**STATE OF MICHIGAN**
**IN THE THIRD JUDICIAL CIRCUIT COURT**

KRISTINA KARAMO; PHILIP O'HALLORAN, MD; BRADEN GIACOBAZZI; TIMOTHY MAHONEY; KRISTIE WALLS; PATRICIA FARMER; and ELECTION INTEGRITY FUND AND FORCE, a Michigan non-profit corporation,

Plaintiffs,

v

JANICE WINFREY, in her official capacity as Detroit City Clerk; and CITY OF DETROIT BOARD OF ELECTION INSPECTORS, in their official capacity,

Defendants.

Case No. 22-021759-AW

Hon. Timothy M. Kenny

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**BRIEF OF *AMICI CURIAE* LOCAL ELECTION OFFICIALS IN OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

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## STATEMENT OF INTEREST

*Amici* are the local election officials of Eaton, Ingham, Saginaw, Washtenaw, and Wayne Counties.[1] As election officials, *amici*'s primary duty is to ensure the right to vote of all eligible citizens in their respective jurisdictions. *Amici*'s responsibilities include oversight of all federal, state, and local elections. Duties also include the programming, printing, and distributing of ballots and the coordination of the canvass of federal, state, and local elections. *Amici* are well-versed in the requirements of Michigan law as it pertains to receiving and reviewing applications for mail-in ballots. *Amici* are fiercely committed to complying with the law and ensuring fairness in our electoral process both within our respective jurisdictions and across the state. While *amici* recognize the ways in which local election officials might tailor their efforts to the needs of the communities they serve, *amici* are wary of efforts to create unreasonable and discriminatory impediments to voting in certain districts.

## ARGUMENT

In this case, Plaintiffs retread tired tropes about the administration of elections in Detroit in an apparent effort to disenfranchise the City's predominantly African American voters. In fact, Plaintiffs seek an extreme remedy—they attempt to invalidate votes already cast in this election. Plaintiffs misunderstand Michigan law, seek relief that would be unnecessary, disruptive, and disenfranchising, and attempt to upset the overall administration of the election at the stroke of midnight. Their intentions are transparent and their claims are baseless. This Court should not accept Plaintiffs' invitation to meddle in the election.

[1] Pursuant to MCR 7.212(H)(3), *amici curiae* state that no counsel for a party authored this brief in whole or in part, nor did anyone, other than *amici* and their counsel, make a monetary contribution intended to fund the preparation or submission of the brief. A list of all *amici* is attached as Appendix A.

In analyzing Plaintiffs' request for a preliminary injunction, this Court applies a well-established four-part test. This Court must evaluate whether (1) Plaintiffs are likely to prevail on the merits; (2) Plaintiffs will be irreparably harmed if an injunction is not issued; (3) the harm to Plaintiffs absent an injunction outweighs the harm that the injunction would cause Defendants; and (4) there will be harm to the public interest if an injunction is issued. *See, e.g.*, *Detroit Fire Fighters Ass'n v Detroit*, 482 Mich 18, 34 (2008). All these factors weigh heavily against the issuance of a preliminary injunction in this case. This Court should deny the relief requested, dismiss this case with prejudice, and ensure that Detroit voters remain subject to the same obligations and entitled to the same rights as all other voters in the state.[2]

## I. PLAINTIFFS WILL NOT PREVAIL ON THE MERITS.

Plaintiffs' myriad and baseless challenges include a broadside attack on the State law that governs the processing of applications for absent ballots received by mail or via the internet. Without adducing any evidence specific to Detroit's process for verifying absentee ballot applications, Plaintiffs contend that the entire "scheme"—meaning steps that Detroit has taken pursuant to Michigan law—is "invalid," and beg this Court to disenfranchise every Detroit voter who applied for their absentee ballot by mail or over the internet. Compl. ¶¶ 26, 27. The problem is that Plaintiffs misconstrue State law to create an imaginary requirement never passed by the Legislature: that applicants must provide identification in person. This absurd argument is jury-rigged for the sole purpose of disenfranchising remote absent ballot applicants, whose identities are verified via separate statutory means. Indeed, the law ensures that all registered voters who apply for absentee ballots have been required to adequately identify themselves upon registration

[2] *Amici* address Plaintiffs' claims relating to verification of absent ballots in this brief. *Amici* agree with Defendants that none of Plaintiffs' claims has merit.

in accordance with the provisions actually written by Michigan's lawmakers. *See* MCL 168.761. Plaintiffs also make cursory allegations of amorphous equal protection violations that are by turns indecipherable and legally unfounded. The purported violations identified by Plaintiffs have no basis in law; accordingly, Plaintiffs will not prevail on the merits.

