

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

WILLIAM BAILEY

Plaintiff

Case No. 20-9238-CZ

v.

ANTRIM COUNTY

HON. KEVIN A. ELSENHEIMER

Defendant

SECRETARY OF STATE JOCELYN  
BENSON

Intervenor-Defendant.

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**PLAINTIFF'S COLLECTIVE RESPONSE TO DEFENDANTS' and NON-PARTY  
COUNTIES' MOTIONS TO QUASH AND FOR PROTECTIVE ORDERS**

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Plaintiff, WILLIAM BAILEY ("Plaintiff"), by and through his attorney, DePerno Law Office, PLLC, submits the following for his collective response to Defendants' joint motion for protective order and the motions to quash subpoena filed by Barry, Livingston, Macomb, and Grand Traverse Counties. This brief is collectively because many of the issues are intertwined. It makes more sense to file a combined brief rather than five separate briefs that repeat the same concepts and arguments. For the reasons stated herein Plaintiff respectfully requests this Court deny Defendants' and Non Party motions, or in the alternative, limits the scope of the discovery and subpoenas.

## 1. **Motions at issue**

Plaintiff has served second, third, and fourth discovery requests on Defendants. Plaintiff has also served eight (8) subpoenas on non-party counties in Michigan [Exhibit 1]. In response, Defendants and four of those non-party counties have filed motions to quash and for protective orders.<sup>1</sup> This brief collectively responds to the motions filed in this court. They are:

- a. Defendants' Joint Motion for Protective Order Pursuant to MCR 2.302(C), dated March 17, 2021.
- b. Motion to Quash Subpoena by Non-Party Barry County Clerk Pamela A. Palmer, dated March 22, 2021
- c. Livingston County Clerk's Motion to Quash Subpoena and for Protective Order, dated March 24, 2021
- d. Grand Traverse County Clerk's Motion to Quash Subpoena and for Protective Order, dated March 24, 2021
- e. Macomb County Clerk Anthony Forlini's Motion to Quash Subpoena and for Protective Order, dated March 24, 2021

Defendants object to Plaintiff's second, third, and forth discovery requests. They claim that the discovery is not relevant, "abusive, excessive, oppressive, and done with the clear purpose of

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<sup>1</sup> Kent County, Charlevoix County, Oakland County, and Wayne County have chosen to institute new actions by filing motions to quash in their respective counties.

imposing an undue burden and expense upon Defendants." *Defendant's Joint Motion for Protective Order*, at 4-5. They also object to eight (8) subpoenas served on Barry, Charlevoix, Grand Traverse, Kent, Livingston, Macomb, Oakland, and Wayne counties for the purpose of a forensic review of the counties' election records. Defendants claim there is "no basis in law and fact for these subpoenas". *Id.* at 5. No other objections are presented. This brief argues that those objections must be overruled and the motion must be denied.

Similarly, Barry Count, Grand Traverse County, Livingston County, and Macomb County have filed separate motions to quash subpoenas. They argue that the subpoenas are not relevant, overly broad, and unduly burdensome. No other objections are presented. This brief argues that those objections must be overruled and the motions must be denied.

**2. Defendants have engaged in obfuscation and delays to run out the clock**

Contrary to their assertions, it is actually Defendants who have engaged in a campaign to obfuscate and hide evidence. Almost the entirety of discovery has been consumed with delays and the intent to hinder discovery. Initially, Defendant Benson refused to respond to the first discovery requests. Plaintiff had to file a motion to compel, which was granted. Then Defendant Benson demanded three weeks to respond; then she requested an additional week. Ultimately, she responded by producing documents that were not organized and not responsive. In fact, Defendant Benson did not produce one single communication with Antrim County. It is hard to imagine that considering the fraud that occurred in Antrim County, that not one person in Defendant Benson's office made one single cable to Antrim County. Further, there is not one single correspondence, communication, or document produced between Defendant Benson and the Michigan House or Senate regarding Antrim County. It is clear that Defendant Benson's strategy has been to run out the clock on discovery.

This brief will help clarify that these election voting machines Defendant Benson and Sheryl Guy (as the elected clerk of Antrim County), and Dana Nessel are wrong in their press releases and campaign to vilify attorneys. They are wrong on the facts. They are wrong in their false assertion that this was the safest election in history [Exhibit 2].<sup>2</sup> In order to set the record straight and compel production of the evidence requested, this brief exposes the algorithm and foreign and domestic interference used in Antrim County (and the state of Michigan) to regulate and shift votes in the 2020 election. We reveal that Antrim County purchased USB external motions (likely 17) that allowed their machines to connect to the internet. We reveal that Antrim County had at least one connection through the internet to Taiwan and Germany. In addition, the court should be aware that Defendants have not produced important information. For instance, on March 26, 2021, Defendants produced a report written by J. Alex Halderman titled "*Analysis of the Antrim County, Michigan November 2020 Election Incident.*" This report which casually describes election fraud as an "incident" reveals that while Defendants have delayed production of information and even argued that they should not be required to produce data, their expert has been in possession of many of the same items Plaintiff has requested. This report could not have been completed otherwise.

**3. Plaintiff's investigative team has uncovered the algorithm, a sixth degree polynomial, used in Michigan**

To be clear, at least four (4) of the so-called battleground states have implemented an algorithm used to regulate and shift votes in the 2020 elections.<sup>3</sup> These algorithms are unique to each particular state. In other words, the algorithm used in Michigan does not work across the

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<sup>2</sup> This is supported by the recent Court of Claims ruling in which Judge Christopher M. Murray ruled that Defendant Benson violated the Administrative Procedures Act by ignoring matching laws on absentee ballots in the 2020 election. See *Robert Genetski v Jocelyn Benson and Jonathan Brater*, Case No. 20-000216-MM, Michigan Court of Claims (03/09/2021).

<sup>3</sup> Michigan, Pennsylvania, Ohio, and Florida.

border in Ohio. Likewise, the algorithm in Ohio does not work in Michigan or in Pennsylvania. Similarly, the Pennsylvania algorithm does not work in Ohio. But make no mistake, they are each determined at the state level to shift votes based on the particular and peculiar demographics of each state. With that said, the algorithm used in Michigan was very hard to discover. The data is particularly challenging because in the fall of 2020, Michigan changed the way it reports data to the Qualified Voter File ("QVF") before, during, and after the election. Michigan presents data in the QVF in two files: 1) in a database of everyone registered to vote and 2) through a database of ballots received for the entire state. The files contain gigabytes of data because it is every citizen for every election. Interestingly, nothing is in order. The data is deliberately tangled up. Presumably, this is not an accident. The state intentionally makes it difficult for the average person access and uses the data. Most likely, our elected officials have never seen their own database. We challenge any elected official in Michigan, including all of the clerks, representative, senators, and even Defendant Benson to tell us that they have looked at the actual raw data. Rather, they pay to access the database through a third party application or program. They don't actually look at the real data. Indeed, you can't look at this in Excel. You need to be a programmer to pull out data. And it is a good strategy if you want to hide information. They charge for access. Then they mix it all up so that even if a person gets in they can't find data. It makes it muddy instead of transparent. For example, imagine the state took all the data from every election in paper form and put it in a gymnasium. Common sense would dictate that they put each year in a separate bin. But the state doesn't do that. They throw it all in a pile and then they mix it up. That is how the database looks.

Nevertheless, after countless hours of work going through the Michigan database, Plaintiff's expert, Douglas G. Frank, PhD [Exhibit 3], has uncovered the algorithm (a sixth

degree polynomial). This brief explains how it works, using the powerpoint slides from Dr. Frank [Exhibit 4]. The data is shown in graphs and compiled from three different databases:

1. **BLUE CURVE.** Population data extracted from the 2019 U.S. census at census.gov. This is the blue curve on each chart for the 9 counties examined, which shows the census data per age group.
2. **BLACK LINE.** The state registration database for October 2020 used in the November 3, 2020 election. This is the black line on each chart.
3. **RED LINE.** The state voter database from January, 2021. This is the red line on each chart.

The blue, black, and red lines on the graphs are data. It is not speculative or calculated. It is completely 100% data. Based on the similarities between the black line and the red line, people should immediately say "wait a minute."

Dr. Frank looked at 9 counties: Antrim, Barry, Charlevoix, Grand Traverse, Kent, Livingston, Macomb, Oakland, and Wayne. He concludes:

- Voter registration is consistently near, or exceeding county population demographics.
- **There are over 66,000 ballots recorded that are not associated with a registered voter.**
- The ability to predict ballot demographics with such remarkable precision (average correlation coefficient of **R = 0.997**) demonstrates the activity of a regulating algorithm.
- **This confirms, as seen in several other states, that ballots are being harvested at the precinct level, regulated at the county level, and determined at the state level.**
- The degree of precision observed confirms that algorithms had access to voting databases and voting activity before, during, and following the November 3, 2020 election.

