

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

BRIAN BARKEY, DORIS BARKEY,
QUINCY MURPHY, MARYUM RASOOL,
NAYYIRAH SHARIFF, and AMERICAN
CIVIL LIBERTIES UNION OF MICHIGAN,

Plaintiffs,

v

INEZ M. BROWN, in her official capacity as
City Clerk for the City of Flint, and
CITY OF FLINT,

Defendants.

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Case No. 20-_____-CZ

Hon.

**COMPLAINT FOR WRIT OF
MANDAMUS AND OTHER RELIEF

EXPEDITED CONSIDERATION
REQUESTED**

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NOW COME Brian Barkey, Doris Barkey, Quincy Murphy, Maryum Rasool, Nayyirah Shariff, and American Civil Liberties Union of Michigan (“ACLU”), (collectively, “Plaintiffs”), by and through their undersigned attorneys, and for their Complaint against Inez M. Brown in her official capacity as City Clerk for the City of Flint, Michigan (“City Clerk Brown” or “Flint City Clerk”) and the City of Flint (collectively, “Defendants”), state as follows:

INTRODUCTION

1. Plaintiffs file this Complaint to compel Defendants to comply with their legal duties to ensure the availability of absentee voting for Michigan’s primary election on August 4, 2020.

2. In November 2018, the people of Michigan voted to enshrine a constitutional right to vote by absentee ballot. By an overwhelming margin, the people passed a constitutional amendment giving every registered voter the right to submit an absentee ballot—by mail or in person, at the voter’s choosing—at any point in the 40 days preceding an election. See Const 1963, art 2, § 4(1)(g).

3. To ensure that all voters may receive an absentee voter ballot within those 40 days, the constitutional amendment provides that election officials authorized to issue absent voter ballots, such as the City Clerk for the City of Flint, Michigan, Inez M. Brown, shall be available in at least one location to issue and receive absent voter ballots during the election officials’ regularly scheduled business hours. See Const 1963, art 2, § 4(1)(g).

4. Consistent with the constitutional amendment, Michigan election laws mandate that the City Clerk shall mail or personally deliver absentee ballots to voters *immediately* upon receipt of an absentee ballot application. See MCL 168.761(1).

5. Thus, at a minimum, the City Clerk has clear constitutional and statutory duties to issue absentee ballots *immediately* to voters, either in person or by mail, if the application is received within 40 days of the election.

6. Michigan's fast-approaching state primary election is set for August, 4, 2020—a mere 19 days from the date of this filing. Yet Defendants have failed to comply with the constitutional and statutory commands set forth above in two ways.

7. *First*, since at least June 25, 2020—the 40th day preceding the upcoming August 4, 2020 election—the Flint City Clerk's office has been closed, and Defendants have otherwise failed to provide any location at any hour for voters to apply for or receive absent voter ballots, thereby denying electors in the City of Flint their constitutional right to apply for, receive, and submit an absentee ballot in person.

8. *Second*, upon information and belief, City Clerk Brown has failed to issue absentee ballots to thousands of Flint voters who have submitted absentee ballot applications, thereby denying electors in the City of Flint their statutory right to have their absentee ballot applications processed immediately to ensure that they can timely cast their ballot.

9. These constitutional and statutory violations are further exacerbated by the COVID-19 pandemic, which has both increased the need for absentee voting and severely hampered the United States Postal Service's ("USPS") ability to deliver mail in a timely manner.

10. The immediacy of the impending election, Defendants' clear and indisputable legal duties, the fundamental nature of the rights at stake, and the practicalities of the COVID-19 pandemic warrant immediate relief.

11. Plaintiffs, by this Complaint, seek an order compelling Defendants to comply with their legal duties to make available at least one location to issue and receive absentee ballots

in person, and to deliver absentee ballots to voters immediately upon receipt of an absentee ballot application.

PARTIES

12. Plaintiff Brian Barkey is a registered voter residing in Flint, Michigan. Exhibit 1, Affidavit of Brian Barkey ¶ 3. Mr. Barkey submitted his application for an absentee ballot to the Flint City Clerk's office in early June 2020 by regular postal mail. *Id.* ¶ 4. As of July 15, 2020, he has not received his absentee ballot. *Id.* As a registered voter in Flint, Michigan, Mr. Barkey has a legal right to vote by absentee ballot and to have his timely absentee ballot application processed immediately upon receipt.

13. Plaintiff Doris Barkey is a registered voter residing in Flint, Michigan. Exhibit 2, Affidavit of Doris Barkey ¶ 3. Ms. Barkey submitted her application for absentee ballot to the Flint City Clerk's office in early June 2020 by regular postal mail. *Id.* ¶ 4. As of July 15, 2020 she has not received her absentee ballot. *Id.* As a registered voter in Flint, Michigan, Ms. Barkey has a legal right to vote by absentee ballot and to have her timely absentee ballot application processed immediately upon receipt.

