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Attorney for Petitioners

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN – SOUTHERN DIVISION

UNITED SOVEREIGN AMERICANS, INC.
167 Lamp and Lantern Village, Suite 194
Chesterfield, Missouri 63017

And

MICHIGAN FAIR ELECTIONS INSTITUTE
P.O. Box 41
Stockbridge, Michigan 49285

And

TIMOTHY MAURO-VETTER
6505 Arrowhead Ct.
Davisburg, Michigan 48350

And

BRADEN GIACOBAZZI
6 Parakeet Hill Dr.
Orion Twp, Michigan 48359

And

CIVIL ACTION

Case No.: 24-12256

HON. ROBERT WHITE

MAG. ANTHONY P. PATTI

PETITIONERS' RESPONSE IN OPPOSITION TO RESPONDENTS MICHIGAN SECRETARY OF STATE JOCELYN BENSON AND MICHIGAN ATTORNEY GENERAL DANA NESSEL'S MOTION TO DISMISS

PHANI MANTRAVADI
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Brighton, Michigan 48116

And

PHILIP O'HALLORIN
294 Cayuga Rd.
Lake Orion, Michigan 48362

And

DONNA BRANDENBURG
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Bryon Center, Michigan 49315

And
NICK SOMBERG
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Waterford Twp, Michigan 48328

Petitioners,

v.

JOCELYN BENSON IN HER OFFICIAL CAPACITY AS THE MICHIGAN SECRETARY OF STATE
430 W Allegan Street
Richard H. Austin Building – 4th Floor
Lansing. Michigan 48918

And

MICHIGAN BUREAU OF ELECTIONS
1250 Wilson St.
Marquette, Michigan 49855

And

DANA NESSEL, IN HER OFFICIAL CAPACITY AS ATTORNEY GENERAL OF MICHIGAN
525 W. Ottawa St.
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And

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Respondents.

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BRIEF OF PETITIONERS IN OPPOSITION TO RESPONDENTS

MOTION TO DISMISS

I. SUMMARY OF ARGUMENT

Respondent, Michigan Secretary of State Jocelyn Benson and Michigan Bureau of Elections[1] (*hereinafter* "Respondents") assert that this Court lacks subject-matter jurisdiction in the above-captioned matter because Petitioners, United Sovereign Americans, Inc. (*hereinafter* "USA"), Michigan Fair Elections Institute, Timonthy Maura-Vetter, Braden Giacobazzi, Donna Brandenburg, and Nick Somberg (collectively Petitioners), lack Article III standing. A complaint must simply *allege* standing; standing need not be *proven* at the pleading stage. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992). Standing ultimately requires injury, causation, and redressability, all of which are alleged in the Complaint. Qualified voters have constitutionally protected voting rights, and that an official's failure to adhere to state and federal election laws amounts to a deprivation of that legally protected interest. These principles fit squarely within the purview of Petitioners' allegations. Petitioners alleged actions by Respondents which caused injury to their right to vote, and to access public information. As further explained below, the

[1] To the extent the Michigan Attorney General does not have a role in the time, place, and manner of federal elections, or in their conduct, within Michigan, Plaintiffs concur that the claim against the Attorney General should be dismissed

Complaint appropriately alleges a particularized injury and imminent risk of future harm rather than a generalized grievance shared by the community. Petitioners respectfully suggest that possess standing to invoke federal jurisdiction.

Respondents also contend that Petitioners' claims are barred by the Eleventh Amendment, which in most instances state officials affords sovereign immunity. However, Eleventh Amendment sovereign immunity is subject to several exceptions, including that established by the Supreme Court in *Ex parte Young*. 209 U.S. 123 (1908). The *Young* exception properly permits lawsuits against state officials in their official capacities where a plaintiff alleges an ongoing violation of federal law and seeks prospective relief as a means of addressing that violation. *Verizon Md., Inc. v. Public Serv. Comm'n of Md.*, 535 U.S. 635, 645 (2002). Here, the *mandamus* relief Petitioners request in the Complaint is prospective, and therefore *Young* does not allow Respondents to invoke Eleventh Amendment sovereign immunity as a means of precluding Petitioners' claims.

