

STATE OF MICHIGAN JUDICIAL DISTRICT JUDICIAL CIRCUIT COUNTY Court of Claims	SUMMONS	CASE NUMBER 25- -MZ
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Court address Michigan Court of Claims, Hall of Justice, 925 W. Ottawa Street, P.O. Box 30185, Lansing, MI 48909

Court telephone number (517) 373-0807

Plaintiff's name, address, and telephone number MICHIGAN HOUSE OF REPRESENTATIVES	v	Defendant's name, address, and telephone number JOCEYLN BENSON Secretary of State Richard H. Austin Building 430 W. Allegan Street, 4th Floor Lansing, MI 48918 (888) 767-6424
Plaintiff's attorney bar number, address, and telephone number Michael J. Pattwell (P72419) Zachary C. Larsen (P72189) Benjamin J. Holwerda (P82110) Clark Hill PLC 215 S Washington Square, Ste. 200 Lansing, MI 48933 (517) 318-3100		

Instructions: Check the items below that apply to you and provide any required information. Submit this form to the court clerk along with your complaint and, if necessary, a case inventory addendum (MC 21). The summons section will be completed by the court clerk.

Domestic Relations Case

- ☐ There are no pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint.
- ☐ There is one or more pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint. I have separately filed a completed confidential case inventory (MC 21) listing those cases.
- ☐ It is unknown if there are pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint.

Civil Case

- ☐ This is a business case in which all or part of the action includes a business or commercial dispute under MCL 600.8035.
- ☐ MDHHS and a contracted health plan may have a right to recover expenses in this case. I certify that notice and a copy of the complaint will be provided to MDHHS and (if applicable) the contracted health plan in accordance with MCL 400.106(b).
- ☒ There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint.
- ☐ A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has

been previously filed in ☐ this court, ☐ _____ Court, where

it was given case number _____ and assigned to Judge _____

The action ☐ remains ☐ is no longer pending.

Summons section completed by court clerk.

SUMMONS

NOTICE TO THE DEFENDANT: In the name of the people of the State of Michigan you are notified:

1. You are being sued.
2. **YOU HAVE 21 DAYS** after receiving this summons and a copy of the complaint to **file a written answer with the court** and serve a copy on the other party **or take other lawful action with the court** (28 days if you were served by mail or you were served outside of Michigan).
3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.
4. If you require accommodations to use the court because of a disability or if you require a foreign language interpreter to help you fully participate in court proceedings, please contact the court immediately to make arrangements.

Issue date	Expiration date*	Court clerk
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*This summons is invalid unless served on or before its expiration date. This document must be sealed by the seal of the court.

PROOF OF SERVICE

TO PROCESS SERVER: You must serve the summons and complaint and file proof of service with the court clerk before the expiration date on the summons. If you are unable to complete service, you must return this original and all copies to the court clerk.

CERTIFICATE OF SERVICE / NONSERVICE

☐ I served ☐ personally ☐ by registered or certified mail, return receipt requested, and delivery restricted to the addressee (copy of return receipt attached) a copy of the summons and the complaint, together with the attachments listed below, on:

☐ I have attempted to serve a copy of the summons and complaint, together with the attachments listed below, and have been unable to complete service on:

Name	Date and time of service
Place or address of service	
Attachments (if any)	

☐ I am a sheriff, deputy sheriff, bailiff, appointed court officer or attorney for a party.

☐ I am a legally competent adult who is not a party or an officer of a corporate party. I declare under the penalties of perjury that this certificate of service has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

Service fee \$	Miles traveled	Fee \$	
Incorrect address fee \$	Miles traveled	Fee \$	TOTAL FEE \$

Signature

Name (type or print)

ACKNOWLEDGMENT OF SERVICE

I acknowledge that I have received service of a copy of the summons and complaint, together with

Attachments (if any) _____ on _____ Date and time

Signature _____ on behalf of _____

Name (type or print) _____

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Court address

Michigan Court of Claims, Hall of Justice, 925 W. Ottawa Street, P.O. Box 30185, Lansing, MI 48909

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Plaintiff's name, address, and telephone number MICHIGAN HOUSE OF REPRESENTATIVES
Plaintiff's attorney bar number, address, and telephone number Michael J. Pattwell (P72419) Zachary C. Larsen (P72189) Benjamin J. Holwerda (P82110) Clark Hill PLC 215 S Washington Square, Ste. 200 Lansing, MI 48933 (517) 318-3100

v

Defendant's name, address, and telephone number MICHIGAN DEPARTMENT OF STATE Richard H. Austin Building 430 W. Allegan Street, 4th Floor Lansing, MI 48918 (888) 767-6424
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it was given case number _____ and assigned to Judge _____

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Name	Date and time of service
Place or address of service	
Attachments (if any)	

☐ I am a sheriff, deputy sheriff, bailiff, appointed court officer or attorney for a party.

☐ I am a legally competent adult who is not a party or an officer of a corporate party. I declare under the penalties of perjury that this certificate of service has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

Service fee \$	Miles traveled	Fee \$	
Incorrect address fee \$	Miles traveled	Fee \$	TOTAL FEE \$

Signature

Name (type or print)

ACKNOWLEDGMENT OF SERVICE

I acknowledge that I have received service of a copy of the summons and complaint, together with

Attachments (if any) _____ on _____ Date and time

Signature _____ on behalf of _____

Name (type or print) _____

**STATE OF MICHIGAN
IN THE COURT OF CLAIMS**

MICHIGAN HOUSE OF REPRESENTATIVES,

Case No. 25-

-MZ

Plaintiff,

Hon.

v.

**URGENT STATE
CONSTITUTIONAL MATTER**

JOCELYN BENSON, in her official capacity
as Michigan Secretary of State, and the MICHIGAN
DEPARTMENT OF STATE,

Defendants.

Michael J. Pattwell (P72419)
Zachary C. Larsen (P72189)
Benjamin J. Holwerda (P82110)
Clark Hill PLC
215 S. Washington Sq., Ste. 200
Lansing, MI 48933
zlarsen@clarkhill.com
mpattwell@clarkhill.com
bholwerda@clarkhill.com
Attorneys for Plaintiff

*There is no other pending or resolved civil action arising out of the transition or occurrence
alleged in this Complaint.*

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

IMMEDIATE AND EXPEDITED CONSIDERATION REQUESTED

Plaintiff, the Michigan House of Representatives (the “House”), by and through its attorneys, Clark Hill PLC, hereby states as follows in support of its Complaint for Declaratory Judgment and Injunctive Relief against Michigan Secretary of State Jocelyn Benson (the “Secretary”) and the Michigan Department of State (the “Department”) (together, “Defendants”):

INTRODUCTION

*“Except as otherwise provided in this constitution or in the constitution or laws of the United States the legislature shall enact laws to regulate the time, place and manner of all nominations and elections, to preserve the purity of elections, to preserve the secrecy of the ballot, to guard against abuses of the elective franchise, and to provide for a system of voter registration and absentee voting.”*¹

1. This case is about the Michigan Legislature’s ability to gather information from state officials regarding the administration of state elections in furtherance of the Legislature’s constitutional duty to regulate elections—a responsibility the Legislature has long accomplished through, *inter alia*, the enactment and amendment of the Michigan Election Law, 1954 PA 116, MCL 168.1 *et seq.*

2. Within the Legislature, the House undertakes the initial and labor-intensive part of its election-related lawmaking responsibilities through the House Election Integrity Committee, chaired by Representative Rachelle Smit (the former Martin Township Clerk), and the House Oversight Committee, chaired by Representative Jay DeBoyer (the former St. Clair County Clerk and Register of Deeds). Under its Rule 36, the House vested the House Oversight Committee with the full scope of power under MCL 4.101 and MCL 4.541 to issue subpoenas and examine the books and records of government entities. See House Resolution 1 of 2025.

3. Notably, in Sections 21 and 31 of the Michigan Election Law, the Legislature has charged the Secretary with supervisory control over local election officials and directed the Secretary to create various curriculum and training materials instructing Michigan’s 1,603 local clerks on how to properly administer elections pursuant to the Michigan Election Law. MCL 168.21; MCL 168.31. On several occasions in recent years, however, Michigan courts have found

¹ Mich Const 1963, art 2, § 4(2) (italics added); see also US Const art I, § 4, cl 1.

that the Secretary has either exceeded her authority under, or erroneously interpreted, the Michigan Election Law, and thus furnished improper guidance to local clerks.

4. Dating back to November of 2024, the House, through its designated committees, has informally asked the Secretary and Department to produce the training materials used to instruct local clerks on the administration of Michigan elections. Rather than aid the House in its constitutional duty to safeguard the purity of Michigan elections, Defendants chose a non-cooperative path of delay and obfuscation.

5. After almost six months of attempting to obtain Defendants' voluntary cooperation with the informal informational request, the House, through its House Oversight Committee, was constrained on April 22, 2025, to issue subpoenas to the Secretary and Department compelling production of the previously requested election training materials ("House Subpoenas"). The House Subpoenas were properly issued by majority vote and otherwise in accordance with Public Act 118 of 1931, MCL 4.101, Public Act 46 of 1952, MCL 4.541, and House Resolution 1 of 2025 (adopting the standing rules of the House), and signed by Representative Jay DeBoyer, Chairman of the House Oversight Committee.

6. Defendants admitted that these training materials are readily available in a digital format on the Secretary's eLearning Center and have been disseminated to thousands of local clerks and staff members. Nevertheless, Defendants have produced only 68 of the 517 admittedly responsive documents and, instead, lodged five meritless objections in an attempt to justify their overt non-compliance with the House Subpoenas.

7. Even when the House politely offered to bear the expense of production and engage in a confidential review and joint redaction process related to the responsive documents,

Defendants chose to persist in their irrational and even conspiratorial objections to the House Subpoenas.

8. Defendants' unfortunate conduct left Plaintiff little choice but to pass House Resolution 117 on May 22, 2025, finding that Defendants are in violation of the House Subpoenas, holding Defendants in civil contempt for their deliberate conduct, and authorizing the House Office of Legal Counsel to enforce compliance with the House Subpoenas.

9. To date, Defendants have maintained their defiance of the House Subpoenas and House Resolution 117.

10. In an attempt to avoid criminal contempt proceedings before the House in accordance with MCL 4.82 and MCL 4.83 and OAG, 1947–1948, No. 759, p 671, Plaintiff respectfully asks this Court to issue an order declaring that: (a) the House Subpoenas are supported by a valid legislative purpose; (b) Defendants' objections to the House Subpoenas are invalid; and (c) Defendants have a legal duty to timely produce all documents responsive to the House Subpoenas. Plaintiff also seeks a preliminary injunction preventing the spoliation of the documents responsive to the House Subpoenas until those documents have been produced.

PARTIES

11. Plaintiff Michigan House of Representatives is one of the two legislative bodies constituting Michigan's bicameral Legislature in which the legislative power of the State of Michigan is vested. Const 1963, art 4, § 1. It consists of 110 members who are elected by the qualified electors of their respective districts.

12. The House and Senate are together vested with "the legislative power of the State of Michigan." Mich Const 1963, art 4, § 1. The Legislature is required to "enact laws to regulate the time, place and manner of all nominations and elections, to preserve the purity of elections, to

preserve the secrecy of the ballot, to guard against abuses of the elective franchise, and to provide for a system of voter registration and absentee voting.” Mich Const 1963, art 2, § 4(2). The Legislature cannot legislate in a vacuum. It needs relevant and timely information to help ensure its members are appropriately informed when carrying out their legislative responsibilities. Defendants’ violation of the House Subpoenas injures and inhibits the ability of the House to obtain information necessary to carry out its legislative functions and to fulfill its constitutional duty related to elections.

13. Defendant Jocelyn Benson is Michigan’s Secretary of State, serves as the head of the Defendant Department of State, and is constitutionally obligated to “perform duties prescribed by law” Mich Const art V, §§ 3, 9; see also MCL 16.126. The Michigan Legislature has designated the Secretary as the “the chief election officer of the state,” granted her “supervisory control over local election officials,” and directed her to prepare and disseminate the very training materials sought by the House Subpoenas here. MCL 168.21 and MCL 168.31.

14. Defendant Michigan Department of State is a principal executive department in the State of Michigan and is tasked with, among other things, implementing the provisions of the Michigan Election Law. See, e.g., MCL 16.125; MCL 168.31.

JURISDICTION

15. The Revised Judicature Act confers on the Michigan Court of Claims “exclusive” jurisdiction to “hear and determine any claim or demand, statutory or constitutional, liquidated or unliquidated, ex contractu or ex delicto, or any demand for monetary, equitable, or declaratory relief or any demand for an extraordinary writ against the state or any of its departments or officers notwithstanding another law that confers jurisdiction of the case in the circuit court.” MCL 600.6419(1)(a). This includes authority to hear and determine any claim for equitable relief or

declaratory relief against the State “or any of its departments or officers.” *Id.* The Court of Claims therefore has jurisdiction over this matter pursuant to MCL 600.6419(1)(a).

16. This Court also has the authority to “order a speedy hearing” and adjudicate this matter under the Michigan Court Rules where there is an actual controversy between interested parties. MCR 2.605(A)(1), (D).

