

STATE OF MICHIGAN  
IN THE COURT OF APPEALS

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D. ETTA WILCOXON,  
Plaintiff-Appellee,

v

STATE BOARD OF CANVASSERS,  
Defendant-Appellant.

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Court of Appeals No. NEW FILING

Ingham Circuit Court No. 13-944-NZ

**This elections case involves a ruling prohibiting State governmental action. Emergency relief is requested under MCR 7.205(E). A decision should be made by Friday, August 30, 2013 at 5:00pm.**

**BOARD OF STATE CANVASSERS  
EMERGENCY APPLICATION FOR LEAVE TO APPEAL**

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Dated: August 30, 2013

## TABLE OF CONTENTS

	<u>Page</u>
Table of Contents .....	i
Index of Authorities.....	ii
Statement of Question Presented .....	iii
Statutes Involved .....	iv
Statement of Jurisdiction.....	1
Introduction .....	2
Statement of Facts and Proceedings Below .....	3
Argument.....	7
I.    The trial court abused its discretion by ex parte enjoining Defendant from certifying the results of the August 6 <sup>th</sup> Detroit primary election, which included the race for mayor, city clerk and city council.....	7
A.    Standard of Review .....	7
B.    Plaintiff has not established a substantial likelihood of success on the merits of any of his alleged claims.....	8
1.    Plaintiff's claims are without merit.....	8
2.    Plaintiff does not meet the requirements of MCR 2.605.....	13
a.    Plaintiff's claim is moot.....	13
b.    Plaintiff's request for declaratory relief is without merit.....	14
3.    Plaintiff does not meet the requirements for mandamus.....	15
C.    The TRO harms the public interest. ....	15
D.    Plaintiff has not alleged sufficient irreparable harm to warrant injunctive relief.....	16
Conclusion and Relief Requested.....	17

## INDEX OF AUTHORITIES

Page

### Cases

<i>City of Port Huron v Amoco Oil Company, Inc</i> , 229 Mich App 616 (1998) .....	9
<i>Genesis Ctr, PLC v Comm'r of Financial &amp; Ins Servs</i> , 246 Mich App 531; 633 NW2d 834 (2001). .....	14
<i>Michigan Coalition of State Employee Unions, et al v Civil Service Commission</i> , 465 Mich 212; 634 NW2d 692 (2001) .....	7
<i>Michigan State Employees Ass'n v Dept of Mental Health</i> , 421 Mich 152; 365 NW2d 93 (1984) .....	7
<i>Miller v Miller</i> , 266 Mich 127; 253 NW 241 (1934) .....	11
<i>People v Plunkett</i> , 485 Mich 50; 780 NW2d 280 (2010) .....	8
<i>Rutter v Handy #1 Fractional School District Board</i> , 359 Mich 461 (1960) .....	12
<i>Shavers v Attorney General</i> , 402 Mich 554; 267 NW2d 72 (1978) .....	14
<i>Stamos v Genesee County Board of Canvassers</i> , 46 Mich App 636 (1973) .....	12, 13
<i>Stand Up for Democracy v Sec'y of State</i> , 492 Mich 588; 822 NW2d 159 (2012) .....	14
<i>UAW v Central Mich Univ Trustees</i> , 295 Mich App 486; 815 NW2d 132 (2012) .....	14
<i>US v Comstock</i> , 560 US 126; 130 S Ct 1949 (2010) .....	9

### Statutes

MCL 168.804 .....	4, 11
MCL 168.822 .....	1, 7, 10, 15
MCL 168.823 .....	9, 10
MCL 168.822 .....	1

### Rules

MCR 3.310 .....	8
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## STATEMENT OF QUESTION PRESENTED

1. Did the trial court abuse its discretion by ex parte enjoining Defendant from certifying the results of the City of Detroit's August 6, 2013, primary election, which included races for mayor, city clerk, and city council?

Appellant's answer: Yes.

Appellee's answer: No.

Trial court's answer: No.

## STATUTES INVOLVED

MCL 168.804

MCL 168.822

MCL 168.823

## STATEMENT OF JURISDICTION

This Court has jurisdiction under MCR 7.205(A)(1). Defendant Board of State Canvassers (Board) seeks leave to appeal the August 29, 2013 amended temporary restraining order issued by the Ingham County Circuit Court that enjoins Defendant from counting the actual ballots cast for write-in candidates during the August 6, 2013 primary election for the City of Detroit; handling and removing from the ballot boxes any ballots cast during the primary election at issue; and from certifying the results of the primary election. The court also scheduled a show cause hearing for Tuesday, September 3, 2013 at 2:00 p.m. but that is too late. By law, Defendant has only 10 days to certify the results of the election, which deadline also expires on Tuesday, September 3, 2013. MCL 168.882(2) and exhibit 1, Affidavit of Bureau of Elections Director Christopher M. Thomas, ¶¶ 9, 26.

If the results are not certified in time, then the 24,000 write-in voters in Detroit who cast ballots for mayor, clerk, police commissioner, and school board are at risk of being disenfranchised. Although the election was held some three weeks ago, none of the results are yet certified. The Wayne County Board of Canvassers voted 4-0 not to certify the results after election workers did not show how they tabulated approximately 24,000 write-in votes. (Exhibit 1, ¶ 7.) Because the results were not certified by the county, by operation of law, that responsibility transferred to the Board. MCL 168.882(2). Plaintiff is attempting to derail that process and confuse matters. This is **not** a recount. This is the certification of the official results. The recount process commences after the certification of the official

results, which the Board must complete by Tuesday, September 3, 2013. MCL 168.866.

## INTRODUCTION

“[T]he time element is now short and the ponderous [state] election machinery is already under way, printing the ballots. Absentee ballots have indeed already been sent out and some have been returned. The costs of reprinting all the ballots will be substantial and it may well be that no decision on the merits can be reached by the Court of Appeals in time to reprint the ballots excluding petitioners, should they lose on the merits. . . . I must deny the injunction, not because the cause lacks merit but because orderly election processes would likely be disrupted by so late an action. The time element has plagued many of these election cases; but one in my position cannot give relief in a responsible way when the application is a[s] tardy as this one.” [*Westermann v Nelson*, 409 US 1236, 1236 (1972) (Douglas, J., denying request for injunction) (emphasis added).]

When Justice Douglas penned these words in 1972, he was apparently channeling the August 6<sup>th</sup> Detroit mayoral primary and the time element plaguing this election. Although the ballots have already been cast, now more than three weeks later, the results have not yet been certified, and the orderly election process is now in serious jeopardy.

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The order issued ex parte by the Ingham County Circuit Court enjoins the Board of State Canvassers from certifying the results of the Detroit mayoral primary. The very last day for the Board to certify the results of the election under Michigan’s Election Law is Tuesday, September 3, 2013 (Ex 1, Thomas Affidavit, ¶ 26). Yet that is the same day on which the circuit court has issued a show cause order and is expected to conduct a hearing. (Ex 2, Amended TRO dated August 29, 2013.) If allowed to stand, this Order sets a dangerous precedent as the Board will

be prevented from complying with its statutory responsibility to certify the results, including counting approximately 24,000 write-in votes that were properly cast at that election.<sup>1</sup>

Plaintiff could have filed this emergency request on August 27<sup>th</sup> but failed to do so. Given that this is a holiday weekend, the delay in filing is critical as it interferes with the election process. This challenge so late in the process should be denied.

### **STATEMENT OF FACTS AND PROCEEDINGS BELOW**

Plaintiff, D. Etta Wilcoxon, a candidate for city clerk in the City of Detroit, filed this statutory challenge against the Board of State Canvassers to stop it from certifying the results of the August 6, 2013 primary election for the city. Plaintiff sought a temporary restraining order (TRO) asserting that the Board of State Canvassers lacks statutory authority to finish the canvass of that election.

A citywide primary election was held on August 6, 2013 to determine the two nominees who are entitled to advance to the November 5, 2013 general election for the office of Mayor. The Wayne County Board of Canvassers found alleged errors in the tabulation of write-in votes by election inspectors in the mayoral race. (Exhibit 1, Thomas Affidavit ¶ 7.) According to the “August 6, 2013 Election Canvass

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<sup>1</sup> After the results are certified, the recount process may begin, including the one filed by Plaintiff. (Ex 1, Thomas Affidavit.) The ballots must then be printed for the November general election and the absentee ballots mailed in a timely manner to overseas and military voters, which must be mailed 45 days prior to the election. MCL 168.759a.