	Wayne County	Oakland County	Macomb County	Kent County	Livingston County	Grand Traverse County	Barry County	Charlevoix County	Antrim County
<b>Total Population</b>	1,749,284	1,257,532	873,922	656,900	191,938	93,030	61,489	26,089	23,266
<b>Total 18+ Population</b>	1,339,405	999,630	694,156	500,078	152,390	74,536	48,094	21,337	19,222
<b>Current Registered (4/6/2021)</b>	1,383,669	1,016,125	685,385	492,643	159,774	79,954	49,724	23,576	21,935
<b>Total Registrations (October Database)</b>	1,365,392	1,011,669	670,592	489,234	157,667	79,537	48,628	23,279	24,118
<b>Total Ballots in Database</b>	840,810	750,232	477,718	348,880	123,642	57,888	34,913	16,574	14,901
<b>Ballots not found in October Database</b>	20,124	17,551	13,596	8,782	3,240	1,295	914	380	312

The 0.997 average correlation (is relatively simply terms) means that when we take the census data and the registration data and then apply the algorithm, we can predict the number of ballots cast in a county to 99.7% certainty without seeing the results.

## Predicting Ballots with the Registration Key

(In decreasing order by population)

R	County Name
0.999	Wayne County
0.999	Oakland County
1.000	Macomb County
0.999	Kent County
0.999	Livingston County
0.996	Grand Traverse County
0.996	Barry County
0.995	Charlevoix County
0.993	Antrim County

*“That ain’t natural, buddy.”*

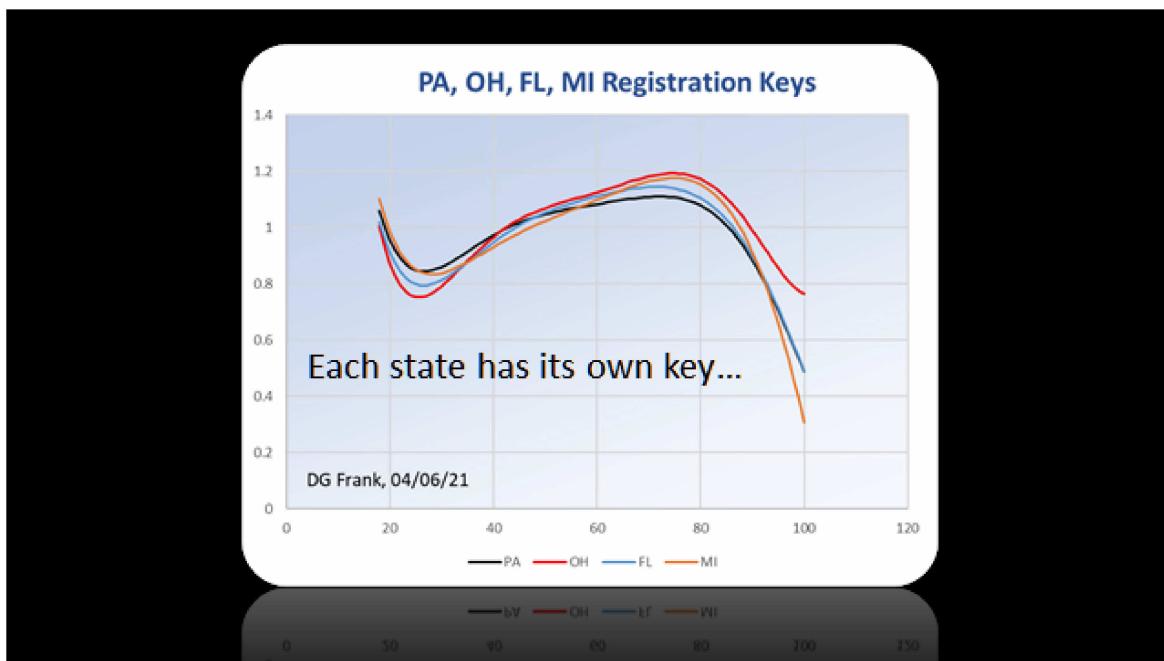


→ **0.997 Average Correlation**

The algorithm itself, a sixth degree polynomial, is a mathematical computation of the actual registrations on each graph (black line) compared to the actual ballots cast (red line).

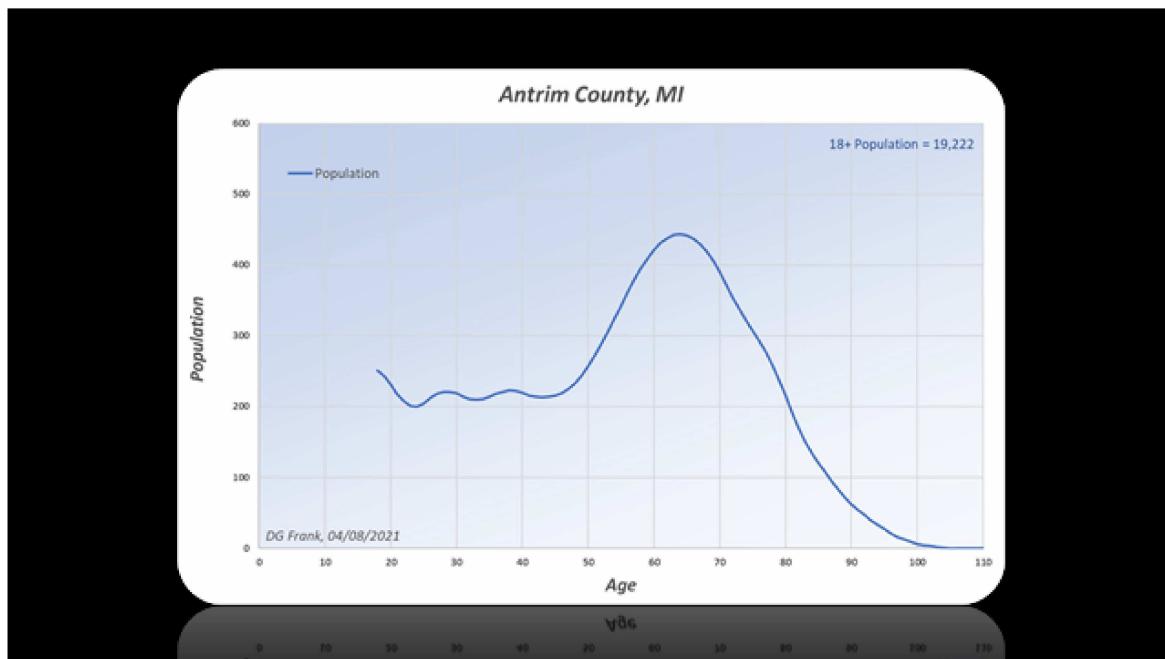


We can call the polynomial a "key" because it works in every county in Michigan. It unlocks the door and uncovers the ability to manipulate data and results. And as stated earlier, every state has its own key. The chart below shows the "key" for Pennsylvania, Ohio, Florida, and Michigan.