STATEMENT OF FACTS

A. Initial House Correspondence with Defendants and Request for Training Records

17. On February 6, 2025, Representative Rachelle Smit, Speaker Pro Tempore and Chair of the House Election Integrity Committee, formally requested from the Secretary certain election-related information, including all current election-related training materials available to clerks found on the Department’s secure eLearning Center web portal (the “Portal”).

18. In an email from Legislative Director John Burns to Erin Schor, Legislative Policy Director for the Secretary, on February 26, 2025, Mr. Burns stated that, “[a]s you know, the Election Integrity Committee views these records as foundational to their work this session, and we’ve been trying to gain access to the records since early November.”²

19. On March 7, 2025, on behalf of the Secretary, the Chief Legal Director for the Department, Michael Brady, formally responded to Chair Smit’s request for records. Despite the training materials already being available to thousands of clerks and staff members throughout the State, the Secretary argued that refusing to provide them to the House was somehow necessary to ensure the integrity of the State’s election system and refused to provide the training materials.

² Chair Smit informally requested the Secretary provide training records beginning in November 2024, but that initial request was erroneously converted to a Michigan Freedom of Information Act request and ultimately denied by the Secretary.

20. On March 12, 2025, the Chair of the Michigan House Oversight Committee, Representative Jay DeBoyer, sent a letter to the Secretary and Mr. Brady, notifying the Secretary of the deficiencies in her response to Chair Smit's request for records. Specifically, Chair DeBoyer remarked that the URL provided was inaccessible; the produced material was not comprehensive; certain records were withheld; and full access to the Portal was denied. Chair DeBoyer further requested that Secretary identify all withheld documents and materials and the reasons they were withheld.

21. On March 19, 2025, on behalf of the Secretary, Mr. Brady again responded to Chair DeBoyer, and once again refused to provide the requested materials.

22. On April 4, 2025, Chair DeBoyer and Chair Smit issued a joint letter to the Secretary explaining the House's frustration with the Defendants' refusal to produce the training materials and again requesting that those materials be produced or that login credentials for the Portal be provided to facilitate the House's review of those materials.

23. On April 14, 2025, Khyla Craine, Chief Legal Director for the Department responded on behalf of the Defendants, refusing once again to provide the requested training materials and baselessly asserting that the requests were being "weaponized" against the Department.

B. House Oversight Committee Issues Subpoenas for Training Records.

24. On April 22, 2025, after months of resistance by the Defendants, the House Oversight Committee voted to authorize the issuance of two subpoenas, one to the Secretary and the other to the Department. (**Ex. A**, House Subpoena to Benson; **Ex. B**, House Subpoena to MDOS).

25. Specifically, the House Subpoenas requested the “current full, complete, and unredacted training materials used to train Michigan clerks and their staffs on Michigan elections, including but not limited to all of the materials found in the Department of State’s eLearning Center.” (*Id.*) The House Subpoenas further requested “all materials listed on the attached list of documents that the Department of State withheld from disclosure to the Michigan House of Representatives.” (*Id.*)

26. The House Subpoenas were signed by Chair DeBoyer, and served on legal counsel for the Defendants on April 22, 2025, with a response deadline of May 13, 2025, 4:00 p.m. (*Id.*)

27. The House Subpoenas were issued pursuant to the legislative subpoena power of the House, as contemplated by Article III, § 2 of the Michigan Constitution. *People v Courser*, 326 Mich App 298, 308; 926 NW2d 29 (2018) (“The power to investigate and to do so through compulsory process plainly falls within’ the legislative sphere[.]”) (internal citations omitted).

28. The House Subpoenas were issued pursuant to lawful statutory authority. See MCL 4.101 (“Committees and commissions of or appointed by the legislature may by resolution of the legislature be authorized to administer oaths, subpoena witnesses and/or to examine the books and records of any persons, partnerships or corporations involved in a matter properly before any of such committees or commissions”); see also MCL 4.541 (“Notwithstanding any other provision of law to the contrary, any standing or select committee of the senate or the house of representatives, and any joint select committee of the senate and house of representatives, shall be authorized to subpoena and have produced before any such committee, or inspect the records and files of any state department, board, institution or agency; and it shall be the duty of any state department, board, institution or agency to produce before the committee as required by the subpoena, or permit the members of any such committee to inspect its records and files”).

29. The House Subpoenas were also issued pursuant to a valid legislative purpose to seek relevant information to inform the Legislature in its constitutional duty to “regulate the time, place, and manner of all nominations and elections, to preserve the purity of elections[, and] guard against abuses of the elective franchise . . .[.]” and, if deemed necessary, enact laws effectuating that constitutional responsibility to regulate the manner of elections in the State of Michigan. Const 1963, art 2, § 4(2).

C. Defendants Object to the House Subpoenas

30. On May 7, 2025, Defendants submitted a letter to Catherine Edwards, Deputy General Counsel for the Michigan House of Representatives in response to the House Subpoenas. (Ex. C, 5/7/2025 MDOS Letter).

31. In the letter, Defendants objected to the House Subpoenas on several grounds, including: baselessly asserting that the House Subpoenas were issued for “irrelevant purposes” and the underlying investigation is being conducted “solely for the personal aggrandizement of the investigators” (*Id.* at 8); that the House Subpoenas violate the House Standing Rules, an area where neither Defendant has any oversight (*Id.* at 6-7); that the House Subpoenas are overbroad, compliance with the House Subpoenas would cost approximately \$9,000 plus labor costs to address, and reviewing materials to respond to the House Subpoenas would take Department staff away from other duties (*Id.* at 9); the Defendants will not produce the information because it is sensitive and Chair DeBoyer could theoretically direct the release of the information to anyone (*Id.* at 11); and the House Subpoenas were “unauthorized” by including the Secretary as a requestee for the subpoenaed material. (*Id.* at 7).

D. The House Rebuts the Defendants’ Objections and Offers Additional Time for Defendants to Comply

32. On May 16, 2025, the House responded to the Defendants’ May 7, 2025 Letter, after Defendants again failed to provide the requested training records by the deadline of May 13, 2025. (Ex. D, 5/16/2025 House Response Letter). The House also rebutted the Defendants’ several objections to the House Subpoenas. (*Id.*) Specifically:

- a. The House Subpoenas were issued pursuant to a valid legislative purpose, namely, to gather information related to and make findings of fact regarding the Defendants’ implementation of Public Act 116 of 1954, MCL 168.1 *et seq.* (“Michigan Election Law”) and determine if remedial amendments to the Michigan Election Law or other legislative actions are necessary. (*Id.* at 3).
- b. The House, through its resolved Committees, not only has a valid reason to review all election materials prepared by Defendants, including the sensitive training materials, it has a constitutional duty to do so. (*Id.* at 4). Article II of the Michigan Constitution vests the Legislature with the duty to “enact laws to regulate the time, place and manner of all nominations and elections, to preserve the purity of elections, to preserve the secrecy of the ballot, to guard against abuses of the elective franchise, and to provide for a system of voter registration and absentee voting.” (*Id.* 4, citing Mich Const Art II, § 4(2)). Moreover, Defendants fail to appreciate that it is was the Legislature directing Defendants in the first instance to prepare and disseminate the very training materials sought by the House Subpoenas here. (*Id.*).
- c. The Defendants’ objection that the House violated House Rule 36 is incorrect. (*Id.* at 9). Rule 36 was drafted to convey maximum subpoena power upon the House Oversight Committee and does not prohibit that Committee from assisting standing, special, or subcommittees in the proper discharge of their legislative mission. (*Id.*) Similarly, in addition to assisting the House Election Integrity Committee, the House Oversight Committee has jurisdiction to investigate how agencies and departments, including the Secretary, implement the laws the Legislature enacts. (*Id.*)
- d. Moreover, Defendants have no standing to allege the House violated its own rules, as the interpretation and enforcement of the House Rules are within the exclusive jurisdiction of the Michigan House of Representatives. (*Id.* at 9); citing *Anderson v Atwood*, 273 Mich 316, 319; 262 NW 922 (1935) (“Rules of legislative procedure, adopted by the legislature and not prescribed by the Constitution, may be suspended and in action had, even if contrary thereto, will not be reviewed by the court[]”); OAG, 1983-1984 No. 6195, p 215 (Dec 13, 1983) (“It has been held that the power of a legislative body to make reasonable rules for its operation is an absolute power

beyond the challenge of any other body or tribunal, except that the rules may not ignore constitutional restraints or violate fundamental rights.”)

- e. Next, Defendants cannot cloak information they deem confidential or sensitive from legislative purview. (*Id.* at 7); OAG, No. 4998 (finding that confidential health information “requested under the subpoena must be provided to the committee[.]”); see also *Practical Political Consulting v Secretary of State*, 287 Mich App 434, 464; 789 NW2d 178 (2010) (“Elections constitute the bedrock of democracy and the public’s interest in the purity of such elections is of paramount importance. If we cannot hold our election officials accountable for the way in which they conduct our elections, then we risk the franchise itself.”)
 - f. Yet, given the Defendants’ confidentiality concerns, the House proposed a confidential joint redaction process (as has historically been done) whereby legal counsel and at least two (2) representatives from each side meet and confer in good faith regarding the redactions the Secretary believes are necessary to ensure the security of elections. (*Id.* at 8).
 - g. The Defendants’ objection that the House Subpoenas are purportedly overbroad and unduly burdensome is not valid, both legally and factually. (*Id.* at 9). From a legal standpoint, the Defendants are not exercising an independent constitutional authority and are subordinate to the Legislature in its exercise of authority to regulate the manner of elections in the state, including the creation and dissemination of training materials for local clerks. (*Id.*) From a factual standpoint, the purported 517 responsive documents, 68 of which have already been provided, hardly represents an undue burden to produce and/or redact. (*Id.* at 9–10).
 - h. Finally, the objection that the Secretary is neither a necessary or appropriate party to the House Subpoenas is meritless. (*Id.* at 10). The House Subpoenas name Secretary Benson in her *official* capacity as Secretary of State, and head of the Department of State. (*Id.*) She is Michigan’s chief election officer pursuant to Section 21 of the Michigan Election Law and, therefore, she is appropriately listed as a party to the House Subpoenas. (*Id.*)³
33. To aid in the facilitation of the requested material, the House offered additional time for Defendants to respond to the House Subpoenas, or by May 22, 2025. (*Id.*)

³ Indeed, to name a state officer in their official capacity is equivalent to naming the office. See, e.g., *Mays v Snyder*, 323 Mich App 1, 88; 916 NW2d 227 (2018) (explaining that a suit against a state official in their official capacity is “not a suit against the official but rather is a suit against the official’s office”).

E. Defendants Reassert Their Objections and Again Refuse to Disclose the Election Training Materials

34. On May 22, 2025, rather than comply with the House Subpoenas, Defendants doubled down on their objections that no legislative purpose had been provided for the House Subpoenas and refused to provide the requested materials. (Ex. E, 5/22/2025 MDOS Letter).

35. Notably, Defendants conceded that state departments and agencies are ***required*** to comply with legislative subpoenas, ***regardless*** of the sensitive or confidential nature of the information requested, and that the training records had “long” been previously provided to over a thousand Michigan local clerks, including to Chairs Smit and DeBoyer in their former capacities without issue. (*Id.* at 4). Yet, despite these concessions, Defendants continued to refuse to provide the training records they contend are beyond the reach of the inherent subpoena power of the Legislature.

F. The House Holds Defendants in Civil Contempt

36. On May 22, 2025, the House passed House Resolution No. 117. (Ex. F, House Resolution No. 117). In the Resolution, the House determined that Defendants were “in violation of the House’s subpoenas” and held them in civil contempt for “their deliberate failure to comply with the House’s subpoenas.” (*Id.* at 3).

37. The Resolution also directed the House Office of Legal Counsel to “take steps necessary and proper to ensuring compliance with the House’s subpoenas, including the initiation of legal action[.]” (*Id.*)

**COUNT I
DEFENDANTS’ LEGISLATIVE-PURPOSE OJECTION IS INVALID**

38. Plaintiff incorporates by reference all preceding allegations set forth above as if fully stated herein.

39. “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.” The Michigan Supreme court has held that “[a]n actual controversy exists when a declaratory judgment is needed to guide a party’s future conduct in order to preserve that party’s legal rights.” *League of Women Voters of Mich v Secretary of State*, 506 Mich 561 (2020) (*en banc*).

40. Defendants have violated their legal duty to timely produce all documents responsive to the House Subpoenas.

41. Defendants challenge the legitimacy of the legislative purpose underlying the House Subpoenas as a justification for their continued refusal to fully respond to the House Subpoenas.

42. Defendants legislative-purpose objections are baseless. The House Subpoenas were not issued for irrelevant purposes or for the personal aggrandizement of House members, and Defendants’ refusal to disclose the subpoenaed election training materials infringes on the constitutional duty of the House to regulate “the time, place and manner of all nominations and elections, to preserve the purity of elections, to preserve the secrecy of the ballot, to guard against abuses of the elective franchise, and to provide for a system of voter registration and absentee voting” among other constitutional responsibilities related to elections in the State. Const 1963, art 2, § 4(2).