14. Plaintiff Quincy Murphy is a registered voter residing in Flint, Michigan. Exhibit 3, Affidavit of Quincy Murphy ¶ 3. On July 14, 2020, at approximately 11:00 a.m. EST, Mr. Murphy visited the Flint City Clerk's office for the purpose of submitting his application for an absentee ballot, and completing and submitting his absentee ballot, in person before the August 4, 2020 election. *Id.* ¶ 4. Upon arrival, he was not able to enter City Hall, as it was closed to all visitors, including visitors who intended to submit absentee ballot applications and completed voter ballots to the City Clerk's office. *Id.* As a registered voter in Flint, Michigan, Mr. Murphy has a legal right to vote by absentee ballot, to submit his absentee ballot application and

completed absentee ballot in person, and to have his timely absentee ballot application processed immediately upon receipt.

15. Plaintiff Maryum Rasool is a registered voter residing in Flint, Michigan. Exhibit 4, Affidavit of Maryum Rasool ¶ 3. On July 13, 2020, Ms. Rasool decided to apply for, obtain, and submit her absentee ballot at the Flint City Clerk's office. *Id.* ¶ 4. At approximately 3:00 p.m. EST, Ms. Rasool called the Flint City Clerk's office to inquire when she could come in person to obtain and submit her absentee ballot. *Id.* She was informed by a City Clerk employee that she could apply for the absentee ballot online or drop off her application in a mailbox outside of City Hall. *Id.* Ms. Rasool was further informed that it was not possible for her to apply for and submit an absentee ballot in person. *Id.* The Flint City Clerk employee could not provide Ms. Rasool with any date for when the Flint City Clerk's office would reopen. *Id.* As a registered voter in Flint, Michigan, Ms. Rasool has a legal right to vote by absentee ballot, to submit her absentee ballot application and completed absentee ballot in person, and to have her timely absentee ballot application processed immediately upon receipt.

16. Plaintiff Nayyirah Shariff is a registered voter residing in Flint, Michigan, who applied online for an absentee ballot in March 2020. Exhibit 5, Affidavit of Nayyirah Shariff ¶¶ 3–4. In May 2020, Ms. Shariff received by mail, from the Secretary of State, an application for an absentee ballot for the August 4, 2020 primary election. *Id.* ¶ 5. Ms. Shariff then completed and mailed her application that same month. *Id.* In June 2020, she requested that she be placed on the permanent absentee ballot list. *Id.* As of July 15, 2020, she has not received her absentee ballot. *Id.* Because Ms. Shariff has serious medical issues, voting in person is a high risk option for her. *Id.* ¶ 6.

17. Established in 1959, Plaintiff American Civil Liberties Union of Michigan (“ACLU”) is a domestic, nonpartisan and nonprofit corporation organized for the civic, protective, or improvement purpose of protecting rights guaranteed by the United States and Michigan Constitutions. The mission of the ACLU is to realize the promise of the Bill of Rights for all citizens and expand the reach of its guarantees to new areas through public education, advocacy, and organization. The ACLU seeks to ensure an easy and equal right to vote for every citizen and encourages its members and the people of Michigan to exercise their right to vote, including by absentee ballot. The ACLU works to shape public policy and promotes full and fair access to the ballot, including, for example, by supporting and advocating for the 2018 ballot proposal that is now embodied in Art. 2, § 4 of the Michigan Constitution. At present, the ACLU has approximately 176 members in Flint, each of whom, upon information and belief, is registered to vote and has been encouraged by the ACLU to vote by absentee ballot. The ACLU dedicates substantial time, effort, and resources to voter education and the protection of voting rights. These efforts include informing voters about the law concerning absentee ballots and educating them on how to apply for and timely submit their absentee ballot by mail and in person for the August 4, 2020 primary election. The ACLU’s ability to fulfill its mission to educate and encourage voting by absentee ballot is harmed by the state constitutional and statutory violations detailed in this Complaint, which divert ACLU resources from other aspects of its mission. The ACLU has organizational standing and associational standing to represent its members who wish to vote by absentee ballot.

