

**STATE OF MICHIGAN
COURT OF CLAIMS**

ELECTION INTEGRITY FUND)	
)	
and)	
)	Case No. _____
GLEN SITEK,)	
)	
Plaintiffs,)	VERIFIED COMPLAINT FOR
)	DECLARATORY AND
v.)	INJUNCTIVE RELIEF
)	
JOCELYN BENSON, in her official capacity as)	
SECRETARY OF STATE,)	
)	
Defendant.)	
)	

Ian Northon
Michigan Bar No. P65082
RHOADES MCKEE PC
55 Campau Ave NW #300
Grand Rapids, MI 49503
Tel.: (616) 233-5125
Fax: (616) 233-5269
inorthon@rhowadesmckee.com

Edward D. Greim (pro hac pending)
Special Counsel, Thomas More Society
Missouri Bar No. 54034
GRAVES GARRETT, LLC
1100 Main Street, Suite 2700
Kansas City, Missouri 64105
Tel.: (816) 256-3181
Fax: (816) 222-0534
edgreim@gravesgarrett.com

**VERIFIED COMPLAINT FOR IMMEDIATE
DECLARATORY AND INJUNCTIVE RELIEF**

There is no other pending or resolved civil
action arising out of the transaction or
occurrence alleged in the complaint.

Plaintiffs Election Integrity Fund (“EIF”) and Glen Sitek, by and through counsel, and for their complaint against Secretary of State Jocelyn Benson, in her official capacity as Michigan Secretary of State (“Secretary”), state the following:

INTRODUCTION

1. This lawsuit challenges the action of Michigan Secretary of State Jocelyn Benson in allowing individuals to apply for absentee ballots online. The online system fails to comply with Michigan law and invites fraud. The problem is this: every individual who gains access to the Secretary’s online application system can apply for a ballot to be mailed without submitting the actual signature of a voter. Without a real signature on the application, election officials have no signature to check against the voter signature that is already on file—a crucial anti-fraud protection. Using the Secretary’s new online system, thousands of ballots will be mailed to addresses, but without the statutorily required signature comparison to ensure that the addressee-voter really requested the ballot, and really requested it to be sent to that address.

2. Additionally, the lack of an application signature also undermines the process of authenticating ballots once they are returned via mail. The Secretary’s own “Election Officials’ Manual” requires the officials processing these ballots to compare the signature on the ballot to the signature on the application to “determine the legality of the ballot”. This comparison cannot be accomplished, of course, if the application lacks an accompanying signature. Hence, the officials cannot determine the legality of the ballots requested using the Secretary’s online system.

3. Voting in the general election should be safe and it should not be unduly burdensome, as voters recognized two years ago in amending the constitution to allow for absentee voting “without giving a reason,” including by mail. Mich. Const. Art. II, § 4(1)(g). But

voters never approved a system that allows key procedural safeguards to be so easily circumvented. These safeguards arise from the express language of the constitution itself. They include citizens' individual "right to have the results of statewide elections audited, in such a manner as prescribed by law, to ensure the accuracy and integrity of the elections." *Id.*, § 4(1)(h). They also include a constitutional delegation to the legislature, which "shall enact laws" to "preserve the purity of elections" and "guard against abuses of the elective franchise." *Id.*, § 4(2).

4. Almost since the beginning of the Covid-19 pandemic, Michigan's executive branch officials have cited the pandemic as part of an effort to undermine these important statutory and constitutional protections. On March 10, 2020, Governor Whitmer issued Executive Order 2020-4 which declared a state of emergency in Michigan "to address the COVID-19 pandemic." Since then, citing the pandemic as their rationale, the Governor and Secretary have worked together to promote voting by mail and heavily discourage in-person voting in Michigan's May and August elections. They continue to encourage the use of voting by mail and discourage in-person voting for the November 3, 2020 election.

5. The Secretary's first means of achieving this goal was her plan to mail an absentee ballot application to every voter, regardless of whether the voter requested an application or not. This is not permitted under Michigan law – a voter must request an application before one can be sent to him or her. However, at least under this plan, the applications will be signed, and election officials will be able to compare the application signature to the signature in the voter file before mailing a ballot to the requested address. While this system is not perfect and far more prone to fraud than in-person voting¹, this particular error

¹ In person voting allows for direct control of the ballot: a voter's identification and eligibility to vote is verified at the time that the vote is cast and the polling place protects voters from being coerced, intimidated, or misled as they cast their ballot. Mail in voting, on the other hand, is ripe with opportunities for third parties to

is not being challenged here. Indeed, it shows that one can increase voter participation without resorting to an online system.

6. The Secretary's second effort, the online application system, is far more problematic. Under that system, an individual can enter a voter's information into an online portal. It would be possible under such a system to use this information to print off a computer-generated form that could then be signed and then mailed in or perhaps even scanned and e-mailed. But rather than adopting these fair and easy options, the Secretary permits individuals to avoid signing an application by clicking an option that "borrows" a voter's pre-existing signature from their driver's license or state ID; this pre-existing, borrowed signature then does double-duty as the "signature" for the individual's application. To be clear, the online system does not require any contemporaneous, handwritten, or wet signature at the time of application.