43. “The legislative power, under the Constitution of the state, is as broad, comprehensive, absolute and unlimited as that of the parliament of England, subject only to the Constitution of the United States and the restraints and limitations imposed by the people upon such power by the Constitution of the State itself.” *Young v Ann Arbor*, 267 Mich 241, 243 (1934).

And, it is well-established that the House has power to secure needed information in order to legislate. Indeed, the House’s power to gather information on a subject of legislative action is an essential corollary of the very power of the House to legislate on that subject. As the United States Supreme Court has explained: “A legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change. . . .” *McGrain v Daugherty*, 273 US 135, 175 (1927).

44. While an appropriate legislative purpose can be found whenever the subject of the subpoena is within the legislative sphere and addresses a topic pertinent to potential legislation, the clarity of the legislative purpose in this case is even more stark. The House Subpoenas seek to gather information related to the implementation of the Michigan Election Law which, of course, was enacted by the Legislature. This legislative investigation is vital to the House’s duty to determine whether remedial amendments to the Michigan Election Law or other legislative actions are necessary.

45. Even more specifically, the House Subpoenas demand production of the very training materials the Legislature directed the Secretary to create and provide to local clerks in the first instance. Review of those materials by the House is necessary to determine, *inter alia*, whether Defendants have properly discharged the functions delegated them by Sections 21 and 31 of the Michigan Election Law, whether more precise guiding principles are required, or even whether additional or different election procedures or structures may be more prudent to better safeguard the purity of Michigan elections.

46. Because elections are quickly approaching (with the next election day occurring on November 4, 2025, and primaries occurring even earlier on August 5, 2025) and the term of the 103rd Legislature is limited in duration (ending on January 1, 2027), every day Defendants obstruct

access to the subpoenaed election training materials, Defendants undermine the ability of the House to fulfill its constitutional duty to regulate and safeguard the purity of elections.

47. The House is therefore entitled to declaratory judgement that the House Subpoenas are supported by a valid legislative purpose, Defendants' objection to same is without merit, and Defendants have a legal duty to timely produce all documents responsive to the House Subpoenas.

COUNT II DEFENDANTS' REMAINING OBJECTIONS ARE INVALID

48. Plaintiff incorporates by reference all preceding allegations set forth above as if fully stated herein.

49. Defendants have violated their legal duty to timely produce all documents responsive to the House Subpoenas.

50. As stated in the May 7, 2025 Letter, Defendants ongoing refusal to comply with the House Subpoenas is based on several additional objections including: (a) conjecture that the House Oversight Committee will share responsive documents with the House Election Integrity and such information would violate House Rule 36; (b) an unsubstantiated and speculative concern the House would share certain unspecified confidential documents with the public and thereby jeopardize the purity of the elections the House looks to better protect; and (c) a wholly baseless and disproven claim of overbreadth and burden. See, *supra*, ¶ 32.

51. Defendants have no cognizable legal ground upon which to interpose the objections listed above. Defendants are neither the sole guardians of election security in the state nor are they the sole gatekeepers of purported sensitive election information. That the Legislature has vested Defendants with certain election-related responsibilities is not a basis for Defendants to impede the actual constitutional authority of the Michigan Legislature to regulate—in virtually all material aspects—elections in the State of Michigan. Const 1963, art 2, § 4(2).

52. Defendants' objection regarding the scope of House Rule 36 is improper. The House is sole judge of its own rules, and separation-of-powers concerns further dictate that Defendants have no authority to interpret or enforce the House's procedural rules. See Ex. D, at 9; see also Const 1963, art 4, § 16 ("Each house . . . shall . . . determine the rules of its proceedings . . ."). Moreover, nothing in House Rule 36 prohibits the House Oversight Committee from sharing responsive documents with the House Election Integrity Committee.

53. Defendants' conspiratorial confidentiality objection is factually and legally meritless. Defendants have no factual basis upon which to allege that House members or staff would share confidential election materials with the public, particularly where Defendants previously made these same materials available to Chair Smit in her former capacity as the Martin Township Clerk and to Chair DeBoyer in his former capacity as the St. Clair County Clerk, and such concern is contrary to the written record. See Ex. D, at 7. Regardless of any factual merit for this objection, Defendants have no legal authority which justifies their withholding of confidential documents from the Legislature, particularly where the Legislature instructed and empowered Defendants to create those very documents in the first instance and where objections under the Michigan Freedom of Information Act do not restrict a legislative subpoena. *Id.*

54. Defendants' overbreadth and burden objection is pretextual and belied by the record. Defendants claimed that there are just over 500 responsive items and that those items have already been compiled in an electronic database presently accessible to Michigan's 1,603 local clerks and their staffs, which number in the thousands. The House has also offered to independently bear the burden and cost of production through an independent data collection specialist. Regardless, Defendants have no legal authority which justifies their withholding of documents from the Legislature on the basis of burden. See Ex. D, at 9-10.

55. Because elections are quickly approaching (with the next election day occurring on November 4, 2025, and primaries occurring even earlier on August 5, 2025) and the term of the 103rd Legislature is limited in duration (ending on January 1, 2027), every day Defendants obstruct access to the subpoenaed election training materials, Defendants undermine the ability of the House to fulfill its constitutional duty to regulate and safeguard the purity of elections.

56. The House is therefore entitled to declaratory judgment that Defendants' remaining objections to the House Subpoenas are invalid, and Defendants have a legal duty to timely produce all documents responsive to the House Subpoenas.

COUNT III

AN INJUNCTION MUST ISSUE TO PRESERVE THE STATUS QUO

57. Plaintiff incorporates by reference all preceding allegations set forth above as if fully stated herein.

58. Defendants have stated that the electronic repository in which the responsive documents are stored is a "live" database and have not committed to preserving all documents responsive to the House Subpoenas.

59. The Michigan Court Rules contemplate that "other relief" may be granted based on a declaratory judgment. MCR 2.605(F). The Michigan Court Rules provide for preliminary injunctions at MCR 3.310(A). And, in exceptional circumstances, such as this, Michigan courts may also issue affirmative "mandatory injunctions" necessary to preserve the status quo.

60. All of the criteria for such injunctive relief are met. See, e.g., *Mich AFSCME Council 25 v Woodhaven-Brownstown School District*, 293 Mich App 143 (2011); *L & L Concession Co v Goldhar-Zimmer Theatre Enters*, 332 Mich 382 (1952).

61. The House has a clear legal right to a full and timely production of documents responsive to the House Subpoenas and is likely to succeed on the merits of the declaratory judgment claims.

62. Defendants' obstruction has and continues to irreparably damage the House by impeding the House in its pursuit of satisfying its constitutional to regulate and safeguard the purity of elections in the State. Mich Const 1963, art 2, § 4(2). This irreparable damage is exacerbated by that fact that the term of the 103rd Legislature is limited in duration and future state elections loom on the horizon. Any prolonged delay in the production of the responsive documents will prevent the ability of the House to properly oversee the training and instruction of local clerks leading into the next election cycle. Moreover, any alternation, obfuscation, or spoliation of the responsive documents will also result in irreparable damage to the House.

63. The balance of hardships also favors the House because there is no harm to Defendants in producing the documents responsive to the House Subpoenas, and there is no harm in Defendants preserving the status quo.

64. Finally, the public interest is best served if the constitutional order of the State of Michigan is preserved and the Legislature can properly perform its duty to regulate the manner of elections in the state and, if deemed necessary, enact election laws for the benefit of Michigan residents.

65. Plaintiff is therefore entitled to a preliminary injunction preventing Defendants from altering, obfuscating, or otherwise spoliating documents responsive to the House Subpoenas

RELIEF REQUESTED

WHEREFORE, the House respectfully demands a judgment:

- (a) Declaring that the House Subpoenas are supported by a valid legislative purpose;
- (b) Declaring that the Defendants' objections to the House Subpoenas are invalid;

- (c) Declaring that Defendants have a legal duty to timely produce all documents responsive to the House Subpoenas;
- (d) Enjoining Defendants from altering or otherwise spoliating the materials responsive to the House Subpoenas;
- (e) Granting the House its attorney fees; and
- (f) Granting any other relief as this Court may deem just and proper.

Respectfully submitted,

CLARK HILL PLC

/s/ Michael J. Pattwell

Michael J. Pattwell (P72419)

Zachary C. Larsen (P72189)

Benjamin J. Holwerda (P82110)

Clark Hill PLC

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Lansing, MI 48933

zlarsen@clarkhill.com

mpattwell@clarkhill.com

bholwerda@clarkhill.com

Attorneys for Plaintiff

Dated: June 5, 2025

VERIFICATION

Per the requirements of MCL 600.6434(2), I, Andrew Fink depose and say the following:

1. I am duly authorized to sign this Verification for and on behalf of Plaintiff in this matter.

2. Pursuant to MCR 1.109(D)(3)(b), I declare under the penalties of perjury that this Verified Complaint has been examined by me and that its contents are true to the best of my information, knowledge, and belief.



By: Andrew Fink
Its: General Counsel

Subscribed and sworn to before me
this 5th day of June 2025.



Paula K. Mertins, Notary Public
Eaton County, Michigan
My Commission expires: 11/17/2029
Acting in the County of Ingham

PAULA K. MERTINS
NOTARY PUBLIC, STATE OF MI
COUNTY OF EATON
MY COMMISSION EXPIRES Nov 17, 2029
ACTING IN COUNTY OF **INGHAM**

EXHIBIT A

SUBPOENA
BY THE AUTHORITY OF THE HOUSE
OF REPRESENTATIVES OF THE STATE OF MICHIGAN

To Michigan Secretary of State Jocelyn Benson

You are hereby commanded, at the date and time specified below, to

() Appear and testify before the House Oversight Committee in Room H-352 of the Michigan Capitol, 100 N. Capitol Ave, Lansing, Michigan 48933

() Appear and testify before the House Oversight Subcommittee on _____ in Room ____ of the House Office Building, 124 N. Capitol Ave, Lansing, Michigan 48933

() Appear and testify at a deposition on matters before the Oversight Committee in Room ____ of the House Office Building, 124 N. Capitol Ave, Lansing, Michigan 48933

(x) Produce the things identified on the attached Schedule A at Room S-821 of the House Office Building, 124 N. Capitol Ave, Lansing, Michigan 48933

Date and time of appearance, testimony, and/or production: May 13, 2025, no later than 4:00 p.m.

Questions regarding this subpoena may be directed to:

Catherine Edwards
Deputy General Counsel
Michigan House of Representatives
517-373-5070
cedwards@house.mi.gov


Rep. Jay DeBoyer
Chair, House Oversight Committee

Signed or attested to by Jay DeBoyer before me on the 22nd day of April, 2025.

Signature MH L
Printed name Matthew Carnagie
Notary public, State of Michigan, County of Eaton
My commission expires Nov 1, 2025
Acting in the County of Ingham

PROOF OF SERVICE
OF SUBPOENA ISSUED BY THE AUTHORITY OF THE HOUSE
OF REPRESENTATIVES OF THE STATE OF MICHIGAN

Subpoena issued to Michigan Secretary of State Jocelyn Benson

Address 430 W. Allegan St., Richard H. Austin Building – 4th Floor, Lansing, MI 48918

To produce documents by May 13, 2025, no later than 4:00 p.m.

Served by (print name) _____

Title _____

Manner of Service _____

Date April _____, 2025

Signature of Server _____

Address _____

ACKNOWLEDGEMENT OF SERVICE
OF SUBPOENA ISSUED BY THE AUTHORITY OF THE HOUSE
OF REPRESENTATIVES OF THE STATE OF MICHIGAN

I acknowledge that I have received service of a copy of the subpoena, together with

Excel spreadsheet _____

Attachments (if any)

on 04.22.2025 at 11:03am

Date and time

Heather S. Meingast

Signature

on behalf of Jocelyn Benson

Heather S. Meingast

Name (type or print)

SCHEDULE A
DOCUMENTS TO BE PRODUCED

The current full, complete, and unredacted training materials used to train Michigan clerks and their staffs on Michigan elections, including but not limited to all of the materials found in the Department of State's eLearning Center.

This includes all materials listed on the attached list of documents that the Department of State withheld from disclosure to the Michigan House of Representatives.

EXHIBIT B

SUBPOENA
BY THE AUTHORITY OF THE HOUSE
OF REPRESENTATIVES OF THE STATE OF MICHIGAN

To Michigan Department of State

You are hereby commanded, at the date and time specified below, to

() Appear and testify before the House Oversight Committee in Room H-352 of the Michigan Capitol, 100 N. Capitol Ave, Lansing, Michigan 48933

() Appear and testify before the House Oversight Subcommittee on _____ in Room ____ of the House Office Building, 124 N. Capitol Ave, Lansing, Michigan 48933

() Appear and testify at a deposition on matters before the Oversight Committee in Room ____ of the House Office Building, 124 N. Capitol Ave, Lansing, Michigan 48933

(x) Produce the things identified on the attached Schedule A at Room S-821 of the House Office Building, 124 N. Capitol Ave, Lansing, Michigan 48933

Date and time of appearance, testimony, and/or production: May 13, 2025, no later than 4:00 p.m.

Questions regarding this subpoena may be directed to:

Catherine Edwards
Deputy General Counsel
Michigan House of Representatives
517-373-5070
cedwards@house.mi.gov


Rep. Jay DeBoyer
Chair, House Oversight Committee

Signed or attested to by Jay DeBoyer before me on the 22nd day of April, 2025.