18. Defendant Inez M. Brown is the City Clerk for the City of Flint, Michigan and by law its chief election officer. City of Flint Charter, Section 3-403 Election Duties of the City Clerk, p. 32–33. The Flint City Clerk is also the election official authorized to issue absent voter

ballots to voters in the City of Flint. MCL 168.759; MCL 168.761; MCL 168.761b. In her capacity as City Clerk, she serves as the chair of the board of city election commissioners for the City of Flint, and has the authority to “appoint a number of assistants as may be necessary to carry out the general provisions of the election law.” MCL 168.29. See also MCL 168.25. City Clerk Brown took an oath of office to support the Michigan Constitution and has a clear legal duty to enforce the Michigan Constitution and Michigan election laws regarding elections requiring no exercise of judgment or discretion. See Const 1963, art 11, § 1. She is sued in her official capacity.

- a. Among her many constitutional and statutory duties as the chief election officer for the City of Flint who is authorized to issue absentee ballots, City Clerk Brown must, during the 40 days before an election, make available at least one location at which voters may choose to apply for, receive, and submit absent voter ballots in person or by mail during regularly scheduled business hours and for at least eight hours during the Saturday and/or Sunday immediately prior to the election. Const 1963, art 2, § 4.
 - b. She is also required to mail or deliver personally ballots to the voter applicant immediately upon receipt of the application. MCL 168.761.
 - c. Furthermore, the City Clerk is required to provide assistance to an absentee voter who is unable to return her absent voter ballot by postal mail or in person before 5 p.m. on the Friday immediately preceding the election and may be tasked with physically retrieving a completed absent voter ballot. MCL 168.764a.
19. Defendant City of Flint is a municipal corporation located in, and organized under the laws of, the State of Michigan.

JURISDICTION

20. This Court has jurisdiction over this action pursuant to MCR 2.605 (declaratory relief); MCR 3.305(A)(2) (mandamus relief); and MCR 3.310 (injunctive relief). See also *Alliance for Mentally Ill v Dep't of Community Health*, 231 Mich App 647, 660; 588 NW2d 133, 139 (1998) (“As a court of general equity jurisdiction, the circuit court had subject-matter jurisdiction to issue an injunction.”).

21. “[M]andamus is the proper remedy for a party seeking to compel election officials to carry out their duties.” *League of Women Voters v Secretary of State* (“LWV”), ___ Mich ___; ___ NW2d ___ (2020) (Docket No. 353654); slip op. at 3, quoting *Citizens Protecting Mich’s Const v Secretary of State*, 324 Mich App 561, 583; 922 NW2d 404 (2018) (alteration in original). Mandamus actions may be brought against local election clerks who have “ignored or otherwise failed to comply with . . . the law.” *LWV*, slip op. at 16.

22. Venue is proper in this Court pursuant to MCL 600.1621, MCL 600.1615, and MCR 3.305(B)(1) (mandamus relief). City Clerk Brown conducts business in Genesee County, and the City of Flint exercises its governmental authority in Genesee County.

NECESSITY FOR EXPEDITED CONSIDERATION AND IMMEDIATE ACTION

23. There is an urgent need for this Court to render an expedited decision in this case because it impacts the constitutional rights of registered voters in the imminent August 4, 2020 primary election.

24. The Michigan Supreme Court has declared that election-related cases should be considered expeditiously. See *Scott v. Mich Dir of Elections*, 490 Mich 888, 889; 804 NW2d 119, 120 (2011). Furthermore, expedited review is especially imperative in light of the COVID-

19 pandemic, which has demonstrated the heightened and immediate need for absentee voting to help reduce the number of voters appearing to vote on election day in person.

FACTUAL ALLEGATIONS

I. Voters' Constitutional Rights to Cast an Absentee Ballot In Person or By Mail

25. In the November 2018 general election, Michigan voters—by a margin of 67% to 33%—adopted 2018 Proposal 3, which created several state constitutional voting rights now set forth in Article 2, § 4 of the Michigan Constitution.

26. Proposal 3 created an unqualified, unconditional state constitutional right for registered voters to vote in all elections:

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

(a) The right, once registered, to vote a secret ballot in all elections.

Const 1963, art 2, § 4(1)(a).

27. It also created an unqualified, unconditional state constitutional right for registered voters to vote in all elections by *absentee ballot*: the Michigan Constitution now provides that all registered voters have the right “to vote an absent voter ballot without giving a reason, during the forty (40) days before an election.” *Id.*, art 2, § 4(1)(g).

28. Further, Proposal 3 established a constitutional “right to *choose* whether the absent voter ballot is applied for, received and submitted *in person* or *by mail*.” *Id.* (emphases added).

29. During the 40 days before an election, election officials authorized to issue absent voter ballots have constitutionally mandated duties:

Election officials authorized to issue absentee voter ballots *shall* be available in *at least one* (1) location to issue and receive absent voter ballots during the election officials' regularly scheduled business hours and for at least eight (8) hours during the Saturday and/or Sunday immediately prior

to the election. Those election officials shall have the authority to make absent voter ballots available for voting in person at additional times and places beyond what is required herein.

