

12/09/20

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DAILY CALENDAR FOR KELSENHEIM Kevin Elsenheimer-Circuit Ct
12/10/2020 - 12/10/2020

Thursday 12/10/2020

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HON. KEVIN A. ELSENHEIMER PRESIDING

GRAND TRAVERSE COUNTY DAY

==COURTROOM 3, 3RD FLOOR==

===JESSICA JAYNES REPORTING===

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12:00N

03:00P ++SEE JPC++ /TNG 12/4/20

.

03:00P

03:30P A.20-9238-CZ, MOT

12/09 N

BAILEY, WILLIAM V ANTRIM COUNTY

SECRETARY OF STATE JOCELYN BENSON'S EMERGENCY

MOTION TO INTERVENE AS PARTY DEFENDANT

M DEPERNO/H KAZIM/H MEINGAST

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**STATE OF MICHIGAN
CIRCUIT COURT FOR THE 13TH JUDICIAL CIRCUIT
ANTRIM COUNTY**

WILLIAM BAILEY,

Plaintiff,

No. 20-9238-CZ

v

HON. KEVIN A. ELSENHEIMER

ANTRIM COUNTY,

Defendant,

**SECRETARY OF STATE JOCELYN
BENSON,**

Proposed Intervenor-Defendant.

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**SECRETARY OF STATE JOCELYN BENSON'S
EMERGENCY MOTION TO INTERVENE AS PARTY DEFENDANT**

Secretary of State Jocelyn Benson, by her attorneys, moves this Court to allow her to intervene as a Defendant in this matter and in support of her motion states as follows:

SUMMARY OF PLAINTIFF'S CLAIMS

1. On or about November 23, 2020, Plaintiff filed the instant complaint against Antrim County seeking a declaratory judgment and quo warranto relief, along with an ex parte motion for a temporary restraining order, show cause order, and preliminary injunction. He purportedly brings this action under MCL 600.4545 (quo warranto for fraud or error in the conducting of an election on a ballot proposal); MCR 3.306(A)(2) (quo warranto); MCL 600.605 (jurisdiction of circuit court); MCR 2.605 (declaratory judgment), and article 1, § 2 and article 2, § 4 of the Michigan Constitution. (Compl., ¶ 10.)
2. Plaintiff alleges fraud in the Antrim County Clerk's canvassing of the November 3, 2020 general election, based on Plaintiff's perception that the Dominion Voting Systems election management system and voting machines used in Antrim County were rigged to miscount votes cast for President Donald Trump.
3. Plaintiff alleges that "the election on November 3, 2020 in Antrim County was fraudulently manipulated." (Compl., ¶ 4.)
4. In Count I, Plaintiff alleges that his constitutional rights to a free and fair election have been violated and he apparently seeks to invoke the new provision in article 2, § 4(1)(h), which provides that citizens shall have the right to "have the results of statewide elections audited, in such a manner as prescribed by law, to ensure the accuracy and integrity of elections." Const 1963, art 2, §4(1)(h). The Legislature has implemented this provision in MCL 168.31a.

5. Plaintiff alleges that “based upon all the allegations of fraud, statutory violations, and other misconduct . . . it is necessary to permit Plaintiff to immediately take a forensic image of the 22 precinct tabulators, thumb drives, related software, the Clerk’s ‘master tabulator,’ and conduct an investigation of those images, after which a manual recount of the election results and an independent audit of the November 3, 2020 election may be ordered to ensure the accuracy and integrity of the election.” (Compl., ¶ 40.)

6. In Count II, Plaintiff alleges that the “purity of elections” clause of the Michigan Constitution was violated, see Const 1963, art 2, §4(2), by the alleged fraud and he seeks the same relief stated in Count I. (Compl., ¶¶ 42-45.)

7. In Count III, Plaintiff seeks quo warranto relief for alleged fraud or error in the conducting of an election on a ballot measure under MCL 600.4545, and under MCL 168.861. He seeks the same relief requested in Count I. (Compl., ¶¶ 47-50.)