Signature M H L
Printed name Matthew Carnegie
Notary public, State of Michigan, County of Eaton
My commission expires Nov 1, 2025
Acting in the County of Ingham

PROOF OF SERVICE
OF SUBPOENA ISSUED BY THE AUTHORITY OF THE HOUSE
OF REPRESENTATIVES OF THE STATE OF MICHIGAN

Subpoena issued to Michigan Department of State

Address 430 W. Allegan St., Richard H. Austin Building – 4th Floor, Lansing, MI 48918

To produce documents by May 13, 2025, no later than 4:00 p.m.

Served by (print name) _____

Title _____

Manner of Service _____

Date April _____, 2025

Signature of Server _____

Address _____

ACKNOWLEDGEMENT OF SERVICE
OF SUBPOENA ISSUED BY THE AUTHORITY OF THE HOUSE
OF REPRESENTATIVES OF THE STATE OF MICHIGAN

I acknowledge that I have received service of a copy of the subpoena, together with

Excel spreadsheet _____
Attachments (if any)

on 04.22.2025 4:04pm
Date and time

Heather S. Meingast
Signature

on behalf of MI Department of State

Heather S. Meingast
Name (type or print)

SCHEDULE A
DOCUMENTS TO BE PRODUCED

The current full, complete, and unredacted training materials used to train Michigan clerks and their staffs on Michigan elections, including but not limited to all of the materials found in the Department of State's eLearning Center.

This includes all materials listed on the attached list of documents that the Department of State withheld from disclosure to the Michigan House of Representatives.

EXHIBIT C

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



P.O. Box 30736
LANSING, MICHIGAN 48909

DANA NESSEL
ATTORNEY GENERAL

May 7, 2025

Ms. Catherine Edwards, Deputy General Counsel
Office of the General Counsel
N-821 House Office Building
P.O. Box 30014
Lansing, Michigan 48909

Re: House Oversight Committee Subpoenas

Dear Ms. Edwards:

The Department of State and Secretary of State (together “DOS”) are in receipt of the House Oversight Committee’s subpoenas dated April 22, 2025. They have requested representation by the Department of Attorney General to assist in further discussions regarding the subpoenas.

The subpoenas are identical and seek the production of:

The current full, complete, and unredacted training materials used to train Michigan clerks and their staffs on Michigan elections, including but not limited to all of the materials found in the Department of State's eLearning Center.

This includes all materials listed on the attached list of documents that the Department of State withheld from disclosure to the Michigan House of Representatives.

The purpose of this letter is to interpose objections to the subpoenas and to request a narrowing of the scope of material requested. But first, it may be helpful to recount the facts leading to the issuance of these subpoenas and DOS’s good faith efforts to comply with earlier document requests.

Summary of Requests and Records Produced

On November 20, 2024, staff for Representative Rachelle M. Smit emailed a request to DOS for “electronic copies of all training materials offered or otherwise provided to elections clerks.” (Attachment 1, Burns 11.20.24 email.) DOS’s FOIA

Document received by the MI Court of Claims.

Coordinator responded the next day advising that the FOIA request could not be processed because it did not sufficiently describe the records sought as required by MCL 15.233(1). (Attachment 2, Hines 11.21.24 email & Burns 12.10.24 email.) The FOIA Coordinator suggested that the request be refined. (*Id.*)

On December 10, 2024, staff for Representative Smit submitted a refined request seeking twelve (12) categories of records:

1. All indexes and/or lists of materials used by MDOS to train clerks to run/manage/supervise/administer/oversee Michigan elections;
2. A sitemap of all public and non-public facing internet pages for the Bureau of Elections;
3. A sitemap of the e learning portal
(<https://mielections.csod.com/client/mielections/default.aspx>)
4. The leadership/personnel organizational chart for MDOS;
5. The leadership/personnel organizational chart for the Bureau of Elections;
6. The electronic mail distribution list for all Michigan clerks used by the Bureau of Elections to disseminate Guidance – including but not limited to opinion letters from Director Jonathan Brater;
7. The US mail distribution list for all Michigan clerks used by the Bureau of Elections to disseminate Guidance – including but not limited to opinion letters from Director Jonathan Brater;
8. **(Time period 2018 to present)** All opinions of the Secretary of State interpreting Michigan elections law and /or regulations and/or administrative rules (this includes but is not limited to letters /guidance issued to clerks);
9. **(Time period 2018 to present)** All opinions of the Director of Elections Jonathan Brater interpreting Michigan elections law and /or regulations and/or administrative rules (this includes but is not limited to letters and/or guidance issued to clerks);
10. **(Time period 2018 to present)** All administrative rules and/or regulations created by the Secretary of State, Director Brater, and/or any rulemaker and/or rulemaking body within MDOS pertaining to

Michigan elections (this includes but is not limited to letters/guidance issued to clerks);

11. All training materials made available to clerks relating to the management, running, administering, and/or supervising of elections – a specific description of the documents can be found here:
<https://www.michigan.gov/sos/elections/admin-info>;

12. All training materials made available to clerks relating to any aspect of elections found in this following portal:
<https://mielections.csod.com/client/mielections/default.aspx>.
[Attachment 2, Hines 11.21.24 email & Burns 12.10.24 email.]

On December 18, 2024, the FOIA Coordinator advised Smit's staff that DOS was taking the extension for responding to the request, and that a notice would be provided by January 7, 2025. (Attachment 3, 12.18.24 Hines letter.)

On January 7, 2025, the FOIA Coordinator provided notice to Smit's staff that the request was granted as to existing, non-exempt records, and estimating a processing fee of \$8,781.75, of which half was due to commence processing. (Attachment 4, Hines 1.7.25 letter.)

Smit's staff did not respond to the January 7, 2025, letter. Instead, on February 6, 2025, staff from Smit's office sent a "new" request for information on behalf of the House Election Integrity Committee of which Representative Smit was now Chair. (Attachment 5, 2.6.25 Burns email.) The February 6, 2025 communication sought the same information requested previously (see above). (*Id.*) The communication also suggested that Representative Smit be provided login credentials to access certain categories of information. (*Id.*)

On March 7, 2025, DOS responded to the February 6 request. (Attachment 6, 3.7.25 Brady Letter.) Of note, DOS responded to all 12 requests for records by either providing records or providing website links¹ to where the records were readily accessible, with the exception of records maintained in the "eLearning Center" portal. (*Id.*) To that request, DOS responded that it would not provide immediate, unlimited access to the requested information because doing so would raise security concerns:

MDOS maintains a secure portal for election clerks which contains sensitive training materials regarding the cyber security and physical security of election systems and election machines. This limited access

¹ The FOIA expressly permits providing website links. MCL 15.234(5).

is critical to ensure the ongoing integrity of our election systems and thereby the integrity of our elections. [*Id.*]

DOS did, however, provide a copy of a list of training materials available to clerks in the eLearning Center. (*Id.*)

On March 11, 2025, Representative Smit appeared before the House Oversight Committee and complained of DOS's purported lack of cooperation, wrongly asserting DOS had provided none of the records she sought.² Although Smit later admitted she had received the majority of the information sought by that date, she asked the Committee to issue a subpoena for the remaining records.³ Representative Jay DeBoyer, Chair of the House Oversight Committee, declined to issue a subpoena at that time, stating he would send a letter to DOS requesting production of the remaining records instead.⁴

The next day, on March 12, 2025, Chair DeBoyer sent a letter to DOS on behalf of Representative Smit, raising concerns with respect to DOS's response to all 12 categories of requested information. (Attachment 7, 3.12.25 DeBoyer Letter.) With respect to materials in the "eLearning Center" portal, the Chair requested that "login credentials and full and unobstructed access to the portal" be provided. (*Id.*)

On March 19, 2025, DOS responded to each concern stated by the Chair and produced additional records. (Attachment 8, 3.19.25 Brady Letter.) With respect to the eLearning Center request, DOS declined to provide login credentials to access the portal:

[A]s noted in our March 7, 2025, response to Rep. Smit, MDOS remains committed to the safe and secure administration of elections for the citizens of Michigan. We strive to provide as much transparency as the law allows while fulfilling our duty to protect the security and integrity of our collective election systems. Again, as noted in our March 7, 2025, response to Rep. Smit, MDOS maintains a secure portal for election clerks which contains sensitive training materials regarding the cyber security and physical security of election systems and election machines. This limited access is critical to ensure the ongoing integrity of our election systems and thereby the integrity of our elections. Lest there be any question as to the necessity or wisdom

² See Benson Threatened With House Panel Subpoena, March 12, 2025, available at <https://home.mirs.news/post/benson-threatened-with-house-panel-subpoena> (accessed May 7, 2025.)

³ (*Id.*)

⁴ (*Id.*)

of complying with industry “need to know” standards in the protection of critical infrastructure and sensitive information, unfortunately, we need look no further than the ongoing criminal prosecution of individuals (including a former state representative from during her time in office) who are alleged to have attempted to gain unauthorized and illegal access to voting machines for their own personal and political purposes. [*Id.*]

DOS further responded that producing records from the eLearning Center portal would be burdensome due to the scale of the material and the need to review each record for redactions to protect sensitive information:

As for the eLearning Center, it contains over 500 training materials in a variety of different formats, including written documents, videos, recorded training presentations, online classes, and software. The materials hosted on the eLearning Center contain sensitive information regarding the cybersecurity and physical security of election systems and election machines. If training materials were to be released, each item would require individual review and redaction to ensure no protected information is released which may jeopardize the security and integrity of Michigan elections. For materials such as videos or online classes, this review may necessitate video and audio editing to ensure protected information is not released. [*Id.*]

DOS stated that if specific materials were identified for production, it could produce a more detailed estimate of the time and cost required to produce the materials. (*Id.*)

On April 4, 2025, the Chair responded, again requesting *all* materials in the eLearning Center be produced without redaction or that login credentials be provided for the portal. (Attachment 9, 4.4.25 DeBoyer Letter.) The Chair did not acknowledge or address DOS’s stated election security concerns with producing these materials or the burden in doing so. (*Id.*)

On April 14, 2025, DOS responded to the Chair’s letter, maintaining its objections but stating that it would individually review the items in the eLearning Center portal to determine which items presented security concerns, and would provide what documents it could on a rolling basis:

[A]s noted in our prior responses, MDOS maintains a secure portal for election clerks which contains sensitive training materials regarding the cyber security and physical security of election systems and election machines. This limited access is critical to ensure the ongoing

integrity of our election systems and thereby the integrity of our elections; therefore, read access login credentials will not be provided.

In an effort to assist the Election Integrity Committee in its previously stated goal of reviewing election documents to identify areas of improvement for election administration, the Department will conduct an individual review of each of the items included on the e-learning portal to prevent disclosure of protected information which, if released, may jeopardize the security and integrity of Michigan elections. In our March 7, 2025 response, MDOS offered to assist the Committees by asking the Committees to identify which specific materials they were most interested in reviewing, so that these materials could be prioritized for production. Because we did not receive any response to this offer of assistance, MDOS will provide the materials, following a security review, on a rolling basis. [Attachment 10, 4.14.25 Craine Letter.]

DOS stated an initial production of materials would be made available by April 30, 2025. (*Id.*)

Despite DOS's commitment to review all materials in the eLearning Center portal and to provide records, where possible and with appropriate redactions, the House Oversight Committee, at the Chair's request, approved the issuance of the instant subpoenas on April 15, 2025. The subpoenas were later served on April 22, 2025.

On May 2, 2025, consistent with DOS's stated intent in its April 14 letter, DOS provided a set of documents to you.

Objections to the Subpoenas in the Manner and Form Presented

Violation of Statutes and House Rule 36

MCL 4.101 provides that "[c]ommittees . . . of or appointed by the legislature may by resolution of the legislature be authorized to . . . subpoena witnesses and/or to examine the books and records of any persons, partnerships or corporations involved in a matter properly before any of such committees or commissions." MCL 4.541 similarly provides that "any standing or select committee of . . . the house of representatives . . . shall be authorized to subpoena and have produced before any such committee, or inspect the records and files of any state department, board, institution or agency[.]" MCL 4.541 also provides that "[s]uch records and files shall be subpoenaed, examined or used only in connection with the jurisdiction and purposes for which the committee was created."

Nothing in MCL 4.401 or MCL 4.541, or the House Standing Rules,⁵ allows a standing committee to issue a subpoena on behalf of *another* standing committee. As detailed above, the information sought by the subpoenas was clearly requested by Representative Smit—first in her capacity as a legislator, then in her capacity as Chair of the Election Integrity Committee, which is a standing committee per the House Rules. Representative Smit is not a member of the House Oversight Committee. Despite this, the House Oversight Committee interceded on that committee’s behalf via the March 12, 2025, letter. And then did so again by authorizing the instant subpoenas.⁶ The House Oversight Committee’s authorization of a subpoena on behalf of another committee runs directly counter to statute and the House’s own rules.