7. The application signature is of fundamental importance in the absentee voting process in Michigan. Michigan law requires that the voter affix his or her signature to both the application for the ballot and the ballot itself. The two step signature requirement – at both the application and ballot stages – is a fraud prevention measure. Before the ballot is sent, the signature on the application is matched to the signature for that applicant in the State's Qualified Voter File ("QVF"). Before the ballot is counted, the signature on the ballot is likewise matched to the signature stored in the QVF. If the signature on the application does not match the signature in the QVF, the applicant is not supposed to receive a ballot. Likewise, if the signature on the ballot itself does not match the signature in the QVF, the ballot is not supposed to be counted.

fraudulently obtain and cast ballots, or to coerce, intimidate, or mislead voters as they cast their ballot outside the sanctity of the polling place.

8. This signature matching ensures that the person requesting and casting the absentee ballot is actually who they purport to be. It also ensures that only eligible voters are able to receive and cast absentee ballots in Michigan's elections.

9. The signature matching function is of such vital importance that the Legislature codified the requirement in Michigan's statutes. *See* MCL 168.761(2) ("The qualified voter file *must be used* to determine the genuineness of a signature on an application for an absent voter ballot.") (emphasis added); MCL 168.766 ("The qualified voter file *must be used* to determine the genuineness of a signature on an envelope containing an absent voter ballot. Signature comparisons *must be made* with the digitized signature in the qualified voter file.") (emphasis added).

10. The Secretary's online system further undermines the signature matching function because at least some of the signatures in the QVF come from the signature that was collected when the applicant received his driver's license or state ID. *See* MCL 168.509q ("The qualified voter file shall contain all of the following information for each qualified voter: ... (g) The most recent digitized signature of an elector if captured or reproduced by the secretary of state or a county, city, or township clerk from a voter registration application pursuant to section 509hh, or captured or reproduced by the secretary of state pursuant to section 307 of the Michigan vehicle code, 1949 PA 300, MCL 257.307."). For some of these online applicants, the "signature match" is illusory- the signature affixed to the application by the online system and the signature in the QVF originate from the exact same source: the applicant's driver's license or state ID. The "signature match" is merely a reproduction of the same signature, not a comparison of two different signatures.

11. By eliminating this important procedural safeguard, the online application system increases the chances that fraudulent absentee ballots will be cast in Michigan, affecting the outcomes of elections that will determine who will serve in offices from Detroit to Lansing to Washington D.C.

12. This action, therefore, seeks an order compelling the Michigan Secretary of State to comply with statutory and constitutional voter protections by *only* mailing ballots to voters who have affixed real application signatures, and whose real application signatures have been matched to those in the voter file. That will require an immediate end to the current form of the online application system before even more damage is done to the purity and integrity of Michigan's elections.

BACKGROUND

I. The Secretary of State orchestrates the statewide mailing of absent voter applications in advance of the May election.

13. Even before implementing the online application system that is the subject of this lawsuit, the Secretary of State, in cooperation with and at the encouragement of the Governor, began to unilaterally suspend important statutory election safeguards.

14. The most striking example came very early in the spring of 2020. On March 23, 2020 the Secretary announced that her office would mail absent voter ballot applications to all registered voters in advance of the May 5 election, regardless of whether those voters requested an application or not. According to the Secretary's corresponding press release, applications would be sent to all voters with a postage-paid return envelope unless the voter had already requested an absent voter ballot.²

² Press Release, Office of Michigan Secretary of State Jocelyn Benson, Secretary of State to mail absent voter ballot applications to all May 5 voters (2020), https://www.michigan.gov/sos/0,4670,7-127-1640_9150-522761--,00.html (last visited Aug. 20, 2020).

15. Shortly thereafter, on March 27, 2020, the Governor blessed the Secretary's efforts by signing Executive Order 2020-27, ordering that "Elections on May 5, 2020 must be conducted to the greatest extent possible by absent voter ballots issued and submitted without in-person interaction."

16. Among other amendments to Michigan election law sprinkled throughout the order, the Governor directed:

The Department of State may assist local clerks, county clerks, and election administrators with: the mailing of absent voter ballot applications with a postage-prepaid, pre-addressed return envelope to each registered voter within any jurisdiction conducting a May 5, 2020 election; the preparation of postage-prepaid absent voter ballot return envelopes

17. These actions were in derogation of Michigan law. A voter must request an absent voter ballot application before that application can be sent to the voter. *See* MCL 168.759(3)-(5) (requiring written or verbal request from voter to furnish ballot application form); *see also Taylor v. Currie*, 277 Mich. App. 85, 93, 743 N.W.2d 571, 576 (2007) (MCL 168.759(5) does not permit a city clerk to mail absent voter ballot applications without having received a verbal or written request."). The mailing of unsolicited absent voter applications is not authorized under Michigan election law.³

18. The applications were mailed to voters regardless of whether the voter had requested such an application.

19. The applications mailed by the Secretary included a cover letter that claimed that voting by mail is "the optimal way to cast a ballot due to the public health crisis."

³ "A person who is not authorized in this act and who both distributes absent voter ballot applications to absent voters and returns those absent voter ballot applications to a clerk or assistant of the clerk is guilty of a misdemeanor." MCL 168.759(8).

20. Approximately 740,000 voters were mailed applications for the May election. Of those voters that received applications, 213,011 submitted them.⁴

21. The Secretary would later trumpet the success of her efforts: “Record-breaking turnout was recorded in the approximately 50 elections held across 33 counties on May 5, with nearly 25 percent of eligible voters casting ballots and 99 percent of them doing so by mail or in a drop box. From 2010 to 2019, average turnout in local elections in May was 12 percent.”