Report” (Ex 1, att. A) prepared by the Wayne County Clerk, the county board approved name variations for write-in candidates for the cities of Dearborn and Detroit. The county’s results were determined by the number of hash marks each received, including those with approved name variations. The county clerk’s election staff reviewed 614 Election Day and Absentee Voter (AV) Poll Books. (Ex. 1, Thomas Affidavit, ¶ 7.) From this total, 137 Election Day and 42 AV Precincts did not have the required hash marks. *Id.* In addition, the write-in portion of AV 117 was torn out of the poll book. *Id.*

Notably, Michigan Election Law does not mandate the use of a particular type of “hash mark,” tally mark, check mark, or other symbol for keeping count, but rather provides:

In the canvass of votes cast for candidates for public office, the board shall first select and count the straight tickets and shall cause to be credited on the tally sheets the number to each candidate voted for on a straight ticket. *All other ballots shall be counted and tallied in such manner as will best insure accuracy and promptness in determining the result*, and the inspectors of election shall see that proper credit is given on the tally sheets to the candidates voted for on such ballots. *All computations and tallies shall be made upon the tally sheets used at such election.*

MCL 168.804. (Emphasis added). However, based on the alleged inconsistencies in the hash marks used—or not used—on the tally sheets, the Wayne County Board of Canvassers failed to certify the results of the mayoral race. On August 20, 2013, they voted 4-0 to send the matter to the Board of State Canvassers.

After the records were delivered to the Board of State Canvassers by the county on August 22, 2013, staff reviewed the poll books, statement of votes, and

tally sheets for the Election Day and AV precincts at issue. They found the following scenarios:

- Precincts in which poll workers correctly documented the number of write-in votes, and the number of write-in votes recorded on the statement of votes was equal to or less than the number of write-in votes indicated on the tabulator tape.
- Precincts in which poll workers correctly documented the number of write-in votes, but the number of write-in votes recorded on the statement of votes exceeded the number of write-in votes indicated on the tabulator tape.
- Precincts in which poll workers wrote the total number of write-in votes but did not document (through hash marks or otherwise) how they kept count, and the number of write-in votes recorded on the statement of votes was equal to or less than the number of write-in votes indicated on the tabulator tape.
- Precincts in which poll workers wrote the total number of write-in votes but did not document (through hash marks or otherwise) how they kept count, but the number of write-in votes recorded on the statement of votes exceeded the number of write-in votes indicated on the tabulator tape.

On August 27, 2013, the Board of State Canvassers met and conducted an open meeting to review the staff's findings and take public comments. (Ex. 1, Thomas Affidavit, ¶ 20.) During this meeting, the Board of State Canvassers (4-0) unanimously passed motions to:

- accept the write-in vote total reported by the City of Detroit for write-in votes cast at the August 6, 2013 primary for the office of Mayor, in precincts where such total is equal to or less than the number of write-in votes indicated on the tabulator tape.
- authorize staff to open ballot boxes for the purpose of verifying the accuracy of the Wayne County Board of Canvassers' Canvass Report in precincts where:
  - no documentation shows how election inspectors kept count of the number of write-in votes cast for declared write-in candidates;

- documentation shows how election inspectors kept count of the number of write-in votes for declared write-in candidates exists, but the total indicated on the statement of votes exceeds the number of write-in votes indicated on the tabulator tape; and
- documentation shows a discrepancy between the Wayne County Board of Canvassers' Canvass Summary and the statement of votes prepared by the election inspectors.

Staff commenced the tabulation process immediately after the Board meeting on Tuesday, August 27, and continued on August 28 and 29.

Although Robert Davis had advised on August 27 that litigation had been filed on August 27 in Ingham County Circuit Court, litigation was not commenced until Thursday, August 29. On August 29, the Ingham Circuit Court entered a TRO ex parte, which was then amended that same day. Defendant was deprived of an opportunity to appear at the time the TRO request was sought in order to argue against its issuance.<sup>2</sup>

Because the trial court abused its discretion in issuing the TRO, Defendant files the instant emergency application for leave to appeal along with motions to stay the TRO, stay the proceedings, waive the transcript requirements, and for immediate consideration.

**The Board will suffer substantial harm by awaiting final judgment before taking the appeal.**

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<sup>22</sup> When plaintiff's counsel contacted the Attorney General's office on August 29, he was on his way to court but stated that he did not know what judge was assigned to the case. Nor did the court call to verify or confirm that notice was provided even though the Attorney General's office is located minutes away from the courthouse. After Plaintiff's counsel appeared in the lobby of the Attorney General's office to serve the TRO, he then returned to court to amend the order. That order was amended at 3:50 p.m. and again, Plaintiff's counsel never mentioned that he was returning to court after he had served his documents earlier.

The results of the Detroit primary election will not be certified in time unless this Court grants relief. Michigan Election Law does not allow the 10 day deadline to be extended. The very last day for the Board to meet in order to certify the results is September 3, 2013. (Ex. 1, Thomas Affidavit, ¶ 26.) This is because Michigan's Election Law authorizes the county board to certify the election results within 14 days, and by operation of law, if that deadline is not met, the Board of State Canvassers steps into the shoes of the county board. MCL 168.822(2). In fact, the costs incurred by the state are borne by the county. *Id.* If the results are not certified, then the 24,000 write-in voters who voted in the Detroit primary will be disenfranchised. This result is undemocratic, unprecedented, and untenable.

## ARGUMENT

### **I. The trial court abused its discretion by ex parte enjoining Defendant from certifying the results of the August 6<sup>th</sup> Detroit primary election, which included the race for mayor, city clerk and city council.**

#### **A. Standard of Review**

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A temporary or preliminary injunction is extraordinary relief and "should issue only in extraordinary circumstances." *Michigan State Employees Ass'n v Dept of Mental Health*, 421 Mich 152, 157, 158; 365 NW2d 93 (1984); *Michigan Coalition of State Employee Unions, et al v Civil Service Commission*, 465 Mich 212, 226, n 11; 634 NW2d 692 (2001). The issuance of this extraordinary relief is determined by a four-factor analysis:

harm to the public interest if an injunction issues; whether harm to the applicant in the absence of a stay outweighs the harm to the opposing party if a stay is granted; the strength of the applicant's demonstration that the applicant is likely to prevail on the merits; and the demonstration that the applicant will suffer irreparable injury if a preliminary injunction is not granted. [Citation omitted]. This inquiry often includes the consideration of whether an inadequate legal remedy is available to the applicant. *Michigan State Employees Ass'n*, 421 Mich at 157, 158.

When seeking injunctive relief, plaintiffs have the burden of proof on each of these factors. MCR 3.310(A)(4). Plaintiff fails to meet this burden, and her motion for injunctive relief should have been denied.

**B. Plaintiff has not established a substantial likelihood of success on the merits of any of his alleged claims.**

**1. Plaintiff's claims are without merit.**

Plaintiff's complaint and motion fail to offer any coherent explanation as to how the Board of State Canvassers could ever certify the election if they are unable to open the ballot boxes. First, consider the Michigan Election Law. The Michigan Supreme Court has held that when interpreting a statute, courts must "ascertain the legislative intent that may reasonably be inferred from the words expressed in the statute," which requires courts to consider "the plain meaning of the critical word or phrase as well as its placement and purpose in the statutory scheme." *People v Plunkett*, 485 Mich 50, 58; 780 NW2d 280 (2010).

Plaintiff's argument depends upon the conclusion that the Board of State Canvassers lacks authority to open the ballot boxes. However, the statute itself

includes no such prohibition, and in fact grants the Board of State Canvassers the power to “make the necessary determinations and certify results.” MCL 168.822(2).

Although Michigan Election Law does not define what is meant by “necessary” determinations, that term has been defined in other statutes to mean those actions that are required and appropriate to carry out the purpose and effect of the statute. See e.g. *City of Port Huron v Amoco Oil Company, Inc*, 229 Mich App 616, 629 (1998); *US v Comstock*, 560 US 126; 130 S Ct 1949, 1956 (2010). When applied here, it is clear that the Board has the authority to open the ballot boxes and otherwise do what is appropriate to certify the results of the election.

Second, the Board of State Canvassers is only called upon to conduct a canvass once the county board of canvassers fails to certify the election results. MCL 168.822(2). At that point, the State Board is called upon to essentially stand in the shoes of the county board in order to certify the election results once the county board has failed to act. This reading is consistent with the fact that the cost of conducting the certification process is to be borne by the county—even when the state conducts the canvass. *Id.*

Third, it is undisputed that the county board clearly had the authority to open the ballot boxes and direct inspectors to count them—the statute expressly provides for it:

The board of county canvassers is empowered to summon the persons having the boxes containing the ballots cast at the election and the keys and seals of the boxes, or having the returns or the poll lists or tally sheets used and made at the elections, to bring the boxes, keys, seals, returns, poll lists, and tally sheets before the board of county canvassers, and *the board of county canvassers is authorized to open*

*the boxes* and take any books or papers bearing upon the count and return of the election inspectors of the election precincts, but the board of county canvassers shall not remove or mark the ballots.

MCL 168.823(2). (Emphasis added).

The board of county canvassers shall correct obvious mathematical errors in the tallies and returns. *The board of county canvassers may, if necessary for a proper determination, summon the election inspectors before them, and require them to count any ballots* that the election inspectors failed to count, to make correct returns in case, in the judgment of the board of county canvassers after examining the returns, poll lists, or tally sheets, the returns already made are incorrect or incomplete, and the board of county canvassers *shall canvass the votes from the corrected returns*. In the alternative to summoning the election inspectors before them, the board of county canvassers may designate staff members from the county clerk's office to count any ballots that the election inspectors failed to count, to make correct returns in case, in the judgment of the board of county canvassers after examining the returns, poll lists, or tally sheets, the returns already made are incorrect or incomplete, and the board of county canvassers shall canvass the votes from the corrected returns. When the examination of the papers is completed, *or the ballots have been counted*, they shall be returned to the ballot boxes or delivered to the persons entitled by law to their custody, and the boxes shall be locked and sealed and delivered to the legal custodians.