8. In Count IV, Plaintiff purports to bring a claim for common law fraud in an election under MCR 3.306(B)(2), citing *Barrow v City of Detroit*, 290 Mich App 530, 543 (2010). He alleges that this claim “is brought to remedy fraudulent or illegal voting or tampering with ballots via Dominion. Based upon the allegations contained herein, material fraud or error occurred in this election so that the outcome of the election was affected.” (Compl., ¶¶ 52-54.) Plaintiff seeks the same relief as requested in Count I. (Compl., ¶ 55.)

9. In Count V, Plaintiff alleges a violation of the Equal Protection Clause of the Michigan Constitution, based on the theory that the purported fraud that occurred

through the County Clerk's use of the Dominion voting system unlawfully diluted his right to vote through the counting of improper ballots, counting ballots more than once, improper handling of ballots, etc. (Compl., ¶¶ 57-63.) He again requests the same relief as in Count I. *Id.*, ¶ 64.

10. And finally, in Count VI, Plaintiff alleges that the County violated MCL 168.765(5) by failing to timely post information regarding absent voter ballots, and by receiving additional absentee ballots after the polls closed. (Compl., ¶¶ 66-69.) He again requests the same relief as in Count I. *Id.*, ¶ 70.

11. In his Prayer for Relief, Plaintiff requests that the Court "issue an order requiring allowing [sic] Plaintiff to take a forensic image of the 22 precinct tabulators, thumb drives, related software, the Clerk's 'master tabulator,' and conduct an investigation of those images." (Compl., p 14.) Plaintiff also requests that the Court "issue an order allowing Plaintiff to conduct an independent and non-partisan audit to determine the accuracy and integrity of the November 3, 2020, election[.]" *Id.*

12. After the close of business on December 4, 2020, this Court entered an order granting, at least in part, Plaintiff's motion for a preliminary injunction to the extent it permitted Plaintiff to take forensic images of at least one Dominion tabulator in the possession of Antrim County. (Order, p 4.)

13. The Court's order also serves as a "protective order," ordering that "pursuant to MCR 2.302(C), [] to protect the respective interests of the parties, this Decision and Order shall also serve as a Protective Order restricting use, distribution or

manipulation of the forensic images and/or other information gleaned from the forensic investigation without further order of this Court.” (Order, p 5.)

INTERESTS OF INTERVENOR SECRETARY OF STATE

14. Under the Michigan Constitution, the Legislature “shall enact laws to regulate the time, place and manner of all . . . elections[.]” Const 1963, art 2, § 4(2).

15. The Legislature delegated the task of conducting proper elections to the Secretary of State, an elected Executive-branch officer, and the head of the Department of State. Const 1963, art 5, §§ 3, 9.

16. Section 21 of the Michigan Election Law makes the Secretary the “chief election officer” and she “shall have supervisory control over local election officials in the performance of their duties under the provisions of this act.” MCL 168.21. Further, under § 31, the Secretary “shall do all of the following”: “(a). . . issue instructions and promulgate rules . . . for the conduct of elections . . . in accordance with the laws of this state,” and “(b) [a]dvise and direct local election officials as to the proper methods of conducting elections.” MCL 168.31(1)(a)-(b).

17. These sections provide the Secretary with broad authority to issue instructions for the proper conduct of elections and to require adherence to those instructions by the election officials over whom she exercises supervisory control. See *Hare v Berrien Co Bd of Election Commr's*, 373 Mich 526, 531 (1964) (local election board had “duty to follow” the Secretary of State’s “instructions” under MCL 168.31).

18. This case challenges the security and integrity of the general election conducted and canvassed in Antrim County by the Antrim County Clerk (Clerk) and the Antrim County Board of Canvassers (County Board). The County Board certified the results of the county canvass well-before the deadline of November 17, 2020, see MCL 168.822, which results were then sent to the Secretary of State, see MCL 168.843, and certified by the Board of State Canvassers on November 23, 2020, see MCL 168.841-168.845.