II. The Secretary of State orchestrates the statewide mailing of absent voter applications in advance of the August and November elections.

22. On May 19, 2020, the Secretary again announced that all registered voters in Michigan would be sent an absent voter ballot application for the August and November elections.⁵⁶

23. “Secretary Benson ensured that all of the state’s 7.7 million registered voters were mailed an application and instructions to safely vote from home.”⁷

24. In her press release, the Secretary acknowledged that “some jurisdictions are mailing applications to all local registered voters.” The Michigan Court of Appeals explicitly held in *Taylor v. Currie*, 277 Mich. App. 85, 97, 743 N.W.2d 571, 578 (2007), that a local election official – there a city clerk – was not authorized by Michigan law to mail unsolicited absent voter ballot applications to voters.

⁴ Press Release, Office of Michigan Secretary of State Jocelyn Benson, Secretary Benson encourages voters to return absentee ballots as soon as possible (2020), https://www.michigan.gov/sos/0,4670,7-127-1640_9150-527286--m_2020_4,00.html (last visited Aug. 20, 2020).

⁵ Press Release, Office of Michigan Secretary of State Jocelyn Benson, Benson: All voters receiving applications to vote by mail (2020), https://www.michigan.gov/sos/0,4670,7-127-1640_9150-529536--00.html (last visited Aug. 20, 2020).

⁶ Ex. A, Michigan absent voter ballot application sent by Secretary to Voters; Ex. B, Secretary’s Letter accompanying absent voter ballot applications.

⁷ Press Release, Office of Michigan Secretary of State Jocelyn Benson, Absentee ballot requests up by 1 million from 2016, https://www.michigan.gov/sos/0,4670,7-127-1640_9150-533467--00.html (last visited Aug. 20, 2020).

25. According to the Secretary, the Michigan Department of State's Bureau of Elections was to ensure that all registered voters who had not already received an application would receive one in time to vote absentee for the August and November elections.

26. On information and belief, the Secretary's office then mailed absentee ballot applications to all voters for the August and November elections, regardless of whether or not the voter requested an application.

III. The Secretary of State develops and encourages the use of an online application system which does not require the applicant's signature.

27. On or about June 12, 2020, the Secretary launched an online absentee voter application system.

28. By navigating to the Secretary's website, Michigan residents are able to fill out an online form to apply for an absentee ballot.

29. Prior to the launch of the Secretary's online system, voters could already submit applications digitally by scanning and emailing their signed applications to their local clerk.

30. The fully online system purportedly makes it easier for voters to apply for an absentee ballot, but in doing so, it removes a key component of the application process: the signature.

31. Instead of requiring a contemporaneous signature, the online application system borrows the applicant's signature from their driver's license or state ID.

32. Because of this, in order to utilize the new tool to request the absentee ballot online, individuals must have access to a voter's Michigan driver's license or state ID, and

submit the same information required to register to vote digitally, including their driver's license number and the last four digits of the voter's Social Security number.⁸

33. After completing an application, the individual then uses the tool built into the online application system to send the handwritten signature the voter provided for their driver's license or state ID card along with the completed application to the voter's local clerk through the state's Qualified Voter File software. Clerks are alerted of the request and are able to see the application and signature.

34. The clerk then sends a ballot to the voter after verifying the information provided by the individual online.

35. A voter who does not use the online system must provide a signature at the time that the voter completes the application. Both the absent voter ballot application available on the Michigan.gov website and the absent voter ballot application mailed to voters by the Secretary contain a clear admonition: "You must sign the form to get a ballot."⁹

36. An individual who uses the online system does not have to provide a voter's signature at the time the individual completes the application. Instead, the signature is borrowed from the voter's driver's license or state ID. "When they complete their application, voters can then use the tool to send the handwritten signature they provided for their driver's license or state ID card, and the completed application, to their local clerk through the state's Qualified Voter File software."¹⁰

⁸ Press Release, Office of Michigan Secretary of State Jocelyn Benson, Michigan Department of State launches online absentee voter application, https://www.michigan.gov/sos/0,4670,7-127-1640_9150-531796--00.html (last visited Aug. 20, 2020).

⁹ See Ex. C, Michigan absent voter ballot application and instructions, available online at https://www.michigan.gov/documents/AbsentVoterBallot_105377_7.pdf; see also Ex. A.

¹⁰ *Id.*

37. The “signature” transaction – borrowing the signature from the license or ID – is entirely facilitated by the State’s online platform.

38. When using the online system, the person who is logged in does not need to provide a contemporaneous handwritten, electronic, or scanned signature with the application.

39. The Secretary’s online system further undermines the signature matching function because at least some of the signatures in the QVF come from the signature that was collected when the applicant received his driver’s license or state ID. *See* MCL 168.509q (“The qualified voter file shall contain all of the following information for each qualified voter: ... (g) The most recent digitized signature of an elector if captured or reproduced by the secretary of state or a county, city, or township clerk from a voter registration application pursuant to section 509hh, or captured or reproduced by the secretary of state pursuant to section 307 of the Michigan vehicle code, 1949 PA 300, MCL 257.307.”).

40. For some of these online applicants, the “signature match” is illusory- the signature affixed to the application by the online system and the signature in the QVF originate from the exact same source: the applicant’s driver’s license or state ID. The “signature match” is merely a reproduction of the same signature, not a comparison of two different signatures.