Id. (emphases added).

30. Recognizing the importance of the constitutional right to vote by absentee ballot, the amendment further provides that:

Persons registered in accordance with subsection (1)(f) shall be *immediately* eligible to receive a regular or absent voter ballot.

Id., art 2, § 4(1)(f) (emphasis added).

31. These newly adopted constitutional voting rights “shall be self-executing” and “shall be liberally construed in favor of voters’ rights in order to effectuate its purposes.” *Id.*, art 2, § 4(1).

II. Legal Duties of the Flint City Clerk under the Michigan Constitution and Michigan Election Laws

32. City Clerk Brown, in her capacity as chief election official for the City of Flint, has clearly defined legal duties as prescribed by the Michigan Constitution (as amended by Proposal 3), Michigan elections laws (by statute), and the Flint City Charter. The City Clerk is responsible for processing absentee ballot applications, issuing absentee ballots, and receiving completed absentee ballots.

33. By statute, Michigan voters may apply for an absentee ballot any time during the 75 days prior to an election and up until 8 p.m. on election day, and absentee ballots are not issued except upon application. See MCL 168.759(1) and (2); MCL 168.761(3).

34. Once the City Clerk receives an absentee ballot application in the 75 days before a primary or general election, and the application signature “agrees with” the signature of the voter registration on file, the City Clerk “*immediately . . . shall forward by mail, postage prepaid, or shall deliver personally*” the absentee ballot to the voter. MCL 168.761(1) (emphasis added).

See also MCL 168.759(1) and (3). As recognized by the Michigan Court of Appeals on July 14, 2020, the Michigan Secretary of State has directed local clerks to issue ballots within 24 hours of receipt of the application. See *LWV*, slip. op. at 15.

35. If the absentee ballot application is “received before the printing of the absent voter ballots, *as soon as the ballots are received by the clerk*, [she] shall forward by mail, postage prepaid, or shall deliver personally” those ballots to the applicant. MCL 168.761(1) (emphasis added).

36. In addition to the statutory requirements that the City Clerk must fulfill, the Michigan Constitution, as amended by Proposal 3, mandates that in the 40 days before an election, the Flint City Clerk must make available at least one location during regularly scheduled business hours to “issue and receive” absentee ballots. Const 1963, art 2, § 4(1)(g). See also MCL 168.759; MCL 168.761; MCL 168.761b. The amendment further requires that at least one location be made available for “at least eight (8) hours during the Saturday and/or Sunday immediately prior to the election.” Const 1963, art 2, § 4(1)(g).

37. In the City of Flint, the City Clerk’s office maintains published business hours from Monday to Friday, 8 a.m. to 5 p.m. See City of Flint, *City Clerk* <<https://www.cityofflint.com/city-clerk/>> (accessed July 16, 2020).

38. In addition, if an absentee voter is unable to return her ballot by mail or in person “before 5 pm on the Friday immediately preceding the election,” the City Clerk is “required to provide assistance.” MCL 168.764a. In fact, if the absentee voter is within the jurisdictional limits of the city in which she is registered, the completed ballot “will then be picked up by the clerk or an election assistant sent by the clerk”—all of whom are “required to carry credentials issued by the clerk.” *Id.*

39. As made clear by Michigan’s Constitution and statutes, the Flint City Clerk is responsible for ensuring that absentee ballot applications are processed immediately—either in person or by regular postal mail—and that absentee ballots are subsequently issued to voters and received once the voter has completed her absentee ballot.

III. The Flint City Clerk’s Failure to Comply with Constitutionally and Statutorily Mandated Duties

40. Michigan’s fast-approaching primary election is set for Tuesday, August 4, 2020—less than three weeks from the date of this filing for expedited relief.

41. Yet the Flint City Clerk has failed to comply with her legal duties regarding absentee voting in two critical ways.

42. *First*, upon information and belief, since at least June 25, 2020—40 days before the August 4, 2020 election—the Flint City Clerk’s office has remained closed and the Flint City Clerk has not otherwise made a location available to issue or receive absentee ballots or absentee ballot applications *in person*, in violation of her constitutionally mandated duties.

43. As a result, Plaintiff Murphy, who visited Flint City Hall on July 14, 2020, has been deprived of his constitutional rights to submit his application for an absentee ballot, receive an absentee ballot, and submit a completed absentee ballot in person. Plaintiff Rasool who seeks to apply for, obtain, and submit her absentee ballot in person has likewise been denied her constitutional right to vote by absentee ballot in person due to the City Hall closure.

44. *Second*, the Flint City Clerk has failed to comply with her legal duty to mail or deliver personally absentee ballots “immediately upon receipt of [an] application.” MCL 168.761(1).