19. The Secretary of State exercises supervisory control over the Clerk and the County Board, and all other election officials in the County, in the performance of their duties. MCL 168.21. She exercises that control, in part, through the issuance of guidance and instructions to the officials for performing election-day and canvassing-related duties. MCL 168.31(1)(a)-(b).

20. The Secretary has an interest in Plaintiff's claims that the officials whom she supervises either failed to operate the Dominion voting system tabulator properly or otherwise failed to perform their canvassing duties to ensure a proper canvass as to all candidate races, local and state, as well as all ballot proposals in the County, as a result of any purported tabulator errors or intentional fraud.

21. Indeed, as Plaintiff notes in his Complaint, the Secretary reviewed the circumstances surrounding the Clerk's initial posting of unofficial results in the early hours after the polls closed, and determined, after consultation with staff at Election Source, the subcontractor who provides programming to the County, that it was the result of an unintentional user error on the part of the Clerk. (Ex 1, Brater

Dec., ¶¶ 3-13, *King et al v Whitmer, et al*, USDC-ED Mich, No. 20-13134 (Parker, J.)). Plaintiff's claims that the errors in the early, unofficial results were somehow the result of fraud is inconsistent with information obtained through discussion with the software programmers for the County, who are the experts with respect to the Dominion voting system—not Plaintiff. *Id.*

22. This case also raises a novel question concerning the interpretation of a new provision of the Constitution added by Proposal 3 in 2018 regarding an audit of statewide election results. That section provides for “results of statewide elections” to be audited as “prescribed by law” and the Legislature has prescribed that it is the Secretary’s duty to perform such audits under MCL 168.31a(2). The Secretary thus has an interest in how this Court will interpret both the Constitution and her duty to conduct an audit as set forth in the statute. Indeed, there is no right under the Constitution to have, as Plaintiff requests, “an independent audit” performed by anyone other than the Secretary under the Constitution and MCL 168.31a(2).

23. This case also presents other questions as to the proper interpretation and application of the Michigan Election Law, MCL 168.1 *et seq.* For instance, Plaintiff suggests throughout his Complaint that there should be a “manual *recount* of the election results.” (Emphasis added). But the time for requesting a recount as to any candidate race or ballot proposal expired shortly after the Board of State Canvassers’ certification of the statewide results on November 23. See MCL 168.879. And as the audit statute states “[a]n audit conducted under this section is not a recount and does not change any certified election results.” MCL 168.31a(2).

The Secretary of State and her staff are prepared to perform an audit regarding Antrim County's results, but Plaintiff no longer has a right to request a recount.

24. Further, Plaintiff suggests in his Complaint that a "special election" should be held in the "precincts affected" by the purported mechanical malfunctions in the tabulators, citing MCL 168.931-168.839. (Compl., ¶¶ 35-36.) However, a petition for a special election based on a mechanical malfunction had to be filed with the County Board within 10 days after the election. MCL 168.832. Thus, Plaintiff can no longer petition for a special election, even if he could factually support a petition to do so.

25. In addition to her interests in the proper interpretation of the Constitution and the Michigan Election Law, the Secretary has serious concerns regarding the Court's decision to grant Plaintiff's request to "take a forensic image" of the tabulator in the County's possession, the "thumb drives, [and the] related software . . . and conduct an investigation of those images[.]" (Compl., ¶ 40; 12/4/20 Order, p 4.)

26. Nowhere in Plaintiff's Complaint, his initial motion and brief in support of a temporary restraining order or preliminary injunction, or in his two supplemental briefs, did Plaintiff explain precisely what he sought to image, how it would be done, who exactly was going to perform the imaging and what qualifications those persons possessed.