Michigan law ensures that the identities of voters who apply for absentee ballots—whether they do so in person or remotely—are adequately verified. Plaintiffs ground their broadside challenge to State law (which is unaccountably focused only on Detroit) on an imaginary requirement that voters applying for absentee ballots must provide identification in person at their local precinct. This requirement appears nowhere in Michigan law. State law, instead, provides two means for verifying the identity of an applicant for an absentee ballot. Those applying in person for an absentee ballot must (a) "present[] identification for election purposes" or (b) sign an affidavit stating that they do not possess such identification before the clerk can issue an absentee ballot. MCL 168.761(6). A separate provision of the law, which Plaintiffs understand to govern absentee ballot applications received via mail or the internet, Compl. ¶ 23(b), provides that such an applicant's identity will be verified by comparison of the signature on the application to the signature in the State's qualified voter file (QVF) or the signature on the State's "master card." MCL 168.761(2).

Plaintiffs' invented requirement that applicants for absentee ballots must "show identification at the precinct" appears nowhere in Michigan law. Plaintiffs concede as much by stating that Michigan law provides for the identification of applicants by comparison of their signature to that contained in the QVF or master card as an alternative to the production of identification at the precinct. Compl. ¶ 23(b) (citing MCL 168.761(2)). Bizarrely, Plaintiffs urge this Court to ignore the existence of the State-sanctioned identity verification process that they

themselves describe, and instead impose a special rule—specific only to Detroit voters—that absentee ballots must be applied for in person, and that all absentee ballots cast after applying via mail or the internet be thrown out.[3] Compl. ¶¶ 26-27.

Even if Plaintiffs' mystifying assertions were to be generously interpreted as making out the claim that the signature verification process detailed in MCL 168.761(2) is "invalid" because it does not adequately verify the applicant's identity, their argument would nevertheless fail (and not only for its circularity). The QVF against which a voter's signature is checked contains information verifying the voter's identity by reference to the accepted form of identification, address, and signature information that voters must provide when they register to vote. MCL 168.509q, 168.495. It cannot credibly be claimed that the process detailed in MCL 168.761(2)—which Detroit has followed assiduously—does not satisfy the Legislature's requirements for verifying an absentee ballot applicant's identity.

Plaintiffs additionally make cursory allegations that the Michigan state election law at issue, and the implementation of that law by Detroit, violates the Equal Protection Clause of the federal Constitution. Compl. ¶¶ 45, 97. This Court should not entertain these throw-away accusations. To begin, Plaintiffs do not allege facts that create any equal protection issues, nor do they provide any legal analysis explaining why Michigan state law and Detroit's election processes violate the Equal Protection Clause. Plaintiffs' equal protection claims are absurd on their face, as they aim to stop the counting of ballots in one jurisdiction—Detroit—but not any other jurisdiction

[3] Plaintiffs also appear to assert that the Court of Claims' invalidation of State guidance that provided rules for clerks to use when comparing signatures under MCL 168.761(2) renders any signature verification process used pursuant to the law unlawful. Compl. ¶¶ 24–26. Plaintiffs cite no authority for this proposition. In addition, the durability of that order is in question, as the Attorney General has sought a stay of the Court of Claims' decision.

in the state employing the same or similar procedures. An explanation from Plaintiffs on how such relief could possibly equitably protect the rights of Detroit voters only is noticeably absent.

