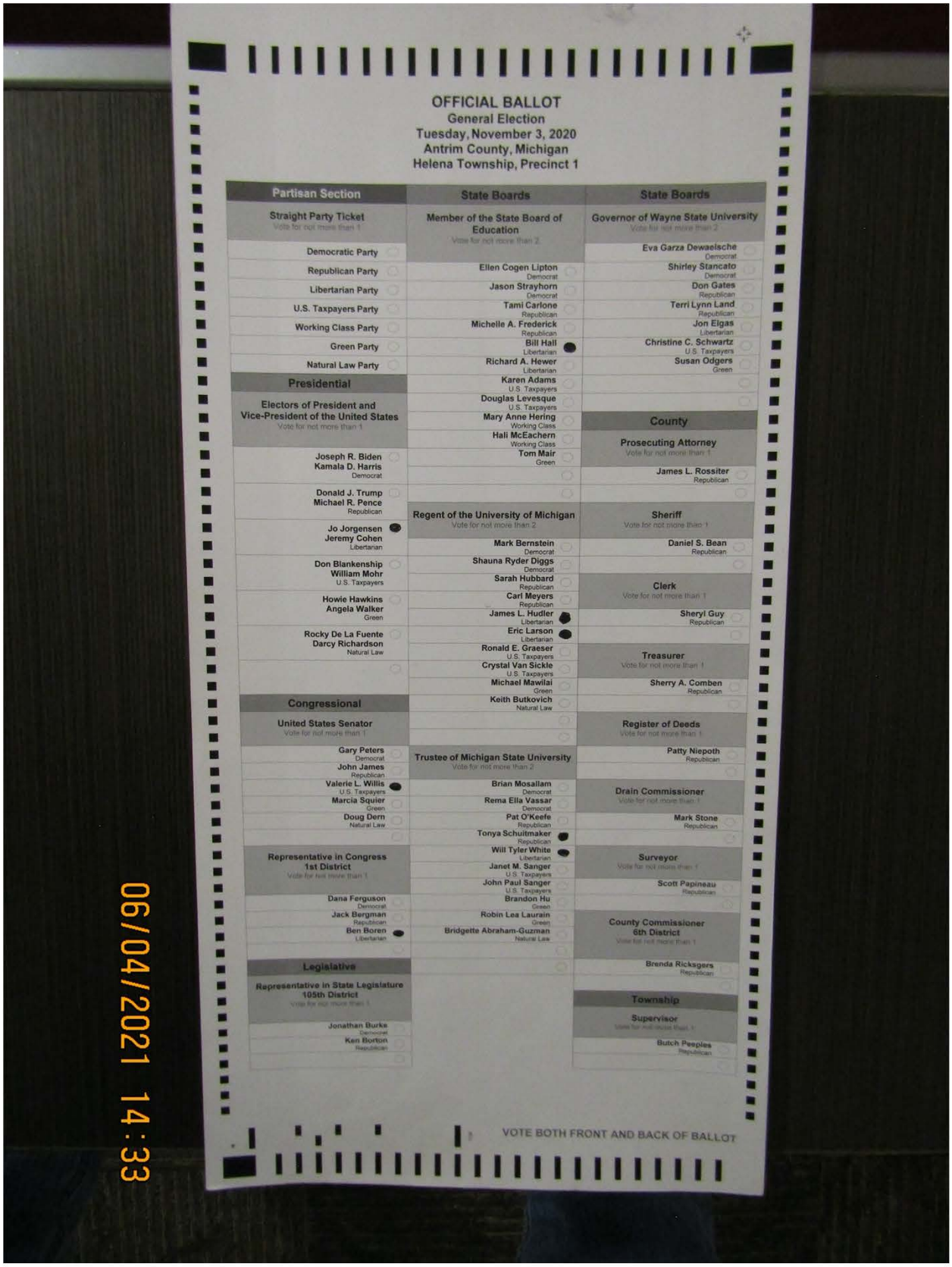

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- Ken Borton — Republican

State Boards

Member of the State Board of Education
Vote for not more than 2

- Ellen Cogen Lipton — Democrat
- Jason Strayhorn — Democrat
- Tami Carlone — Republican
- Michelle A. Frederick — Republican
- Bill Hall — Libertarian
- Richard A. Hewer — Libertarian
- Karen Adams — U.S. Taxpayers
- Douglas Levesque — U.S. Taxpayers
- Mary Anne Hering — Working Class
- Hali McEachern — Working Class
- Tom Mair — Green

Regent of the University of Michigan
Vote for not more than 2

- Mark Bernstein — Democrat
- Shauna Ryder Diggs — Democrat
- Sarah Hubbard — Republican
- Carl Meyers — Republican
- James L. Hudler — Libertarian
- Eric Larson — Libertarian
- Ronald E. Graeser — U.S. Taxpayers
- Crystal Van Sickle — U.S. Taxpayers
- Michael Mawilai — Green
- Keith Butkovich — Natural Law

Trustee of Michigan State University
Vote for not more than 2

- Brian Mosallam — Democrat
- Rema Ella Vassar — Democrat
- Pat O'Keefe — Republican
- Tonya Schuitmaker — Republican
- Will Tyler White — Libertarian
- Janet M. Sanger — U.S. Taxpayers
- John Paul Sanger — U.S. Taxpayers
- Brandon Hu — Green
- Robin Lea Laurain — Green
- Bridgette Abraham-Guzman — Natural Law

State Boards

Governor of Wayne State University
Vote for not more than 2

- Eva Garza Dewaelsche — Democrat
- Shirley Stancato — Democrat
- Don Gates — Republican
- Terri Lynn Land — Republican
- Jon Elgas — Libertarian
- Christine C. Schwartz — U.S. Taxpayers