But the purpose of state law and presumably House Rule 36 is to check a committee’s authority to wield subpoena power by ensuring it is used for an appropriate legislative purpose and “only in connection with the jurisdiction and purposes for which the committee was created.”⁷ The House Oversight Committee, by acting on behalf of the Election Integrity Committee, usurped this authority, violating the House Rules by issuing the instant subpoenas, seriously undermining any claim that the subpoenas have a proper scope or legitimate legislative purpose. Additionally, having one committee subpoena sensitive information for another committee blurs the lines of who potentially has access to that information, making it clear that the House fails to appreciate the sensitive nature of certain of the information requested.

Further, the subpoena to the Secretary is redundant and unauthorized. Both subpoenas are identical and seek the same information. So, there is no need for both. And under MCL 4.541, a standing committee is authorized to subpoena “the records and files of any state department, board, institution or agency.” The Department of State is the holder of such records and files, not the Secretary herself. A single subpoena to the Department of State is all that was necessary.

⁵ See Standing Rules of the House of Representatives, available at [house_rules.pdf](#) (accessed May 7, 2025.)

⁶ See Michigan House GOP to subpoena Jocelyn Benson for election training docs, available at [Michigan House GOP to subpoena Jocelyn Benson for election training docs | Bridge Michigan](#) (accessed May 7, 2025.)

⁷ See MCL 4.541; see also MCL 4.101, which provides that any subpoena involve “a matter properly before any of such committees or commissions.”

Lack of legislative purpose

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 “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).) See also *Trump v Mazars USA, LLP*, 591 US 848, 862-863 (2020); *Barenblatt v United States*, 360 US 109, 111-112 (1959); *Watkins v United States*, 354 US 178, 187 (1957). 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. (*Id.*)

A legislative investigation may “pursue its legitimate course,” but “the 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, p 394 (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*, 354 US at 178.

Here, the subpoenas issued by the House Oversight Committee disclose no legislative purpose. Nowhere do they explain the committee’s purpose in requesting the training materials or how the requested materials are pertinent to the Oversight Committee’s purpose. Nor did the Chair provide any explanation of the Oversight Committee’s purpose and why it requires the materials on the record during the April 15, 2025, meeting at which it approved issuing the subpoenas.

Overbreadth and Burden

Narrowing of the requested materials

The subpoenas seek all training materials in the eLearning Center portal. As shown by the Excel sheet attached to the subpoenas, there are at least 517 discreet items in the portal. There are videos, documents, forms, online trainings, and powerpoints. It is estimated that the portal contains 22 gigabytes of information. And, as was explained to both Representative Smit and Chair DeBoyer previously, the majority of these items must be individually reviewed to determine whether they contain security feature information or other sensitive information, the release

of which could jeopardize the security of Michigan’s electoral process. Such information is generally exempt from disclosure. See MCL 15.243(1)(d), (y), (z).

To conduct this individualized review, DOS will have to move what materials it can into a platform so that the information may be reproduced in a format capable of redaction and production to the committee. It is estimated that the cost to DOS of hosting the information on the platform will be \$9,000, in addition to the labor costs for reviewing the material.⁸ Further, deploying staff to engage in hours of review in the midst of the May 6, 2025 election burdens DOS’s performance of a core mission—the administration of free and fair elections in Michigan. See OAG No 5994, p 394 (legislature’s “power of investigation has been limited to the extent necessary to avoid encroachment on other constitutionally independent prerogatives.”) But, as explained in DOS’s previous communications, the cost and burden on DOS could be alleviated, at least to some extent, if the House Oversight Committee would agree to narrow the scope of the materials requested. *Mazars*, 591 US at 870 (“[T]o narrow the scope of possible conflict between the branches” when a subpoena is directed at a coequal branch of government “the subpoena must be “no broader than reasonably necessary to support [the] legislative objective.”); *McLaughlin v Montana State Legislature*, 405 Mont 1; 493 P3d 980, 994-995 (Mont, 2021) (legislature’s subpoenas were “sweepingly overbroad”). Refining the request should also result in more timely production of information by DOS. This is a reasonable request by DOS, which has so far been ignored.

DOS will not produce sensitive information

DOS anticipates that the response to its concerns will be that the expense and burden may be avoided if DOS simply provides the House Oversight Committee with unredacted material or provides login credentials so that the information may be reviewed electronically by the committee. But, as it has stated in every correspondence, DOS cannot provide sensitive election information to persons not entitled by the law to possess such information and maintain its legal duty to ensure the security of Michigan elections. See, e.g., OAG No 5994 at p 394; *Barenblatt*, 360 US at 111-112.

Section 21 of the Michigan Election Law makes the Secretary the “chief election officer” and she “shall have supervisory control over local election officials in the performance of their duties under the provisions of this act.” MCL 168.21. Further, under § 31, the Secretary “shall . . . [a]dvise and direct local election officials as to the proper methods of conducting elections.” MCL 168.31(1)(b). These sections provide the Secretary with broad authority to issue instructions, directions, and

⁸ DOS previously provided estimated costs in its January 7, 2025, FOIA fee estimate to Representative Smit of the labor required to review the material. (Attachment 4.)

advice for the proper conduct of elections and to require adherence to those instructions by the election officials over whom she exercises supervisory control. See, e.g., *Davis v Secy of State*, 333 Mich App 588, 597 (2020); *Hare v Berrien Co Bd of Election Commr's*, 373 Mich 526, 531 (1964); MCL 168.931(1)(h).

This authority plainly includes issuing directives to safeguard voting equipment and associated programming and software. See OAG, 2021-2022, No. 7316 (August 6, 2021) (“The Secretary of State, in her role as the Chief Elections Officer, may exercise supervisory authority over local elections officials responding to a request for access to voting equipment by the Auditor General by issuing directions that access to voting equipment should not be permitted, given the need to protect the physical integrity and security of the equipment consistent with state and federal law.”)⁹ Since the November 2020 general election, unprecedented efforts to gain unlawful access to voting equipment have occurred.¹⁰ Other individuals have sought to obtain sensitive, proprietary information through FOIA requests, which DOS has successfully defended against.¹¹

To be clear, DOS is not imputing to members of the House Oversight Committee any nefarious intent to use or share sensitive information with those who would harm or disrupt Michigan elections.¹² But it is concerning that the committee, including Chair DeBoyer as a former clerk, has failed to appreciate the sensitive nature of information pertaining to the functioning of Michigan’s qualified voter file and election equipment. DOS recognizes that the Special Rules for the House Oversight Committee generally limit the receipt of confidential information to committee members and staff, and prohibit releasing confidential information to third parties, which presumably also precludes providing that information to members of other committees and their staff. Special Rule 2.0. But the Chair has discretion to direct otherwise. (*Id.*). In other words, the Chair could direct the

⁹ Available at [Opinion #7316 \(state.mi.us\)](#) (accessed May 7, 2025). See also, OAG, 2009-2010, No. 7247 (May 13, 2010) (Secretary of State may exercise supervisory authority over local elections officials responding to a FOIA request for voted ballots by issuing directions for the review of the ballots in order to protect their physical integrity and the security of the voted ballots.), available at [Opinion #7247 \(state.mi.us\)](#) (accessed May 7, 2025).

¹⁰ Again, it should not be lost on the House Oversight Committee that a former House member was one of several individuals charged with conspiring to obtain and improperly access voting equipment. See [DePerno, Rendon charged in Michigan voting machine probe](#) (accessed May 7, 2025.)

¹¹ See [Attorney General: Macomb County Judge Rules FOIA Requests for Sensitive Election Data Were Properly Denied](#) (accessed May 7, 2025.)

¹² DOS is concerned regarding the prospective sharing of information with Representative Smit, a former clerk, who continues to claim that the 2020 election was “stolen,” and has defended various individuals now charged with election-related crimes. See [2020 election skeptic to head Michigan House election integrity committee | Bridge Michigan](#) (accessed May 7, 2025.)

release of DOS's information to anyone the Chair so desires, rendering any protection afforded by the confidentiality provision potentially meaningless.¹³

Again, as discussed above, no appropriate legislative purpose has been advanced by the House Oversight Committee in support of subpoenaing any of the training materials—let alone sensitive information raising election security concerns. *Mazars*, 591 US at 870-871 (The legislative body must “adequately identif[y] its aims and explai[n] why the [requested] information will advance its consideration of the possible legislation.”); *State ex rel Joint Committee of Government & Finance of West Virginia Legislature v Bonar*, 159 W Va 416, 423-424; 230 SE2d 629 (W Va, 1976) (legislative committee failed to establish need for subpoenaed records.) There simply has been no explanation as to why the House Oversight Committee needs this sensitive information. As a result, moving forward, DOS will produce those materials that require no redactions in full, other materials will be redacted making as few redactions as possible. Material that cannot be appropriately redacted will not be produced.

Conclusion

The Secretary of State firmly believes transparency in the administration of Michigan elections is vitally important. To that end, DOS's Elections website is replete with information concerning all aspects of the voting process—from registering to vote, to tabulating ballots, to post-election audits, and everything in between.¹⁴ But just as important is protecting the security and integrity of the voting process itself. Releasing material that would reveal security feature information or other sensitive information, jeopardizes the process. This is true even if those seeking the information are well-intentioned, because each time sensitive information is released, its potential for intentional or accidental disclosure to those who would misuse it increases.

We are hopeful that the House Oversight Committee will thoughtfully consider the Secretary's and DOS's concerns, including their request to narrow the scope of documents requested, and will expressly confirm that the committee is no longer seeking sensitive information. Even so, the Secretary and DOS are committed to

¹³ Importantly, MCL 4.541 limits a committee's use of subpoenaed records such that they may be used “only in connection with the jurisdiction and purposes for which the committee was created.” Attorney General Opinion No. 4998 opines that, through this provision in MCL 4.541, “the legislature has restricted the use of information obtained by an investigative committee solely to the exact purposes of that committee.” OAG, 1975-1976, No 4998, p 421 (April 22, 1976.) Thus, while a committee may subpoena information, the committee does not have unfettered use of such information.

¹⁴ See <https://www.michigan.gov/en/sos/elections> (accessed May 7, 2025.)

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producing all material that can be produced with any appropriate redactions. Given the scope of material requested and the need for review, combined with DOS's pre- and post-election duties regarding the May 6 election, it is unlikely that production can be fully completed by the May 13, 2025, deadline set forth in the subpoenas.

Please feel free to contact me should you have any questions concerning any of the above. We look forward to your response.

Sincerely,



Heather S. Meingast
Division Chief
Civil Rights & Elections Division

HSM/lsa

EXHIBIT D



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May 16, 2025

ELECTRONIC MAIL

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Re: Enforcement of the House Oversight Committee's April 22, 2025, Legislative Subpoenas

Dear Division Chief Meingast:

This Firm represents the Michigan House of Representatives with respect to the April 22, 2025 subpoenas ("Legislative Subpoenas") served upon the Michigan Secretary of State, Jocelyn Benson, and the Michigan Department of State (together, the "Secretary of State"). The Legislative Subpoenas, which were issued in accordance with Public Act 118 of 1931 (MCL 4.101), Public Act 46 of 1952 (MCL 4.541), and House Resolution 1 of 2025 (adopting the standing rules of the House of Representatives), and signed by Representative Jay DeBoyer, Chairman of the House Oversight Committee, seek the production of certain Secretary of State materials used to train county, city, and township clerks on the proper administration of Michigan elections.¹

The Secretary of State has not provided a complete set of documents responsive to the Legislative Subpoenas and the date for doing so has passed. The purpose of this correspondence is to acknowledge receipt of and respond to your May 7, 2025 correspondence wherein you detail the surprising refusal over the last six (6) months of the Secretary of State to produce all documents responsive to the informal oversight inquiries of both Representative Rachelle Smit, Chairwoman

¹ The House of Representatives was forced to issue the Legislative Subpoenas where, over the course of the last six (6) months, the Secretary of State has refused to meaningfully respond to several informal legislative requests for the same information. This is so, despite the fact that most of the responsive training materials are already compiled and available for review on the Secretary of State's eLearning Center.

of the House Election Integrity Committee, and Representative Jay DeBoyer, Chairman of the House Oversight Committee.

Your 12-page single spaced letter then interposes five (5) objections to the Legislative Subpoenas the House Oversight Committee was – after six months of informal efforts – compelled to serve upon your clients. *First*, the Secretary of State purports to question whether there is a legitimate purpose for the Legislative Subpoenas. *Second*, the Secretary of State attempts to shield from disclosure certain responsive documents deemed by her too sensitive to share with the requesting legislative bodies. *Third*, the Secretary of State argues that the Legislative Subpoenas violate House Rule 36 because the House Oversight Committee issued the Legislative Subpoenas in part to aid the House Election Integrity Committee in its legislative duties. *Fourth*, the Secretary of State argues that the Legislative Subpoenas are purportedly overly broad and unduly burdensome and seeks to narrow the scope of materials described in the Legislative Subpoenas. *Fifth*, Jocelyn Benson, in her official capacity as Secretary of State, and head of the Department of State, maintains that she is neither a necessary nor appropriate party to the Legislative Subpoenas. We address those objections seriatim.

