

**STATE OF MICHIGAN  
IN THE 16<sup>TH</sup> CIRCUIT COURT  
COUNTY OF MACOMB**

MICHAEL LEWIS BUTZ,

Plaintiff,

v.

JENNIFER ZELMANSKI, Clerk, City of  
Roseville, and CITY OF ROSEVILLE, et al.

Defendants,

AND

SECRETARY OF STATE, JOCELYN  
BENSON,

Intervening Defendant.

Case No. 2023-002852-CZ

Hon. Edward A. Servitto, Jr.

Consolidated with:

2023-002835-CZ (Richmond Twp.)  
2023-002836-CZ (Bruce Twp.)  
2023-002837-CZ (Macomb Twp.)  
2023-002838-CZ (Mt. Clemens)  
2023-002839-CZ (Bruce Twp.)  
2023-002840-CZ (Centerline)  
2023-002841-CZ (Shelby Twp.)  
2023-002842-CZ (Washington Twp.)  
2023-002843-CZ (Harrison Twp.)  
2023-002844-CZ (St. Clair Shores)  
2023-002845-CZ (Eastpointe)  
2023-002847-CZ (Warren)  
2023-002848-CZ (Clinton Twp.)  
2023-002850-CZ (Sterling Heights)  
2023-002851-CZ (Chesterfield Twp.)

**PLAINTIFF’S JOINT BRIEF IN  
RESPONSE TO MOTIONS FOR  
SUMMARY DISPOSITION FILED BY  
MUNICIPAL DEFENDANTS AND  
INTERVENING DEFENDANT,  
SECRETARY OF STATE JOCELYN  
BENSON**

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**EXHIBIT 1**

Plaintiff’s (Amended) Supplemental Brief and  
Attachments, filed on March 20, 2024

**STATE OF MICHIGAN  
IN THE 16<sup>TH</sup> CIRCUIT COURT  
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MICHAEL LEWIS BUTZ,

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Case No. 2023-002852-CZ  
Hon. Edward A. Servitto, Jr.

**(AMENDED)  
SUPPLEMENTAL BRIEF**

JENNIFER ZELMANSKI, et al.

Defendants.

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(AMENDED)<sup>1</sup> SUPPLEMENTAL BRIEF OF PLAINTIFF

INTRODUCTION

Plaintiff has filed numerous FOIA requests for EPB data. Without legal authority to do so, Secretary Benson has ordered all defendants to deny these EPB FOIA requests. (ATTACHMENT A). In 2020, Benson ordered all clerks to delete the EPB data in violation of state and federal law. (ATTACHMENT B). Many clerks refused to violate law and did not delete the EPB data. (ATTACHMENT C, Affidavit of Stephanie Scott, Correspondence and Supporting Expert Report); (ATTACHMENT D, Affidavit of Kim Meltzer and Exhibits). Analysis currently under law enforcement investigation revealed that original data is preserved on the EPB drive that is not contained in end of the night

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<sup>1</sup> This supplemental memorandum was amended to correct a **statement of fact** on page 20. The correction is as follows: ~~And in the case of Adams Township, someone falsely utilizing Stephanie Scott's User Code.~~ And, in the case of Adams Township, someone blocking Stephanie Scott's access to user codes and locking her out of the qualified voter file (QVF) voter registration.

print outs as suggested by SOS Benson. In fact, analysis of the correctly preserved EPB data reflects who voted in a particular township. The EPB data analyzed by law enforcement proves that it matches what the local jurisdiction certified in the past election. The data should match and this is correct.

When this same data is then compared to the data certified in FOIA requests from the state as to who SOS Benson has recorded as voting in the same election- *it varies by up to 12%*. The data should match and it does not.

Local clerks must maintain accurate registrations and the registration on the EPB drive. SOS Benson inflated the state registration by 700000 just weeks before the 2020 election and told local clerks they wouldn't see a paper trail at their level because the registration was being modified through the driver database. (ATTACHMENT E). Now we know that non-citizens are being enrolled on the voter roll through the driver database. (ATTACHMENT F, Affidavit of Colin O'Brien). When these discrepancies were questioned by clerks and citizens, SOS Benson encrypted the EPB data so that clerks can no longer reconcile it despite local clerks having civil liability in the event that it is not accurate.

This action involves a simple request for documents under Michigan's Freedom of Information Act (FOIA), MCL 15.231 et seq. Pursuant to the express terms of that act, certain information may be exempted from disclosure, but the exemptions must explicitly and specifically apply to the withheld information.

MCL 15.243(1)(d). This statute provides that “[a] public body may exempt from disclosure...[r]ecords or information *specifically described and exempted from disclosure by statute.*” *ACLU of Mich v Calhoun Co Sheriff's Office*, 509 Mich 1, 4-5; 983 NW2d 300 (2022). An agency “regulation,” or a “directive,” or “guidance” or an “opinion,” or a “statement” in a legal brief, or an “email”, cannot serve as the basis for a FOIA denial under MCL 15.243(1)(d). *Id.* Such are not “*statutes*,” and therefore, the only basis for denial of a FOIA request must be based on the express and plain language of the statute’s exemptions. *Id.*

Intervenor Secretary of State (SOS Benson) has no real “standing” in this matter. The public official who receives a FOIA request and who denies a FOIA request, and who is required by law to decide on denial based on the statute, not on the basis of regulations, opinions, “memos” or “emails” or direction of another state agency, i.e., SOS Benson, see *ACLU, supra*, is the only individual who is subject to FOIA’s requirements and restrictions, and who must comply with its statutory mandate. See *Practical Political Consulting, Inc v Secretary of State*, 287 Mich App 434, 458; 789 NW2d 178 (2010). Defendants cannot therefore say, as they have, that they are “waiting” on the research and guidance from the SOS or any other entity for that matter to tell them what to withhold, what exemption applies, or what exemption might be asserted, or what might be exempt *in the future*, because “*only the circumstances known to the public body at the time of*

*the request* are relevant to whether an exemption precludes disclosure,” not any “waiting to hear from” the SOS, or any entity other than the Legislature. *Id.* SOS Benson is simply not authorized by law to prohibit public officials from fulfilling their constitutional and statutory duties of disclosing public information under FOIA – no “guidance,” “regulation,” “directive,” “opinion,” legal argument, memo, or email can do that – a denial must be based on a legitimate, valid, and applicable, statutory exemption found in the FOIA statutes themselves. See *ACLU of Mich*, 509 Mich at 4-5. Here that is not present.

SOS Benson originally acknowledged that this information was public information under FOIA subject to disclosure because she had no other choice by law. (ATTACHMENT G). When she realized that some public officials were properly releasing this information under FOIA, she ordered them to “delete” the data (ATTACHMENT C), even though destruction of this data is contrary to and a violation of Michigan and federal criminal law. (ATTACHMENT H, Correspondence from Bourbonais Instructing to Delete); see, e.g., 52 U.S.C. § 20701 (requiring “all records and papers which come into [the] possession [of “[e]very officer of election”] relating to any application, registration, payment of poll tax, or other act requisite to voting in such election,” to be “retained and preserved” for a period of 22 months following an election” and, 52 U.S.C. § 20702, making it a crime...for “any person” whether or not an election officer to

“willfully steal[], destroy[], conceal[], mutilate[], or alter[] any record or paper required by” § 20701 to be retained and preserved. Of course, the latter applies to orders to and the act of deleting or concealing such information. See also, MCL 750.248, which provides that “[a] person who falsely makes, alters, forges, or counterfeits a public record, or a certificate, return, or attestation of a clerk of a court, register of deeds, notary public, township clerk, or any other public officer, in relation to a matter in which the certificate, return, or attestation may be received as legal proof... with intent to injure or defraud another person is guilty of a felony punishable by imprisonment for not more than 14 years.

Those public officials who complied with SOS Benson’s *unlawful order* to delete this information were themselves violating state and federal criminal laws. Finally, after some of the clerks held onto this data, SOS Benson unilaterally, and without legal authority, “encrypted” it and concealed it from the public. SOS Benson’s prohibited local governments from having access to this data, thereby preventing local election officials and county and township clerks from performing their duties pursuant to state and federal law.

Plaintiff demonstrates herein that not only were Defendants wrong in withholding his FOIA request, but also that local governments are required by law to maintain accurate registration and election roll records. Indeed, MCL 15.244 *requires* public officials to disclose non-exempt information; if there is “exempt”



information combined with said “non-exempt” information, then the public official *cannot* use the excuse that redaction or separation is not possible. See, e.g., *Evening News Asso v Troy*, 417 Mich 481, 486; 339 NW2d 421 (1983). Indeed, the statute itself says: “the public body *shall separate the exempt and nonexempt material* and make the nonexempt material available for examination and copying.” *Id.*, (emphasis in original), citing MCL 15.244. As this Court is well aware, “[u]se of the word ‘shall’ connotes *a mandatory duty imposed by law*,” especially as it relates to a command directed at public officials and their public duties to disclose public information under FOIA. *Sharp v Huron Valley Bd of Ed*, 112 Mich App 18, 20; 314 NW2d 785 (1981), citing *Southfield Twp v Drainage Board for Twelve Towns Relief Drains*, 357 Mich 59, 76; 97 NW2d 821 (1959), *King v Director of the Midland County Department of Social Services*, 73 Mich App 253, 259; 251 NW2d 270 (1977). See also, *Anklam v Delta College Dist, et al.*, Unpublished Per Curiam Opinion of the Michigan Court of Appeals, Docket No. 317692 (June 26, 2014) (**ATTACHMENT I**).

Plaintiff’s request is simple, straightforward, and compliant with FOIA. (**ATTACHMENT J**). He agreed that certain of the information that *might* be exempt can be redacted (i.e., separated from the non-exempt information), and he has also shown that *none* of the remaining information that he requests is exempt under those exemptions that have been asserted by the Defendants. *Id.*

The information requested by Plaintiff is public information, subject to disclosure under FOIA, and not covered by any of the exemptions cited by any of the Defendants.

### FACTUAL BACKGROUND

Plaintiff requested Defendants to release files from the electronic poll books (EPB) for all registrants for all voting precincts for elections on November 8, 2022 and May 2, 2023. (ATTACHMENT J). Plaintiff agreed that some of the information contained in the poll books were exempt from disclosure and asked that this information be redacted prior to disclosure. *Id.* The specific information Plaintiff sought included election returns and the poll lists. These are required to be delivered to the clerk of the township or city, as the case may be, and shall be by him filed in his office, MCLA 168.810. The EPB poll list must be carefully preserved and may be destroyed after the expiration of 2 years following the primary or election at which the same were used, MCL 168.811. Registration records, which Plaintiff also requested, are required by law to be open for public inspection. MCL 168.516. Plaintiff also cited MCL 750.492, requires public officials, after request, to permit inspection of the official records of said public office. Failure to do so is a violation of Michigan Law.

Plaintiff's FOIA request only asked for raw text data to be placed on a spreadsheet in .csv or Microsoft "Excel" format (.xls). In other words, Plaintiff's

request pertained only to the text of the information from the EPB. In fact, in his specific FOIA request, dated May 2, 2023, Plaintiff explicitly acknowledged that under MCL 168.509gg “birthdate and driver’s license numbers” were exempt from the FOIA request, and/or could be redacted. *Id.* Plaintiff also asked whether only the date of birth could be left in the response. *Id.*

Finally, after acknowledging the necessity of certain redactions to comply with FOIA’s exemptions under MCL 168.509gg, Plaintiff correctly stated that “there should be no other FOIA exempt information in the EPB digital records requested. *Id.* Plaintiff then specifically stated: ***“I am not requesting any software or information which would somehow be deemed proprietary. I am only requesting public record information as is my right.”*** *Id.* (emphasis added). Plaintiff further reminded Defendants that the EPB .csv files “are an original record and a component of the electronic voting system audit trail. As such, these digital records should be retained by your office for a federal minimum of 22 months (52 U.S.C. § 207[20701])<sup>2</sup> and a state minimum of 24 months (MCL 168.811).

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<sup>2</sup> Federal law requires “***all records and papers*** which come into [the] possession [of “[e]very officer of election”] relating to any ***application, registration***, payment of poll tax, or ***other act requisite to voting*** in such election,” to be “***retained and preserved***” for a period of 22 months following an election. 52 U.S.C. § 20701. Further, 52 U.S.C. § 20702 makes it a crime for “***any person***” whether or not an election officer to “***willfully steal[], destroy[], conceal[], mutilate[], or alter[] any record or paper required by***” § 20701 to be retained and preserved.

On May 9, 2023, Defendants sent a letter exercising the 10-day extension under FOIA explaining that the request was complex due to the nature of the information sought and estimated that a response would be complete by May 23, 2023. (ATTACHMENT K). Also, in the letter exercising the extension, while they have no right to do so, Defendants cryptically stated: “We are continuing to investigate and research issues involving whether a request would create an exposure to the operating system resulting in injury. We are also reviewing our methods and capabilities in responding, including likely time involved.” *Id.*

On May 23, 2023, Defendants sent a letter attached to an email denying, *in toto*, Plaintiff’s request. (ATTACHMENT K). Defendant stated: “[i]n response to your FOIA requested[sic] submitted on May 2, 2023 for a copy of the extract files from the electronic poll book (EPBs) for all registrants at all voting precincts in the jurisdiction for the elections concluding November 8, 2022 and May 2, 2023...[t]he following Action has been taken pursuant to your request for a public record: Denied all portions of your request (Please see below for reason). *Id.* The denial further provided:

Per the Michigan Bureau of Elections, clerks must not publicly release data or files that would reveal the software design or data architecture of the Electronic Poll Book, as doing so could compromise the Bureau of Elections ability to secure and safeguard the software and data from hacking, theft, loss, or destruction. In response to previous FOIA request regarding EPB data, the Bureau of Elections has not disclosed these records because the records sought constitute "cybersecurity plans, assessments, or vulnerabilities" that are exempt from

disclosure. The Bureau has an interest in maximizing the protection and defense of its information systems, which outweighs the public interest in the disclosure of this information as the release of this sensitive information could jeopardize the security of Michigan's electoral process. MCL 15.2431(y). In addition, the responsive records include sensitive information which, if released, "would disclose a person's cybersecurity plans or cybersecurity-related practices, procedures, methods, results, organizational information system infrastructure, hardware, or software." MCL 15.2431(z).

Further, electronic poll book files contain personal identifying information such as full birth dates for voters, which is exempt from disclosure. MCL 168.509gg. Attempted manual redaction of personal identifying information may not be sufficient to protect this information from disclosure if the software program files are disclosed.

Please contact the Macomb County Clerk for the paper pollbook copies or the Michigan Bureau of Elections for the log files or voter history. [*Id.*]

The original election records subject to this FOIA appeal submitted by Michael Butz concerns the .csv file referenced as the Electronic Pollbook Voter History file dated October 2021. The poll book and poll list are defined in MCL 168.735. They compile the record of the voter and the ballot number provided at the time a voter is provided a vote to cast. This activity occurs after a voter shows valid identification or signs an affidavit of a lost identification card at the time of an election. The responsibility is on the election inspectors to keep and an accurate list of these activities. In the case of absentee ballots, upon opening the envelope, the election inspector must record the name of the voter and the number of the

ballot, which also is to be used to compare with the data on the EPB. MCL 168.375.

The election inspectors use the EPB in the format as it is downloaded on the election day laptops by the local clerk. The EPB is downloaded from the Qualified Voter File (QVF) and is loaded to a laptop prior to each election. Once the EPB is loaded on the laptop, the software allows election inspectors to look up a voter's registration record, confirm their registration is correct, and assign a ballot to that voter, essentially automating the typical paper process. After the election is complete, the EPB software will generate reports to complete the official precinct record (paper binder pollbook) and a voter history file that can be uploaded into the QVF to update voter history in a matter of minutes.” This guidance and information is taken directly from the Electronic Pollbook Refresh Election Inspector Manual. (ATTACHMENT L).

The EPB software is downloaded by the local clerk from the state's QVF after 4pm the night before the election. *Id.* It is downloaded onto a USB storage device (USB flash drive) and the clerk then uploads that into the election day laptops. *Id.* It is within this software that the activities required by election inspectors to record voters and ballot numbers occurs throughout election day. *Id.* At the close of the election, the election inspectors close out the EPB and save the reports back onto the USB flash drive that was utilized for the EPB install onto the

laptop. *Id.* Three (3) end of night reports are printed and included per MCL 168.375 into the final election records envelopes provided to county and local clerks. *Id.* The election inspectors return the USB flash drive of the EPB download to the clerk at the end of the election per MCL 168.811. *Id.* The USB stick contains the following election record files:

1. EPB Package. This zipped file presumably contains the poll book software programming files. It is encrypted/ password protected;
2. Three (3) PDF reports that are generated at poll closing: Ballot Summary, Remarks, Voter List;
3. EPB History. This is a .csv file of the poll book which is the subject of the FOIA request in this case. [*Id.*]

The Electronic Pollbook Refresh Clerk's Manual describe this duty as 'Post-election Tasks: Import Voter History (within 7 days) The clerk or a designated QVF user (either Basic or Complete) must upload voter history into the QVF within seven days of the election. *Id.* To enter voter history via the QVF, they are to insert the encrypted flash drive into a USB port and log into the flash drive, then log into QVF. *Id.*

As explained herein, this raw data (the voter registration records of qualified voters), and all other election records, that data which is the subject of Plaintiff's FOIA request, are the responsibility of the local clerk to maintain per, inter alia, MCL 168.811, 52 U.S.C. § 20701 and 52 U.S.C. § 20702. See also, footnote 1, *supra*.

## SUMMARY OF ARGUMENT

Federal and state election laws provide that election officials have duties to maintain election records *precisely because* they constitute public information that is subject to public access and examination upon request – i.e., they are subject to public disclosure. Therefore, these records enjoy a prima facie presumption of disclosable information under FOIA. Indeed, the presumption is written into the act because “[t]he FOIA is an act *requiring full disclosure* of public records *unless a statutory exemption precludes the disclosure* of information.” *Messenger v Consumer & Industry Services*, 238 Mich App 524, 531; 606 NW2d 38 (1999) (emphasis added). See also, MCL 15.243(1)(d). “Rather than specifying which records would be subject to disclosure, the Legislature chose to provide that, *unless expressly exempt* under Section 13 of the FOIA, *all public records are subject to public disclosure.*” *Penokie v Michigan Technological Univ*, 93 Mich App 650, 657; 287 NW2d 304 (1979) (emphasis added). See also, *Detroit News v Co of Wayne*, \_\_\_NW2d\_\_\_; 2002 Mich. App. LEXIS 3409, at \*10 (Ct App, Mar. 15, 2002), Unpublished Per Curiam Opinion of the Michigan Court of Appeals, Docket No. 235831 (March 15, 2002) (ATTACHMENT M). See also, *Practical Political Consulting, Inc v Secretary of State*, 287 Mich App 434, 455-62; 789 NW2d 178 (2010) (noting the presumption and that the purpose of FOIA is to provide the people of this state with full and complete information regarding the



government's affairs and the official actions of governmental officials and employees and where the SOS conceded that the names and addresses of registered voters in were public records subject to public disclosure without exemption).

Moreover, the exemptions cited by the Defendants *do not apply* to Plaintiff's FOIA request. First, and foremost, Plaintiff specifically only asked for raw text data from the files. He specifically stated that he was not asking for "any software or information which would somehow be deemed proprietary" and that he was "only requesting public record information as is my right." (ATTACHMENT J). Plaintiff further reminded Defendants that the EPB .csv files "are an original record and a component of the electronic voting system audit trail. As such, these digital records should be retained by your office for a federal minimum of 22 months (52 U.S.C. § 207[20701]) and a state minimum of 24 months (MCL 168.811). *Id.* Secondly, Plaintiff specifically conceded to redaction of private information (personal identifying information). Defendants cannot say that they are "waiting" on the SOS or any other entity to tell them what an exemption is or might be, or what might be exempt in the future because "only the circumstances known to the public body at the time of the request are relevant to whether an exemption precludes disclosure, not any "waiting to hear from" the SOS, or any entity other than the Legislature. *Practical Political Consulting, Inc v Secretary of State*, 287 Mich App 434, 458; 789 NW2d 178 (2010).

“The Legislature when enacting, and courts when interpreting, the privacy exemption of FOIA have weighted the scales heavily in favor of disclosure: the balance to be struck is between the public's ongoing interest in governmental accountability, on the one hand, and clearly unwarranted invasions of privacy on the other. Under this exemption, the scales are not balanced equally at the outset, and for good reason. 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. *Practical Political Consulting, Inc v Secretary of State*, 287 Mich App 434, 464; 789 NW2d 178 (2010) (information about registered voters was public information subject to disclosure under FOIA and holding “FOIA is a pro disclosure statute that we are to interpret broadly to allow public access. Conversely, we are to interpret its exemptions narrowly so that we do not undermine its disclosure provisions. Simply put, the core purpose of FOIA is disclosure of public records in order to ensure the accountability of public officials. Here, there is no question that the “separate record[s]”... that contain the printed name, address, and qualified voter file number of each elector and the participating political party ballot selected by that elector at the 2008 presidential primary *are public records*. And there is no question that these “separate record[s] were also the public records that Practical Political Consulting sought in its March 26, 2008 FOIA request.”).

Finally, even if Defendants' argument were to be considered despite the presumptive prima facie availability to the public of this information, and notwithstanding that the exemptions cited simply do not apply, there are genuine issues of material fact which make summary dismissal impossible. The burden of proof lies on the denying party to demonstrate that exemptions apply. *Manning v East Tawas*, 234 Mich App 244, 248; 593 NW2d 649 (1999).

Here, Plaintiff has specifically tailored his request *not to include* personal identifying information and *not to include* "software" and/or "proprietary" information. It is for the Defendants to demonstrate through factual presentation and/or expert presentation to the court under MCR 2.116(C)(10) that the requested records are exempt, and then, why Defendants cannot tailor their response to provide that information that is disclosable, as Plaintiff has requested, and how disclosing same would implicate any of the exemptions.

The matter in contest is the voter history file and its accessibility to citizens via state FOIA statutes. MCL 168.509gg defines election data exempt from FOIA. It exempts six items from FOIA disclosure of election related information and cannot be construed to exclude the data requested in Mr. Butz's FOIA request. The pollbook for each jurisdiction is maintained by the local clerk. The poll book is an electronic record produced through the electronic pollbook software distributed by the bureau of elections. Per MCL 168.668b (2019 version), each

city or township “shall use the electronic poll book software developed by the bureau of elections.”

Secretary of State Jocelyn Benson and the Bureau of Elections (BOE) assert that the information contained in the EPB history file (.csv) is contained in its entirety in the Voter List Report produced at the end of night, but this is simply not the case. In review of the EPB data preserved from Adams Township November 2020 election, it is apparent that it contains data unique to the EPB file; including Same Day Voting data, data elements specific to the laptop and its security and internet connectivity, and ten data fields of voter information. (ATTACHMENT C, Stephanie Scott Affidavit, Correspondence, and Expert Reports).

To further convolute the voter records, Secretary of State Jocelyn Benson admits to inflating voter rolls prior to the November 2002 Presidential election. Local clerks were notified via the BOE newsletter, that there would be no paper trail, and hence no ability to verify the eligibility of voter names added to his/her local poll list. (ATTACHMENT E). MCL 168.509r states “ The county, city, and township clerks shall verify the accuracy of the names and addresses of registered electors in the qualified voter file.” Through the actions of the SOS, the local clerk’s voter registration file is thus compromised and out of the control of local clerks.

This series of events will show how it has become apparent that local clerks are instructed to delete original election records in violation of Federal and State statutes of records retention. The blind obedience of local clerks to the unlawful directives of the BOE is the actual reason that the FOIA requests presented by Michael Butz were denied.

The Electronic Pollbook flash drive contains corroborating evidence that public records have been deleted, altered, or produced with fraudulent data. The above two examples show users other than the local clerk within the voter's registration file. ~~And in the case of Adams Township, someone falsely utilizing Stephanie Scotts User Code.~~ And, in the case of Adams Township, someone blocking Stephanie Scott's access to user codes and locking her out of the qualified voter file (QVF) voter registration.

This is in direct violation of MCL 750.248 (1) which reads "A person who falsely makes, alters, forges, or counterfeits a public record.... with intent to injure or defraud another person is guilty of a felony punishable by imprisonment for not more than 14 years.

As a result, the Bureau of Elections and Secretary of State have gone out of their way to keep this information from the public by controlling responses to FOIA requests such as Michel Butz's.

In 2022 individuals such as Michael Butz began to FOIA for the EPB Voter file (.csv) from local clerks per MCL 168.509ff, which states: “The secretary of state and each county, city, township, or village clerk shall maintain all records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of registration records under this chapter for 2 years or more. Except to the extent that the records maintained pursuant to this section relate to a declination to register to vote or to the identity of a designated voter registration agency through which any particular voter applied for registration pursuant to section 509gg, the secretary of state or a county, city, township, or village clerk *shall make the records available* for public inspection under reasonable conditions and, if available, for photocopying at a reasonable cost.” (emphasis added).

While some FOIA requests were fulfilled, it became apparent that the BOE was intervening to discourage and prevent the lawful fulfillment of FOIA requests for pertinent election records. As early as February, 12, 2021, BOE directed County Clerks that “[t]he EPB software and *associated files* must be deleted unless a post-election audit is planned but has not yet been completed or the deletion of the data has been stayed by an order of the court or the Secretary of State.” **(ATTACHMENT B)**.

In February of 2021, Stephanie Scott, former Township Clerk for Adams Township in Hillsdale County was instructed by the Deputy County Clerk, Abe Dane to comply with the BOE's letter. (ATTACHMENT C). In a follow-up email, it was confirmed that the folder in the EPB drive from the November 2020 election was the one that the local clerks, including Scott, were being told to delete. (ATTACHMENT C).

FOIA requests for EPB information began to be sent to county and local clerks. A July 20, 2022 email from Lori Bourbonais advised clerks to consult with counsel before responding to FOIAs. On August 26, 2022, Lori Bourbonais with BOE sent email to clerks asserting their instructions to delete records are lawful. (ATTACHMENT H).

On November 14, 2022 Lori Bourbonais released a letter to clerks instructing that local counsel should be consulted before fulfilling FOIA requests. (ATTACHMENT G). The letter asserts that the release of the .csv file contains software programming and the BOE interest in 'maximizing the protection and defense of its information system which outweigh the public interest in the disclosure of this information'. *Id.*

As further discussed herein, MCL 168.509gg defines election information that is exempt from freedom of information act. Lawful redaction of the appropriate items is expected, but BOE is not allowed to define what is acceptable

FOIA material in opposition to statute. In July 2023 the Bureau of Elections released a seven-page letter to county clerks and a handful of local clerks that had received FOIA requests for the EPB Voter file (.csv).

As of the 2022 elections, all files on the USB Drive for the EPB flash drive are now fully encrypted. This blatantly usurps a local clerk's control and responsibility of local election records and appears to be the BOE's attempt to further prevent release of election records.

The electronic pollbook is an inherent component of the election audit trail and associated public election records. The public records derived from the EPB must, by law, be retained in their entirety and be accessible to the public. The Bureau of Elections has displayed a pattern of oversight that shows disregard for State and Federal Laws applicable to the election process. This FOIA appeal should be upheld and local clerks should testify as to the status of their EPB Voter file (.csv) format. Any interjection of responsibility by the Secretary of State should be denied.

## ARGUMENT AND ANALYSIS

### A. FOIA and Its Interpretation

Michigan's Freedom of Information Act (FOIA), MCL 15.231, et seq., "is a manifestation this state's public policy *favoring public access to government information*, recognizing the need that citizens be informed *as they participate in*



*democratic governance, and the need that public officials be held accountable for the manner in which they perform their duties.” Manning v East Tawas, 234 Mich App 244, 248; 593 NW2d 649 (1999) (emphasis supplied). Our Supreme Court has repeatedly described FOIA as “ a **pro-disclosure statute,**” Herald Co v Bay City, 463 Mich 111, 119; 614 NW2d 873 (2000); Swickard v Wayne Co Med Examiner, 438 Mich 536, 544; 475 NW2d 304 (1991), and, as a result, Michigan courts have held “that FOIA’s disclosure provisions **must be interpreted broadly to ensure public access.**” Practical Political Consulting, Inc v Secretary of State, 287 Mich App 434, 465; 789 NW2d 178 (2010) (emphasis supplied). The Legislature placed its imprimatur on this policy of broad public access and narrow construction of asserted statutory exemptions, when it stated:*

It is the public policy of this state that all persons...are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and public employees, consistent with this act. **The people shall be informed so that they may fully participate in the democratic process.** MCL 15.231(2) (emphasis added).

While it is true that FOIA contains several exceptions to the duty to disclose, MCL 15.243, “these exemptions **must be construed narrowly, and the burden of proof rests with the party asserting an exemption,**” Manning, 234 Mich App at 248 (emphasis added); see also *Bradley v Saranac Community Schools Bd of Ed*, 455 Mich 285, 293; 565 NW2d 650 (1997). “Under FOIA, a public body **must disclose all public records that are not specifically exempt** under the act.”

*Hopkins v Duncan Twp*, 294 Mich App 401, 409; 812 NW2d 27 (2011); see also MCL 15.233(1) (emphasis added). See also, *Rataj v City of Romulus*, 306 Mich App 735, 748-49; 858 NW2d 116 (2014).

With the legislative policy of ***broadly*** interpreting public disclosure statutes ***in favor of public access***, ***narrowly*** construing asserted exemptions, and placing the burden of proof always on the party so asserting them, the overarching framework for interpretation of the statutes at issue is established.

“FOIA is a pro disclosure statute that we are to interpret broadly to allow public access. Conversely, [courts] are to interpret its exemptions narrowly so that we do not undermine its disclosure provisions. Simply put, the core purpose of FOIA is disclosure of public records in order to ensure the accountability of public officials. *Practical Political Consulting, Inc v Secretary of State*, 287 Mich App 434, 465; 789 NW2d 178 (2010) (“record[s]” created...for the 2008 presidential primary that contain the printed name, address, and qualified voter file number of each elector and the participating political party ballot selected by that elector at the 2008 presidential primary are public records” as these are not “specifically exempt” they are subject to public access and required to be disclosed).

Indeed, the presumption is written into the act because “[t]he FOIA is an act ***requiring full disclosure*** of public records ***unless a statutory exemption precludes the disclosure*** of information. *Messenger v Consumer & Industry Services*, 238

Mich App 524, 531; 606 NW2d 38 (1999) (emphasis added). See also, MCL 15.243(1)(d). “Rather than specifying which records would be subject to disclosure, the Legislature chose to provide that, *unless expressly exempt* under Section 13 of the FOIA, all public records are subject to public disclosure.” *Penokie v Michigan Technological Univ*, 93 Mich App 650, 657; 287 NW2d 304 (1979) (emphasis added). See also, *Detroit News v Co of Wayne*, \_\_\_NW2d\_\_\_; 2002 Mich. App. LEXIS 3409, at \*10 (Ct App, Mar. 15, 2002), Unpublished Per Curiam Opinion of the Michigan Court of Appeals, Docket No. 235831 (March 15, 2002) (**ATTACHMENT M**). See also, *Practical Political Consulting, Inc v Secretary of State*, 287 Mich App 434, 455-62; 789 NW2d 178 (2010) (noting the presumption and that the purpose of FOIA is to provide the people of this state with full and complete information regarding the government's affairs and the official actions of governmental officials and employees and where the SOS conceded that the names and addresses of registered voters in were public records subject to public disclosure without exemption).

**B. The General Rules of Statutory Interpretation Applicable to the FOIA Statute**

“The primary goal of statutory interpretation is to ‘ascertain the legislative intent that may reasonably be inferred from the statutory language.’” *Krohn v Home-Owners Ins Co*, 490 Mich 145, 156-57; 802 NW2d 281 (2011) (internal citations omitted). “The first step in that determination is to review the language of

the statute itself.” *Id.* See also, *In re MCI Telecom Complaint*, 460 Mich. 396, 411; 596 N.W.2d 164 (1999), citing *House Speaker v State Admin Bd*, 441 Mich 547, 567; 495 NW2d 539 (1993).

By statute, the Michigan Legislature requires that “[a]ll words and phrases [of statutes] shall be construed and understood according to the common and approved usage of the language; but technical words and phrases, and such as may have acquired a peculiar and appropriate meaning in the law, shall be construed and understood according to such peculiar and appropriate meaning.” MCL 8.3a (LexisNexis, Lexis Advance through Act 11 of the 2024 Regular Legislative Session). “Unless *statutorily* defined, every word or phrase of a statute should be accorded its plain and ordinary meaning,” *Robertson v Daimlerchrysler Corp*, 465 Mich 732, 748; 641 NW2d 567 (2002), “taking into account the context in which the words are used.” *Krohn v Home-Owners Ins Co*, 490 Mich 145, 156-57; 802 NW2d 281 (2011). It is not the judiciary or any executive or administrative agency that can “decide” what words in statutes mean if they are plain and understandable. The Legislature is presumed to have intended the meaning it has plainly expressed, and if the expressed language is clear, judicial construction is not permitted and the statute must be enforced as written. *Id.* Additionally, it is important to ensure that words in a statute are not ignored, treated as surplusage, or rendered nugatory.

*Hoste v Shanty Creek Management, Inc*, 459 Mich. 561, 574; 592 N.W.2d 360 (1999).

### ANALYSIS

1. The statutes related to the voting records and the Secretary of States' and Defendants' duties to maintain such information provide a prima facie presumption that the records sought by Plaintiff are open for public access.

To begin with, the information sought by Plaintiff already enjoys a statutory presumption of being open and accessible for public access. These requirements must factor into any assessment of a FOIA request, and, particularly, the statutory exemptions asserted as the reasons for withholding them. For example, MCL 168.810 provides that “[o]ne of the poll lists shall be *delivered to the clerk of the township or city*, as the case may be, *and shall be by him filed in his office.*” (emphasis added). In other words, these records are to be entered *and* filed in the public records of the relevant official. Further, MCL 168.811 provides, explicitly, that:

All election returns, including poll lists, statements, tally sheets, absent voters' return envelopes bearing the statement required by [MCL 168.]761, absent voters' records required by [MCL 168.760], and other returns made by the election inspectors of the several precincts must be carefully preserved and may be destroyed after the expiration of 22 months following the primary or election at which the same were used. All applications executed under [MCL 168.]523, all voter registration applications executed by applicants under [MCL

168.]497(3) and (4), and all absent voters' applications must be carefully preserved and may be destroyed after the expiration of 6 years following the primary or election at which those applications were executed. All ballots used at any primary or election, other than ballots containing a federal office, may be destroyed after 30 days following the final determination of the board of canvassers with respect to the primary or election unless a petition for recount has been filed and not completed or unless the destruction of the ballots is stayed by an order of a court. All ballots containing a federal office, and all presidential primary ballot selection forms, may be destroyed after the expiration of 22 months following the primary or election at which those ballots were cast or forms were used.