27. As the County and this Court conceded, allowing this imaging violated the County's license agreement with Dominion.¹ And this inspection or imaging should have been the subject of a comprehensive protective order and strict, specific standards for how and when the imaging would be conducted. For instance, Plaintiff and his agents should not have been permitted to retain and leave the inspection sight with images. Rather, the forensic review should have been conducted wholly onsite. And presently, there is no time limit on how long Plaintiff and his agents may retain the images.

28. At this time, it is completely unclear to the Secretary what information Plaintiff and his agents were granted access to and permitted to image. It is certainly possible that Plaintiff and his agents obtained information, the release of which could present election security concerns to the State of Michigan.

29. The Secretary recognizes that this Court granted a very basic protective order "restricting use, distribution or manipulation of the forensic images and/or other information gleaned from the forensic investigation without further order of this Court." (Order, p 5.) But it also appears that Plaintiff and his agents are poised to violate that order.² Given that it is ultimately the Secretary's duty to

¹ To the extent Plaintiff and his agents convinced non-party township clerks or election officials to provide them with access to similar information absent a court order, these townships likely violated their licensing agreements with Dominion, and potentially violated other legal requirements as well.

² See *Statement From Plaintiff on Antrim County, MI Lawsuit Reveals He Was Able To Get "Damning Evidence" That "Points to Election Tampering"*, 12/7/20, available at <https://news1a.localad.com/2020/12/07/statement-from-plaintiff-on-antrim-county-mi-lawsuit-reveals-he-was-able-to-get-damning-evidence-that-points-to-election-tampering/>.

ensure that election information is maintained and preserved according to law and security protocols, she has a particular interest in understanding what information was obtained and in ensuring that access to this otherwise confidential information is limited.

STANDARDS FOR GRANTING INTERVENTION

30. MCR 2.209(A) and (B) govern intervention and provide, in relevant part:

(A) Intervention of Right. On timely application a person has a right to intervene in an action

(3) when the applicant claims an interest relating to the . . . transaction which is the subject of the action and is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties. . . .

(B) Permissive Intervention. On timely application a person may intervene in an action

(2) when an applicant's claim or defense and the main action have a question of law or fact in common.

In exercising its discretion, the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

31. MCR 2.209(A)(3) "should be liberally construed to allow intervention when the applicant's interest otherwise may be inadequately represented." *Auto-Owners Ins Co v Keizer-Morris, Inc*, 284 Mich App 610, 612 (2009). However, "MCR 2.209(A)(3) and (B) both condition intervention on timely application." *Kuhlgert v Mich State Univ*, 328 Mich App 357, 379 (2019). A party seeking to intervene must be diligent. See *Sch Dist of Ferndale v Royal Oak Twp Sch Dist No 8*, 293 Mich 1,

11 (1940). That is, “[g]enerally, a right to intervene should be asserted within a reasonable time[.]” *Karrip v Cannon Twp*, 115 Mich App 726, 731 (1982).

32. For purposes of MCR 209(A)(3), the court rule permitting intervention should be liberally construed “to allow intervention where the applicant’s interests may be inadequately represented.” *Neal v Neal*, 219 Mich App 490, 492 (1996). “[T]he concern of inadequate representation of interests need only exist; inadequacy of representation need not be definitely established. Where this concern exists, the rules of intervention should be construed liberally in favor of intervention.”

Vestevich v West Bloomfield Twp, 245 Mich App 759, 762 (2001).

33. The Secretary is entitled to intervene as of right or should be granted permissive intervention in this case.

34. Here, the Secretary’s interests have not and will not be adequately represented by the County Defendant. While the County offered defenses in opposition to the motion for an injunction, it is unclear that the County made any effort to secure an appropriate protective order regarding the proposed imaging. Moreover, the County’s decision not to request a stay of the Court’s order for purposes of taking an immediate appeal of this unprecedented access to one of the State’s approved voting systems was contrary not just to the interests of the County but to the State of Michigan as a whole. These actions raise concerns that the County does not intend to vigorously defend against the fictional claims of fraud here, which have the potential to negatively impact elections in this State since dozens of counties use the Dominion voting system.