MCL 168.823(3) (emphasis added).

There is nothing improper about opening the ballot boxes for purposes of making correct returns and completing the canvass. Plaintiff's argument hinges on the idea that this authority is limited to the county board and is prohibited when performed by the Board of State Canvassers. Again, this is contrary to the broad grant of authority conferred on the Board to "make necessary determinations" in order to certify the election results. MCL 168.822.

But moreover, Plaintiff's argument simply makes no sense, and would result in an unworkable statutory construction. If the Board of State Canvassers cannot

open the ballot boxes as the county board could, how could it possibly make correct returns? The event that brought this issue to the fore—the failure of election inspectors to properly complete their tally sheets—perfectly demonstrates the necessity of being able to access the ballot boxes and count the ballots. If the boxes cannot be opened, then the ballots cannot be counted. If the ballots cannot be counted, then the voters will be disenfranchised—an untenable result.

This result is also contrary to a long line of Michigan cases. In *Miller v Miller*, 266 Mich 127; 253 NW 241 (1934), the Michigan Supreme Court interpreted a provision with identical language<sup>3</sup> and on similar facts. In *Miller*, election workers failed to keep tally sheets. The Supreme Court refused to invalidate the voters' ballots based on a procedural mistake of the election workers:

It is claimed the statute, 1 Comp. Laws 1929, § 3155, which provides: "All computations and tallies shall be made upon the tally sheets used at such election," is mandatory and the failure of the election officials in that precinct to observe it vitiates the election therein and the entire precinct should be thrown out. *There is no provision in the statute which excludes the vote of the precinct or says the election therein shall be void for failure to make the computations and tallies upon the tally sheets provided.* The primary object of an election is to enable the voters of the precinct to express their choice of candidates. They ought not to be deprived of the right to express that choice by the fault or neglect of election officials. *The authorities all recognize that fraud upon the part of the voter vitiates his ballot, but fraud or mistake on the part of the inspectors of election should not operate to defeat the will of the voter.* *People, ex rel. Hayes, v. Bates*, 11 Mich. 362 (83 Am. Dec. 745); *People, ex rel. Prosecuting Attorney, v. Avery*, 102 Mich. 572; *Horning v. Board of Canvassers of Saginaw County*, 119 Mich. 51. It is not claimed the election itself in this precinct was in any way irregular.

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<sup>3</sup> MCL 168.804 currently reads: "All computations and tallies shall be made upon the tally sheets used at such election." The predecessor law, 1 Comp. Laws 1929, § 3155 contained this exact text.



The irregularity was in the failure of the election officers to use the official tally sheets and the mistake made in the count.

*Miller*, 266 Mich at 132-133. (Emphasis added.) The Court also quoted approvingly from *McCrary on Elections* (4th Ed.), § 227: “Ignorance, inadvertence, mistake, or even intentional wrong on the part of local officials, should not be permitted to disfranchise a district.” *Miller*, 266 Mich at 134. It is significant that in the more than 75 years following the *Miller* decision and various other amendments to the election law, the statutory language has never been amended to void ballots based on flaws in the tally sheets.

The Supreme Court reaffirmed this principle in *Rutter v Handy #1 Fractional School District Board*, 359 Mich 461, 466 (1960). There, the court confronted a controversy over whether an election had been properly “called” and—citing to *Miller*—the court concluded that procedural defects did not justify invalidating the election:

*We have consistently held, as we did in Carnes , that irregularities by officials or their failure to comply with statutes' directory provisions will not be held to invalidate an election without a showing that any elector was thereby deprived of his right to vote or in any way misled or prejudiced or that the result was thereby affected or changed. Rosenbrock v. School District No. 3, 344 Mich 335; Richey v. Monroe County Board of Education , 346 Mich 156; Connine v. Smith , 190 Mich 631; Attorney General, ex rel. Miller, v. Miller , 266 Mich 127 (106 ALR 387); Thompson v Cihak , 254 Mich 641; Adsit v. Secretary of State , 84 Mich 420 (11 LRA 534). Here 60 of the 66 eligible voters voted. If the remaining 6 had voted adversely, the result would not have been changed. No fraud or deception is shown or claimed. Under such circumstances and the decisions in the above cited cases the election must be upheld and the transfer held lawful. (Emphasis added).*

Finally, the Court of Appeals in *Stamos v Genesee County Board of Canvassers*, 46 Mich App 636 (1973) refused to enjoin the county board of canvassers from opening, reviewing, or counting absentee ballots where those ballots were delivered to the precinct late due to extraordinary weather. The Court of Appeals issued a clear statement on its reasoning:

The overwhelming weight of authority holds that *an election official's failure to comply with statutory provisions governing election procedures will not, absent an unequivocal legislative expression to the contrary, be held to deny effect to ballots lawfully cast by the voters*. The relatively minor procedural irregularity in this case should not invalidate the 22 absentee ballots challenged by plaintiff.

*Stamos*, 46 Mich App at 646. (Emphasis added). The *Miller* decision controls and Plaintiff is unlikely to prevail on the merits of her claim.

**2. Plaintiff does not meet the requirements of MCR 2.605.**

**a. Plaintiff's claim is moot.**

Plaintiff, a candidate for city clerk, claims that she will not be able to seek a recount because staff began to physically touch and count the ballots that were cast in the August 2013 primary. She sought a TRO to prevent the Board of State Canvassers "from opening up ballot boxes and taking out the actual ballots cast during the August 2013 Primary." (Ex 3, Wilcoxon Affidavit ¶ 7.) Because that part of the process has already been completed, Plaintiff's request for relief is moot. Ballots have already been examined and properly counted. (Thomas Affidavit ¶¶ 22-23.)

**b. Plaintiff's request for declaratory relief is without merit.**

With respect to declaratory judgment actions, MCR 2.605(A)(1) provides:

In a case of *actual controversy* within its jurisdiction, a Michigan court of record may declare the rights and other legal relations of an interested party seeking a declaratory judgment, whether or not other relief is or could be sought or granted. [Emphasis added.]

MCR 2.605 “does not limit or expand the subject-matter jurisdiction of the courts, but instead incorporates the doctrines of standing, ripeness, and mootness.” *UAW v Central Mich Univ Trustees*, 295 Mich App 486, 495; 815 NW2d 132 (2012). “The existence of an ‘actual controversy’ is a condition precedent to invocation of declaratory relief.” *Shavers v Attorney General*, 402 Mich 554, 588; 267 NW2d 72 (1978); see also *Genesis Ctr, PLC v Comm’r of Financial & Ins Servs*, 246 Mich App 531, 544; 633 NW2d 834 (2001). “An ‘actual controversy’ . . . exists when a declaratory judgment is necessary to guide a plaintiff’s future conduct in order to preserve legal rights. The requirement prevents a court from deciding hypothetical issues.” *UAW*, 295 Mich App at 495 (citations omitted) (footnotes omitted). “The essential requirement of an ‘actual controversy’ under the rule is that the plaintiff pleads and proves facts that demonstrate an “ ‘adverse interest necessitating the sharpening of the issues raised.’ ” ” *Id.* (citations omitted) (footnotes omitted).

Now that the ballots have already been touched and counted by staff, Plaintiff’s concerns are moot as this part of the certification process is over.  
(Thomas Affidavit ¶¶ 23, 25.)

### **3. Plaintiff does not meet the requirements for mandamus.**

“Mandamus is an extraordinary remedy and the primary purpose of a writ of mandamus is to enforce duties required by law.” *Stand Up for Democracy v Sec’y of State*, 492 Mich 588, 618; 822 NW2d 159 (2012). A writ of mandamus is appropriate only where the plaintiff has shown “that [she] has a clear legal right to the performance of the specific duty sought to be compelled and that the defendant[s] ha[ve] a clear legal duty to perform the act.” *Id.*

For the reasons set forth in this Brief, Plaintiff has failed to show that she has a clear legal right to mandamus and has also failed to prove that the Board has a clear legal duty to fail to certify the results. In fact, it’s quite the opposite. Furthermore, mandamus will not lie for a discretionary act. The Board is vested with discretion to decide what necessary determinations must be made during the canvassing and certification process, as provided by MCL 168.822 (2). Plaintiff’s claim for mandamus is without merit.

### **C. The TRO harms the public interest.**

This is no ordinary case. Plaintiff’s attempt to disenfranchise nearly 24,000 ballots violates the core principles of democratic government. In a representative democracy, every vote matters. Casting aside even one ballot for the purpose of expedience would be too many, but in this case, where tens of thousands of ballots are at stake, it is simply unimaginable. That result undermines the right to vote and the public’s confidence in the integrity of public elections.

Also, aside from the absurdity of Plaintiff's argument, it takes virtually no imagination to see how this strained interpretation could be bent to mischief and abuse. Under Plaintiff's interpretation, if an election inspector working in a controversial precinct were perhaps interested in putting their thumb on the scale, all they would need do is to throw away a tally sheet or fail to show their computation on a tally sheet, and those ballots would be discounted.