Further, all voter registration records are required by law *to be open for public inspection*. MCL 168.516. Further, MCL 750.492 requires public officials *to permit inspection* of the official records of said public office. Finally, federal law requires “*all records and papers* which come into [the] possession [of “[e]very officer of election”] relating to any *application, registration*, payment of poll tax, or *other act requisite to voting* in such election,” to be “retained and preserved” for a period of 22 months following an election. 52 U.S.C. § 20701. Further, 52 U.S.C. § 20702 makes it a crime for “any person” whether or not an election officer to “willfully steal[], destroy[], conceal[], mutilate[], or alter[] any record or paper required by” § 20701 to be retained and preserved. Moreover, MCL 750.248 provides that (1) *A person* who falsely *makes, alters*, forges, or counterfeits a public record, or a certificate, return, or attestation of a clerk of a court, register of deeds, notary public, township clerk, or any other public officer, in relation to a matter in which the certificate, return, or attestation *may be received as legal*

*proof*, ...with intent to injure or defraud another person is guilty of a felony punishable by imprisonment for not more than 14 years.” This statute (1) applies to government officials by its plain language (“*a person*”), and (2) it “applies to public records.” *People v Carter*, 106 Mich App 765, 767-68; 309 NW2d 33 (1981). Indeed, there is even more reason to hold government officials responsible for deleting, altering, and/or concealing public information and public records because of the tight control and monopoly of possession that the government exercises over such data. See, e.g., *People v Hall*, 391 Mich 175, 215 NW2d 166 (1974).

These and additional statutes therefore demonstrate that these records are public records, required to be kept on file and retained and preserved for public inspection. These records therefore enjoy a presumption of disclosure under FOIA. “FOIA is a *pro disclosure* statute that [courts] are to interpret broadly to allow public access. Conversely, [courts] are to interpret its exemptions narrowly so that [they] *do not* undermine its disclosure provisions. Simply put, the core purpose of FOIA is disclosure of public records in order to ensure the accountability of public officials. *Practical Political Consulting, Inc v Secretary of State*, 287 Mich App 434, 465; 789 NW2d 178 (2010) (emphasis added) (“record[s]” created...for the 2008 presidential primary that contain the printed name, address, and qualified voter file number of each elector and the participating

political party ballot selected by that elector at the 2008 presidential primary are public records” as these are not “specifically exempt” they are subject to public access and required to be disclosed). Therefore, generally sweeping assertions of whole swaths of excluded information will not satisfy the pro-disclosure nature of FOIA. Indeed, the responding agency is responsible and liable for the decisions made respecting FOIA requests – they cannot rely on guidance, regulations, memoranda, or emails from any other entity to make this decision. *ACLU, supra* (the only basis for a FOIA denial is if it is in the statute’s exemptions, which must be narrowly construed to ensure that the public has presumptive access to public information). See also, *Practical Political Consulting, Inc v Secretary of State*, 287 Mich App 434, 458; 789 NW2d 178 (2010).

Defendants cannot therefore say, as they have, that they are “waiting” on the research and guidance from the SOS or any other entity for that matter to tell them what to withhold, what exemption applies, or what exemption might be asserted, or what might be exempt in the future, because “only the circumstances known to the public body at the time of the request are relevant to whether an exemption precludes disclosure,” not any “waiting to hear from” the SOS, or any entity other than the Legislature. *Id.*

2. There is no statutory basis for Defendants’ denial of the public records requested by Plaintiff’s FOIA



The public record / public information sought does have to be factually analyzed – some personal information, etc. (which Plaintiff has already conceded can be “redacted”) might be subject to one or more exemptions cited, but on balance, the information can and should be disclosed without concern that any of the reasons for the exemptions will be triggered. *Practical Political Consulting, Inc v Secretary of State*, 287 Mich App 434, 465; 789 NW2d 178 (2010) (“record[s]” created...for the 2008 presidential primary that contain the printed name, address, and qualified voter file, number of each elector and the participating political party ballot selected by that elector at the 2008 presidential primary are public records” as these are not “specifically exempt” they are subject to public access and required to be disclosed).

Moreover, Plaintiff specifically stated he was not asking for any proprietary software or any technical information that would require disclosure of such. In other words, there is no threat to a cyber-attack, hacking methods software, hardware tech data, because this is ostensibly “static” information that is sought to report on and record and classify that which appeared at a specific place and a specific time in history. These are quintessentially kept and preserved public records that record and document the passage of a public event – an election. See *Political Consulting Inc, supra*. And, in any event, the Defendants (counties and clerks) cannot rely on the sweeping, ultra-vires decision of the Secretary of State to

make a FOIA decision on behalf of each and every individual who in their own right are responsible for, and will be held liable for, errant decisions made upon receipt of a FOIA request.

The data sought in Plaintiff's FOIA requests must be subject to redaction, if necessary, as Plaintiff has conceded, but also must be tailored to the request to fulfill the pro-disclosure meaning and intent of Michigan's FOIA. However, the information sought fits nowhere within the meaning of MCL 15.2431(y) (threatening Michigan's election security – quite the contrary, it is sought precisely to prevent unlawful breaches in Michigan's *election security* as defined in the Michigan Constitution and statutory law – not as envisioned and conceived by SOS Benson); or MCL 15.243(1)(z) (it simply would not “disclose a person's cybersecurity plans or cybersecurity-related practices, procedures, methods, results, organizational information system infrastructure, hardware, or software.” ). The data will be used to compare the results with voter information, and data provided by the state – where several alarming discrepancies have already been found. (ATTACHMENT C).

3. Genuine issues of material fact about the categorization of the items subject to Defendants' denial and the scope of the exemptions as applied thereto prohibit summary dismissal of Plaintiff's claims.

Finally, Defendants' cannot be entitled to summary dismissal because there are genuine issues of material fact that require factual, expert, and legal

determinations concerning whether (and to what extent, i.e., scope), Defendants' exemptions are valid. Moreover, FOIA provides a right of action – to sue the denying parties in court to determine the fact and apply the law to them. This is the process *required by the statute*. SOS Benson and Defendants cannot get a “free pass” from compliance with FOIA just because SOS Benson “intervened,” even though she has no standing to do so in this FOIA proceeding, and seeks to apply her own administrative agency’s “interpretations” and “*broadly construed*,” i.e., sweeping idea of exemptions. *ACLU, supra*. Denial of FOIA must come from the public official who receives the request. And, the broadly construed permissibility, and narrowly construed exemptions must also be applied by these officials.

Aside from the fact that the records Plaintiff has requested (1) enjoy a prima facie presumption of being open public records due to their independent treatment under Michigan and federal election laws as public information required to be retained, preserved, and protected, and therefore, are subject to disclosure, and (2) do not fall within any of the asserted exemptions cited by Defendants when the broadly permissive interpretive principles and the narrow construction of the asserted exemptions are applied, see analysis *supra*, genuine issues of material fact exist sufficient to prohibit summary dismissal based on Defendants' sweeping interpretation of the exemptions cited as applied to the precise information sought.

Indeed, MCL 15.244 *requires* public officials to disclose non-exempt information; if there is “exempt” information combined with said “non-exempt” information, then the public official *cannot* use the excuse that redaction or separation is not possible. See, e.g., *Evening News Asso v Troy*, 417 Mich 481, 486; 339 NW2d 421 (1983). Indeed, the statute itself says: “the public body ***shall separate the exempt and nonexempt material*** and make the nonexempt material available for examination and copying.” *Id.*, (emphasis in original), citing MCL 15.244. As this Court is well aware, “[u]se of the word ‘shall’ connotes ***a mandatory duty imposed by law***,” especially as it relates to a command directed at public officials and their public duties to disclose public information under FOIA. *Sharp v Huron Valley Bd of Ed*, 112 Mich App 18, 20; 314 NW2d 785 (1981), citing *Southfield Twp v Drainage Board for Twelve Towns Relief Drains*, 357 Mich 59, 76; 97 NW2d 821 (1959), *King v Director of the Midland County Department of Social Services*, 73 Mich App 253, 259; 251 NW2d 270 (1977). See also, *Anklam v Delta College Dist, et al.*, Unpublished Per Curiam Opinion of the Michigan Court of Appeals, Docket No. 317692 (June 26, 2014) **(ATTACHMENT I)**.

### CONCLUSION

As of the 2022 elections, all files on the USB Drive for the EPB flash drive are now fully encrypted. This blatantly usurps a locals clerk’s control and

responsibility of local election records and appears to be the BOE's attempt to further prevent release of election records. Plaintiff is entitled to the information he seeks to keep the state in check, and to ensure that elections are secure and properly run in accordance with the laws that county and local clerks, and local election officials *must follow*. The very pro disclosure purpose behind Plaintiff's request is not to make elections less secure, but more secure, not to invade privacy or infringe on copyright and proprietary matters, but to make elections and the manner in which they are conducted transparent and honest.

The electronic pollbook is an inherent component of the election audit trail and associated public election records. The public records derived from the EPB must, by law, be retained in their entirety and be accessible to the public. The Bureau of Elections has displayed a pattern of oversight, at best, and downright intentional neglect, at worst, that shows disregard for State and Federal Laws applicable to the election process. Plaintiff's FOIA should be honored, and there should be a full litigation and hearing so that local clerks and other witnesses called by the parties can testify as to the status of their EPB Voter file (.csv) format and/or as to their own experiences with voter registration fraud and/or mistakes. Any interjection of responsibility by the Secretary of State should be denied.

RELIEF REQUESTED

WHEREFORE, Plaintiff requests this Honorable Court to deny Defendants' rejection of the FOIA requests, and to ORDER that Defendants disclose or provide copies of all or a portion of the public records requested, and further enter JUDGMENT in favor of Plaintiff, and to award attorneys' fees and costs as required by statute, and any and all other relief to which Plaintiff is entitled.

Respectfully submitted,

/s/ Stefanie Lambert  
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Dated: March 20, 2024 (AMENDED)

**STATE OF MICHIGAN  
IN THE 16<sup>TH</sup> CIRCUIT COURT  
COUNTY OF MACOMB**

MICHAEL LEWIS BUTZ,

Plaintiff,

v.

Case No. 2023-002852-CZ  
Hon. Edward A. Servitto, Jr.

JENNIFER ZELMANSKI, et al.

Defendants.

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**ATTACHMENT A**

Secretary of State and Bureau of Elections  
Instructions Regarding FOIA Responses

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STATE OF MICHIGAN  
JOCELYN BENSON, SECRETARY OF STATE  
DEPARTMENT OF STATE  
LANSING

**MEMORANDUM**

Date: July 10, 2023  
To: Municipal and County Election Officials  
From: Jonathan Brater, Director of Elections  
Subject: Security of Qualified Voter File and Electronic Pollbooks

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**Introduction**

Election officials have experienced a series of attempts to access election materials that, if disclosed, pose privacy threats to Michigan voters and security threats to Michigan’s election system. At times, these attempts have been accompanied by aggressive and even threatening language and behavior. Consistent with the Michigan Election Law and its responsibility to safeguard election security in Michigan, the Bureau of Elections (the Bureau) has instructed clerks that while Qualified Voter File (QVF) and Electronic Pollbook (EPB) records are public and subject to disclosure, certain components of these systems cannot be released without compromising voter privacy and election system security.

This memorandum provides further explanation of these issues and information for clerks to consider when reviewing public records requests with their legal counsel. It also describes the potential consequences of providing inappropriate access to election equipment to unauthorized individuals. Additionally, the memorandum addresses several false claims that have been made about QVF and EPB data and election administration in Michigan.

**Record Requests Seeking QVF and EPB Data**

Clerks have received requests for access to QVF and EPB data in a variety of different formats, including:

- Requests under the Michigan Freedom of Information Act (FOIA)
- Demands that records be preserved for “investigation”
- Demands to perform “inspections” of election records or equipment

Regardless of the format of any request to inspect QVF or EPB data, clerks should consult with their own counsel for legal questions regarding any of these requests.<sup>1</sup> The Bureau provides the following information in this memorandum: a summary of applicable provisions of FOIA and the Michigan Election Law; a description of the manner in which the Bureau has responded to

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<sup>1</sup> Any clerk who receives a subpoena, request to preserve records pursuant to a lawsuit, or a request to inspect records from law enforcement should consult with legal counsel and inform the Bureau of Elections and the Michigan Department of Attorney General.



specific requests, and; instructions not to disclose certain materials that pose a threat to election system security if released.

### **Requests for Electronic EPB Files**

Clerks have received requests for electronic copies of EPB materials in various formats. These include requests for “an electronic copy of the Qualified Voter File (QVF) extract”; an “electronic pollbook flash drive”, a “CSV- Comma separate value format”, or other similar requests. At times, these requests have been accompanied by “helpful” instructions showing clerks how to potentially compromise the security of their election systems and render their election equipment unusable by illegally providing security-compromising information to unauthorized individuals.

Before responding to these or any FOIA requests, clerks should consult with their legal counsel regarding the requests and exemptions that may apply. Under FOIA, officials may shield sensitive information from disclosure. In the case of EPB files, the Bureau of Elections instructs clerks that they must not publicly release data or files that would reveal the software design or data architecture of the EPB. The Bureau gives this lawful instruction<sup>2</sup> under its supervisory authority pursuant to MCL 168.21, 168.31, and 168.32, as doing so could compromise the Bureau’s ability to secure and safeguard the software and data from hacking, theft, loss or destruction, and accordingly interfere with the Bureau’s obligation under the Michigan Election law to provide EPB software to clerks. MCL 168.668b.

In response to previous FOIA requests regarding EPB data, the Bureau of Elections has not disclosed these records because the records sought constitute “cybersecurity plans, assessments, or vulnerabilities” that are exempt from disclosure. The Bureau has an interest in maximizing the protection and defense of its information systems, which outweighs the public interest in the disclosure of this information as the release of this sensitive information could jeopardize the security of Michigan’s electoral process. MCL 15.243(1)(y). In addition, the responsive records include proprietary software information, security feature information, and sensitive information which, if released, “would disclose a person’s cybersecurity plans or cybersecurity-related practices, procedures, methods, results, organizational information system infrastructure, hardware, or software.” MCL 15.243(1)(z). Additionally, these files contain sensitive information regarding jurisdictions’ EPB laptop(s) that might compromise the security of these laptops.

EPB files also contain personal identifying information such as full birth dates for voters, which are exempt from disclosure. MCL 168.509gg. Attempted manual redaction of personal identifying information may not be sufficient to protect this information from disclosure if the software and program files are disclosed.

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<sup>2</sup> See MCL 168.931(h) (“A person shall not willfully fail to perform a duty imposed upon that person by this act, or disobey a lawful instruction or order of the secretary of state as chief state election officer[.]”)

If clerks receive a FOIA request for EPB data, the requestor can be directed to the county clerk for paper pollbook copies or to the Bureau for the log file or voter history.

Notwithstanding the above restrictions on the release of certain information, there are numerous ways in which members of the public can review public QVF and EPB data. Clerks can provide the paper records they are legally obligated to maintain for the required retention period after each election, as soon as the security period has elapsed. Certain specific data derived from the QVF and EPB is subject to disclosure under FOIA, including the lists of registered voters from the QVF and the paper printout of the EPB generated on election night.

If members of the public are interested in verifying the names of individuals registered to vote on a certain date or included in the EPB, they may obtain this information by submitting a FOIA request for publicly available records. If members of the public with concerns about EPB data wish to verify the names of individuals who cast ballots, they can also do so by submitting a FOIA request and reviewing the paper applications to vote completed by all in-person voters and the absent voter ballot applications submitted by all absentee voters.

Electronic records such as the EPB log file or voter history can be requested from the Bureau. Requests for EPB data must be directed to the Bureau to ensure that sensitive information related to both individual voters and the EPB are removed before public disclosure of otherwise available information. Even if clerks were to attempt to redact a voter's date of birth and other personally identifiable information, the disclosure of security and technical information is also exempt from FOIA and may not be properly redacted if produced by clerks, instead of the Bureau.

### **Demands to Disregard Lawful Instructions from the Bureau of Elections**

Clerks have also received communications demanding that they disregard instructions contained in the Bureau of Elections communications, including the Recount/Release of Security Memorandum circulated after each election. The Bureau's instructions are lawful directives in compliance with state and federal law.

Going back to at least 2012 (under Secretary of State Ruth Johnson), the Bureau has issued a directive to destroy electronic copies of the EPB and flash drive. As clerks are no doubt aware, numerous candidates of both major political parties have won statewide elections since 2012. This procedure is necessary to safeguard security and voter privacy. Clerks destroy electronic copies only after they have already printed the paper copy of pollbook information (which must be retained for the required retention period).

Clerks must comply with this instruction regardless of whatever claims private individuals make. A private individual has no authority to instruct clerks on their duties. Whatever "investigation" these individuals claim to be conducting or threats of "prosecution" they may make toward local or state officials, in the absence of a court-issued subpoena or other court order, clerks are not required to comply with their demands. If clerks do receive one of these demands, they should consult with their attorney on how to respond.

Clerks should also be wary of private individuals, including self-proclaimed “experts,” attempting to instruct them on the issue of whether disclosure of electronic materials would or would not constitute a security concern. In reality, it is often not possible for an individual unfamiliar with a system to determine whether any one individual piece of information, if known, would be useful in compromising that system. This is one of the reasons software and data elements which may, on their own or in combination with other elements, jeopardize security are not disclosed. Similarly, clerks should not accept at face value claims from private individuals, whatever expertise they claim to have, that clerks can easily redact security-related or personal identifying information.

### **Consequences of Improper Disclosure**

Clerks should understand that the disclosure of this sensitive information may compromise the integrity of Michigan’s elections and may warrant an investigation by the Department of State, Department of Attorney General, or Michigan State Police. Improper disclosure may also result in fiscal implications for the jurisdiction. Specifically, disclosure could require the purchase of new EPB laptops for each precinct for which data was compromised.

### **False and Misleading Claims About QVF and EPB Data**

Individuals seeking improper access to QVF and EPB records have made numerous false or misleading claims about QVF and EPB data and election administration in Michigan. Although making or believing false statements has no bearing on whether individuals are permitted to access a record, clerks may find these explanations useful in communicating with the public or other local and county officials, including law enforcement.

### Election Turnout and Voter History

Some individuals have claimed that because, in past elections, the total number of ballots tabulated statewide does not exactly match the number of voters with a voter history indicator in QVF, this means that election results and files cannot be trusted, or that there is some sort of unknown or unexplained irregularity involving voter data.

In reality, these numbers do not match exactly because they come from two different sources. County-certified election results are based on the number of ballots cast and tabulated in each jurisdiction, as determined by the county canvass. This includes canvasser review of tabulator tapes showing election night results, in addition to any corrections or adjustments at the county canvass and recounts, if applicable.

Voter history in QVF is based on entry of voter history data from the EPBs (for in-person voters) and absent voter ballot return envelopes (for absentee voters). Following each election, each clerk uploads their EPB data for each of their precincts to the QVF. This automatically updates the voter history in QVF for all voters recorded in the EPB as voting at the polling place. Alternatively, clerks can manually add voter history to the QVF using the paper printout of the EPB.

If any of Michigan’s 1,520 municipal clerks do not update QVF with EPB data for any of their precincts, voter history for voters in those precincts will not appear in QVF even though those voters did in fact appear at the precinct, apply to vote, get recorded in the poll book, and cast

ballots. Following each election, the Bureau sends multiple communications and reminders to clerks to add voter history data to the QVF. Most clerks do so promptly, but some are delayed and some fail to do so.

This was the case in the November 2020 election, as it was in other past elections. Approximately 5.57 million ballots were cast in the November 2020 election according to certified results. As of April 2021, when the Office of the Auditor General reviewed QVF data for its audit of the Bureau, voter history for approximately 5.53 million voters had been uploaded to the QVF. In subsequent months, the Bureau sent additional communications to clerks reminding them to add voter history data to the QVF, and more clerks did so. As of 2022, the number of voters showing history in QVF for the November 2020 election was approximately 5.55 million.

Ultimately, a small percentage of jurisdictions did not add QVF data for at least one of their precincts in 2020 which meant that a small percentage of voter history was not recorded in QVF. Approximately 99.6% of voter history was uploaded in the QVF for the November 2020 election, which is a higher percentage than was uploaded for the November 2016 election (approximately 99.0%) and November 2018 election (approximately 98.5%). In subsequent elections, the percentage of voter history uploaded has increased even further.

#### EPB Time and Date Records

Individuals have claimed that the absence of a specific “time stamp” on some voter history tables is suspicious because, on election day, the EPB records the specific time at which a voter appeared on Election Day. These individuals misunderstand the table they are viewing. In reality, some QVF tables include “00:00” in the time field because the record is referring to an election *date*, not a *time* on election day. Elections occur all day, so it does not make sense for QVF to display any specific time. Like other programs that include voluminous amounts of data, QVF generates tables of data that are programmed and populated using numerous databases.<sup>3</sup> When there is no entry needed for a field (for example, a time field corresponding to election day), the default value that databases display is “00:00.”

#### Voter History from Previous Addresses

Some voters who have moved from one jurisdiction to another in Michigan have noticed that voter history from prior elections, when they voted at their prior address, may appear as voter history from their current address. This is because the old version of QVF (QVF Legacy) did not track the jurisdiction where a past vote occurred. One of the many benefits of QVF Refresh, released in 2019, is that voter history from prior addresses can be tracked at the prior address. Therefore, voters who moved to and voted from prior addresses in elections that occurred after QVF Refresh was released will see voter history appear as having voted at the prior address.

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<sup>3</sup> Some individuals have claimed that there are multiple QVF “databases” and that this is somehow being used to perpetuate fraud. Aside from being impossible for the reasons described later in the memo, this claim is based on misconceptions regarding the QVF. The QVF is not a single “database” but instead a program used by the Bureau and Clerks for many purposes, requiring numerous tables and reports, which are in turn programmed and populated by numerous databases. For an explanation of what a database actually is, see this explanation from Microsoft: <https://azure.microsoft.com/en-us/resources/cloud-computing-dictionary/what-are-databases/>.

However, votes that occurred at addresses when the voter's move predated QVF Refresh will display at the current address. This is not because of some nefarious purpose, but because QVF Legacy did not have the data capability as the current system.

#### QVF Record Identifying and Voter ID Numbers

Some individuals have claimed that the fact that there are multiple identifying numbers corresponding to voter records in QVF is suspicious. In reality, there are multiple numbers for security reasons. Voters have a public voter ID number in QVF and the EPB, which is public and disclosed in public record requests. QVF also contains separate record-identifying numbers that correspond to voter records, which are used for security and verification purposes (and which are not publicly disclosed for security reasons). Again, the non-disclosed record-identifying number is not different from the voter ID number for some nefarious purpose, but as an internal verification and security measure.

#### Security Procedures Used to Verify EPB is Offline

As clerks are aware, the EPB used on Election Day must be offline and laptops operating the EPB software must be turned to "airplane mode" to ensure there is no internet connection. In order to make sure that EPBs are offline, the EPB software is designed to receive a periodic "Ping" from the State of Michigan network on Election Day to check for improper internet connectivity. If the Ping detects an internet connection on the EPB laptop, the EPB software displays a warning message instructing the user to disconnect the laptop from an internet connection by turning the laptop to airplane mode. Some individuals have suggested this connection is suspicious, when in fact it is a security feature designed to ensure EPB laptops remain offline throughout Election Day.

#### General QVF-Related Conspiracy Theories

In general, some individuals have pointed to various data or program elements in QVF and claimed – whether because QVF data is imperfect or incomplete, because these individuals do not understand what they are looking at, or some combination of the above – that this shows some broad conspiracy to perpetrate election fraud. While it is of course true that QVF – a constantly changing voter file that needs to be updated whenever a voter registers, moves, cancels a registration, dies, applies for an absentee ballot, or various other activities – will never be 100 percent accurate or up to date, this does not mean there is some conspiracy to manipulate QVF data to perpetrate fraud. In fact, in recent years the Bureau and clerks have done more than ever before to keep QVF accurate and up to date.<sup>4</sup>

Regardless of how accurate or up to date QVF is at any given time, however, the suggestion that QVF could be used to perpetuate massive undetected election fraud is without merit. Even if one were to assume that Bureau staff (many of whom have worked at the nonpartisan Bureau of Elections for years or decades under multiple Secretaries of State of both political parties) and staff at the nonpartisan Department of Technology, Management, and Budget were involved in such a scheme, it would require thousands of clerks and election inspectors of both political parties to be involved as well.

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<sup>4</sup> For more information on how QVF is kept up to date, see <https://www.michigan.gov/sos/elections/voting/voters/voter-registration-cancellation-procedures>.

This is because while QVF is used to maintain *electronic* registration and voting records, voting is done by human beings using *paper* ballots, in elections that are run by municipal clerks across the state. In addition to the paper ballots, there are also polling place applications to vote (which must be completed by in-person voters, and which are retained by clerks after election) and absentee ballot applications (which must be completed by absentee voters, and which are also retained by clerks after elections). These materials provide an independent, *paper* record of all the individuals who cast ballots in an election. If there were actually some kind of fraud being perpetrated using QVF, this could be easily proven by reviewing these paper records.

In many respects, these nonsensical claims about QVF are similar to the false claims previously made about ballot tabulation equipment, which if true could have been proven by reviewing paper ballots (when in fact, reviews of paper ballots all confirmed that tabulators counted ballots accurately).

### **Additional Information and Support Available**

It is unfortunate that election officials continue to be subjected to false claims, abusive behavior, and even threats. Whatever assertions individuals make about election officials, clerks should be mindful that there are legal avenues for individuals to pursue these assertions. If individuals disagree with a FOIA determination by a local or state official, they can file a lawsuit. If they believe criminal activity occurred, they can make a complaint in writing to law enforcement.

The Bureau encourages election officials to communicate with local and state law enforcement regarding any threats they may have received, and to continue to communicate with law enforcement regarding the various false claims and allegations of criminal activity that some individuals continue to make. Clerks are also encouraged to communicate with municipal and county government associations for additional independent support and advice. Finally, the Bureau of Elections remains available for any additional questions you have or support you may need. If clerks believe that any unauthorized or unsupervised access to their equipment may have occurred, they should contact the Bureau immediately. Please do not hesitate to contact the Bureau if we can be of further assistance.



Stephanie Scott <stephiedscott@gmail.com>

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## FOIA Requests to Review QVF Records, Master Cards, and AV Records

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**Michigan Bureau of Elections** <MISOS@public.govdelivery.com>  
Reply-To: MISOS@public.govdelivery.com  
To: stephiedscott@gmail.com

Wed, Jul 20, 2022 at 11:25 AM

Having trouble viewing this email? [View it as a Web page.](#)



City and Township Clerks,

Jurisdictions have received Freedom of Information Act Requests to view Qualified Voter File (QVF) records, voter registration records, and absent voter ballot records for registered voters in Michigan. You should consult with your local legal counsel regarding any public records requests. The Bureau of Elections' position is that the Michigan Election Law prohibits the release of the digitized voter signature images from the Qualified Voter File. MCL 168.509gg(f). The Bureau's position is that the Michigan Election Law does not prohibit clerks from allowing members of the public to view voter registration forms, voter registration master cards, absent voter ballot applications, or absent voter ballot applications that include a voter's handwritten signature.

Lori A. Bourbonais, Director  
Election Administration Division  
Bureau of Elections

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This email was sent to [stephiedscott@gmail.com](mailto:stephiedscott@gmail.com) using GovDelivery Communications Cloud on behalf of: Michigan Secretary of State • [430 W. Allegan Street](#) • Lansing, MI 48918 • 1-888-767-6424

STATE OF MICHIGAN  
IN THE 16<sup>TH</sup> CIRCUIT COURT  
COUNTY OF MACOMB

MICHAEL LEWIS BUTZ,

Plaintiff,

v.

Case No. 2023-002852-CZ  
Hon. Edward A. Servitto, Jr.

JENNIFER ZELMANSKI, et al.

Defendants.

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ATTACHMENT B

Bureau of Elections Direction to  
Delete the EPB Files / Data

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STATE OF MICHIGAN  
BUREAU OF ELECTIONS  
LANSING

**MEMORANDUM**

DATE: February 12, 2021  
TO: County Clerks  
FROM: Michigan Bureau of Elections  
SUBJECT: Release of Voting Equipment

Please be advised of the following:

**RELEASE OF VOTING EQUIPMENT:** The security of ballots and election equipment is released as follows:

***Ballots, programs and related materials:*** The security of all optical scan ballots, programs, test decks, accuracy test results, edit listings and any other related materials are released.

***E-Pollbook laptops and flash drives:*** The EPB software and associated files must be deleted unless a post-election audit is planned but has not yet been completed or the deletion of the data has been stayed by an order of the court or the Secretary of State. Jurisdictions should consult with city, township, or county counsel regarding any pending court orders, subpoenas, or records requests regarding these materials.

**FEDERAL BALLOT RETENTION REQUIREMENT:** If the office of President, U.S. Senator or U.S. Representative in Congress appears on the ballot (all appeared on the November 3, 2020 general election ballot), federal law requires that all documents relating to the election -- including optical scan ballots and the programs used to tabulate optical scan ballots -- be retained for 22 months from the date of the certification of the election. To comply with the requirement, the Bureau of Elections recommends that optical scan ballots and the programs relating to federal elections be stored in **sealed ballot bags** in a secure place during the 22-month retention period. The documents subject to the federal retention requirement must not be transferred to ballot bags for extended retention until after they are released under Michigan election law as detailed in this memo.

**Questions?**

If you have any questions, please contact us via email at [elections@michigan.gov](mailto:elections@michigan.gov), or by phone at (517) 335-3234 or (800) 292-5973.

**STATE OF MICHIGAN  
IN THE 16<sup>TH</sup> CIRCUIT COURT  
COUNTY OF MACOMB**

MICHAEL LEWIS BUTZ,

Plaintiff,

v.

Case No. 2023-002852-CZ  
Hon. Edward A. Servitto, Jr.

JENNIFER ZELMANSKI, et al.

Defendants.

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**ATTACHMENT C**

**Affidavit of Stephanie Scott  
and Supporting Exhibits**

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# Affidavit of Stephanie Scott

State of Michigan

County of Hillsdale

Stephanie Scott, being duly sworn deposes and states as follows under penalty of perjury:

1. My name is Stephanie Scott. I am presently 52 years old, and my current address of residence is 3571 State Road, Hillsdale MI 49242.
2. I am the former Adams Township Clerk.
3. I assumed office of Adams Township Clerk early December 2020.
4. I immediately began to prepare to run a local school millage election by completing the State of Michigan's online election training and certification program. Upon completion I was then allowed access to the State of Michigan Qualified Voting File (QVF).
5. To my understanding, Adams Township was holding the first and only election in the state following the November 2020 presidential election.
6. During election preparation, I received instructions from the Hillsdale County clerks office, Deputy Clerk Abe Dane, that I was to locate the USB flash drive from November 2020 election. Once located I was instructed to delete the files and return the USB flash drive to him for the programming files of the Electronic Pollbook (EPB) for the next election.
7. In December 2020, an email was sent out from the Michigan Bureau of Elections at the direction of Jocelyn Benson directing the deletion of the EPB data from the November 3, 2020 election.
8. I reviewed the law and discovered that deleting the EPB data would be a violation of state and federal law. I did not delete the EPB data.
9. I questioned the direction from the Secretary of State to delete the EPB data because the USB sticks that store the EPB data cost less than \$10.00. Additionally, election records that I am required to maintain pursuant to the Michigan Constitution, Michigan law, and federal law would be deleted.
10. I raised this concern with the Secretary of State's Office. I was told by the Bureau of Elections that the records contained on the EPB USB drive were preserved by 3 print outs from the pollbook (the laptop that the EPB USB drive is inserted into) that occur on election night.
11. I subsequently learned this statement from the BOE is FALSE!
12. I had the Adams Township EPB data analyzed by a forensic expert, and I learned that the EPB data is original evidence that has information not contained anywhere else including

the 3 print outs referred to by the BOE. It is original evidence that had I deleted that I would have violated state and federal law.

13. The forensic expert further verified that the registration (QVF) files were on the EPB USB drive. I then reconciled the data with the Adams Township certified and recorded data for the November 3, 2020 election. It matched. As it should.
14. I then compared the EPB data and the Adams Township data that was recorded for the November 3, 2020 election to the certified and recorded data that Hillsdale County had for Adams Township for the November 3, 2020 election. It matched. As it should.
15. I then compared the EPB data, and Adams Township data, Hillsdale data to the certified data obtained by FOIA request from the BOE as to who the state had recorded for voting in Adams Township for the November 3, 2020 election. It differed by 11.5%
16. Again, it differed by 11.5%.
17. In other words, the State final certified data had 11.5% unique voters recorded as voting in Adams Township that Adams Township, and Hillsdale County did not have recorded.
18. This was ONLY discovered by looking at the EPB data. The same data that the SOS ordered to be deleted.
19. voter records (FOIA records) from 2009 thru October 2021. We began to examine the numbers for Adams Township.
20. The first discrepancy identified was the fact that the FOIA records illustrate 1332 people voted
21. I wanted to find who the 30 people were that the state FOIA records did not have record of voting. We created a query to compare the EPB record to the state FOIA records.
22. Pertaining to the timestamps. There is no other documentation to my knowledge that records this. It would represent when the election inspector 'checked in' the voter to the electronic pollbook on the laptop and provided him/her a ballot. The ballot number would be entered at this time as well.
23. I noticed the Voter IDs had different lengths of numbers. Upon closer review, the Voter IDs did not match the Voter IDs on the state FOIA records.
24. The BOE responded in the October 15, 2021 letter to my concerns of deleting the EPB to me that "all electronic pollbook data is printed in paper form on election night". That is clearly not the case with my findings.
  - a. The 14 names listed as same day registers are not delineated on the .pdf file of the Voter List.
  - b. There are 10 data fields not included on the .pdf of the Voter List including the time stamp and the Voter ID.
  - c. No information regarding the laptop is recorded in any of the night end .pdf reports.
25. These discrepancies are repeatable in other precincts in which the clerks lawfully retained their EPB flash drives. And because of this, citizens began writing FOIAs for the .csv EPB Voter file.