35. Further, the County cannot adequately defend against all the legal arguments raised here, for instance the audit issue, since the County cannot purport to represent the State's interpretation of the Constitution and the statute the Secretary administers and enforces. Indeed, as to all election issues raised here, the Secretary has standing and is better postured to offer interpretations of the election laws as she administers and enforces these laws throughout the State.

36. Regarding permissive intervention, the Secretary's defenses to this litigation will share at least some common questions of law or fact with the County Defendant. Indeed, the Secretary will likely make several of the same arguments the County raised in its brief in opposition to the injunction in her own dispositive motion and brief.

37. As for timing, the Secretary has been diligent in bringing her motion. While the Secretary was aware of this case, had received some of the pleadings, and was monitoring it, the Secretary, her staff, and counsel, have been occupied with defending numerous cases in which the State is a named party.

38. The Secretary learned of the Court's order late on December 4 and spent the weekend attempting to gather information as to exactly what the Court had ordered and when and where the imaging was taking place.

39. The County has not yet filed a first responsive pleading, no dispositive motions have been filed, no scheduling order has issued, and no discovery has commenced in this case. Permitting the Secretary to intervene at this juncture will not delay the case or prejudice the named parties.

40. Finally, the Secretary respectfully requests that this Court grant expedited review of her motion for intervention and resolve the motion as soon as possible. It is unclear what Plaintiff's next steps will be in this case; however, it is clear that the Secretary cannot protect her interests and the interests of the State absent intervention, giving her the right to respond to any new pleadings.

41. The Secretary sought concurrence in the instant emergency motion to intervene from the named parties' counsel around Noon on December 8; however, neither counsel had provided the courtesy of a response by the time of this filing.

CONCLUSION AND RELIEF REQUESTED

For the reasons stated above, Secretary of State Jocelyn Benson respectfully requests that the Court enter an order granting her emergency motion to intervene as a Defendant in this matter under MCR 2.209(A) or (B).

Respectfully submitted,

Dana Nessel
Attorney General

/s/ Heather S. Meingast
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Dated: December 9, 2020

PROOF OF SERVICE

On December 9, 2020, I electronically filed the foregoing papers with the Wayne County Circuit Court using the MiFile system, which will provide electronic copies to counsel of record, and I certify that my secretary has mailed by U.S. Postal Service the papers to any non-ECF participant.

/s/Heather S. Meingast
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**STATE OF MICHIGAN
CIRCUIT COURT FOR THE 13TH JUDICIAL CIRCUIT
ANTRIM COUNTY**

WILLIAM BAILEY,

Plaintiff,

No. 20-9238-CZ

v

HON. KEVIN A. ELSENHEIMER

ANTRIM COUNTY,

Defendant,

**SECRETARY OF STATE JOCELYN
BENSON,**

Proposed Intervenor-Defendant.

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**DEFENDANT SECRETARY OF STATE JOCELYN BENSON'S
ANSWER TO PLAINTIFF'S COMPLAINT**

**Defendant Secretary of State Jocelyn Benson, by counsel, answers Plaintiff's
complaint as follows:**

JURISDICTION AND VENUE

1. Defendant neither admits nor denies the allegations in paragraph 1 for lack of sufficient information or knowledge to form a belief about the truth of the allegations asserted and thus leaves Plaintiff to his proofs.

2. Defendant admits that Defendant Antrim County is a public agency but neither admits nor denies the remaining allegation in paragraph 2 for lack of sufficient information or knowledge to form a belief about the truth of the allegations asserted and thus leaves Plaintiff to his proofs.

3. The first allegation contained in paragraph 3 is a legal conclusion to which no response is required. As to the second allegation, Defendant neither admits nor denies the remaining allegation for lack of sufficient information or knowledge to form a belief about the truth of the allegations asserted and thus leaves Plaintiff to his proofs.

