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May 22, 2025

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Re: House Oversight Committee Subpoenas to DOS

Dear Mr. Pattwell:

Thank you for your correspondence dated May 16, 2025, regarding the House Oversight Committee's subpoenas to the Department of State and Secretary of State (together "DOS"). While there is much in the letter with which DOS disagrees, we respect that the House Oversight Committee (Committee) has acknowledged DOS's concerns regarding the sharing of sensitive information. We are open to a discussion on this topic and hope that a mutually agreeable resolution of the parties' concerns may be reached. In the interim, DOS reiterates its principal objections.¹

Legislative Purpose Objection

The Committee's letter states that "[t]he Secretary of State argues that there *is no legitimate purpose* for the Legislative Subpoenas which compel the production of certain election training materials furnished by the Secretary of State to local clerks." (5,16,25 Letter, p 1) (emphasis added). That was not the basis of DOS's objection in its May 7, 2025, letter. Rather, the objection was that the Committee had not clearly articulated its legislative purpose for investigating DOS and requesting every piece of information in the eLearning Portal. DOS has never disputed the authority of the Legislature to conduct investigations, and it does not do so now. See OAG, 1981-1982, No 5994, p 394 (Sept 30, 1981) ("The power to conduct investigations, including investigations of the executive branch of government, has long been deemed to be an incident of legislative power necessary to the enactment of effective and wise laws.").

¹ DOS incorporates and relies on its previous statements and the objections made in its May 7, 2025, letter.

But investigations “must be in aid of a legislative purpose and the information sought must be pertinent to the inquiry made.” See OAG, 1975-1976, No 4998, p 421 (April 22, 1976.) A legislative subpoena is only valid to the extent it serves a *legislative purpose* of the committee that issues the subpoena. See MCL 4.541 (“Such records and files shall be subpoenaed, examined or used only in connection with the jurisdiction and purposes for which the committee was created.”) Investigations aid a legislative purpose if the investigation seeks to “determine what action or inaction had been effected by [] departments and agencies,” which may spur a change in the laws or alter the organization or operations of the relevant departments and agencies. OAG, No 4998, p 421.

The Committee’s letter provides that “[t]he stated purpose of the Legislative Subpoenas is to gather information related to and make findings of fact regarding the Secretary of State’s implementation of Public Act 116 of 1954, MCL 168.1 *et seq.*,” citing minutes from the Committee’s April 15, 2025, meeting. (5.16.25 Letter, p 3.) The letter states “this legislative investigation is vital to the Legislature’s duty to determine whether remedial amendments to the Michigan Election Law or other legislative actions are necessary.” (*Id.*) The Committee’s letter suggests the need for oversight is self-evident, and cites a handful of cases in which a court has disagreed with the Secretary’s interpretation of the election laws as support.² Setting aside that the courts have upheld the Secretary in numerous decisions since she took office in January 2019,³ the few cases cited in the letter support the Committee’s general interest in the interpretations and election laws at issue. But the breadth of this general description suggests the Committee’s purpose is to investigate every aspect of election administration—that is functionally the same as having no purpose.

² The citation to the case of *Agee, et al v Benson, et al*, Case No. 22-cv-272 (WD Mich), and suggestion that the Secretary was responsible for drawing racially discriminatory electoral districts, is particularly unpersuasive. Michigan’s Independent Redistricting Commission is charged with drawing Michigan’s electoral districts to the exclusion of all others. Const 1963, art 4, § 6(1), (19). The Secretary serves only as a non-voting “secretary”, “and in that capacity shall furnish, under the direction of the commission, all technical services that the commission deems necessary.” (*Id.*, § 6(4).) Further, since the Legislature cannot legislate in the area of redistricting, see art 4, § 6(22), the citation to this case in support of the Committee’s legislative purpose is inapt. The letter also cites *Carra v Benson*, No. 20-211-MZ (Court of Claims), which involved a last-minute challenge to a COVID-19 protocol related to the November 2020 presidential election, and not to a particular ongoing interpretation of the election law.

³ See *Benson In More Elections-Related Lawsuits Than Last 4 SOS Combined*, MIRS, May 2, 2025, <https://mirs.news/news/capsule/mirs-capitol-capsule-friday-may-2-2025 - 79819>. Most recently, the Sixth Circuit Court of Appeals upheld DOS’s process for removing deceased voters from the State’s qualified voter file. See [Federal Court affirms that Michigan's work to remove deceased voters from state rolls is "more than reasonable," rejects legal challenge.](#)

The Secretary appreciates that it is the Legislature that has principally entrusted her with the task of supervising elections in Michigan, MCL 168.21, and providing directions, advice, and training to the clerks she supervises, MCL 168.31(1)(a)-(c), (j), vesting in the Legislature an interest in understanding how the laws it has enacted are enforced. But surely that interest—and the people—are best served if the Committee would articulate a specific purpose to support its investigation here. For instance, if the Committee was interested in potential legislation concerning an aspect of the absent-voting process—say, signature comparisons—the Secretary could provide materials together and in context so that a comprehensive view of the process may be presented to the Committee. But a generalized review of training materials—which themselves might not be full explications of the process and are frequently written for clerks already trained to perform these duties—would provide little assistance to Committee members contemplating remedial legislation.