LEGISLATIVE PURPOSE OBJECTION

The 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. In attempt to support the Secretary's unipolar position, you cite the following authorities:

- (i) OAG, 1975-1976, No 4998, p 421 (April 22, 1976), where former Attorney General, Frank Kelly, opined that the Michigan Department of Public Health *was* required to provide certain clinical records of a confidential nature to a legislative committee;
- (ii) *Trump v Mazars USA, LLP*, 591 US 848 (2020), where the United States Supreme Court remanded an attempt to quash congressional subpoenas seeking the *personal financial records of President Trump and his family* for consideration of “special concerns” regarding the separation of powers but also reaffirmed that when Congress seeks information needed for intelligent legislative action, it “unquestionably” remains “the duty of all citizens to cooperate”;
- (iii) *Barenblatt v United States*, 360 US 109 (1959), where the United States Supreme Court upheld the contempt conviction of a witness who, during a congressional committee hearing, refused to answer whether he was a member of the Communist Party, because the scope of the congressional power of inquiry “is as penetrating and far-reaching as the potential power to enact and appropriate under the Constitution”; and
- (iv) *Watkins v United States*, 354 US 178 (1957), where the United States Supreme Court vacated the contempt conviction of a witness who, during a congressional committee hearing, *refused to identify whether certain persons were members of*

the Communist Party, but also clarified that the Court’s conclusion in that case “will not prevent the Congress, through its committees, from obtaining any information it needs for the proper fulfillment of its role in our scheme of government.”²³

None of those authorities remotely support the Secretary’s decision to obstruct disclosure of the election training materials sought by the Legislative Subpoenas here. As explained in detail below, the Secretary of State’s argument is devoid of any factual merit and may even reflect a concerning misunderstanding of the structure of state government as established by the Michigan Constitution of 1963.

The 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.* (“Michigan Election Law”) which, of course, was enacted by the Legislature. See 4/15/25 House Oversight Committee Minutes, attached as **Exhibit A**. As is self-evident, 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. The pressing need for legislative oversight in this area should come as no surprise to the Secretary of State who on more than one occasion in the last several years has been found by Michigan courts to have either exceeded her authority under, or erroneously interpreted, the Michigan Election Law. See, e.g., *Davis v Sec’y of State*, 506 Mich 1022; 951 NW2d 329 (2020) (challenging the Secretary Benson’s directive banning the open carrying of firearms at polling places on election day); *Republican National Committee v Benson*, No 24-000041-MZ (Mich Ct Claims, June 12, 2024) (finding that the “initial presumption of validity” in signature verification of absentee ballot applications and envelopes mandated by Secretary Benson’s guidance is incompatible with the Constitution and laws of the State of Michigan); *Carra v Benson*, No 20-211-MZ (Mich Ct Claims, Oct 28, 2020) (finding that COVID-19 precautionary measures promulgated by Secretary Benson cannot impede the work of challengers, watchers, and talliers as required by the Michigan Election Law); *Genetski v Benson*, No 20-000216-MM, 2021 WL 1624452 (Mich Ct Claims, Mar 9, 2021) (finding that Secretary Benson’s guidance with respect to signature matching standards was issued

² You also cite OAG, 1981-1982, No. 5994, p 394 (Sept. 30, 1981) which, unlike the matter extant, focused on the executive privilege as it involved a legislative demand for production of the actual communications between the Governor and the head of a principal department. Even with respect to such executive communications, however, former Attorney General, Frank Kelly, opined that “[w]hether the doctrine of executive privilege has been appropriately invoked in this instance may not be determined without an examination of the documents withheld.”

³ Similarly, you reference OAG, 1967-1968, No 4606, p 109 (Sept 20, 1967), which involved the enforceability of legislative subpoenas issued to constitutionally-established state institutions of higher education. Unlike the Secretary of State, who derives her power to administer elections from the Legislature, the Michigan Constitution grants the governing boards of certain state institutions of higher education general supervisory power and control. Nevertheless, because the Legislature was charged with appropriating funds for the otherwise autonomous institutions of higher education, the Attorney General broadly opined that “the legislature has authority to conduct investigations into all matters relating to the financial requirements of institutions of higher education in this state.”

in violation of the Michigan Administrative Procedures Act); *Republican National Committee v Benson*, No 24-000148-MZ (Mich Ct Claims, Oct 3, 2024) (ordering Secretary Benson to, *inter alia*, revise her manual to clarify that ballot stub numbers must be compared to the number on the return envelope); *Agee v Benson*, No 1:22-cv-272, 2023 WL 8826692*2 (WD Mich Dec 21, 2023) (holding that the Michigan Independent Redistricting Commission, overseen by the Secretary Benson, “inescapably” drew electoral districts on the basis of race in violation of the Equal Protection Clause of the United States Constitution).

The Michigan House of Representatives through its resolved Committees not only has a valid reason to review all election training materials prepared by the Secretary of State, it has a constitutional duty to do so. The legislative power of the State of Michigan is vested in the Senate and House of Representatives. Mich Const art IV, § 1. The Legislature has general plenary power to enact legislation subject only to prohibitions of federal law or the Michigan Constitution. The Michigan Supreme Court has explained that:

The legislative power, under the Constitution of the State, is as broad, comprehensive, absolute and unlimited as that of the parliament of England, subject only to the Constitution of the United States and the restraints and limitations imposed by the people upon such power by the Constitution of the State itself. [*Young v Ann Arbor*, 267 Mich 241, 243; 255 NW 579 (1934).]

With respect to elections, Article II of the Michigan Constitution of 1963 vests the Legislature with the duty to “enact laws to regulate the time, place and manner of all nominations and elections, to preserve the purity of elections, to preserve the secrecy of the ballot, to guard against abuses of the elective franchise, and to provide for a system of voter registration and absentee voting.” Mich Const art II, § 4(2); see also US Const art I, § 4, cl 1; Mich Const art II, §§ 1, 2, 3, 7(2), 8, 9, 10; *Council No 11, Am Fed’n of State, Cnty & Mun Emp (AFSCME), AFL-CIO v Mich Civ Serv Comm’n*, 408 Mich 385, 395; 292 NW2d 442 (1980) (“It is well settled that the Legislature of this state is empowered to enact laws to promote and regulate political campaigns and candidacies”); *North v Cady*, 194 Mich 561, 563; 161 NW 377 (1917). (“It has been many times held by this court that it is within the power of the Legislature to regulate the elective franchise.”).

Relevantly here, the Legislature has, in part, carried out its election-related lawmaking duties by enacting the Michigan Election Law. It appears to be lost on the Secretary of State that was the Legislature that determined the Secretary of State be “the chief election officer of the state” and the Legislature that imbued the Secretary of State with “supervisory control over local election officials in the performance of their duties under the provisions of this act.” MCL 168.21. It also appears the Secretary of State has failed to grasp the significance of it being the Legislature that directed her in the first instance to prepare and disseminate the very training materials sought by the Legislative Subpoenas here. MCL 168.31(1).

To be sure, the Legislature by way of Section 31 of the Michigan Election Law directs the “Secretary of State” to *inter alia*, “issue instructions and promulgate rules . . . for the conduct of elections and registrations in accordance with the laws of this state,” “[a]dvice and direct local election officials as to the proper methods of conducting elections,” “[p]ublish . . . a manual of

instructions that includes specific instructions on assisting voters in casting their ballots, directions on the location of voting stations in polling places, procedures and forms for processing challenges, and procedures on prohibiting campaigning in the polling places,” “[p]ublish indexed pamphlet copies of the registration, primary, and election laws and furnish to the various county, city, township, and village clerks a sufficient number of copies for their own use,” “[p]rescribe and require uniform forms, notices, and supplies . . . for use in the conduct of elections and registrations,” “[e]stablish a curriculum for comprehensive training and accreditation of all county, city, township, and village officials who are responsible for conducting elections,” “[e]stablish a continuing election education program for all county, city, township, and village clerks,” “[e]stablish and require attendance by all new appointed or elected election officials at an initial course of instruction,” and “[e]stablish a comprehensive training curriculum for all precinct inspectors.” *Id.*⁴

Without this broad legislative grant of authority, the Secretary of State would not have the authority to undertake the very election-related training tasks under scrutiny now. See, e.g., Mich Const art V, § 9 (providing that as a single executive heading a principal department, the Secretary of State shall “perform duties prescribed by law[]”); see also *O’Halloran v Sec’y of State*, No 166424, 2024 WL 3976495, at *8 (Mich Aug 28, 2024) (recognizing that the power of the Secretary of State “derives from statute” and further that the Secretary of State’s interpretation of that statute “may not conflict with the Legislature’s clearly expressed language[]”); *Belanger & Sons, Inc v Dep’t of State*, 176 Mich App 59, 63; 438 NW2d 885 (1989) (identifying that the Secretary of State lacks inherent authority and holding that administrative determinations of the Secretary of State “are enforceable only in the manner provided by statute”); *Pharris v Sec’y of State*, 117 Mich App 202, 204; 323 NW2d 652 (1982) (acknowledging that the Secretary of State “has no inherent power” and that any “authority it has must come from the Legislature”); *Jackson v Sec’y of State*, 105 Mich App 132, 139; 306 NW2d 422 (1981) (invalidating actions of the Secretary of State which exceed the power delegated it by the Legislature).⁵

With this constitutional background in focus, the clear error of the Secretary of State’s position is revealed. It is illogical to assert that the Secretary of State has the unilateral authority to obstruct the Legislature’s oversight of the precise election training tasks the Legislature, by statute, expressly directed the Secretary of State to perform. Without access to the very election training materials the Legislature directed the Secretary of State to create, the Legislature cannot perform its constitutional mandate to enact laws which regulate and preserve the purity of elections. In that sense the Legislature’s power to gather information on a subject of legislative action is an essential corollary of the very power of the Legislature to legislate on that subject.

This concept, while elementary, has been reflected in numerous United States Supreme Court opinions. For example, in *McGrain v Daugherty*, 273 US 135 (1927), the Court held that

⁴ *Lahti v Fosterling*, 357 Mich 578, 588–89; 99 NW2d 490 (1959) (“The right which defendants claim sprang from the kindness and grace of the legislature. It is the general rule that that which the legislature gives it may take away”).

⁵ This black letter law is not intended to reflect adversely on the Secretary of State’s recently added authority under Mich Const art II, § 4(1)(l) to conduct and supervise election audits.

the congressional power of inquiry, including the process to enforce it, is an essential and appropriate auxiliary to the legislative function. The Court explained the necessity of the legislative subpoena power as follows:

A legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change; and where the legislative body does not itself possess the requisite information—which not infrequently is true—recourse must be had to others who do possess it. Experience has taught that mere requests for such information often are unavailing, and also that information which is volunteered is not always accurate or complete; so some means of compulsion are essential to obtain what is needed. [*Id.* at 175].

Applying that standard, the *McGrain* Court found that the subject of congressional investigation (namely, whether certain functions of the United States Department of Justice were being “properly discharged”) constituted a legitimate legislative purpose. *Id.* at 177-80 (“We conclude that the investigation was ordered for a legitimate object; that the witness wrongfully refused to appear and testify before the committee and was lawfully attached; that the Senate is entitled to have him give testimony pertinent to the inquiry, either at its bar or before the committee; and that the district court erred in discharging him from custody under the attachment.”).

Even the United States Supreme Court in *Mazars*, a decision on which the Secretary of State relies, acknowledges legislative oversight of the administration of laws as an appropriate legislative function justifying exercise of the subpoena power. *Mazars*, 591 US at 862–63 (“The congressional power to obtain information is broad and indispensable . . . It encompasses inquiries into the administration of existing laws, studies of proposed laws, and surveys of defects in our social, economic or political system for the purpose of enabling the Congress to remedy them.”) (cleaned up). Indeed, the Court quoted with approval the following instructional passage from *United States v Rumely*, 345 US 41, 43 (1953) where it was said:

It is the proper duty of a representative body to look diligently into every affair of government and to talk much about what it sees. It is meant to be the eyes and the voice, and to embody the wisdom and will of its constituents. Unless Congress have and use every means of acquainting itself with the acts and the disposition of the administrative agents of the government, the country must be helpless to learn how it is being served. [*Id.* at 865 (cleaned up).]

Accordingly, the Legislative Subpoenas at issue here have a valid and well-grounded legislative purpose and the objection of the Secretary of State to the contrary must be unequivocally withdrawn. 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.”).

CONFIDENTIALITY OBJECTION

The Secretary of State contends that an unspecified number of the responsive documents have, for undetermined reasons, been deemed by her as too confidential to share with the House of Representatives. The Secretary of State then seems to promote the false narrative that members of the House Oversight Committee (*i.e.*, the Legislative body constitutionally empowered to investigate and oversee the Secretary's administration of the Michigan Election Law) would, in violation of House Rules, disclose this unspecified information with unidentified persons the Secretary alleges would purportedly "harm or disrupt Michigan elections." Even worse, is the Secretary of State's unfounded suggestion that Representative Smit (*i.e.*, the Chairwoman of the House Election Integrity Committee) has any intent other than protecting the purity of Michigan's elections. The Secretary of State's escalatory comments in this regard are irresponsible political theatre.

It should be lost on no one that the Secretary of State has long made these purportedly sensitive materials available to Michigan's 1,603 county and local clerks and their respective staff members which number in the thousands. And, it should also not go unnoticed that the Secretary of State had previously made these same training materials available to Representative Smit in her former capacity as the Martin Township Clerk, and Representative DeBoyer in his former capacity as the St. Clair County Clerk and Register of Deeds. Why the Secretary of State believes these elected representatives should not be granted access to this same information now that they are serving in a legislative oversight capacity is perplexing.