4. Defendant neither admits nor denies the allegations in paragraph 4 for lack of sufficient information or knowledge to form a belief about the truth of the allegations asserted and thus leaves Plaintiff to his proofs.

5. Defendant nether admits nor denies the allegations in paragraph 5 as Plaintiff's filings speak for themselves.

6. Defendant nether admits nor denies the allegations in paragraph 6 as it is a quotation from MCL 600.4545(1), which speaks for itself.

7. Defendant nether admits nor denies the allegations in paragraph 7 as it is a quotation from Const 1963, art 1, § 2, which speaks for itself.

8. Defendant neither admits nor denies the allegations contained in paragraph 8 as they are legal conclusions to which no response is required.

9. Defendant neither admits nor denies the allegations contained in paragraph 9 as they are legal conclusions to which no response is required.

10. Denied.

11. Defendant neither admits nor denies the allegations in paragraph 11 as Plaintiff's filings speak for themselves.

12. Defendant neither admits nor denies the allegations contained in paragraph 12 as they are legal conclusions to which no response is required.

COMMON ALLEGATIONS

13. Admitted.

14. Defendant admits that Antrim County uses the Dominion Voting Systems election management system and voting machines but denies the remaining allegations in paragraph 14 for the reason that they are untrue.

15. Defendant admits that at least 47 counties use the Dominion voting systems but neither admits nor denies the remaining allegations in paragraph 15 as it is a quotation from a letter from Senator Nesbitt, which speaks for itself and no response is required.

16. Defendant neither admits nor denies the allegations in paragraph 16 as it is a quotation from a letter from Senator Nesbitt, which letter speaks for itself and no response is required.

17. Defendant neither admits nor denies the allegations in paragraph 17 as it refers to a letter from Representative Theis, which letter speaks for itself and no response is required.

18. Defendant neither admits nor denies the allegations in paragraph 18 as Plaintiff's Exhibit 3 speaks for itself and no response is required.

19. Defendant neither admits nor denies the allegations in paragraph 19 for lack of sufficient information or knowledge to form a belief about the truth of the allegations asserted and thus leaves Plaintiff to his proofs.

20. Defendant neither admits nor denies the allegations in paragraph 20 for lack of sufficient information or knowledge to form a belief about the truth of the allegations asserted and thus leaves Plaintiff to his proofs.

21. Defendant neither admits nor denies the allegations in paragraph 21 for lack of sufficient information or knowledge to form a belief about the truth of the allegations asserted and thus leaves Plaintiff to his proofs.

22. Defendant neither admits nor denies the allegations in paragraph 22 as Plaintiff's Exhibit 4 speaks for itself and no response is required.

23. Defendant neither admits nor denies the allegations in paragraph 23 as Plaintiff's Exhibit 5 speaks for itself and no response is required.

24. Defendant neither admits nor denies the allegations in paragraph 24 for lack of sufficient information or knowledge to form a belief about the truth of the allegations asserted and thus leaves Plaintiff to his proofs. To the extent an answer

is required the allegations are denied as Plaintiff has misapprehended or misunderstood the events as to which he complains of in this case.

25. Defendant neither admits nor denies the allegations in paragraph 25 for lack of sufficient information or knowledge to form a belief about the truth of the allegations asserted and thus leaves Plaintiff to his proofs. To the extent an answer is required the allegations are denied as Plaintiff has misapprehended or misunderstood the events as to which he complains of in this case.

26. Defendant neither admits nor denies the allegations in paragraph 26 for lack of sufficient information or knowledge to form a belief about the truth of the allegations asserted and thus leaves Plaintiff to his proofs. To the extent an answer is required the allegations are denied as Plaintiff has misapprehended or misunderstood the events as to which he complains of in this case.