- Susan Odgers — Green

County

Prosecuting Attorney
Vote for not more than 1

- James L. Rossiter — Republican

Sheriff
Vote for not more than 1

- Daniel S. Bean — Republican

Clerk
Vote for not more than 1

- Sheryl Guy — Republican

Treasurer
Vote for not more than 1

- Sherry A. Comben — Republican

Register of Deeds
Vote for not more than 1

- Patty Niepoth — Republican

Drain Commissioner
Vote for not more than 1

- Mark Stone — Republican

Surveyor
Vote for not more than 1

- Scott Papineau — Republican

County Commissioner 6th District
Vote for not more than 1

- Brenda Ricksgers — Republican

Township

Supervisor
Vote for not more than 1

- Butch Peeples — Republican

VOTE BOTH FRONT AND BACK OF BALLOT

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

WILLIAM BAILEY Plaintiff	Case No. 20-9238-CZ
v.	
ANTRIM COUNTY Defendant	HON. KEVIN A. ELSENHEIMER
SECRETARY OF STATE JOCELYN BENSON Intervenor-Defendant,	

Matthew S. DePerno (P52622)
DEPERNO LAW OFFICE, PLLC
Attorney for Plaintiff
951 W. Milham Avenue
PO Box 1595
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Haider A. Kazim (P66146)
Allan C. Vander Laan (P33893)
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Attorney for Defendant
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Erik A. Grill (P64713)
Assistant Attorneys General
Attorneys for Intervenor-Defendant Benson
PO Box 30736
Lansing, MI 48909
(517) 335-7659

EXHIBITS 5

PLAINTIFF'S MOTION AND BRIEF FOR RECONSIDERATION OR, ALTERNATIVELY, REHEARING PURSUANT TO MCR 2.119(F)