As a legal matter, however, it is of little importance. The very authority upon which the Secretary of State relies in withholding the purportedly confidential election training materials undermines the Secretary of State's position. At issue in OAG, 1975-1976, No 4998, p 421 (April 22, 1976), was whether the Michigan Department of Public Health was required to provide to the Legislature the names, addresses, and clinical data of citizens who, under a confidentiality agreement, participated in a study conducted by the Department. Former Attorney General, Frank Kelly, stated that he was "of the opinion that the information requested under the subpoena must be provided to the committee." The Attorney General reasoned that the confidential clinical data had a legislative purpose in that it might prompt amendments to the state's health laws or alter the basic organization and operations of the departments and agencies involved. The only proper limitation on a legislative committee identified by the Attorney General was that the committee's use of the materials be restricted to a legislative purpose and that the materials not arbitrarily be made public. Historically, the legislative committees of the House of Representatives have gone into closed meeting to review confidential materials subpoenaed from third parties.

This Attorney General Opinion is also consistent with more recent Michigan appellate caselaw emphasizing the importance of transparency and accountability in government operations, particularly in the context of elections. For example, in *Practical Political Consulting v Secretary of State*, 287 Mich App 434, 464; 789 NW2d 178 (2010), the Secretary of State urged the Court of Appeals to hold that certain election records were exempt from public disclosure. In rejecting the Secretary of State's argument, the court reasoned as follows:

In all but a limited number of circumstances, the public's interest in governmental accountability prevails over an individual's, or a group of individuals', expectation of privacy. As Louis D. Brandeis stated so many years ago, "Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman." And, we emphasize, if there ever was an area in which that disinfectant is the most needed, it is in the conducting of elections. ***Elections constitute the bedrock of democracy and the public's interest in the purity of such elections is of paramount importance. If we cannot hold our election officials accountable for the way in which they conduct our elections, then we risk the franchise itself.*** And we cannot hold our election officials accountable if we do not have the information upon which to evaluate their actions. [*Id.* at 464 (emphasis added).]

And, just recently, the Michigan Court of Appeals reiterated Michigan's "strong public policy favoring public access to government information" when stressing that certain FOIA exemptions were never "intended to shield public bodies from the transparency that FOIA was designed to foster." *Hjerstedt v Sault Ste Marie*, No 358803, 2024 WL 3907176, at *5 (Mich Ct App Aug 22, 2024), appeal denied, 16 NW3d 90 (Mich 2025).

Though the Secretary of State has no legal ground on which she may prevent the Legislature from overseeing her implementation of the training duties set forth in Section 31 of the Michigan Election Law, the House Oversight Committee and House Election Integrity Committee are agreeable to a confidential joint redaction process whereby legal counsel and at least two (2) representatives from each side promptly meet and confer in good faith regarding those redactions the Secretary of State believes are necessary to protect the security of elections. Once agreement is reached, the confidentiality objection of the Secretary of State must be withdrawn and a full set of responsive documents with the agreed-upon redactions produced.

HOUSE RULES OBJECTION

The Secretary of State next posits that the Legislative Subpoenas violate House Rule 36 because the House Oversight Committee has issued the Legislative Subpoenas to aid the House Election Integrity Committee in its legislative duties. The objection is devoid of both factual and legal merit.

First, as a threshold jurisdictional matter, except as otherwise provided in the Constitution, Article IV, Section 16 of the Michigan Constitution provides that the House of Representatives shall "determine the rules of its proceedings." Mich Const art IV, § 16. And it is on good authority that the interpretation and enforcement of the House Rules are within the exclusive jurisdiction of the House of Representatives. *Anderson v Atwood*, 273 Mich 316, 319; 262 NW 922 (1935) ("Rules of legislative procedure, adopted by the legislature and not prescribed by the Constitution, may be suspended and in action had, even if contrary thereto, will not be reviewed by the court.") OAG, 1983-1984 No 6195, p 215 (Dec 13, 1983) ("It has been held that the power of a legislative body to make reasonable rules for its operation is an absolute power beyond the challenge of any other body or tribunal, except that the rules may not ignore constitutional restraints or violate fundamental rights."); OAG, 1979-1980 No 5548, p 359 (Aug 17, 1979) ("[T]he only restriction

imposed by the constitution upon the rules of proceedings of a house of the legislature is that neither house may adopt a rule which will prevent a majority of the members of the house from discharging a committee from the further considerations of a measure. There is no other limitation upon the rules of proceedings which may be adopted.”). The Secretary of State therefore has no standing to tell the House of Representatives how to interpret its own rules.

Second, Rule 36 was drafted to convey maximum subpoena power upon the House Oversight Committee. It states, in pertinent part, that: “The House Oversight Committee for the One Hundred Third Legislature is granted the full scope of power as authorized by MCL 4.101 and MCL 4.541 to administer oaths, issue subpoenas, and examine books and records of any person, partnership, corporation, governmental entity, or political subdivision.” Nothing in Rule 36 or any House Rule for that matter prohibits the House Oversight Committee from assisting standing, special, or subcommittees in the proper discharge of their legislative mission. Rather, funneling the legislative subpoena power through the House Oversight Committee serves as a check and balance of the appropriate discharge of legislative function and furthers the efficient and orderly conduction of legislative business.

Third, in addition to assisting the House Election Integrity Committee in the proper discharge of its election-related legislative duties, the House Oversight Committee itself has jurisdiction to investigate how agencies and departments, such as the Secretary of State, implement legislatively created laws and to evaluate remedial legislation and other legislative action that may be appropriate under the circumstances. It intends to do so here with respect to the Secretary of State’s potentially errant implementation of the Michigan Election Law. For all these reasons, this objection must also be unequivocally withdrawn.

OVERBREADTH AND BURDEN OBJECTION

The Secretary of State complains that the Legislative Subpoenas are purportedly overbroad and unduly burdensome and seeks to narrow the scope of materials described in the Legislative Subpoenas. The argument is not valid.

As a legal matter, unlike in *Mazars*, this case does not present a clash between coequal branches of government. Similarly, the dicta in OAG, 1981-1982, No 5994, p 394 (Sept 30, 1981) referenced by the Secretary of State is inapposite where the Legislative Subpoenas here do not encroach upon a constitutionally independent prerogative of the Secretary of State. Rather, the Legislative Subpoenas seek access to the training materials the Legislature *mandated* the Secretary of State develop and disseminate to local clerks pursuant to Section 31 of the Michigan Election Law. The Secretary of State is not exercising an independent constitutional authority. Rather, she is subordinate to the Legislature in the exercise of this educational function. What’s more, the Secretary of State’s reliance on certain exemptions set forth in the Michigan Freedom of Information Act is entirely misplaced. In OAG, 1981-1982, No 5994, p 394 (Sept 30, 1981), upon which the Secretary heavily relies, former Attorney General, Frank Kelly, actually opined that in enacting FOIA the Legislature did not in any way restrict its own subpoena power.

As a factual matter, the Secretary of State has represented that there are only 517 items responsive to the Legislative Subpoena and that 68 of those items have already been produced. We

understand that electronic document platforms have not been the Secretary's forte as of late, but the limited quantity of documents at issue here hardly represents an undue burden to produce and/or redact. Nor is the expenditure of \$9,000 unduly burdensome when weighed against the importance of the Legislature being able to aptly oversee the administration of the Michigan Election Law. Being that as it may, the House of Representatives is fully prepared to engage a third-party e-discovery consultant to, under a duty of confidentiality, extract and securely host the responsive documents in a system capable of effectuating any agreed upon redactions.

UNECESSARY PARTY OBJECTION

Finally, Jocelyn Benson argues that she is neither a necessary nor appropriate party to the Legislative Subpoena. The argument is meritless where the Legislative Subpoena names her in her official capacity as Secretary of State, and head of the Department of State. See, e.g., Mich Const art V, § 3: MCL 168.21; MCL 168.31. As you are aware, Secretary Benson made a similar argument in *Agee v Benson*, where she sought dismissal from a voting rights act and racial gerrymandering lawsuit brought by Black electors in Detroit whose state House and Senate districts had been subjected to an odious racial gerrymander by the Michigan Independent Citizens Redistricting Commission staffed and overseen by Secretary Benson. Although she attempted to downplay her role in the redistricting process and implementation of the unconstitutionally gerrymandered districts, the three-judge panel rejected her arguments because, *inter alia*, she is Michigan's chief election officer pursuant to Section 21 of the Michigan Election Law. *Agee v. Benson*, No. 1:22-CV-272, 2022 WL 22652588, at *1 (W.D. Mich. Sept. 21, 2022). Similar to the redistricting litigation, Secretary Benson is an appropriate and necessary party to the Legislative Subpoenas.

CONCLUSION

For all the reasons set forth above, the Secretary of State's objections to the Legislative Subpoenas lack merit and must be withdrawn in accordance with the reasonable terms proposed herein. Please advise whether the Secretary of State will withdraw its objections under these conciliatory terms and fully comply with the Legislative Subpoenas by 11:00 a.m. on Thursday, May 22, 2025, else the House of Representatives will be constrained to commence contempt proceedings and other necessary legal action. The Michigan House of Representatives simply cannot countenance the obstruction of its preeminent constitutional duty to regulate and safeguard the purity of this State's elections. We hope the Secretary chooses the path of mutual cooperation as opposed to overt noncompliance.

Sincerely,

CLARK HILL



Michael J. Pattwell
Member

May 16, 2025
Page 11

MJP:nb
Attachments

cc: Andrew Fink
Catherine Edwards
Zachery Larsen
Ben Holwerda

EXHIBIT A



HOUSE OF REPRESENTATIVES
COMMITTEE ON OVERSIGHT
REP. JAY DEBOYER
CHAIR

COMMITTEE MEETING MINUTES

Tuesday, April 15, 2025

9:00 AM

Room 352, State Capitol
Building

The House Committee on Oversight was called to order by Chair DeBoyer.

The Chair requested attendance to be called:

Present: Reps. DeBoyer, Bierlein, Meerman, Paquette, Carra, Bruck, Rigas, Schriver, Woolford, Miller, Pohutsky, Conlin, MacDonell, Mentzer, Tsernoglou and Wegela.

Absent: Rep. Jaime Greene.

Excused: None.

Representative Carra moved to adopt the meeting minutes from March 18, 2025. There being no objection, the motion prevailed with unanimous consent.

Chair DeBoyer offered the following proposed committee rules:

Rule 1.0 — Open Meetings Act / Public Comment

At the discretion of the committee chair, a member of the public may address the committee regarding business before the committee. The committee may accept written testimony in lieu of oral testimony.

Rule 2.0 — Confidential Information

Members of the committee and staff may receive access to confidential information pertaining to matters before the committee. Such confidential information may include sensitive, and/or proprietary data, material, or information in any format, tangible or intangible. Members and staff authorized to access confidential information shall maintain the confidentiality of that information unless otherwise directed by the Chair. Members and staff shall not disclose or permit access to any confidential information to any third party, in any manner whatsoever, except as with the prior authorization by the Chair or Speaker of the House. Notwithstanding any of the foregoing, the Chair, the Speaker of the House, and the Office of Legal Counsel are authorized to access all confidential information pertaining to the Committee and may share and disclose confidential information among themselves, and other specific designees authorized by the Chair or Speaker of the House.

Rule 3.0 — Issuance of Subpoenas

- (a) Generally. The Oversight Committee may issue subpoenas in accordance with House Rule 36. Subcommittees may not issue subpoenas.
- (b) Procedure. Subpoenas may issue upon the motion of the Chair or a Subcommittee Chair and an affirmative vote of a majority of the Committee members. When moving to issue a subpoena, the movant must provide all of the following to the Committee:
 - (1) the reason the information or testimony being sought is necessary to the work of the Committee or relevant Subcommittee;
 - (2) any previous efforts made to obtain the information or testimony being sought without the issuance of a subpoena;
 - (3) the party to be subpoenaed, including but not limited to any of the following descriptors:
 - (a) a specific individual to be subpoenaed;
 - (b) a records custodian of an entity or state department;
 - (c) relevant officers, employees, or agents of an entity or state department; or
 - (d) a specific entity or state department.
 - (4) a general description of the documents or other things to be produced, if any;
 - (5) whether the party is to appear for a deposition, Committee or Subcommittee hearing, or other testimony.

Rule 4.0 — Deposition Authority

(a) Generally. The Chair of the Committee, upon consultation with the Majority Vice Chair and the Minority Vice Chair of the Committee, may order the taking of depositions, under oath and pursuant to notice or subpoena. Chairs of Subcommittees may not order the taking of depositions.

(b) Notices. Notices or subpoenas for the taking of depositions shall specify the date, time, and place of examination. Depositions may continue from day to day.

(c) Oaths. Depositions shall be taken under oath administered by a member or a person otherwise authorized to administer oaths.

(d) Consultation. Consultation with the Majority Vice Chair and the Minority Vice Chair of the Committee means three business day's notice, and a copy of a proposed deposition notice or subpoena, as applicable, before any deposition is taken.