Such a result does not balance against the complete absence of harm to Plaintiff through the action of the Board of State Canvassers in opening the ballot boxes. Plaintiff will still be able to pursue any recount or appeal following the certification. In fact, Plaintiff already has filed a recount petition. The ballots themselves will not be destroyed or harmed. Plaintiff is no worse off following the conclusion of the canvass and the certification of correct election results.

Moreover, the TRO is overbroad as it prohibits the Board from certifying any of the Detroit primary results, not just the race for mayor.

**D. Plaintiff has not alleged sufficient irreparable harm to warrant injunctive relief.**

Again, Plaintiff simply has not been harmed, nor has she demonstrated any likelihood of being irreparably harmed, by any act of the Board of State Canvassers. In fact, the canvass has now been completed and her arguments are, therefore, moot.

Further, Plaintiff continues to have an adequate remedy at law: a recount once the results are certified. If she believes the election results are somehow flawed, that is her recourse. The canvass has not prevented Plaintiff from pursuing

her legal remedies—in fact, they are the necessary predicate for her to initiate those remedies. Under these circumstances, Plaintiff has not demonstrated any irreparable harm, and her claim for injunctive relief must fail.

### **CONCLUSION AND RELIEF REQUESTED**

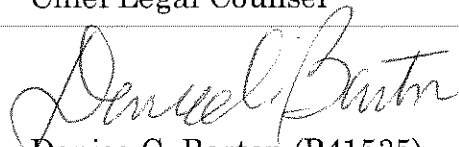
Defendant respectfully requests this Court, by 5:00pm today (Friday, August 30, 2013) or, at the latest, by 9:00 a.m. on Tuesday, September 3, 2013, to (1) grant the application for leave to appeal, (2) immediately dissolve the TRO, and (3) stay all proceedings at the trial court. The integrity of the election results from the August 6<sup>th</sup> Detroit mayoral primary is at stake in Michigan's largest city.

Respectfully submitted,

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Dated: August 30, 2013

STATE OF MICHIGAN  
IN THE COURT OF APPEALS

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Plaintiff-Appellee,

v

STATE BOARD OF CANVASSERS,

Defendant-Appellant.

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Court of Appeals No. NEW FILING

Ingham Circuit Court No. 13-944-NZ

Exhibit 1

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STATE OF MICHIGAN  
IN THE COURT OF APPEALS

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D. ETTA WILCOXON,  
Plaintiff-Appellee,

Court of Appeals No. NEW FILING  
Ingham Circuit Court No. 13-944-NZ

v

STATE BOARD OF CANVASSERS,  
Defendant-Appellant.

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STATE OF MICHIGAN)  
                                  )ss  
COUNTY OF INGHAM)

**AFFIDAVIT OF CHRISTOPHER M. THOMAS**

Christopher M. Thomas, being first duly sworn, deposes and says as follows:

1. I bring this affidavit in support of Defendant's Emergency Application for Leave and Emergency Motion for Stay.
2. I have been employed by the Secretary of State as Director of Elections since June 21, 1981 and in such capacity serve as Director of the Bureau of Elections and Secretary to the Board of State Canvassers.
3. I am personally knowledgeable about provisions of the Michigan Election Law regarding the canvassing of ballots.
4. On August 6, 2013, a citywide primary election was held in Detroit for the purpose of determining the nominees who would advance to the November 5, 2013 general election for the offices of Mayor, Clerk, City Council, and Police Commissioner. Election night results compiled by the city were and continue to be



unofficial until such time as there is an official certification of the results. County canvassing boards have 14 days after an election to canvass an election. MCL 168.822(1). A recent amendment to Michigan Election Law eliminated all local boards of canvassers and moved all election canvassing to the 83 boards of canvassers, beginning with the August 6 primary.

5. On August 6, 2013 there were 10 Wayne County jurisdictions with elections. Detroit was one of the ten.

6. Questions arose on the final day of the Wayne County canvass concerning the tabulation of write-in votes and the effect of incomplete records on the race for mayor. These questions could not be thoroughly addressed and resolved on August 20, 2013, the last day of the canvass.

7. Consequently, the Wayne County Board of Canvassers voted unanimously (4-0) not to certify the Detroit primary. The Wayne County Board of Canvassers pointed to alleged errors in the tabulation of write-in votes by election inspectors in the mayoral race as the reason for its failure to certify the election results for the City of Detroit. According to the "August 6, 2013 Election Canvass Report" prepared by the Wayne County Clerk:

The [Wayne County] Board of Canvassers approved name variations for write-in candidates for the Cities of Dearborn and Detroit. Write-in results were determined by the number of hash marks each candidate received, including those with approved name variations.

\* \* \*

City of Detroit – [The Wayne County Clerk's] staff reviewed 614 Election Day and AV Poll Books. 137 Election Day and 42 AV Precincts did not have the required hash marks. In addition, the

write-in portion of AV 117 was torn out of the poll book. (Attachment 1.)

8. Although the Wayne County Board of Canvassers had clear legal authority during the course of the county canvass to summon appropriate personnel (including election inspectors), to require that personnel to produce election materials, to open and examine the contents of ballot containers or other sealed records, and the duty to correct obvious mathematical errors in the tallies and returns, they did not do so. MCL 168.823(1)-(3).

9. When the Board of County Canvassers fails to complete the canvass within the required 14-day period, Michigan Election Law requires them to immediately deliver "all records and other information pertaining thereto" to the Secretary of the Board of State Canvassers, and requires the Board of State Canvassers to "make the necessary determinations and certify the results within 10 days." MCL 168.822(2).

10. On August 22, 2013, certain election records and materials -- poll books, statements of votes, the Wayne County Board of Canvassers' canvass report and recommendations prepared by staff of the Wayne County Clerk and various reports generated by that staff -- were transferred to Sally Williams, Director of Elections Liaison Division, Department of State. This transfer of the canvass occurred by operation of law and started the 10-day period to complete the canvass. MCL 168.822(2).

11. The certification of the mayoral primary using the canvass report presented to the Wayne County Board of Canvassers would have resulted in a

massive disenfranchisement of voters in a magnitude never seen in my tenure as State Election Director. The magnitude of the disenfranchisement would have been more than 24,000 valid write-in votes.

12. This election included an extraordinary situation in the case of the primary race for Mayor of Detroit, with a major write-in effort by one of the candidates.

13. Historically, it is extremely rare for a declared write-in candidate to receive enough votes to be nominated as one of two candidates to move on to the November election.

14. A large-scale write-in effort presents major challenges, not just for the candidate, but for election officials at every level. Requirements with respect to recording and tabulating write-in votes involve several detailed steps. This poses particular challenges in training election workers, in completing the unofficial election night canvass, and in completing the final canvass and certification—all of which become substantial undertakings.

15. The election workers and staff of both the City of Detroit and the Wayne County Clerk's office developed structured instructions and procedures to be used in processing the write-in votes.

16. During the State's initial review, mistakes were discovered with the processing and recording of write-in votes, at both the City and County level. At the city level, although precinct workers were instructed to show their work in tallying the write-in compilations, some did not do as required. MCL 168.804 clearly

contemplates that the statement of votes will show the tally in addition to the results.

17. Michigan Election Law does not mandate the use of a particular type of "hash mark," tally mark, check mark, or other symbol for keeping count, but rather provides:

In the canvass of votes cast for candidates for public office, the board shall first select and count the straight tickets and shall cause to be credited on the tally sheets the number to each candidate voted for on a straight ticket. *All other ballots shall be counted and tallied in such manner as will best insure accuracy and promptness in determining the result*, and the inspectors of election shall see that proper credit is given on the tally sheets to the candidates voted for on such ballots. *All computations and tallies shall be made upon the tally sheets used at such election.* (Emphasis added.) MCL 168.804.

See attachment 2 for tallies that should be acceptable.

18. The county canvassers were faced with a recommendation to not count any write-in votes if the compilation worksheets were not completed using *hash marks*. This was recommended even though the precinct tabulator tapes recorded a number of darkened write-in ovals in the office of Mayor substantially greater than the number of write-in votes recommended by the canvass report for write-in candidates. These tabulator tape totals indicate that write-in votes were recorded and detected by tabulator machines. Prior to the completion of the county canvass, there is broad authority and sufficient tools outlined in Michigan Election Law to conduct a thorough canvass and correct any errors that may have occurred. MCL168.823. See attachments 2 and 3.