Respectfully submitted

DePERNO LAW OFFICE, PLLC

Dated: June 9, 2021

/s/ Matthew S. DePerno
Matthew S. DePerno (P52622)
Attorney for Plaintiff

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Date: 6/9//2021
Analyst: Jeff Lenberg
Subject: Central Lake Township Ballot Reversals Make Ballots Impossible to Count, Helena Township 21% Ballot Reversal Rate, 20% Higher Reversal Rate for Republican voters and Mancelona Late Night Ballot Processing

Executive Summary

In Central Lake Township, there was an eighty (82) percent reversal rate that drastically exceeded the rate across the rest of the precincts in Antrim County. Forensic examination of the tabulator log file indicates that there were modifications made to the ballots outer markers that led to the specific ballots being reversed by the ICP tabulator. Sixty (60) percent of the reversals are attributed to tampering with a subset of ballots. Those tampered ballots are never actually counted because they always reverse, and therefore never record votes. This irregularity is cause for investigation into the changes that occurred with respect to the ballots originally cast in Central Lake Township. It is not possible to investigate or evaluate the ballot processing in Central Lake Township for the election day on November 3, 2020 because those files were not stored on the EMS, not provided in any other forensics data from Antrim County, nor provided during discovery by the defendants.

Given the fact that the Central Lake Township ballots were re-processed on November 6, 2020 (three days after election day), this high reversal rate indicates an intentional injection of these tampered ballots in order to overshadow the ambient reversal rate of twenty percent. Similarly, in Warner Township on October 21, logic and accuracy testing (LAT) was performed prior to the election. The Warner Township logs from the LAT indicate precisely the same ballot tampering issue that was noted in Central Lake Township on November 6, 2020. It appears that despite a striking number of reversals occurring during the LAT in Warner Township before the election, no steps were taken to address the detected issues to ensure it did not also occur in Central Lake Township on November 6. The purpose of the LAT is to determine if there are any extant issues with the "logic" and "accuracy" of the Dominion Voting Systems equipment. The fact that this LAT occurred after normal business hours and did not result in actions to fix the errors indicates that intentional manipulation of ballots and voting systems occurred.

There was a substantial level of ballot reversals of approximately twenty-one (21) precent in Helena Township and a higher rate of thirty-five (35) percent on average across Antrim County during the November 3, 2020 general election. A ballot reversal occurs when a ballot is not accepted by the Dominion ImageCast Precinct (ICP) tabulator, the ballot is drawn into the ICP, scanned, and then it is "reversed" and returned back out the front to the user that fed it into the system, no votes are recorded when this occurs.

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The Antrim County configuration for ballot reversals simply rejects the ballot and returns it to the poll worker for reprocessing. It is unclear how each poll worker dealt with the reversals; however, the log data indicates that when the ballot reverses it was immediately fed into the ICP again for reprocessing, and in the vast majority of cases the ballot is accepted on the second or third attempt. Based on this assumption, the ballot reversals in Helena Township disproportionately impacted Republican voters twenty (20) percent more in comparison to Democrat voters. This is normalized for the percentages of Republicans and Democrats that are present in the voter rolls for Helena Township.

In Mancelona Township, there was evidence of long runs of continuous ballot feeding into the ICP warranting additional investigation. This is anomalous in and of itself because typical voting day behavior is aperiodic input of ballots as voters complete their ballots. The Mancelona Township behavior demonstrates an attempt at feeding of ballots approximately every 11 seconds for almost 4 hours straight interrupted by a high rate of reversals, late into the night after the polls officially closed. The continuous feeding of ballots ended just after midnight.

Details

Central Lake Township 82% Reversal Rate

The extremely high rate of reversals of 82% was calculated for Central Lake Township. This reversal rate occurred on November 6, 2020 several days after the general election on November 3, 2020. At the time of the reversals being recorded in the log file the Antrim County clerk was reprocessing ballot from election day in order to properly account for the votes that had been impacted by manipulation days earlier during the election. It is unclear exactly who was responsible for the reprocessing of the ballots for Central Lake Township on November 6, 2020.