45. On July 1, 2020, the FlintBeat reported that the Flint City Clerk’s office had received close to 10,000 applications for absentee ballots. Diaz, *Flint Nears Record for Absentee*

Ballot Applications, FlintBeat (July 1, 2020) <<https://flintbeat.com/flint-nears-record-for-absentee-ballot-applications/>>. The precipitous rise in absentee ballot applications in Flint is not surprising in light of the current COVID-19 pandemic. See Secretary of State, *More than 1.6 million absentee ballots sent ahead of August election*, Press Release (July 14, 2020) <https://www.michigan.gov/sos/0,4670,7-127-1640_9150-534096--,00.html> (accessed July 16, 2020).

46. In early July 2020, the ACLU received records from the Michigan Secretary of State that indicated that fewer than 100 absentee ballots had been issued to Flint voters.

47. Shortly thereafter, on July 7, 2020, the ACLU notified Flint Mayor Sheldon Neeley and City Clerk Brown of the unlawful denial of in-person absentee voting *and* failure to issue absentee ballots immediately upon receipt of an absentee ballot application. Exhibit 6, Letter from ACLU (July 7, 2020). In that letter, the ACLU specifically requested that City Clerk Brown comply with her legal duties under both the Michigan Constitution and Michigan election laws (1) to open the clerk’s office immediately in accordance with the Michigan Constitution; (2) to process all outstanding applications for absentee ballots by July 10, 2020; and (3) to process all newly received applications for absentee ballots within 24 hours of receipt. *Id.*

48. Two days later, on July 9, 2020, City Clerk Brown admitted that she had received the ballots printed by the County Election Commission on June 25, 2020—the 40th day before the August 4, 2020 election—but refused to commit to opening her office or processing ballot applications immediately as requested. Exhibit 7, Letter from City Clerk Brown (July 9, 2020).

49. Upon information and belief, as of July 14, 2020, the Flint City Clerk has issued a little over 4,000 absentee ballots to voters.

50. Even assuming that City Clerk Brown has issued approximately 4,000 absentee ballots in the last two weeks, she has not complied with the statutory requirement to process absentee ballot applications immediately. Of the approximately 10,000 absentee ballot applications that had been submitted by July 1—more than two weeks ago—City Clerk Brown has failed to process 6,000 of them.¹ By any standard, the City Clerk is not “immediately upon receipt of the application[s]” mailing ballots to voters who request them. MCL 168.761(1); see also *LWV*, slip. op. at 15 (recognizing that the Michigan Secretary of State has directed local clerks to issue ballots within 24 hours of receipt of the application).

IV. The Flint City Clerk’s Actions Threaten to Disenfranchise Thousands of Flint Voters

51. The Flint City Clerk’s failure to comply with her legal duties threatens to disenfranchise thousands of voters in Flint.

52. Because the Flint City Clerk has refused to issue or receive completed absentee ballots in person, absentee voters must receive and cast their ballot by mail. At the same time, she has failed to deliver absentee ballots by mail immediately upon receiving an application, let alone within the directed 24 hours.

53. Absent the relief sought by Plaintiffs, Defendants’ failures to comply with the law will deny Plaintiffs and other voters in Flint their constitutional right to vote absentee in the August 4 primary. Even if the Flint City Clerk belatedly delivers absentee ballots by mail to those who have applied and will apply, given the statutory deadline for submitting an absentee ballot and the uncertain, often lengthy delivery timelines for the U.S. mail—issues that have been exacerbated by the ongoing COVID-19 pandemic—thousands of voters, including

¹ The City Clerk is authorized to mail absentee ballots to voters until 5 p.m. on the Friday before the election, which is Friday, July 31, 2020. See MCL 168.759(1).

individual Plaintiffs and ACLU members in Flint, face a substantial risk that they will be disenfranchised entirely.

54. By statute, absentee ballots must be received by City Clerk Brown or her assistants *before* the polls close at 8 p.m. on election day. See MCL 168.759b; MCL 168.764a (Step 6); MCL 168.765(4); 1948 CL 80.8; 1929 CL 3141.

55. Even assuming that City Clerk Brown processes all outstanding absentee ballot applications and mails absentee ballots in the 15 days before the primary election, there is a substantial risk that the absentee ballot will not be received by the voter before election day or that the voter's completed ballot will not be received by the Clerk's office *before* 8 p.m. on election day.²

56. Although the USPS used to process mail within a city or township locally, with next day delivery and twice daily deliveries were common in residential areas, see United States Postal Service (USPS), *An American History* (2020), p. 27, available at <<https://about.usps.com/publications/pub100.pdf>> (accessed July 16, 2020), that is no longer the case. Now, all mail is transported to a local post office, then to a regional sorting facility, and from there to a local post office for delivery. There are five regional facilities that serve Michigan: Pontiac, Grand Rapids, Traverse City, and Marquette, Michigan; and Green Bay, Wisconsin.

