

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

ALEXANDER GANIK and AMERICAN
CIVIL LIBERTIES UNION OF MICHIGAN,

Plaintiffs,

Case No. 2020- -AW

v

JANICE M. WINFREY, in her official capacity
as City Clerk for the City of Detroit,

Defendant.

**COMPLAINT FOR WRIT OF
MANDAMUS AND OTHER RELIEF**

**EXPEDITED CONSIDERATION
REQUESTED**

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**Pro hac vice* motions forthcoming

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

NOW COME Alexander Ganik and American Civil Liberties Union of Michigan (“ACLU”) (collectively, “Plaintiffs”), by and through their undersigned attorneys, and for their Complaint against Janice M. Winfrey in her official capacity as City Clerk for the City of Detroit, Michigan (“Defendant” or “City Clerk”), state as follows:

INTRODUCTION

1. Plaintiffs file this Complaint to ensure that Defendant will comply with her legal duties to honor Detroit voters’ constitutional right to cast election ballots by mail for the general election on November 3, 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. Michigan statutes further mandate that the City Clerk shall mail or personally deliver absentee ballots to voters *immediately* upon receipt of an absentee ballot application. MCL 168.761(1). The City Clerk must also process absentee ballots in the same order in which the applications were received. See MCL 168.761(4).

4. Consistent with this legal requirement, and as recognized by the Michigan Court of Appeals on July 14, 2020, the Michigan Secretary of State has directed local clerks to issue absentee ballots within 24 hours of receipt of an application. See *League of Women Voters v Secretary of State*, 2020 WL 3980216, at *19 n.2 (July 14, 2020) (Riordan, J., concurring).

5. Defendant has systematically failed to comply with her duty to issue absentee ballots within 24 hours of the receipt of an application.

6. Upon information and belief, as of September 23, 2020, Defendant was in possession of 200,000 absentee ballot applications. See Kiertzner, *Under the gun, Detroit city clerk shows how she's getting ready for the record election*, WXYX.com (September 23, 2020), available at <<https://www.wxyz.com/news/election-2020/under-the-gun-detroit-city-clerk-shows-how-shes-getting-ready-for-the-record-election>> (“Detroit City Clerk Janice Winfrey is going into the November election with a record number of absentee ballot applications . . . There will be 200,000 absentee ballot applications processed.”).

7. Publicly available data from the Secretary of State’s office, show that as of October 12, 2020, Defendant had issued only 132,879 ballots. See Ex. 1. In other words, it appears that up to 70,000 ballot applications have been sitting in Defendant’s office for almost three weeks.

8. Indeed, although Defendant has logged the ballot application of Plaintiff Andrew Ganik as having been received by Defendant on October 1, he has not yet received his ballot. Ex. 2, Affidavit of Alexander Ganik ¶ 5 (hereinafter “Ganik Affidavit”). Upon information and belief, numerous other registered voters in Detroit have had to wait weeks to receive their ballots after having made a proper request, and an unknown number are, like Mr. Ganik, still waiting for ballots that they requested long ago.

9. Furthermore, the same data from the Secretary of State’s office show that as of October 12, 2020, Defendant had logged only 142,622 ballot applications as received, see Ex. 1, in the online voter registration database, the Michigan Voter Information Center (“MVIC”).¹

¹ The MVIC reflects the voter’s Qualified Voter File (“QVF”), the official electronic file for the “conduct of all elections.” MCL 168.509o. Election clerks are legally required to “enter the name of the [absentee voter] applicant . . . together with the date of receiving the application, the date of mailing or delivering the ballot or ballots to such voter, the date of (continued...)

This suggests that Defendant has yet to confirm receipt of at least 50,000 applications, let alone issues ballots in response to those applications.

10. Thus, despite the statutory mandate to issue ballots within 24 hours upon receipt, it appears that Defendant has left thousands of ballot applications unprocessed for weeks. As the Court of Appeals recently recognized, “[i]f a local election clerk has *ignored or otherwise failed to comply with the Secretary’s directions and the law*, it would require a mandamus action against those clerks to force their compliance.” *LWV*, 2020 WL 3980216, at *12 (emphasis added). Defendant’s inaction violates her clear constitutional and statutory obligations to mail ballots to voters “immediately” upon receipt of an absentee ballot application.