Lastly, Respondents contend that Petitioners have failed to state a valid claim under the All Writs Act because the requested relief is not "in aid of" a matter over which this Court has jurisdiction, *mandamus* is not "necessary or appropriate" to resolve Petitioners' claims, and such exceeds the permissible scope of a writ of *mandamus*. As Respondents argue that they (or some of them) need not comply with Congressional mandates simply because they are state officials, this is a case of first

impression, and accordingly the cases cited in support of Respondents' argument offer little guidance. By including language in the Elections Clause, U.S. Const., art. I, § 4, the authors or "Framers" of the Constitution reserved to Congress the ultimate authority to regulate federal elections conducted by the several states. Congress has exercised this power to supersede the states through legislation such as the National Voter Registration Act[2] (*hereinafter* "NVRA"), and the Help America Vote Act[3] (*hereinafter* "HAVA"). Further, by enacting the All Writs Act, Congress created an enforcement mechanism by which federal courts become empowered to compel state election officials to comply with mandates of Congress in the supervision of federal elections. Petitioners assert that state election officials supervising federal elections become quasi-federal officers, and thus are subject to Congressional oversight enforced by federal courts when carrying out any election-related duties delegated to them by the state legislature to regulate and administer federal elections. This crucial departure from the concepts of dual sovereignty and federalism makes a writ of *mandamus* both appropriate *and* necessary to properly adjudicate Petitioners' claims that state election officials have failed in their duty.

[2] 52 U.S.C. §§ 20501 *et seq*.
[3] 52 U.S.C. §§ 20901 *et seq*.

II. ARGUMENT

In response to a Motion to Dismiss, Petitioner is not required to prove factual allegations to overcome a 12(b)(6) motion. *CompuSpa, Inc. v. IBM*, 228 F. Supp. 2d 613, 624-625. When ruling on a motion under Rule 12(b)(6) …the court must 'accept the well-pled allegations of the complaint as true,' and 'construe the facts and reasonable inferences derived therefrom in the light most favorable to the plaintiff.'" *Signal Hill Capital Group LLC v. CMO Int'l ApS*, 2014 U.S. Dist. LEXIS 81967 (citing *Ibarra v. United States*, 120 F.3d 472, 474 (4th Cir. 1997)). "To survive a motion to dismiss, the factual allegations of a complaint 'must be enough to raise a right to relief above the speculative level . . . on the assumption that all the allegations in the complaint are true (even if doubtful in fact).'" *Id*. (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007)). This Court should deny the Respondents' Motion to Dismiss because this Court has subject matter jurisdiction over the Petitioners, and Petitioners submitted a well pleaded complaint.

A. The Amended Complaint contains allegations sufficient to invoke federal jurisdiction.

Article III of the Constitution limits the jurisdiction of federal courts to "Cases" and "Controversies." U.S. Const. art. III, § 2. "One element of the case-or-controversy requirement [of Article III] is that plaintiffs must establish that they have standing to sue." *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 408 (2013) (internal

citations and quotation marks omitted). To invoke federal jurisdiction, a plaintiff must satisfy the "irreducible" minimum requirements of Article III standing: (1) injury-in-fact; (2) causation; and (3) redressability. *Lujan*, 504 U.S. at 560-561. "To establish injury in fact, a plaintiff must show that he or she suffered 'an invasion of a legally protected interest' that is 'concrete and particularized' and 'actual or imminent, not conjectural or hypothetical.'" *Spokeo, Inc. v. Robins*, 578 U.S. 330, 339 (2016) (quoting *Lujan*, 504 U.S. at 560). In other words, the injury must affect the "plaintiff in a personal and individual way." *Lujan*, 504 U.S. at 560. *See Gill v. Whitford*, 585 U.S. 48, 65 (2018) ("a person's right to vote is individual and personal in nature") (internal citation and quotation marks omitted). The injury must also be actual or imminent, not speculative, meaning the injury must have already occurred or be likely to occur in the near future. *Clapper*, 568 U.S. at 409. Importantly, "if one party has standing, then identical claims brought by other parties to the same lawsuit are also justiciable." *Memphis A. Philip Randolph Inst. v. Hargett*, 2 F.4th 548, 555 (6th Cir. 2021).