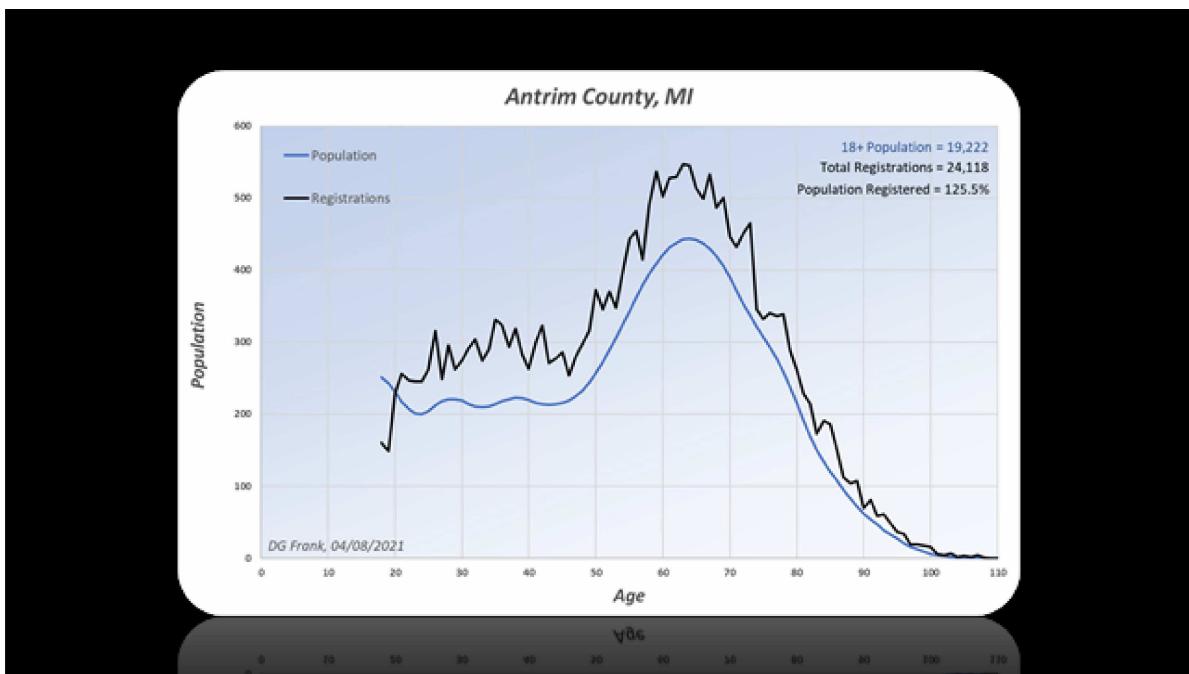


#### **4. Antrim County and the algorithm**

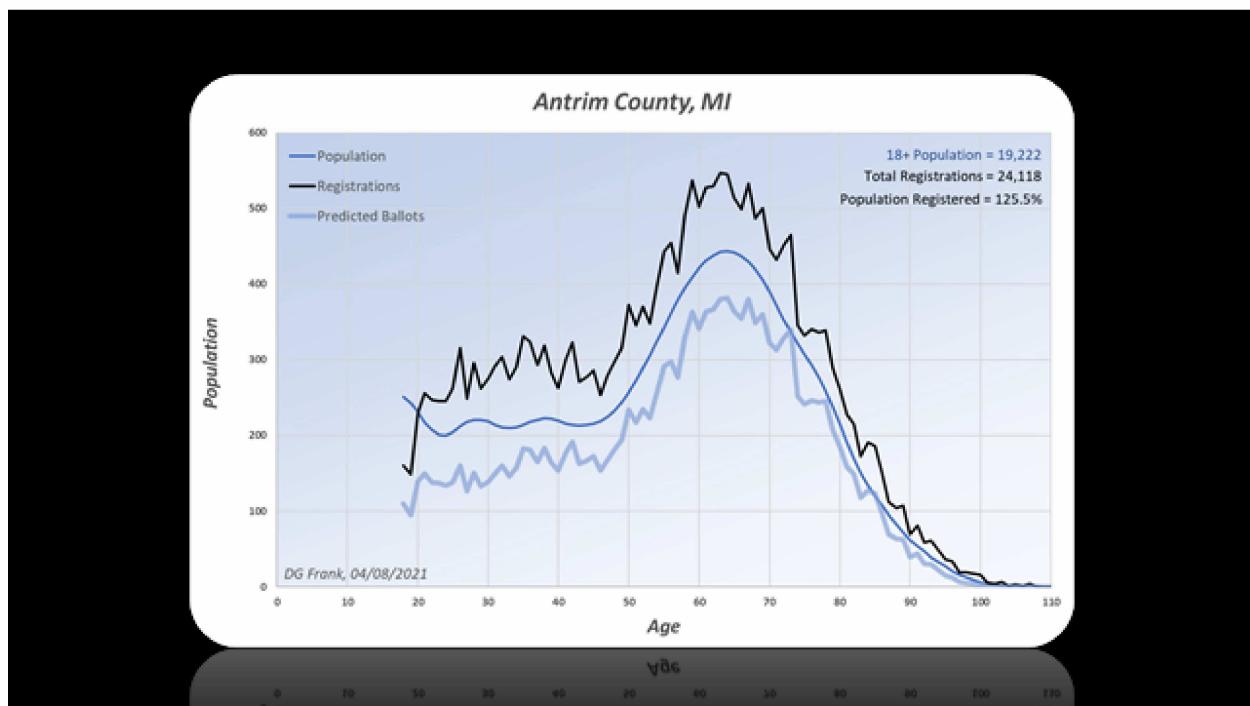
Dr. Frank first charted the total voting population of 19,222 that could be registered. This is represented by the blue line and assumes that 100% of the population is eligible to vote. The actual number is statistically less because not everyone over 18 is eligible to vote. Indeed, some may be criminals who lost the right to vote or foreigners on VISAs. Defendants have not produced that data so for purposes of this brief, we will give them the benefit of charting the entire 18+ population as eligible.



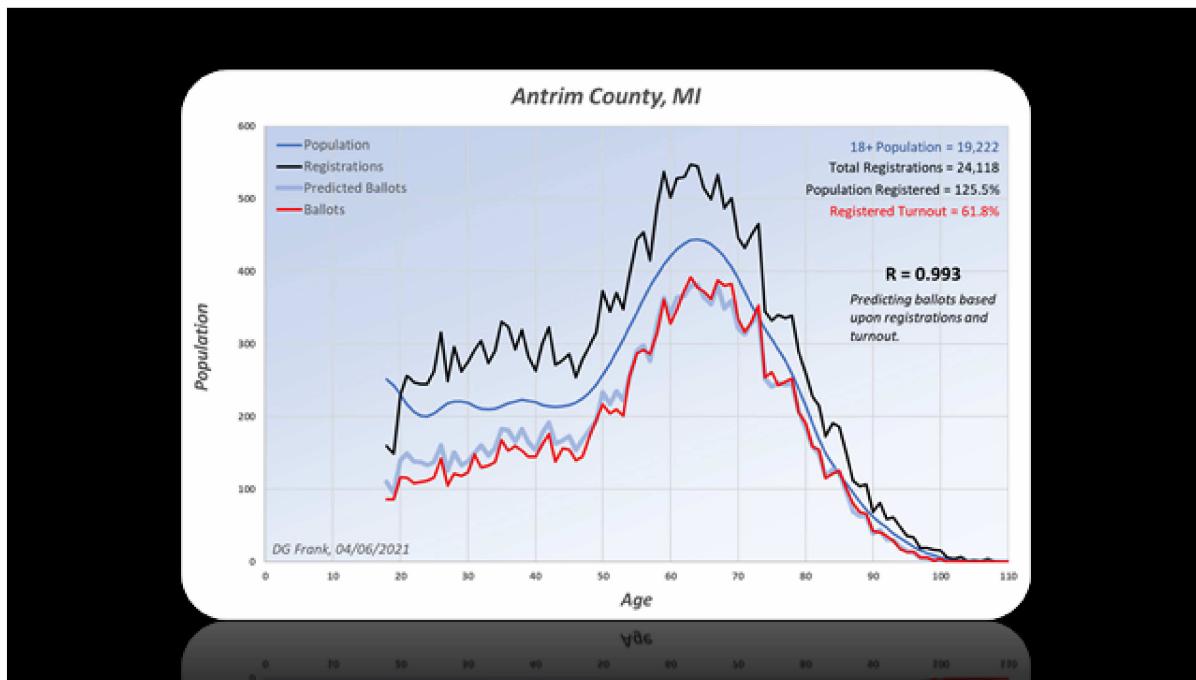
In the second step, Dr. Frank layered in the registered voters (black line). The black line shows that Antrim County has more registered voters than eligible population. Antrim County actually has 125.5% of the population registered. This means Antrim County has an unclean voter role. Defendant Benson has failed to properly clean her voter role.



In the third step, Dr. Frank applied the algorithm (a sixth degree polynomial) and predicted the number of ballots cast per age group in Antrim County. This is represented by the light blue line (predicted ballots).



We can see how the light blue line (predicted ballots) tracks with the black line (registrations). They also follow the shape of the census (population). Next, Dr. Frank added the actual ballots cast (red line).



We see that the red line (ballots) tracks almost identically with the predicted ballots. This key works in every county tested: Barry, Charlevoix, Grand Traverse, Kent, Livingston, Macomb, Oakland, and Wayne; every county that is presently subject to a subpoena and every county that has refused to open their doors for inspection, but has instead closed its doors and refused transparency.

Importantly, we always see at least 2 spikes on the right side of the graph that rise above the population line. This is a breadcrumb (a clue that the data is being controlled by something). In this case, the spikes on the right side actually reveal that an algorithm controls the results. This is a fact (not speculation) because they exist in every county in every state that has been tested. There is no way that every county in the US would have this same feature. **The spikes appear because every county in every state is being regulated by the census.** By way of analogy,

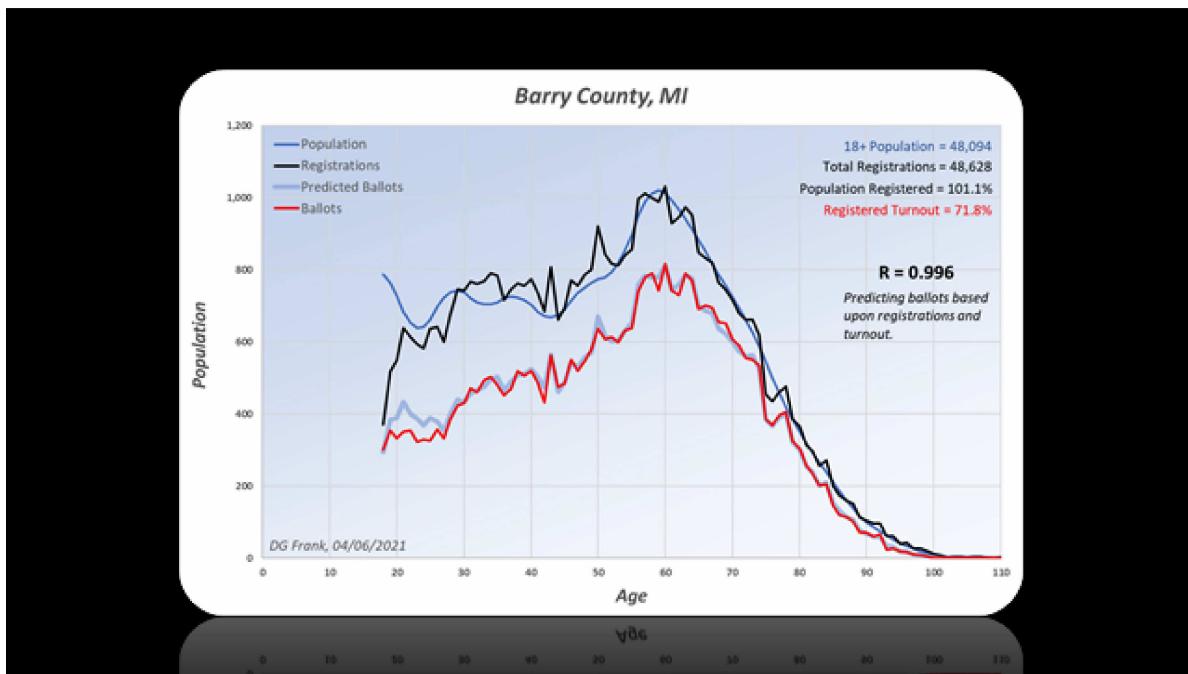
imagine you have a cookie cutter in your kitchen and it has a ding on one side. Every time you use the cookie cutter the ding will show up in every cookie. It is a remnant that you used the same cookie cutter. These dings show up in every county. They are not random.