41. By July 14, 2020, 1,718,384 absentee ballot applications had been received, 1,673,442 absentee ballots had been sent out, and 323,657 absentee ballots had been cast for the August 4, 2020 primary. During the same time period – 21 days before the election – in 2016, 475,046 absentee ballot applications were received, 474,989 absentee ballots were issued, and 134,900 absentee ballots were returned.¹¹

¹¹ Press Release, Office of Michigan Secretary of State Jocelyn Benson e, More than 1.6 million absentee ballots sent ahead of August election, <https://www.michigan.gov/som/0,4669,7-192-47796-534096--,00.html> (last visited Aug. 20, 2020).

42. By August 3, 2020, those numbers rose to 2,052,186 applications received, 2,066,106 ballots issued, and 1,289,025 ballots returned. This again reflected a massive increase compared to the 2016 August primary, which during the same time period – 1 day before the election – saw 566,010 applications received, 575,239 ballots issued, and 456,220 ballots returned.¹²

43. On information and belief, at least some of these absent voter ballot applications originated and/or were processed via the Secretary’s online application system.

IV. Michigan sees its highest ever usage rate of absent voter ballots, a substantial number of which do not have a signature on the application for comparison to the QVF because they were requested via the online system.

44. By August 3, 2020, more than 1.28 million absent voter ballots had been cast, breaking the record for total absent-voter ballots ever cast in a Michigan election. The previous record was 1.27 million, cast in the November 2016 General Election.¹³

45. The Secretary’s July 2, 2020 press release regarding the dramatic rise in absentee ballot applications acknowledges the vital importance of the voter’s signature in the absentee ballot context:

Once completed, they must place the ballot into the secrecy sleeve and then into the return envelope. Once the envelope is sealed, the voter must sign the back of the envelope. This signature will be compared to the signatures election officials have on file, and must match for the ballot to be counted.¹⁴

46. On information and belief, at least some of the absentee ballots cast in the August 4, 2020 election were cast by voters that applied for an absentee ballot via the Secretary’s online system.

¹² Press Release, Office of Michigan Secretary of State Jocelyn Benson, Bring absent voter ballots to clerk offices and drop boxes, https://www.michigan.gov/sos/0,4670,7-127-1640_9150-535497--,00.html (last visited Aug. 20, 2020).

¹³ *Id.*

¹⁴ Press Release, Office of Michigan Secretary of State Jocelyn Benson, Absentee ballot requests up by 1 million from 2016, https://www.michigan.gov/sos/0,4670,7-127-1640_9150-533467--,00.html (last visited Aug. 20, 2020).

V. The Secretary continues to permit and encourage the signature-less online application process for the November 3, 2020 general election.

47. On August 13, 2020, Secretary Benson issued a press release announcing that she was going to mail postcards to Michigan voters encouraging them to use her online system to “vote from home”— i.e. vote via absentee ballot.¹⁵

48. Beginning on August 20, 2020, individuals could use the Secretary’s online system to apply for an absent voter ballot for the November 3rd election by navigating to <https://mvic.sos.state.mi.us/avapplication> and filling out the Secretary’s form.

49. As part of the online application, the applicant must “authorize the Secretary of State to send [his or her] stored digital signature to [his or her] city or township clerk for [his or her] absent voter ballot application.”

50. The system continues to provide individuals with an option to apply for an absentee ballot without providing a contemporaneous voter signature at the time they submit the application.

51. The applicant need not upload a signature, provide an electronic signature, or otherwise provide a contemporaneous signature at the time of application.

52. A person need only have the limited personal information required by the online system to request an absentee ballot on behalf another.

53. Permitting the applicant to “borrow” his or her signature from a voter’s driver’s license or state ID guts the signature requirement altogether, undermining the purpose for the requirement: to prevent voter fraud.

¹⁵ Press Release, Office of Michigan Secretary of State Jocelyn Benson, Benson to mail postcards encouraging voters to apply online to vote from home, <https://www.michigan.gov/sos/0,4670,7-127--536718--00.html> (last visited Aug. 20, 2020).

54. The Secretary's own "Election Officials' Manual" asserts that the legality of an absentee ballot is determined by comparing the signature on the application to the signature on the ballot itself:

Step 1 Materials: AV return envelopes, QVF AV List, and AV applications.

- Determine the legality of the ballot by checking the signature on the absentee ballot return envelope against the voter's absent voter ballot application and checking the ePollbook to confirm that the voter has not voted in person at the election (these steps are optional for AVCBs).¹⁶

55. This comparison, which the Secretary considers vital for the purposes of determining the legality of the ballot, cannot occur if there is not a contemporaneous signature on the application with which the ballot signature can be compared.

VI. EIF members participate as election challengers for the August 4, 2020 election and observe further disregard for the law's signature matching requirements for absentee ballots.

56. EIF's primary purposes include maintaining the integrity of electoral processes, preserving the purity of elections, and guarding against the abuse of the elective franchise in the state of Michigan.

57. During the August 4, 2020 primary, several EIF members participated as election challengers in Oakland County pursuant to § 168.730, MCL.

58. The EIF challengers observed the actions of the local election officials in Oakland County over the course of the entire election day, with some challengers engaged in performing their duties for nearly 14 hours, from 8:00 a.m. to 10:00 p.m.

59. EIF became aware that a challenger in Wayne County witnessed the absentee counting board count every absentee ballot in its possession, without conducting any comparison of signatures on thousands of ballots as required by law.