57. Moreover, the USPS “does not guarantee the delivery of First Class mail . . . within a specified time.” USPS, *Domestic Mail Manual* 133.2.1, available at <<https://pe.usps.com/text/dmm300/133.htm#ep1041576>> (accessed July 16, 2020). Although

² The City Clerk is authorized to mail absentee ballots to voters until 5 p.m. on the Friday before the election, which is Friday, July 31, 2020. See MCL 168.759(1). As such, City Clerk Brown will have until July 31 to mail absentee ballots, *i.e.*, 15 days before the primary election.

the USPS has stated that the “estimated delivery time” for first-class mail is 1 to 3 business days, see USPS, *FAQ’s: What are the Types of First Class Mail?* <<https://faq.usps.com/s/article/What-are-the-Types-of-First-Class-Mail>> (accessed July 16, 2020), the 1 to 3-day estimated delivery time is believed to be an *average*, which means delivery may take *more* than 3 business days. See Smallbusiness.chron.com, *How long does it take for first class mail to arrive?*

58. Furthermore, the ongoing COVID-19 pandemic has severely hampered the USPS’s ability to process mail in accordance with its average estimated delivery time. See Hicks, *Coronavirus Continues to Disrupt Mail Service in Parts of Michigan*, mlive (May 6, 2020) <<https://www.mlive.com/public-interest/2020/05/coronavirus-continues-to-disrupt-mail-service-in-parts-of-michigan.html>> (“USPS has had 113 employees test positive for the virus in the Detroit-Pontiac-Flint area” and “[t]he region continues to be hit hard by the coronavirus.”).

59. Plaintiffs’ concerns are not merely theoretical. Voters in other states who have sought to vote absentee amidst the ongoing COVID-19 pandemic have been disenfranchised due to unreliable mail delivery timelines. In a recent election in Ohio, “[s]ome Ohioans did not receive their ballots in time for the election because of mail delays.” Lee, *Scattered problems with mail-in ballots this year signal potential November challenges for Postal Service*, Wash Post (July 15, 2020) <https://www.washingtonpost.com/politics/scattered-problems-with-mail-in-ballots-this-year-signal-potential-november-challenges-for-postal-service/2020/07/15/0dfb8b42-c216-11ea-b178-bb7b05b94af1_story.html>. Some ballots “took up to nine days” to be delivered “and were not returned in time to be counted.” *Id.* “In one county, more than 300 delayed ballots were not counted” *Id.*³

³ See also Fessler & Moore, *Signed, Sealed, Undelivered: Thousands Of Mail-In Ballots Rejected For Tardiness*, NPR (July 13, 2020) <<https://www.npr.org/2020/07/13/889751095/signed-sealed-undelivered-thousands-of-mail-in-ballots-rejected-for-tardiness>>.

60. Thus, because City Clerk Brown has failed to issue absentee ballots immediately, she has violated Plaintiffs' constitutional and statutory rights to vote by absentee ballot. Specifically, Plaintiffs Brian Barkey and Doris Barkey, who submitted their applications for absentee ballots in early June, have not received their absentee ballots as of July 15, 2020. On July 13, 2020, Plaintiff Rasool was informed by a City Clerk employee that she could not apply for or submit an absentee ballot in person. And on July 14, 2020, Plaintiff Murphy visited Flint City Hall in an attempt to submit an application for an absentee ballot, but was unable to submit his application because City Hall and the Clerk's office were closed. Finally, Plaintiff Shariff, who suffers from serious medical issues and is at high risk for COVID-19, submitted her application for an absentee ballot in May 2020 and has yet to receive her absentee ballot as of July 15, 2020.

COUNT I
VIOLATION OF MICHIGAN CONSTITUTION, ARTICLE 2, § 4:
FAILURE TO ISSUE AND RECEIVE ABSENTEE BALLOTS IN PERSON

61. Plaintiffs hereby incorporate all foregoing paragraphs as if they were fully set forth herein.

Declaratory Relief

62. Pursuant to MCR 2.605, this Court has the authority to declare the rights and legal relations to the parties to this action.

63. There exists an actual case and controversy between the parties in that Plaintiffs allege that Defendants violated—and continue to violate—their legal right to vote by absentee ballot by failing to make available at least one location during regularly scheduled business hours to issue and receive absentee ballots. See Const 1963, art 2, § 4(1)(g).