26. The BOE responded to the FOIAs with a variety of emails and memos discouraging clerks from providing the information and claiming security concerns. Included are emails/memos dated 8/26/22, 7/20/22, 11/14/2022.
27. These take the same authoritarian tone by the BOE advising clerks to consult with their legal counsel before complying with FOIA.
28. Election records exempt from FOIA release are identified in MCL 168.509gg. BOE has no authority to intimidate clerks into non-compliance with statute.
29. The BOE continued to send out letters instructing clerks to delete the EPB flash drive data off laptops and off the USB flash drive, justifying it as a necessary security issue.
30. EPB sticks of 2022 election show 'pings' of internet connectivity attempts. Although I do not have physical prints of the evidence I saw, you will see reference to this fact in the July 10, 2023 BOE letter to clerks. While the BOE attempts to explain the internet connection attempts as their 'ping' to check if election laptop is in airplane mode, it is not logical to believe that the EPB software installed on local laptops can record inbound 'pings'. But it is completely reasonable that it would record it's own outbound 'pings' of failed IP address connection attempts.
31. As the momentum increased around the state, and as clerks denied FOIAs and were on record of not having the files, the BOE released a memo dated July 10, 2023 which contains many refutations to the election result findings of the EPB voter files verifies.
32. As of the 2023 election, the EPB history file is encrypted. The clerk has no ability to access her own pollbook records.
33. It is my opinion that the mantra to compare tabulator tapes to paper ballots is NOT sufficient to an audit of actual election results. It completely disregards WHO voted. Adams Township records from the USB flash drive document the complete misstatement of the state QVF voter database. It contains a litany of bad and potentially fraudulent records.
34. MCL168.509ff states "*The secretary of state and each county, city, township, or village clerk shall maintain all records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of registration records under this chapter for 2 years or more. Except to the extent that the records maintained pursuant to this section relate to a declination to register to vote or to the identity of a designated voter registration agency through which any particular voter applied for registration pursuant to section 509gg, the secretary of state or a county, city, township, or village clerk shall make the records available for public inspection under reasonable conditions and, if available, for photocopying at a reasonable cost.*" While some FOIA requests were fulfilled, it became apparent that the BOE was intervening to discourage and prevent the lawful fulfillment of FOIA requests for pertinent election records.
35. The EPB flash drive files MUST be maintained and utilized for election accountability.

36. I hereby affirm that the information above is true and accurate and complete to the best of my knowledge, and that no relevant information has been omitted.

Dated:

3/11/24

Signature:

*Jon Paul Rutan*



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**Release of Voting Equipment/Ballots**

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**Stephanie Scott** <stephiedscott@gmail.com>  
To: Abe Dane <a.dane@co.hillsdale.mi.us>

Wed, Feb 24, 2021 at 9:42 AM

:)

On Wed, Feb 24, 2021 at 9:36 AM Abe Dane &lt;a.dane@co.hillsdale.mi.us&gt; wrote:

You have a point there. I won't disagree.

*Abe Dane*

Chief Deputy Clerk

Hillsdale County

517-437-3391

**From:** Stephanie Scott <stephiedscott@gmail.com>**Sent:** Wednesday, February 24, 2021 9:34 AM**To:** Abe Dane <a.dane@co.hillsdale.mi.us>**Subject:** Re: Release of Voting Equipment/Ballots

Yes, I am sure this is the common practice but this past year appears quite different than past years. With all the accusations of voting irregularities and a SOS that is certified despite of this, it seems premature for the Bureau of Election to have us destroy potential evidence by breaking seals.

On Wed, Feb 24, 2021 at 9:18 AM Abe Dane &lt;a.dane@co.hillsdale.mi.us&gt; wrote:

Good morning Stephanie,

From what Marney has said it sounds like this is common practice. They just want them to stay sealed so they can maintain their integrity in case there is a recount or audit. Since we are past that point, all we need to do is keep them retained for 22 months and then after that they can be destroyed.

*Abe Dane*

Chief Deputy Clerk

Hillsdale County

517-437-3391

**From:** Stephanie Scott <[stephiedscott@gmail.com](mailto:stephiedscott@gmail.com)>  
**Sent:** Wednesday, February 24, 2021 7:52 AM  
**To:** Abe Dane <[a.dane@co.hillsdale.mi.us](mailto:a.dane@co.hillsdale.mi.us)>  
**Subject:** Re: Release of Voting Equipment/Ballots

Hi Abe-

I am surprised that this direction isn't coming from the Secretary of State. Incredible that all are being directed to remove seals and loose the integrity of the paper trail. I suppose this came out because the Supreme Court declined case?

On Tue, Feb 23, 2021 at 5:00 PM Abe Dane <[a.dane@co.hillsdale.mi.us](mailto:a.dane@co.hillsdale.mi.us)> wrote:

Clerks,

We received word from the state's Bureau of Elections (attached) that the security of ballots and election equipment is released. So you are free to remove seals and store your ballots somewhere more convenient if you want to free up your nice ballot storage containers for the next election. PLEASE LET MARNEY OR I KNOW IF YOU NEED NEW BALLOT STORAGE BAGS. Our current bags are between 15 and 20 years old and are showing a lot of age. We are in the process of researching prices for new bags and if you are interested these bags can include wheels for easier transport.

These presidential election ballots should still remain in your possession until September of 2022 (22 month retention period).

The state also wants you to UNINSTALL the EPB software from your laptops (NOT just delete the icon from the desktop) and remove the election folder from your EPB flash drive.

Please see the attached memorandum from the BOE for more information. Thank you all!

*Abe Dane*

Chief Deputy Clerk  
Hillsdale County  
517-437-3391





Stephanie Scott <stephiedscott@gmail.com>

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## EPB Flash Drive for Adams Twp

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**Abe Dane** <a.dane@co.hillsdale.mi.us>  
Reply-To: a.dane@co.hillsdale.mi.us  
To: Stephanie Scott <stephiedscott@gmail.com>

Wed, Mar 3, 2021 at 9:20 AM

Thank you Stephanie!

*Abe Dane*

Chief Deputy Clerk

Hillsdale County

517-437-3391

**From:** Stephanie Scott <stephiedscott@gmail.com>  
**Sent:** Wednesday, March 03, 2021 8:51 AM  
**To:** Abe Dane <a.dane@co.hillsdale.mi.us>  
**Cc:** Zinser, John <bluke26@yahoo.com>; Kast, Marney <mkast@co.hillsdale.mi.us>  
**Subject:** Re: EPB Flash Drive for Adams Twp

I located the EPB flash drive so I shouldn't need another. :)

On Tue, Mar 2, 2021 at 4:12 PM Stephanie Scott <stephiedscott@gmail.com> wrote:

Hi Abe-

I will look tonight when I get to the townhall and let you know.

Stephanie

On Tue, Mar 2, 2021 at 4:08 PM Abe Dane <a.dane@co.hillsdale.mi.us> wrote:

Stephanie and Scott,

We are preparing your precinct kit for the March 23rd election. Can either of you check to see if Adams Township is in possession of their Electronic Poll Book (EPB) Flash Drive? It would probably be in a labeled medium sized white envelope.

This would be used on Monday March 22nd to download the EPB from QVF for transfer to your EPB laptop for election day.

If you already have your EPB Flash Drive, please delete the November 3rd, 2020 election folder within the drive.

If you do not have an EPB Flash Drive, I will provide one in your precinct kit.

Please let me know either way. Thank you.

Abe Dane

Chief Deputy Clerk

Hillsdale County

(517) 437-3391

**AFFIDAVIT OF BENJAMIN R. COTTON 11 JULY 2022**

I, Ben Cotton, being duly sworn, hereby depose and state as follows:

- 1) I am over the age of 18, and I understand and believe in the obligations of an oath. I make this affidavit of my own free will and based on first-hand information and my own personal observations.
- 2) I am the founder of CyFIR, LLC (CyFIR).
- 3) I have a master's degree in Information Technology Management from the University of Maryland University College. I have numerous technical certifications, including the Certified Information Systems Security Professional (CISSP), Microsoft Certified Professional (MCP), Network+, and Certified CyFIR Forensics and Incident Response Examiner.
- 4) I have over twenty-five (25) years of experience performing computer forensics and other digital systems analysis.
- 5) I have over eighteen (18) years of experience as an instructor of computer forensics and incident response. This experience includes thirteen (13) years of experience teaching students on the Guidance Software (now OpenText) EnCase Investigator and EnCase Enterprise software.
- 6) I have testified as an expert witness in state and federal courts and before the United States Congress.
- 7) I regularly lead engagements involving digital forensics for law firms, corporations, and government agencies and am experienced with the digital acquisition of evidence under the under the Federal Rules of Evidence.
- 8) I reviewed the Administrator manual for the Hart Verity system for the version of software that was purchased by the State of Michigan under contract number #071B7700128.

- 9) I reviewed the State of Michigan contract number #071B7700128, which is specific to the State of Michigan acquisition, deployment and operation of the Hart voting systems from March 1, 2017 to February 28, 2027 and was in effect during the November 3, 2020 general election.
- 10) I reviewed the Voting System Examination of Hart InterCivic Verity Voting 2.4 report dated May 16, 2020 the was conducted by Brian Mechler on behalf of the State of Texas.
- 11) The analysis and review of the Hart InterCivic contract, administrative and user manuals state the following:
- a) State Michigan contract number #071B7700128 documents the inclusion of the State of MI Qualified Voter Files (QVF) loaded onto the tabulators on page 59 and are illustrated in the diagram on page 60.
  - b) This download of QVF occurs 4-5 weeks prior to election via the Verity Drive USB stick (V-Drive). This data is loaded onto the tabulator prior to the Public Accuracy Test and not modified by the clerk prior to election day.
  - c) The Verity drive is provided by the County to the township clerk.
  - d) The Hart InterCivic tabulator includes WIFI and ethernet local area network (LAN) network support coupled with an automatic transmission process to connect to the internet. (Page 61)
  - e) The ballot images are stored on the tabulator in PNG format. (page 77)
  - f) The time stamp of the ballot insertion into the tabulator is removed per paragraph 1.1.A.24 of Hart contract.
  - g) Ballot information is recorded in 3 physically separate locations: internal memory, the paper ballot itself and on the V-drive.
  - h) Given that the ballot images are stored on the tabulator, the QVF is stored on the tabulator, the ballot images are stored on the tabulator and the tabulator has multiple

modes of internet connectivity with few if any cyber security protections, a huge vulnerability to the integrity of the voting process exists. If an unauthorized person were to gain remote access to the tabulators the vote as recorded on the tabulator could be modified or additional votes entered into the system.

12) The Adams Township tabulator was confiscated by MI State Police and remains in their custody. Since maintenance was not performed prior to the seizure, the ballot information from the 2018 thru March 2021 elections should remain on the device.

13) I have had the opportunity, with the permission of Adams Township, Michigan officials, to examine the contents of the Electronic Poll Book (EPB) USB drive from the November 2020 General Election.

14) I have reviewed the letter from Jonathan Brater, Director of Elections, dated 15 October 2021 to Stephanie Scott.

15) I have reviewed a series of emails between Stephanie Scott and Abe Dane dated 23 February 2021 through 24 February 2021.

16) I have reviewed the Memorandum dated 12 February 2021 named 2021.02.12 Final Release of Security Memo Nov 2020.pdf. This memorandum is unsigned but is written on Michigan Bureau of Elections letterhead.

17) I have had the opportunity to review the reports that are generated and printed by the Secretary of State following the submission of precinct results for a given election. These reports are referenced in the Jonathan Brater document dated 15 October 2021.

18) The administrative and operator manuals for the Hart InterCivic voting system clearly state that the Qualified Voter Record is stored on the voting machines and poll books..

19) The epb.accdb file on the EPB USB is a password-protected data base that contains the election definition data as well as qualified voter data. At the point that these files are utilized in

the course of the election, the data contained in these files becomes unique to that machine and election. For example, when a qualified voter casts a vote the exact date and time that the vote is cast is added to the voter's record. At this point, the data on the devices and the EPB USB becomes original evidence for the voting process.

20) Under the Federal Rules of Evidence Rule 902 paragraph 14, data copied from an electronic device, storage medium or file is admissible if authenticated by a process of digital identification and certified by a qualified person. This presumes that all data contained on the device is copied and reproduced. I saw no evidence that there is any such certification attesting to the completeness of the copied data associated with the conversion of the electronic EPB USB to the printed format that is produced by the Secretary of State. Without this certification, the original evidence must be preserved. In this case that would require that the systems involved in the election and the removable media used in the election be preserved in their digital state following the closure of the polls. There are forensic preservation processes that could have preserved the data, but there are no current processes or procedures approved by the Secretary of State to perform these operations.

21) The EPB USB is original evidence. The basic principle governing the preservation of electronic data and ensuring that digital evidence is admissible in court is that original evidence is the best evidence. Preserving a digital device in an original state ensures that the evidence is reliable, dates and times are factual, and that the data has not been altered. Failure to preserve digital evidence in a forensically sound manner can result in charges of spoliation and the inadmissibility of that evidence in court. Based on my review of the Hart InterCivic manuals and the Secretary of State's instructions to the municipality election officials, I do not see any

method or procedure to forensically preserve the voting systems or the digital media used in a Michigan election.

22) The EPB USB contains data that is unique to that specific EPB USB and to the equipment that the USB is plugged into. The following items are not recorded anywhere else in the night-end reporting:

- a. Same Day Voting Data. The quantity of same-day in-person registrations is not summarized on night-end reports.
- b. Same Day Voting Data. The voter identification/ information is not recorded in the printed total votes cast nor is this information delineated in the end-of-night voter list.
- c. Same Day votes. These votes are not separated out on the night-end ballot summary report.
- d. The reports produced at the closing of the polls will reconcile the voting numbers, but there is no method to separate out the same-day registers without the original EPB USB.

23) I have analyzed reports produced by the Secretary of State for the preservation of voting data and materials under the Federal Statute and have determined that those reports do not capture and preserve all the data contained on the EBP USB. The following data elements for and Electronic Pollbook and other voting equipment used in the election are not part of these reports:

- a) Computer Name that the Vote was Conducted On
- b) The Domain of the Computer
- c) Manufacturer of the Computer
- d) The Model of the Computer
- e) Processor Name

- f) Total Virtual Memory Size
- g) Free Virtual Memory
- h) Free Physical Memory
- i) Internet Connection Status
- j) Internet Connection Type
- k) Cable Internet Speed
- l) Cable Internet MAC Address
- m) Wifi Internet Speed
- n) Wifi Internet Mac Address
- o) Windows Operating System Version
- p) AntiVirus Program and Status
- q) Firewall Type and Status
- r) Bit Locker Disk Encryption Status
- s) Bitlocker Hard Disk Status
- t) Bitlocker Removeable Drive Status
- u) .Net Version
- v) Dymo Lable Version.

Once again, these data elements are not part of the reports that are produced for preservation by the Secretary of State, but would be data that should be preserved under the Federal statutes. Should an audit of the election or should the voting records be produced in support of a legal action, the above components would be critical to prove compliance with election law, validate voting system configurations and the demonstrate the fairness of the election. Failure to



forensically preserve the EPB USB would have effectively deleted and wiped these elements of information, as they are not present or preserved on any other component of the voting system.

24) The following data fields for voter information from election day are not part of the night end reports:

- a) VOTERID
- b) BALLOTTYPE
- c) PRECINCT
- d) CREATE DATE – Recorded date of election.
- e) ADDRESS\_ID
- f) LICENSE\_NUMBER
- g) IDENTIFICATION\_STATUS\_ID
- h) DISTINCT\_POLITICAL\_AREA\_ID
- i) CODE
- j) PARTYID

25) I had the opportunity to review FOIA documents produced by the Secretary of State's office to Scott Aughney. These documents included the official vote totals for Adams Township. Analysis of these official totals revealed some significant deviations from the data contained on the voting media at the local Township level.

- a) The Electronic Poll Book USB data for Adams Township recorded 1,362 voters in night end reporting. This includes the same-day registered voters.
- b) The Hillsdale County Canvassing Board confirms the quantity of 1362 votes in Adams Twp
- c) The State records indicate 1332 votes recorded in Adams Township. This is short 30 votes from the end-of-day totals in the Adams Township data. These numbers do not include the fourteen (14) same-day registration voters.

- d) A comparison of names between the two data sources illustrates seventy-nine (79) unique names on the Electronic Poll Book data for Adams township that are not listed on the State's official records.
- e) Conversely, there are sixty-four (64) names unique to the State's records that are not represented on the Adams Township Electronic Poll Book records.
- f) The combination of these report discrepancies documents an 11.5% difference in votes between township and state.

Without the data contained on the EPB USB data there is no manner by which these discrepancies could be investigated and reconciled. The EPB USB data is essential to any audit or reconciliation.

I have had the opportunity to review two reports created by Scott Aughney. The first report titled "BALLOTS CAST HILLSDALE COUNTY ADAMS TOWNSHIP ELECTION DATE 2020-11-03" was printed on 1/13/2022. The second report titled "BALLOTS CAST HILLSDALE COUNTY ADAMS TOWNSHIP ELECTION DATE 2020-11-03" was produced on 1/13/2022 as well. Both reports were produced in an Adobe Acrobat .pdf format document. Highlighting was applied to the "BALLOTS CAST HILLSDALE COUNTY ADAMS TOWNSHIP ELECTION DATE 2020-11-03" document on 1/17/2022. This was done to highlight voters, who according to the report, voted in the November 3, 2020 election but were not registered until after that date. In some cases these voters data of registration reflects registering to vote 7 months after the election. Figure one is a screen capture of this report. Voter identification data has been blocked to preserve privacy. The original document is available for review.

Report Prepared by: Scott Aughney Jackson, Michigan scaof7@gmail.com		<b>BALLOTS CAST</b> <b>HILLSDALE COUNTY</b> <b>ADAMS TOWNSHIP</b> <b>ELECTION DATE 2020-11-03</b> <b>SORT BY</b> <b>VOTER IDENTIFICATION NUMBER,</b> <b>LAST NAME, FIRST NAME</b>		Print Date: 1/13/2022				
Please request permission to receive a copy of reports, request a query report or to be included on the distribution list				Total Ballots Cast: 1331				
VOTER IDENTIFICATION NUMBER	LAST NAME	FIRST NAME	REGISTRATION DATE	ELECTION DATE	IS ABSENTEE	IS PERMANENT ABSENTEE VOTER	YEAR OF BIRTH	GENDE
			2020-12-28	2020-11-03 00:00:00	Y	N	1984	F
			2020-10-21	2020-11-03 00:00:00	Y	N	1958	M
			2020-12-19	2020-11-03 00:00:00	Y	N	1956	F
			1997-12-07	2020-11-03 00:00:00	Y	N	1962	M
			1997-12-12	2020-11-03 00:00:00	Y	N	1959	F
			1997-12-29	2020-11-03 00:00:00	Y	N	1974	M
			2021-06-28	2020-11-03 00:00:00	N	N	2059	F
			2021-06-18	2020-11-03 00:00:00	N	N	1955	M
			1998-04-10	2020-11-03 00:00:00	N	N	1948	F
			1998-04-10	2020-11-03 00:00:00	N	N	1950	F

Figure 1 - Voter Registration After the Election


It is evident that the election date column reflects the date of the November 2020 general election and it is also apparent that on this one snippet of the report four (4) individuals registered well after the election date. A search was conducted on the QVR from the EPB.accdb file and none of these individuals were shown to have been registered before the election. A review of the total information contained in this report indicates that thirteen (13) individuals are recorded as successfully voting in the November 2020 general election that were not registered to vote until well after the election.

26) I have had the opportunity to examine multiple voting systems from multiple software vendors. It is clear from my experience that there is a blatant lack of cyber security protection within the election systems. In the case of Adams Township I have had a limited opportunity to examine the complete voting system, but the items that I have been able to examine confirmed that there are shared passwords utilized by the personnel supporting the election process. Specifically the primary data base that is utilized on the EPB USB is a Microsoft Access database named epb.accdb. This file is password protected, which is sound security practices, but Microsoft Access only support a single password for multiple users. Each person using this

data base would have had to have possession of this single password. This is known as a shared password. Sharing passwords is a violation of one of the basic tenants of sound cyber security practices.

27) It is clear from my examination of the materials, the Secretary of State's election reports and the digital EPB USB data that had Ms. Scott followed the directive from the Secretary of State's to delete the EPB USB data, none of these discrepancies could have been detected or substantiated.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY THIS 14th DAY OF July  
2022.



Benjamin R. Cotton

# NOTARIAL CERTIFICATE

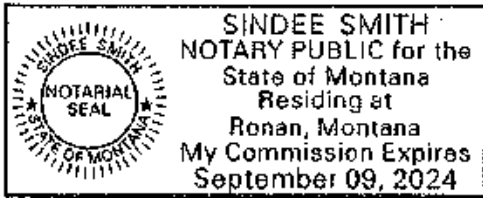
## Acknowledgment

State of Montana

County of Lake

The attached record was acknowledged before me on 7-16-2022  
(Date)

by Benjamin Richard Cotton  
(Name of signer(s).)



[Signature]  
(Notary Signature)

[Affix stamp above]

This certificate has been attached to the Affidavit of Benjamin Richard Cotton  
(Type of record or document)

consisting of 10 page(s), dated July 11, 2022

Any evidence that this certificate has been detached or removed from the above described document may render the notarization invalid or unacceptable.





STATE OF MICHIGAN  
JOCELYN BENSON, SECRETARY OF STATE  
DEPARTMENT OF STATE  
LANSING

October 25, 2021

Stephanie Scott, Clerk  
Adams Township  
5675 Knowles Road  
P.O. Box 336  
North Adams, MI 49262  
***Via U.S. Mail and email: [stephiedscott@gmail.com](mailto:stephiedscott@gmail.com)***

Dear Clerk Scott:

As of this date, you have not responded sufficiently to my previous letter directing you to confirm by October 22, 2021, that you would fulfill your legal responsibilities and comply with instructions from the Bureau of Elections. I previously directed you, in a letter dated October 15, 2021 (attached for your reference), to confirm that you would do the following:

- Permit Hart Intercivic, Inc. to perform preventative maintenance on your voting equipment.
- Conduct Public Accuracy Testing and sign required certificates.
- Conduct all future elections in Adams Township using certified Hart Intercivic, Inc. voting equipment, until such time as the Hillsdale County Clerk chooses a different certified voting system vendor.

On October 17, 2021 you responded by email stating that Public Accuracy Testing had been scheduled for October 27, 2021; however, in response to a follow-up email you did *not* confirm that you would sign certificates confirming Public Accuracy Testing had been completed, which you, as Township Clerk, are required to do. You also did not respond to either of the other two matters raised in the directive.

Your past statements, detailed in prior letters, indicate that you are unwilling to fulfill your responsibilities as clerk, and you have failed to confirm that you will fulfill them in response to recent correspondence. Accordingly, in order to ensure public trust and confidence in the integrity and security of elections, and to ensure that elections in Adams Township are conducted in accordance with the Michigan Election Law, I am directing you to refrain from administering any elections held in Adams Township, including the upcoming November 2, 2021 election. These functions will be fulfilled by the Hillsdale County Clerk or her designee until further notice.

Under the Michigan Election Law, 1954 PA 116, as amended, MCL 168.1*et seq.*, the Secretary of State is the Chief Election Officer of this State and "shall have supervisory control over local election officials in the performance of their duties under the provisions of this act." MCL 168.21. The Secretary of State is required by law to "issue instructions" and "[a]dvice and

direct local election officials as to the proper methods of conducting elections." MCL 168.31(1)(a),(b). County clerks and Boards of Commissioners are required to comply with the instructions given by the Secretary of State. *Secretary of State v Berrien Co Bd of Election Comm'rs*, 373 Mich 526, 530-531 (1964). The Director of Elections is authorized to act at the Secretary's behest "with respect to the supervision and administration of the election laws." MCL 168.32.

In accordance with my authority under the Michigan Election Law, you are directed to refrain from any election administration activities, including the duties described below pertaining to voter registration and routine list maintenance; preparation, issuance, and processing of ballots (including absent voter ballots) and absent voter ballot applications; ordering or assembling election supplies and precinct supply kits; recruiting, placing, and training election inspectors; logic and accuracy testing; voter registration before the 14<sup>th</sup> day prior to Election Day and the close of polls; handling any Election Day issues that may arise; generation of unofficial election results, and responsibilities related to the post-election canvass process.

- **Performing Voter Registration and Routine List Maintenance.** You must refrain from any duties associated with processing voter registration applications and performing routine list maintenance. These functions must be performed by the Hillsdale County Clerk or an individual designated by her or the Bureau of Elections.
- **Ordering Election Supplies and Ballots.** You are prohibited from ordering election supplies and ballots; the Hillsdale County Clerk or an individual designated by her or the Bureau of Elections must order supplies and prepare the precinct materials. You are prohibited from handling any ballots, including blank ballots. The Hillsdale County Clerk or an individual designated by her or the Bureau of Elections must secure and track all ballots, including blank ballots, that are ordered or delivered to your office.
- **Processing Absent Voter Ballot Applications and Issuing Absent Voter Ballots.** You are barred from issuing, handling, and processing any absent voter ballot applications, and prohibited from preparing, issuing, delivering, receiving, and handling any absent voter ballots, including the recording of issuance and receipt of ballots in the Qualified Voter File (QVF). Only the Hillsdale County Clerk or an individual designated by her or the Bureau of Elections are permitted to perform any of these functions.
- **Preparing Polling Locations.** You must not set up (or supervise the set up of) polling locations. The Hillsdale County Clerk or an individual designated by her or the Bureau of Elections must perform (or supervise) the set up.
- **Recruiting, Assigning and Training Election Inspectors.** You must refrain from performing any tasks associated with poll worker recruitment, placement and training. Training must be conducted by an individual who is certified to train election inspectors. If supplemental training is necessary, it may be taught by the Hillsdale County Clerk or an individual designated by her or the Bureau of Elections.
- **Membership on the Election Commission.** The Hillsdale County Clerk or an individual designated by her or the Bureau of Elections shall replace you as a member



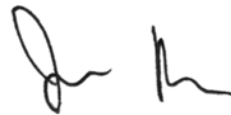
of the Township Election Commission.

- **Role in Logic and Accuracy Testing.** You must not perform any duties in relation to logic and accuracy testing. Individuals designated by the Election Commission (other than yourself) may be authorized to complete the test decks, ballot charts, and initial testing for the preliminary logic and accuracy testing. The public accuracy test shall be conducted by the Election Commission, which is also responsible for sealing the equipment, recording seal numbers, and completing the required paperwork. Duties that would otherwise be performed by you will be performed by the Hillsdale County Clerk or an individual designated by her or the Bureau of Elections.
- **Addressing Election Day Issues.** Issues that arise on Election Day must be addressed by the Hillsdale County Clerk or an individual designated by her or the Bureau of Elections as appropriate.
- **Compiling Unofficial Results/ Post-Election Canvass.** The Hillsdale County Clerk or an individual designated by her or the Bureau of Elections will act as the Township's point of contact regarding involving all duties related to the compiling of unofficial results and the 14-day post-election canvass process.

You are directed to provide immediate access to all election equipment and records, including tabulators, voter assist terminals, absent voter ballot applications and ballot envelopes, and polling place materials, to the Hillsdale County Clerk or her designee at a time and place specified by the County Clerk or her designee. Your access to the Qualified Voter File will be suspended until further notice. Adams Township will be billed for all costs incurred by Hillsdale County and the State of Michigan, including staff time, for administering elections in Adams Township.

This directive remains in effect until further notice. Be advised that willfully failing to comply with a lawful order from the Secretary of State is a misdemeanor. MCL 168.931(h). Please contact my office if you require additional information or clarification regarding these instructions.

Sincerely,



Jonathan Brater  
Director of Elections

- c: Marney Kast, Hillsdale County Clerk  
Heather Meingast, Michigan Department of Attorney General  
Adams Township Board

**STATE OF MICHIGAN  
IN THE 16<sup>TH</sup> CIRCUIT COURT  
COUNTY OF MACOMB**

MICHAEL LEWIS BUTZ,

Plaintiff,

v.

Case No. 2023-002852-CZ  
Hon. Edward A. Servitto, Jr.

JENNIFER ZELMANSKI, et al.

Defendants.

---

**ATTACHMENT D**

**Affidavit of Kim Meltzer  
and Supporting Exhibits**

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**STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB**

**MICHAEL LEWIS BUTZ,**

Plaintiff,

vs

**JENNIFER ZELMANSKI, Clerk – City of  
Roseville and CITY OF ROSEVILLE, a  
Michigan Municipal Corporation,**

Defendants,

and

**JOCELYN BENSON,**

Intervenor-Defendant

**Case No.: 2023-002852-CZ**

Hon. Edward A. Servitto

*Consolidated with:*

*2023-002835-CZ; 2023-002836-CZ;  
2023-002837-CZ; 2023-002838-CZ;  
2023-002839-CZ; 2023-002840-CZ;  
2023-002841-CZ; 2023-002842-CZ;  
2023-002843-CZ; 2023-002844-CZ;  
2023-002845-CZ; 2023-002847-CZ;  
2023-002848-CZ; 2023-002850-CZ;  
2023-002851-CZ*

---

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**AFFIDAVIT OF KIM MELTZER, CLERK FOR THE CHARTER TOWNSHIP  
OF CLINTON, CONCERNING FREEDOM OF INFORMATION ACT  
REQUEST MADE BY MICHAEL BUTZ AND INFORMATION RECEIVED  
FROM THE MICHIGAN SECRETARY OF STATE**

County of Macomb    )  
                                  )SS  
State of Michigan    )

NOW COMES, Kim Meltzer, Clerk for the Charter Township of Clinton, who having been sworn, deposes and states as follows:

1. That I am competent to testify to the following facts based on my personal knowledge if called as a witness at trial, unless stated otherwise upon information and belief.
2. That I am presently the Clerk for the Charter Township of Clinton, and in my role as clerk undertook an oath of office to support the Constitution of the United States and of the State of Michigan, and to faithfully perform the duties of the office of clerk.
3. That I have received the following communications attached, marked and signed by me from the Michigan Secretary of State Election Division involving the electronic poll book. Exhibit A.
4. That I have been made aware of the requirements of 52 USCA 20701 and 20702, copies of which are attached as Exhibit B.
5. That I am aware of obligations as a clerk associated with my duties as an election official provided under MCL 168.520 which is attached as Exhibit C.
6. That I have been advised by the Secretary of State that the content of the electronic poll book in its electronic format as existing on the poll book should not be disclosed as such disclosure reasonably could result in harm to the confidentiality, integrity or availability of information systems which are part of the electronic poll book.
7. That I have also been advised by the Secretary of State that disclosure of the information in electronic form from the electronic poll book (extract file) as its assembled in the electronic poll book would furnish information that would identify or provide a means of identifying a person that may, as a result of disclosure of information, become a victim of a cybersecurity incident, or it may disclose a person's cybersecurity plans or cybersecurity-related practices, procedures, methods, results, organizational information system infrastructure, hardware or software.
8. That I have an obligation as clerk to comply with MCLA 168.520, a copy of which is attached as Ex. C, if I have knowledge that there is a probable illegal or fraudulent registration in the Township or in any precinct of the Township.
9. The Secretary of State has the ability to register voters through the driver database, and increase the number of new voter registrations in the QVF without a voter

registration form mailed or filed with my office. I only have personal knowledge as to the manner in which a voter registration has been completed for voter registrations I have personally done myself, or those which have been done under my supervision within the Clerk's office of the Charter Township of Clinton.

Further deponent sayeth not.

CHARTER TOWNSHIP OF CLINTON

*Kim Meltzer*  
Kim Meltzer, Clerk

Subscribed and sworn to before me  
this 6<sup>th</sup> day of December, 2023.

*Kimberly Jo Irvine*  
Notary Public

Macomb County, Michigan  
My commission expires: 1-11-2024  
Acting in Macomb County, Michigan

KIMBERLY JO IRVINE  
NOTARY PUBLIC - STATE OF MICHIGAN  
COUNTY OF MACOMB  
My Commission Expires Jan. 11, 2024  
Acting in the County of Macomb

**RELEASE OF ALL CLAIMS AND HOLD HARMLESS AGREEMENT**

**By and Between**

**CHARTER TOWNSHIP OF CLINTON and SHEILA GOLDSTEIN**

This Release of All Claims and Hold Harmless Agreement (hereinafter "Release") is made and entered into this 6th day of December, 2023, by and between the Charter Township of Clinton, a Michigan municipal corporation, whose address is 40700 Romeo Plank Road, Clinton Township, Michigan 48038 (hereinafter "Township") and Sheila Goldstein ("Goldstein"), whose address is 38135 S Julian St Clinton Twp, Michigan 48036.


WHEREAS, for receipt of an executed Affidavit, an unexecuted copy of which is attached to this Release, Goldstein desires to release the Township from any and all claims relating to damages, injuries, causes of action or claims arising from any acts and omissions of the Township, Kim Meltzer, and its elected officials, employees, attorneys, agents, and affiliates for any and all claims, damages, injuries, causes of action or claims of any kind known, or unknown whatsoever relating to the production or failure to produce documents associated with any requests under the Michigan Freedom of Information Act, or failure to preserve or produce election records or for any errors or omissions or failures to preserve or produce election related records for elections occurring up until the date of this Release. Further, Goldstein desires to release the Township, Kim Meltzer, and its elected officials, employees, attorneys, agents, and affiliates from any and all claims known or unknown, injuries or damages, claims or causes of action known or unknown associated with elections or record retention or preservation.

NOW, THEREFORE, in consideration of an executed Affidavit, Goldstein hereby releases the Township from any and all claims relating to damages, injuries, causes of action or claims arising from any acts and omissions of the Township, Kim Meltzer, and its elected officials, employees, attorneys, agents, and affiliates for any and all claims, damages, injuries, causes of action or claims of any kind known, or unknown whatsoever relating to the production or failure to produce documents associated with any requests under the Michigan Freedom of Information Act, or failure to preserve or produce election records or for any errors or omissions or failures to preserve or produce election related records for elections occurring up until the date of this Release.

FURTHER, Goldstein releases the Township, Kim Meltzer, and its elected officials, employees, attorneys, agents, and affiliates from any and all claims known or unknown, injuries or damages, claims or causes of action known or unknown associated with elections or record retention or preservation.

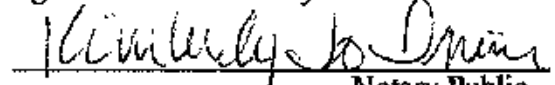
Goldstein shall not encourage, promote or furnish assistance, whether financial or otherwise, to any person or entity in order to pursue any action against the released parties which she otherwise has forgone pursuant to the terms of this Release. Goldstein shall hold harmless the released parties for any breach of this provision from all damages, costs and expenses.

The parties mutually agree that they have had the opportunity to review this Release with counsel of their own choosing, and that the Release is freely and voluntarily being executed by them. This Release contains the entire understanding of the parties and that there are no other promises or conditions other than those described in this Release.

  
Robert J. Cannon, Supervisor  
Charter Township of Clinton

STATE OF MICHIGAN     )  
                                  )SS  
COUNTY OF MACOMB    )

On this 14 day of December, 2023, before me personally appeared Robert J. Cannon, Supervisor for the Charter Township of Clinton, to me known to be the person described and who executed the foregoing document and who acknowledged that he voluntarily executed same.