¹⁶ See Election Officials' Manual, Michigan Secretary of State- Bureau of Election, Chapter 8, p. 3; https://www.michigan.gov/documents/sos/VIII_Absent_Voter_County_Boards_265998_7.pdf (updated February 2019).

60. Given what the EIF challengers learned and observed during the primary and the dramatic increase in the use of mail in ballots, EIF is concerned that the lack of a contemporaneous signature on the absent voter application will make it difficult or impossible to prevent fraud in the absentee ballot arena.

61. Specifically, by not requiring a contemporaneous signature at the time of application for comparison to the QVF, the Secretary is increasing the likelihood that absentee ballots will end up in the hands of someone other than the voter qualified to cast the ballot.

62. In order to fulfill its purpose – to maintain the integrity and purity of Michigan’s elections – EIF must now divert time and resources that it planned on using for voter outreach and education, rallies, and other election related activities and instead devote its time and resources towards training election challengers to monitor the counting of absentee ballot during the November 3, 2020 election.

63. EIF has had to reallocate its already limited resources to identify additional election challengers and plans to reallocate funds to train these challengers to ensure the validity of absentee ballots cast for the November 3, 2020 election, particularly those that were processed via the Secretary’s online system and do not have a contemporaneous signature on the application that was checked against the QVF before a ballot was sent to the applicant.

64. If the Secretary continues to provide an avenue for individuals to apply for mail in ballots without a contemporaneous signature, EIF will not only have to train and provide election challengers in hundreds of precincts on election day itself, but it will also have to carve out weeks’ worth of time to observe the processing of applications and comparing of signatures in clerks’ offices across the state.

PARTIES

65. Plaintiff Election Integrity Fund is a Michigan 501(c)(4). EIF's primary purposes include maintaining the integrity of electoral processes, preserving the purity of elections, and guarding against the abuse of the elective franchise in the state of Michigan. EIF's members participated as election challengers in Oakland County during the August 4th primary and quickly became concerned with the lack of fidelity to the law that they witnessed. As a result, EIF must reallocate its limited time and resources to training challengers for the November 3, 2020 general election to monitor the absentee vote counting process, particularly for those absentee ballots that were received as a result of an online application via the Secretary's system.

66. Plaintiff Glen Sitek is a Michigan taxpayer, resident, and voter. Mr. Sitek resides in Oakland County. Mr. Sitek regularly votes and understands the importance of only having valid votes cast by eligible voters counted in elections. Mr. Sitek is also the Vice President of the Election Integrity Fund.

67. Defendant Jocelyn Benson is the Michigan Secretary of State. The Secretary is being sued in her official capacity only.

JURISDICTION AND VENUE

68. The Court of Claims has "exclusive" jurisdiction to "hear and determine any claim or demand, statutory or constitutional," or any demand for "equitable[] or declaratory relief or any demand for an extraordinary writ against the state or any of its departments or officers notwithstanding another law that confers jurisdiction of the case in the circuit court." MCL 600.6419(1)(a).

69. Because Plaintiffs raise statutory and constitutional claims and seek equitable, declaratory, and extraordinary relief against the Secretary, this Court has jurisdiction to hear these claims.

70. For the same reason, venue is appropriate in this Court.

**COUNT I: Violation of MCL § 168.759
Failure to Collect Signature with Application**

71. Plaintiffs restate and reallege the foregoing paragraphs as if the same were repeated verbatim herein.

72. Michigan law, specifically MCL § 168.759, requires an applicant to sign an absent voter ballot application:

An applicant for an absent voter ballot shall sign the application. A clerk or assistant clerk shall not deliver an absent voter ballot to an applicant who does not sign the application.

MCL § 168.759(4). This law is a valid exercise of voters' constitutional command to the legislature that it "shall enact laws...to preserve the purity of elections," to "guard against abuses of the elective franchise," and to otherwise "provide for a system of voter registration and absentee voting." Mich. Const. Art. II, § 4(2). It is also necessary to protect Michigan citizens' individual "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." *Id.*, § 4(1)(g).

73. The statute also prescribes exact instructions which must be included with each application furnished to an absent voter ballot applicant, including: "After completely filling out the application, sign and date the application in the place designated. *Your signature must appear on the application or you will not receive an absent voter ballot.*" MCL § 168.759(6).

74. The Legislature was sufficiently concerned with signature fraud in the absent voter ballot application context that they determined it should be a felony. *See* MCL §

168.759(6) (“A person who forges a signature on an absent voter ballot application is guilty of a felony.”).

75. Upon receiving an application, the clerk is required to compare the signature on the application to the applicant’s signature in the Qualified Voter File (“QVF”) before sending an absentee ballot to the applicant. MCL § 168.761(2). “The qualified voter file must be used to determine the genuineness of a signature on an application for an absent voter ballot. Signature comparisons must be made with the digitized signature in the qualified voter file.” *Id.*

76. The Secretary’s online system prevents the clerk from fulfilling this role, as there is no contemporaneous application signature to compare to the QVF.

77. The Secretary is not authorized by Michigan law to provide an application which does not require a contemporaneous signature or to transmit applications lacking such a signature to local clerks. “A person who is not authorized in this act and who both distributes absent voter ballot applications to absent voters and returns those absent voter ballot applications to a clerk or assistant of the clerk is guilty of a misdemeanor.” MCL 168.759(8).

78. On information and belief, the Secretary has spent and continues to spend funds generated from tax revenue to operate and maintain the online application system, as well as to process applications through the online system.