The same errors were also discovered in Warner Township where logic and accuracy testing (LAT) was occurring on the evening of Oct 20, 2020 starting at 5:14PM ET. The LAT was concluded at 7:18PM ET taking place entirely outside normal business hours. During the course of LAT there were a total of 256 ballots successfully processed with 283 reversals during the LAT. There is a one hundred-ten percent (110) reversal rate during LAT. Given the extremely high reversal rate, the technician performing the LAT should have taken measures to fix the fundamental issue that was causing the reversals. There are no records that indicate any measures were taken to fix the tabulator nor were appropriate steps taken to avoid the same problem reoccurring during the November 6, 2020 reprocessing of the votes from Central Lake Township.

Forensic analysis of the slog.txt file for Central Lake Township show there are specific irregularities found on outer markers on the physical ballots. The external markings along the edges of the ballots showed modification on blocks 15, 18, 28, 41, and 44. These irregularities were found on both the right and left side of the

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ballots. The physical ballots and the associated blocks around the perimeter of the ballot were tampered/modified, with either a pen, or some other marker to distort the shape of the block and make the ICP reverse the ballot instead of processing it normally. Experimentation with ballot folding and processing has determined that different error codes are generated if the folding causes distortion of the outer markers, these are distinct from the ones observed in this scenario. More specifically, folding may generate errors that the marker is "missing," the observed errors are for markers that are oversized.

The error messages that were found in both Warner and Central Lake Townships are similar and are depicted in Table 1 (Warner) and Table 2 (Central Lake) showing the raw error messages for the modifications to the ballot outer markers on the ballots.

Table 1 – Sample Errors from Warner Township Oct 20, 2020 Logic and Accuracy Testing from Compact Flash Card slog.txt

Date/Time	Action	Alert	Information
Oct 20/2020 17:14:21	ScanVote	Warning	+ error, correlateMarker inputs: xx(0,1120) yy(1133,44)
Oct 20/2020 17:14:21	ScanVote	Warning	+ error, correlateMarker findPattern
Oct 20/2020 17:14:21	ScanVote	Warning	+ error, left marker#18, rectangle height, detected 35, expected 24
Oct 20/2020 17:14:21	ScanVote	Warning	+ failed correction, left edge marker#18, pattern match, percent=0.0 rc=51484
Oct 20/2020 17:14:21	ScanVote	Warning	+ error, left edge marker#18 on top side not found.
Oct 20/2020 17:14:22	ScanVote	Warning	+ error, Front page grid problem
Oct 20/2020 17:14:22	ScanVote	Warning	+ Ballot format or id is unrecognizable.
Oct 20/2020 17:14:24	ScanVote		Ballot has been reversed.

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Table 2 - Sample Errors from Central Lake Township November 6, 2020 Compact Flash Card slog.txt file

Date/Time	Action	Alert	Information
Nov 06/2020 09:33:20	ScanVote	Warning	+ error, correlateMarker inputs: xx(0,1069) yy(1082,41)
Nov 06/2020 09:33:20	ScanVote	Warning	+ error, correlateMarker findPattern
Nov 06/2020 09:33:20	ScanVote	Warning	+ error, left marker#18, rectangle height, detected 33, expected 24
Nov 06/2020 09:33:20	ScanVote	Warning	+ failed correction, left edge marker#18, pattern match, percent=0.0 rc=51484
Nov 06/2020 09:33:20	ScanVote	Warning	+ error, left edge marker#18 on top side not found.
Nov 06/2020 09:33:21	ScanVote	Warning	+ error, Front page grid problem
Nov 06/2020 09:33:21	ScanVote	Warning	+ Ballot format or id is unrecognizable.
Nov 06/2020 09:33:23	ScanVote		Ballot has been reversed.

Replicating the Reversals in Warner and Central Lake Township

The error found in both Warner and Central Lake Townships logs was recreated by taking a pristine ballot and adding to the outer blocks with a pen, changing the shape of the blocks. Modifying or tampering with the ballot in this fashion creates the same error messages observed in the logs for both Warner and Central Lake Townships.