  
Notary Public  
County of Macomb  
My Commission Expires: 1-11-2024  
Acting in Macomb County, Michigan

KIMBERLY JO IRVINE  
NOTARY PUBLIC - STATE OF MICHIGAN  
COUNTY OF MACOMB  
My Commission Expires Jan. 11, 2024  
Acting in the County of MACOMB

Document received by the MI Macomb 16th Circuit Court.



Sheila M. Goldstein  
Sheila Goldstein

STATE OF MICHIGAN     )  
                                  )SS  
COUNTY OF MACOMB    )

On this 6<sup>th</sup> day of December, 2023, before me personally appeared Sheila Goldstein to me known to be the person described and who executed the foregoing document and who acknowledged that he voluntarily executed same.

Jessica Glynn  
Notary Public  
County of Macomb  
My Commission Expires:  
Acting in Macomb County, Michigan

JESSICA GLYNN  
NOTARY PUBLIC, STATE OF MI  
COUNTY OF WAYNE  
MY COMMISSION EXPIRES Mar 6, 2024  
ACTING IN COUNTY OF MACOMB

**RELEASE OF ALL CLAIMS AND HOLD HARMLESS AGREEMENT**

**By and Between**

**CHARTER TOWNSHIP OF CLINTON and LINDA SHARLOW**

This Release of All Claims and Hold Harmless Agreement (hereinafter "Release") is made and entered into this 6<sup>th</sup> day of December, 2023, by and between the Charter Township of Clinton, a Michigan municipal corporation, whose address is 40700 Romeo Plank Road, Clinton Township, Michigan 48038 (hereinafter "Township") and Linda Sharlow ("Sharlow"), whose address is 18000 ELLERY DR. CLINTON TWP, Michigan 48025

WHEREAS, for receipt of an executed Affidavit, an unexecuted copy of which is attached to this Release, Sharlow desires to release the Township from any and all claims relating to damages, injuries, causes of action or claims arising from any acts and omissions of the Township, Kim Meltzer, and its elected officials, employees, attorneys, agents, and affiliates for any and all claims, damages, injuries, causes of action or claims of any kind known, or unknown whatsoever relating to the production or failure to produce documents associated with any requests under the Michigan Freedom of Information Act, or failure to preserve or produce election records or for any errors or omissions or failures to preserve or produce election related records for elections occurring up until the date of this Release. Further, Sharlow desires to release the Township, Kim Meltzer, and its elected officials, employees, attorneys, agents, and affiliates from any and all claims known or unknown, injuries or damages, claims or causes of action known or unknown associated with elections or record retention or preservation.

NOW, THEREFORE, in consideration of an executed Affidavit, Sharlow hereby releases both the Township from any and all claims relating to damages, injuries, causes of action or claims arising from any acts and omissions of the Township, Kim Meltzer, and its elected officials, employees, attorneys, agents, and affiliates for any and all claims, damages, injuries, causes of action or claims of any kind known, or unknown whatsoever relating to the production or failure to produce documents associated with any requests under the Michigan Freedom of Information Act, or failure to preserve or produce election records or for any errors or omissions or failures to preserve or produce election related records for elections occurring up until the date of this Release.

FURTHER, Sharlow releases the Township, Kim Meltzer, and its elected officials, employees, attorneys, agents, and affiliates from any and all claims known or unknown, injuries or damages, claims or causes of action known or unknown associated with elections or record retention or preservation.

Sharlow shall not encourage, promote or furnish assistance, whether financial or otherwise, to any person or entity in order to pursue any action against the released parties which she otherwise has forgone pursuant to the terms of this Release. Sharlow shall hold harmless the released parties for any breach of this provision from all damages, costs and expenses.

The parties mutually agree that they have had the opportunity to review this Release with counsel of their own choosing, and that the Release is freely and voluntarily being executed by them. This Release contains the entire understanding of the parties and that there are no other promises or conditions other than those described in this Release.

  
\_\_\_\_\_  
Robert J. Cannon, Supervisor  
Charter Township of Clinton

STATE OF MICHIGAN        )  
                                      )SS  
COUNTY OF MACOMB        )

On this 14 day of December, 2023, before me personally appeared Robert J. Cannon, Supervisor for the Charter Township of Clinton, to me known to be the person described and who executed the foregoing document and who acknowledged that he voluntarily executed same.

Kimberly Jo Irvine  
Notary Public

County of Macomb

My Commission Expires: 1-11-2024

Acting in Macomb County, Michigan

**KIMBERLY JO IRVINE**  
**NOTARY PUBLIC - STATE OF MICHIGAN**  
**COUNTY OF MACOMB**  
My Commission Expires Jan. 11, 2024  
Acting in the County of Macomb

Linda Sharlow  
Linda Sharlow

STATE OF MICHIGAN        )  
                                      )SS  
COUNTY OF MACOMB        )

On this 14<sup>th</sup> day of December, 2023, before me personally appeared Linda Sharlow to me known to be the person described and who executed the foregoing document and who acknowledged that he voluntarily executed same.

Crystal Cook  
Notary Public of Michigan  
Macomb County  
Expires 03/24/2026  
Acting in the County of Macomb

Crystal Cook  
Notary Public

County of Macomb

My Commission Expires: 03/24/2026

Acting in Macomb County, Michigan

**RELEASE OF ALL CLAIMS AND HOLD HARMLESS AGREEMENT**  
**By and Between**  
**CHARTER TOWNSHIP OF CLINTON and MICHAEL BUTZ**

This Release of All Claims and Hold Harmless Agreement (hereinafter "Release") is made and entered into this 5<sup>th</sup> day of December, 2023, by and between the Charter Township of Clinton, a Michigan municipal corporation, whose address is 40700 Romeo Plank Road, Clinton Township, Michigan 48038 (hereinafter "Township") and Michael Butz ("Butz"), whose address is 3105 McKail Rd, Bruce Township, Michigan 48065.

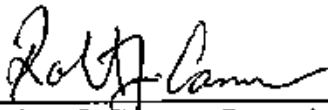
WHEREAS, for receipt of an executed Affidavit, an unexecuted copy of which is attached to this Release, Butz desires to release the Township from any and all claims relating to damages, injuries, causes of action or claims arising from any acts and omissions of the Township, Kim Meltzer, and its elected officials, employees, attorneys, agents, and affiliates for any and all claims, damages, injuries, causes of action or claims of any kind known, or unknown whatsoever relating to the production or failure to produce documents associated with any requests under the Michigan Freedom of Information Act, or failure to preserve or produce election records or for any errors or omissions or failures to preserve or produce election related records for elections occurring up until the date of this Release. Further, Butz desires to release the Township, Kim Meltzer, and its elected officials, employees, attorneys, agents, and affiliates from any and all claims known or unknown, injuries or damages, claims or causes of action known or unknown associated with elections, record retention, inspection, or preservation.

NOW, THEREFORE, in consideration of an executed Affidavit, Butz hereby releases both the Township from any and all claims relating to damages, injuries, causes of action or claims arising from any acts and omissions of the Township, Kim Meltzer, and its elected officials, employees, attorneys, agents, and affiliates for any and all claims, damages, injuries, causes of action or claims of any kind known, or unknown whatsoever relating to the production or failure to produce documents associated with any requests under the Michigan Freedom of Information Act, or failure to preserve or produce election records or for any errors or omissions or failures to preserve or produce election related records for elections occurring up until the date of this Release.

FURTHER, Butz releases the Township, Kim Meltzer, and its elected officials, employees, attorneys, agents, and affiliates from any and all claims known or unknown, injuries or damages, claims or causes of action known or unknown associated with elections, record retention, inspection, or preservation.

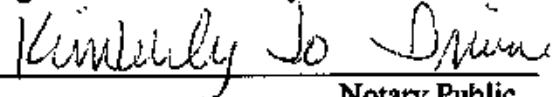
Butz shall not encourage, promote or furnish assistance, whether financial or otherwise, to any person or entity in order to pursue any action against the released parties which he otherwise has forgone pursuant to the terms of this Release. Butz shall hold harmless the released parties for any breach of this provision from all damages, costs and expenses.

The parties mutually agree that they have had the opportunity to review this Release with counsel of their own choosing, and that the Release is freely and voluntarily being executed by them. This Release contains the entire understanding of the parties and that there are no other promises or conditions other than those described in this Release.

  
Robert J. Cannon, Supervisor  
Charter Township of Clinton

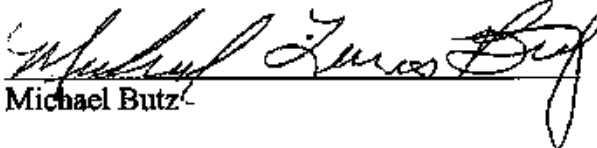
STATE OF MICHIGAN     )  
  )SS  
COUNTY OF MACOMB    )

On this 14 day of December, 2023, before me personally appeared Robert J. Cannon, Supervisor for the Charter Township of Clinton, to me known to be the person described and who executed the foregoing document and who acknowledged that he voluntarily executed same.

  
Notary Public

KIMBERLY JO IRVINE  
NOTARY PUBLIC - STATE OF MICHIGAN  
COUNTY OF MACOMB  
My Commission Expires Jan. 11, 2024.  
Acting in the County of Macomb


County of Macomb  
My Commission Expires: 1-11-2024  
Acting in Macomb County, Michigan

  
Michael Butz

STATE OF MICHIGAN     )  
  )SS  
COUNTY OF MACOMB    )

On this 5<sup>th</sup> day of December, 2023, before me personally appeared Michael Butz to me known to be the person described and who executed the foregoing document and who acknowledged that he voluntarily executed same.

CONSTANCE NAUDSCH  
NOTARY PUBLIC, STATE OF MI  
COUNTY OF MACOMB  
MY COMMISSION EXPIRES Sep 18, 2026  
ACTING IN COUNTY OF *macomb*

  
Notary Public  
County of Macomb  
My Commission Expires: *Sep 18, 2026*  
Acting in Macomb County, Michigan

**STATE OF MICHIGAN  
IN THE 16<sup>TH</sup> CIRCUIT COURT  
COUNTY OF MACOMB**

MICHAEL LEWIS BUTZ,

Plaintiff,

v.

Case No. 2023-002852-CZ  
Hon. Edward A. Servitto, Jr.

JENNIFER ZELMANSKI, et al.

Defendants.

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**ATTACHMENT E**

Secretary of State's Addition of 700,000 Voters  
to Voter Rolls

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Michigan Bureau of Elections  
**News Update**  
for Election Administrators

September 8, 2020



### Michigan Department of State Voter Registration Mailings

This week, the Michigan Department of State will begin sending voter registration mailings to eligible but unregistered individuals with a Michigan driver's license or state ID card. The mailings are part of Michigan's participation in the [Electronic Registration Information Center \(ERIC\)](#) program. Through the ERIC program, Michigan obtains information about individuals who are eligible but not registered to vote in Michigan, as well as information about registered voters who may have left the state or otherwise become ineligible.

Based on data received from ERIC, the Bureau of Elections will be sending voter registration mailers to approximately 700,000 individuals. These mailers will notify Michigan residents of their voter registration eligibility and offer options to register online or to return the inserted card to the Secretary of State to be registered. Registration will occur through the driver database – clerks will not be mailed forms. However, the mailer also gives voters information on how to contact their local clerk to register to vote if the voter prefers that method of registration. Individuals on the mailing list who had Secretary of State transactions after Proposal 2018-3 went into effect but before it was implemented in September 2019, and are marked on the driver file as U.S. citizens, will receive an automatic voter registration mailer

### IN THIS ISSUE

- Michigan Department of State Voter Registration Mailings
- Reminder: Ballot Scout Webinar Today at 3 p.m.
- Michigan Department of State AV Postcards Begin Mailing this Week
- Reminder: Center for Tech and Civic Life Grand Funding Available

#### Reminder: Ballot Scout Webinar Today at 3 p.m.



As a reminder, the Bureau of Elections and Democracy Works will be hosting a live Zoom webinar on the Ballot Scout ballot-tracking system. Clerks who are deciding whether to use the software for November AV ballots are invited to attend and learn more.

**Topic: Discussing Ballot Tracking & Ballot Scout Time: Sep 8, 2020 3:00 PM Eastern Time Join Zoom Meeting:**  
<https://us02web.zoom.us/j/81148500204>  
**Meeting ID: 811 4850 0204**



#### Michigan Department of State AV Postcards Begin Mailing this Week

As announced in the August 12 News Update, the Michigan Department of



similar to the form currently used when these eligible individuals renew their driver's license.

Because voter registration through these mailers will occur primarily through the driver database, clerks should not expect an increase in voter registration forms mailed to their offices as a result of these mailings. However, you may see an increased number of new voter registrations in QVF as a result of these mailers between September 21 and October 20. These mailers can be identified by their green color and *Be a Voter* message across the top. Our office will be tracking the registration response to improve our future efforts. If you have any questions or feedback, please email Shelly Belton [beltons@michigan.gov](mailto:beltons@michigan.gov) with "ERIC Mailer" in the subject line.

State will be mailing postcards to voters who have not requested absent voter ballots informing them of opportunities to apply for absent voter ballots for November. More information about the postcards is available in an August [press release](#) from the Secretary of State. Unlike the mailers sent before the August primary, these postcards are not absent voter ballot applications and will not be mailed to the local clerk. However, as is the case with the voter registration mailers discussed above, clerks may see an increase in absent voter ballot applications as a result of these postcards.



### **Reminder: Center for Tech and Civic Life Grant Funding Available!**

Funding to support voter education efforts – including mailings and public service announcements, and technology, tabulators, and other equipment – is available through a grant from the Center for Tech and Civic Life. Jurisdictions should act quickly if they are interested in this funding, which is separate from state reimbursement and grant programs (you can apply for both).

You can find more information and request an application on the [Center for Tech and Civic Life's COVID-19 Response Grant webpage](#).

### **Helpful Links**



**STATE OF MICHIGAN  
IN THE 16<sup>TH</sup> CIRCUIT COURT  
COUNTY OF MACOMB**

MICHAEL LEWIS BUTZ,

Plaintiff,

v.

Case No. 2023-002852-CZ  
Hon. Edward A. Servitto, Jr.

JENNIFER ZELMANSKI, et al.

Defendants.

---

**ATTACHMENT F**

**Affidavit of Colin O'Brien**

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## Affidavit of Colin O'Brien

I, Colin O'Brien, being duly sworn deposes and states as follows under penalty of perjury:

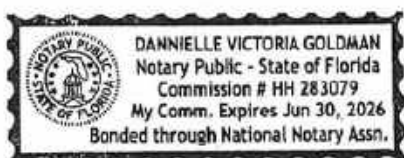
1. My name is Colin O'Brien. I am currently 66 years old, and my current address is 4155 Hawksbury court, Canton MI 48188.
2. I was born in Dublin, Ireland, and live in the United States with Permanent Resident status (attached).
3. I am married to Marilyn O'Brien who is a US citizen.
4. My wife and I moved from a house in Canton, MI to a condominium in Canton, MI, in late 2019.
5. In 2022 I received an absentee ballot application.
6. In 2022, we received a registration card for the son of the previous owner, Nicholas Stevers at our new address (attached).
7. I have never requested to be registered to vote.
8. Marilyn advised our local clerk in July 2022 to remove Mr. Stevers and myself.
9. She was directed by the clerk that I would need to send an email to that effect.
10. We sent an email to the clerk August 19, 2022 to remove my name from the state voter roll (attached).
11. Additionally, we asked for confirmation of removal from the voter roll. To the best of my recollection, I did not receive confirmation of removal.
12. The Qualified Voter File in the state of Michigan as of 11/1/2020 indicates the following:
  - a. Voter: Colin Brendan O'Brien
  - b. Voter ID: 4001866568
  - c. Voter Registration date: 9/29/03
  - d. Address: 4155 Hawksbury Ct, Canton, MI 48188
13. The Qualified Voter file does not reflect me of having voted in any elections.

I hereby affirm that the information above is true and accurate and complete to the best of my knowledge, and that no relevant information has been omitted.

Signature: *Colin O'Brien* Date: *2-27-2024*

State of Florida  
County of *Sarasota*

This record was signed and sworn before me by Colin O'Brien on *February 27<sup>th</sup>, 2024*



*Dannielle Goldman*

Notary Signature

*Dannielle V Goldman*

*My Comm. Expires:*

*June 30, 2026*

**STATE OF MICHIGAN  
IN THE 16<sup>TH</sup> CIRCUIT COURT  
COUNTY OF MACOMB**

MICHAEL LEWIS BUTZ,

Plaintiff,

v.

Case No. 2023-002852-CZ  
Hon. Edward A. Servitto, Jr.

JENNIFER ZELMANSKI, et al.

Defendants.

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**ATTACHMENT G**

Email from Laurie Bourbonais from Secretary of  
State's Office Instructing Local Governments on  
How to Respond to FOIA Requests, dated  
November 14, 2022

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## **Bourbonais, Lori (MDOS)**

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**From:** Bourbonais, Lori (MDOS)  
**Sent:** Monday, November 14, 2022 1:17 PM  
**To:** Bourbonais, Lori (MDOS)  
**Subject:** Recent FOIA Requests

Clerks,

We are aware that clerks have received a request for the following:

1. An electronic copy of the Qualified Voter File (QVF) extract for all precincts completed on Monday November 7, 2022 and loaded to the electronic pollbooks.
2. The historical electronic pollbook flash drive for all voting precincts in the jurisdiction for the election concluding November 8, 2022. (This is likely in a CSV – comma separated value format).
3. An electronic copy of the Qualified Voter File extract for all precincts completed as soon as the November midterm election voter history is uploaded to the QVF which must be within 7 days pursuant to MCL 168.813."

Before responding to these FOIA requests, you should consult with your city or township attorney regarding the requests and exemptions that may apply including those contained in MCL 15.243(1)(y) and (z). Under FOIA, you may shield sensitive information from disclosure. Clerks must not publicly release data or files that would reveal the software design or data architecture of the Electronic Poll Book, as doing so could compromise the Bureau of Elections' ability to secure and safeguard the software and data from hacking, theft, loss or destruction. In response to previous FOIA requests regarding EPB data, the Bureau of Elections has not disclosed these records because the records sought constitute "cybersecurity plans, assessments, or vulnerabilities" that are exempt from disclosure. The Bureau has an interest in maximizing the protection and defense of its information systems, which outweighs the public interest in the disclosure of this information as the release of this sensitive information could jeopardize the security of Michigan's electoral process. MCL 15.243(1)(y). In addition, the responsive records include sensitive information which, if released, "would disclose a person's cybersecurity plans or cybersecurity-related practices, procedures, methods, results, organizational information system infrastructure, hardware, or software." MCL 15.243(1)(z).

Further, electronic poll book files contain personal identifying information such as full birth dates for voters, which is exempt from disclosure. MCL 168.509gg. Attempted manual redaction of personal identifying information may not be sufficient to protect this information from disclosure if the software and program files are disclosed.

Please note that certain specific data derived from the qualified voter file electronic pollbook is subject to disclosure under FOIA, including the lists of registered voters from the Qualified Voter File and the paper printout of the electronic pollbook generated on election night. If members of the public are interested in verifying the names of individuals registered to vote on a certain date or included in the electronic pollbook, they may obtain this information by submitting a FOIA for publicly available records.

Additionally, we are aware that clerks received FOIA requests for a copy of or the opportunity to view tabulator tapes. While the tapes are a public record that can be provided, they are election records that should remain secured until security is released after the final canvass and certification, recounts, and audits. Once you are notified that security has been released in your jurisdiction, you can fulfill these requests.

Lori A. Bourbonais, Director  
Election Administration Division

STATE OF MICHIGAN  
IN THE 16<sup>TH</sup> CIRCUIT COURT  
COUNTY OF MACOMB

MICHAEL LEWIS BUTZ,

Plaintiff,

v.

Case No. 2023-002852-CZ  
Hon. Edward A. Servitto, Jr.

JENNIFER ZELMANSKI, et al.

Defendants.

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ATTACHMENT H

Email from Laurie Bourbonais from Secretary of  
State's Office Instructing Local Governments to  
Destroy Electronic Copies of Epollbook and Flash  
Drives Used in Elections, dated August 26, 2022

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Stephanie Scott <stephiedscott@gmail.com>

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## Communication to Clerks Regarding BOE Instructions

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**Michigan Secretary of State** <MISOS@govsubscriptions.michigan.gov>  
Reply-To: MISOS@govsubscriptions.michigan.gov  
To: stephiedscott@gmail.com

Fri, Aug 26, 2022 at 11:18 AM

County, City, and Township Clerks:

Many clerks have reported receiving a communication from a private individual or group demanding that they disregard instructions contained in the Bureau of Elections' recent Recount/Release of Security Memo. The Bureau's instructions are lawful directives in compliance with state and federal law.

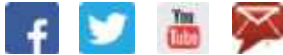
As has been done in past elections, the Bureau has issued a directive to destroy electronic copies of your epollbook and flash drive. This procedure is necessary to safeguard security and voter privacy. You have already printed, and must retain for the required retention period, the paper copy of pollbook information for the August 2, 2022 primary election.

A private individual has no authority to instruct you on your duties. The circulated communication is not a subpoena, court order, or lawsuit. If you do receive one of these, please consult with your attorney on how to respond.

Lori A. Bourbonais, Director  
Election Administration Division  
Michigan Bureau of Elections

[Manage Subscriptions](#) | [Unsubscribe All](#) | [Help](#)

STAY CONNECTED:



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This email was sent to [stephiedscott@gmail.com](mailto:stephiedscott@gmail.com) using GovDelivery Communications Cloud on behalf of: Michigan Secretary of State • 430 W. Allegan Street • Lansing, MI 48918 • 1-888-767-6424

STATE OF MICHIGAN  
IN THE 16<sup>TH</sup> CIRCUIT COURT  
COUNTY OF MACOMB

MICHAEL LEWIS BUTZ,

Plaintiff,

v.

Case No. 2023-002852-CZ  
Hon. Edward A. Servitto, Jr.

JENNIFER ZELMANSKI, et al.

Defendants.

---

ATTACHMENT I

*Anklam v Delta College Dist, et al.*, Unpublished Per  
Curiam Opinion of the Michigan Court of Appeals,  
Docket No. 317692 (June 26, 2014)2

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STATE OF MICHIGAN  
COURT OF APPEALS

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ANN ANKLAM,

Plaintiff-Appellant,

v

DELTA COLLEGE DISTRICT and DELTA  
COLLEGE BOARD OF TRUSTEES,

Defendants-Appellees.

---

UNPUBLISHED

June 26, 2014

No. 317962

Kent Circuit Court

LC No. 12-009608-CZ

Before: MURPHY, C.J., and SHAPIRO and RIORDAN, JJ.

PER CURIAM.

Plaintiff filed a complaint against defendants, alleging various violations of the Freedom of Information Act (FOIA), MCL 15.231 *et seq.* She now appeals as of right the trial court's order granting defendants' motion for summary disposition and denying plaintiff's own motion for summary disposition. Except for one issue that we conclude is not justiciable, we reverse and remand for further proceedings.

On August 9, 2012, and August 10, 2012, plaintiff sent defendants two FOIA requests, each of which requested multiple records. On August 31, 2012, defendants granted in part and denied in part plaintiff's FOIA requests. In general, the two sets of FOIA requests sought information regarding the compensation and benefits of Jean Goodnow, who holds the position of Delta College President. After defendants' decision to grant in part and deny in part plaintiff's FOIA requests, plaintiff filed the instant action claiming that defendants committed multiple violations of the FOIA. The parties subsequently filed competing motions for summary disposition under MCR 2.116(C)(10). The trial court granted defendants' motion and denied plaintiff's motion.

A trial court's ruling on a motion for summary disposition is reviewed *de novo* on appeal. *Elba Twp v Gratiot Co Drain Comm'r*, 493 Mich 265, 277; 831 NW2d 204 (2013).<sup>1</sup>

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<sup>1</sup> In *Pioneer State Mut Ins Co v Dells*, 301 Mich App 368, 377; 836 NW2d 257 (2013), this Court recited the well-established principles governing a motion for summary disposition brought pursuant to MCR 2.116(C)(10):

Interpretation of the FOIA is a question of law that is also subject to de novo review. *Thomas v City of New Baltimore*, 254 Mich App 196, 200; 657 NW2d 530 (2002). With respect to the principles applicable to statutory construction, our Supreme Court in *Whitman v City of Burton*, 493 Mich 303, 311-312; 831 NW2d 223 (2013), observed:

When interpreting a statute, we follow the established rules of statutory construction, the foremost of which is to discern and give effect to the intent of the Legislature. To do so, we begin by examining the most reliable evidence of that intent, the language of the statute itself. If the language of a statute is clear and unambiguous, the statute must be enforced as written and no further judicial construction is permitted. Effect should be given to every phrase, clause, and word in the statute and, whenever possible, no word should be treated as surplusage or rendered nugatory. Only when an ambiguity exists in the language of the statute is it proper for a court to go beyond the statutory text to ascertain legislative intent. [Citations omitted.]

In MCL 15.231(2), the Legislature expressly declared the public policy and purpose behind enactment of the FOIA:

It is the public policy of this state that all persons, except those persons incarcerated in state or local correctional facilities, are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and public employees, consistent with this act. The people shall be informed so that they may fully participate in the democratic process.

“[T]he FOIA is a prodisclosure statute; a public body must disclose all public records not specifically exempt under the act.” *Thomas*, 254 Mich App at 201, citing MCL 15.233(1); see

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In general, MCR 2.116(C)(10) provides for summary disposition when there is no genuine issue regarding any material fact and the moving party is entitled to judgment or partial judgment as a matter of law. A motion brought under MCR 2.116(C)(10) tests the factual support for a party's claim. A trial court may grant a motion for summary disposition under MCR 2.116(C)(10) if the pleadings, affidavits, and other documentary evidence, when viewed in a light most favorable to the nonmovant, show that there is no genuine issue with respect to any material fact. A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ. The trial court is not permitted to assess credibility, weigh the evidence, or resolve factual disputes, and if material evidence conflicts, it is not appropriate to grant a motion for summary disposition under MCR 2.116(C)(10). A court may only consider substantively admissible evidence actually proffered relative to a motion for summary disposition under MCR 2.116(C)(10). [Citations and internal quotation marks omitted.]

also *Nicita v Detroit*, 194 Mich App 657, 661-662; 487 NW2d 814 (1992). “[I]f a public body makes a final determination to deny a request, the requesting person may either appeal the denial to the head of the public body or commence an action in the circuit court within 180 days.” *Scharret v City of Berkley*, 249 Mich App 405, 412-413; 642 NW2d 685 (2002), citing MCL 15.235(7).

Plaintiff first argues that the trial court erred when it determined that defendants had not violated MCL 15.235(4)(c). We agree. MCL 15.235(4)(c) provides that a public body’s “written notice denying a request for a public record in whole or in part . . . shall contain . . . [a] description of a public record or information on a public record that is separated or deleted pursuant to [MCL 15.244<sup>2</sup>], if a separation or deletion is made.” Here, on August 31, 2012, defendants partially denied the FOIA request in ¶ 10 of plaintiff’s first set of requests on the basis that the withheld information fell under the attorney-client privilege exemption of MCL 15.243(1)(g).<sup>3</sup> The FOIA does exempt from disclosure “[i]nformation or records subject to the

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<sup>2</sup> MCL 15.244 provides:

(1) If a public record contains material which is not exempt under section 13, as well as material which is exempt from disclosure under section 13, the public body shall separate the exempt and nonexempt material and make the nonexempt material available for examination and copying.

(2) When designing a public record, a public body shall, to the extent practicable, facilitate a separation of exempt from nonexempt information. If the separation is readily apparent to a person requesting to inspect or receive copies of the form, the public body shall generally describe the material exempted unless that description would reveal the contents of the exempt information and thus defeat the purpose of the exemption.

<sup>3</sup> Plaintiff had requested:

Copies of any and all communications (in any form, including e-mail communications) that were exchanged between any member of the President’s Compensation Committee, the Delta College Board of Trustees and any Delta College staff, including Board Secretary and the President for a period from May 1, 2008[,] to November 11, 2008[,] regarding the President’s Employment Contract and/or her compensation.

Defendants’ FOIA coordinator responded:

This request is GRANTED IN PART and DENIED IN PART. The information is exempt from disclosure under Section 13(1)(g) of the [FOIA], for information or records subject to the attorney-client privilege.

attorney-client privilege.” MCL 15.243(1)(g). However, defendants’ written notice of partial denial did not describe or otherwise identify the information that was separated or deleted based on the attorney-client privilege. Defendants did not provide such a description until they attached an affidavit executed by their FOIA coordinator to their June 2013 motion for summary disposition, which, of course, was after plaintiff commenced the litigation seeking FOIA compliance. The trial court found that the FOIA coordinator’s affidavit cured any deficiency in defendants’ written notice, and it granted summary disposition in favor of defendants regarding plaintiff’s claim of a violation of MCL 15.235(4)(c). The plain language of MCL 15.235(4)(c), however, requires that a public body’s written notice denying a FOIA request “shall contain” a description of the public record that was separated or deleted. The word “shall” denotes a mandatory directive, not a discretionary act. *Smitter v Thornapple Twp*, 494 Mich 121, 136; 833 NW2d 875 (2013). There is no language in MCL 15.235(4)(c) remotely suggesting that compliance may be achieved at a later date or that compliance is excusable if the public body eventually provides the required description. Compliance certainly cannot be found when the public body communicates the description of the separated or deleted records after the requesting party is forced to initiate litigation to obtain FOIA compliance. On the record before us, there is no genuine issue of material fact regarding defendants’ failure to comply with MCL 15.235(4)(c). Thus, with respect to plaintiff’s claim under MCL 15.235(4)(c), the trial court erred in granting defendants’ motion for summary disposition and in denying plaintiff’s own summary disposition motion relative to the claim. We reverse the trial court’s grant of summary disposition in favor of defendants and remand for entry of judgment in favor of plaintiff, declaring that defendants violated MCL 15.235(4)(c). See *Scharret*, 249 Mich App at 416.

On a related issue, plaintiff next argues that defendants improperly withheld requested information under the attorney-client privilege exemption of MCL 15.243(1)(g). Section 13 of the FOIA sets forth several exemptions to a public body’s duty to disclose under the FOIA. *Manning v City of East Tawas*, 234 Mich App 244, 248; 593 NW2d 649 (1999). “[T]hese exemptions must be construed narrowly, and the burden of proof rests with the party asserting an exemption.” *Id.* (citation omitted). In order for a public body to meet its burden of proof in asserting an exemption, “the public body should provide a complete particularized justification for the claimed exemption[.]” *Nicita*, 194 Mich App at 662 (citation omitted); see also *The Evening News Ass’n v City of Troy*, 417 Mich 481, 503, 516; 339 NW2d 421 (1983). The public body should provide “[d]etailed affidavits describing the matters withheld” and show that it complied with the requirement to separate exempt and non-exempt material under MCL 15.244. *Evening News Ass’n*, 417 Mich at 503 (citation omitted); *Nicita*, 194 Mich App at 662-663. The public body’s “[j]ustification of exemption must be more than ‘conclusory,’ i.e., simple repetition of statutory language.” *Evening News Ass’n*, 417 Mich at 503. Moreover, “a trial court may not make conclusory or ‘generic determinations’ when deciding whether the claimed exemptions are justified.” *Nicita*, 194 Mich App at 662 (quotation omitted). Rather, “before determining that the defendant sustained its claim of exemption, the court must specifically find that the particular sections of the public record requested by the plaintiff would for particular reasons fall within the claimed exemptions.” *Id.*

Here, defendants partially denied plaintiff's record requests in ¶ 10 of her first set of requests, as alluded to earlier, and ¶ 2 of her second set of requests, asserting that the withheld information was exempt under the attorney-client privilege exemption in MCL 15.243(1)(g).<sup>4</sup> In *Herald Co, Inc v Ann Arbor Pub Sch*, 224 Mich App 266, 279; 568 NW2d 411 (1997), this Court examined the exemption, explaining:

The attorney-client privilege attaches to communications made by a client to an attorney acting as a legal adviser and made for the purpose of obtaining legal advice. The purpose of the privilege is to enable a client to confide in an attorney, secure in the knowledge that the communication will not be disclosed. The scope of the privilege is narrow: it attaches only to confidential communications by the client to its advisor that are made for the purpose of obtaining legal advice. [Citations omitted.]

The FOIA coordinator's affidavit averred that, pursuant to the attorney-client privilege exemption, defendants withheld six e-mails from the records they produced in response to ¶ 10 of plaintiff's first set of FOIA requests and that they redacted certain information on billing records produced in response to ¶ 2 of the second set of FOIA requests. According to the affidavit, the e-mails were communications between defendants' general counsel and members of the Compensation Committee "and/or" President Goodnow. However, the FOIA coordinator did not describe the substance of the withheld e-mails or redacted information in the billing statements as being exempted on the basis that the withheld information reflected confidential communications made to counsel for the purpose of obtaining legal advice. The affidavit cursorily indicated that the coordinator relied on counsel to redact information and to withhold communications under the attorney-client privilege exemption. Defendants' motion for summary disposition relied on the coordinator's affidavit to justify their claimed exemptions under MCL 15.243(1)(g).

"When a public body's statements alone are inadequate to determine, upon review de novo, if disclosure should be compelled, a trial court should examine the disputed documents in camera to resolve the question." *Manning*, 234 Mich App at 248. Here, at the hearing on the

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<sup>4</sup> Plaintiff had requested the following records in ¶ 2 of the second set of requests:

Copies of itemized billing statements, including a description of all services performed and all costs charged, which were submitted to Delta College by any attorneys who performed services for the Delta Board of Trustees President's Compensation Committee for the years 2008 and 2009.

Defendants' FOIA coordinator responded:

This request is GRANTED IN PART and DENIED IN PART. The information redacted is exempt from disclosure under Section 13(1)(g) of the [FOIA], for information or records subject to the attorney-client privilege.

parties' competing motions for summary disposition, plaintiff asked the trial court to conduct an in-camera review of the materials withheld under MCL 15.243(1)(g). However, the record does not indicate that the trial court undertook any in-camera review of the six withheld e-mails, but rather merely relied on the FOIA coordinator's affidavit and the assertions defendants made in their motion for summary disposition. But defendants' assertions ultimately relied on the coordinator's affidavit for support, which in turn did not aver that the withheld e-mails were confidential communications made to counsel for the purpose of obtaining legal advice. Given that the trial must construe a claimed exemption narrowly and defendants were required to provide "detailed" affidavits describing the matters withheld, *Evening News Ass'n*, 417 Mich at 503, we are compelled to conclude that the trial court erred in finding that defendants met their burden of proof regarding whether the withheld e-mails were exempt under the attorney-client privilege exemption.