11. The immediacy of the impending general election, Defendant’s clear and indisputable legal duties, the fundamental nature of the rights at stake, and the practicalities of the COVID-19 pandemic warrant injunctive and declaratory relief. In particular, Plaintiffs ask that the Court issue an injunction and a writ of mandamus requiring Defendant to clear the backlog of absent voter applications within 24 hours and to hand-deliver the ballots to affected voters in order to avoid postal delays that could disenfranchise voters whose ballots have been delayed as the result of Defendant’s unconstitutional (in)action.

PARTIES

12. Plaintiff Alexander Ganik is a registered voter residing in Detroit, Michigan. Ganik Affidavit at ¶2, ¶3. Mr. Ganik submitted his application for an absentee ballot to the Detroit City Clerk’s office on September 29, 2020 by completing the online application. Affidavit of Alexander Ganik, ¶4. As of October 16, 2020, his ballot has not been sent. Ganik

receiving the ballot from such voter . . . “[u]pon receipt of such properly executed application.” MCL 168.760 (emphasis added).

Affidavit, ¶8. As a registered voter in Detroit, Mr. Ganik has a legal right to vote by absentee ballot and to have his timely absentee ballot application processed immediately upon receipt.

13. 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 317 members in Detroit, 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 November 3, 2020 general 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.

14. The ACLU has standing to represent its members who wish to vote by absentee ballot.

15. Defendant Janice Winfrey is the City Clerk for the City of Detroit and is the Chairperson of the Election Commission for the City of Detroit. City Clerk <<https://detroitmi.gov/government/city-clerk> > (accessed October 16, 2020); Charter of The City of Detroit Sec. 3-102, p.26, available at <https://detroitmi.gov/sites/detroitmi.localhost/files/2018-05/2_29_2012_CharterDocument_2_1_WITHOUT_COMMENTARY_1.pdf>. The Detroit City Clerk is also the election official authorized to issue absent voter ballots to voters in the City of Detroit. MCL 168.759; MCL 168.761; MCL 168.761b. In her capacity as the Chairperson of the Election Commission for the City of Detroit, she has the authority (and obligation) 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; Detroit Charter 3.103. Defendant 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.

16. Among her many constitutional and statutory duties as the Director of Elections for the City of Detroit who is authorized to issue absentee ballots, Defendant is required to mail or deliver personally ballots to the voter applicant immediately upon receipt of the application or as soon as the ballots are printed. MCL 168.761.

JURISDICTION

17. 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.”).

18. “[M]andamus is the proper remedy for a party seeking to compel election officials to carry out their duties.” *LWV*, 2020 WL 3980216, at *2, 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*, 2020 WL 3980216, at *12.

19. Venue is proper in this Court pursuant to MCL 600.1621, MCL 600.1615, and MCR 3.305(B)(1) (mandamus relief). City Clerk Winfrey conducts business in Wayne County.

**NECESSITY FOR EXPEDITED CONSIDERATION
AND IMMEDIATE ACTION**

20. There is an urgent need for this Court to render an expedited decision in this case because there are 18 days before Election Day and Defendant’s noncompliance impacts the constitutional rights of registered voters for the November 3, 2020 general election.

21. 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).

22. Expedited review is especially imperative in light of the COVID-19 pandemic, which has created a heightened need for election clerks to honor voters’ broad constitutional absentee voting rights, thereby reducing the number of voters appearing to vote on Election Day in person.

FACTUAL ALLEGATIONS

I. Michigan Voters Possess a Constitutional Right to Cast an Absentee Ballot In Person or By Mail Under Proposal 3.

23. 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.

24. 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).

25. 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” and have “the *right to choose* whether the absent voter ballot is applied for, received and submitted *in person or by mail.*” *Id.*, art 2, § 4(1)(g) (emphasis added).