79. Plaintiff EIF is directly injured as a result of the Secretary’s actions in not requiring a signature via the online application. EIF must now reallocate its time and resources that it would have spent on other election related tasks to identify and train individuals to serve as election challengers to oversee the absentee voting process in order to guard against absentee ballot fraud. The loss of a real, wet signature on the application also compromises the “right to

audit” the results of statewide elections to “ensure the accuracy and integrity of elections,” another constitutional right that MCL § 168.759 enforces and protects.

80. Plaintiff Sitek and Plaintiff EIF’s individual members are likewise harmed. Plaintiff Sitek and EIF’s members plan to vote in the upcoming election. Any fraudulent vote that is cast in that election, including a fraudulent absentee ballot, dilutes the strength of Plaintiff Sitek’s and EIF’s members’ legitimate votes. Plaintiff Sitek’s and EIF’s members’ right to vote includes the assurance that their votes will not be diluted by votes of fraudulent voters. Further, the loss of a real, wet signature on the application also compromises their individual constitutional rights “to audit” the results of statewide elections to “ensure the accuracy and integrity of elections,” another constitutional right that MCL § 168.759 enforces and protects.

81. The Secretary should be enjoined from providing an absentee ballot application system which permits and encourages Michigan residents to apply for an absentee ballot without providing a contemporaneous signature at the time of application because the system violates Michigan law, specifically, MCL § 168.759.

82. Alternatively, the Court should issue a writ of mandamus ordering the Secretary to require an applicant for an absent voter ballot to submit a signature created contemporaneously with the filing of the application.

83. Any action by the Secretary to accept and process absent voter ballot applications without a contemporaneous signature on the application is not allowed by Michigan law.

84. If the Secretary is going to facilitate the processing of absent voter ballot applications, the Secretary has a duty to collect a signature at the time of application.

85. The Secretary’s duty to collect a signature is ministerial and involves no discretion or judgment.

86. Plaintiffs have a clear legal right to the proper discharge by the Secretary to perform her ministerial duty to collect a signature at the time that a person applies for an absent voter ballot.

87. Plaintiffs have no other adequate legal or equitable remedy.

**COUNT II: Violation of the Purity of Elections Clause,
Michigan Constitution Art. II, § 4(2)**

88. Plaintiffs restate and reallege the foregoing paragraphs as if the same were repeated verbatim herein.

89. Article II, § 4(2) of the Michigan Constitution of 1963 states:

Except as otherwise provided in this constitution or in the constitution or laws of the United States the legislature shall enact laws to regulate the time, place and manner of all nominations and elections, to preserve the purity of elections, to preserve the secrecy of the ballot, to guard against abuses of the elective franchise, and to provide for a system of voter registration and absentee voting.

90. This “purity of elections” clause requires the legislature to preserve the purity of election and guard against abuses of the elective franchise, including in the context of absentee voting.

91. The Michigan Supreme Court has interpreted the “purity of elections” clause to embody 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 N.W.2d 1 (1982), quoting *97 *Wells v. Kent Co. Bd. of Election Comm'rs*, 382 Mich. 112, 123, 168 N.W.2d 222 (1969).

92. The Legislature has carried out the directive of the “purity of elections” clause, at least in part, by enacting the signature matching requirement in MCL 168.759 as a means of preventing absentee ballot fraud.

93. However, by creating and encouraging the use of a system which ignores the signature requirement and obviates its purpose, the Secretary usurps “the constitutional authority to enact laws to preserve the purity of elections” which “resides in the Legislature,” simultaneously undermining the purity of Michigan’s elections and encouraging abuses of the elective franchise via absentee voter ballot fraud.

94. On information and belief, the Secretary has spent and continues to spend funds generated from tax revenue to operate and maintain the online application system, as well as to process applications through the online system.

95. Plaintiff EIF is directly injured as a result of the Secretary’s actions in not requiring a signature via the online application. EIF must now reallocate its time and resources that it would have spent on other election related tasks to identify and train individuals to serve as election challengers to oversee the absentee voting process in order to guard against absentee ballot fraud.

96. The necessity of having challengers and poll watchers was driven home by EIF’s experience in the August 4, 2020 primaries. There, EIF learned that the Secretary had not offered any additional resources, provided training, or educated local election authorities on best practices or methods for verifying that signature comparison is fair and accurate—or indeed, that it is occurring at all.

97. Indeed, EIF’s poll watchers and challengers observed a failure to verify signatures on absentee ballots in Wayne County on August 4, 2020. Without their presence, neither the Secretary nor anyone else would have known whether signature verification had occurred. In order to preserve the purity of Michigan’s elections, EIF’s mission compels it to allocate

substantial resources to providing even more challengers and poll-watchers for the general election.

98. Plaintiff Sitek and Plaintiff EIF's individual members are likewise harmed. Plaintiff Sitek and EIF's members plan to vote in the upcoming election. Any fraudulent vote that is cast in that election, including a fraudulent absentee ballot, dilutes the strength of Plaintiff Sitek's and EIF's members' legitimate votes. Plaintiff Sitek's and EIF's members' right to vote includes the assurance that their votes will not be diluted by votes of fraudulent voters.

99. The Secretary should be enjoined from providing an absentee ballot application system which permits and encourages Michigan residents to apply for an absentee ballot without providing a contemporaneous signature at the time of application because the system violates Art. II, § 4(2) of the Michigan Constitution.