It is a well-recognized principle that any person whose right to vote has been impaired has standing to sue. *Gray v. Sanders*, 372 U.S. 368, 375 (1963). Qualified voters have a constitutionally protected right to cast their ballots and have their votes counted and reported correctly, undiluted by illegal ballots. *Id.* at 380. As stated by the Supreme Court regarding voting rights, "the most basic of political rights, [are]

sufficiently concrete and specific" to establish standing. *Federal Election Comm'n v. Akins*, 524 U.S. 11, 24 (1998). Respondents argue that Petitioners' claims amount to mere generalized grievances concerning improper government conduct and therefore have failed to establish Article III standing. Generalized grievances in the context of standing refer to instances where a plaintiff's harm concerns "his and every citizen's interest in proper application of the Constitution and laws and seeking relief that no more directly and tangibly benefits him than it does the public at large." *Lujan*, 504 U.S. at 573. However, the Supreme Court has previously held that a group of qualified voters alleging that a state's action diminished the effectiveness of their vote *did not* amount to a generalized grievance. *Baker v. Carr*, 369 U.S. 186, 208 (1962).

While persons do not have standing to sue when they claim an injury that is suffered by all members of the public, "where the harm is concrete, though widely shared, the Court has found 'injury in fact.'" *Akins*, 524 U.S. at 24. The Supreme Court has been clear that "where large numbers of voters suffer interference with voting rights…" the interests related to that are sufficiently concrete to obtain the standing necessary to seek redress under Article III. *Id*. In *Massachusetts v. Envtl. Prot. Agency*, the "…EPA maintain[ed] that because greenhouse gas emissions inflict widespread harm, the doctrine of standing presents an insuperable jurisdictional obstacle." 549 U.S. 497, 517 (2007). The Court found that the "EPA's

steadfast refusal to regulate greenhouse gas emissions presents a risk of harm to Massachusetts that is both 'actual' and 'imminent.'" *Id*. at 498-499. Here, the harms implicating voting rights are arguably widespread (as, *arguendo,* are the effects of greenhouse gas emissions). Thus, Petitioners complaining of election-related injuries from Respondents also have standing to seek review by federal courts under Article III, just as did those seeking relief in the cases cited above.

The Supreme Court has stated that when a plaintiff is a group or organization representing several persons with similar injuries, such "representational standing" exists when an organization's "members would otherwise have standing to sue in their own right, the interests at stake are germane to that organization's purpose, and neither the claim asserted, nor the relief requested, requires the participation of individual members in the lawsuit." *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 181 (2000); *Gillis v. U.S. Dept. of Health and Human Servs.*, 759 F.2d 565, 579 (6th Cir. 1985). Additionally, an organization can assert an injury in its own right when a defendant's actions impede efforts to promulgate its organizational mission. *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982). To establish such organizational standing, the organization must advance allegations identifying at least one (1) member who has suffered or will suffer injury. *Tenn. Republican Party v. Sec. and Exch. Comm'n*, 863 F.3d 507, 520 (6th Cir. 2017). However, the specificity requirements do not mandate identification

of all individuals who were harmed if "*all* the members of the organization are affected by the challenged activity." *Id*. (quoting *Summers v. Earth Island Inst.*, 555 U.S. 488, 498-99 (2009)).

The Complaint here alleges standing sufficient to establish subject-matter jurisdiction under Article III. Respondents, however, argue that Petitioners lack Article III standing for failure to allege an injury-in-fact with requisite specificity as to the deprivation of a legally protected interest and the imminent risk of future harm. Consider that Timothy Mauro-Vetter, a qualified voter in Michigan, along with USA, has alleged they sent multiple written inquiries to state election officials requesting information relative to the state's election law compliance. Michigan officials mostly rebuffed these efforts or provided outdated information. The information Timothy Mauro-Vetter did receive showed a massive number of apparent errors in the voter registration index that directly impacted the votes recorded in Michigan's 2022 election. This data was discussed at length in the complaint and if not corrected will cause the same harm in 2024 and following federal elections due to the cyclical nature of elections. The Respondents rebuffed the data as unreliable, yet the data was collected and provided by the Michigan Election Bureau.[4] To argue with the data is

[4] The reliability of the data pled in the complaint is not at issue at the present stage of this litigation. Petitioners believe and therefore aver the data contained in their complaint is accurate as are the expert conclusions petitioners present. It may well be that Michigan disputes the data it provided Petitioners which, Petitioners suggest is for the court to consider another day.