Furthermore, with respect to ¶ 2 of the second set of requests in which plaintiff sought detailed copies of attorney billing statements, defendants provided redacted billing statements, but did not provide any justification for the redactions other than to state that the information was covered by the attorney-client privilege exemption. The public body's "[j]ustification of exemption must be more than 'conclusory,' i.e., simple repetition of statutory language." *Evening News Ass'n*, 417 Mich at 503. Here, the trial court relied on its review of the redacted documents to make its ruling. The trial court found that "[m]ost of the redacted information related to" the substance of the communications and that there were "very few instances where the redacted information is who the attorney had a conversation with." The trial court concluded that because "in some instances it is possible that who an attorney had a conversation with" could be covered by the attorney-client privilege, defendants properly exempted the redacted information under MCL 15.243(1)(g). Again, a trial court must construe a claimed exemption narrowly and is not permitted to render conclusory or generic determinations in deciding whether a claimed exemption is justified. *Nicita*, 194 Mich App at 662. Rather, the trial court "'must specifically find that the particular sections of the public record requested by the plaintiff would for particular reasons fall within the claimed exemptions.'" *Id.* (citation omitted). The attorney-client privilege exemption is only triggered in regard to confidential communications made by a client to an attorney that are made for the purpose of obtaining legal advice. *Herald Co*, 224 Mich App at 279. In the case at bar, the trial court did not speak in terms of the required finding for purposes of the attorney-client privilege exemption.

Ultimately, the record before us is insufficient to determine whether the information defendants withheld and redacted under the attorney-client privilege exemption was properly exempted under MCL 15.243(1)(g). We reverse the trial court's grant of summary disposition with respect to plaintiff's claims relative to MCL 15.243(1)(g) and remand for further factual findings as to this issue, which may require an in-camera review of the withheld e-mails and/or unredacted billing statements.

Plaintiff next argues that defendants improperly withheld requested information under the privacy exemption of MCL 15.243(1)(a). We agree. MCL 15.243(1)(a) provides that "[a] public body may exempt from disclosure as a public record under this act any . . . [i]nformation of a personal nature if public disclosure of the information would constitute a clearly unwarranted invasion of an individual's privacy." In *State News v Michigan State Univ*, 274 Mich App 558,

576-577; 735 NW2d 649 (2007), rev'd in part on other grounds 481 Mich 692 (2008), this Court examined the privacy exemption, stating:

[T]he privacy exemption consists of two distinct elements, both of which must be satisfied for the exemption to apply. First, the information must be of a “personal nature,” and, second, the disclosure of such information must constitute a “clearly unwarranted” invasion of privacy. Information that is not of a personal nature is subject to disclosure without considering the second prong of the exemption. [Citations omitted.]

Under the first prong, information is of a personal nature when it is intimate, embarrassing, private, or confidential information. *Mich Federation of Teachers & Sch Related Personnel, AFT, AFL-CIO v Univ of Mich*, 481 Mich 657, 676; 753 NW2d 28 (2008). Regarding the second prong, this Court in *Detroit Free Press, Inc v City of Southfield*, 269 Mich App 275, 282; 713 NW2d 28 (2006), observed:

Determining whether the disclosure of such information would constitute a clearly unwarranted invasion of privacy requires a court to balance the public interest in disclosure against the interest the Legislature intended the exemption to protect. The only relevant public interest is the extent to which disclosure would serve the core purpose of the FOIA, which is to facilitate citizens’ ability to be informed about the decisions and priorities of their government. This interest is best served through information about the workings of government or information concerning whether a public body is performing its core function. [Citations omitted.]

In ¶ 2 of plaintiff’s first set of requests, she asked for a “[c]opy of the 403(b) salary reduction agreement signed by President Goodnow which allowed her participation in a 403(b) plan.” In response, the FOIA coordinator indicated:

This request is GRANTED IN PART and DENIED IN PART. The redacted information is exempt from disclosure under Section 13(1)(a). President Goodnow’s personal financial decisions are information of a personal nature the public disclosure of which would constitute a clearly unwarranted invasion of Dr. Goodnow’s privacy.

Defendants produced President Goodnow’s salary reduction agreements, but they redacted information revealing the amount of her salary that President Goodnow elected to contribute to her 403(b) retirement account (“Bi-Weekly Reduction \$ [redacted] or % [redacted]”).

Plaintiff argues that the 403(b) information was subject to disclosure under MCL 15.243a and that, additionally, in regard to the claimed privacy exemption, the information was necessary to determine whether the total annual contributions to President Goodnow’s 403(b) account exceeded IRS limitations. MCL 15.243a provides, in relevant part, that a community college “shall upon request make available to the public the salary records of an employee or other official of the institution of higher education, school district, intermediate school district, or

community college.” MCL 15.243a is prefaced by the language, “Notwithstanding section 13,” which is the exemption section that encompasses the privacy exemption, MCL 15.243(1)(a). Accordingly, if a record comes within the parameters of MCL 15.243a, it must be disclosed regardless of whether it otherwise reveals information of a personal nature that, if disclosed, would constitute a clearly unwarranted invasion of privacy.

Defendants fail to even address or acknowledge MCL 15.243a in their appellate brief, let alone present an argument with respect to why it would not be applicable. The full title of the salary reduction agreements is the “DELTA COLLEGE 403(b) RETIREMENT PLAN SALARY REDUCTION AGREEMENT FOR ELECTIVE DEFERRAL.” The *salary* reduction agreements, in general, would appear to qualify as “salary records” for purposes of MCL 15.243a. A somewhat more difficult question is whether a redaction within a salary record is nonetheless permissible under MCL 15.243a with respect to information concerning the nature or extent of an employee’s 403(b) contributions, which information does not truly reflect or identify the employee’s “salary”<sup>5</sup> but rather a type of salary spending decision by the employee. We note that MCL 15.243a’s requirement to make available an employee’s salary records does not necessarily mean that every piece of information contained within a salary record must be disclosed. For example, a person’s full social security number cannot be disclosed pursuant to a FOIA request, MCL 445.85, and President Goodnow’s social security number was redacted in the salary reduction agreements without dispute. We decline to resolve the issue posed above, given that, as we shall explain below, the information regarding President Goodnow’s contributions is not subject to the privacy exemption under the particular circumstances of this case.

Although the extent of President Goodnow’s contributions to her 403(b) retirement account constitutes information of a personal nature, we cannot conclude that disclosure of the information would be a clearly unwarranted invasion of her privacy, which is the second prong of the privacy-exemption test. *State News*, 274 Mich App at 576-577. In balancing the public interest in disclosure against the interest the Legislature intended the exemption to protect, *Detroit Free Press*, 269 Mich App at 282, we find in favor of disclosure. The salary reduction agreements provided, “The Employee must ensure that he/she is not exceeding the lower of the annual elective deferral limit or the annual addition limit established by the IRS[.]” They further provided, “In the event that contributions are made on behalf of the Employee which exceed the limits permitted by Sections 403(b), 402(g), 414(v) and/or 415 of the Internal Revenue Code, the Employee must assure that such excess deferrals, contributions and income on these amounts are returned to the Employee as required by the Internal Revenue Code.” Finally, the salary reduction agreements provided:

I fully understand my responsibilities as a participant in the Delta College 403(b) Retirement Plan and agree to provide both the Delta College 403(b) Plan Administrator and my 403(b) Account Service Provider(s) with accurate, timely

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<sup>5</sup> The term “salary” is defined as “a fixed compensation paid periodically to a person for regular work or services.” *Random House Webster’s College Dictionary* (2001).



information. I accept full responsibility for determining that the annual elective deferral amount(s) elected in my Salary Reduction Agreement(s) under the Delta College 403(b) Retirement Plan do not exceed the legal limits. Furthermore, I agree to indemnify and hold Delta College, its Board of Trustees, agents, employees and representatives and the Delta College 403(b) Plan Administrator harmless in any case, matter or proceeding involving or relating to alleged adverse tax consequences affecting any tax sheltered annuity or custodial account sold to me, including, but not limited to, any case, matter or proceeding in which it is alleged that there was a failure to calculate or improper calculation of the permissible limitations under current Code §§ 403(b), 402(g), 414(v) or 415 or under corresponding provisions of future tax laws.

We hold that disclosure of the 403(b) information at issue would facilitate the ability of citizens to be informed regarding President Goodnow's compliance with her contractual obligations, regarding any Internal Revenue Code (IRC) violations and President Goodnow's need to take remedial steps, and regarding any IRC violations and defendants' potential liability and need to seek indemnification under the salary reduction agreements. See *Detroit Free Press*, 269 Mich App at 282 (there is a public interest in facilitating a citizen's ability to be informed about the decisions and priorities of the government, which interest is best served through the disclosure of information concerning the workings of government or whether a public body is performing its functions). When balanced against President Goodnow's privacy interests relative to the extent of her 403(b) contributions, public disclosure governs; therefore, any invasion of privacy is not clearly unwarranted.

Defendants argue that "there is no merit to [plaintiff's] assertion that President Goodnow's personal financial information falls within the public interest due to an alleged potential for 'excess' annual contributions to her 403(b) retirement plan that could subject [defendants] to IRS fines and refunds." In support, defendants simply contend that they have specific accounting controls in their payroll management software that would prevent excess retirement contributions to the 403(b) plan. This argument, in our view, is irrelevant and is akin to claiming that the public interest in obtaining information on a matter of concern can be negated by promises or assurances of the public body that there is no need for the information or no need to be concerned about a matter, as the public body is up to the task of preventing an error; the public body cannot be left to dictate and define what is or what should be in the public's interest. The FOIA does not support defendants' self-accountability argument; rather, the FOIA seeks to achieve public-body accountability by permitting open access to public-body records by the citizens of the state, so as to keep the citizenry informed and on guard. In sum, the redacted information at issue is to be disclosed, and the trial court erred in ruling to the contrary.

Plaintiff next argues that defendants violated MCL 15.235(4)(d)(i) by failing to advise her that she had the right to file an appeal with the board of trustees, which, according to plaintiff, is the head of the public body in this case. We agree. MCL 15.235(4)(d)(i) provides in relevant part that "[a] written notice denying a request for a public record in whole or in part . . . shall contain . . . [a] full explanation of the requesting person's right to . . . [s]ubmit to the head of the public body a written appeal . . . ." Here, defendants' written notice of partial denial informed plaintiff that she could appeal to President Goodnow. Plaintiff contends that President

Goodnow was not the head of Delta College and, thus, defendants violated MCL 15.235(4)(d)(i) when they incorrectly instructed her to direct her appeal to President Goodnow.

Under the Community College Act of 1966 (“the CCA”), MCL 389.1 *et seq.*, it is abundantly clear that the head of the Delta College District is the Delta College District Board of Trustees. See, e.g., MCL 389.14(1) (“A community college district is directed and governed by a board of trustees[.]”). Accordingly, for purposes of MCL 15.235(4)(d)(i), the written notice of denial had to include language explaining that plaintiff had a right to submit a written appeal to the Delta College District Board of Trustees. Assuming for the moment that the board of trustees had the authority to delegate its duty or authority to hear FOIA appeals to President Goodnow under MCL 389.123(d) and/or MCL 389.124(a) and (b), there is nothing in the record, including her employment agreement, that indicates that she was specifically delegated the duty or authority to hear FOIA appeals. Moreover, assuming such a delegation and the ability to do so under MCL 389.123(d) and/or MCL 389.124(a) and (b), it would not change the fact that, for purposes of MCL 15.235(4)(d)(i) and the notice of a right to appeal, the board of trustees is the head of the public body and needed to be identified as such; any delegation would merely be in a representative capacity for and on behalf of the board of trustees. While we question whether the FOIA would permit the head of a public body to delegate the duty or authority to hear a FOIA appeal, we ultimately need not answer that question, given that we have only been asked to rule on whether President Goodnow should have been identified as head of the public body in connection with the required notice under MCL 15.235(4)(d)(i) and that plaintiff only pursued an appeal in the circuit court.

Next, plaintiff argues that defendants violated MCL 15.234(3) by failing to establish and publish procedures and guidelines to allow them to charge FOIA fees. MCL 15.234(1) provides that “[a] public body may charge a fee for a public record search, the necessary copying of a public record for inspection, or for providing a copy of a public record.” MCL 15.234(3) provides, in relevant part, that “[a] public body shall establish and publish procedures and guidelines to implement this subsection.” Here, although defendants waived plaintiff’s FOIA fees, plaintiff still sought declaratory and injunctive relief precluding defendants from charging FOIA fees under MCL 15.234, where defendants allegedly failed to properly establish and publish procedures and guidelines regarding FOIA fees as required by MCL 15.234(3). It is uncontroverted that at all times relevant to this case, defendants had procedures and guidelines regarding FOIA fees posted on the official website of Delta College.

Whether under the doctrine of ripeness, mootness, or standing, or a combination of two or more of those doctrines, we decline to address the issue presented. Plaintiff acknowledges that her associated claim for money damages was rendered moot because the fees were waived, but she asserts that her “request for declaratory and injunctive relief is not moot because Delta College is still imposing fees for FOIA requests . . . .” Plaintiff does not claim, nor provide evidence, that defendants are imposing fees on her. Whether defendants properly established and published procedures and guidelines to allow for the imposition of fees is only relevant if fees have actually been imposed on a party. There is no actual controversy over the payment of fees that requires judicial resolution and thus the issue is moot. See *State News v Mich State Univ*, 481 Mich 692, 704 n 25; 753 NW2d 20 (2008) (FOIA appeal would be rendered moot if a requested record were released as there would no longer be a controversy requiring judicial resolution); *Mich Chiropractic Council v Comm’r of the Office of Fin & Ins Servs*, 475 Mich

363, 371 n 15; 716 NW2d 561 (2006) (an issue is moot if it is no longer “live” or the parties lack a legally cognizable interest in the issue’s outcome), overruled in part on other grounds *Lansing Sch Ed Ass’n v Lansing Bd of Ed*, 487 Mich 349; 792 NW2d 686 (2010); see also MCR 2.605(A)(1) (declaratory judgment may be rendered “[i]n a case of actual controversy”). An issue regarding any fees that might be imposed on plaintiff in the future is not ripe for consideration. *Mich Chiropractic Council*, 475 Mich at 371 n 14 (ripeness precludes adjudication of hypothetical or contingent claims prior to an actual injury; a claim is not ripe if it rests on contingent future events that may never occur). And, as to this particular issue, plaintiff does not have “a special injury or right, or substantial interest, that will be detrimentally affected in a manner different from the citizenry at large.” *Lansing Sch Ed*, 487 Mich at 372 (discussing the requirements to establish “standing”).<sup>6</sup>

Finally, plaintiff asks us to enter an award of reasonable attorney fees and costs under MCL 15.240(6), which provides:

If a person asserting the right to inspect, copy, or receive a copy of all or a portion of a public record prevails in an action commenced under this section, the court shall award reasonable attorneys' fees, costs, and disbursements. If the person or public body prevails in part, the court may, in its discretion, award all or an appropriate portion of reasonable attorneys' fees, costs, and disbursements. . . .

Considering that further proceedings and findings are necessary as discussed above, we leave it to the trial court, after resolution of all matters, to rule on any request for attorney fees and costs made by plaintiff, with the court to employ MCL 15.240(6) and to take into consideration conclusive rulings in this opinion.

We reverse and remand for further proceedings, except as to the public-body fee issue under MCL 15.234, which we conclude is not justiciable. Plaintiff, having predominantly prevailed on appeal, is awarded taxable costs pursuant to MCR 7.219. We do not retain jurisdiction.

/s/ William B. Murphy  
/s/ Douglas B. Shapiro  
/s/ Michael J. Riordan

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<sup>6</sup> If steps have not already been taken, it might be wise for defendants to publish procedures and guidelines regarding FOIA fees in a setting other than solely the Internet.

**STATE OF MICHIGAN  
IN THE 16<sup>TH</sup> CIRCUIT COURT  
COUNTY OF MACOMB**

MICHAEL LEWIS BUTZ,

Plaintiff,

v.

Case No. 2023-002852-CZ  
Hon. Edward A. Servitto, Jr.

JENNIFER ZELMANSKI, et al.

Defendants.

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**ATTACHMENT J**

Plaintiff, Michael Butz's FOIA Requests

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Michael Butz <mbutzsr@gmail.com>

## Michael Butz FOIA Request - Electronic Poll Book raw data files (EPB\_History.CSV)

1 message

Michael Butz <mbutzsr@gmail.com>

Tue, May 2, 2023 at 3:31 PM

To: jzelmanski@roseville-mi.gov

Bcc: Mercede Scargall <mercede.scargall@gmail.com>, Melissa Pehlis <mptorch@gmail.com>, Michelle Franzen <mfranzen86@yahoo.com>, Brian <brian\_c1959@yahoo.com>, Sue Vandenberghe <lacybell1958@gmail.com>, Scott Aughney <seaof7@gmail.com>, Joanne Bakale <Joanne.electioninfo@gmail.com>

Good afternoon,

Attached is a FOIA request for your jurisdiction's Electronic Poll Book raw data files for the elections concluding November 8, 2022 and May 2, 2023 along with relevant supporting documents:

- MCL 168.509gg
- MCL 168.813
- 52 USC Chapter 207

Please don't hesitate to contact me with any questions or concerns.

Sincerely,

Michael Butz

### 4 attachments

mcl-168-509gg.pdf  
8K

mcl-168-811.pdf  
7K

52 USC Chapter 207.pdf  
96K

(Roseville) Butz Michael Lewis - Clerk Letter - EPB-FOIA Request - 20230502r.pdf  
271K

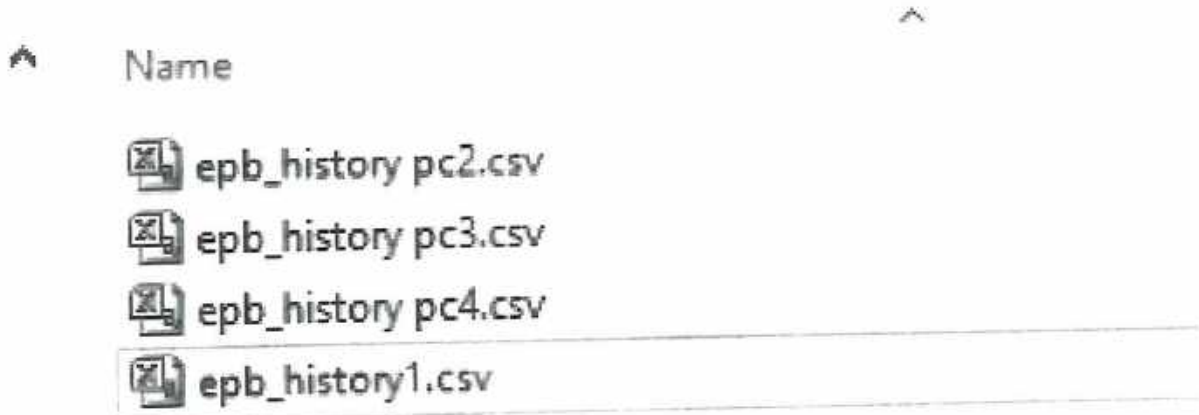
May 2, 2023

Roseville Clerk's Office  
Attn Jennifer Zelmanski

Re: Freedom of Information Act ("FOIA") Request

Dear Jennifer Zelmanski:

Per the Freedom of Information Act, please provide a copy of the extract files from the electronic poll books (EPBs) for all registrants at all voting precincts in the jurisdiction for the elections concluding November 8, 2022 and May 2, 2023. These files should be in .CSV or .XLS format and typically have a file name beginning with "EPB\_History" (see below screenshot).



Please note that these files likely contain the full birthdate (month, day and year) and driver's license number of the registrants in your jurisdiction, which is exempt from FOIA release (MCL 168.509gg). Therefore, please open the copy of the digital file(s), remove or redact the birth month, birth day and drivers license number information, and save your changes before sending the file(s) to me. If you are able to retain the year of birth for the registrants as is permissible per MCL 168.509gg, it will be greatly appreciated.

Instructions on how to locate the requested information is available on pages 40-41 of the Electronic Poll Book Refresh Manual provided by the Michigan Board of Elections. These pages are included in Exhibit 1 below for your convenience.

Once the above redactions have been made, there should be no other FOIA exempt information in the EPB digital records requested. I am not requesting any software or information which would somehow be deemed proprietary. I am only requesting public record information as is my right.

Please note that the EPB .CSV files are an original record and a component of the electronic voting system audit trail. As such, these digital records should be retained by your office for a federal minimum of 22 months (52 USC 207) and a state minimum of 24 months (MCL 168.811).

I prefer to receive the requested information via email as a file attachment. If email is unavailable, please contact me to coordinate an alternative method to fulfill my FOIA request since I would be happy to bring a USB drive to your office so that you or your staff can copy the file(s) to.

Please don't hesitate to contact me if you have any questions.

Thank you.

Sincerely,

Michael Lewis Butz  
3105 McKail Rd.  
Bruce Township, MI 48065  
586.596.4945  
mbutzs@gmail.com

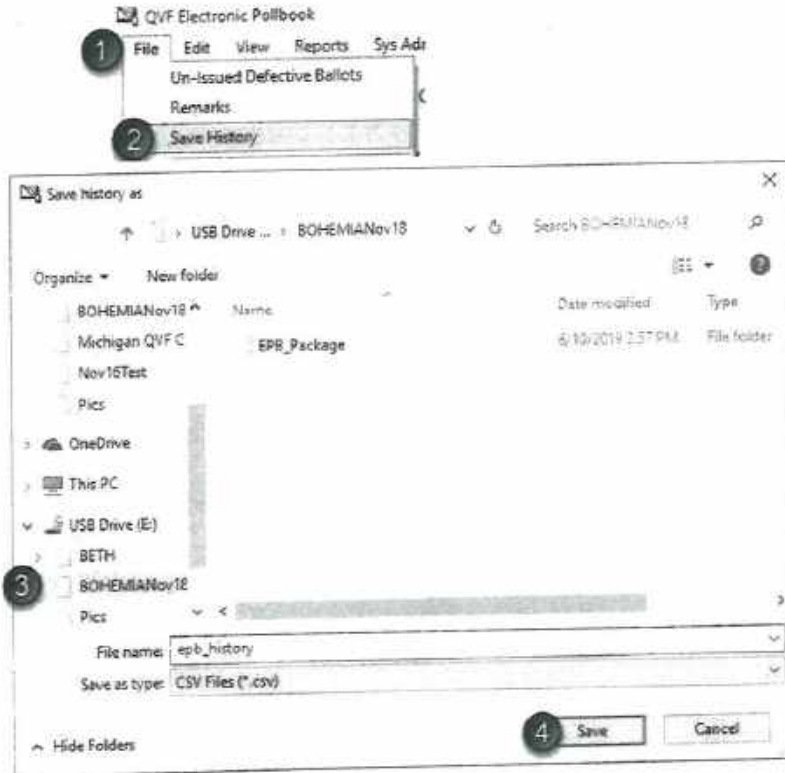
**Exhibit 1:**

**Save Voter History: Redirection Action Required!**

After all other reports are saved, save the voter history to the flash drive. The clerk needs to use this file to update the voter registration files in the Qualified Voter File (QVF) recording who voted on Election Day.

**To save Voter History:**

1. Click File
2. Click Save History
3. Redirect the file by clicking on the flash drive under This PC, then double-click on the **Election Date** folder. The file name should say **epb\_history** with no preceding d:\
- If d:\ is still in the File name, click the cursor at the beginning of the File name field and use the Delete key to delete the d:\
4. Click Save



**RECEIVED**

AUG 23 2023

ANTHONY G. FORLINI  
Macomb County Clerk



## Ensure Files are on Flash Drive

To verify files have been saved on the encrypted flash drive:

1. Click on the file folder icon to open Windows File Explorer
2. Click Removable Disk (E:) Drive letters may vary
3. Double Click the [ElectionDate] folder



4. You must have the following files:

File Name	File Type
EPB Back Up	ACCDB file
EPB_History	CSV file
rptBallot Summary	PDF file
rptRemarks	PDF file
rptVoter List	PDF file

The  
 EPB\_History.CSV  
 file is what is  
 being requested

You may also see the following files in your folder:

File Name	File Type
EPB_Package	File Folder
EPB_Package	Compressed (zipped)

Once all reports have been saved, close all programs and shut down the laptop. Return all items to the case except the encrypted flash drive. **The encrypted flash drive must be placed into the container the Clerk recommends, sealed (either an envelope with a red paper seal or an approved container and the appropriate seal), and returned to the Clerk on election night.**

**STATE OF MICHIGAN  
IN THE 16<sup>TH</sup> CIRCUIT COURT  
COUNTY OF MACOMB**

MICHAEL LEWIS BUTZ,

Plaintiff,

v.

Case No. 2023-002852-CZ  
Hon. Edward A. Servitto, Jr.

JENNIFER ZELMANSKI, et al.

Defendants.

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**ATTACHMENT K**

**Defendants' FOIA Rejection and Denial**

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Michael Butz <mbutzsr@gmail.com>

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## FOIA request

1 message

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**Jennifer Zelmanski (City of Roseville)** <jzelmanski@roseville-mi.gov>  
To: "mbutzsr@gmail.com" <mbutzsr@gmail.com>  
Cc: "Jackie Crimboli (City of Roseville)" <jcrimboli@roseville-mi.gov>

Tue, May 9, 2023 at 7:35 AM

Hello Michael,  
Please see attached information.


Jennifer Zelmanski  
City Clerk  
Phone: 586 447-4615  
Fax: 586 774-8048

-----Original Message-----

From: Scans Roseville <scans@roseville-mi.gov>  
Sent: Tuesday, May 9, 2023 7:33 AM  
To: Jennifer Zelmanski (City of Roseville) <jzelmanski@Roseville-mi.gov>  
Subject: Scan from Roseville Clerks office

Please do not reply to this MFP email address.  
Please do not reply to this email address.

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526K



City of Roseville  
Jennifer A. Zelmanski  
City Clerk

**FOIA - NOTICE OF TEN DAY EXTENSION**

May 9, 2023

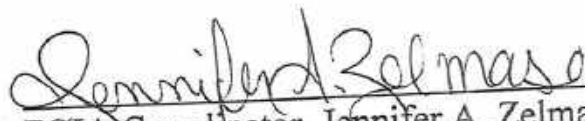
Michael Lewis Butz  
3105 McKail Rd.  
Bruce Township, MI 48065

The time for responding to your request for disclosure of public record(s) dated May 2, 2023 has been extended to the 15<sup>th</sup> working day following the date of your request for the following reason(s):

\_\_\_\_\_ The need to search for, collect, or appropriately examine or review a potential voluminous amount of separate and distinct public record(s) pursuant to a single request.

\_\_\_\_\_ The need to collect the requested public record(s) from numerous other offices.

  X   Due to the complexity of your request, a 10-day extension is necessary. The estimated date to complete response from date of receipt of first response is – May 23, 2023 (Additional time requirement for review/collection of information). *We are continuing to investigate and research issues involving whether a request would create an exposure to the operating system resulting in injury. We are also reviewing our methods and capabilities in responding, including likely time involved.*

  
FOIA Coordinator, Jennifer A. Zelmanski, City Clerk

Bldg. Inspections..... 445-5450	Community Develop..... 445-5423	Fire..... 445-5444	Purchasing..... 445-5425
City Assessor..... 445-5430	Controller..... 445-5417	Housing..... 778-1360	Recreation (Parks)..... 445-5480
City Clerk..... 445-5443	District Court..... 773-2010	Library..... 445-5407	Senior Center..... 777-7177
	..... 445-5470	Personnel..... 445-5412	Treasurer..... 445-5420
			Water (Billing)..... 445-5460



Michael Butz <mbutzsr@gmail.com>

**RE: Michael Butz FOIA Request - Electronic Poll Book raw data files (EPB\_History.CSV)**

1 message

**Jennifer Zelmanski (City of Roseville)** <jzelmanski@roseville-mi.gov>  
To: Michael Butz <mbutzsr@gmail.com>  
Cc: "Jackie Crimboli (City of Roseville)" <jcrimboli@roseville-mi.gov>

Tue, May 23, 2023 at 8:40 AM

Good Morning,  
Please see attachment.

*Jennifer Zelmanski*

*City Clerk*

*Phone: 586 447-4615*

*Fax: 586 774-8048*



**From:** Michael Butz <mbutzsr@gmail.com>  
**Sent:** Tuesday, May 2, 2023 3:31 PM  
**To:** Jennifer Zelmanski (City of Roseville) <jzelmanski@Roseville-mi.gov>  
**Subject:** Michael Butz FOIA Request - Electronic Poll Book raw data files (EPB\_History.CSV)

Good afternoon,

Attached is a FOIA request for your jurisdiction's Electronic Poll Book raw data files for the elections concluding November 8, 2022 and May 2, 2023 along with relevant supporting documents:

- MCL 168.509gg
- MCL 168.813
- 52 USC Chapter 207

Please don't hesitate to contact me with any questions or concerns.

Sincerely,

Michael Butz

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1260K



City of Roseville  
Jennifer A. Zelmanski  
City Clerk

May 23, 2023

Michael Lewis Butz  
3105 McKail Rd.  
Bruce Township, MI 48065  
(586)596-4945  
mbutzsr@gmail.com

**FOIA - NOTICE OF DENIAL OF REQUEST FOR DISCLOSURE OF INFORMATION**

In response regarding your FOIA requested submitted on May 2, 2023 for a copy of the extract files from the electronic poll books (EPBs) for all registrants at all voting precincts in the jurisdiction for the elections concluding November 8, 2022 and May 2, 2023.

The following Action has been taken pursuant to your request for a public record:

✓ Denied all portions of your request (Please see below for reason)

**November 8, 2022, Election:**

Per the Michigan Bureau of Elections, Clerks must not publicly release data or files that would reveal the software design or data architecture of the Electronic Poll Book, as doing so could compromise the Bureau of Elections' ability to secure and safeguard the software and data from hacking, theft, loss or destruction. In response to previous FOIA requests regarding EPB data, the Bureau of Elections has not disclosed these records because the records sought constitute "cybersecurity plans, assessments, or vulnerabilities" that are exempt from disclosure. The Bureau has an interest in maximizing the protection and defense of its information systems, which outweighs the public interest in the disclosure of this information as the release of this sensitive information could jeopardize the security of Michigan's electoral process. **MCL 15.243(1)(y)**. In addition, the responsive records include sensitive information which, if released, "would disclose a person's cybersecurity plans or cybersecurity-related practices, procedures, methods, results, organizational information system infrastructure, hardware, or software." **MCL 15.243(1)(z)**.

Further, electronic poll book files contain personal identifying information such as full birth dates for voters, which is exempt from disclosure. **MCL 168.509gg**. Attempted manual redaction of personal identifying information may not be sufficient to protect this information from disclosure if the software and program files are disclosed.

Please contact the Macomb County Clerk for the paper pollbook copies or the Michigan Bureau of Elections for the log file or voter history.

Document received by the MI Macomb 16th Circuit Court.

29777 GRATIOT AVENUE • ROSEVILLE, MICHIGAN 48066-9021 • FAX (586) 774-8048 • www.cityclerk@roseville-mi.gov

Bldg. Inspections..... 445-5450	Community Develop..... 445-5423	Fire..... 445-5444	Purchasing..... 445-5425
City Assessor..... 445-5430	Controller..... 445-5417	Housing..... 778-1360	Recreation (Parks)..... 445-5480
City Clerk..... 445-5443	District Court..... 773-2010	Library..... 445-5407	Senior Center..... 777-7177
		Personnel..... 445-5412	Treasurer..... 445-5420
			Water (Billing)..... 445-5460

**May 2, 2023, Election:**

Per the Michigan Bureau of Elections, Clerks must not publicly release data or files that would reveal the software design or data architecture of the Electronic Poll Book, as doing so could compromise the Bureau of Elections' ability to secure and safeguard the software and data from hacking, theft, loss or destruction. In response to previous FOIA requests regarding EPB data, the Bureau of Elections has not disclosed these records because the records sought constitute "cybersecurity plans, assessments, or vulnerabilities" that are exempt from disclosure. The Bureau has an interest in maximizing the protection and defense of its information systems, which outweighs the public interest in the disclosure of this information as the release of this sensitive information could jeopardize the security of Michigan's electoral process. **MCL 15.243(1)(y)**. In addition, the responsive records include sensitive information which, if released, "would disclose a person's cybersecurity plans or cybersecurity-related practices, procedures, methods, results, organizational information system infrastructure, hardware, or software." **MCL 15.243(1)(z)**.

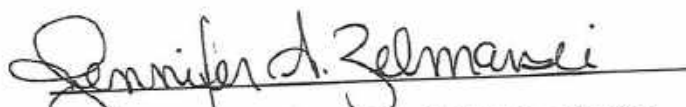
Further, electronic poll book files contain personal identifying information such as full birth dates for voters, which is exempt from disclosure. **MCL 168.509gg**. Attempted manual redaction of personal identifying information may not be sufficient to protect this information from disclosure if the software and program files are disclosed.

Please contact the Macomb County Clerk for the paper pollbook copies or the Michigan Bureau of Elections for the log file or voter history.

*If your request for record(s) is denied, you may submit a written appeal, specifically stating Appeal@ and stating the reasons for appeal, to the attention of the City Council, or seek judicial review under Section 10 of the Act within 180 days after the public body's final determination. Within 10 days of receiving a request for an appeal, the City Council shall: a) reverse the denial; b) issue a written notice upholding the denial; c) reverse the disclosure denial in part and issue a written notice to the requesting person upholding the disclosure denial in part; or d) issue a notice extending by 10 business days the time to decide the appeal. (Note: If a board of commission is the head of the public body it is not considered to have received a written appeal until the first regularly scheduled meeting following submission of the written appeal.)*

*If after judicial review, the Circuit Court determines that the public body has not complied fully with the disclosure requirements, the Court shall award reasonable attorney's fees, costs and disbursements. If the Court determines that the public body has arbitrary and capriciously violated the Act, the Court shall award punitive damages in the amount of \$500.00.*

*A copy of this request will be kept on file for no less than one (1) year.*

  
Jennifer A. Zelmanski, City Clerk FOIA Coordinator

**STATE OF MICHIGAN  
IN THE 16<sup>TH</sup> CIRCUIT COURT  
COUNTY OF MACOMB**

MICHAEL LEWIS BUTZ,

Plaintiff,

v.

Case No. 2023-002852-CZ  
Hon. Edward A. Servitto, Jr.

JENNIFER ZELMANSKI, et al.

Defendants.