26. 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).

27. 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. The Michigan Constitution and Michigan Election Laws Prescribe Clear Legal Duties for Defendant.

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

29. 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).

30. Once the City Clerk receives an absentee ballot application, the City Clerk “*immediately* upon receipt of the application or, if the application is received before the printing of the absent voter ballots, *as soon as the ballots* are received by the clerk, . . . shall forward by mail, postage prepaid, or shall deliver personally” the ballot to the applicant. MCL 168.761(1) (emphases added). See also MCL 168.759(1) and (3). In addition, all “[a]bsent voter ballots must be issued in the same order in which applications are received by the clerk. . . .” MCL 168.761(4).

31. As the Court of Appeals has recognized, Secretary of State Jocelyn Benson “discharged her legal duty to, in essence, direct local clerks to comply” with the requirement that ballots be issued “immediately” by directing clerks to issue absentee ballots within 24 hours of the receipt of an application. See *LWV*, 2020 WL 3980216, at *12.

32. Thus, pursuant to Michigan's Constitution and election laws, the City Clerk is legally required to issue ballots in response to a valid absentee ballot application within 24 hours.

III. The Detroit City Clerk Has Failed to Comply with Constitutionally and Statutorily Mandated Duties.

33. Upon information and belief, Defendant has been in possession of at least 200,000 absentee ballot applications as of September 23, 2020—a record number. See Kiertzner, *Under the gun, Detroit city clerk shows how she's getting ready for the record election*, WXYX.com (September 23, 2020), available at <<https://www.wxyz.com/news/election-2020/under-the-gun-detroit-city-clerk-shows-how-shes-getting-ready-for-the-record-election>>.

34. In light of the significant volume of applications, Defendant secured a \$7 million grant as of September 23, 2020 to hire sufficient staff to process absentee ballot applications in a timely fashion. *Id.*

35. Defendant has nonetheless consistently fallen far short of meeting her legal obligations.

36. As of September 28, 2020, Defendant had logged 114,191 absentee ballot applications as having been received. Ex 3, Secretary of State, Ballot Statistics by Jurisdiction (September 28, 2020)

37. As of October 5, 2020, Defendant had issued approximately 108,065 ballots, slightly over half of the number of absentee ballot applications that were apparently in her possession as of September 23. Ex. 4, Secretary of State, Ballot Statistics by Jurisdiction (October 5, 2020). This also shows that Defendant had failed to issue absentee ballots in response to at least 6,126 of the 114,191 applications *that she had logged as received* by September—despite having those applications in her possession for at least a week.

38. On October 8, 2020, Plaintiff ACLU transmitted a letter to Defendant seeking information regarding the extent of Defendant's backlog of absentee ballot applications and Defendant's plan for ensuring that applications in her possession would be processed immediately. Ex. 5, Letter from ACLU (October 8, 2020).

39. On October 12, 2020, Defendant responded to Plaintiff ACLU's letter indicating that the "unprocessed applications you mentioned in your letter are expected to be processed on or before Wednesday, October 14." Ex. 6, Letter from City Clerk Winfrey (October 12, 2020). Defendant failed to provide any information regarding the number of applications that remained in her backlog, despite being explicitly asked to do so in the ACLU's October 8 letter.

40. Data released by the Secretary of State's office on October 13, 2020 showed that as of October 12, 2020, Defendant had issued approximately 133,000 ballots. Ex. 1, Secretary of State, Ballot Statistics by Jurisdiction (October 12, 2020). Thus, it appears that 70,000 applications in the possession of the Defendant as of September 23 had still not been processed by October 12. That data further showed that approximately 10,000 voters whose applications for an absentee ballot had been received by Defendant still had not been mailed a ballot.

41. On October 14, 2020, Plaintiff ACLU sent another letter to Defendant, requesting (a) that Defendant provide information regarding the extent of Defendant's backlog that she omitted in her prior letter; (b) that Defendant confirm that she did in fact process the unprocessed applications referenced in Plaintiff ACLU's October 8 letter; and (c) provide her plan for complying with her legal obligation for processing ballot applications going forward within 24-hours. Ex. 7, Letter from ACLU (October 14, 2020).