19. Prior to the August 27, 2013 meeting of the Board of State Canvassers, staff for the Board of State Canvassers reviewed the poll books, statement of votes,

and tally sheets for the 184 Election Day and absent voter precincts at issue and found the following:

- Precincts in which poll workers correctly documented the number of write-in votes, and the number of write-in votes recorded on the statement of votes was equal to or less than the number of write-in votes indicated on the tabulator tape.
- Precincts in which poll workers correctly documented the number of write-in votes, but the number of write-in votes recorded on the statement of votes exceeded the number of write-in votes indicated on the tabulator tape.
- Precincts in which poll workers wrote the total number of write-in votes but did not document (through hash marks or otherwise) how they kept count, and the number of write-in votes recorded on the statement of votes was equal to or less than the number of write-in votes indicated on the tabulator tape.
- Precincts in which poll workers wrote the total number of write-in votes but did not document (through hash marks or otherwise) how they kept count, but the number of write-in votes recorded on the statement of votes exceeded the number of write-in votes indicated on the tabulator tape.
- Precincts in which the poll workers did provide sufficient documentation through markings other than hash marks such as an X, a check mark or an diagonal slash mark, but the county canvass report presented to the county canvassers, but not approve, recommended not counting any of those write-in votes.

20. On Tuesday, August 27, 2013, a Board of State Canvassers meeting was held. The Board received the report of staff's preliminary findings and voted unanimously to allow staff to finish the examination of the records from the write-in votes that were cast in the August 6<sup>th</sup> Detroit primary, including opening up ballot containers and examining any ballots, if necessary. The Board took these actions under the authority granted to them in Michigan Election Law as it became the Board's duty to continue and complete the canvass. MCL 168.822(2).

21. The Board of State Canvassers' process began in the afternoon on August 27, 2013 and concluded at noon on August 29, 2013. The State canvass was supervised by Michigan Department of State, Bureau of Elections staff who specialize in election administration in Michigan. The staff members overseeing the canvass are the same staff members who train Michigan's county, city and townships clerks on how to run elections and the 83 boards of county canvassers on how to conduct canvasses and recounts. All appropriate steps were taken when unsealing and re-sealing ballot containers to thoroughly document the process and to ensure any recount that has or will be requested after the election is certified will not be impeded. There are specific processes for maintaining the chain of custody involving sealed ballot containers and documentation of seal numbers in poll books which also remain sealed. See attachment 4 Summary of Canvass Processes. Plaintiff Wilcoxon has already filed a recount petition with the Wayne County Clerk and nothing done in the State canvass has adversely affected her petition.

22. Recount is a term of art that means an entirely new examination of the certified results (pollbooks, statements of votes, ballots, etc.) in affected precincts. In a recount, the election results certified by the county canvassing board may be set aside and a new vote total, the results of the recount, would be certified by the board responsible for conducting the recount. Here, there are no certified results because no board has completed the canvass and certified the results.

23. The Board of State Canvassers has NOT conducted a recount of the Detroit Mayoral primary. On the contrary, it is impossible to even schedule a

recount in Michigan before there is canvass that actually certifies the election. No Detroit primary races have been certified. It is common to open ballot boxes and retabulate ballots during a canvass. The Wayne County Board of Canvassers' report states at least two instances where entire precincts were retabulated during the county canvass, which demonstrates that the Wayne County Board of Canvassers took follow-up action for some precincts during their portion of the canvass.

24. The Board of State Canvassers must have the same authority as a board of county canvassers to complete a canvass once a county has failed to certify in 14 days under MCL 168.822 and 823. Without the same authority to count ballots that had not been counted and to correct totals and reports, something the Wayne County Board of Canvassers was unwilling to do, the Board of State Canvassers would be forced to disenfranchise 24,746 Detroit voters. The poll workers in some Detroit precincts failed to show their tally work and Wayne County failed to ensure that the voters in those precincts were not disenfranchised by the errors of the poll workers.

25. Consistent with the Board of State Canvassers' motions, 385 precincts where the totals were in question were reviewed and tabulated in order to ascertain an accurate count of the write-in ballots cast. The unofficial results released by Detroit city clerk on election night showed Mr. Duggan receiving more than 44,000 write-in votes – votes in which Mr. Duggan's name was spelled correctly ("Mike Duggan"). The recommend Wayne County canvass report showed Mr. Duggan receiving only 23,970 write-in votes. Preliminary figures from State canvass of the

write-in votes show Mr. Duggan receiving 48,716 -- an astounding 24,746 additional valid votes.

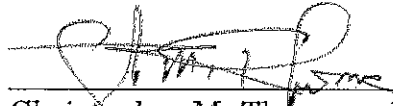
26. A Board meeting has been scheduled to certify the results within the deadline on September 3, 2013 at Cadillac Place, in Detroit, Michigan. If any order is entered to interfere with this schedule, the Board will be unable to meet the 10-day deadline and will lose jurisdiction to canvass the Detroit primary. Michigan Election Law does not contemplate this occurrence. Note: the 10<sup>th</sup> day after taking possession of the Wayne County records is September 1. MCL 168.13 provides that when a deadline falls on a holiday or weekend, it moves to the next business day. In this case the next business day is Tuesday, September 3.

27. Delays in canvassing the Detroit primary will shortly have adverse impact on the conduct of the November general election. After the primary is certified there are a number recounts that have been requested and will likely take a few weeks to complete. Under the Uniformed and Overseas Citizens Absentee Voter Act (UOCAVA) and Michigan Election Law, MCL 168.759a, absentee ballots must be prepared and delivered to the County Clerk by the 47<sup>th</sup> day prior to Election Day, or by September 19, 2013. Absent voter ballots must be available for distribution to all voters, and especially military and overseas voters, no later than the 45<sup>th</sup> day before the November Election, or by September 21, 2013. The deadline for distribution of absent voter ballots is governed by both the Federal Military and Overseas Voters Empowerment Act, 42 USC 1973ff-1(a)(8), and Michigan Election Law, MCL 168.714 and 759a.



28. Plaintiff Wilcoxon's allegation that my 'personal politics' and 'personal affiliations with Mike Duggan' have affected my decisions is untruthful, absurd, and without foundation.

Further, affiant sayeth not.

  
\_\_\_\_\_  
Christopher M. Thomas  
Director, Bureau of Elections

Sworn to and subscribed before me, this  
30 day of August, 2013

  
\_\_\_\_\_

Notary Public

Eaton County, Michigan

Acting in Ingham County, Michigan

My commission expires: 7-31-2020

# ATTACHMENT 1

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## August 6, 2013 Election Canvass Report

This election included nine (9) local communities – Allen Park, Dearborn, Detroit, Ecorse, Hamtramck, River Rouge, Romulus, Taylor and Trenton and one (1) School District – South Redford.

1. The canvass began on Wednesday, August 7<sup>th</sup>.
2. Staff canvassed 745 precincts. Included were 603 Election Day precincts and 142 Absent Voter Counting Boards. The City of Trenton processed their Absent Voter Ballots at the polls.

All Out-County Poll Books and tapes required were received on arrival. The City of Detroit delivered 482 Precinct Poll Books and 125 AV Poll Books.

The Detroit inventory was completed on Wednesday afternoon. Staff contacted the City of Detroit and we received the balance of 7 Precinct Poll Books on Thursday morning.

### 3. Plus/Minus

#### Out-County

- 116 Election Day Precincts and AV Counting Boards balanced to "0".
  - 5 precincts were unbalanced (no reasonable explanation-Dearborn, Hamtramck, Taylor).
  - 9 precincts were off by 1 (reasonable explanation Dearborn-6, Hamtramck-1, Taylor-2).
- 
- 4 AV precincts were off by 1 (Dearborn-2, Ecorse-1 and Hamtramck-1).
  - 1 Election Day precinct was off by 2 (Dearborn).

#### Detroit Election Day Precincts

- 430 City of Detroit Election Day Precincts balanced to "0".
- 58 Election Day Precincts were off by 3 or less.
- 1 Election Day Precinct was off by 4 and had a reasonable explanation.
- Re-ran ballots for 2 precincts (Election Day Precincts 112 and 198), because the tapes were incomplete and they balanced to "0"

- 6 Election Day Precinct tapes had to be printed, because they were not delivered to the canvass (65, 90, 97, 163, 167, and 486) and they balanced to "0".

**Detroit Absent Voter Precincts**

- 42 AV Counting Boards balanced to "0"
- 83 AV Counting Boards were off by 3 or less.

4. Completed poll book check for seals and signatures. The following communities were contacted by staff to obtain missing seal numbers for the ballot containers:

- 1 – City of Dearborn (Election Day Precincts)
- 3 – City of Detroit (2-Election Day Precincts and 1-AV Precinct)

The following communities were contacted by staff to obtain signatures of election inspectors that certified that the ballot containers were properly sealed:

- 2 – City of Allen Park (Election Day Precincts)
- 3 – City of Dearborn (Election Day Precincts)
- 1 – City of Hamtramck (Election Day Precincts)
- 1 – City of Romulus (Election Day Precincts)
- 1 – City of Taylor (Election Day Precincts)
- 23 – City of Detroit (13 Election Day and 10 AV)

5. Provisional Ballot Reports were received as follows:

- 1 valid Envelope Ballot in River Rouge
- 2 valid Envelope Ballots in Detroit
- 77 Invalid Envelope Ballots in Detroit.

6. The Board of Canvassers approved name variations for write-in candidates for the Cities of Dearborn and Detroit.

Write-in results were determined by the number of hash marks each candidate received, including those with approved name variations.