See the Figures below to note the modification of the ballots that create the errors seen in both Townships. This testing shows that the modifications create the same error messages as found in both Warner and Central Lake Townships.

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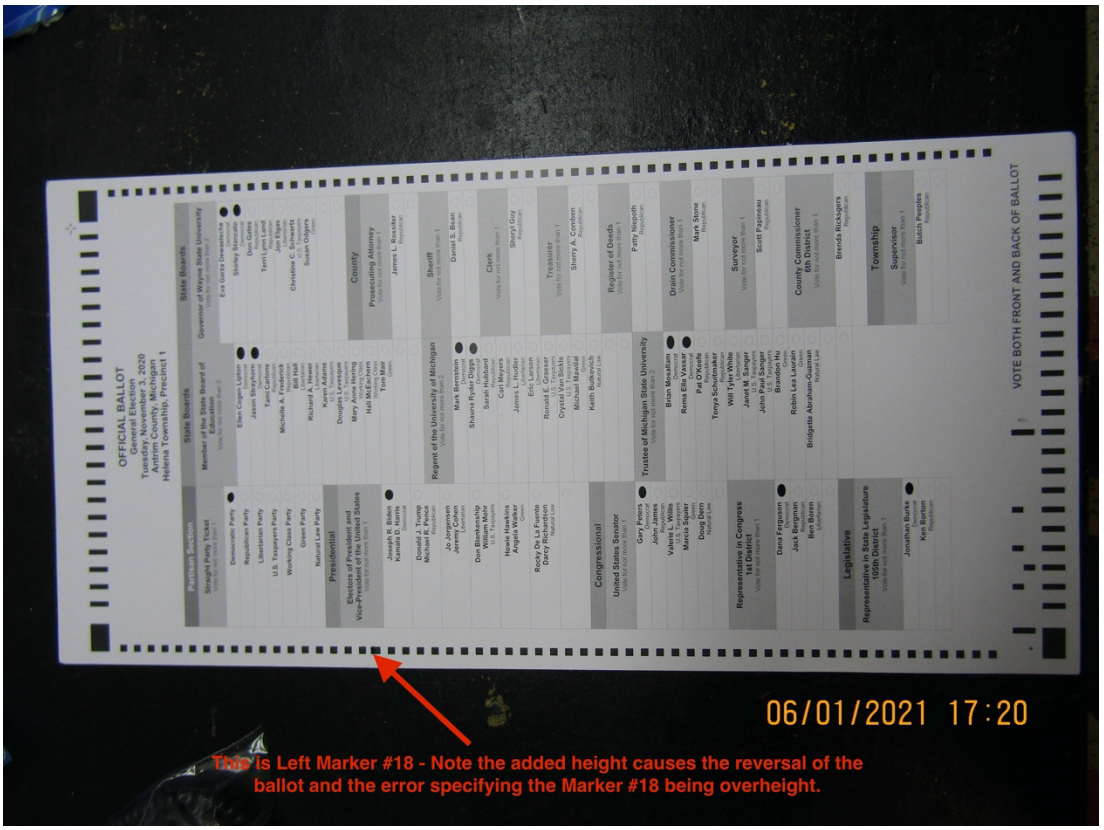