To the extent that Plaintiffs' poorly articulated assertions could somehow be read to allege that Detroit's election administration practices violate the Equal Protection Clause because they might differ from those used in other jurisdictions, they are incorrect. The law is clear: the use of varying procedures to implement state election law does not automatically violate the Equal Protection Clause. "Counties may, consistent with equal protection, employ entirely different election procedures and voting systems within a single state." *Donald J. Trump for President, Inc. v Boockvar*, No. 2:20-cv-066, 2020 WL 5997680, at *44 (WD Pa, Oct. 10, 2020) (collecting cases); see also *Wexler v Anderson*, 452 F3d 1226, 1231–33 (CA 11, 2006) ("Plaintiffs do not contend that equal protection requires a state to employ a single kind of voting system throughout the state. Indeed, local variety in voting systems can be justified by concerns about cost, the potential value of innovation, and so on.") (internal quotation and alteration marks omitted). As the U.S. Supreme Court has recognized, "local entities, in the exercise of their expertise, may develop different systems for implementing elections." *Bush v Gore*, 531 US 98, 109 (2000); see also *Ron Barber for Cong v Bennett*, No. 14-2489, 2014 WL 6694451, at *5 (D Ariz, Nov. 27, 2014) ("[*Bush v Gore*] did not invalidate different county systems regarding implementation of election procedures."). Absent proof of an actual equal protection violation, Detroit is fully able to implement Michigan's election laws in a manner tailored to local conditions without running afoul of the Equal Protection Clause.

## II. PLAINTIFFS WILL NOT BE IRREPARABLY HARMED WITHOUT AN INJUNCTION.

On a broad scale, Plaintiffs do not need a preliminary injunction to remedy the purported harms caused by imagined invalid absentee ballots because Michigan law provides a sufficient

process for matching signatures. At the individual level, the law provides for adequate oversight by credentialed challengers. Plaintiffs' request for preliminary relief also fails because their more general assertions of harm are far too vague to establish the irreparable injury needed.

Plaintiffs repeatedly confuse and elide provisions of Michigan state law governing the review and approval of signatures on submitted absentee ballots. Plaintiffs' half-baked arguments do little to further their contentions; Michigan's relevant governing provisions are straightforward and the processes of Detroit's Board of Election Inspectors and Clerk fit comfortably within the requirements of state law. What is more, if the phantom fraudulent votes of Plaintiffs' fantasies somehow materialize, state law furnishes an adequate remedy by providing certified challengers the opportunity to observe and make good faith challenges to perceived violations of election law. *See* MCL 168.733(1)–(2); MCL 168.765a. Considering the availability of this remedy, not to mention the utterly speculative and nebulous nature of Plaintiffs' claimed injuries, Plaintiffs cannot prevail on their required showing of irreparable injury from the casting and counting of absentee ballots in Detroit. *Pontiac Fire Fighters Union Local 376 v City of Pontiac*, 753 NW2d 595, 600 (Mich 2008) ("The mere apprehension of future injury or damage cannot be the basis for injunctive relief. Equally important is that a preliminary injunction should not issue where an adequate legal remedy is available").

Upon receiving a submitted absentee ballot, the Clerk delivers it to the corresponding Board of Election Inspectors. MCL 168.765(1). The Board of Election Inspectors verifies the legality of an absentee ballot by comparing the signature on the ballot to the digitized signature of the voter (1) in the QVF maintained by the Secretary of State or (2) the State's master card. MCL 168.766(1)–(2). If the signature is rejected as a mismatch, the Board sends the ballot back to the local clerk. MCL 168.767. If the signature matches (and is thus "legal"), the Board member

deposits the ballot in the proper ballot box to be tabulated. MCL 168.768. To summarize: the Board receives the ballot, compares the signature against the digitized QVF, and then marks the ballot as legal or rejected.

Plaintiffs' protestations notwithstanding, this is exactly how Detroit operates its absentee voter signature review process. The City uses a commercial mail processing system called Relia-Vote, which photographs the signatures on received absent voter ballots. From there, election staff review the photo of the voter's signature against the voter's signature in the QVF.[4] As described by City officials, if election staff determines the two signatures do not match, the ballot does not advance. However, if the staff determines that there is a match, the Relia-Vote system marks the ballot envelope with a stub number and the name of the clerk who approved it and sends it on for counting. Contrary to Plaintiffs' insinuations, and in clear compliance with Michigan election law, Detroit's election staff thus completes an individual review of each signature on a submitted absentee ballot against the signature in the state-maintained QVF, and only advances ballots with a match. The mere presence of a tool that helps Detroit's election workers process tens of thousands of ballots does not, in fact, render that process ripe for fraud and deceit, and Plaintiffs have made no showing that it has been impermissibly used.