- City of Dearborn – staff reviewed 55 Election Day and AV Poll Books. Two (2) precincts did not have the required hash marks.
- City of Detroit – staff reviewed 614 Election Day and AV Poll Books. 137 Election Day and 42 AV Precincts did not have the required hash marks. In addition, the write-in portion of AV 117 was torn out of the poll book.

7. This canvass was quite challenging and tedious. As always, staff was very focused and diligent in their work. The official certified results will be posted on the County Clerk's website.

## OFFICIAL RESULTS

WAYNE COUNTY BOARD OF CANVASSERS  
STATEMENT OF VOTESAUGUST 6, 2013  
PRIMARY ELECTION

The whole number of votes given for candidates for the office of			Put figures in this column
DETROIT - MAYOR - 4 YEAR TERM (1) POSITION			
was	Sixty Nine thousand Nine hundred Thirty Three		69,933
and they were given for the following persons:			
#	PERSONS RECEIVING THE VOTES	NUMBER OF VOTES WRITTEN IN WORDS	
1	Tom Barrow	Three thousand Six hundred Ninety Nine	3,699
2	Angelo Scott Brown	One hundred Eighty Two	182
3	D'Artagnan M. Collier	Ninety One	91
4	Krystal A. Crittendon	Five thousand Three hundred Eleven	5,311
5	Fred Durhal, Jr.	Eight hundred Forty Two	842
6	Herman Griffin	One hundred Sixty Five	165
7	Lisa L. Howze	Four thousand Five hundred Ninety One	4,591
8	Willie G. Lipscomb, Jr.	Three hundred Three	303
9	Mark Murphy	One hundred Forty Two	142
10	Benny N. Napoleon	Twenty Eight thousand Three hundred Ninety One	28,391
11	John Olumba	One thousand Three hundred Twenty Nine	1,329
12	Sigmunt John Szczepkowski, Jr.	One hundred Forty Six	146
13	John Telford	One hundred Ten	110
14	Jean Vonkamp	One hundred Thirty Eight	138
15	Alga Marie Anderson-Bowison	Fifty Three	53
16	Ricardo Brown	Zero	0
17	Tawanza Brown	Five	5
18	Walter Cole	Six	6
19	Michael Thaddeus Dugeon	Four hundred Forty Five	445
20	Mike Duggan	Twenty Three thousand Nine hundred Seventy	23,970
21	Vellina Patterson Dockery	Two	2
22	Cheryl Franklin	Five	5
23	Clyde Darnell Lynch	One	1
24	Willie McLeod	Zero	0
25	Percy Robert Ross, III	Six	6
		Sixty Nine thousand Nine hundred Thirty Three	69,933

AUGUST 20, 2013

WAYNE COUNTY BOARD OF CANVASSERS  
STATEMENT OF VOTES

AUGUST 6, 2013  
PRIMARY ELECTION

The whole number of votes given for candidates for the office of		Put figures in this column
DETROIT - CLERK - 4 YEAR TERM (1) POSITION		
was	Eighty Eight thousand One hundred Ninety Seven	88,197
and they were given for the following persons:		
#	PERSONS RECEIVING THE VOTES	NUMBER OF VOTES WRITTEN IN WORDS
1	Scotty Boman	Four thousand Four hundred Fifty Six
2	James Cole, Jr.	Eight thousand Two hundred Twenty Two
3	Lucinda J. Darrah	Two thousand Eight hundred Sixty Eight
4	D. Etta Wilcoxon	Fourteen thousand Nine hundred Forty Six
5	Janice M. Winfrey	Fifty Seven thousand Six hundred Seventy Two
6	Anthony C. Ewell	Thirty Three
	TOTAL	Eighty Eight thousand One hundred Ninety Seven
		88,197

The whole number of votes given for candidates for the office of		Put figures in this column
DETROIT - CITY COUNCIL AT-LARGE - 4 YEAR TERM (2) POSITIONS		
was	One hundred Fifty One thousand Nine hundred Thirty One	151,931
and they were given for the following persons:		
#	PERSONS RECEIVING THE VOTES	NUMBER OF VOTES WRITTEN IN WORDS
1	Cedric Banks	Five thousand Three hundred Twenty Five
2	David Bullock	Fifteen thousand Seven hundred Forty Six
3	Angles Lisa Hunt	Five thousand Five hundred Twenty Three
4	Sauntéel Jenkins	Fifty One thousand Nine hundred Seventy One
5	Brenda Jones	Forty Five thousand Five hundred Ninety Four
6	Monica Lewis-Patrick	Nine thousand Seven hundred Seventy Five
7	Roy McCalister, Jr.	Thirteen thousand Four hundred Fourteen
8	Jessica M. Rayford-Clark	Four thousand Five hundred Sixteen
9	Derrick A. Coates	One
10	Charles Coleman	Forty Four
11	Dobey Gavin	One
12	R. E. Lee	Seven
13	Hosea Lee Walker, Jr.	Four
14	Cheryl A. Wellman	Eight
15	Bobby Mae White	Two
	TOTAL	One hundred Fifty One thousand Nine hundred Thirty One
		151,931

AUGUST 20, 2013

## OFFICIAL RESULTS

WAYNE COUNTY BOARD OF CANVASSERS  
STATEMENT OF VOTESAUGUST 6, 2013  
PRIMARY ELECTION

The whole number of votes given for candidates for the office of			Put figures in this column
DETROIT - CITY COUNCIL DISTRICT 1 - 4 YEAR TERM (1) POSITION			
was	Fifteen thousand Six hundred Seven		15,607
and they were given for the following persons:			
#	PERSONS RECEIVING THE VOTES	NUMBER OF VOTES WRITTEN IN WORDS	
1	James Kyle Beeler	Eight hundred Forty Nine	849
2	Osei Bomani	Six hundred Ninety	690
3	Darryl D. Brown	One thousand Six hundred Seventeen	1,617
4	Laura Goodspeed	Eight hundred Sixty Eight	868
5	Wanda Jan Hill	Two thousand One	2,001
6	Ulice Sherman	One hundred Eighty Seven	187
7	James Tate	Nine thousand Three hundred Forty Nine	9,349
8	Kathryn A. Montgomery	Thirty Six	36
9	Marc Cayce	Ten	10
	<b>TOTAL</b>	Fifteen thousand Six hundred Seven	15,607

The whole number of votes given for candidates for the office of			Put figures in this column
DETROIT - CITY COUNCIL DISTRICT 2 - 4 YEAR TERM (1) POSITION			
was	Sixteen thousand Nine hundred Seventy Four		16,974
and they were given for the following persons:			
#	PERSONS RECEIVING THE VOTES	NUMBER OF VOTES WRITTEN IN WORDS	
1	Ervin Bassett	Two hundred Fifty Seven	257
2	Richard J. Bowers, Jr.	Two thousand Eight hundred Ninety	2,890
3	Terrance A. Burney	Six hundred Sixty Six	666
4	George Cushingberry, Jr.	Four thousand Six hundred Seventy Eight	4,678
5	Barbara Herard	Seven hundred Sixty Four	764
6	Leslie Love	Two thousand Seven hundred Ninety Eight	2,798
7	Derrick Muhammad	One thousand Eight hundred Twenty Two	1,822
8	Carron L. Pinkins	One thousand Three hundred Ninety Two	1,392
9	Ken Scott	One thousand Four hundred Twelve	1,412
10	Hollie R. Tugwell	Two hundred Fifty Nine	259
11	John Cromer	One	1
12	Aaron Renaldo Smith	Thirty Five	35
	<b>TOTAL</b>	Sixteen thousand Nine hundred Seventy Four	16,974

AUGUST 20, 2013

## OFFICIAL RESULTS

WAYNE COUNTY BOARD OF CANVASSERS  
STATEMENT OF VOTESAUGUST 6, 2013  
PRIMARY ELECTION

The whole number of votes given for candidates for the office of			Put figures in this column
DETROIT - CITY COUNCIL DISTRICT 3 - 4 YEAR TERM (1) POSITION			
was	Eight thousand Nine hundred Eight		8,908
and they were given for the following persons:			
#	PERSONS RECEIVING THE VOTES	NUMBER OF VOTES WRITTEN IN WORDS	
1	Francine Adams	One thousand Four hundred Twenty Five	1,425
2	Russ Bellant	One thousand One hundred Fourteen	1,114
3	Myron Cash Benford	Two hundred Fifteen	215
4	Scott Benson	Three thousand Two hundred Twenty Nine	3,229
5	Wanda Redmond	Nine hundred Twenty Eight	928
6	Eugene Slappy	One thousand One hundred Ninety Six	1,196
7	Dorthea E. Thomas	Eight hundred One	801
8	Melia Howard	Zero	0
	TOTAL	Eight thousand Nine hundred Eight	8,908

The whole number of votes given for candidates for the office of			Put figures in this column
DETROIT - CITY COUNCIL DISTRICT 4 - 4 YEAR TERM (1) POSITION			
was	Ten thousand Five hundred Ninety		10,590
and they were given for the following persons:			
#	PERSONS RECEIVING THE VOTES	NUMBER OF VOTES WRITTEN IN WORDS	
1	Albert Aaron	Two hundred One	201
2	Jessie Lee Fennie	Three hundred Twenty Six	326
3	Khalil Ligon	One thousand Six hundred Seventy Two	1,672
4	Bernard Parker	Two thousand Ten	2,010
5	Bettie Cook Scott	Two thousand Three hundred Fifty Three	2,353
6	Andre L. Spivey	Four thousand Twenty Eight	4,028
7	Enos Philip Walker	Zero	0
	TOTAL	Ten thousand Five hundred Ninety	10,590