The generalized nature of the request for training materials on every available topic suggests either that the Committee has not yet arrived at a particular legislative purpose or is simply requesting documents for the sake of doing so—but neither scenario provides a sufficient basis for the Committee to exercise its subpoena authority. “[T]he legislative power to compel disclosure of information by the executive branch may not be used for ‘irrelevant purposes’ [and] must respect the ‘traditional independence’ of another ‘constitutionally established’” branch. See OAG, 1981-1982, No 5994, (September 30, 1981), quoting OAG, 1967-1968, No 4606, p 109 (September 20, 1967). “Investigations conducted solely for the personal aggrandizement of the investigators or to ‘punish’ those investigated are indefensible.” *Watkins v United States*, 354 US 178 (1957).

Further, given the accusations leveled against the Secretary, it bears noting that the Committee may not investigate DOS or the Secretary for purported violations of the law under the guise of conducting a legislative investigation. “Addressing alleged violations of existing law is an enforcement matter entrusted to the executive, not to the legislative, branch of government; it is therefore not a valid legislative purpose.” *McLaughlin v Montana State Legislature*, 493 P.3d 980, 989 (Mont 2021), citing *Watkins*, 354 US at 187. See also *Trump v Mazars USA, LLP*, 591 US 848, 863 (2020) (Congress may not issue a subpoena for the purpose of “law enforcement,” because “those powers are assigned under our Constitution to the Executive and the Judiciary.”)

Confidentiality Objection

Although the Committee’s letter describes DOS’s concerns regarding the disclosure of sensitive information as “political theatre,” election security is a serious matter with severe consequences for the state and its citizens. The

Committee’s letter notes that DOS has long made the same sensitive information available to Michigan’s local clerks, which includes Representative Smit and Committee Chair DeBoyer in their former capacities. But this information does not lose its sensitive status simply because local clerks and select staff members must access it to perform their duties under the election law. Such reasoning—taken to its end—would mean that no information could be confidential in Michigan since the law almost always permits certain individuals access to confidential information. Regardless, the Representatives’ former capacities are not pertinent now, since they are no longer bound by the duties they formerly upheld or to the supervision that formerly applied to them in their exercise of those duties.

Further, any disregard of the confidentiality of the information sought would be inconsistent with the laws passed by the Legislature. By the Legislature’s own design, access to Michigan’s qualified voter file (QVF) and the information in it is limited. MCL 168.509r provides that “the secretary of state shall establish and maintain the computer system and programs necessary to the operation of the qualified voter file,” and that the Secretary of State “shall *allow* each county, city, or township *access* to the qualified voter file.” (Emphasis added). Local clerks are allowed access to the QVF and can add, change, or delete records in the QVF, see MCL 168.509p, but the QVF remains under the supervision and control of DOS. And as noted in DOS’s prior letter, a local clerk who misuses their access to the QVF or the information in it is subject to the Secretary’s remedial supervisory control authority. MCL 168.21. This authority keeps potential abuse in check. But the Secretary has no authority to punish misuse of this information by those outside her purview.

For example, some of the instructional guidance in the eLearning Portal contains screenshots or descriptions on accessing the QVF or reveal aspects of the QVF’s architecture or security feature information. There is no “smoking gun,” so to speak, but rather dispersed pieces of information from which additional understanding of the system and its digital architecture be gleaned. Similarly, certain instructional materials contain proprietary or confidential information related to the functioning of Michigan’s electronic voting systems—Dominion Voting Systems, Hart InterCivic, and Electronic Systems & Software, Inc.—the disclosure of which (unintentionally or not) would likely violate the State of Michigan’s contracts with these entities. Other materials simply include sensitive information intended to protect the safety and security of election administrators, their systems and records, and the act of voting.

Recognizing the sensitive nature of such material, the Legislature expressly exempted specific information in the QVF from public disclosure, see MCL 168.509gg, and DOS regularly invokes cybersecurity exemptions to protect other

sensitive information from public disclosure. MCL 15.243(1)(d), (y), (z). To be clear, DOS understands that FOIA exemptions generally do not apply in the context of a legislative committee request for information. But DOS' point is that its concern regarding disclosure is neither new nor pretended and is not being invoked simply because the Committee is the requestor. Further, while it is correct that former Attorney General Frank Kelley opined that the Department of Public Health was required to provide confidential clinical data in response to a legislative committee subpoena, he did so after determining the committee had set forth a proper legislative purpose and that the information sought was pertinent to the investigation:

The investigation undertaken pursuant to House Resolution 171 has as its purpose an inquiry into the operation of various state departments and agencies with regard to the recent poisoning of livestock. From the resolution and its preamble, it is clear that the legislature has authorized an investigation of the situation to determine what action or inaction had been effected by the respective departments and agencies.