27. Defendant neither admits nor denies the allegations in paragraph 27 for lack of sufficient information or knowledge to form a belief about the truth of the allegations asserted and thus leaves Plaintiff to his proofs. To the extent an answer is required the allegations are denied as Plaintiff has misapprehended or misunderstood the events as to which he complains of in this case.

28. Denied.

29. Defendant neither admits nor denies the allegations in paragraph 29 for lack of sufficient information or knowledge to form a belief about the truth of the allegations asserted and thus leaves Plaintiff to his proofs. To the extent an answer

is required the allegations are denied as Plaintiff has misapprehended or misunderstood the events as to which he complains of in this case.

30. Defendant neither admits nor denies the allegations in paragraph 30 for lack of sufficient information or knowledge to form a belief about the truth of the allegations asserted and thus leaves Plaintiff to his proofs. To the extent an answer is required the allegations are denied as Plaintiff has misapprehended or misunderstood the events as to which he complains of in this case.

31. Defendant admits she made the statement referenced in the footnote in paragraph 31 but denies the remainder of the allegations in paragraph 31.

32. Defendant neither admits nor denies the allegations in paragraph 32 as her statement speaks for itself.

33. Defendant neither admits nor denies the allegations in paragraph 33 as her statement speaks for itself, as does County Clerk Sheryl Guy's testimony before the Legislature's Joint Oversight Committee.

34. Defendant admits that there was a reporting error in Oakland County, but otherwise neither admits nor denies the remaining allegations in paragraph 34 for lack of sufficient information or knowledge to form a belief about the truth of the allegations asserted and thus leaves Plaintiff to his proofs.

35. Denied.

36. Defendant neither admits nor denies the allegations in paragraph 36 as the referenced statutes and manual speak for themselves.

COUNT 1
CONSTITUTIONAL RIGHT TO ACCURACY AND INTEGRITY OF
ELECTIONS

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

37. Defendant incorporates her answers from the foregoing paragraphs as if fully set forth herein.

38. The allegations contained in this paragraph are legal conclusions to which no response is required. To the extent a response is necessary, Defendant denies that Plaintiff's constitutional rights have been violated.

39. Defendant neither admits nor denies the allegations in paragraph 39 as Const 1963, art 2, § 4 speaks for itself and no response is required.

40. Denied.

COUNT 2
VIOLATION OF "PURITY OF ELECTIONS" CLAUSE
Michigan Constitution – Article 2, Section 4, Paragraph 2

41. Defendant incorporates her answers from the foregoing paragraphs as is fully set forth herein.

42. Defendant neither admits nor denies the allegations in paragraph 42 as Const 1963, art 2, § 4(2) speaks for itself and no response is required.

43. The allegations contained in this paragraph are legal conclusions to which no response is required.

44. The allegations contained in this paragraph are legal conclusions to which no response is required.

45. Denied.

COUNT 3
ELECTION FRAUD; MCL 600.4545(2); MCL 158.861

46. Defendant incorporates her answers from the foregoing paragraphs as if fully set forth herein.

47. Defendant neither admits nor denies the allegations in paragraph 47 as MCL 600.4545(1) speaks for itself and no response is required.

48. The allegations contained in this paragraph are legal conclusions to which no response is required.

49. Denied.

50. Denied.

COUNT 4
COMMON LAW ELECTION FRAUD

51. Defendant incorporates her answers from the foregoing paragraphs as if fully set forth herein.

52. The allegations contained in this paragraph are legal conclusions to which no response is required.

53. The allegations contained in this paragraph are legal conclusions to which no response is required.

54. Defendant neither admits nor denies the allegations in paragraph 54 as Plaintiff's filings speak for themselves and no response is required. To the extent a response is required, Defendant denies that material fraud or error was committed during the election such that the outcome of the election was affected.

55. Denied.

COUNT 5
EQUAL PROTECTION VIOLATION
Mich Const, art 1, § 2

56. Defendant incorporates her answers from the foregoing paragraphs as if fully set forth herein.

57. Defendant neither admits nor denies the allegations in paragraph 57 as Const 1963, art 1, § 2 speaks for itself and no response is required.