In their haste to disparage Detroit's innovative and practical processes, Plaintiffs conveniently forget that Michigan election law explicitly allows for public inspection and challenge of the signature review process, providing an adequate state law remedy for the very harm they seek to prevent. Certified challengers are permitted to "observe . . . the manner in which the duties of the election inspectors are being performed" in absent voter counting boards and

[4] Ali Swenson, *Posts mislead on signatures, 'large bags' at Detroit ballot counting site*, AP (Aug. 4, 2022), https://apnews.com/article/fact-check-detroit-ballot-counting-signature-verification-381399477254.

subsequently bring challenges related to "an election procedure that is not being properly performed"; "improper handling of a ballot by an elector or election inspector"; or "a violation of election law or other prescribed election procedure." MCL 168.733(1)–(2). This language is clearly broad enough to permit virtually any good-faith challenge a challenger could bring regarding the signature review process, including a review of two signatures in the Relia-Vote system. The Michigan Legislature therefore already provides the remedy for Plaintiffs' claims. A broad injunction is entirely unnecessary. Plaintiffs can readily challenge individual ballots, provided that each challenge is made with good cause and that challenges are not made indiscriminately. *See* MCL 168.727(3). Rather than comply with Michigan election law themselves by engaging in good faith individual challenges, Plaintiffs would engage in over-kill by attempting to challenge all of Detroit's absentee ballots indiscriminately.

Even on its own terms, the injury that Plaintiffs assert is amorphous and cannot support the issuance of their desired preliminary injunction. Plaintiffs baldly assert a vague and undifferentiated interest held by candidates, poll challengers, election workers, and "election public interest organizations" in their statement that "the illegal and ultra vires actions of the Detroit Clerk and Board of Elections will result in an illegal election." Compl. ¶ 127. To the extent that they attempt to support their claims at all, Plaintiffs adduce no credible evidence of unlawfully cast absentee ballots in Detroit (citing only "[n]umerous" yet indeterminate "violations of statute"). Compl. ¶ 126. Instead, they opt to fulminate about "ballot mules" conjured by partisan documentarians and imagined instances of vote "stuffing" in 2020's elections. Compl. ¶¶ 41–42, 118. These vagaries do not suffice to show any injury whatsoever, much less the "irreparable" one that the law demands before injunctive relief can be issued. *State Employees Ass'n v Dep't of Mental Health*, 421 Mich 152, 158 (1984).

## III. THE HARM TO DEFENDANTS, DETROIT VOTERS, AND THE PUBLIC INTEREST CAUSED BY AN INJUNCTION WOULD BE SUBSTANTIAL

The sweeping and unnecessary relief requested by Plaintiffs on the eve of the election would harm Detroit voters' constitutionally protected interests in having their lawfully cast absentee ballots counted and unfairly burden Defendants' and *amici*'s concrete and compelling interest in the orderly administration of the 2022 elections. Plaintiffs urge this Court to buy dangerous snake oil–a proposed cure that would cause far more harm than the disease they believe they have diagnosed. Even if Plaintiffs could manage to articulate an injury, the harm to Defendants and the public interest that would result from Plaintiffs' drastic requested relief would vastly outweigh it. Upon an accurate assessment of the real harm that Plaintiffs' remedy would do to Detroit's body politic, and the state as a whole, this Court should not issue the requested injunction.

### A. The Remedy Sought by Plaintiffs Would Violate the Constitutional Rights of Untold Numbers of Detroit Voters

Voters who have already cast, or plan to cast, lawful absent ballots have an interest in having their vote counted. *See, e.g.*, *Griffin v Burns*, 570 F 2d 1065, 1078-79 (CA1, 1978). Voters rely on absent balloting for many legitimate reasons, whether that be illness, balancing work and life demands, or simply convenience, but they need give no reason at all—Michigan has constitutionally enshrined the right to vote absentee "without giving a reason." Const 1963, art 2, § 4(g). Michigan's law and constitution notwithstanding, Plaintiffs would have this court enjoin Defendants from counting any absentee ballot that has not been requested in person. Compl. ¶ 27.