100. Alternatively, the Court should issue a writ of mandamus ordering the Secretary to require an applicant for an absent voter ballot to submit a signature created contemporaneously with the filing of the application.

101. Any action by the Secretary to accept and process absent voter ballot applications without a contemporaneous signature on the application is not allowed by Michigan law.

102. If the Secretary is going to facilitate the processing of absent voter ballot applications, the Secretary has a duty to collect a signature at the time of application.

103. The Secretary's duty to collect a signature is ministerial and involves no discretion or judgment.

104. Plaintiffs have a clear legal right to the proper discharge by the Secretary to perform her ministerial duty to collect a signature at the time that a person applies for an absent voter ballot.

105. Plaintiffs have no other adequate legal or equitable remedy.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Election Integrity fund respectfully requests this Court:

A. Order “a speedy hearing” of this action and “advance it on the calendar” under MCR 2.605(D).

B. Declare and adjudge that:

a. The Secretary’s online absent voter ballot application system violates MCL § 168.759; and

b. The Secretary’s online absent voter ballot application system violates Michigan’s “purity of elections clause”, Article II, § 4(2) of the Michigan Constitution of 1963.

C. Immediately enjoin the Secretary from providing any absentee voter ballot application system, whether online or not, which does not require the applicant to submit a signature created contemporaneously with the filing of the application;

D. Alternatively, issue a writ of mandamus ordering the Secretary to require an applicant for an absent voter ballot to submit a signature created contemporaneously with the filing of the application; and,

E. Grant such other and further relief as this Court deems just and proper.

Dated: August 24, 2020

Respectfully submitted,

Edward D. Greim (pro hac pending)



Special Counsel, Thomas More Society
Missouri Bar No. 54034
GRAVES GARRETT, LLC
1100 Main Street, Suite 2700
Kansas City, Missouri 64105
Tel.: (816) 256-3181
Fax: (816) 222-0534
edgreim@gravesgarrett.com

Ian Northon

Michigan Bar No. P65082
RHOADES MCKEE PC
55 Campau Ave NW #300
Grand Rapids, MI 49503
Tel.: (616) 233-5125
Fax: (616) 233-5269
inorthon@rhoadesmckee.com

VERIFICATION

I declare that the statements above are true to the best of my information, knowledge, and belief.

By: _____

Dated: _____

Glen Sitek, Individually

By: _____

Dated: _____

Glen Sitek
Vice President, Election Integrity Fund

Michigan Absent Voter Ballot Application

Approved by: _____

Check election(s) which you are requesting ballot(s).

BOTH 2020 ELECTIONS ELECTION: 8/4/2020 ELECTION: 11/3/2020

VOTER NAME
VOTER ADDRESS
CITY MI 41111

See other side for additional instructions

Future elections
I want to vote absentee in all future elections.
Automatically send me an application for every election



I certify that I am a United States citizen and a qualified and registered elector of the Michigan city or township listed above, and I apply for an official ballot, to be voted by me in the election(s) checked above, and the statements in this application are true.

X / /
Voter's Signature (Voter must sign - power of attorney is not acceptable) Date

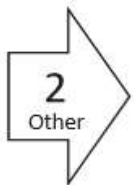
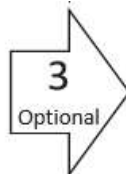


Table with 4 columns: Aug 4 Primary, Nov 3 General, Street Address, Date of return. Includes sub-headers for Date leaving for this address.



()
Email Address Phone #

Your email address and phone number help your clerk contact you if there is a problem with your application or ballot.

Table with 5 columns: Clerk's Use Only, Primary, Ballot No:, General, Ballot No:. Includes rows for Filed, Mailed, Returned, and Clerk information.

00001 08/04/2020 1111

8/4/2020



11/3/2020
Ballot No:
Voter No:
Inspector Initials:

Complete and return to:
CLERK@TOWNSHIP.GOV

NAME
ADDRESS
CITY MI 41111

CLERK NAME
CITY CLERK
CLERK ADDRESS
CITY MI 41111



ABSENT VOTER BALLOT APPLICATION INSTRUCTIONS

STEP 1. Fill out the application completely. You must sign the form to get a ballot.

STEP 2. Deliver the application by one of the following methods:

- 1. Mail it.** Make sure the envelope has proper postage and is addressed to your local clerk.
- 2. E-mail it.** Take a picture of the form (or scan it) and e-mail it to your clerk. Make sure your signature is visible.
- 3. Deliver it** in person to the clerk, the clerk's office, or the clerk's authorized assistant. Someone in your immediate family or living in your household can help you deliver this application. If that's not possible, you can ask any Michigan registered voter to deliver it for you. The person helping you must sign the "Certificate of Authorized Registered Elector Assisting in Returning Application".

CERTIFICATE OF AUTHORIZED REGISTERED ELECTOR ASSISTING IN RETURNING APPLICATION

I certify that my name is _____, my address is _____, date of birth is ____/____/____; that I am delivering the absent voter ballot application of _____ at his or her request; I did not solicit or request to return the application or make any markings on or alter it; I did not influence the applicant; I understand that a false statement in this certificate is a violation of Michigan election law.

Date

Signature

WARNING

You must be a United States citizen to vote. If you are not a United States citizen, you will not be issued an absent voter ballot. A person making a false statement in this absent voter ballot application is guilty of a misdemeanor. It is a violation of Michigan election law for a person other than those listed in the above instructions to return, offer to return, agree to return, or solicit to return your absent voter ballot application to the clerk. An assistant authorized by the clerk who receives absent voter ballot applications at a location other than the clerk's office must have credentials signed by the clerk. Ask to see his or her credentials before entrusting your application with a person claiming to have the clerk's authorization to return your application.