AUGUST 20, 2013



## OFFICIAL RESULTS

WAYNE COUNTY BOARD OF CANVASSERS  
STATEMENT OF VOTESAUGUST 6, 2013  
PRIMARY ELECTION

The whole number of votes given for candidates for the office of			Put figures in this column
DETROIT - CITY COUNCIL DISTRICT 5 - 4 YEAR TERM (1) POSITION			
was	Fourteen thousand Two hundred Fifty Four		14,254
and they were given for the following persons:			
#	PERSONS RECEIVING THE VOTES	NUMBER OF VOTES WRITTEN IN WORDS	
1	Adam Hollier	Four thousand Two hundred Forty Eight	4,248
2	Mary Sheffield	Four thousand One hundred Ninety Two	4,192
3	DaNetta L. Simpson	Four hundred Eighty	480
4	Mary Waters	Two thousand Nine hundred Ninety	2,990
5	Brian White	Two thousand Three hundred Thirty Nine	2,339
6	Naomi Anderson	Three	3
7	Yusef Shakur	Two	2
	TOTAL	Fourteen thousand Two hundred Fifty Four	14,254

The whole number of votes given for candidates for the office of			Put figures in this column
DETROIT - CITY COUNCIL DISTRICT 6 - 4 YEAR TERM (1) POSITION			
was	Eight thousand Five hundred Thirty Eight		8,538
and they were given for the following persons:			
#	PERSONS RECEIVING THE VOTES	NUMBER OF VOTES WRITTEN IN WORDS	
1	Tyrone A. Carter	One thousand Five hundred Twenty One	1,521
2	Raquel Castaneda-Lopez	Two thousand Six hundred Thirteen	2,613
3	Nina Fawaz	Two hundred Thirty One	231
4	Vince Keenan	One thousand Five hundred Ninety Eight	1,598
5	Isaac Robinson	Two thousand Two hundred Forty Six	2,246
6	Davonte D. Sherard	Three hundred Twenty Nine	329
	TOTAL	Eight thousand Five hundred Thirty Eight	8,538

AUGUST 20, 2013

The whole number of votes given for candidates for the office of			Put figures in this column
DETROIT - CITY COUNCIL DISTRICT 7 - 4 YEAR TERM (1) POSITION			
was	Eleven thousand Two hundred Ninety Two		11,292
and they were given for the following persons:			
#	PERSONS RECEIVING THE VOTES	NUMBER OF VOTES WRITTEN IN WORDS	
1	John K. Bennett	Two thousand Six hundred Twenty Six	2,626
2	Robb Bennett	Three hundred Ninety Two	392
3	Dustin H. Campbell	One thousand Seven hundred Thirty One	1,731
4	Gabe Leland	Three thousand Eight hundred Ninety Six	3,896
5	Regina Ross	Two thousand Five hundred Seventy Six	2,576
6	Milton Hudson	Zero	0
7	Charmaine Johnson	Seventy	70
8	Tonya Renay Wells	One	1
	TOTAL	Eleven thousand Two hundred Ninety Two	11,292

The whole number of votes given for candidates for the office of			Put figures in this column
DETROIT - POLICE COMMISSIONER DISTRICT 4 - 4 YEAR TERM (1) POSITION			
was	Eight thousand Eight hundred Fifty Seven		8,857
and they were given for the following persons:			
#	PERSONS RECEIVING THE VOTES	NUMBER OF VOTES WRITTEN IN WORDS	
1	Willie E. Bell	Two thousand Eight hundred Ninety Two	2,892
2	Konrad A. Greene	One thousand Seven hundred Seventeen	1,717
3	William O. Thompson	One thousand Eight hundred Fifty One	1,851
4	Henry L. Williams, Jr.	Two thousand Three hundred Ninety Seven	2,397
	TOTAL	Eight thousand Eight hundred Fifty Seven	8,857

The whole number of votes given for candidates for the office of			Put figures in this column
DETROIT - POLICE COMMISSIONER DISTRICT 5 - 4 YEAR TERM (1) POSITION			
was	Twelve thousand Two hundred Ninety Two		12,292
and they were given for the following persons:			
#	PERSONS RECEIVING THE VOTES	NUMBER OF VOTES WRITTEN IN WORDS	
1	Marcelus Brice	Four thousand Three hundred Sixty Three	4,363
2	Willie E. Burton	Five thousand One hundred Eleven	5,111
3	Jamie S. Fields	Two thousand Eight hundred Eighteen	2,818
	TOTAL	Twelve thousand Two hundred Ninety Two	12,292

# ATTACHMENT 2

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# **ATTACHMENT 3**

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AV

OPTICAL SCAN  
STATEMENT OF VOTES

12 Detroit 8-6-13

Precinct Name of City Date of Election

[illegible]

We, the undersigned members of the Board of Election Inspectors, certify that all voted, duplicated, spoiled and defective ballots were properly sealed in an approved ballot container by affixing seal # 631650

Phone

Form E18L3P

Pink - City Clerk

\*\*\* Voting Results Report \*\*\*  
21:37:03 03/05/2013

Detroit  
City of Detroit May 2013  
0450 AVEB 1  
Election Dates: August 06, 2013  
Total Voter Turnout: 230

P-11 Voting Report

Total Ballots for All Precincts 230  
Ballots for P-11 230

WIDE DETROIT

Jon Barrow	8
Angela Scott Brown	1
D'Aragnan E. Collier	9
Crystal A. Brittonson	11
Fred Doherty Jr.	9
Kernan Griffin	2
Lisa L. Moore	15
William G. Lipscomb Jr.	3
Mark Murphy	1
Benny H. Hayslee	84
John Woods	4
James J. Smith	8
James J. Smith	1
James J. Smith	1
Write In	152
Over Votes	0
Under Votes	5
Total Votes	230

CITY CLERK DETROIT

Scotty Brown	12
James Cole Jr.	17
Lucinda J. Smith	4
D. Eric Smith	31
James J. Smith	20
Write In	3
Over Votes	0
Under Votes	10
Total Votes	230

CITY COUNCIL - AT LARGE DETROIT

Number to Vote For: 2

Cedric Banks	22
David Bullock	250
Kayla Lisa Hunt	11
Shantel Jenkins	153
Brandon Jones	143
Monica Lewis-Patrick	26
For McCallister Jr.	35
Jessica H. Kayford-Clark	16
Write In	3
Over Votes	4
Under Votes	110
Total Votes	589

CITY COUNCIL DISTRICT 1

James Kyle Reeler	8
West Brown	11
Barry D. Brown	24
Laura Goodspeed	25
Yanda John Hill	35
Write In	3
Over Votes	1
Under Votes	0
Total Votes	230

WE, THE UNDERSIGNED, DO HEREBY CERTIFY  
THAT THE ABOVE RESULTS ARE A TRUE AND  
ACCURATE ACCOUNT OF ALL BALLOTS COUNTED  
AND THAT ALL COUNTIES WERE USED TO  
VERIFY THE POLLS OPENED AND THAT THE  
ELECTION WAS HELD IN ACCORDANCE WITH  
THE LAWS OF THE STATE.

ELECTION JUDGE

*Deon Tate*  
*Michelle A.*

ELECTION JUDGE

*Lorraine Griffin*

ELECTION JUDGE

# **ATTACHMENT 4**

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## Summary of Canvass Documents and Procedures

### **Principal Documents Employed to Complete Precinct Canvass (Election Night):**

- **Poll Books:** documents the ballots issued, ballots tabulated, ballots spoiled in a voting precinct or absent voter counting board precinct.
- **The Statement of Votes (multiple documents):** tabulator totals tape documenting the vote totals obtained in a voting precinct or absent voter counting board, declared write-in candidate vote totals, and signed election inspector certificate containing seal numbers for tabulator and ballot container. Note: There are 3 Statement of Votes created, one delivered to the local clerk, one to the County Board of Canvassers, and one to the County Clerk.

### **County Canvass Process (within 14 days of election):**

- Check the *List of Voters* for proper completion.
- Examine the *Remarks* Section of the *Poll Book* from each precinct to identify any unique circumstances which might affect the total number of voters participating or the total number of ballots tabulated.
- Examine the *Write-In Tally Sheet* documenting the number of votes cast for each declared write-in candidate.
- Verify the accuracy of the *Ballot Summary Report* to accurately account for all ballots utilized in the precinct including voted ballots, unused ballots, and absent voter ballots.
- In the case where any discrepancy appears between the tabulator totals tape, List of Voters and/or Ballot Summary Report, canvassers shall correct obvious mathematical errors in the tallies or returns.
- In correcting errors, the canvassing board may summon election inspectors (or utilize county clerk staff) to count any ballots that election inspectors failed to count; or to complete correct tally sheets and returns that were incomplete or incorrect.
- Document the votes cast for each candidate on ballot (on a County Canvassers' Report MCLA 168.824; 168.825)
- Determine the winning candidates for which the Board of County Canvassers is responsible for certifying (MCLA 168.826)

### **State Canvass (between the 20<sup>th</sup> and 40<sup>th</sup> days of affected elections):**

- There is no state canvass process for municipal elections.
- A state canvass occurs only for statewide offices and proposals and certain judicial and state-level offices that cross county lines.
- The State Board of Canvassers is responsible for certifying the results, utilizing canvass reports of results provided by the county.
- The state canvass process is not applicable to the completion of a county canvass under MCL 168.822.