64. Nor have Defendants given any affirmation that they will comply with their statutory and constitutional obligations (1) to issue absentee ballots to registered voters *in person*

until 4 p.m. on the day before an election, MCL 168.759(1); (2) to make available at least one location to issue and receive absentee ballots for “at least eight (8) hours during the Saturday and/or Sunday immediately prior to the election,” Const 1963, art 2, § 4(1)(g); or (3) to “provide assistance” to voters who are unable to submit their completed ballots by mail or in person, MCL 168.764a.

65. As such, Plaintiffs are entitled to declaratory relief.

Writ of Mandamus

66. This Court has jurisdiction to issue a writ of mandamus. MCR 3.305(A)(2); see also *LWV*, slip op. at 3, 16 (Mandamus actions may be brought against local election clerks who have “ignored or otherwise failed to comply with the Secretary’s directions and the law.”).

67. Defendants have a clear legal duty, as mandated by the Michigan Constitution and Michigan election laws, (1) to make available at least one location to issue and receive absentee ballots in person during regularly scheduled business hours during the 40 days prior to the August 4 primary; and (2) to make available at least one location to issue and receive absentee ballots in person for at least 8 hours during the Saturday and/or Sunday immediately prior to August 4, 2020. See Const 1963, art 2, § 4(1)(g); MCL 168.759(1).

68. These legal duties, as set out in the Michigan Constitution and by statute, are ministerial in nature.

69. Plaintiffs have a clear legal right, pursuant to the Michigan Constitution, to vote absentee, including in person, and to demand that Defendants comply with their legal duties to effectuate that right.

70. No other adequate legal or equitable remedy exists that might achieve the same result.

Preliminary and Permanent Injunctive Relief

71. Plaintiffs are likely to prevail on the merits of their claims because Defendants have failed to make available at least one location during published, regularly scheduled business hours in the 40 days prior to the election to issue and receive absentee ballots in clear violation of the Michigan Constitution.

72. Plaintiffs face a real and imminent danger of irreparable harm if an injunction is not issued. As a threshold matter, a “loss of a constitutional right constitutes irreparable harm which cannot be adequately remedied by an action at law.” *Garner v Mich State Univ*, 185 Mich App 750, 764; 462 NW2d 832, 838 (1990). Defendants’ continued closure of the Flint City Clerk’s office renders Plaintiffs Brian Barkey, Doris Barkey, Murphy, Rasool, and Shariff unable to apply for or submit their absentee ballot in person. This harm is far from speculative: with fewer than 19 days until the election, none of the individual Plaintiffs has received their absentee ballots but have the intent to vote by absentee ballot. And none of the individual Plaintiffs is able to submit an absentee ballot in person as result of the Flint City Clerk’s closure.

73. The ACLU has organizational standing and associational standing to represent its members who wish to vote by absentee ballot.

74. Moreover, the balance of harms weigh in favor of Plaintiffs, as their irreparable harm is nothing short of violating their constitutional right to vote by absentee ballot. Nor can Defendants credibly claim *any* harm when Plaintiffs are simply asking that they comply with their constitutional and statutorily mandated duties.

75. Finally, there is no clearer public interest than the right to vote, which as Michigan now recognizes, enshrines the fundamental right to vote by absentee ballot. Furthermore, absentee voting helps minimize the risks of long lines on election day associated with COVID-19.

76. As such, all four factors weigh in favor of preliminary and permanent injunctive relief.

COUNT II
VIOLATION OF MCL 168.761:
FAILURE TO ISSUE ABSENTEE BALLOTS IMMEDIATELY

77. Plaintiffs hereby incorporate all foregoing paragraphs as if they were fully set forth herein.

Declaratory Relief

78. Pursuant to MCR 2.605, this Court has the authority to declare the rights and legal relations to the parties to this action.

79. There exists an actual case and controversy between the parties in that Plaintiffs allege that Defendants violated—and continue to violate—Michigan election laws by failing to “*immediately . . . forward by mail, postage prepaid, or . . . deliver personally*” the absentee ballot to the voter upon receipt her application. MCL 168.761(1) (emphasis added). See also MCL 168.759(1) and (3).

80. Defendants have not agreed to process ballot applications immediately, *i.e.*, within 24 hours as directed.

81. As such, Plaintiffs are entitled to declaratory relief.

Writ of Mandamus

82. This Court has jurisdiction to issue a writ of mandamus. MCR 3.305(A)(2). See also *LWV*, slip op., at 16 (noting that mandamus actions may be brought against local election clerks who have “ignored or otherwise failed to comply with the Secretary’s directions and the law.”).

83. Defendants have a clear legal duty to forward by mail or deliver personally absentee ballots to voters “*immediately* upon receipt” of their absentee ballot application. MCL 168.761(1) (emphasis added). See also MCL 168.759(1) and (3).