---

**ATTACHMENT L**

**Electronic Pollbook Manual**

---



**Electronic Pollbook Refresh  
Election Inspector Manual  
For Windows 10 & BitLocker Flash Drives**



**Michigan Department of State  
Bureau of Elections**

**October 2021**

## Electronic Pollbook User Manual - Table of Contents

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## Introduction to the Electronic Pollbook

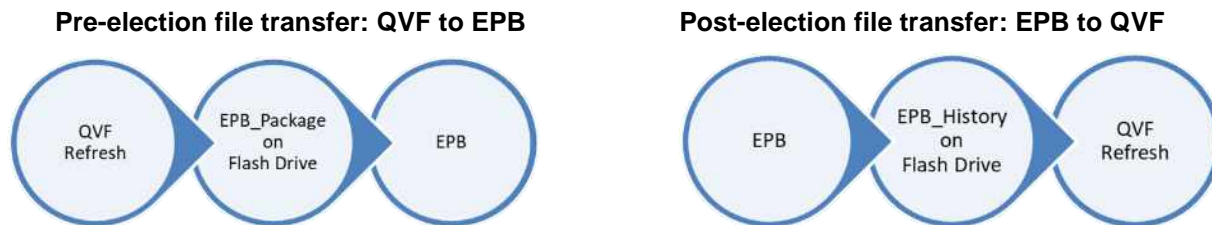
The Bureau of Elections developed computer software that can be used in the polling place on Election Day to process voters and generate precinct reports. The electronic pollbook (EPB) software is downloaded from the Qualified Voter File (QVF) software and is loaded to a laptop prior to each election. Once the EPB software is loaded on the laptop, the software allows election inspectors to look up a voter's registration record, confirm their registration is correct, and assign a ballot to that voter, essentially automating the typical paper process. After the election is complete, the EPB software will generate reports to complete the official precinct record (paper binder pollbook) and a voter history file that can be uploaded into the QVF to update voter history in a matter of minutes.

### Key Features

- ☆ Access current voter registration and absent voter information in the precincts (from the day prior to the election, in most cases)
- ☆ Locate a voter's registration record by swiping their driver's license with a magnetic card reader
- ☆ Assign and record the voter's ballot immediately upon registration confirmation
- ☆ Look up voters registered within the jurisdiction but not in the assigned precinct
- ☆ Print accurate reports, including a ballot summary that calculates, the list of voters, and remarks
- ☆ Upload voting history quickly and accurately

### Important Considerations

Maintain security throughout the EPB process by using an encrypted flash drive. The flash drive must be password protected, and passwords should **never** be kept with flash drives. The encrypted flash drive must be used to transfer files back and forth between the QVF computer and the EPB laptop.

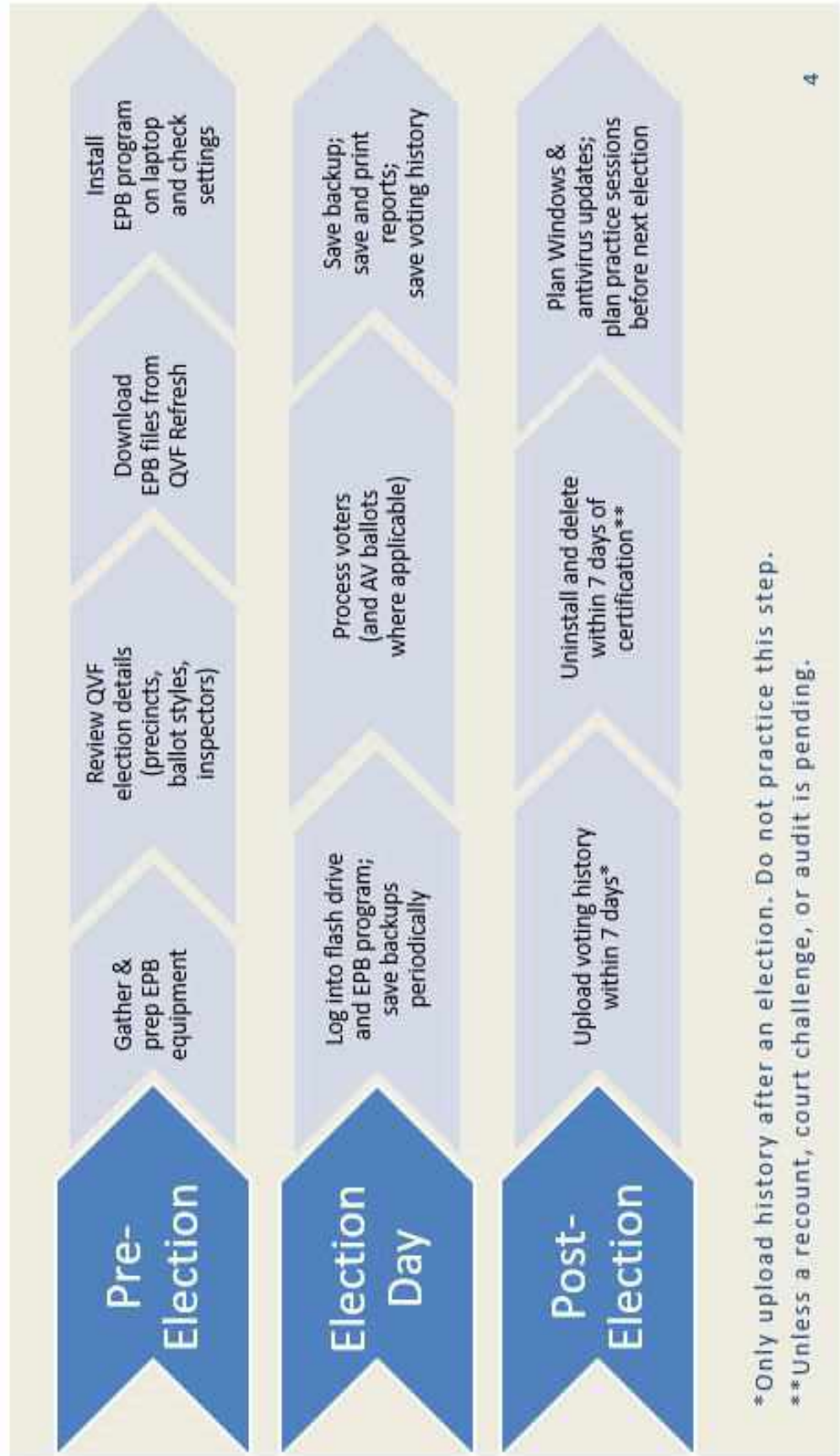


The laptop must not be connected to any networks (must be in "airplane mode") when the EPB software is installed on the laptop. Windows Updates and antivirus updates must be done regularly between elections.

It is also important to understand when to delete files. Delete all EPB files seven days after the final canvas (unless there is a pending recount, court challenge, or audit/Secretary of State order). This keeps voter data secure and prevents the wrong files from being used in future elections.

Most importantly, practice! Walking through the manual well before every election will ensure you understand all of the features of the EPB software and will prepare you for successful implementation come election day. Remember it is important to delete all practice files, too!

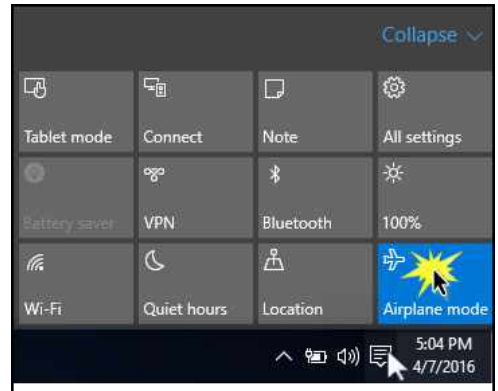
# EPB PROCESS OVERVIEW



\*Only upload history after an election. Do not practice this step.  
\*\*Unless a recount, court challenge, or audit is pending.

## Getting Started: Election Day Reminders

1. **Wireless internet access – *The laptop must be in airplane mode on election day.*** To verify airplane mode is enabled, click the notifications icon and make sure the Airplane mode is blue and that the Wi-Fi button is gray.
2. **Don't skip page 7, Step 3** – It is important when you save the backup file that you browse to the location that the file is supposed to be saved to, which is the flash drive. It does not automatically save to the flash drive.
3. **Unable to Record an Absentee Ballot** – Click the File menu, click Options, and add a checkmark to “Allow the recording of Absentee Ballots.”
4. **Spoiling an Absentee Ballot** – Absentee ballots are never spoiled in the EPB on Election Day. There are other procedures in place for a voter surrendering their absentee ballot. The duplication process does not include spoiling the original ballot number; see FAQ # 11 on p. 31.
5. **Recording PDF ballots / ballots sent electronically** – An absent voter issued an electronic ballot is processed in the EPB with the same ballot number originally recorded by the clerk. Electronically issued MOVE ballots returned by the voter on 8 ½ x 11 paper are recorded in the EPB using the original “ET#.” The number of the ballot onto which the votes are duplicated is NEVER assigned to the absent voter in the EPB. Simply use the duplication process established for other absent voter ballots that require duplication and record the number of ballots used in duplication on line H of the Ballot Summary.
6. **Don't forget page 27** – The Voting History file (epb\_history.csv) must be saved to the flash drive in addition to the 3 PDF reports and the backup file at the end of the night.
7. **Even if your laptop freezes, it's going to be OK!** This reminder is also FAQ # 15 on p. 31.



While other workers continue to process voters using the paper backup:

First, try to close and reopen the EPB program, using Ctrl + Alt + Delete if necessary to use the Task Manager to end the task and close the EPB application. If that doesn't work, you may restart the computer. Remember to log back into the flash drive as well as the EPB program before you begin working again.

## Election Day EPB Tasks: Election Inspector's Guide

### Prepare the EPB for Opening the Polls

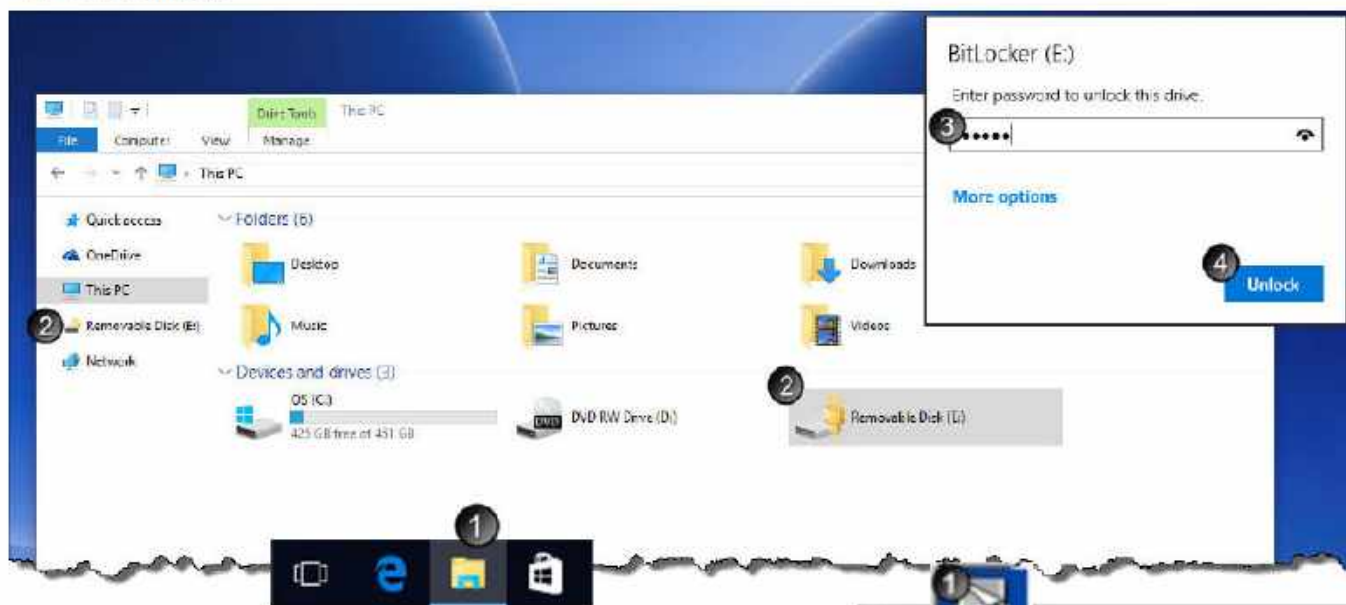
Pull the laptop out of the case, plug it into a surge protector, and plug the surge protector into the wall. The power cord may have two pieces. Keep the power cord plugged in throughout the day to maintain a 100% charged battery. Plug the magnetic card reader and mouse into USB ports. Then turn the laptop on. Once the laptop has booted up, make sure that the laptop cannot connect to the internet by turning on Airplane Mode (see pg. 5).

### Log into the encrypted flash drive

The encrypted flash drive is a vital component of the EPB software program. Use this password-protected file storage device to protect voter data, store the backup file, and store all the work done on Election Day so the Clerk can update voter history and create precinct reports. When saving files, make sure the files are being saved to the encrypted flash drive.

To log into the flash drive, insert it into a USB port and:

1. Click the Windows Explorer folder icon
2. Click Removable Disk
3. Enter the password
4. Click Unlock

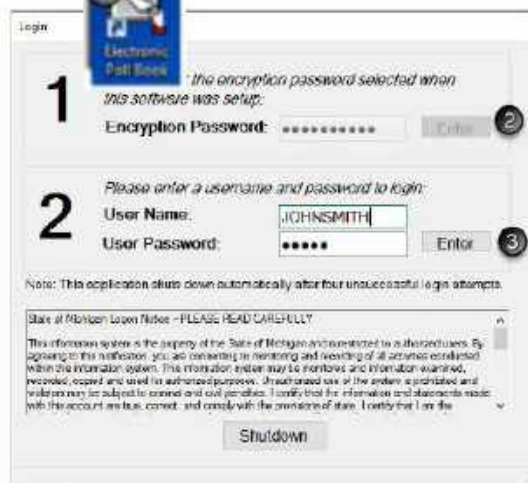


### Log into the EPB software

After you have inserted and logged into the encrypted flash drive with its password, you can open the EPB program.

To log into the EPB software:


1. Double click on the Electronic Poll Book icon in the upper left corner of the desktop
2. Enter Encryption Password and click Enter
3. Enter Username and User Password and click Enter

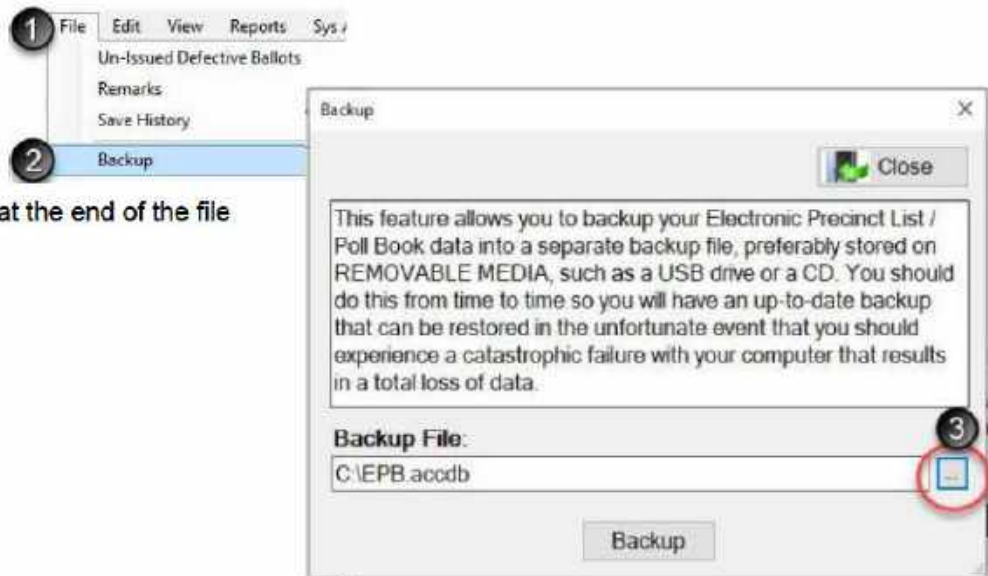


## Save the First EPB Backup: Redirection Action Required!

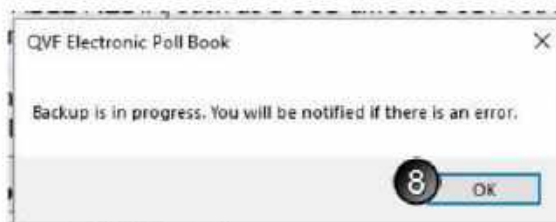
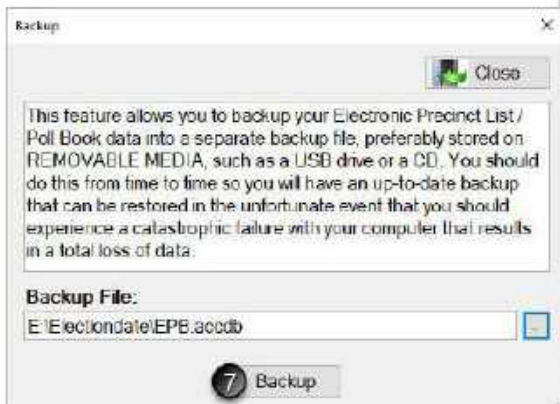
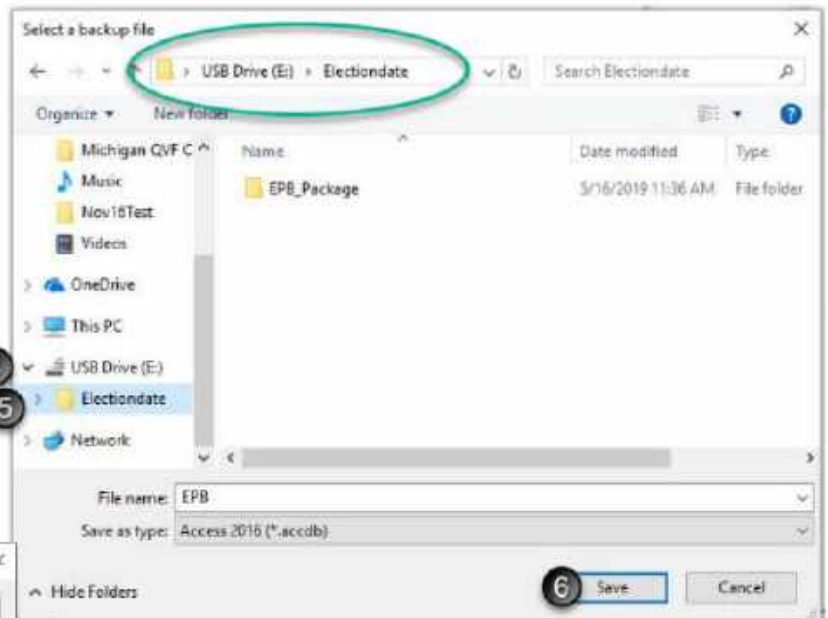
You must keep the encrypted flash drive plugged into the laptop all day. Save a **Backup** periodically throughout the day to save voters that have been processed. This ensures that data will not be lost if there is a hardware failure. Pay attention to your laptop's settings when performing the initial **Backup**. The letter labeling your encrypted flash drive in Windows Explorer may vary since it is dependent on the laptop and port being used.

### To Back up the EPB:

1. Click File
2. Click Backup
3. Click this button  at the end of the file path field



4. Select Removable Disk (Drive letter may vary). Use the encrypted flash drive to save files throughout the day and after the polls close. Future backups should remember the drive you select in this step.
5. Double-click the [ElectionDate] folder
6. Click Save
7. Click Backup
8. After a few seconds, the Backup is in progress message will appear, and the backup continues briefly in the background.



The laptop and EPB software are now ready for voters!

## Read and Use the EPB Main Screen to Process each Voter

The EPB main screen is divided into three sections. Take a moment to become familiar with the various parts of the screen. **Make sure the top line lists the correct election and precinct number.**

The screenshot displays the EPB main screen with the following sections:

- Election:** 11/06/2018 - STATE GENERAL - BOHEMIA TOWNSHIP
- Precinct:** 00001
- Voter Search:** Includes a search bar for DLN / Name and tabs for This Precinct, Other, and Unlisted. A list of voters is shown with columns for Voter Name and DOB.
- Voter Details:** Shows information for MCQVF, AGATHA, CHRISTIE, including Name, DOB, Address, Gender, Polling Location, and Ballot Style (1B). It also features a "Lock this voter record" button and a "General Remarks" field.
- List of Voters:** A table with columns for Assigned To and Ballot.

At the bottom of the screen, it shows "1632 matching voters" and the user name "JOHNSMITH".

**Voter Search:** The Voter Search section of the screen is the precinct list. All voters in your precinct will be listed under **This Precinct** tab. The **Other** tab provides access to the lists of other precincts in the jurisdiction. The **Unlisted** tab is available to add voters not found in either list in certain situations.

**Voter Details:** The Voter Details section of the screen shows the voter's registration information at the top, including the appropriate **Ballot Style** that should be issued to the voter. The Geography button provides detailed district information for each voter. The middle of the screen is the "Lock this Voter Record" action box where ballots will be assigned and recorded. Voting status flags appear at the bottom of the screen. This portion of the screen is important to verify the status before issuing a voter a ballot.

**List of Voters:** The List of Voters section records the voter's name and what ballot number was assigned to them in a running list. This section is for reference; use it throughout the day to balance with the tabulator.

The EPB software contains the voter list for the precinct, records the ballots issued, and creates the List of Voters for the permanent record of the precinct. With a few clicks, a voter may be verified and assigned a ballot.

**Important Note:** If a voter does not wish to have their driver's license scanned, their name should be typed into the EPB software.



## Assign a Ballot

The voter must complete an *Application to Vote*, and their photo identification must be verified or the *Affidavit of Voter Not in Possession of Picture Identification* must be completed before processing a ballot in the EPB software. Once those steps have been taken, process the voter in the EPB by following these steps:

1. Swipe the voter's driver's license through the magnetic card reader or type the voter's name into the DLN/Name field, entering the last name first. If typing, select the correct voter and then you must click on "Lock this voter record," otherwise skip to Step 2.
2. Verify the voter's information on the *Application to Vote* matches EPB.



3. Click Regular ballot
4. Enter the next available ballot number in the **This ballot number will be assigned** box (this number will auto fill after the first number for the ballot style has been entered)
5. Click OK, and the voter's name will now be added to the List of Voters.

## Verify the ballot was issued

Click OK on the confirmation window (if enabled). After you assign the ballot, the main screen returns. Three places verify the ballot was processed in the EPB software. Further duties may be divided amongst election inspectors, including completing the *Election Inspector Completes* portion of the *Application to Vote* and providing the voter a ballot in a secrecy sleeve. The voter will then go to a voting booth to vote their ballot and return the ballot to the tabulator.

## Process Voter with Status Flag(s)

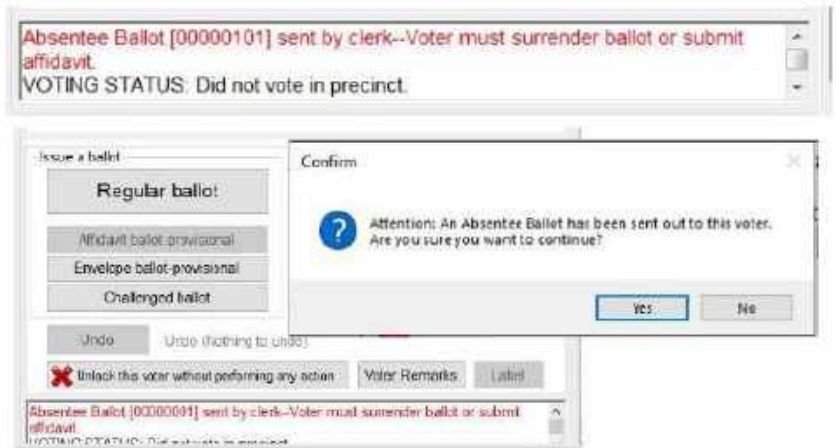
Some voters have status flags that need to be addressed prior to issuing a ballot. On the paper precinct list, these were indicated with a code. Something happened in the registration process or in subsequent mailings that needs follow-up. For example, a signature was not obtained, the voter missed checking an answer to the citizenship question, an absentee ballot was issued, the clerk received reliable information the voter may have moved, etc.

A voter has a status flag if he or she has a red question mark next to his or her name. When a red question mark is found, read the message in the Voter Status window at the bottom of the Voter Details screen to determine the issue.



### Absentee Ballot sent by clerk

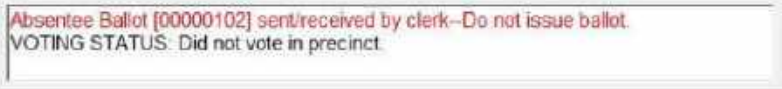
This voter was sent an absentee ballot. The voter must surrender the absentee ballot or complete the *Affidavit of Lost or Destroyed Absentee Ballot* after approval from the Clerk. Process as a Regular ballot and click through the warning. Place the AV ballot in the Local Clerk envelope.



### Absentee Ballot sent/received by clerk

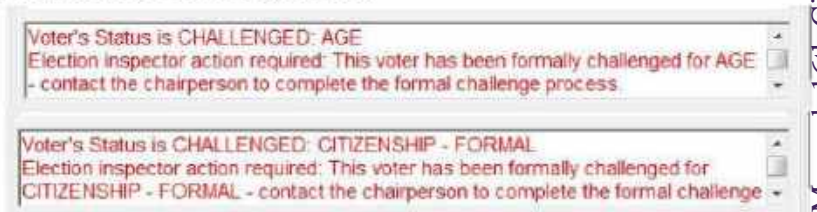
This voter was sent an absentee ballot and returned it to the Clerk. **DO NOT** issue this voter a ballot as they have already voted.

*In the extremely rare case of a clerical error (such as if a ballot was recorded in QVF for the wrong voter), after approval from the clerk a ballot may be issued. Process as instructed and click through the warning.*



### Voter's status is Challenge: Age, Citizenship Formal or Residency Formal

This voter has been formally challenged and must complete the challenge process before being issued a challenged ballot. Seek assistance from the precinct chairperson to complete this process. The EPB processing is the same as a regular voter except Challenged ballot is selected in the Issue a ballot box. A CHAL will appear next to the voter's name after processed.



### Must show ID before voting (Federal Requirement)

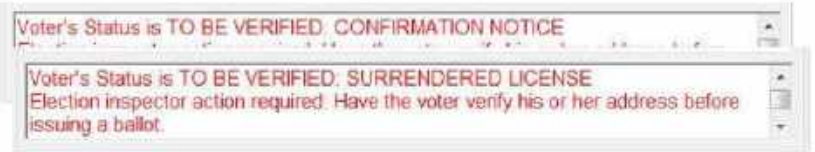
This voter must show photo ID or a paycheck, government check, utility bill, bank statement, or a government document which lists his or her name and address (if no photo ID but provides one of the documents listed above, must sign the *Affidavit of Voter Not in Possession of Photo ID* as well) prior to being issued a ballot.



one of the documents listed above, must sign the *Affidavit of Voter Not in Possession of Photo ID* as well) prior to being issued a ballot.

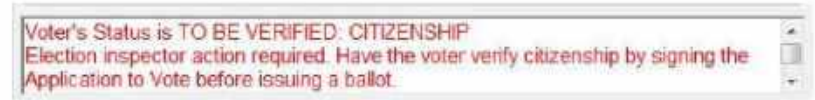
### Voter's Status is V: Address Unclear, Confirmation Notice, or Surrendered License

This voter must verbally confirm the address listed in the EPB. If the voter does not confirm the address, the procedure for voters that have moved must be taken.



### Voter's Status is V: Confirm Citizenship

This voter must verify their citizenship by signing the Application to Vote. If the voter does not complete the Application to Vote, DO NOT issue a ballot.

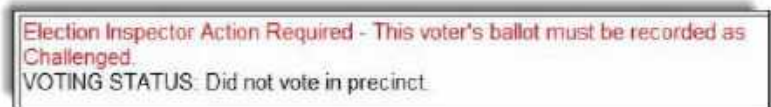


### Voter's Status is V: Sign Registration Card



This voter must sign a voter registration form prior to being issued a ballot.

### Voter Message: Challenged Ballot



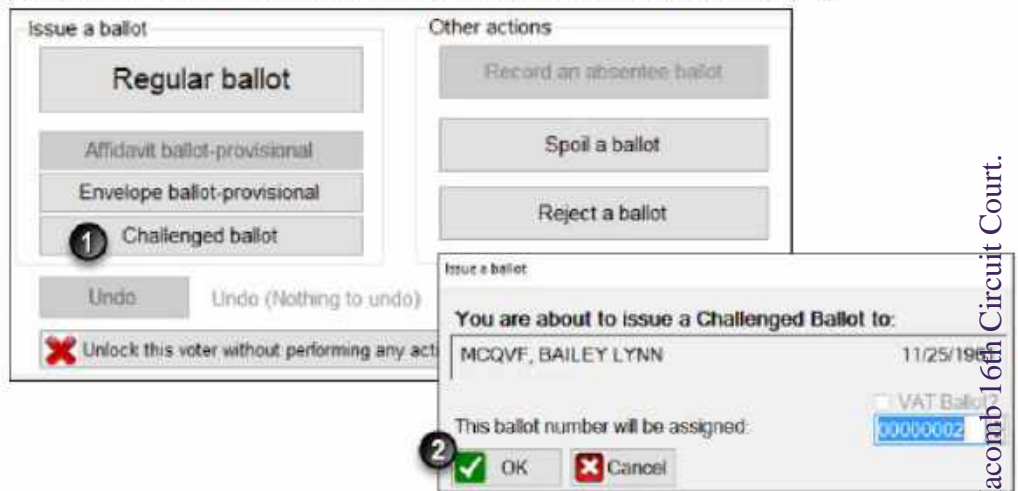
When the EPB indicates in red text that an inspector action is required to record a voter's ballot as challenged (shown above), perform the actions listed below.

(These voters registered within 14 days of the election with an alternative form of residency verification.)

#### To issue a Challenged ballot:

Pull the voter's record up in the EPB software, lock it in if necessary and:

1. Click Challenged ballot
2. Verify the ballot number being issued is correct or enter the ballot number and click OK



#### Important note:

The Challenged ballot procedure for these voters is *different* than formal challenges. Outside of the EPB, perform the following steps when issuing the challenged ballot:

1. Write the ballot number in pencil on the upper left-hand corner of the ballot, being sure to avoid any barcodes or timing marks (not on the ballot stub).
2. Conceal this number with a small piece of white paper taped over the number.
3. Use the Challenged ballot button to enter the voter's ballot number into the e-Pollbook. If your precinct has more than one ballot style, issue the ballot style noted on the receipt.
4. The voter will then vote the ballot and place the ballot in the tabulator as usual.

## Process a Spoiled Ballot

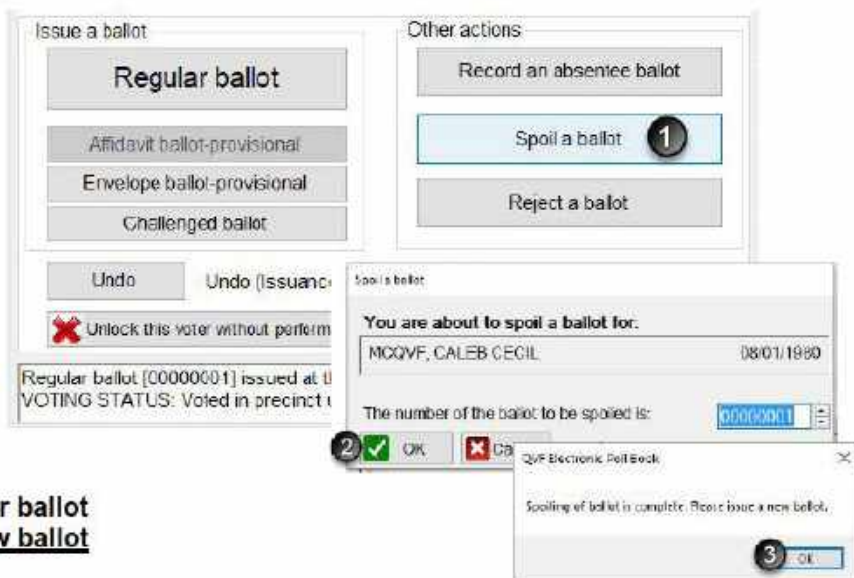
A voter may request a new ballot if needed and a new ballot must be issued, no matter how many times the voter requests a new one. The voter should write "SPOILED" at the top of their ballot, remove the ballot stub, and place in the Spoiled Ballot Envelope. Change the *Application to Vote* to note the new ballot number and record the new ballot in the EPB software.

### To spoil a ballot:

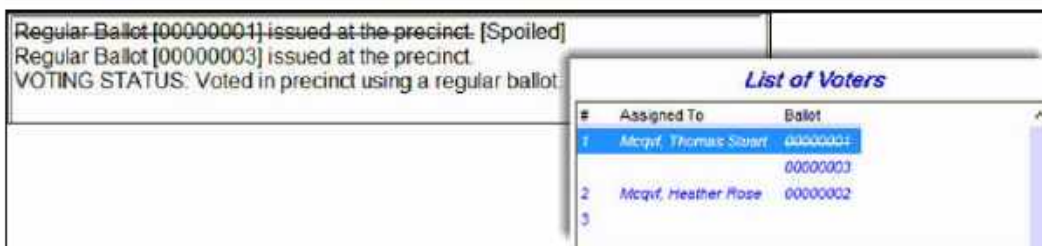
Pull the voter's record up in the EPB software by typing the voter's name into the DLN/Name field, entering the last name first, select the voter's name, click Lock this Voter Record and:

1. Click Spoil a ballot
2. Click OK – the software will automatically enter the ballot number you are spoiling.
3. Click OK

After the ballot is spoiled, the regular ballot process must be used to issue a new ballot to the voter.



Once the process is complete, verify the recording was done properly by looking at the Voter Status screen and the List of Voters.



## Find a Voter Not Appearing On This Precinct List

### Find a Voter in Other Precinct in Other Tab

Election inspectors can look up voters throughout the jurisdiction, not just in the precinct they are working. If the voter does not pop up after a search, click on the **Other** tab. If the voter is registered to vote within the jurisdiction, click on their name and view their polling location. Explain to the voter that they are registered in a different polling location and/or precinct and direct them to the appropriate location. Be sure to click back to the **This Precinct** tab before processing the next voter.

**Voter Search**

DLN / Name: MCQVF Search

This Precinct: Other Unlisted

These voters are located outside of the selected traser precincts:

Voter Name	DOB
MCQVF, A ANTONIO	01/23/1947
MCQVF, AARON ARIELLE	01/12/1947
MCQVF, ABAGAIL ALBERT	02/18/1947
MCQVF, ABBY ARLINE	05/03/1947
MCQVF, ABDULAZIZ ALFONZO	03/14/1947
MCQVF, ABIGAIL ANNA	01/08/1947
MCQVF, ADA ADINA	03/30/1947
MCQVF, ADALISA ALLENE	05/09/1947

### Add an Unlisted Voter

If a voter is not found under the **This Precinct** tab or the **Other** tab, the citizen was not registered to vote in the Qualified Voter File (QVF) for that jurisdiction at the time of the EPB download.

If the voter registered at the local clerk's office after the EPB was downloaded and has a receipt, add the voter to the list (steps 1-4) and see the next section of this manual, *Process Unlisted Voter with a Receipt*.