(e) Attendance. Witnesses may be accompanied at a deposition by an attorney to advise them of their rights. No one may be present at depositions except members authorized by the Chair of the Committee, House staff designated by the Chair of the Committee, an official reporter, the witness, and the witness's attorney. Other persons, including government agency personnel, may not attend.

(f) Who May Question. A deposition shall be conducted by counsel designated by the Chair of the Committee upon consultation with the Minority Vice Chair. The Chair shall designate one attorney from the majority's office of legal counsel and one attorney from the minority's office of legal counsel.

(g) Order of Questions. Questions in the deposition shall be propounded in rounds, alternating between the majority and minority. A single round shall not exceed 60 minutes per side, unless the counsel conducting the deposition agree to a different length of questioning. In each round, the counsel from the majority's office of legal counsel shall ask questions first, followed by counsel from the minority's office of legal counsel.

(h) Objections. Any objection made during a deposition must be stated concisely and in a non-argumentative and non-suggestive manner. The witness may refuse to answer a question only to preserve a privilege. When the witness has refused to answer a question to preserve a

privilege, counsel may (i) proceed with the deposition, or (ii) either at that time or at a subsequent time, seek a ruling from the Chair. If the Chair of the Committee overrules any such objection during the deposition, the witness shall be ordered to answer. If following the deposition's recess, the Chair of the Committee overrules any such objection and thereby orders a witness to answer any question to which a privilege objection was lodged, such ruling shall be filed with the clerk of the Committee and shall be provided to the members and the witness no less than three days before the reconvened deposition. A deponent who refuses to answer a question after being directed by the Chair in writing, or orally during the proceeding as reflected in the record, may be subject to sanction by the House of Representatives.

(i) Record of Testimony. The Chair of the Committee shall ensure that the testimony is either transcribed or electronically recorded or both. If a witness's testimony is transcribed, the witness or the witness's counsel shall be afforded an opportunity to review a copy. No later than five days after the witness has been notified of the opportunity to review the transcript, the witness may submit suggested changes to the Chair of the Committee. Committee staff may make any typographical and technical changes. Substantive changes, modifications, clarifications, or amendments to the deposition transcript submitted by the witness must be accompanied by a letter signed by the witness requesting the changes and a statement of the witness's reasons for each proposed change. Any substantive changes, modifications, clarifications, or amendments shall be included as an appendix to the transcript conditioned upon the witness signing the transcript.

(j) Transcription Requirements. The individual administering the oath, if other than a member, shall certify on the transcript that the witness was duly sworn. The transcriber shall certify that the transcript is a true record of the testimony, and the transcript shall be filed, together with any electronic recording, with the clerk of the Committee. The Chair of the Committee, the Majority Vice Chair and the Minority Vice Chair shall be provided with a copy of the transcripts of the deposition at the same time.

(k) Release. The Chair of the Committee, the Majority Vice Chair and the Minority Vice Chair of the Committee shall consult in advance regarding the release of deposition testimony, transcripts, or recordings, and portions thereof. Following such consultation, the Chair has discretion to release the testimony, transcripts, or recordings.

(l) Provision of Rules to Witnesses. A witness shall not be required to testify unless the witness has been provided with a copy of the Committee's rules.

Rule 5.0 — Witness and Privilege Procedure

(a) Witness Disclosures. Witnesses appearing at a hearing of the Committee or a subcommittee in a non-governmental capacity shall provide a disclosure of the amount and source (by agency and program) of each state grant (or subgrant thereof) or contract (or subcontract thereof), as well as the amount and source of payments or contracts originating from foreign governments, insofar as they relate to the subject matter of the hearing, received during the current calendar year or either of the two previous calendar years, by the witness or by an entity represented by the witness.

(b) Representation by Counsel. When representing a witness or entity before the Committee or a subcommittee in response to a request or subpoena from the Committee, or in connection with testimony before the Committee or a subcommittee, counsel for the witness or entity must promptly submit to the Committee a notice of appearance specifying the following: (1) counsel's name, firm or organization, bar membership, and contact information including email; and (2) each client or entity represented by the counsel in connection with the proceeding.

(c) Privileges. The Chair of the Committee has the authority to rule on assertions of privilege.

(1) For the Chair to consider assertions of privilege over testimony or statements, witnesses or entities must clearly state the specific privilege being asserted and the reason for the assertion on or before the scheduled date of testimony or appearance, or upon a demand from the Chair of the Committee that provides for a subsequent due date.

(2) For the Chair to consider an assertion of privilege over a document, on or before the scheduled date of testimony or appearance, or upon a demand from the Chair of the Committee that provides for a subsequent due date, the assertion must be set forth in a privilege log that includes the following information for each document for which a privilege is asserted:

- (a) every privilege asserted;
- (b) the type of document;
- (c) the general subject matter;
- (d) the date, author, addressee, and any other recipients;
- (e) the relationship of the author and addressee to each other; and
- (f) the basis for the privilege asserted.

(3) The only assertions of executive privilege that the Chair of the Committee will consider are those made in writing by an executive branch official authorized to assert the privilege.

(4) The Chair of the Committee may waive or modify any of the requirements of this rule in order to facilitate cooperation.

The committee discussed the proposed committee rules.

At 9:31 AM, the Chair laid the committee at ease.

At 9:32 AM, the Chair called the committee back to order.

The committee continued to discuss the proposed committee rules.

Representative Bierlein moved to adopt the proposed committee rules. The motion prevailed 9-2-5:

FAVORABLE ROLL CALL

Yeas: Reps. DeBoyer, Bierlein, Meerman, Paquette, Carra, Bruck, Rigas, Schriver and Woolford.

Nays: Reps. Tsernoglou and Wegela.

Pass: Reps. Miller, Pohutsky, Conlin, MacDonell and Mentzer.

Chair DeBoyer moved that the House Oversight Committee authorize the Chair of the committee to execute a subpoena for the Michigan Department of State.

1. The information being sought is necessary to the work of the Committee because:
 - a. Election Integrity is of the utmost importance to the functioning of our republican form of government in the state of Michigan, and the Department of State has been unacceptably difficult in ensuring transparency regarding how that department is training local clerks to administer our state's elections. The House Oversight Committee exercises a vitally important role in providing legislative oversight over this function of the Executive branch of government in our state. The Michigan House of Representatives has the right to know how Secretary of State Jocelyn Benson is instructing local election officials to conduct the elections

within this state. Secretary Benson's refusal to provide the House Oversight Committee with basic training materials provided to local election officials indicates that the training provided does not comply with the Michigan Election Law. If the training did comply with the Michigan Election Law, Secretary Benson would not be withholding the documents from the House Oversight Committee.

2. Previous efforts made to obtain the information being sought, without the issuance of a subpoena, are as follows:
 - a. For a period of four months, Representative Smit sought to obtain records from the Department of State, regarding training materials provided to local election officials. The department repeatedly refused to provide the records.
 - b. On March 11, 2025, Representative Smit appeared before the Oversight Committee and requested that this Committee subpoena the documents that the Department of State refused to provide to the House Election Integrity Committee and to the Michigan House of Representatives.
 - c. On March 12, 2025, the Oversight Committee Chair sent a letter to the Department of State requesting a list of documents that the Department of State had refused to provide to Representative Smit. This letter gave a deadline of March 22, 2025, for the department's response.
 - d. On March 19, 2025, the Department of State responded with a letter stating that the documents sought were limited to only those persons who "need to know" what they contain.
 - e. On April 4, 2025, the Oversight Committee Chair sent another letter to the Department of State, again requesting the documents. That letter gave a deadline of April 14, 2025, for the department's response.
 - f. The Department of State failed to provide all requested documents by the deadline of April 14, 2025.
3. The party to be subpoenaed is the Michigan Department of State and/or its relevant officers, employees, or agents, including Secretary of State Jocelyn Benson, and any records custodian of the Department of State.
4. A general description of the documents or other things to be produced are as follows:
 - a. The documents and/or information requested by the Oversight Committee Chair in his letters dated March 12, 2025, and April 4, 2025, which have not yet been provided by the Department of State.
5. At this time, a subpoena only for the production of records is sought to be issued.

The motion prevailed 9-6-1:

FAVORABLE ROLL CALL

Yeas: Reps. DeBoyer, Bierlein, Meerman, Paquette, Carra, Bruck, Rigas, Schriver and Woolford.

Nays: Reps. Pohutsky, Conlin, MacDonell, Mentzer, Tsernoglou and Wegela.

Pass: Rep. Miller.

Chair DeBoyer laid a presentation from the Department of Environment, Great Lakes, and Energy before the committee.

Chief Deputy Director Aaron Keatley, and Legislative Liaison Sydney Hart gave a presentation on the Department of Environment, Great Lakes, and Energy. Questions and discussion followed.

There being no further business before the committee, Chair DeBoyer adjourned the meeting at 11:26 AM.

Representative Jay DeBoyer, Chair

Edward Sleeper
Committee Clerk
esleeper@house.mi.gov

EXHIBIT E

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



P.O. Box 30736
LANSING, MICHIGAN 48909

DANA NESSEL
ATTORNEY GENERAL

May 22, 2025

Mr. Michael J. Pattwell, Attorney
Clark Hill
215 S. Washington Square, Ste. 200
Lansing, Michigan 48933

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

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
Division Chief
Civil Rights & Elections Division

HSM/mpr

EXHIBIT F

THIS RESOLUTION IS OFFERED PURSUANT TO ARTICLE IV, SECTION 1 OF THE MICHIGAN CONSTITUTION, MCL 4.101, AND MCL 4.541.

HOUSE RESOLUTION NO. 117

Reps. DeBoyer and Bollin offered the following resolution:

1 A resolution to hold Secretary of State Jocelyn Benson and the
2 Department of State in civil contempt of the Michigan House of
3 Representatives.

4 Whereas, The Michigan House of Representatives is, along with
5 the Michigan Senate, vested with the legislative power of the state
6 of Michigan. The legislative power necessarily includes oversight
7 of the administration of laws. Oversight is an appropriate
8 legislative function justifying the exercise of the subpoena power;
9 and

10 Whereas, MCL 4.101 states, in part, that "[c]ommittees and
11 commissions of or appointed by the legislature may by resolution of
12 the legislature be authorized to administer oaths, subpoena
13 witnesses and/or to examine the books and records of any persons,

1 partnerships or corporations involved in a matter properly before
2 any of such committees or commissions"; and

3 Whereas, MCL 4.541 states, in part, that "any standing or
4 select committee of the senate or the house of representatives
5 . . . shall be authorized to subpoena and have produced before any
6 such committee, or inspect the records and files of any state
7 department, board, institution or agency; and it shall be the duty
8 of any state department, board, institution or agency to produce
9 before the committee as required by the subpoena, or permit the
10 members of any such committee to inspect its records and files";
11 and

12 Whereas, In House Resolution 1 of 2025, the House of
13 Representatives adopted the Standing Rules of the House of
14 Representatives for the One Hundred Third Legislature. House Rule
15 36(2) authorizes the House Oversight Committee to issue subpoenas
16 throughout the term of the One Hundred Third Legislature; and

17 Whereas, On April 15, 2025, the House Oversight Committee
18 voted to authorize the issuance of subpoenas directing Secretary of
19 State Jocelyn Benson and the Department of State to produce certain
20 documents for a matter under investigation by the Committee after
21 months of resistance by the Michigan Secretary of State. The
22 subpoenas were signed by Representative Jay DeBoyer, Chair of the
23 House Oversight Committee, and served on the Department of State on
24 April 22, 2025, with a deadline of May 13, 2025, 4:00 p.m., for
25 document production; and

26 Whereas, On May 7, 2025, Heather Meingast, Division Chief of
27 the Michigan Department of Attorney General Civil Rights and
28 Elections Division, objected to the subpoenas sent to Secretary
29 Benson and the Department of State on their behalf; and

1 Whereas, On May 16, 2025, the House of Representatives offered
2 to meet and confer with representatives of the Department of State
3 and demanded compliance with the House Oversight Committee's
4 subpoenas be completed no later than Thursday, May 22, 2025, at
5 11:00 a.m.; and

6 Whereas, Secretary Benson and the Department of State did not
7 fully comply with the House Oversight Committee's subpoenas before
8 11:00 a.m. on May 22, 2025. On May 22, 2025, Heather Meingast
9 reiterated Secretary Benson and the Department of State's
10 objections to the House Oversight Committee's subpoenas; and

11 Whereas, Reviewing election training materials is a valid
12 legislative purpose justifying the issuance of a subpoena; now,
13 therefore, be it

14 Resolved by the House of Representatives, That we hereby
15 declare that Secretary of State Jocelyn Benson and the Department
16 of State are in violation of the House's subpoenas; and be it
17 further

18 Resolved, That Secretary of State Jocelyn Benson and the
19 Department of State are hereby held in civil contempt of the
20 Michigan House of Representatives for their deliberate failure to
21 comply with the House's subpoenas; and be it further

22 Resolved, That the House Office of Legal Counsel is directed
23 to take steps necessary and proper to ensuring compliance with the
24 House's subpoenas, including the initiation of legal action; and be
25 it further

26 Resolved, That copies of this resolution be transmitted to the
27 Secretary of State.