42. To date, Defendant has provided no response to Plaintiff ACLU's October 14 letter. And despite her representation to the contrary, Defendant did not process all unprocessed

applications “on or before Wednesday, October 14.” As of October 16, 2020 ballots have still not been mailed to Plaintiff Ganik. Upon information and belief, Plaintiff Ganik is merely the tip of the iceberg and numerous other registered voters in Detroit who have requested their absentee ballots also have not been sent ballots.

43. At her present rate, Defendant will need *another 7 days* to process the applications that have already been in her possession for at least 20 days. This does not include any ballot applications that she might have received between October 13 and the date of this filing.

44. Defendant has failed to comply with her fundamental legal duty to process absentee ballot applications “immediately,” *i.e.*, within 24-hours.

45. In addition, Plaintiff ACLU has for several weeks received complaints from civic engagement organizations attempting to assist voters and from voters themselves that they cannot get through to anyone at the Detroit clerk’s office by phone to check on the status of their requested ballot or to request an application. Organizations have been left to deliver blank applications to voters who request them because they cannot get through to the clerk. Ex. 8.

IV. Defendant’s Unwillingness to Comply With Voting Laws Risks Disenfranchising Thousands of Detroit Voters.

46. Unless corrected immediately, Defendant’s failure to comply with the law will likely disenfranchise thousands of Detroit voters.

47. Experts have predicted that the 2020 general election will boast the largest mail-in ballot electorate in U.S. history (at least three-quarters of all American voters), with roughly 80 million mail-in ballots inundating election offices in November—more than double the number that were returned in 2016. See Love et al., *Where Americans Can Vote by Mail in the 2020*

Elections, NY Times (Aug. 14, 2020)

<<https://www.nytimes.com/interactive/2020/08/11/us/politics/vote-by-mail-us-states.html>>.

48. The increase in mail-in ballots is largely attributable to the COVID-19 pandemic. See DeSilver, *Mail-in voting became much more common in 2020 primaries as COVID-19 spread*, Pew Research Center (October 13, 2020) <<https://www.pewresearch.org/fact-tank/2020/10/13/mail-in-voting-became-much-more-common-in-2020-primaries-as-covid-19-spread/>> (accessed Oct. 16, 2020). As adults of any age with certain underlying medical conditions are at increased risk for severe illness or death from exposure to COVID-19, the Centers for Disease Control and Prevention recommends that the best way to ensure protection from COVID-19 is to “limit your interactions with other people as much as possible.” People with Certain Medical Conditions, Centers for Disease Control and Prevention, <<https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html>> (accessed Oct. 16, 2020). Mail-in voting is thus essential for voters who face increased risk from exposure to COVID-19, cases of which are spiking in Michigan and across the country. Leatherby, *U.S. Virus Cases Climb Toward a Third Peak*, NY Times (October 16, 2020), available at <<https://www.nytimes.com/interactive/2020/10/15/us/coronavirus-cases-us-surge.html>>.

49. Defendant’s failure to timely issue absentee ballots risks disenfranchising not only those voters whose applications have yet to be processed, but also voters who have yet to submit their applications and whose applications will likely be delayed by Defendant’s backlog.

50. Michigan law allows city clerks to issue absentee ballots until 5 p.m. on the Friday before election day (October 30). MCL 168.759(2). Michigan also allows its voters to apply for absentee ballots online, while, as noted above, requiring local election clerks to issue

ballots within 24 hours of receipt of ballot applications. A Detroit voter therefore has the legal right to submit her application online by 5 p.m. on October 29, the Thursday before election day. However, the voter's ability to receive and cast a timely ballot depends on Defendant's complying with the legal requirement that she process applications "immediately."