Further, when we compare all of the bumps in the black line (registrations) to the red line (ballots), they look very familiar. The red line is almost a direct image of the black line, but just lower on the graph. If we want to check our theory, then we simply graph the ratio between the black and the red, which creates the polynomial. The polynomial becomes the key. The key is then used and works in every county in Michigan. When we apply the key, we end up with the light blue line (predicted ballots). If we apply to the key to another county, we can predict the number of ballots cast. And this is what Dr. Frank found in all 88 counties in Ohio, all 64 counties in Colorado, and in 14 counties in Florida, and 14 counties in Pennsylvania. Elections should not function like this in a normal statistical way. That is why Dr. Frank concludes that it is being decided at the state level; someone is deciding what this key is before the election and then making every county fit this key. The question is who, and in large part that is what our discovery is about. That is what the subpoenas are about. That is why we need the 8 counties as a control group (described below). We need to know who was accessing the database. We need understand how data is transferred from precinct to county and then county to state. Since data was deleted from the Antrim County EMS on November 4, 2021, the data is not available for our case against Antrim County and Secretary of State Benson, so we need to look elsewhere for our control group. That is why we asked about internet connections. Was it Right to Vote? We believe that Defendant Benson gave over 32 groups direct access to change and manipulate the QVF and the algorithm before, during, and after the election. This affected Antrim County.

Some people might ask why the key is different in every state. The answer is different because each state has its own demographics. Outcomes are predicted based on demographics. Anyone with access to the QVF can change just one number in an algorithm (at the state level presumably) and modify the sixth degree polynomial to adjust the election result. For instance, in Michigan, Defendant Benson is overemphasizing the younger people. We can see that in the disparity between the black and red line on the left side of the graph. And that becomes progressively lower as the chart moves right. The younger people are the least reliable; the algorithm tilts to the younger ages because the least reliable voters will give the most shadow ballots. Think of the gap as a "credit line" that can be drawn on at any time using the algorithm.

## 5. Barry County

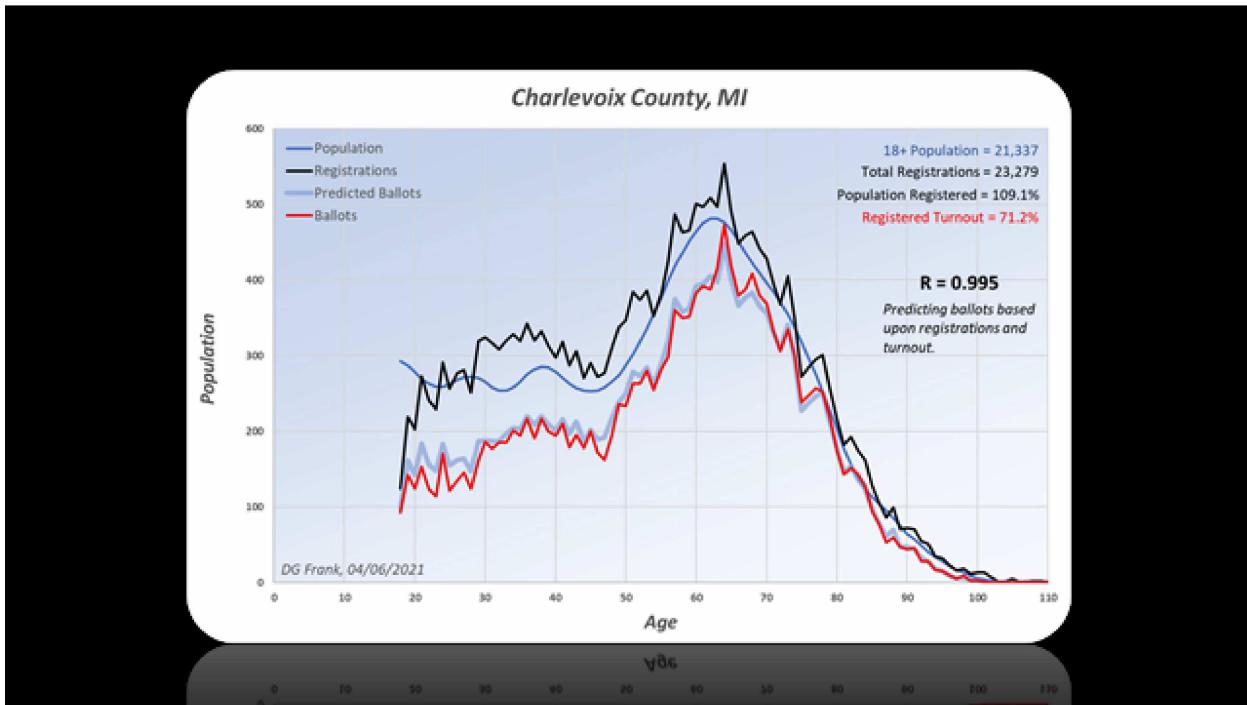
Every other county may think they are clean. They are not. Indeed, the key works in Barry County with 99.6% certainty.<sup>4</sup>



<sup>4</sup> But not everyone in Barry County disagrees. The Barry County GOP recently put forth a resolution stating that "the citizens of Barry County have lost confidence in future elections while *Dominion Voting Systems* remains in question and unchecked" [Exhibit 5]. It is the elected officials who have refused to open the doors to conduct a forensic review.

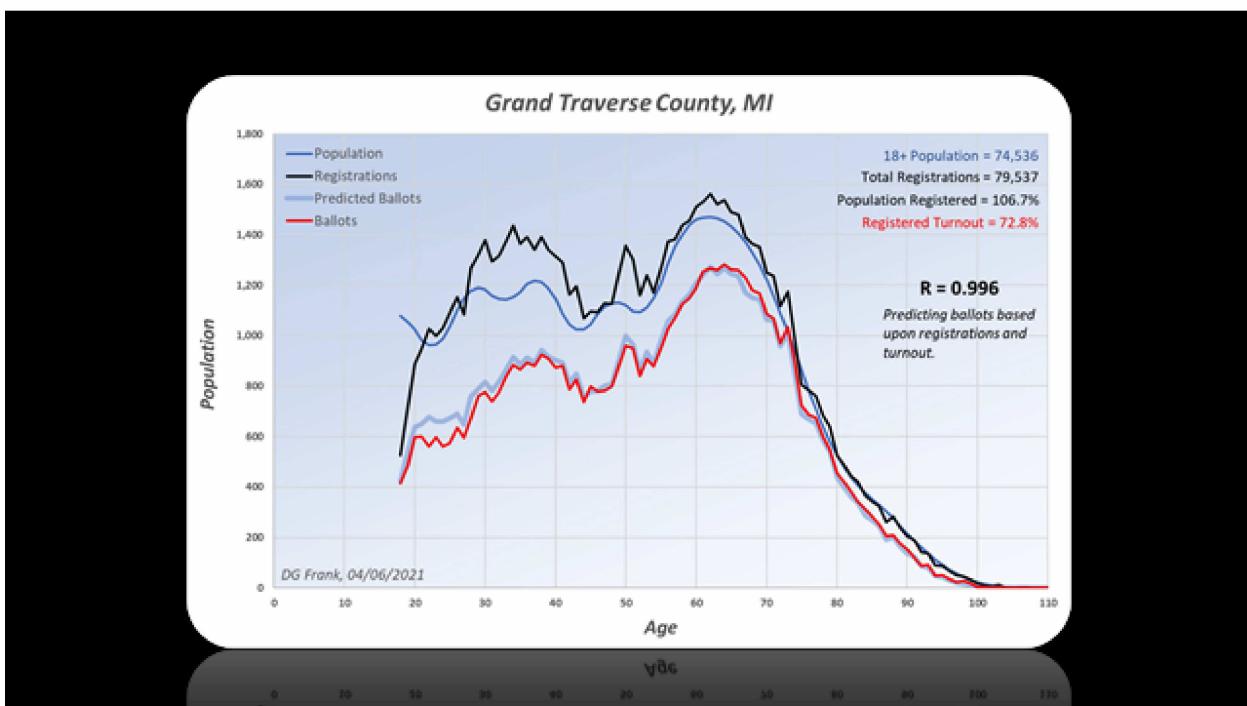
## **6. Charlevoix County**

The key works in Charlevoix County with 99.5% certainty.