Figure 1 – Overview of Ballot with Left Marker #18 Modified to Cause Reversal

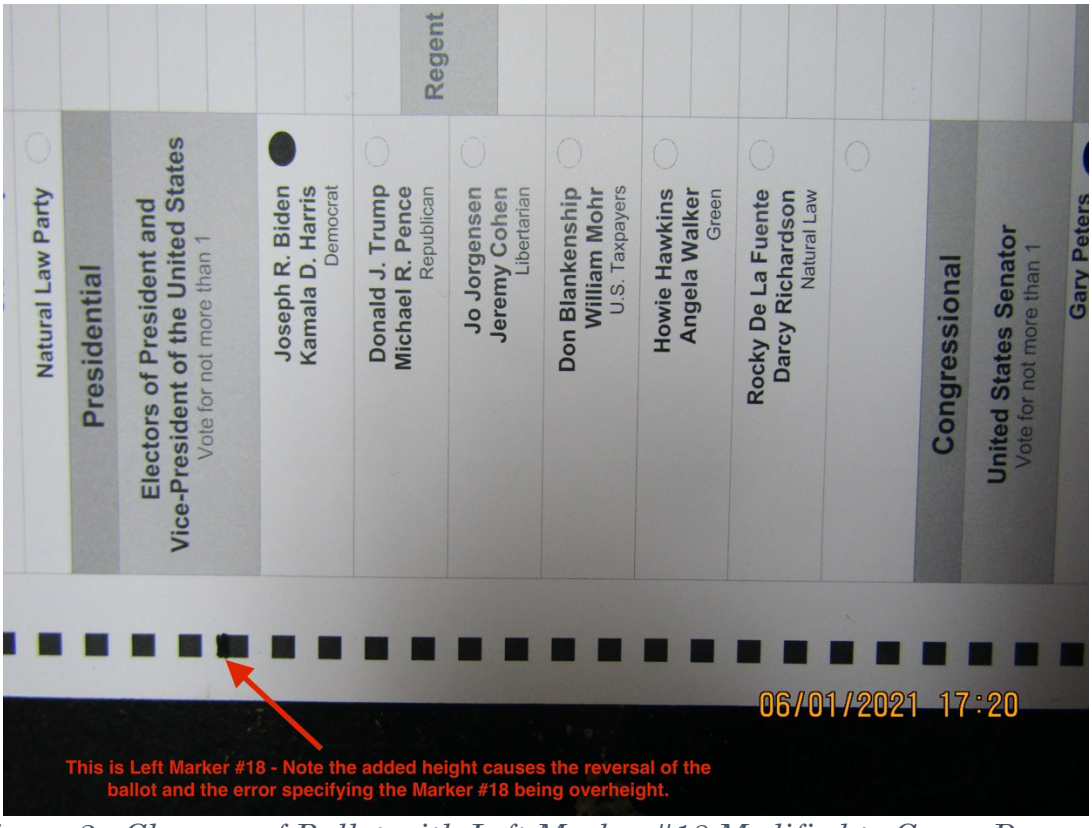

Figure 2 - Close-up of Ballot with Left Marker #18 Modified to Cause Reversal

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Helena Township Ballot Reversals

Helena Township experienced ballot reversals during the November 3, 2020 general election at a level of approximately twenty-one (21) percent reversal rate. The reversal rate of the ballots in Helena is lower than most precincts in Antrim County with the exception of Central Lake Township which had an extremely high reversal rate during the election near eighty (80) percent.

Table 3 - Reversal Rates for Antrim County Precincts

Compact Flash Card for Nov 3, 2020	Total Votes	Reversals	Reversal Rate %
CF01_CentralLake_2[1]	1491	1222	82.0
CF03_Mancelona_11_11	1138	329	28.9
CF05_Mancelona_11_12	913	302	33.1
CF07_Echo_5	602	223	37.0
CF09_MiltonAV_13	1184	45	3.8
CF11_Milton_13	640	360	56.3
CF13_ForestHome_7	1390	134	9.6
CF15_Banks_1	1129	399	35.3
CF17_Helena_8	746	159	21.3
CF19_Jordan_9	573	231	40.3
CF21_Warner_16	228	158	69.3
CF23_Custer_4	776	157	20.2
CF26_Kearney_10	1240	51	4.1
CF27_TorchLake_15	1006	266	26.4
CF30_Chestonia_3	296	149	50.3
CF31_Star_14	635	410	64.6
CF33_ElksRapid_6	1423	201	14.1
CF35_ELKSRapidAV_6_100	634	245	38.6

The reversal rate in Helena Township has been found to have disproportionally impacted Republican voters in comparison to Democrat voters based on the votes recorded directly in the results file from the ICP tabulator.