51. The harm caused by Defendant's failure to timely process absentee ballot applications is particularly acute in light of rampant United States Postal Service ("USPS") delivery delays. While USPS used to process mail within a city or township locally, with next day delivery and twice daily deliveries 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: Detroit, Grand Rapids, Traverse City, and Marquette, Michigan; and Green Bay, Wisconsin.

52. Other recent operational changes at USPS have resulted in further mail delivery delays. Recent USPS performance data show significant delays since July 2020. <https://about.usps.com/newsroom/global/pdf/0831-congressional-service-briefing.pdf>

53. The ongoing COVID-19 pandemic also complicates 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-Detroit-Flint area" and "[t]he region continues to be hit hard by the coronavirus.").

54. 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.*²

55. Thus, absent intervention by this Court, Defendant will continue to violate Plaintiffs' constitutional and statutory rights to vote absentee (by mail or in person) and in person on Election Day in the upcoming November 3 election.

V. COVID-19 Does Not Relieve the City Clerk of Her Constitutional Duty to Issue Absentee Ballots Immediately.

56. On March 24, 2020, Governor Whitmer issued an executive order expressly stating that "activities necessary to manage and oversee elections" are "necessary government activities" that are not to be suspended. Executive Order 2020-21 (COVID-19), available at <https://www.michigan.gov/whitmer/0,9309,7-387-90499_90705-522626--,00.html>.

57. The Secretary of State has created at least six different programs to provide financial support to local clerks in connection with the upcoming general election. See, e.g., Ex.

² 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>>.

9, June 19, 2020 Michigan Bureau of Elections (“BOE”) email (“[Supplemental supply order form] allows clerks to use federal CARES funding to purchase additional supplies needed to process the expected increase in absentee balloting and other issues related to COVID-19 . . . Supplies available through this purchase order will be in addition to, not instead of, the PPE the Bureau of Elections is already providing to local jurisdictions . . . If you don’t place an order by June 30, there will be an additional purchasing opportunity after the August election.”); Ex. 10, June 23, 2020 BOE email (identifying various funding programs); Ex. 11, September 3, 2020 BOE email.

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

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

Declaratory Relief

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

60. There exists an actual case and controversy between the parties in that Plaintiffs allege that Defendant 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 of her application. MCL 168.761(1) (emphasis added). See also MCL 168.759(1) and (3).

61. Defendant has not processed ballot applications immediately, *i.e.*, within 24 hours as directed.

62. Plaintiffs are therefore entitled to declaratory relief.

Writ of Mandamus

63. 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.”).

64. Defendant has 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).

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

66. 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 Defendant comply with her legal duties to effectuate Plaintiffs’ rights.

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

Preliminary and Permanent Injunctive Relief

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

69. 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. Defendant’s failure to issue absentee ballots immediately to voters who have submitted ballot

applications infringes on Plaintiffs' constitutional right to vote by absentee ballot. Absent the relief Plaintiffs seek, Plaintiff Owens, like many other Detroit voters, face a substantial risk of not being able to effectuate her right to vote, let alone to vote by absentee ballot.

70. 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 Defendant credibly claim *any* harm when Plaintiffs are simply asking that she comply with her constitutional and statutorily mandated duties.

71. 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.

72. All four factors therefore 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 Defendant to show cause why a Writ of Mandamus should not issue;
- C. Declare that Defendant are required by Michigan law to issue absentee ballots immediately upon receipt of an application for absentee ballot by a registered voter;
- D. Issue a Writ of Mandamus from the Court ordering Defendant (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.

- E. Enter a preliminary and permanent injunction ordering Defendant (1) to process all pending absentee ballot applications submitted *before* this Court's order within 24 hours; (2) to process all absentee ballot applications received *after* this Court's order within 24 hours of their receipt; (3) to provide daily reports on the number of absentee ballot applications in Defendant's possession, and the number of ballots issued; (4) to hand-deliver ballots to affected voters in order to assure their timely return; and (5) staff the Detroit phone line from 9-9 each day for voters to call and get information on the status of their application or ballot.
- F. Grant Plaintiffs any such further relief as the Court deems equitable and just under the circumstances.

Dated: October 16, 2020

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