If this Court were to accede to Plaintiff's demands—on tissue-thin equal protection grounds—and reject untold numbers of absent ballots lawfully cast by Detroit voters and halt Detroit's electoral processes, it would violate the federal and state constitutions by infringing on

Detroit voters' franchise. This right of individuals, "an implicit fundamental political right that is preservative of all rights," *In re Request for Advisory Opinion Regarding Constitutionality of 2005 PA 71*, 479 Mich 1, 16 (2007) (internal quotation marks omitted), is securely protected against the kind of discrimination created by arbitrary rejection or dilution of voters' ballots. *See Reynolds v Sims*, 377 US 533, 565 (1964) ("Each and every citizen has an inalienable right to full and effective participation in the political processes of his State's legislative bodies."). A state thus cannot arbitrarily treat one group of voters' ballots differently from another group of voters' ballots without risking a violation of the Due Process Clause. *Warf v Bd of Elections of Green Cnty, Ky*, 619 F 3d 553, 559 (CA6, 2010) ("[t]he Due Process clause is implicated . . . in the exceptional case where a state's voting system is fundamentally unfair"); *see also George v Hargett*, 879 F 3d 711, 727 (CA6, 2018) ("A state's election process may be found fundamentally unfair . . . [when] a state employs non-uniform rules, standards and procedures that result in significant disenfranchisement and vote dilution or significantly departs from previous state election practice.") (internal citations omitted). The due process violation is all the more glaring where, as here, the remedy would invalidate thousands of absent ballots that have already been lawfully cast. *See Griffin*, 570 F 2d at 1070, 1080 (affirming that state court's "retroactive invalidation" of lawfully cast absent ballots following an election created a due process violation authorizing a new election).

### B. The Remedy Sought by Plaintiffs Would Create Unjustifiable Eleventh-Hour Changes to Election Procedures

Even if Plaintiffs' facile arguments could facially support their claims (they cannot), Plaintiffs' demand that this Court require "all Detroit voters to vote in person or obtain their ballots in person at the clerk's office" is breathtaking in its scope and implications for the administration of the fast-approaching elections. Compl. ¶ 132. Such sweeping relief at this late date is

inappropriate under almost any circumstances because it would be impossible to implement so close to an election without irreparably harming the "compelling interest" of the state in administering an orderly election. *New Democratic Coalition v Austin*, 41 Mich App 343, 356-57 (1972).

Plaintiffs would have this Court require Defendants to jettison practices adopted according to State law just days before the election and prohibit Defendants from counting absentee ballots that were not applied for in person—precisely the kind of late-breaking change to election administration that Michigan's Courts have long recognized harm the State's "compelling interest in the orderly process of elections" by sowing confusion among election workers and voters alike. *New Democratic Coalition*, 41 Mich App at 356–57. Because "[e]lections require the existence of a reasonable amount of time for election officials to comply with the mechanics and complexities of our election laws," case law and common sense have long counseled courts to "reasonably endeavor to avoid unnecessarily precipitate challenges that would result in immense administrative difficulties for election officials" that would, in turn, negatively impact voters. *Id*; *see also Purcell v Gonzalez*, 549 US 1, 5–6 (2006) (per curiam). In other words, "[w]hen an election is imminent and when there is inadequate time to resolve factual disputes and legal disputes, courts will generally decline to grant an injunction to alter a State's established election procedures." *Crookston v Johnson*, 841 F 3d 396, 398 (CA 6, 2016) (internal quotation marks omitted).

This rule, often cited as the *Purcell* principle, is especially pertinent where, as here, Plaintiffs have offered "no reasonable explanation" for bringing suit so close to an election, *id.* at 398 (citing *Purcell*, 549 US at 5–6), and where a late-breaking change would cause "great confusion associated with [its] implementation" and affect "the state's entire voting methodology," as well as localities' implementation of that methodology, *see US Student Ass'n Found v Land*,

546 F 3d 373, 387 (CA 6, 2008). Here, Plaintiffs' demand that no absentee ballot that was not applied for in person be counted would sow great confusion among voters and election workers alike. This Court would thus be well within its authority to firmly reject Plaintiffs' attempt to disrupt active State and local election procedures in a way that would detrimentally impact election administrators like *amici* and voters. *See Democratic Nat'l Comm v Wis. State Legislature*, 141 S Ct 28, 31 (Kavanaugh, J., concurring in denial of application to vacate stay) (noting the importance of judicial restraint in preventing "voter confusion" and "election administrator confusion" to protect "the State's interest in running an orderly, efficient election").