After receiving the committee's report and recommendations, there are many types of legislative action which may be taken. The legislature, for example, may wish to change the health laws of the State of Michigan or alter the basic organization and operations of the departments and agencies involved. It may also conclude that no changes are necessary in any existing laws. Thus there is no doubt that the resolution indicates a valid legislative purpose.

As I have earlier indicated there is, in addition to the requirement that the inquiry be an aid of a legislative purpose, the requirement that the information sought be pertinent to the investigation. The subpoenaed material includes the names and addresses of persons who participated in a Department of Public Health survey to determine the effect of ingestion of PBB on humans. Certainly that study constitutes a part of the actions taken by the Department of Public Health and as such is pertinent to the scope of the committee's inquiry as set forth in House Resolution 171 and the committee is clearly authorized to review such actions.

OAG, No 4998, p 421. Here, the Committee has not yet articulated a clear legislative purpose for the investigation of DOS. But even if the nebulous purpose stated above, i.e. gathering information related to DOS's implementation of every election law, is legitimate, the Committee has not explained why this sensitive information *itself* is pertinent to its investigation.

Additionally, Attorney General Kelley noted in his opinion that the committee could only use the confidential clinical data consistent with its legislative

purpose, and that the committee had a duty to respect the privacy of the individuals in the study. (*Id.*, pp 421-423.) In this case—as noted in DOS’s May 7, 2025, letter—the Special Rules for the House Oversight Committee give the Chair discretion to direct the release of otherwise confidential information, Special Rule 2.0, and the Committee has so far made no guarantee of confidentiality or promise to only use the sensitive information consistent with its legislative purpose.

To the Committee’s credit, its letter appears to recognize that DOS’s concerns are genuine by proposing a confidential joint redaction process involving participation by the Committee, DOS, and their respective counsel. DOS appreciates this offer of cooperation. While DOS anticipates both sides will participate in good faith, it seems probable that the parties will be unable to reach an agreement as to the confidentiality of all the materials in question. In an effort to address that concern, and without waiving DOS’s objections to the subpoenas, DOS offers a counterproposal. Instead of a joint effort by the parties, DOS proposes that the Committee and DOS select a mutually agreed upon third-party to fully resolve the confidentiality dispute. If the Committee is willing to entertain this proposal, we suggest that counsel for the parties meet to discuss its implementation in more detail before reducing it to a written proposal.

Summary & Conclusion

While the Committee’s letter paints the Secretary as a willful obstructionist impeding its constitutional duty, DOS has responded to every request for information from the Election Integrity Committee and the Oversight Committee and provided responsive materials, including training materials in the eLearning Portal. As to that request, first made by a committee in February 2025, DOS steadfastly maintained its objection to disclosing sensitive information.

Even so, on April 14, 2025, DOS committed to reviewing all the material in the portal and providing it—with redactions, as needed. This is no small task. The portal is a live site that contains hundreds of various types of files that must be downloaded into a producible format. For instance, downloading one video can take up to 30 minutes, and there are dozens of videos in the eLearning Portal. Further, only *one* employee at DOS has the security clearance required to download information from the portal. Each file must then be reviewed to determine whether it contains sensitive information. But despite this show of good faith, the Committee authorized duplicative subpoenas to DOS and the Secretary the very next day.

In response to the subpoenas, DOS again confirmed that it would review and provide the requested materials, subject to appropriate redactions. Notably, such a review would have to be conducted regardless of the Secretary’s position on

Mr. Michael Pattwell
House Oversight Committee MDOS Subpoenas
Page 7
May 22, 2025

disclosure so that the Committee may—if nothing else—be advised of what information posed security or confidentiality concerns and should therefore not be shared outside the Committee itself.

DOS has produced over 3,000 pages of materials and has been transparent about its inability to meet the May 13, 2025, deadline. As of the date of this letter, approximately 50% of the training material has been downloaded and prepared for review. DOS will continue to provide material on a rolling basis. DOS committed to producing these materials despite its objections. Nevertheless, the law requires that the Committee's investigation and subpoenas be supported by a legitimate legislative purpose, and that the information sought be relevant to that purpose. The Committee has met neither requirement here.

The Committee's generalized purpose of investigating how every election law is implemented by DOS is so broad as to emit no purpose. But even if that purpose were assumed to be legitimate, the Committee has made no effort to explain why the sensitive information is pertinent to or necessary for its investigation. As the constitutional officer elected by the people to enforce Michigan's elections laws, the Secretary has her own duty to safeguard election information where the need for its disclosure has not been established.

That said, DOS appreciates the Committee's acknowledgement of DOS' concerns, and its proposal of a joint resolution of the dispute. Because the people of Michigan would certainly expect such an effort, DOS is amenable to a discussion including its proposal to have an independent mediator resolve the disclosure of sensitive information.

We look forward to your response. Thank you.

Sincerely,

Heather S. Meingast

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