84. The act of forwarding by mail or delivering personally an absentee ballot as set out by statute is ministerial in nature.

85. Plaintiffs have clear legal rights to vote by absentee ballot, including by mail; to receive an absentee ballot immediately upon submission of a completed absentee ballot application; and to demand that Defendants comply with their legal duties to effectuate Plaintiffs’ rights.

86. No other adequate legal or equitable remedy exists that might achieve the same result.

Preliminary and Permanent Injunctive Relief

87. Plaintiffs are likely to prevail on the merits of their claims because Defendants have failed to forward by mail or deliver personally absentee ballots to voters immediately upon receipt of applications. See MCL 168.761(1); MCL 168.759(1) and (3).

88. Plaintiffs face a real and imminent danger of irreparable harm if injunctive relief is not granted. As a threshold matter, a “loss of a constitutional right constitutes irreparable harm which cannot be adequately remedied by an action at law.” *Garner*, 185 Mich App at 764. Defendants’ failure to issue absentee ballots either by mail or by person to voters who have submitted applications for absentee ballots within the 75-day period prior to election day, let alone the 40-day period, infringes on Plaintiffs’ constitutional right to vote by absentee ballot. Plaintiff Shariff’s circumstances are illustrative here. She has submitted her application for an absentee ballot *before* the 40 days preceding the August 4 primary, yet she has not received her ballot as of July 15, 2020. Nor is she likely to vote in person due to her serious medical

conditions that put her at risk because of COVID-19. Absent the relief Plaintiffs seek, Plaintiff Shariff, like many other Flint voters, face a substantial risk of not being able to effectuate her right to vote, let alone to vote by absentee ballot. Finally, this harm is not speculative, but in fact imminent: with fewer than 19 days until the election, and no ballots having been delivered to any of the individual Plaintiffs, there is a substantial risk that all Plaintiffs will not be able to exercise their right to vote by absentee ballot or to vote at all.

89. The ACLU has organizational standing and associational standing to represent its members who wish to vote by absentee ballot.

90. Moreover, the balance of harms weigh in favor of Plaintiffs, as their irreparable harm is nothing short of violating their constitutional right to vote by absentee ballot. Nor can Defendants credibly claim *any* harm when Plaintiffs are simply asking that they comply with their constitutional and statutorily mandated duties.

91. Finally, there is no clearer public interest than the right to vote, which as Michigan now recognizes, enshrines the fundamental right to vote by absentee ballot. Furthermore, absentee voting helps minimize the risks of long lines on election day associated with COVID-19.

92. As such, all four factors weigh in favor of preliminary and permanent injunctive relief.

CONCLUSION AND RELIEF SOUGHT

Wherefore, Plaintiffs pray that this Court:

- A. Expedite mandamus proceedings;
- B. Order Defendants to show cause why a Writ of Mandamus should not issue;
- C. Declare that Defendants are required by the Michigan Constitution and statute to make available at least one location to issue and receive absentee ballots in person (1)

- during published, regularly scheduled business hours from now until the day of the election, pursuant to Const 1963, art 2, § 4(1)(g); and (2) for at least 8 hours during the Saturday and/or Sunday immediately prior to an election, pursuant to Const 1963, art 2, § 4(1)(g).
- D. Issue a Writ of Mandamus from the Court ordering Defendants to make available at least one location to issue and receive absentee ballots in person (1) during published, regularly scheduled business hours during from now until August 4, 2020, the day of the primary election; and (2) for at least 8 hours during the Saturday and/or Sunday immediately prior to August 4, 2020.
- E. Enter a preliminary and permanent injunction ordering Defendants to make available at least one location to issue and receive absentee ballots in person (1) during published, regularly scheduled business hours during the 40 days prior to an election; and (2) for at least 8 hours during the Saturday and/or Sunday immediately prior to an election.
- F. Declare that Defendants are required by Michigan law to issue absentee ballots immediately upon receipt of an application for absentee ballot by a registered voter.
- G. Issue a Writ of Mandamus from the Court ordering Defendants (1) to process all pending absentee ballot applications submitted *before* this Court's order within 24 hours of the date of the Court's order; and (2) to process all absentee ballot applications received *after* this Court's order within 24 hours of their receipt.
- H. Enter a preliminary and permanent injunction ordering Defendants (1) to process all pending absentee ballot applications submitted *before* this Court's order within 24

hours; and (2) to process all absentee ballot applications received *after* this Court's order within 24 hours of their receipt.

- I. Grant Plaintiffs any such further relief as the Court deems equitable and just under the circumstances.

Dated: July 16, 2020

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Respectfully submitted,

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