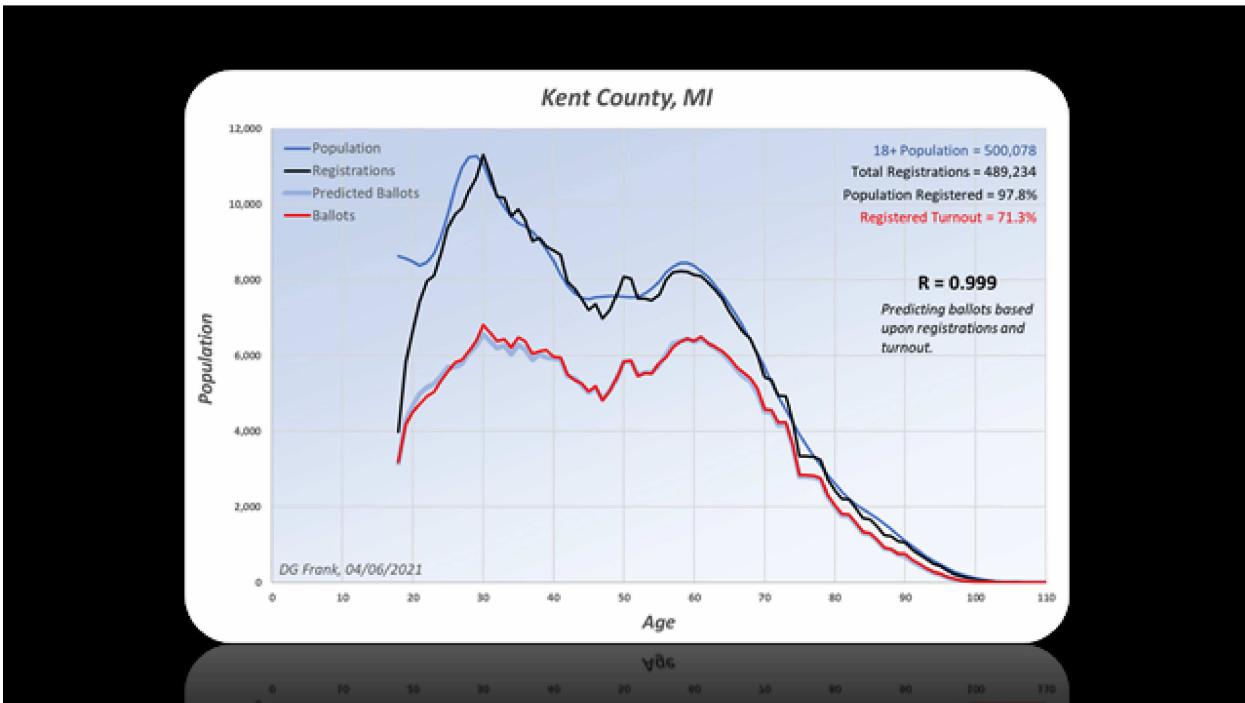
## **7. Grand Traverse County**

The key works in Grand Traverse County with 99.6% certainty.



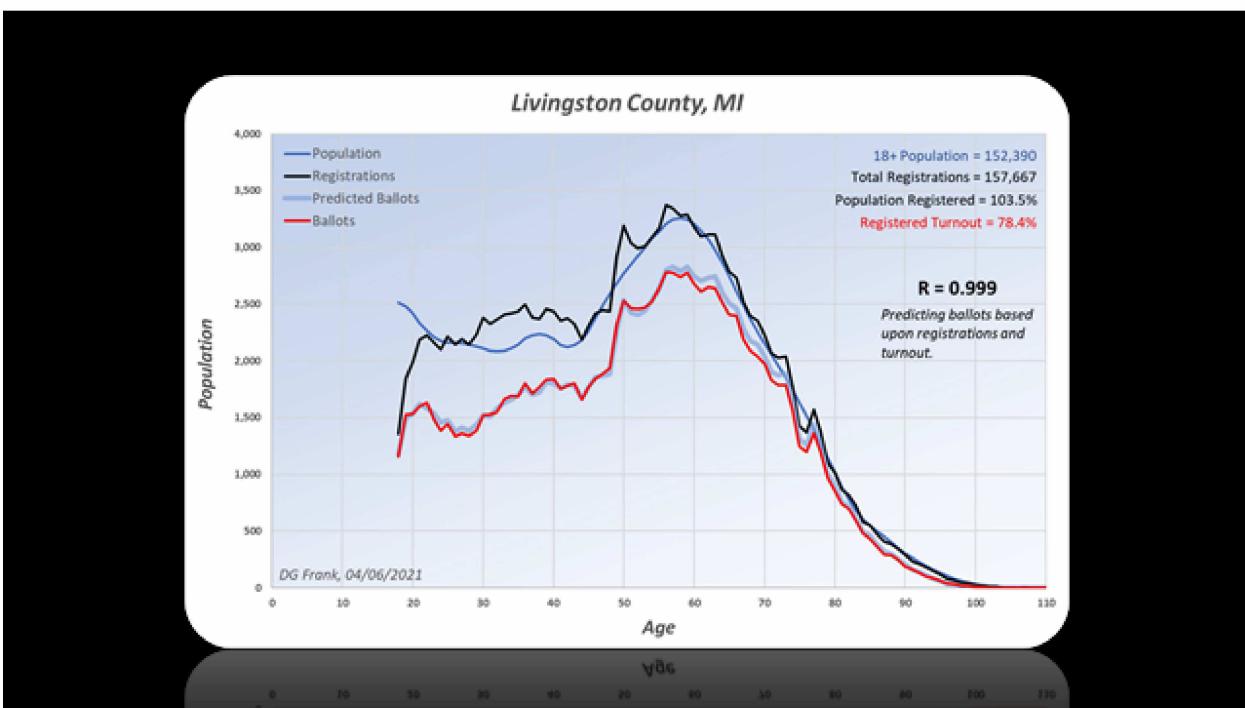
## 8. Kent County

The key works in Kent County with 99.9% certainty.



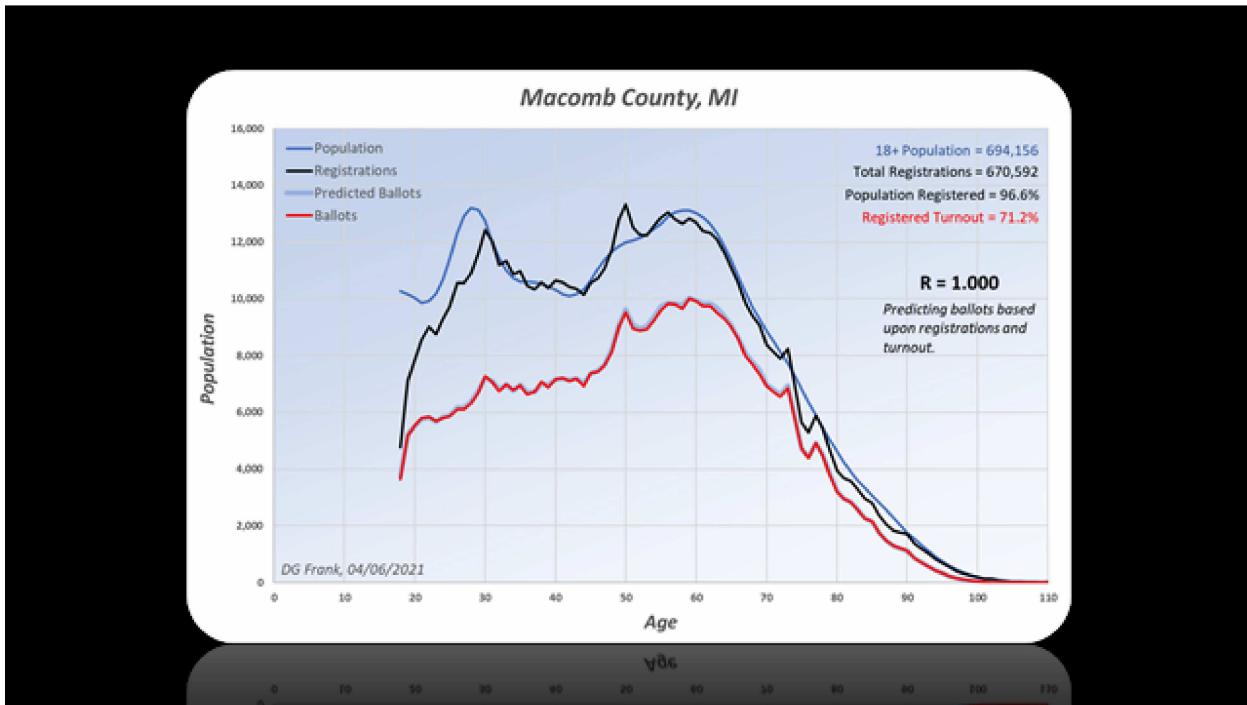
## 9. Livingston County

The key works in Wayne County with 99.9% certainty.