Moving between August and November? You might want to apply for August only and apply for November after you move. How to decide:

(1) If you're moving within the same city or township and apply for both August and November, then as long as you update your registration address before your clerk mails your ballot (usually around September 21), your clerk will send you a ballot to the new address in November. You can still update your address after your November ballot is mailed but you will need to fill out additional paperwork before you get your ballot.

(2) If you're moving to a different city or township, when you update your registration address* your old clerk will cancel your absent voter ballot application for November and you'll have to reapply with the new clerk in your new city or township.

*You must update your voter registration address when you move (it isn't updated automatically unless you update your Michigan driver license/ID card). Find out how to update your registration address at Michigan.gov/Vote.

Already applied for a November ballot?

If you voted by absent voter ballot in March, you might have already applied for November. You'll get that ballot no matter how you fill out this form. If you want to cancel your November request or have questions, contact your clerk.



STATE OF MICHIGAN
JOCELYN BENSON, SECRETARY OF STATE
DEPARTMENT OF STATE
LANSING

Dear Registered Voter,

You have the right to vote by mail in every election. Voting by mail is easy, convenient, and secure. During the outbreak of COVID-19, it also enables you to stay home and stay safe while still making your voice heard in our elections.

There are two upcoming elections in Michigan this year: a statewide election in August and a national election in November. If you would like to vote by mail in these elections, you can request that your clerk mail your ballot directly to you by completing the enclosed form. After you have signed the form, you can submit it in any one of the following ways:

- **Option 1** – Scan or take a photo of the form that clearly shows your signature, and email it to your clerk at the email address included on the bottom of your AV application.

OR

- **Option 2** – Mail or drop-off the form to your local clerk at the address included on the bottom of your AV application.

Go to www.Michigan.gov/Vote for more information about how to return your absent voter ballot application electronically.

Democracy is essential to the success of our nation, and your vote is the foundation of our democracy. Thank you for doing your part by being a registered voter, and making your voice heard.

Sincerely,

Jocelyn Benson
Michigan Secretary of State



Michigan Absent Voter Ballot Application: November 3, 2020 Election



First Name	M.I.	Last Name	County
			<input type="checkbox"/> City <input type="checkbox"/> Township
Street Address		Jurisdiction	
MI			
City	Zip	Year of Birth	
		()	
Email Address			Phone #

Enter your information as it appears on your voter registration. Your email address and phone number help your clerk contact you if there is a problem with your application or ballot. They are used only for election purposes and providing them is optional.



Future Elections: Complete to join permanent list I want to vote absentee in all future elections. Automatically send me an application for every election.



I certify that I am a **United States citizen** and a qualified and registered elector of the Michigan city or township listed above, and I apply for an official ballot, to be voted by me in the election(s) checked above, and the statements in this application are true.

X _____ / /

Voter's Signature (Voter must sign - power of attorney is not acceptable) _____ Date

WARNING: You must be a **United States citizen** to vote. If you are not a United States citizen, you will not be issued an absent voter ballot. A person making a false statement in this absent voter ballot application is guilty of a misdemeanor. It is a violation of Michigan election law for a person other than those listed in the instructions to return, offer to return, agree to return, or solicit to return your absent voter ballot application to the clerk. An assistant authorized by the clerk who receives absent voter ballot applications at a location other than the clerk's office must have credentials signed by the clerk. Ask to see his or her credentials before entrusting your application with a person claiming to have the clerk's authorization to return your application.



Want your ballot mailed to different address than you wrote above? [USPS won't forward it]

Date leaving for this address: / /	Street Address
Date of return: / /	City State Zip



Return this to your city/township clerk. Find their contact info at Michigan.gov/Vote.

<p>Complete only if helping a voter return application</p>	<p>Certificate of Authorized Registered Elector Assisting in Returning Application: I certify that my name is _____, date of birth is ____/____/____ and address is _____; that I am delivering the absent voter ballot application of _____ at his or her request; I did not solicit or request to return the application or make any markings on or alter it; I did not influence the applicant; I understand that a false statement in this certificate is a violation of Michigan election law.</p>	
	X _____ Signature of person assisting the voter	____/____/____ Date

Clerk's Use Only	Primary		General	
Wd/Pct	Mailed / /	Returned / /	Mailed / /	Returned / /
Filed / /	Ballot No:	Clerk	Ballot No:	Clerk

Instructions for Absent Voter Ballot Applicants

Step 1: Fill out the application completely. **You must sign the form to get a ballot.**

Step 2: Deliver the application in any of these ways:

1. **Mail it.** Make sure the envelope has proper postage and is addressed to your local clerk.
2. **E-mail it.** Take a picture of the form (or scan it) and e-mail it to your clerk. Make sure your signature is visible.
3. **Deliver it in person** to the clerk, the clerk's office, or the clerk's authorized assistant.

Someone in your immediate family or living in your household can help you deliver this application. If that's not possible, you can ask any Michigan registered voter to deliver it for you. The person helping you must sign the "Certificate of Authorized Registered Elector Assisting in Returning Application".

Contact your local clerk

You can find your local clerk's address, e-mail address, and phone number by going to [Michigan.gov/Vote](https://www.michigan.gov/Vote).