STATE OF MICHIGAN  
IN THE COURT OF APPEALS

---

D. ETTA WILCOXON,

Plaintiff-Appellee,

v

STATE BOARD OF CANVASSERS,

Defendant-Appellant.

---

Court of Appeals No. NEW FILING

Ingham Circuit Court No. 13-944-NZ

Exhibit 2

---

STATE OF MICHIGAN  
IN THE 30<sup>th</sup> JUDICIAL CIRCUIT COURT  
FOR THE COUNTY OF INGHAM

D. ETTA WILCOXON,  
PLAINTIFF,

Case No. ~~13-NZ~~ 13-944-NZ  
Hon. JOYCE DRAGANCHUK

-v-

STATE BOARD OF CANVASSERS,  
DEFENDANT.

\_\_\_\_\_  
ANDREW A. PATERSON (P18690)  
Attorney for Plaintiff  
46350 Grand River Ave., Suite C  
Novi, MI 48374  
(248) 568-9712

\_\_\_\_\_  
**AMENDED TEMPORARY RESTRAINING ORDER and ORDER TO SHOW CAUSE**

At a session of said Court held in the  
Ingham County Circuit Court,  
City of Lansing, County of Ingham, State of Michigan,  
on Aug. 27, 2013

PRESENT: \_\_\_\_\_

JOYCE DRAGANCHUK

\_\_\_\_\_  
INGHAM COUNTY CIRCUIT COURT JUDGE

\_\_\_\_\_  
This matter comes before the Court on Plaintiff's *Ex Parte* Motion for a Temporary Restraining Order and Order to Show Cause. The Court is satisfied that an order preserving the status quo should be issued pending a full hearing on the merits of this matter.

**THEREFORE, IT IS HEREBY ORDERED** that the Defendant State Board of Canvassers is immediately restrained and enjoined, pending further order of this Court, from counting, and recounting the actual ballots cast for any write-in candidates during the August 2013 Primary Election for the City of Detroit and shall be enjoined from handling and removing

from the ballot boxes any ballots cast during the August 2013 Primary Election for the City of Detroit.

**IT IS FURTHER ORDERED** that Defendant State Board of Canvassers shall be immediately restrained and enjoined, pending further order of this Court, from certifying the results of the August 2013 Primary Election for the City of Detroit.

**IT IS FURTHER ORDERED** that this Temporary Restraining Order has been issued without bond and with prior notice to the Defendant for the reasons that it merely preserves the status quo prior to a full hearing and does not pose any risk or loss to the Defendant. This Order shall expire on the date set for a hearing on an order to show cause, issued together with this order, unless extended by a separate order of this Court.

**IT IS FURTHER ORDERED** that a Show Cause Hearing shall be held on Tuesday, Sept. 3, 2013 at 2:00 a.m./p.m. on why a preliminary injunction shall not be issued. This Order, along with the appropriate pleadings, shall be personally served on the Defendant on or before August 29, 2013 by 5:00 a.m./p.m.

**IT IS SO ORDERED.**

This Order was signed and entered on August 29, 2013 at 3:50 p.m. This Order amends the Temporary Restraining Order and Order to Show Cause previously entered on August 29, 2013.

  
INGHAM COUNTY CIRCUIT COURT JUDGE  
P-30417

STATE OF MICHIGAN  
IN THE 30<sup>th</sup> JUDICIAL CIRCUIT COURT  
FOR THE COUNTY OF INGHAM

D. ETTA WILCOXON,  
PLAINTIFF,

Case No. 13-944-NZ  
Hon. JOYCE DRAGANCHUK

-v-

STATE BOARD OF CANVASSERS,  
DEFENDANT.

ANDREW A. PATERSON (P18690)  
Attorney for Plaintiff  
46350 Grand River Ave., Suite C  
Novi, MI 48374  
(248) 568-9712

TEMPORARY RESTRAINING ORDER and ORDER TO SHOW CAUSE

At a session of said Court held in the  
Ingham County Circuit Court,  
City of Lansing, County of Ingham, State of Michigan,  
on Aug. 29, 2013

PRESENT:

JOYCE DRAGANCHUK

INGHAM COUNTY CIRCUIT COURT JUDGE

This matter comes before the Court on Plaintiff's *Ex Parte* Motion for a Temporary Restraining Order and Order to Show Cause. The Court is satisfied that an order preserving the status quo should be issued pending a full hearing on the merits of this matter.

**THEREFORE, IT IS HEREBY ORDERED** that the Defendant State Board of Canvassers is immediately restrained and enjoined, pending further order of this Court, from recounting the actual ballots cast for any write-in candidates during the August 2013 Primary Election and shall be enjoined from handling and removing from the ballot boxes any ballots cast during the August 2013 Primary Election for the City of Detroit.

**IT IS FURTHER ORDERED** that this Temporary Restraining Order has been issued without bond and with prior notice to the Defendant for the reasons that it merely preserves the status quo prior to a full hearing and does not pose any risk or loss to the Defendant. This Order shall expire on the date set for a hearing on an order to show cause, issued together with this order, unless extended by a separate order of this Court.

**IT IS FURTHER ORDERED** that a Show Cause Hearing shall be held on Tuesday, Sept. 3, 2013 at 2:00 a.m./p.m. on why a preliminary injunction shall not be issued. This Order, along with the appropriate pleadings, shall be personally served on the Defendant on or before August 29, 2013 by 5:00 a.m./p.m.

**IT IS SO ORDERED.**

  
INGHAM COUNTY CIRCUIT COURT JUDGE  
P-39417

STATE OF MICHIGAN  
IN THE COURT OF APPEALS

---

D. ETTA WILCOXON,

Plaintiff-Appellee,

v

STATE BOARD OF CANVASSERS,

Defendant-Appellant.

---

Court of Appeals No. NEW FILING

Ingham Circuit Court No. 13-944-NZ

Exhibit 3

---

**AFFIDAVIT OF D. ETTA WILCOXON, CANDIDATE FOR THE OFFICE OF CITY  
CLERK OF THE CITY OF DETROIT AND ELECTOR OF THE CITY OF DETROIT**

State of Michigan     )  
                                  )  
County of Wayne     )

NOW COMES D. ETTA WILCOXON, a natural person, being first duly sworn and  
deposed and under the penalty of perjury states the following:

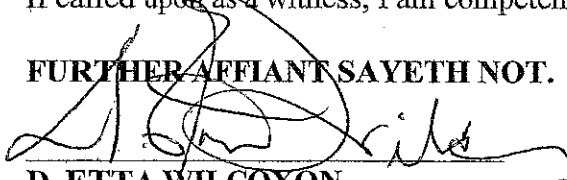
1. That I am a duly qualified and registered elector of the City of Detroit.
2. That I am a duly certified candidate for the office of City Clerk of the City of Detroit,  
that received the second highest number of votes according in the August 2013  
Primary Election according to the unofficial results.
3. That I was physically present at the meeting of the State Board of Canvassers on  
Tuesday, August 27, 2013 in Detroit, MI when Chris Thomas, Director of Elections  
made a recommendation to the State Board of Canvassers to have them physically  
count some of the official ballots that were cast in the August 2013 Primary Election  
for the City of Detroit.
4. That I personally witnessed the staff of the Secretary of State and State Bureau of  
Elections begin to physical touch and count the ballots that were cast in the August  
2013 Primary Election for the City of Detroit.
5. That it is my understanding and belief that the State Board of Canvassers do not have  
the authority to count the actual ballots that were cast for any office that was voted  
upon at the August 2013 Primary Election.
6. That I have requested a recount, however, it is my fear that as a result of the State  
Board of Canvassers taking the action to physically recount some of the actual ballots



cast at the August 2013 Primary Election that all of the ballots will be declared spoiled and I will not be able to seek my recount of the vote totals.

7. That I believe I will suffer irreparable harm if a temporary restraining order is not issued to enjoin the State Board of Canvassers from opening up ballot boxes and taking out the actual ballots cast during the August 2013 Primary.
8. That all of the allegations and counts stated and alleged in the attached Complaint and Emergency Motion for Writ of Mandamus, Declaratory Judgment, and Injunctive Relief are true to the best of knowledge, information, and belief.
9. If called upon as a witness, I am competent to testify as to the facts stated herein.

**FURTHER AFFIANT SAYETH NOT.**

  
D. ETTA WILCOXON

Subscribed and sworn to before me  
On this 28th day of August, 2013

  
NOTARY PUBLIC

My Commission Expires: 3/17/15