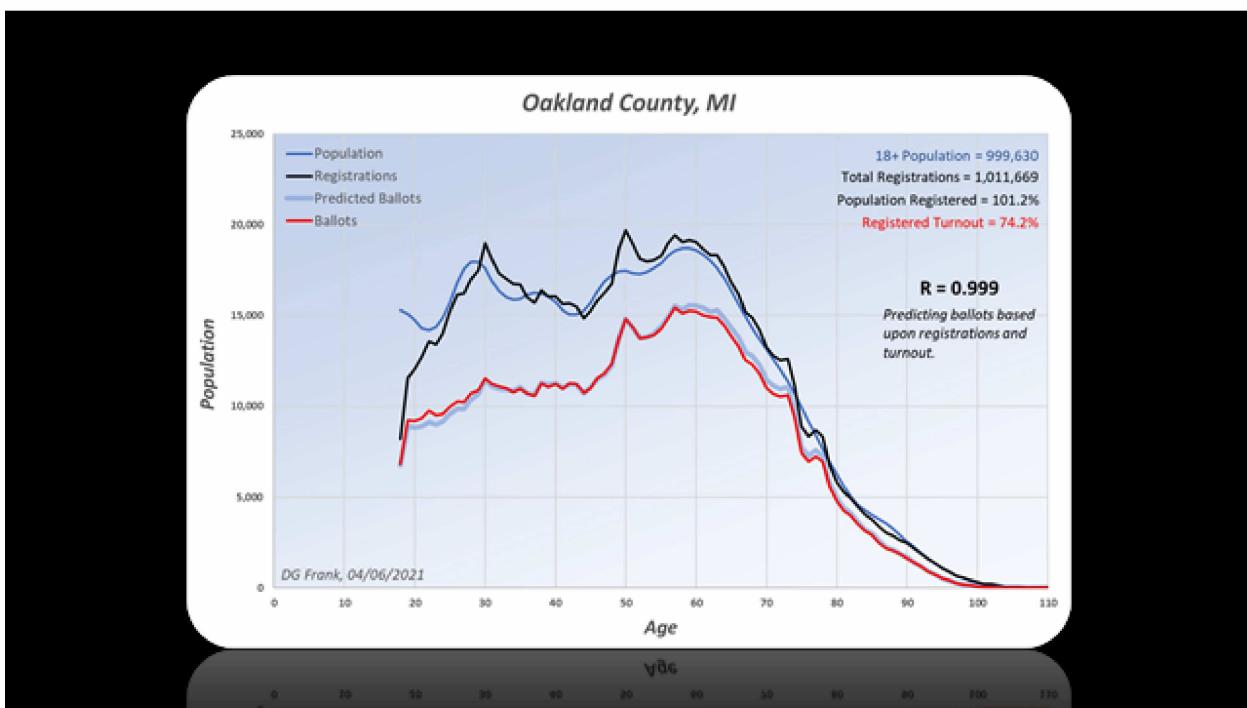
**10. Macomb County**

The key works in Macomb County with 100.0% certainty.



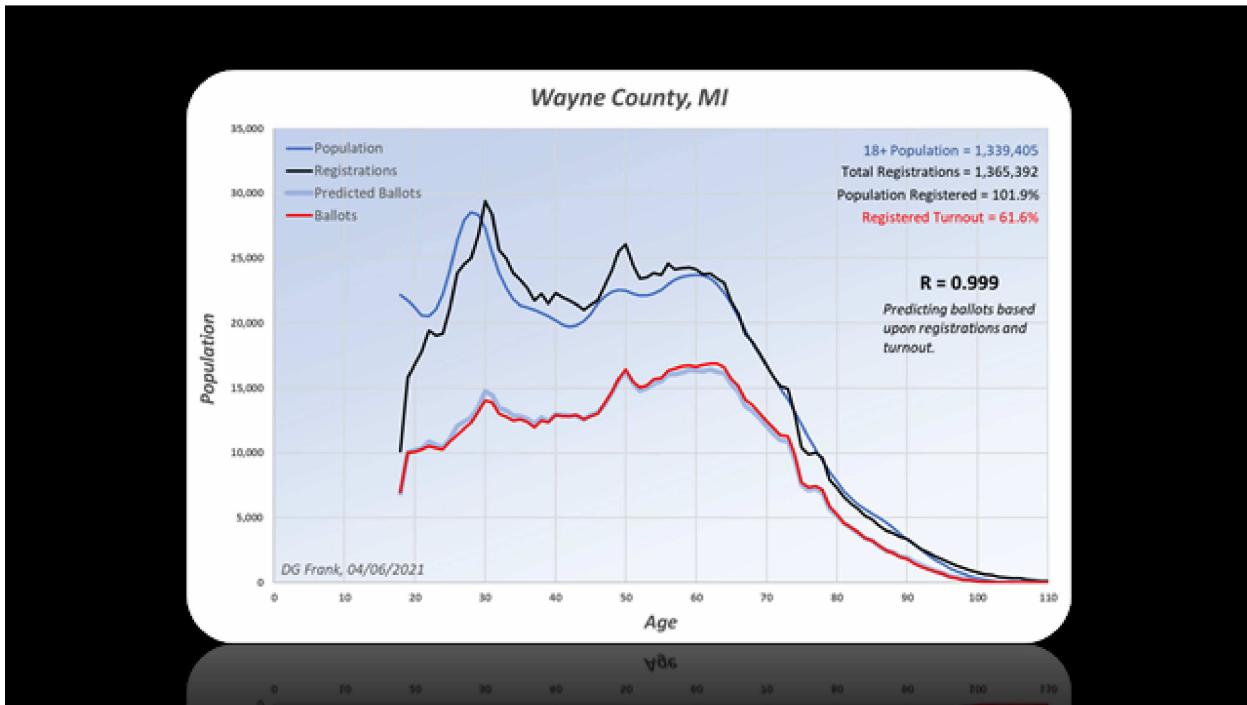
## **11. Oakland County**

The key works in Macomb County with 99.9% certainty.



## 12. Wayne County

The key works in Wayne County with 99.9% certainty.



Elections should not work this way. And this is the reason Defendants don't want us to see the data. This is why eight (8) counties don't want us to see their election systems. This is why every county across the county doesn't want us to see their data. If you have nothing to hide, then don't hide your data.

**"This confirms, as seen in several other states, that ballots are being harvested at the precinct level, regulated at the county level, and determined at the state level."**

**-- Douglas G. Frank, PhD, 04/06/2021**

**13. Relevance of Subpoenas; Dominion, Hart InterCivic, and ES&S; control group and Scytl**

When Plaintiff sent subpoenas, they were specifically targeted to 8 counties. First, there are the 4 biggest counties (Wayne, Oakland, Macomb, and Kent) because we predicted they would yield the highest percentage of correlation to the algorithm key. We were right. The other 4 counties were selected because of geographic location and the election systems they use. Plus they all experienced more than 5% shift from Trump to Biden from 2016 to 2020, which is similar in Antrim County.

DOMINION:           Barry, Charlevoix, Kent, Wayne,

HART:                 Oakland, Livingston

ES&S:                 Grand Traverse, Macomb

It makes sense to test these results against Antrim County and create a baseline comparison. In addition to spoliation, *infra*, this court should deny the motions to quash because the requested evidence from the Michigan counties will provide specific network and application logs which will provide vote total uploads to verify the accuracy of reported vote totals in Antrim County. Further, it is necessary to analyze the vote total upload history for additional Michigan counties to determine if Antrim County exhibited anomalous cyber activity and/or third party election interference.

Plus, by examining these counties we will be able to verify the date contained in the information deleted from Antrim County's EMS on November 4, 2020 at 11:03 pm. The spoliation of evidence alone, *infra*, is enough to deny the motions to quash. In addition, each of these counties will provide a reference point that proves: (1) the algorithm works across systems and is implemented at the state level by an actual state actor, which affected Antrim County and (2) each system is vulnerable to the same intrusions, which affected Antrim County.

Moreover, Plaintiff's experts require analysis of additional Michigan counties to compare and contrast election data, and cyber forensic evidence as it relates to voting equipment used in the November 3, 2020 election to develop complete, fair, and definitive opinions as it relates to the November 3, 2020 election in Antrim County Michigan.

Lastly, Plaintiff's experts desire to create control groups as it relates to evidence they are analyzing as it relates to Antrim County. Plaintiff's experts are exploring the similarities between the Dominion, ES&S, and Hart machines used in the Michigan November 3, 2020 election. Physical examination of the Michigan voting machines reveals the machines are disguised to appear physically different, but share abundant similarities. Due to a series of mergers, acquisitions, and partnership agreements, it appears a loose monopoly exists with Michigan voting machines, and that the voting machine companies share intellectual property. This evaluation is necessary for the experts to analyze software, cyber information, and forensic data in additional Michigan counties to determine accuracy of Antrim County November 3, 2020 election results.

James Penrose also explains internet connectivity on both Dominion and ES&S machines [Exhibit 6]. The Dominion Voting Systems proposal for Antrim County shows a quote for procurement of wireless transmission capabilities. Dominion representatives also confirmed performance issues with wireless transmission of vote totals and even went as far as disabling the saving of ballot images without explicit authorization during the 2020 primary. In addition, a forensic examination of a Dominion ICX machine has shown the existence of Taiwan and Germany-based IP addresses in unallocated space, implying there were international communications via the Internet. In addition, ES&S DS200 machines in Michigan utilized wireless 4G network adapters for vote transmission over the commercial Verizon network. The

company that manufactures the 4G wireless modems is named Telit. Telit has recently taken investment from a major Chinese firm and according to press reporting the UK government is monitoring the situation with concern that the Chinese government is in a position to exercise influence over Telit.