to argue with the data collected from the State itself. The Respondents could not state for any certainty that the data collected from Petitioner's FIOA requests was inaccurate. Consider further, Donna Bradenburg, a candidate for Michigan Governor, was affected directly by the election results. So too Braden Giacobazzi, a qualified voter, recount and poll challenger, and candidate for Orion Township Clerk in Michigan in 2024, will be directly impacted if this Court does not require Respondents to perform hold their duties to ensure Congressional mandates are followed. prior to the state certifying the vote. Phani Mantrvadi is a Michigan citizen who is CEO of CheckMyVote.com, whose for profit business was negatively impacted and will be further impacted because the State of Michigan supplied him compromised and inaccurate election data. Nick Somberg, qualified voter in Michigan who cast ballots in 2022 and will again in 2024 will have his vote diluted if Respondents, in violation of Congressional mandates, permit large numbers of people to vote (other than provisionally) whose registrations are suspect.

Respondents' assertion that Petitioners lack standing by virtue of Petitioners' failure to assert a legally cognizable injury, and likelihood of *future* harm in *subsequent* federal elections administered by Respondents, ignores the factual allegations Petitioners have plainly stated in the Complaint. Petitioners contend they are entirely reasonable in fearing that the demonstrated and pled issues which occurred in the 2022 federal election in Michigan will reoccur since Michigan

election officials, as alleged in the complaint, have done nothing to correct those errors despite notice.

Turning to the issue of whether Petitioners' injury constitutes simply a generalized grievance shared by the whole community, Petitioners suggest it was not the whole community that sent written inquiries to agents of Respondents requesting transparency as to Michigan's compliance with federal election laws and explanations regarding documented voter and registration irregularities. In the same vein, Respondents did not deny the whole community of such requests. Respondents denied Petitioners' requests specifically. The whole community did not comb through innumerable pages of hard voter data to ascertain the accuracy of voter registration rolls, Petitioners did that. The whole community did not create a comprehensive report on apparent registration and voting violations, Petitioners did. Petitioners, *not* Respondents, informed the whole community of these issues, and the whole community could not have realized them on its own. Petitioners themselves, took these actions which distinguished Petitioners from the community at large -- actions which are not in the abstract. Rather, Petitioners have advanced multiple and specific allegations concerning, *inter alia*, discrepancies in voting records, which suggest that this is not merely a speculative issue, but a very real problem causing Petitioners and Petitioners' members legitimate concerns over

whether Michigan is counting and considering their votes in such a way that Petitioners' votes are undiluted.

In sum, for purposes of a Motion to Dismiss, the Complaint states a sufficiently plausible cause of action, at the early stages of litigation, to confer presumptive standing upon Petitioners. Petitioners set forth in the Complaint a series of factual allegations establishing that named Petitioners are individuals qualified to vote in Michigan whose votes were diluted in 2022 through Respondents' failure to ensure that Michigan's voting systems and voter registration records met certain federal standards prior to certification. Though Respondents received notice of these apparent errors, they did not take sufficient (or any) actions to investigate the cause for these apparent errors reasonably leading Petitioners to believe that the same (or similar apparent errors will recur in 2024, 2026, and in every subsequent federal election if Respondents fails to investigate and, where warranted, correct these anomalies going forward. Thus, the complaint is not moot due to the cyclical nature of the election process. If the errors identified are not corrected, the election's integrity will continue to be called into question. Petitioners have identified said anomalies and have pled they brought them to the attention of Michigan election officials who bear the responsibility delegated by the General Assembly to regulate federal elections. Respondents and their agents have failed to investigate and address these anomalies despite Respondents' duty and responsibility to do so. No other

means exist to require a government official to perform his duties apart from a writ of *mandamus*.

