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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

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[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 a 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]dvise 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.

UNECCESSARY 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

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.

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Representative Jay DeBoyer, Chair

Edward Sleeper
Committee Clerk
esleeper@house.mi.gov