Cyber Ninjas has also prepared a report after review of the Antrim County system [Exhibit 7]. This report includes a multitude of problems found within the system and amount to gross error by Dominion and Antrim County. One of the most important discoveries is detailed on page 15 of the report. Here, Cyber Ninjas discovered a Microsoft SQL Server Management Studio implant on the system. This piece of software is not approved by the Election Assistance Commission ("EAC") and allows a user to actually circumvent security protocol and make "direct[] edit entries within the database" which "could potentially be utilized to change vote values." Perhaps most importantly, this software is a "separate install." In other words, it should not be on the system. It is, by its very definition, a hacking tool.

Benjamin Cotton has also prepared an affidavit after review of the Antrim County system [Exhibit 8]. He states that he reviewed the forensic image of the Dominion system "utilized in the November 2020 election and discovered evidence of internet communications to a number of public and private IP addresses." One connection in particular traced back to "the Ministry of Education Computer Center, 12F, No 106, Sec 2, Hoping E. Rd., Taipei Taiwan 106." Further, "[t]his IP address resolves to a cloud provider in Germany." Mr. Cotton's findings show that the Antrim County system was connected to the internet. Of course, Sheryl Guy deleted system files that would allow further review. For this reason, review of other systems in other counties is critical.

We also know that election machines can be hacked and data manipulated. Even Defendants' own expert witness J. Alex Halderman says that he can hack an election:<sup>5</sup> This article states that "he has turned a voting machine into a PacMan game and famously hacked a mock election in DC several years ago, changing votes to famous robots." Halderman says in the video. "I'm here to tell you that the electronic voting machines Americans got to solve the problem of voting integrity, they turned out to be an awful idea. That's because people like me can hack them all too easily. Our highly computerized election infrastructure is vulnerable to

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### 'I hacked an election. So can the Russians.'

by Nicole Casal Moore    April 9, 2018

**Professor Alex Halderman and the New York Times staged a mock election to demonstrate voting machine vulnerability.** | [Short Read](#)



Professor J. Alex Halderman stands in the Bob and Betty Beyster Building while students participate in a mock election asking which is the greatest university: The University of Michigan or The Ohio State University. Photo by Levi Hutmacher

sabotage and even to cyberattacks that could change votes." Halderman also signed an affidavit in *Curling et al v Raffensperger et al*, wherein he described the vulnerabilities of the Dominion system [Exhibit 9].

These vulnerabilities all exist in the Antrim County system. In the affidavit, Halderman also references a declaration by Eric Coomer (one of Dominion's top engineer's) who states that "all computers can be hacked with enough time and access."<sup>6</sup>

<sup>5</sup> <https://news.engin.umich.edu/2018/04/mock-election/>

<sup>6</sup> See video at <https://rumble.com/vbd3s5-2017-dr.-eric-coomer-explains-how-to-alter-votes-in-the-dominion-voting-sys.html>

**Vice President of U.S. Engineering  
Eric Coomer shared anti-Trump  
posts online**



Dominion's top engineer told Antifa he'd 'made f\*\*\*king sure' Trump wouldn't win

Dominion's top engineer assured Antifa activists that he had "made f\*\*\*king sure" that President Donald Trump wouldn't win the presidential race, according to reports.

Dominion Voting Systems' Vice President of U.S. Engineering Eric Coomer allegedly spoke with Antifa members on conference calls and reportedly assured the other participants by saying:

*"Don't worry about the election, Trump's not gonna win. I made f\*\*\*king sure of that!"*

Dominion Voting Systems is one of the largest voting technology companies in the United States.

In this video, Coomer explains how to alter votes on the Dominion ImageCast system. "The buzz word in the industry these days is risk limiting audit"



#### **14. Relevance of subpoenas; Spoliation of evidence**

On December 4, 2020, forensic experts obtained images of Antrim County's election management system ("EMS"). On December 14, 2020, ASOG released a report styled "*Antrim Michigan Forensics Report, Revised Preliminary Summary, v2*"<sup>7</sup> [Exhibit 10]. In that report, they determined"

2. We conclude that the Dominion Voting System is intentionally and purposefully designed with inherent errors to create systemic fraud and influence election results. The system intentionally generates an enormously high number of ballot errors. The electronic ballots are then transferred for adjudication. The intentional errors lead to bulk adjudication of ballots with no oversight, no transparency, and no audit trail. This leads to voter fraud. Based on our study, we conclude that The Dominion Voting System should not be used in

<sup>7</sup> Any protective order regarding the redacted portions should be lifted. None of this is source code.

Michigan. We further conclude that the results of Antrim County should not have been certified.

This conclusion is supported by Halderman's affidavit and Coomer's testimony. ASOG also found that certain log files were missing from the system.

15. Significantly, the computer system shows vote adjudication logs for prior years; but all adjudication log entries for the 2020 election cycle are missing. The adjudication process is the simplest way to manually manipulate votes. The lack of records prevents any form of audit accountability, and their conspicuous absence is extremely suspicious since the files exist for previous years using the same software. Removal of these files violates state law and prevents a meaningful audit, even if the Secretary wanted to conduct an audit. We must conclude that the 2020 election cycle records have been manually removed.
16. Likewise, all server security logs prior to 11:03 pm on November 4, 2020 are missing. This means that all security logs for the day after the election, on election day, and prior to election day are gone. Security logs are very important to an audit trail, forensics, and for detecting advanced persistent threats and outside attacks, especially on systems with outdated system files. These logs would contain domain controls, authentication failures, error codes, times users logged on and off, network connections to file servers between file accesses, internet connections, times, and data transfers. Other server logs before November 4, 2020 are present; therefore, there is no reasonable explanation for the security logs to be missing.

In Plaintiff's first interrogatories to Antrim County, Plaintiff asked Defendant Antrim County who accessed the EMS on November 4, 2020. Federal law states that this information must be preserved:

**52 U.S. Code § 20701 - Retention and preservation of records and papers by officers of elections; deposit with custodian; penalty for violation**

Every officer of election shall retain and preserve, for a period of twenty-two months from the date of any general, special, or primary election of which candidates for the office of President, Vice President, presidential elector, Member of the Senate, Member of the House of Representatives, or Resident Commissioner from the Commonwealth of Puerto Rico are voted for, all records and papers which come into his

possession relating to any application, registration, payment of poll tax, or other act requisite to voting in such election, except that, when required by law, such records and papers may be delivered to another officer of election and except that, if a State or the Commonwealth of Puerto Rico designates a custodian to retain and preserve these records and papers at a specified place, then such records and papers may be deposited with such custodian, and the duty to retain and preserve any record or paper so deposited shall devolve upon such custodian. Any officer of election or custodian who willfully fails to comply with this section shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

Defendant Antrim County replied:

Without waiving any objection, Connie Wing, Election Specialist, Antrim County Clerk's Office, accessed the Dominion Election Management Server throughout the day on November 4, 2020. Ms. Wing does not recall the specific times of access.

Defendants have never denied that the files were deleted. But, they always refused to answer or gave very vague and ambiguous answers. But on March 4, 2021, at a board of commissions meeting, Sheryl Guy acknowledged that she directed her staff to delete the data on November 4, 2020:<sup>8</sup>



<sup>8</sup> See [https://youtu.be/M8NG\\_m6ktD0](https://youtu.be/M8NG_m6ktD0).

In this video segment, Commissioner Marcus asked, "Did you direct or delete yourself any files on the Dominion services? Did you direct anybody on your staff to do so?" In response, Sheryl Guy stated:

"When you are saying who went in and worked on those files, whether they deleted them, replaced them, changed them, or corrected them, it was my office. I have never gone on to that machine. But it was my staff and it was because they were doing their job. We truly did not have correct training with the Election Source new program. Because we didn't know we had to pull all the cards back, not just the ones we had fixed. So when you are talking about who did it, I did it. My office staff did it under my authority to get those numbers right. It wasn't fraud. It was doing my job. Getting my numbers certified."

Commissioner Marcus then responded, "**Sounds like you just admitted to 1) breaking the law by making changes to the thing within the 30 day period 2) admitting that you deleted files and destroyed the integrity of the election in Antrim County. You admitted to directing your employees to do so. So basically, Antrim County's vote was completely skewed by your office and you're admitting it.**"

The fact remains that the files are gone. Sheryl Guy has admitted it that she directed her staff to do it. This is a serious problem.<sup>9</sup> Why isn't the AG's office investigating this? Instead, the government has argued that nothing happened. Sheryl Guy knowingly destroyed evidence. Failure to preserve evidence is not new in civil litigation. One of the founding principles of evidence is that parties have a duty to preserve evidence as soon as a case is anticipated. Certainly, they cannot delete files contrary to law. The law was clear even before 2004, when U.S. District Judge Shira

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<sup>9</sup> Indeed, it may be a crime.