The chairperson, with the assistance of the Clerk (and utilizing the *Election Inspectors' Procedural Manual Flipchart* and *Missing Voters Flow Chart* listing options including a provisional ballot) should determine whether the citizen is eligible to vote. If it is determined that the citizen is a qualified voter that should vote in that precinct, they must be added to the list.

#### To add a voter to the list:

1. Click the Unlisted tab
2. Click New
3. Enter the voter's information
4. Click OK

After the voter is added, a ballot number must be assigned.

The Clerk will provide guidance on the type of ballot to issue the voter.

**Important note:** You must manually enter ballot numbers for unlisted voters, and the next regular ballot issued (for that ballot style) will need to be adjusted; it will not auto advance correctly.

**Voter Search**

DLN / Name: MCQVF Search

This Precinct: Other Unlisted

These voters are entered manually:

Voter Name	DOB
------------	-----

**New Unlisted Voter**

Last Name: [ ]

First Name: [ ]

Middle Name: [ ]

Suffix: [ ]

DOB: [ ]

Address: [ ]

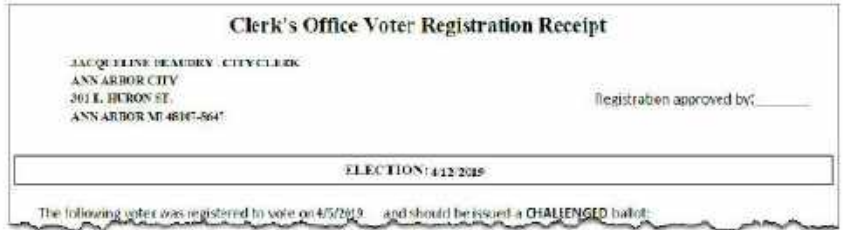
Voter Receipt:

License: [ ]

Ok Cancel

## Process an Unlisted Voter with a Receipt

When a voter is not found under the **This Precinct** tab or the **Other** tab and they were registered by the local clerk's office after the e-Pollbook was downloaded for the election they must present the Clerk's Office Voter Registration Receipt. The voter must be added to the EPB from the **Unlisted** tab, then a ballot can be issued per the instructions on the receipt.

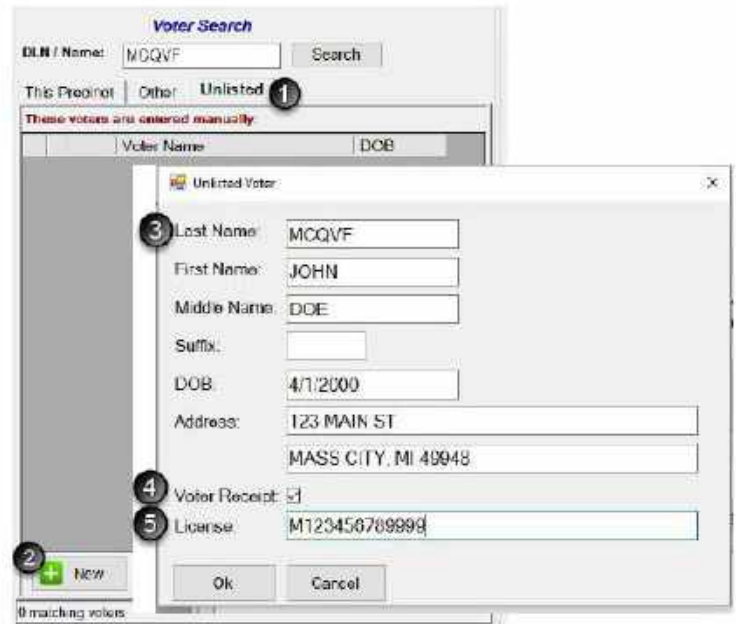


The image shows a 'Clerk's Office Voter Registration Receipt' form. At the top, it says 'JACQUELINE DEARBRY, CITY CLERK' followed by 'ANN ARBOR CITY' and '301 E. HURON ST. ANN ARBOR MI 48107-5647'. To the right, there is a line for 'Registrations approved by:'. Below this, a box contains 'ELECTION 1412 2019'. At the bottom, a note states: 'The following voter was registered to vote on 4/5/2019 and should be issued a CHALLENGED ballot.'

### To add a voter to the list:

1. Click the **Unlisted** tab
2. Click **New**
3. Enter the voter's information
4. Click the "Voter Receipt" box to enable the option and the cursor automatically moves to the License field
5. If the voter has a DL/PID, swipe the DL/PID or scan the barcode to add the id number and the **Unlisted Voter** window will automatically close. The ID number can also be hand-typed, then click **OK**.

After the voter is added, a ballot number must be assigned. Follow the instructions provided on the receipt to select the correct ballot type button (**Regular** or **Challenged**).



The image shows two overlapping software windows. The background window is 'Voter Search' with a search bar containing 'MCQVF' and a 'Search' button. Below the search bar are three tabs: 'This Precinct', 'Other', and 'Unlisted', with 'Unlisted' selected and circled with a '1'. Below the tabs, it says 'These voters are entered manually' and shows a table with columns 'Voter Name' and 'DOB'. The foreground window is 'Unlisted Voter' with fields for: Last Name (MCQVF), First Name (JOHN), Middle Name (DOE), Suffix, DOB (4/1/2000), Address (123 MAIN ST, MASS CITY, MI 49948), Voter Receipt (checked), and License (M123456789999). A 'New' button with a green plus sign is circled with a '2'. The 'Voter Receipt' checkbox is circled with a '4', and the License field is circled with a '5'. 'Ok' and 'Cancel' buttons are at the bottom.

If the receipt says that the ballot must be prepared as "challenged" perform the following steps:

1. Write the ballot number in pencil on the upper left-hand corner of the ballot, being sure to avoid any barcodes or timing marks (not on the ballot stub).
2. Conceal this number with a small piece of white paper taped over the number.
3. Use the **Challenged** ballot button to enter the voter's ballot number into the e-Pollbook. If your precinct has more than one ballot style, issue the ballot style noted on the receipt.
4. The voter will then vote the ballot and place the ballot in the tabulator as usual.

**Important note:** You must manually enter ballot numbers for unlisted voters, and the next regular ballot issued (for that ballot style) will need to be adjusted; it will not auto advance correctly.

## Process Other Voter Types

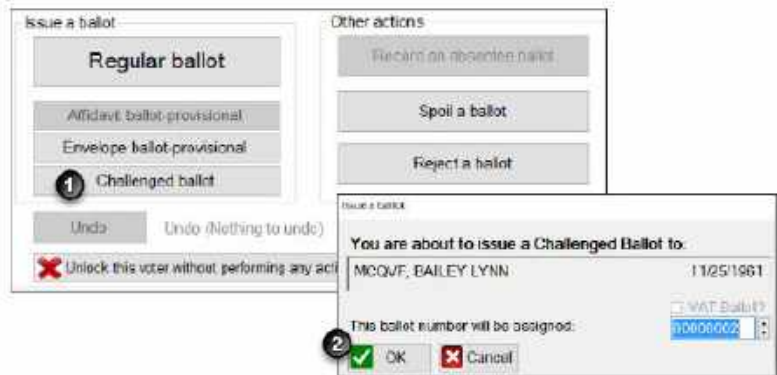
### Process a Voter Challenged by a Challenger

If a voter is challenged by a Challenger, the voter must be issued a Challenged ballot and that Challenged ballot must be recorded in the EPB. Please note, the Challenge must be directed to the chairperson and all steps must be carried out prior to issuing the challenged ballot. Follow the instructions below to issue a challenged ballot in the EPB software.

#### To issue a Ballot to a Challenged Voter:

Pull the voter's record up in the EPB software, lock it in if necessary and:

1. Click Challenged ballot
2. Verify the ballot number being issued is correct or enter the ballot number and Click OK



**Important note:** The ballot number must be written on the physical ballot and covered with a piece of paper or post-it tapes. In addition, full documentation of the challenge must be recorded in the paper binder pollbook.

### Record an Absentee Ballot

If absentee ballots are processed in the precinct and the Clerk has instructed entry into the EPB software versus using the paper Addendum List of AV voters, follow the instructions below to process the ballots in the EPB software.

#### To record an absentee ballot:

Pull the absent voter's record up in the EPB software, lock it in if necessary and:

1. Click Record an absentee ballot
2. Verify ballot number (enter if not auto filled) is the same as assigned and click OK

Once the process is complete, verify the recording was done properly by looking for AV next to the voter's name, the Voter Status screen and the List of Voters.

**NOTE:** If processing a FWAB or electronic MOVE ballot, simply accept the regular AV ballot number assigned or enter the AV ballot number assigned by the clerk.



## Record a Voter Assist Terminal (VAT) Ballot

When a voter requests to use the Voter Assist Terminal (VAT) to vote, issue a blank ballot (with a numbered stub). Since they will make their selections using the VAT which prints their votes on a blank ballot, they will not receive a regular ballot with a traditional number sequence.

To record such ballots in the Electronic Pollbook, search for the voter in the EPB as usual and select a ballot type to record. When assigning this voter's ballot number, indicate that it is a VAT Ballot by checking the VAT box. This action tells the system to use the blank ballot numbering sequence when auto advancing. If it is the first VAT ballot of the day, enter the first ballot number of the blank ballot stock. VAT ballot numbers will advance automatically like other ballots do when the Auto Advance option is enabled and after the first number is entered.

### To record a VAT ballot:

1. Click the button for the kind of ballot being assigned (Regular, Provisional...)
2. Add a checkmark to the VAT box
3. If this is the first VAT ballot of the day, enter the ballot number in, otherwise, confirm the VAT ballot number matches the sequence and click OK.

Issue a ballot

You are about to issue a Regular Ballot to:

MCQVF, RANDALL RUDOLPH 05/08/1993

This ballot number will be assigned:

VAT Ballot? 90001

OK Cancel



## Avoid or Correct Mistakes

If a voter is selected in error, simply click **Unlock this voter without performing any action** to return to the main screen.



If an entry mistake occurs, whether the wrong ballot number or the wrong voter was issued a ballot, using the **Undo** function will aid in correcting the mistake.

### To correct a mistake:

1. Search for the voter, using the DLN/Name search box
2. Select the voter
3. Click Lock this voter record
4. Click Undo
5. Click Yes

Notice the action you are undoing is in brackets next to the Undo button and in the confirmation box. Use the *Application(s) to Vote* to ensure you are making the correction properly. The **Undo** function should not be used to attempt to fix major mistakes. If several ballots have been issued out of sequence, correct this type of error with a remark and by ensuring the next voter is correct from that point forward.

**Important note:** The **Undo** feature is **NOT** for spoiling ballots (see *Spoiled Ballots* section for detail). If you have questions as to when the **Undo** function is appropriate to use, consult your local Clerk.

See *FAQ #1* at the back of this manual, if a voter was issued an incorrect ballot style.

The screenshot shows the 'Voter Details' interface for Randall Rudolph. A confirmation dialog box is open, asking to confirm the undo of a regular ballot issuance. The dialog box contains a yellow warning icon and the text: 'Confirm', 'Undo the following action: (Issuance of regular ballot [00090001])', 'Yes', and 'No'. Below the dialog box, the 'Undo' button is highlighted, with the text 'Undo (Issuance of regular ballot [00090001])' next to it. A red 'X' icon and the text 'Unlock this voter without performing any action' are also visible. The background shows voter information: Name: MCQVF, RANDALL RUDOLPH; DOB: 05/08/1993; Address: 2258 STATE HIGHWAY M38 MASS CITY MI 49948; Precinct: 00001; Ballot Style: 1B; Gender: M; Reg. Date: 05/12/2016; Eff. Rg. Date: 06/11/2016; Polling Location: ROUSSEAU TOWN HALL. Other options include 'Affidavit ballot-provisional', 'Envelope ballot-provisional', 'Challenged ballot', 'Spoil a ballot', and 'Reject a ballot'. The name 'JOHNSMITH' is visible at the bottom right.

Document received by the MI Macomb 16th Circuit Court.

## Make a Remark

Any time a correction is made, a remark should be entered. In addition, remarks should be made throughout the day to document events that happened in the polling place that are significant. Providing this information aids the Clerk in understanding what took place throughout the day. There are two types of remarks General or Specific, be sure to use the correct type based on the comment you need to make.

### To make a general remark:

1. Click File (or the *General Remarks* button and skip to step 3)
2. Click Remarks
3. Click New
4. Enter Remark, the EPB automatically records the date and time of the entry; however, if entry of the remark is delayed from the time the event occurred, then include the time the event took place in the remark.
5. Click OK
6. Click Close

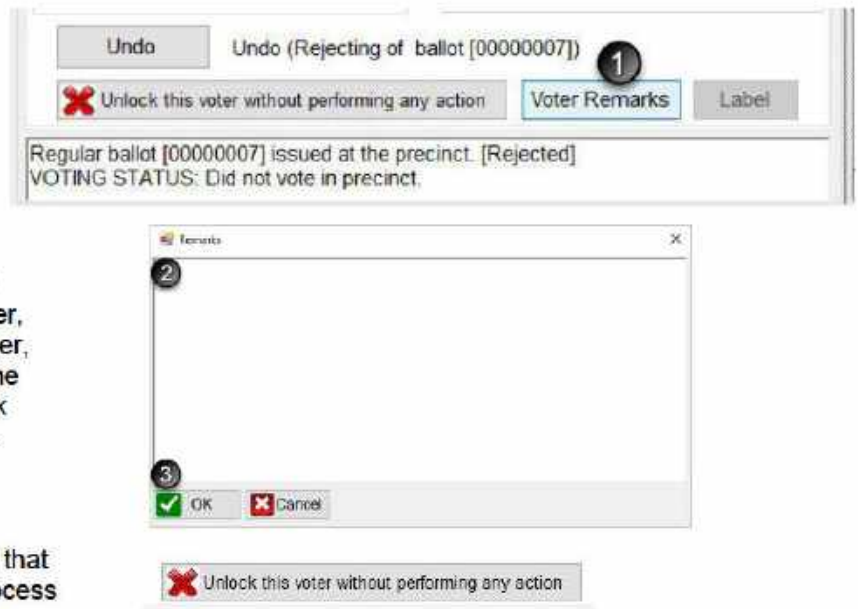


### To make a voter remark:

Pull the voter's record up in the EPB software, by typing the voter's name into the DLN/Name field, entering the last name first, click Lock this Voter Record and:

1. Click Voter Remarks
2. Enter Remark, the EPB automatically records the Voter Name, Voter Number, and date and time of the entry, however, adding the time is recommended as the EPB is not always available for remark entry at the time the event took place.
3. Click OK

If there are no other actions to perform on that voter, Unlock the voter and proceed to process the next voter.



## Reject a Ballot

A ballot is rejected only in a situation where a voter will not be issued a new ballot. Valid reasons for rejection are:

- **Exposure** – A voter intentionally exposed his or her marked ballot to others at the polling place.
- **Missing stub/ballot number does not agree** – It is discovered during the ballot serial number verification process that the stub on the ballot that was issued to the voter at the polls is missing or bears a different number than the number recorded on the voter's *Application to Vote*.
- **Ballot was left in booth/voter did not tabulate** – A voter neglected or refused to tabulate his or her ballot.

If any of these situations arise, a voter may not be issued a replacement ballot. The ballot must be rejected.

### To Reject a ballot:

Pull the voter's record up in the EPB software, by typing the voter's name into the DLN/Name field, entering the last name first, click Lock this Voter Record and:

1. Click Reject a ballot
2. Verify ballot number is the same as assigned - Click OK
3. Click OK
4. Record a Voter Remark (See previous page) that includes the reason for rejection

Reject a ballot

You are about to reject a ballot for:  
MCQVF, RAYMOND RAY 04/05/1993

The number of the ballot to be rejected is: 2 00000007

3 OK Cancel

Undo Undo (issuance of regular ballot [00000007])  
X Check this site without performing any action Voter Remarks Label

Regular ballot [00000007] issued at the precinct  
VOTING STATUS: voted in precinct using a Regular ballot

Voter Details

Name: MCQVF, RAYMOND RAY DOB: 04/05/1993  
Address: 2215 STATE HIGHWAY 100B MASS CITY MI 48918 Precinct: 00001  
Ballot Style: 1B  
Gender: M Reg. Date: 04/05/2016  
Polling Location: ROUSSEAU TOWN HALL Etl. Reg. Date: 06/05/2016

Other actions

Record an absentee ballot  
Spoil a ballot  
1 Reject a ballot

The EPB software will not allow another ballot to be issued to a voter with a rejected ballot. If a ballot was mistakenly rejected, the rejection must be removed by using the Undo button.

## Mark Unissued Ballots Defective

If a ballot becomes unusable and it is within the number range being used, record it defective in the EPB software to ensure balancing at the end of the night.

### To record defective ballots:

1. Click File
2. Click Un-issued Defective Ballots
3. Click Render Ballots Defective
4. Select the ballot style, enter the ballot number range, and record the reason the ballot is defective.
5. Click OK
6. Click Close

QVF Electronic Pollbook

1 File Edit View Reports Sys Adm

2 Un-issued Defective Ballots

6

Un-issued Defective Ballots

Use this screen to record un-issued ballots that are rendered defective. Close

Style Define a new range of defective ballots

4 Ballot Style: 1B

Ballot Number Range: 00000009 To 00000010 (2 ballots)

Remarks  
spilled coffee

5 OK Cancel

3 Render Ballots Defective Un-Render Ballots Defective

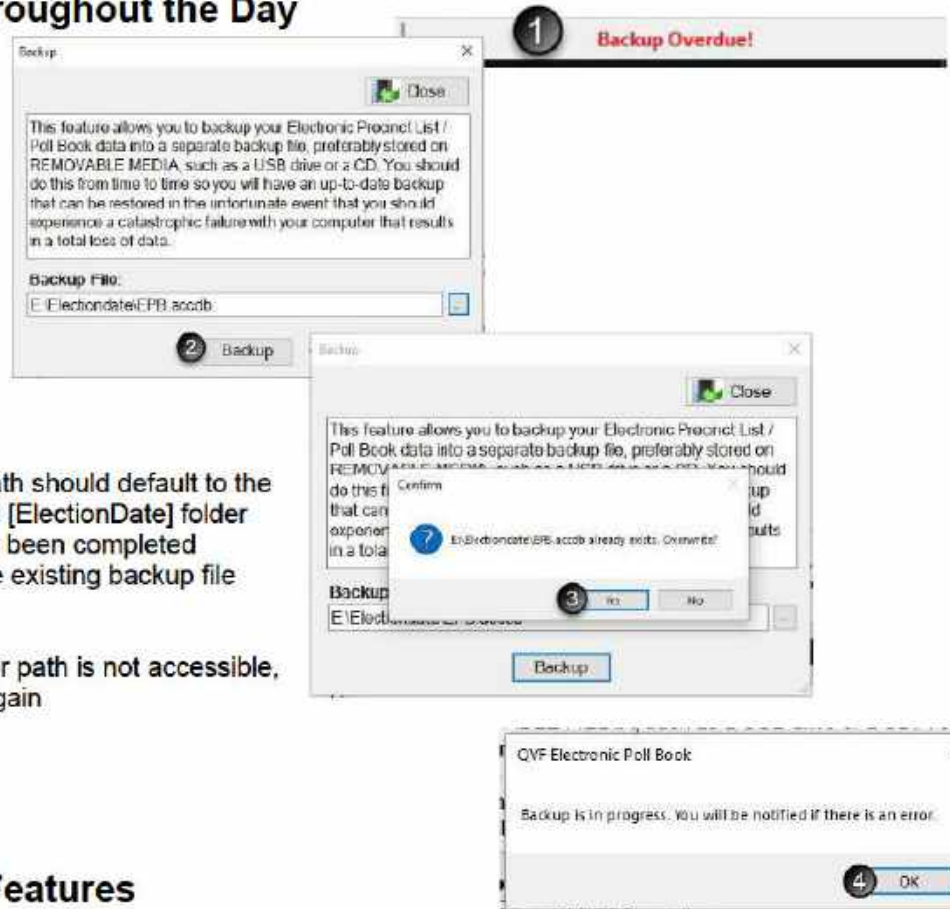
## Back up Regularly Throughout the Day

Approximately every half hour, the EPB software will notify the user that a backup is overdue. It is important to take a moment after processing a voter to update the backup. This will ensure the flash drive has the most recent data entered into the EPB in the event of a hardware failure.

### To Backup:

1. Click Backup Overdue
2. Click Backup – the file path should default to the encrypted flash drive and [ElectionDate] folder once the first backup has been completed
3. Click Yes to overwrite the existing backup file
4. Click OK

If you get an error that the drive or path is not accessible, log into your flash drive and try again



## Understand Timeout Features

For security reasons, the EPB software will logout a user after thirty minutes of inactivity. This can be avoided by moving the mouse and/or clicking into the DLN/Name field if there are long periods of inactivity. If the EPB software logs out the user, simply reenter the User Name and User Password and click Enter.

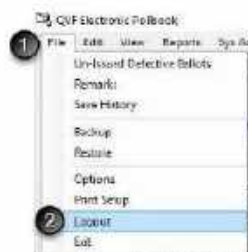


## Switch Users

To switch users, simply use the Logout function by:

1. Click File
2. Click Logout

Then simply log in with the new username and password.



The current user is listed in the lower right hand corner of the screen as illustrated:



## Restore the Database

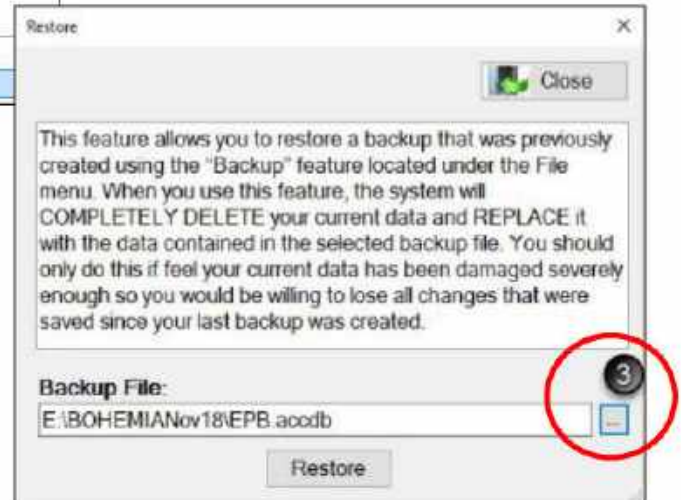
In the event the laptop fails and the EPB needs to be reinstalled on a new laptop on election day, the **Restore** feature will reload all of the information entered up to the point of the last backup. The only voter data missing would be entries made in the EPB since the last backup. That information can be added back in using the *Applications to Vote*. The Administrator username and password must be obtained from the Clerk for the initial login when the software is re-installed.

Once the EPB software has been installed onto the new laptop, login to the EPB software, and perform the following steps:

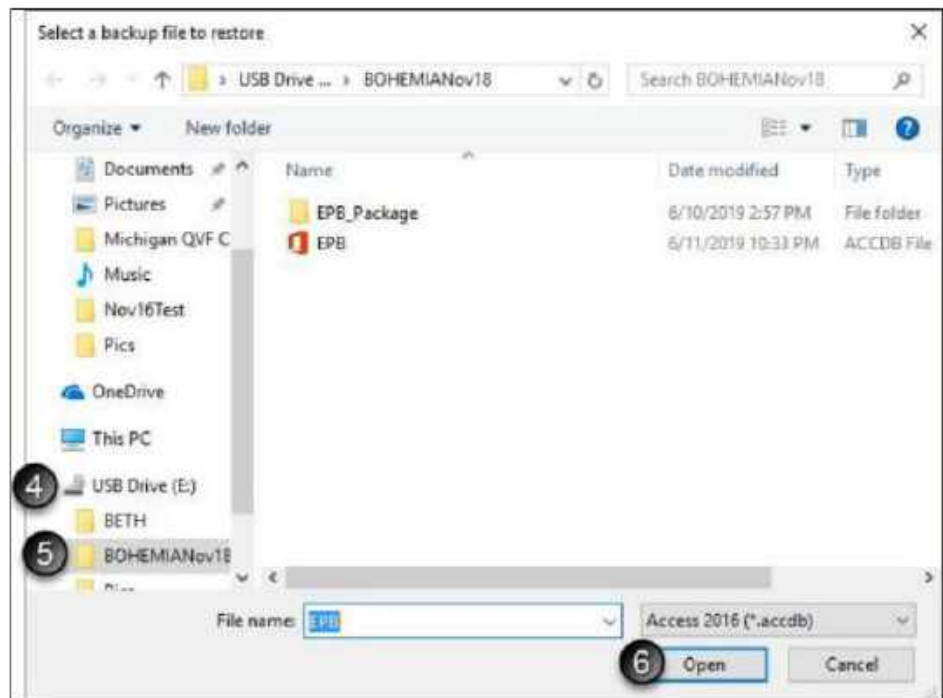
1. Click File
2. Click Restore



3. Click this button  at the end of the path field



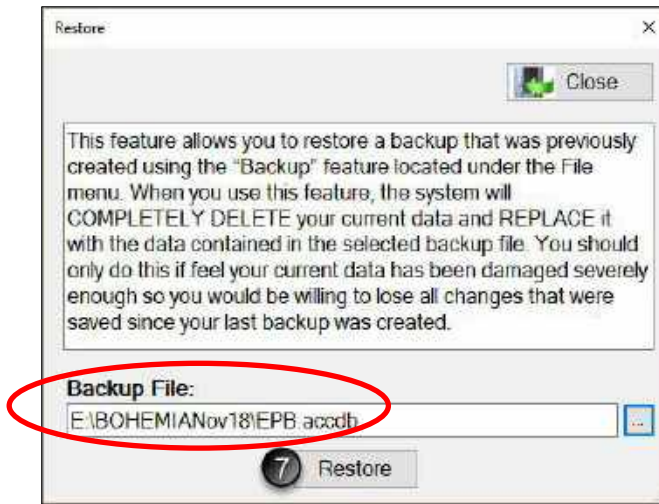
4. Make sure the encrypted flash drive is selected (Removable Disk E:) Drive letters may vary.
5. Double click [ElectionDate] folder
6. Click Open



7. Click Restore
8. Click Yes
9. Click OK

After restoration is complete, the election inspectors should review the Options under File>Options, then log out of the EPB and log back in with the username and password they had used prior to the laptop/software failure.

If time elapsed between the last backup and the restoring of data, use the *Application(s) to Vote* to re-enter voter(s) and process new voters.



## Election Day: Close the Polls

After the close of polls on Election Day, data processed in the EPB software must be saved one last time to the encrypted flash drive and reports must be generated to complete the paper binder pollbook. The EPB software generates the three reports necessary for completion of the paper binder pollbook/official record of the precinct in just a few steps. Those reports include the Ballot Summary, the List of Voters, and the Remarks report. After reports are saved and printed, save voter history in a manner that can easily be uploaded into the Qualified Voter File (QVF) in a matter of seconds, ensuring accurate recording of voters in the master voter registration database.

Review and complete the next six required steps. If your receiving board prints the reports, simply save each report.

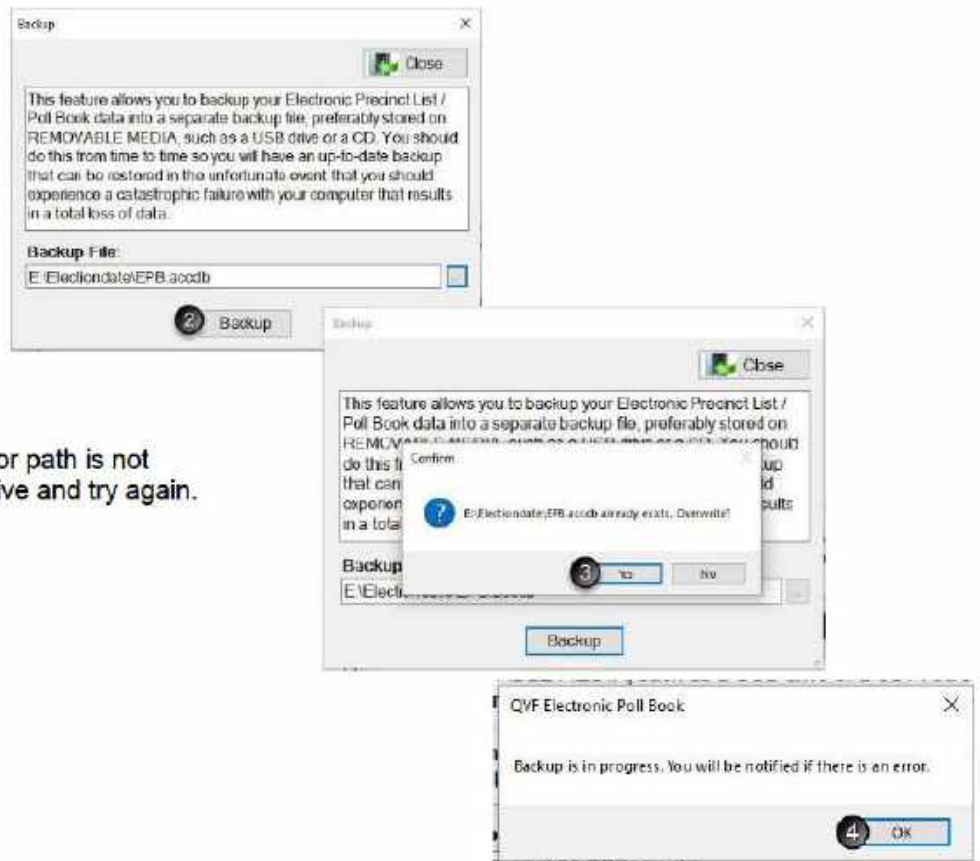
1. Save one last **Backup** file
2. Save and print the **Ballot Summary** Report
3. Save and print the **List of Voters** Report
4. Save and print the **Remarks** Report
5. Save **Voting History** (This is a frequently missed step, so please pay extra attention here!)
6. Look at the files saved on the flash drive and go back to save anything that was missed.

## Save Backup

After all voters have been processed in the EPB, perform one last **Backup** to ensure all data is saved to the encrypted flash drive.

1. Click **File**
2. Click **Backup**
3. Click **Backup**
4. Click **Yes**
5. Click **OK**

If you get an error that the drive or path is not accessible, log into your flash drive and try again.



## Save and Print Reports

### Save and print Ballot Summary Report

The **Ballot Summary** documents the total number of ballots assigned to the precinct and how each ballot was used. You already recorded spoiled or defective (F), rejected (G) and Provisional "envelope" (I) ballots and the software enters those numbers. The designated inspector enters the remaining numbers, and the EPB software will calculate and balance the **Ballot Summary**. Type in numbers carefully and use the Tab key to move between fields.

To complete the Ballot Summary:

1. Click Reports
2. Click Ballot Summary



Enter the Number of ballots delivered to the precinct for each ballot style:

3. (A) Enter the Starting number and the Ending number of the first ballot style. If using more than one ballot style or if any VAT ballots were used, tab to create a new line and repeat the process until all styles are listed. The Count will be calculated automatically.
4. (B) Enter the Number of AV return envelopes received by board, if absentee ballots are being processed in the precinct. If absentee ballots are not being processed in the precinct, this box will already be completed with a 0.

**NUMBER OF BALLOTS DELIVERED TO PRECINCT:**

A: Number of unvoted ballots delivered to precinct: Delete

Style	Starting No.	Ending No.	Count
1A	00001001	00001100	100
1B	00000001	00000100	100
VAT	00000001	00000100	100

Total =

B: Number of AV return envelopes received by board

C: Total

**NUMBER OF BALLOTS AT CLOSE OF POLLS:**

D: Number of ballots tabulated (Enter Tabulator Public Counter reading)

E: Number of AV ballot envelopes delivered to precinct which did not contain a ballot or were not processed

F: Number of ballots reissued to voters who spoiled their ballot at the polling place (spoiled or defective ballots)

G: Number of ballots rejected

H: Number of ballots used by election inspectors for ballot duplication

I: Number of provisional envelope ballots issued

J: Number of UNUSED BALLOTS:

Style	Starting No.	Ending No.	Count
1A	00001001	00001100	100
1B	00000012	00000100	89
VAT	00000002	00000100	99

Delete

Preview 9

Enter the Number of ballots at close of polls:

5. (D) Enter Number of ballots tabulated from the Tabulator Public Counter reading
6. (E) Enter the Number of AV ballot envelopes delivered to precinct which did not contain a ballot or were not processed for any reason, if absentee ballots are being processed in the precinct. If absentee ballots are not being processed in the precinct, this box will already be completed with a 0.
7. (H) Enter the Number of ballots used by election inspectors for ballot duplication.
8. (J) Enter the Number of Unused Ballots by entering the Starting Number (the next ballot that would be issued) and the Ending Number of the unused ballots. If using more than one ballot style, tab to create a new line and repeat the process until all styles are listed. Tab out of the box or place the cursor in a different box to make the totals calculate.

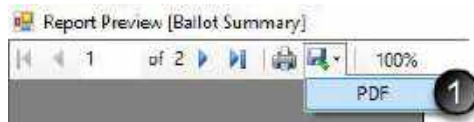
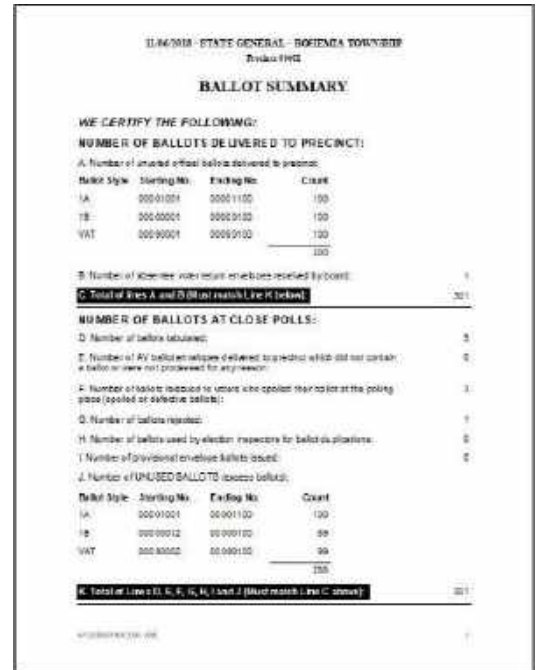
**SCROLL DOWN AND STOP – L must be 0. If L is not 0, double check items 3-8 and ensure everything was entered correctly. If there is a known reason for not balancing and it is unable to be resolved, a detailed Remark must be made to explain to the Board of Canvassers why the precinct does not balance.**



9. Click **Preview**

The **Ballot Summary** report will pop-up after clicking **Preview**. Be sure to review the summary to ensure all information was entered correctly and that the summary balances (**Line L = 0**). Line L may appear on a second page, so click the arrow to view the next page if necessary.