Petitioners have brought this action in an effort to require, through court order, the state of Michigan to investigate and take appropriate action concerning the apparent errors Petitioners have brought to Respondents' attention. Petitioners do not seek this Court to order Respondents *how* to perform their jobs. Petitioners seek court intervention to require Respondents simply to *do* their jobs and take whatever action Respondents consider appropriate in order to comply with Congressional mandates. Petitioner contend the Court ought to order Respondents to report to the Court's satisfaction the reasons for such significant discrepancies, for example, how it is possible that in 2022, various Michigan county boards of elections could possibly have certified in a federal election where more votes were counted than ballots case. As alleged in the Complaint, Petitioners have attempted to gain access to this information through other means, such as public information requests, but Respondents have repeatedly refused. Petitioners suggest they have satisfied the injury-in-fact requirement under Article III, in order to confer subject-matter jurisdiction upon this Court in order to seek the requested relief.[5]

[5] While Petitioners maintain that USA have organizational standing, as both exist for the sole purpose of preserving the integrity of federal elections and therefore the claims set forth in the Complaint are directly tied to their respective organizational missions, neither organization is seeking a distinctive form of relief from the other named Petitioners, and as such each has standing in this action.

B. Petitioners' claims are not barred by Eleventh Amendment sovereign immunity protection by virtue of the *Ex parte Young* exception.

The Eleventh Amendment affords sovereign immunity to government entities, subject to several exceptions. *League of Women Voters of Ohio v. Brunner*, 548 F.3d 463, 474 (6th Cir. 2008). Ordinarily, then, citizens are precluded from filing federal lawsuits against state officials. *Id*. One such exception, pursuant to the doctrine announced in *Ex parte Young*, is applicable where "a state official is sued in his official capacity for purely injunctive relief." *Id*. (citing *Young*, 209 U.S. at 155-56). The applicability of *Young* concerns "whether [the] complaint alleges an ongoing violation of federal law and seeks relief properly characterized as prospective." *Verizon*, 535 U.S. at 645; *Telespectrum v. Public Service Comm'n*, 227 F.3d 414, 419 (6th Cir. 2000). The focus of these inquiries pertain to the allegations only, and "does not include an analysis of the merits of the claim." *Verizon Md., Inc.*, 535 U.S. at 646.

In *Young*, the Supreme Court created a mechanism by which officials and government entities ordinarily afforded Eleventh Amendment protections are stripped of sovereign immunity in "specific situations in which it is necessary to permit the federal courts to vindicate federal rights and hold state officials responsible to the supreme authority of the United States." *Russell v. Lundergan-Grimes*, 784 F.3d 1037, 1049 (6th Cir. 2015) (quoting *Papasan v. Allain*, 478 U.S.

265, 277 (1986)). Especially relevant here, "[e]njoining a statewide official under *Young* ***based on his obligation to enforce a law is appropriate when there is a realistic possibility the official will take legal or administrative actions against the plaintiff's interests***." *Russell*, 784 F.3d at 1048. (Emphasis added).

In support of their sovereign immunity argument, Respondents addresses the other Eleventh Amendment exceptions at length but only briefly discusses the *Young* doctrine. Respondents avers *Young*, however, is inapplicable to Petitioners' claims on the basis that Petitioners do not seek injunctive or declaratory relief, completely ignoring the nature of *mandamus*. Petitioners argue that *mandamus* relief and injunctive relief are functionally equivalent in the *Young* context, as both are forms of equitable relief and each form of relief is prospective in nature. Conversely, the *Young* exception is wholly inapplicable where a plaintiff is seeking monetary damages, which Petitioners notably have not done. *See McKay v. Thompson*, 226 F.3d 752, 757 (6th Cir. 2000) ("the Eleventh Amendment permits prospective injunctive relief, but not damage awards, for suits against individuals in their official capacities"). As such, Petitioners contend that the Supreme Court, through *Young* and its progeny, did not mean to apply the exception to plaintiffs seeking declaratory and/or injunctive relief to the exclusion of those requesting other equitable relief such as that Petitioners seek here through *mandamus*.

It defies logic that Respondents contend, essentially, that since relief in *mandamus* is not the same as relief by injunction, the *Young* exception does not apply. Both injunctive relief and *mandamus* relief in the present context would seek this Court to order Respondents to perform their duties without alleging monetary damages. Respondents premise their argument on injunctive relief being a different form of relief than *mandamus* relief, but their argument fails because under the current factual pattern, the two (2) forms of equitable relief are functionally the same.[6] Accordingly, by application of the *Young* exception, Respondents are not afforded Eleventh Amendment sovereign immunity in this matter.