58. The allegations contained in this paragraph are legal conclusions to which no response is required.

59. The allegations contained in this paragraph are legal conclusions to which no response is required.

60. The allegations contained in this paragraph are legal conclusions to which no response is required.

61. The allegations contained in this paragraph are legal conclusions to which no response is required. To the extent a response is required, Defendant denies that Antrim County's handling of the election establishes rampant fraud that devalued Plaintiff's civil and political rights.

62. The allegations contained in this paragraph are legal conclusions to which no response is required. To the extent a response is required, Defendant denies that Antrim County engaged in illegal procedures, standards, and treatment of ballots that burdened the fundamental right to vote.

63. The allegations contained in this paragraph are legal conclusions to which no response is required. To the extent a response is required, Defendant

denies that Antrim County counted illegal or improper ballots, counted ballots more than once, improperly handled the counting or collection of ballots, or used the Dominion system in a way that diluted properly cast ballots.

64. Denied.

**COUNT 6
STATUTORY ELECTION LAW VIOLATIONS**

65. Defendant incorporates her answers from the foregoing paragraphs as if fully set forth herein.

66. Denied.

67. Denied.

68. The allegations contained in this paragraph are legal conclusions to which no response is required.

69. Admitted.

70. Denied.

AFFIRMATIVE DEFENSES

PLEASE TAKE NOTICE that Defendant Secretary of State will or may rely upon the following affirmative defenses; and reserves the right to assert such other defenses as may become apparent throughout the course of these proceedings:

1. Plaintiff may have failed to state a claim upon which relief may be granted.

2. Plaintiff's claims may be barred due to this Court's lack of jurisdiction to hear this matter.

3. Some or all of Plaintiff's claims may be moot or not ripe for adjudication.

4. Plaintiff may lack standing to bring this action.

5. Plaintiff's claims may be barred by laches.

6. Collateral estoppel may bar some or all of the issues underlying Plaintiff's claims against Defendant.

7. Res judicata may bar some or all of Plaintiff's claims against Defendant.

8. Defendant reserves the right to raise additional affirmative defenses, as needed, following the completion of discovery.

WHEREFORE, Defendant respectfully requests that this Court dismiss Plaintiff's claims in the above-referenced matter with prejudice, and that this Court grant such other relief as justice and equity require.

Respectfully submitted,

Dana Nessel
Attorney General

/s/ Heather S. Meingast
Heather S. Meingast (P55439)
Erik A. Grill (P64713)
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Dated: December 9, 2020

PROOF OF SERVICE

On December 9, 2020, I electronically filed the foregoing papers with the Wayne County Circuit Court using the MiFile system, which will provide electronic copies to counsel of record, and I certify that my secretary has mailed by U.S. Postal Service the papers to any non-ECF participant.

/s/Heather S. Meingast

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**STATE OF MICHIGAN
CIRCUIT COURT FOR THE 13TH JUDICIAL CIRCUIT
ANTRIM COUNTY**

WILLIAM BAILEY,

Plaintiff,

No. 20-9238-CZ

v

HON. KEVIN A. ELSENHEIMER

ANTRIM COUNTY,

Defendant,

**SECRETARY OF STATE JOCELYN
BENSON,**

Proposed Intervenor-Defendant.

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**SECRETARY OF STATE JOCELYN BENSON'S
BRIEF IN SUPPORT OF EMERGENCY MOTION TO INTERVENE AS
PARTY DEFENDANT**

Secretary of State Jocelyn Benson, by her attorneys, moves this Court to allow her to intervene as a Defendant in this matter for the reasons stated in the accompanying motion.

Secretary of State Jocelyn Benson respectfully requests that the Court enter an order granting her emergency motion to intervene as a Defendant in this matter under MCR 2.209(A) or (B).

Respectfully submitted,

Dana Nessel
Attorney General

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