In Helena Township the reversals impacted Republican voters twenty (20) percent more often than Democrats in Helena Township. This indicates that the ICP was reversing Republican voters ballots more often. Forensic examination of the log file from ICP indicates the reason for the reversal being the ballot exceeding the maximum size allowed, error code 46022. The other error code was 46023 which indicated a scanner transport error. The same error codes were provided when rejecting both Republican and Democrat ballots, but nevertheless, the Republican

[1] Central Lake Compact Flash Card was from November 6, 2020 reprocessing

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ballots were disproportionally affected. This expert report supersedes the previous preliminary expert report on Helena County filed on 5/18/2021.

Table 4 - Example Reversal Errors from Slog.txt file from Helena Township Compact Flash Card

Date/Time	Action	Information
Nov 03/2020 07:13:41	ScanVote	Actual scanning of ballot failed with error [46022].
Nov 03/2020 07:13:41	ScanVote	Ballot's size exceeds maximum expected ballot size.
Nov 03/2020 07:20:26	ScanVote	Actual scanning of ballot failed with error [46023].
Nov 03/2020 07:20:26	ScanVote Audit	Scanner transport error.
Nov 03/2020 07:27:07	ScanVote	Actual scanning of ballot failed with error [46023].
Nov 03/2020 07:27:07	ScanVote Audit	Scanner transport error.
Nov 03/2020 07:29:10	ScanVote	Actual scanning of ballot failed with error [46023].
Nov 03/2020 07:29:10	ScanVote Audit	Scanner transport error.
Nov 03/2020 07:29:26	ScanVote	Actual scanning of ballot failed with error [46023].
Nov 03/2020 07:29:26	ScanVote Audit	Scanner transport error.
Nov 03/2020 07:29:47	ScanVote	Actual scanning of ballot failed with error [46023].

Mancelona Township Precinct 1 After-Hours Ballot Processing

Mancelona Township Precinct 1 ICP poll closed 12:21AM on November 4, 2020. At 8:33PM ET individual voters stopped voting and remainder of election night votes were fed into the machine an attempted rate of approximately 11 seconds per ballot.

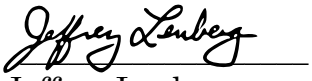
The ICP is rated to process approximately 1200 ballots in the four-hour timespan from the end of in-person voting to the closure of the ICP for presumably absentee ballot processing. The reversal rate was slowing the process substantially and the poll workers should have been able to finish in 1 hour of time vice 4 hours, but the reversal rate was impeding their ability to complete their duties.

At 8:47PM ET, the ICP in Mancelona Precinct 1 was shut down after a series of jams and restarted at 8:50PM ET and continued to process ballots from where the tabulator left off.

It is unclear why there were 313 ballots processed at the end of the election night long after the polls had closed for the night. What is certain is that the ballots processed in Mancelona Precinct 1 were done so in a methodologic fashion one right after another. The results files on the EMS reflect ballots processed late into the night.

The precise nature of the 313 ballots that were processed after the polls closed to individual voters is unknown. Additional discovery is necessary to discover which ballots were processed until 12:21AM on November 4, 2020.

Under the penalties of perjury, I declare that I have read the foregoing report and that facts stated in it are true.



Jeffrey Lenberg

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MICHIGAN NOTARY ACKNOWLEDGEMENT

State of Michigan
County of Oakland

The foregoing instrument was acknowledged before me on this 9th day of June, 2021 by Jeffrey Lenberg.

Notary Public Signature:

Ann M. Howard

Notary Printed Name: Ann M. Howard
Acting in the County of: Oakland
My Commission Expires: 2/24/2023

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