C. Petitioners have stated a valid claim under the All Writs Act, as state election officials become quasi-federal officers subject to Congressional oversight when regulating and administering federal elections, and therefore *mandamus* relief under the All Writs Act is the only remedy available to adjudicate Petitioners' claims.

Under the Elections Clause, Congress conferred to individual state legislatures the authority to conduct statewide federal elections. U.S. Const. art. I, § 4. The Constitution's Framers' intent is clear upon a plain reading of the Constitution. The various states have *presumptive* authority to regulate and administer the election of all federal officers. However, by including the language

[6] This is not to suggest that Petitioners might not later seek injunctive relief, but by pursuing an ultimately successful action in *mandamus* now, Petitioners hope to avoid having to seek an injunction later during the short time window between General Election day and the date by which Michigan must certify its results.

"…but the Congress may at any time by Law make or alter such Regulations," the Framers clearly and unambiguously intended Congress retains the ultimate authority under the Constitution to regulate federal elections. U.S. Const. art. I, § 4. Thus, the Constitution spells out that the *default* authority to regulate federal elections lies with the several states in the absence of acts of Congress. This makes the states subordinate to Congress. The Framers *intentionally* intertwined the powers of the various states with those of Congress in the conducting of federal elections, while making certain Congress maintained the ultimate power over the selection of its own members, thereby carving out a narrow exception to the principles of dual sovereignty and federalism. Accordingly, since the Constitution reserves to Congress the *ultimate* power to regulate federal elections, while simultaneously delegating the *presumptive* power to individual state legislatures. The Michigan General Assembly has further delegated the state's power to regulate federal elections to the Office of the Secretary of State. The Secretary of State, though not a federal officer *per se*, Constitutionally and by necessity, becomes a quasi-federal officer as an agent of the Michigan General Assembly. The Secretary of State directly oversees the Michigan Bureau of Elections including all federal election ballots, holding that office as a quasi-federal agent as well. Thus, they are both required to carry out federal election statutes passed by Congress, including HAVA and NVRA. In fact, they have no choice but to do so.

While a state official, generally, is insulated from federal judicial review when exercising power within the exclusive domain of a state interest, "such insulation is not carried over when state power is used as an instrument for circumventing a federally protected right." *Gray*, 372 U.S. at 372 (citing *Gomillion v. Lightfoot*, 364 U.S. 339, 347 (1960)). Federal courts regard the right to vote in a fairly conducted election as federally protected, *Reynolds v. Sims*, 377 U.S. 533, 554-55 (1964), and the Supreme Court decreed that Congress has authority under the Constitution's Necessary and Proper Clause to regulate any activity during a mixed federal/state election that exposes the federal election process to potential misuse, whether that harm materializes or not. *In re: Coy*, 127 U.S. 731, 752 (1888); *United States v. Slone*, 411 F.3d 643, 647 (6th Cir. 2005). "Every voter in a federal…election…whether he votes for a candidate with little chance of winning or for one with little chance of losing, has a right under the Constitution to have his vote fairly counted, without its being distorted by fraudulently cast votes. *Anderson v. United States*, 417 U.S. 211, 227 (1974). "[T]he right to vote freely for a candidate of one's choice is of the essence of a democratic society," *Oregan v. Mitchell*, 400 U.S. 112, 138-39 (1970). Congress chose to exercise its powers under the Elections Clause and the Necessary and Proper Clause to intervene in Michigan's otherwise absolute constitutional authority to regulate federal elections by enacting federal

election laws including HAVA and NVRA. U.S. Const. art. I, § 4; U.S. Const. art. I, § 8, cl. 18.

Under HAVA, the two (2) provisions at issue impose mandatory language on election officials. For example, 52 U.S.C. § 21081(a)(5) states that the "error rate of [a] voting system in counting ballots…shall comply with the error rate standards established under section 3.2.1. of the voting systems standards issued by the Federal Election Commission[.]" Use of the word "shall" constitutes mandatory language. Furthermore, 52 U.S.C. § 21081(a)(1)(A)(ii) states voting systems "shall…provide the voter with the opportunity (in a private and independent manner) to change the ballot or correct any error before the ballot is cast and counted (including the opportunity to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct any error.)" The use of "shall," again, constitutes mandatory language. Here, the requirement is for voting systems, but election officials subject to judicial authority are responsible for configuring and managing voting machines. NVRA likewise contains mandatory language. For example, "each State shall…conduct a general program that makes a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters by reason of death of the registrant; or a change in the residence of the registrant." 52 U.S.C. § 20507(a)(4).