State law prohibits this remedy as well. Michigan's constitution guarantees registered voters the right to cast an absentee ballot in the forty days preceding an election. Const 1963, art 2, § 4(g). With less than a week remaining before Election Day, thousands of voters have doubtless availed themselves of this right. By enjoining Defendants from counting votes cast on absentee ballots that were applied for through the mail or online, Plaintiffs would have this Court invalidate untold numbers of lawfully cast votes, disenfranchising voters in a manner that infringes as severely on the right to vote as does "exclud[ing] the voter from the polling place." *United States v Saylor*, 322 US 385, 387–388 (1944).

### C. Plaintiffs' Recycling of Baseless and Disproven Claims Against Detroit Is Harmful in and of Itself; Giving Such Claims Any Credence Through an Injunction Would Exacerbate Their Harms

Plaintiffs' unaccountably belated and overreaching attempt to prevent Detroit—and only Detroit—from administering 2022's elections under laws utilized by election officials Statewide creates grave risks to Detroit's voters and all of Michigan. More than anything else, the "evidence" that Plaintiffs adduce to prove their claims echoes the baseless and repeated claims of fraud and deceit that were leveled at Detroit in the wake of the 2020 election. These are best characterized

not as legal claims but were instead displays of partisan tactics that were repeatedly rejected in federal and state courts.[5] The ill-founded and conspiratorial claims that Plaintiffs advance in their complaint would disenfranchise Detroit voters.

It is also notable that Plaintiffs are attacking Detroit, and only Detroit, in an apparent effort to suppress its voters. Plaintiffs' allegations are leveled against largely African American voters and election processes. This Court should preserve the rights of voters and reject Plaintiffs' spurious claims.

[5] *See, e.g.*, *Constantino v Detroit*, No. 20-014780 at *13 (Mich Cir Ct Nov. 13, 2020) (rejecting a request for a protective order and preliminary injunction to block vote counting in Detroit as the court found that "sinister, fraudulent motives were ascribed to the process and to the City of Detroit. Plaintiffs' interpretation of events is incorrect and not credible"); *Stoddard v City Election Commission of Detroit*, No. 20-014604-CZ at *3–4 (Mich Cir Ct, Nov. 6, 2020) (rejecting a request for injunctive relief to halt certification of the vote in Detroit because "Plaintiffs do not offer any affidavits or specific eyewitness evidence to substantiate their assertions" but instead "merely assert in their verified complaint 'Hundreds of thousands of ballots were duplicated solely by Democratic party inspectors and counted.' Plaintiffs' allegation is mere speculation . . . The City of Detroit should not be harmed when there is no evidence to support accusations of voter fraud"); *Leaf v Whitmer*, No. 1:20-CV-1169, 2020 WL 12698016 at *4 (WD Mich, Dec. 7, 2020) (rejecting a request for injunctive relief to impound and inspect voting machines and software used by Michigan in 2020 and finding that "Plaintiffs' Applications invite the Court to make speculative leaps towards a hazy and nebulous inference that there has been numerous instances of election fraud and that Defendants are destroying the evidence."); *King v Whitmer*, 505 F Supp 3d 720, 738 (ED Mich, 2020) (rejecting a request for declaratory, emergency, and injunctive relief to decertify Michigan's 2020 election results because "the closest Plaintiffs get to alleging that election machines and software changed votes for President Trump to Vice President Biden in Wayne County is an amalgamation of theories, conjecture, and speculation that such alterations were possible.").

## CONCLUSION

For the foregoing reasons, *amici* request that this Court deny Plaintiffs' Motion for Injunctive Relief.

Respectfully submitted,

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DATED: November 3, 2022

## APPENDIX A

The following is a list of all amici who joined this brief:

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Mary R Clark, Delta Township Clerk

Ellen L. Craig-Bragg, Romulus City Clerk

Vanessa Guerra, Saginaw County Clerk

Lawrence Kestenbaum, Washtenaw County Clerk

Richard LeBlanc, Westland City Clerk

Michael Siegrist, Canton Township Clerk

Chris Swope, Lansing City Clerk