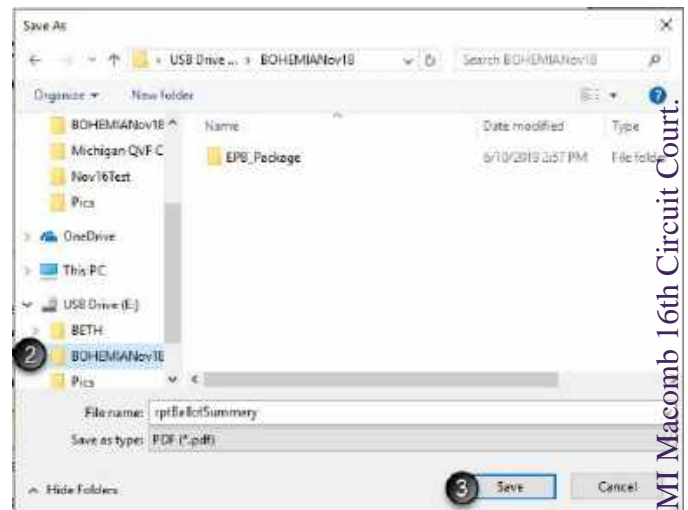
At this point, the **Ballot Summary** must be saved to the encrypted flash drive. If your precinct has the ability to print, the **Ballot Summary** should be printed as well. Otherwise, the reports will be printed at the Receiving Board.



**To save the Ballot Summary:**

1. Click the disk icon and PDF
2. Double click the [ElectionDate] folder in the encrypted flash drive (Removable Disk E:). Drive letters may vary.
3. Click Save

After the **Ballot Summary** has been saved, print the report (if applicable), close out of the preview screen, and close the Ballot Summary screen as well.



Document received by the MI Macomb 16th Circuit Court.

## Save and Print List of Voters Report



### To save the List of Voters:

1. Click Reports
2. Click List of Voters
3. Click the disk icon and PDF
4. The [ElectionDate] folder selected for the Ballot Summary should automatically pop up. Always check to make sure you are in the encrypted flash drive and the correct folder before clicking Save

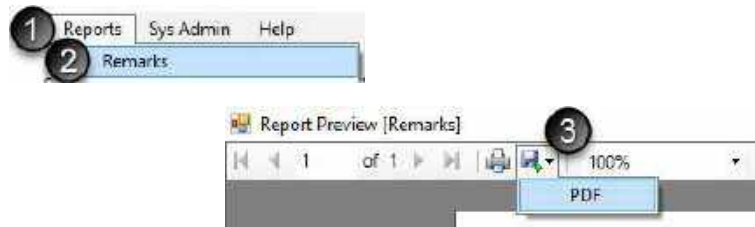
After the **List of Voters** has been saved, print the report (if printing in the precinct) and close out of the preview screen.

11/06/2018 - STATE GENERAL - BOHEMIA TOWNSHIP PRECINCT 1006			
LIST OF VOTERS			
#	Voter Name	Ballots	Remarks
1	MCQVF, LISA ANNE	00000004 00000003	Spilled
2	MCQVF, LISA LEE	00000002	Challenged
3	MCQVF, JOHN DOE	00000004	
4	MCQVF, RALBIGH GRANT	00000106	Absentee Ballot
5	MCQVF, RANDELL REGAN	00000001	
6	MCQVF, BANIA RASHIDI	00000005	
7	MCQVF, RAFAEL REYNALD	00000006	
8	MCQVF, RAYMOND RAY	00000007	Rejected
9	MCQVF, RASHIEDA RAYE	00000008	
10	MCQVF, RANSOM RITTER	00000011	

## Save and Print Remarks Report

**Remarks** recorded in the EPB software using the General Remarks and/or Voter Remarks are saved in a report also and must be saved to the encrypted flash drive. If your precinct has the ability to print, the **Remarks** should be printed as well.

### To save the Remarks report:



1. Click Reports
2. Click Remarks
3. Click the disk icon and PDF
4. The [ElectionDate] folder selected for the last two reports should automatically pop up. Always check to make sure you are in the encrypted flash drive and the correct folder before clicking Save

**Note:** There must be one recorded **Remark** for the report to save.

REMARKS				
Date / Time	User	Voter #	Voter Name	Remarks
6/11/2019 10:30:12 PM	JOHNSMITH	8	MCQVF, RAYMOND RAY	ballot rejected because voter failed to tabulate ballot
6/11/2019 10:25:45 PM	JOHNSMITH			Compared tabulator and list of voters; we still balance!

After the **Remarks** report has been saved, print the report (if using printers in the precinct) and close out of the preview screen.

## Save Voter History: Redirection Action Required!

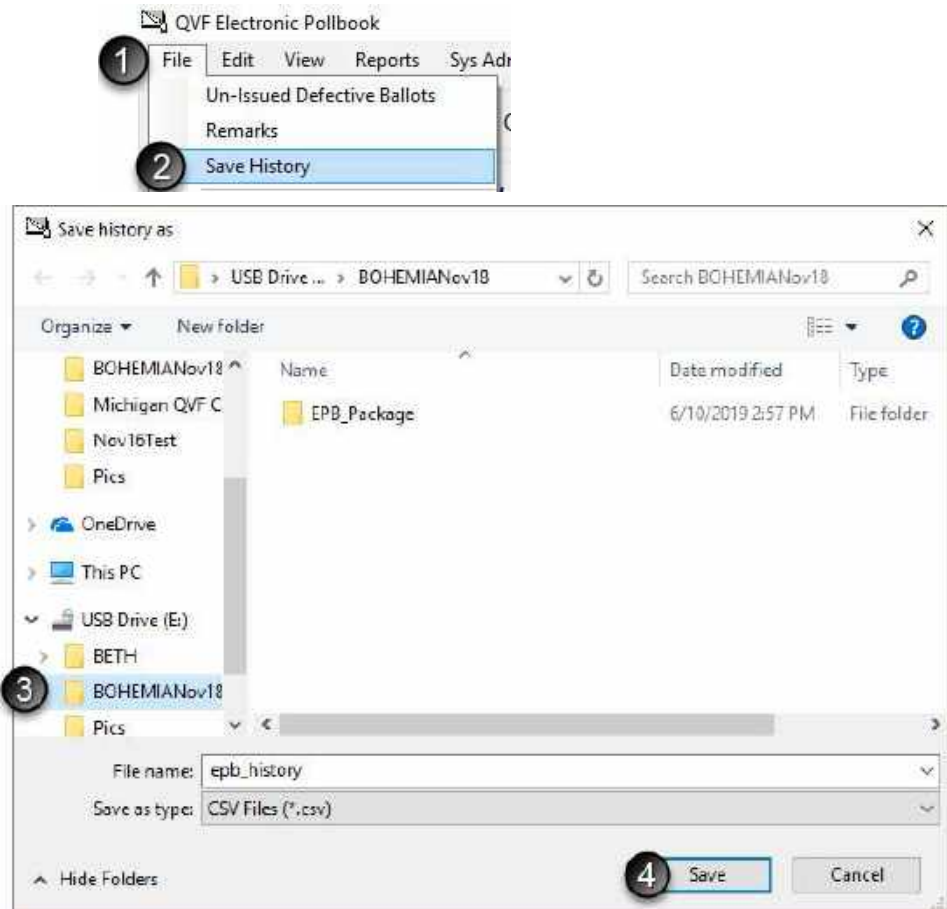
After all other reports are saved, save the voter history to the flash drive. The clerk needs to use this file to update the voter registration files in the Qualified Voter File (QVF) recording who voted on Election Day.

### To save Voter History:

1. Click File
2. Click Save History
3. Redirect the file by clicking on the flash drive under This PC, then double-click on the **Election Date** folder. The file name should say **epb\_history** with no preceding d:\

If d:\ is still in the File name, click the cursor at the beginning of the File name field and use the Delete key to delete the d:\

4. Click Save



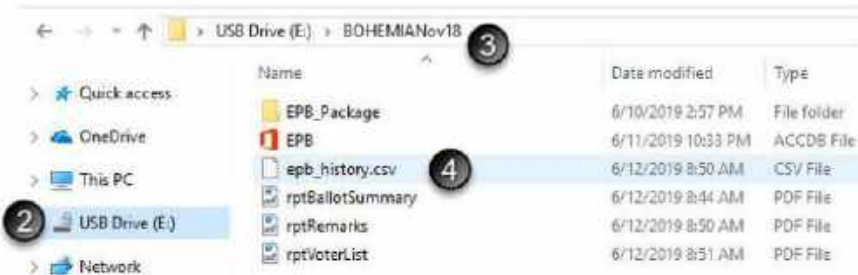
## Ensure Files are on Flash Drive

To verify files have been saved on the encrypted flash drive:

1. Click on the file folder icon to open Windows File Explorer
2. Click Removable Disk (E:) Drive letters may vary
3. Double Click the [ElectionDate] folder



4. You must have the following files:



File Name	File Type
EPB Back Up	ACCCDB file
EPB_History	CSV file
rptBallot Summary	PDF file
rptRemarks	PDF file
rptVoter List	PDF file

You may also see the following files in your folder:

File Name	File Type
EPB_Package	File Folder
EPB_Package	Compressed (zipped)

Once all reports have been saved, close all programs and shut down the laptop. Return all items to the case except the encrypted flash drive. **The encrypted flash drive must be placed into the container the Clerk recommends, sealed (either an envelope with a red paper seal or an approved container and the appropriate seal), and returned to the Clerk on election night.**

## Helpful Hints

### Bar Code Scanners and Absent Voter Ballots

When processing absent voter ballots in the precinct, bar code scanners may be used to scan the absentee ballot application for voter look-up. If the laptop has 4 USB ports, the bar code scanner may be used along with the magnetic card reader. If the laptop only has 3 USB ports, the bar code scanner can be used to scan the back of a driver's license, replacing the need for a magnetic card reader.

### Screen Resolution

Optimal screen resolution for the EPB laptop has been 1366x768. If your list of voters is not displaying on the right-hand side of your screen, the resolution needs to be adjusted.

#### To adjust the screen resolution:

1. Go to the desktop and right click
2. Click screen resolution
3. Select 1366x768

### Additional Resources

This EPB Inspector Manual is now available in the EPB under Help.

Your clerk may have provided you with a set of EPB Procedural Videos downloaded onto this laptop. These provide quick reminders of how to perform various Election Day tasks.

## Frequently Asked Questions

1. The wrong ballot style was issued to a voter, how can it be corrected?

**Answer:** If using different ballot numbers for each ballot style, no action is required except to remark the situation in the **Remarks**. If your ballot styles are numbered with the same ballot number series, open the voter's record, undo the issuance of the ballot with the incorrect ballot style, and reissue a Regular Ballot with a modified number using a letter before the number (for example, X0000012) and remark the situation in the **Remarks**.

2. Is there a way to setup all election inspector usernames and passwords into the software before the EPB software is downloaded on to the encrypted flash drive?

**Answer:** Yes, QVF Basic or Complete users can set up usernames and passwords in QVF.

3. If using the QVF AV module, do I have to extract the EPB software from QVF **after 4:00 p.m.** on the Monday before the election to get the most up to date absent voter information?

**Answer:** Yes, this is now required by law. Jurisdictions with over 50 precincts are required to do so on the Saturday prior to Election Day **after 2:00 p.m.**

4. Is there a way to update absent voter activity on the encrypted flash drive or in the Voter List portion of the EPB software after it has been installed on the laptop?

**Answer:** No, not at this time. Also, remember that election inspectors record AV ballots in the EPB software (unless using the addendum list or an AVCB), but they must **not** record AV ballots in the EPB software before the opening of the polls.

5. Do I have to print the paper binder pollbook reports in the precinct?

**Answer:** No, in fact, having the Receiving Board print the reports is highly recommended. Reports must be delivered to the Receiving Board on the encrypted flash drive in a sealed container by two election inspectors of opposing political party after the polls close. The Receiving Board then prints the reports and completes the paper binder pollbook.

6. Do I need to use a particular type of printer with the laptops?

**Answer:** No. Most printers will work with the laptops as long as the proper printer driver is installed. Complete the installation as soon as possible to verify the laptop and printer are compatible.

7. Do I have to have a hardcopy precinct list and full paper binder pollbook with a List of Voters, Ballot Summary and a Remarks section at each precinct if I use the EPB software?

**Answer:** Under the terms of your User Agreement, you are required to have a hardcopy Precinct List and a hardcopy List of Voters, Ballot Summary, and Remarks Section available for immediate delivery to the precinct in the event of a system failure. One may be printed from the Elections eLearning Center; see *Election Day Use of the QVF Precinct List*.

8. The EPB software allows me to issue a ballot to a voter who has already returned an absent voter ballot. Why is this permitted?

**Answer:** Under rare circumstances, an absentee ballot may have been recorded incorrectly in QVF. Election inspectors **MUST** contact the local clerk to verify the status of the absentee ballot before issuing a ballot to a voter who, according to the EPB software, has already returned an absent voter ballot.

9. How do I change the time and time zone on my laptop?

**Answer:** Right-click on the time and date, click Date and Time Settings. Here you can select the appropriate time zone. If you need to adjust the time, turn off the "Set time automatically" option, then click the Change button. Once the time is corrected, you can turn the "Set time automatically" option back on.

10. Do I have to use the EPB software to process absent voters in the precinct?

**Answer:** No, you may use the Addendum List of Absent Voters method and add the list to the paper binder pollbook.

11. What if an absent voter does not return their ballot? Or if the absent voter surrenders their AV ballot in the polls? Do I need to indicate this in the EPB software?

**Answer:** No. Only process an absentee ballot in the voter's record when the ballot has been received for processing. If the voter has surrendered their absent voter ballot, simply issue a precinct ballot using the normal process. The Spoil a ballot function should never be used for an absent voter ballot in the EPB software.

12. Will Unlisted Voters transfer to QVF after the Voter History has been updated?

**Answer:** Some may, and some may not. Unlisted voters without a driver's license or state ID number will not transfer into QVF after Voter History has been updated. The registration of an Unlisted voter must be added to QVF if it has not been already added, and then Voter History for the Unlisted voter can be entered manually in QVF under Voter>Voting History.

13. Is there a way to view all actions taken in the EPB on Election Day?

**Answer:** Yes. An Activity Log Report can be viewed at any time by selecting Reports > Activity Log Report. This Report may be printed as well.

14. Is there a way to convert the List of Voters into a .csv file?

**Answer:** Not at this time.

15. What if my laptop "freezes up" and stops responding?

**Answer:** First, try to close and reopen the EPB program, using Ctrl + Alt + Delete if necessary to use the Task Manager to end the task and close the EPB application. If that doesn't work, you may restart the computer. Remember to log back into the flash drive as well as the EPB program before you begin working again.

## Glossary

**Antivirus Software** is a software program that helps protect the laptop from viruses that could damage or shut down the machine.

**Backup** is a file that replicates and saves entered data for use in the event of a system failure.

**Ballot Style** is a designation to distinguish amongst ballots in a precinct that has a District split. For example, Precinct One represents voters from County Commission District 5 and 7. If the County Commission position is on the ballot, Precinct One will have two ballot styles, one for District 5 and one for District 7.

**BitLocker** is free encryption software from Microsoft. For the E-Pollbook, it is software on flash drives issued by the State after 2015, used to protect data on a flash drive with a password.

**Data Security** is the means of ensuring that data is kept safe from corruption and that access to it is suitably controlled. Thus, data security helps to ensure privacy. It also helps in protecting personal data.

**e-Pollbook Software** is a computer software program created in the Qualified Voter File (QVF) to be loaded on a laptop and used in the precinct on election day to record voters and the ballots they are issued.

**Encryption** is the process of transforming information using an algorithm to make it unreadable to anyone except those possessing the password.

**Encrypted Flash Drive** is a digital storage device that has the ability to encrypt data and keep the data secure.

**Encryption Password** is a password created to allow access to the encrypted e-pollbook software once downloaded from QVF.

**Election Geography** is a function of QVF where precinct combinations and ballot style names can be set for an election. The information entered in the QVF Election Geography module will then tell the EPB software which precincts have been combined and the preferred name for ballot styles in split precincts.

**Lockout** is an e-pollbook software feature that disallows the issuance of a ballot number more than once per ballot style.

**Privacy Zone** is a term the V-Safe 100 software uses to define the encrypted area of the flash drive. This only applies to flash drives issued by the State prior to 2015.

**Receiving Board** is a board established by the local Election Commission responsible for ensuring 1) all ballot containers delivered to the clerk after the polls close are properly sealed 2) all seal numbers are properly recorded and 3) the number of names entered in the Poll Book balances with the number of ballots counted in the precinct. For more information visit [michigan.gov/elections](http://michigan.gov/elections) and click on "Information for Election Administrators."

**Strong Password** is a password that contains a combination of 8-16 characters, mixed case with at least one number.

**V-Safe 100** is the name of the encryption software installed on earlier versions of the State issued flash drive prior to 2015.



# Quick Reference Checklists

## Pre-Election Day – Clerk Setup

### General Laptop Preparation

- Update antivirus software
- Ensure print driver software has been installed (if applicable)
- Update Windows
- Fully charge battery

### EPB Software Download from QVF

- Review Election Geography
- Set up EPB inspector accounts in QVF
- Insert the encrypted flash drive into a USB port on the QVF computer
- Login to encrypted flash drive
- Create a folder on the desktop
- Log into QVF and create the EPB software
- Move EPB software to encrypted flash drive

### EPB Installation on laptop

- Take encrypted flash drive to laptop and plug in to a USB port
- Log into encrypted flash drive
- Copy folder to the desktop
- Run the EPB software setup file
- Log into the EPB software and select the precinct
- Set Options
- Setup Users

## Election Day – Election Inspector Setup

### Preparing the EPB for Opening the Polls

- Power laptop on
- Make sure the laptop is not connected to the internet and is in Airplane Mode
- Insert the encrypted flash drive into a USB port
- Log into the encrypted flash drive
- Log into the EPB software
- Change options and setup users as recommended by the Clerk, e.g., allow the recording of AV Ballots
- Perform the first EPB backup to establish correct file path to the flash drive.

### Throughout the Day

- Assign ballots and ensure all voters are documented in the EPB software
- Verify status problems
- Backup the EPB software regularly
- Record Remarks as necessary

### Closing the Polls

- Perform one final Backup
- Complete the Ballot Summary Report, ensure it balances (L=0) and save to the encrypted flash drive
- Save the List of Voters Report to the encrypted flash drive
- Save the Remarks Report to the encrypted flash drive
- Save Voter History file to the encrypted flash drive
- Ensure all files are on the encrypted flash drive
- Print reports (if applicable)
- Deliver encrypted flash drive under seal in the Clerk-recommended container to the Receiving Board or Clerk

## **Post Close of Polls**

### **Receiving Board**

- Print Ballot Summary
- Print List of Voters
- Print Remarks

### **Clerk**

- Upload Voter History *within 7 days* of the election
- Uninstall the EPB software from the laptop *7 days after* the canvas of the election
- Delete the [ElectionDate] folder from the encrypted flash drive *7 days after* the canvas of the election
- Delete the [ElectionDate] folder from the QVF desktop *7 days after* the canvas of the election (if applicable)
- Delete any other EPB file(s) that may have been saved
- Properly store the laptop and associated battery

### **Maintenance**

- Calendar and update antivirus software
- Calendar and update Windows updates

STATE OF MICHIGAN  
IN THE 16<sup>TH</sup> CIRCUIT COURT  
COUNTY OF MACOMB

MICHAEL LEWIS BUTZ,

Plaintiff,

v.

Case No. 2023-002852-CZ  
Hon. Edward A. Servitto, Jr.

JENNIFER ZELMANSKI, et al.

Defendants.

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ATTACHMENT M

*Detroit News v Co of Wayne*, Unpublished Per  
Curiam Opinion of the Michigan Court of Appeals,  
Docket No. 235831 (March 15, 2002)

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STATE OF MICHIGAN  
COURT OF APPEALS

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DETROIT NEWS,

Plaintiff-Appellee,

v

COUNTY OF WAYNE,

Defendant-Appellant.

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UNPUBLISHED

March 15, 2002

No. 235831

Wayne Circuit Court

LC No. 01-118800-CZ

Before: Talbot, P.J., and Smolenski and Wilder, JJ.

PER CURIAM.

Plaintiff brought this action alleging defendant violated Michigan's Freedom of Information Act, MCL 15.231 *et seq.* ("FOIA") by refusing to disclose certain employee information about Wayne County employees. The trial court determined that the requested information was not exempt from disclosure and ordered defendant to produce the requested records. Defendant appeals by right. We affirm.

Pursuant to the FOIA, plaintiff requested the following information from defendant: (1) the name, job title, and salary or hourly pay rate for all Wayne County officials and employees for the calendar years 2000 and 2001, (2) the names of all employees who received longevity pay, and the amount of each payment for the calendar years 1999 and 2000, (3) the names of all employees who received pay for annual leave, accumulative leave, and the amount of leave pay each received for the calendar years 1999 and 2000, (4) the names of all employees who received pay for accumulated sick leave and the amount of sick pay each received during the calendar years 1999 and 2000, (5) the names of all employees who received flat rate mileage reimbursements and the monthly amount each received as of April 2, 2001, and (6) the names of all employees who had a county vehicle assigned to them as of April 2, 2001, and the year, make and model of each assigned vehicle.

Defendant denied plaintiff's request. Defendant relied on MCL 15.243(1)(d) of the FOIA, which provides that "[r]ecords or information specifically described and exempted from disclosure by statute" may be exempted from disclosure as a public record under the FOIA. Defendant maintained that the records plaintiff sought were part of the records of the Department of Personnel/Human Resources, a division created under the Wayne County Charter ("The Charter"). Defendant asserted that the Charter is controlled by the Civil Service Act, MCL 38.401 *et seq.*, which provides that "employees' records shall be confidential and not open for public inspection." MCL 38.412(g).

Plaintiff filed a complaint against defendant for an alleged FOIA violation along with a motion for an expedited order to show cause. The trial court proceeded on the assumption that the Civil Service Act governs the Charter, but the court concluded that the requested records did not fall within the exemptions of MCL 38.412(g), and ordered defendant to produce the records.

Defendant's appeal raises two legal issues: (1) Does the County Employees Civil Service Act ("Civil Service Act"), MCL 38.412(g), exempt the requested information from FOIA disclosure, and (2) can a negative inference be made that the Legislature intended to protect from disclosure other public employee salaries when it amended the FOIA, Section 13a, MCL 15.243a, to expressly provide for the disclosure of the salaries of public education employees? We conclude that the Civil Service Act does not exempt the requested information from FOIA disclosure, and that the Legislature, by amending the FOIA, did not intend to bar the FOIA disclosure of public employee salaries.

## I

Section 13 of the FOIA, MCL 15.243(1)(d), provides that "[r]ecords or information specifically described and exempted from disclosure by statute" may be exempted from disclosure as a public record. Defendant contends that MCL 38.412(g), of the Civil Service Act exempts the requested information from disclosure. We conclude that MCL 38.412(g) is inapplicable to the requested records.

A determination whether a public record is exempt from disclosure under the FOIA is a mixed question of law and fact. *Schroeder v City of Detroit*, 221 Mich App 364, 366; 561 NW2d 497 (1997). We review the trial court's factual findings for clear error and review the questions of law de novo on appeal. *Id.* Statutory interpretation is a question of law that is also subject to review de novo on appeal. *Oakland Co Bd of Co Rd Comm'rs v Michigan Property & Casualty Guaranty Ass'n*, 456 Mich 590, 610; 575 NW2d 751 (1998).

The trial court did not rule on the question whether the Civil Service Act governs the current civil service system in Wayne County, in light of the Wayne County Charter and Reorganization Plan ("Charter"), adopted by the electorate on November 3, 1981, effective January 1, 1983.<sup>1</sup> However, even assuming arguendo, as did the trial court in this case, that the Civil Service Act applies, a reading of the plain language of MCL 38.412(g) shows that it does

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<sup>1</sup> At the request of the trial court, the parties orally argued the issue of whether the Civil Service Act governed the Charter, but the trial court did not decide the issue, and it proceeded under the assumption that the Civil Service Act applied. Because the argument was not decided by the court, it is not preserved for appeal. *Swickard v Wayne Co Medical Examiner*, 438 Mich 536, 562; 475 NW2d 304 (1991); *Herald Co, Inc, v Ann Arbor Public Schools*, 224 Mich App 266, 278; 568 NW2d 411 (1997). Further, defendant failed to brief, and plaintiff did not fully brief, this issue in the trial court, and both parties have not fully briefed this question on appeal, giving their arguments only cursory attention. We decline to address the issue when the record relating to it is not fully developed and when the issue is unnecessary for this Court's review. *Kent Co Deputy Sheriff's Ass'n v Kent Co Sheriff*, 463 Mich 353, 356 n7; 616 NW2d 677 (2000).

not exclude the requested records from FOIA disclosure. Section 13 of the Civil Service Act, MCL 38.412, provides that the Civil Service Commission:

(g) . . . Shall have such other powers and perform such other duties as may be necessary to carry out the provisions hereof.

\* \* \*

**Service records.** It shall cause to be kept in each department and division thereof, records of the service of each employee, known as “service records”. These records shall contain fact statements on all matters relating to the character and quality of the work done and the attitude of the individual to his work.

**Service records; armed services records; confidential records.** It shall keep a roster of the employees of the county, together with a record of service, military or naval experience and such other matters as may have a bearing on promotion, transfer or discharge. *All such “service records” and employees’ records shall be confidential and not open for public inspection.* [Emphasis added.]

Defendant argues that the requested information qualifies as a “service record,” defined by MCL 38.412(g) as those records that “contain fact statements on all matters relating to the character and quality of the work done and the attitude of the individual to his work.” In support of its argument, defendant merely offers a generalized statement that “[c]ompensation and benefit information include facts related to the employee’s work and attitude.”<sup>2</sup>

The exemptions in the FOIA are to be narrowly construed, and the burden of proving their applicability rests with the public body. *Booth Newspapers, Inc v Univ of Michigan Bd of Regents*, 444 Mich 211, 232; 507 NW2d 422 (1993). To meet the burden of proving that public records are exempt from disclosure, the public body claiming the exemption should provide complete particularized justification, rather than simply repeat statutory language. *Hyson v Dep’t of Corrections*, 205 Mich App 422, 424; 521 NW2d 841 (1994). Because defendant failed to support its claim with a complete particularized justification, it failed to carry its burden of showing that the requested records qualify as “service records.”

Defendant also argues that MCL 38.412(g) does not define the term “employees’ records” and that the plain meaning of the term encompasses the requested records. We disagree. A plain reading of the language of the statute shows that it does point to the definition of the term “employees’ records” and excludes the requested records from its statutory exemption.

The primary goal of judicial interpretation of statutes is to give effect to the intent of the Legislature. *Farrington v Total Petroleum, Inc*, 442 Mich 201, 212; 501 NW2d 76 (1993). The first criterion in determining intent is the specific language of the statute. *Indenbaum v Michigan*

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<sup>2</sup> We note that during oral argument, defense counsel conceded that the statute adequately defines the term “service records.”

*Bd of Medicine (After Remand)*, 213 Mich App 263, 270; 539 NW2d 574 (1995). The Legislature is presumed to have intended the meaning it plainly expressed. *Id.* In determining legislative intent, we look first at the words of the statute. *Id.* The words of the statute must be given their ordinary and plain meaning; only if the language is ambiguous may the courts look beyond the statute to determine the intent of the Legislature. *DiBenedetto v West Shore Hosp*, 461 Mich 394, 402; 605 NW2d 300 (2000). When statutory language is clear and unambiguous, this Court must honor the legislative intent as clearly indicated in that language. *Western Michigan Univ Bd of Control v Michigan*, 455 Mich 531, 538; 565 NW2d 828 (1997). No further construction is required or permitted. *Id.*

The statutory language at issue is the following sentence: “All such ‘service records’ and employees’ records shall be confidential and not open for public inspection.” MCL 38.412(g). Plaintiff argues that the word “such” modifies the term “employees’ records.” Defendant argues that it does not. The only logical conclusion that can be drawn from a reading of the sentence is that the word “such” modifies the term “employees’ records” because of the absence of a separating comma after the term “service records” and before the connective word “and.” Punctuation is an important factor in determining legislative intent, and the rules of grammar are presumed to have been known to the Legislature. *Kizer v Livingston Co Board of Comm’rs*, 38 Mich App 239, 251; 195 NW2d 884 (1972). Therefore, the absence of a separating comma before the connective conjunction suggests that the word “such” was intended to modify the term “employees’ records.”

The word “such” is not defined in the statute. Therefore, we look to the dictionary definition for its ordinary and plain meaning. *DiBenedetto, supra* at 402. The relevant dictionary definitions of the adjective “such” include “of the kind, character, degree . . . indicated or implied” or “being the . . . things indicated.” *Random House Webster’s College Dictionary* (1997). The word “such” is properly used as an adjective when reference has previously been made to a category of persons or things, meaning “of that kind.” *Garner, A Dictionary of Modern American Usage* (Oxford University Press, 1998). Furthermore, “such” is a pointing word that must refer to a clear antecedent. *Id.* A pointing word should always have an identifiable referent. *Id.* A “pointing word” is a word like *this, that, these, those, and it*, which points directly to an antecedent. *Id.* An “antecedent” is a word, phrase, or clause that is replaced later by a pronoun or other substitute. *Random House Webster’s College Dictionary* (1997). A reading of the sentence in question points directly to two antecedents: the “service records” in the immediately preceding paragraph, and the “roster of the employees of the county, together with a record of service, military or naval experience and such other matters as may have a bearing on promotion, transfer or discharge” in the immediately preceding sentence. Because it is clear that the term “service records” in the sentence at issue refers to the “service records” defined in the preceding paragraph in the statute, the only conclusion to be made is that the term “employees’ records” in the sentence at issue is the term that the Legislature chose to describe the second antecedent. Contrary to defendant’s contention that the term “employees’ records” was not defined in the statute, we conclude that a plain reading of the statute shows that it is defined, albeit indirectly.

We reject defendant’s argument that had the Legislature intended to restrict “employees’ records” to the items described in the preceding sentence, the Act would have read “these records shall be confidential” or “the foregoing records shall be confidential.” Defendant does not

explain the basis of its conclusion that the above sentence structures are the only syntax usages that the Legislature employs or should employ.

We find no ambiguity in the language of MCL 38.412(g), and therefore we may not look beyond the statute to determine the intent of the Legislature. *DiBenedetto, supra* at 402. Thus, an “employee record” as defined by MCL 38.412(g) is a record that contains “a record of service, military or naval experience and such other matters as may have a bearing on promotion, transfer or discharge.” Defendant failed to show that the requested records of employee job title, salary, paid or used sick and annual leave, mileage reimbursement or the use of assigned county vehicles, have “a bearing on promotion, transfer or discharge.” Therefore, the requested records do not fall within the definition of “employees’ records” pursuant to MCL 38.412(g), and are not exempt from FOIA disclosure.<sup>3</sup>

## II

Defendant next argues that when the Legislature amended the FOIA, section 13a, MCL 15.243a,<sup>4</sup> to expressly require only the disclosure of the salaries of public education employees, it did not expressly include the disclosure of other public employee salaries, and, consequently, a negative inference may be made that the Legislature did not intend that the salaries of other government employees be disclosed to the public. We disagree.

The FOIA is an act requiring full disclosure of public records unless a statutory exemption precludes the disclosure of information. *Messenger v Consumer & Industry Services*, 238 Mich App 524, 531; 606 NW2d 38 (1999); MCL 15.243(1)(d). Rather than specifying which records would be subject to disclosure, the Legislature chose to provide that, unless expressly exempt under Section 13 of the FOIA, all public records are subject to public disclosure. *Penokie v Michigan Technological Univ*, 93 Mich App 650, 657; 287 NW2d 304 (1979).

Here, it is undisputed that salary information of Wayne County employees are public records. However, defendant cites no statutory exemption that expressly exempts the release of

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<sup>3</sup> We do not address here the issue whether the disclosure of the requested information would constitute an invasion of individual privacy, subsection 13(1)(a) of the FOIA, MCL 15.243(1)(a), because defendant does not raise it on appeal. We note, however, that defense counsel alluded to the question during oral argument.

<sup>4</sup> Section 13a of MCL 15.243a reads as follows:

Notwithstanding section 13, an institution of higher education established under section 5, 6, or 7 of article 8 of the state constitution of 1963; a school district as defined in section 6 of Act No. 451 of the Public Acts of 1976, being section 380.6 of the Michigan Compiled Laws; an intermediate school district as defined in section 4 of Act No. 451 of the Public Acts of 1976, being section 380.4 of the Michigan Compiled Laws; or a community college established under Act No. 331 of the Public Acts of 1966, as amended, being sections 389.1 to 389.195 of the Michigan Compiled Laws shall upon request make available to the public the salary records of an employee or other official of the institution of higher education, school district, intermediate school district, or community college. [Footnote omitted.]



the Wayne County employee salaries, other than MCL 38.412(g), which, as previously discussed, is inapplicable. In construing a statute, a court may consider a variety of factors and apply principles of statutory construction, but should not ignore common sense. *Marquis v Hartford Accident & Indemnity (After Remand)*, 444 Mich 638, 644; 513 NW2d 799 (1994). Common sense dictates that the manner in which Wayne County allocates taxpayer monies in the form of salaries is “information regarding the affairs of government and the official acts of those who represent [the people] as public officials and public employees.” MCL 15.231(2).

The Legislature enacted 1979 PA 130, effective October 26, 1979, which amended the FOIA by adding Section 13a, MCL 15.243a. *Penokie, supra* at 664 n 7. The addition mandates the disclosure of the salary records of employees of institutions of higher education, school districts, intermediate school districts and community colleges. MCL 15.243a. In *Penokie*, this Court noted that MCL 15.432a represents a clarification of, rather than a substantive change in, prior law.<sup>5</sup> *Id.* at 664 n 7. The legislative history of the amendment indicates that the purpose of the amendment was to remove from the public educational institutions the discretion whether to disclose salary information, and make the disclosure mandatory pursuant to the FOIA. As noted in the House Legislative Analysis Section regarding the release of school salary information, the proponents of the bill argued that because other public employee salary information was available, there was no reason to provide an exemption for the disclosure of school teacher salaries. Thus, because the FOIA does not expressly exempt the disclosure of records of public employee salaries, defendant’s argument is without merit.

Affirmed.

/s/ Michael J. Talbot  
/s/ Michael R. Smolenski  
/s/ Kurtis T. Wilder

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<sup>5</sup> It must be noted here that the Legislature enacted MCL 15.234a subsequently to the decision in *Penokie*, but prior to the release date of the opinion. *Penokie, supra* at 664 n 7. The issue in *Penokie* was the disclosure of salary records of university employees pursuant to the privacy provision of FOIA, MCL 15.243(1)(a).