NVRA exists in part "to protect the integrity of the electoral process" and "to ensure that accurate and current voter registration rolls are maintained." 52 U.S.C. §§ 20501(b)(3)-(4). Similarly, HAVA mandates that voter roll databases contain only registrations of qualified citizen voters residing in that state. 52 U.S.C. § 21083(a)(1)(A). Maintaining the accuracy of voter rolls and voting systems, therefore, is required under the Constitution to uphold the right of the people to choose their representatives. The requirements of NVRA and HAVA are mirrored in Michigan's election laws. Under Michigan election laws, the Secretary of State, as the chief election officer, oversees and regulates voter registration procedures and the conduct of elections throughout the state. M.C.L.A. Const. Art. 2, § 4(i). Further, the Secretary of State *must* maintain the accuracy of the statewide voter registration database. M.C.L.A. Const. Art. 2, § 4(k). Accordingly, the Secretary of State, acting in his capacity as a quasi-federal officer, must ensure compliance with NVRA and HAVA when regulating and administering federal elections. A writ of *mandamus* is the enforcement mechanism through which the Secretary of State can be held accountable to Congress for refusing to comply with Congressional legislation.

The All Writs Act grants this Court the power to "issue all writs necessary or appropriate in the aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C. § 1651(a). A writ of *mandamus* is warranted where the moving party establishes that "(1) no other adequate means [exist] to attain the

relief he desires, (2) the party's right to issuance of the writ is clear and indisputable, and (3) the writ is appropriate under the circumstances." *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (quoting *Cheney v. United States Dist. Ct.*, 542 U.S. 367, 380-381 (2004)) (internal quotation marks omitted). Writs of *mandamus* apply to ministerial actions. A "ministerial action" is a duty in a particular situation so plainly prescribed, as is the case with respect to the mandatory HAVA and NVRA language cited above, as to be free from doubt and equivalent to a positive command. *Wilbur v. United States*, 281 U.S. 206, 218 (1930). *Mandamus* under the All Writs Act is a remedy reserved for extraordinary circumstances where no other form of relief can adequately provide redress. *Cheney*, 542 U.S. at 369. Refusing to comply with federal election laws, in defiance of Congress, constitutes an extraordinary circumstance.

Here, Respondents argue that *mandamus* is not "necessary or appropriate" to the resolution of Petitioners' claims and is not agreeable to the usages and principles of law because the requested relief exceeds the permissible scope of a writ of *mandamus*.[7] Respondents argue that the Petitioner's did not exhaust the alternative remedies to which our response is no remedy under the Michigan code will provide relief as to our claims. Respondents cannot dispute that Congress delegated

[7] Petitioners have established standing in this matter, as outlined above and under 28 U.S.C. §§ 1331 and 1367(a), and therefore the requested writ of *mandamus* is "in aid of" a matter over which this Court has jurisdiction.

presumptive power to regulate and administer Michigan's federal elections to the Michigan General Assembly, or that the General Assembly delegated that power to them. Respondents cannot dispute Congress' ultimate authority to regulate federal elections under the Elections Clause. U.S. Const. art. I, § 4. Respondents cannot dispute that Congressional mandates under HAVA and NVRA are plainly within the scope of his duties as Michigan's chief election officer and the Michigan Election Bureau. It follows, then, that Respondents cannot dispute that they are required to conduct Michigan's federal elections in accordance with federal law. Nonetheless, Respondents argue that this Court cannot compel them through a writ of *mandamus* to answer to Congress for their failure to comply with HAVA and NVRA, in the administration of Michigan's 2022 General Election, simply because they are not federal officers, an absurd result neither the Framers nor Congress intended.

The very purpose of the All Writs Act is to provide a remedy by which federal courts may rectify extraordinary circumstances such as those at issue here. But Respondents argue that, despite Congress' undisputed and superseding power to regulate federal elections, he is not required to comply with Congressional election legislation and therefore Petitioner cannot be afforded *mandamus* relief under the All Writs Act on the basis that he is not a federal official. In other words, according to Respondents, no Constitutional mechanism exists by which state election officers can be held accountable to Congress. Accepting Respondents' contention as true

would lead to an absurd result, as Respondents would be effectively empowered to regulate and administer federal elections *without any Congressional oversight whatsoever*. The language of the Elections Clause clearly precludes this outcome, as Congress retained the ultimate authority to regulate federal elections. It follows that the All Writs Act exists as an enforcement mechanism through which Congress intended to enjoin state election officials from violating federal election legislation, including HAVA and NVRA.

Respondents' argument, therefore, must fail because, as a matter of Constitutional law, state election officials become quasi-federal officers when regulating and administering federal elections, subject to the enforcement provisions under the All Writs Act. Here, *mandamus* relief is not merely "necessary or appropriate" to this Court's resolution of Petitioners' claims, it is the *only* remedy available to compel Respondents' subservience to Congress' ultimate authority to regulate federal election processes. The Petitioner is asking this Court to aid in addressing systemic issues raised in the Complaint since the state legislature offers no avenue by which a state tribunal could compel Respondents to follow federal election legislation for lack of jurisdiction. Only federal courts are empowered to resolve the whole of Petitioners' claims, and the only available remedy for purposes of adjudicating Petitioners' claims is the requested writ of *mandamus*.

III. CONCLUSION

Based on the foregoing, Petitioners respectfully request that this Court deny Respondents' Motion to Dismiss in the above-captioned matter.

Respectfully Submitted,

/s/ Bruce L. Castor, Jr

Date October 15, 2024

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CERTIFICATE OF COMPLIANCE

Pursuant Eastern District of Michigan Local Civil Rule 7.1(d)(3)(A). I hereby certify that this case has not been assigned to a track. This memorandum complies with the page limitations for unassigned cases.

/s/ Bruce L. Castor, Jr

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED SOVEREIGN AMERICANS, INC. 167 Lamp and Lantern Village, Suite 194 Chesterfield, Missouri 63017 *And* MICHIGAN FAIR ELECTIONS INSTITUTE P.O. Box 41 Stockbridge, Michigan 49285 *And* TIMOTHY MAURO-VETTER 6505 Arrowhead Ct. Davisburg, Michigan 48350 *And* BRADEN GIACOBAZZI 6 Parakeet Hill Dr. Orion Twp, Michigan 48359 *And* PHANI MANTRAVADI 8173 Hillside Lakes Dr. Brighton, Michigan 48116 *And* PHILIP O'HALLORIN	Case No. 24-12256- Honorable Robert J. White Magistrate Anthony P. Patti

294 Cayuga Rd.
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And

DONNA BRANDENBURG
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Bryon Center, Michigan 49315

And
NICK SOMBERG
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Petitioners,

v.

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Lansing. Michigan 48918

And

MICHIGAN BUREAU OF ELECTIONS
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And

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And

MERRICK GARLAND, IN HIS OFFICIAL CAPACITY AS ATTORNEY GENERAL OF THE UNITED STATES 950 Pennsylvania Avenue NW Washington, District of Columbia 20530 *Respondents.*	

BRIEF FORMAT CERTIFICATION FORM

I, Bruce Castor, Jr., certify that the foregoing brief complies with Eastern District of Michigan Local Rules 5.1(a), 5.1.1, and 7.1, and Judge White's Case Management Requirements, including the following (click each box to indicate compliance):

☒ the brief contains a statement regarding concurrence, *see* LR 7.1(a);

☒ the brief, including footnotes, uses 14-point font, *see* LR 5.1(a)(3);

☒ the brief contains minimal footnotes and, in all events, no more than 10, *see* Case Management Requirements § III.A;

☒ the brief and all exhibits are filed in searchable PDF format, *see* Case Management Requirements § III.A;

☒ except for footnotes and necessary block quotes, the brief is double spaced (not "Exactly 28 pt" spaced) with one-inch margins, *see* LR 5.1(a)(2);

☒ deposition transcripts have been produced in their entirety (not in minuscript), *see* Case Management Requirements § III.A;

☒ if the brief and exhibits total 50 pages or more, I will mail to chambers a courtesy copy with ECF headers, *see* Case Management Requirements § III.B.

I also acknowledge that my brief will be stricken from the docket if the Court later finds that these requirements are not met.

/s/ Bruce Castor, Jr.
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