(5) A person shall not do any of the following:

- (a) Knowingly and intentionally remove, alter, conceal, destroy, or otherwise tamper with evidence to be offered in a present or future official proceeding.

MCL 750.483a(5)(a). The penalty if "committed in a criminal case" is "imprisonment for not more than 10 years or a fine of not more than \$20,000.00, or both."

See also, MCL 750.505.

A. Scheindlin wrote a series of influential opinions in *Zubulake v. UBS Warburg*, 220 F.R.D. 212 (S.D.N.Y. 2003) outlining that duty. Despite this clarity, lawyers and their clients continue to be sanctioned for a failure to preserve electronic records. For example, in the matter of *Arbor Realty Funding, LLC v Herrick, Feinstein LLP*, 2016 NY Slip Op 05065 [140 AD3d 607] June 28, 2016 the court stated, "It is undisputed that Arbor's obligation to preserve evidence arose at least as early as June 2008, when Arbor retained counsel in connection with its claims against Herrick. However, Arbor did not issue a formal litigation hold until May 2010." In that case, the plaintiff retained counsel in June 2008 but continued recycling backup tapes, deleting emails, erasing hard drives and deleting email accounts of departing employees until May 2010. Another often cited case is *Congregation Rabbinical College of Tartikov, Inc., v. Village of Pomona*, Case No. 7:07-cv-06304, Southern District of New York. In that case, Judge Karas imposed an adverse inference and more than \$40,000 in attorneys' fees for failure to preserve evidence in a litigation hold; in that case, emails and angry Facebook posts.

In our case, Antrim County has now admitted that files were deleted. Based on Sheryl Guy's statement, this was the result of **intentional acts, gross negligence, and bad faith**. She admitted that she did it (intentional). She admitted that she was not properly trained (gross negligence). Nevertheless, she ran a federal and state election (bad faith).

This type of deleted data is analogous to the infamous case involving Volkswagen's auto emissions fraud scandal. In that case, a lawyer, known only as "Attorney A" had been under investigation for "bungling a litigation hold, resulting in destroyed documents and implicating the attorney in obstruction of justice." See [[Exhibits 11 and 12](#)], *More Lessons From VW: How*

*Not to Do a Litigation Hold<sup>10</sup> and VW's \$4.3BN Plea to Obstruction for Botched Litigation Hold.<sup>11</sup>*

Courts in Michigan see the issue the same way. In *Flagg v. City of Detroit*, No. 05-74253, 2011 WL 4634249, at \*1 (E.D. Mich. Aug. 3, 2011) (Whalen, M.J.) the court stated:

"As our sister circuits have recognized, a proper spoliation sanction should serve both fairness and punitive functions. See *Vodusek v. Bayliner Marine Corp.*, 71 F.3d 148, 156 (4th Cir.1995) (observing that a proper sanction will serve the 'purpose[s] of leveling the evidentiary playing field and . . . sanctioning the improper conduct'). Because failures to produce relevant evidence fall 'along a continuum of fault – ranging from innocence through the degrees of negligence to intentionality,' *Welsh*, 844 F.2d at 1246,<sup>12</sup> the severity of a sanction may, depending on the circumstances of the case, correspond to the party's fault. Thus, a district court could impose many different kinds of sanctions for spoliated evidence, including dismissing a case, granting summary judgment, or instructing a jury that it may infer a fact based on lost or destroyed evidence. *Vodusek*, 71 F.3d at 156."

*Id.* (quoting *Adkins v. Wolever*, 554 F.3d 650, 652-53 (6th Cir. 2009)). The *Adkins* Court also cited with approval *Vodusek v. Bayliner Marine Corp.*, 71 F.3d 148, 156 (4th Cir. 1995), which held that, "As a general proposition, the trial court has broad discretion to permit a jury to draw adverse inferences from a party's failure to present evidence, the loss of evidence, or the destruction of evidence. While a finding of bad faith suffices to permit such an inference, it is not always necessary."

The Sixth Circuit has upheld sever sanctions for failure to preserve evidence, e.g., *Smith v. Nationwide Mut. Fire Ins. Co.*, 410 F. App'x 891 (6th Cir. 2010); *Bryant v. U.S. Postal Serv.*, 166 F. App'x 207 (6th Cir. 2006); *U.S. v. Reyes*, 307 F.3d 451 (6th Cir. 2002). Indeed, in *Beavan v U.S. Dep't of Justice*, the Sixth Circuit found that the "'culpable state of mind' factor is satisfied

<sup>10</sup> [https://blogs.findlaw.com/in\\_house/2017/01/more-lessons-from-vw-how-not-to-do-a-litigation-hold.html](https://blogs.findlaw.com/in_house/2017/01/more-lessons-from-vw-how-not-to-do-a-litigation-hold.html)

<sup>11</sup> <https://www.jdsupra.com/legalnews/vw-s-4-3bn-plea-to-obstruction-for-43372/>

<sup>12</sup> *Welsh v. United States*, 844 F.2d 1239, 1249 (6th Cir. 1988)

by a showing that the evidence was destroyed knowingly, even without intent to breach a duty to preserve it, *or negligently.*" 622 F.3d 540, 554 (6<sup>th</sup> Cir. 2010). See also *Alexander v. Del Monte Corp.*, Case No. 09-12303, 2011 U.S. Dist. LEXIS 9915 (E.D. Mich. Jan. 11, 2011) ("The culpable state of mind factor is satisfied where evidence was destroyed negligently, even without intent to breach a duty to preserve it."); *Broan-Nutone*, 2011 U.S. Dist. LEXIS 99043 at \*13 ("Bad faith is not an essential element of spoliation . . . and the court has discretion to craft a spoliation sanction that serves both fairness and punitive functions."). See also *Forest Laboratories, Inc. v Caraco Pharmaceutical Labs, Ltd.*, No. 06-CV-13145, 2009 U.S. Dist. WL 998402 at \*5 ("[o]nce the duty to preserve attaches, any destruction of [evidence] is, at a minimum, negligent") (quoting *Zubalake v. UBS Warburg LLC*, 220 F.R.D. 212, 220 (S.D.N.Y. 2003)); see also *Arteria Property Pty v. Universal Funding V.T.O., Inc.*, No. 05-4896, 2008 U.S. Dist. LEXIS 77199 (D.N.J. Oct. 1, 2008) ("This Court need not delve into these murky waters [of the requisite culpability of a purported spoliator needed to trigger an adverse inference], as either under a negligence or bad faith/intentional destruction standard, an adverse inference is warranted here. The Defendants admitted in their Rule 26 disclosures to have in their possession the [requested] letter, yet when pressed about the issue in his deposition, [defendant's representative] stated that he did not know anything about the letter. This tends to show that Defendants either had the document and then willfully destroyed it, or had the document and lost it, which would constitute bad faith or negligence, respectively. What was once under the control of the Defendants is now gone."); *Creative Resources Group of New Jersey, Inc. v. Bart*, 212 F.R.D. 94, 107 (E.D.N.Y. 2002) ("Even if that intent were absent, however, the circumstances here rise to the level of negligence that satisfies the [culpability] standard. [Defendant] claims that many of the documents are "missing," but that he has no idea of how they were lost or

discarded. At the very least, the circumstances amount to negligence in the preservation of evidence. The 'culpable state of mind' element is thus satisfied."); *Liberman v. FedEx Ground Package System, Inc.*, No. 09-2423, 2011 U.S. Dist. LEXIS 4401, \*12 (E.D.N.Y. Jan. 18, 2011) ("Given that . . . FedEx had an obligation to preserve the relevant records, FedEx was at least negligent in its failure to do so."); *Pension Comm.* 685 F. Supp. 2d at 464 (S.D.N.Y. 2010) (Explaining that in the discovery context, negligence is a "failure to conform to th[e] standard" of "what a party must do to meet its obligation to participate meaningfully and fairly in the discovery phase of a judicial proceeding.").

Here, the Defendants must have known litigation was imminent when they bungled the election on November 3, 2020. Certainly, they have been aware of issues related to the destruction of evidence since December 14, 2020. Yet, they have done nothing but deny. Attorney General Dana Nessel has started no investigation. She has not called in the Michigan State Police or FBI. Instead, she continued to push the false narrative and fever dream that this was the safest election in history. The Sixth Circuit has held that "a federal court's inherent powers include broad discretion to craft proper sanctions for spoliated evidence." *Adkins v. Wolever*, 554 F.3d 650, 651 (6th Cir. 2009) (en banc). This discretion includes imposing sanctions such as "dismissing a case" or "granting summary judgment" for the moving party. *Id.* at 653.

Plaintiff is entitled to an adverse inference at trial that the files destroyed and deleted would have been adverse to the Defendants. The system files would have shown fraud, internet connections, and data manipulation. Indeed, the adverse inference will eliminate many of the Defendants' defenses, including the defense of "human error." For that reason alone, Plaintiff must be allowed to collect forensic data from other counties, which will show the type of data

deleted from Antrim County's EMS. Further, the type of data within the deleted folders will tell us about the culpability of Sheryl Guy and her staff. Did she act maliciously, with bad faith, with unjustifiable carelessness, with gross negligence? There is a lot of information we will learn from the information contained in the EMS of other counties. Plus, the data collected from 8 counties using three different systems will show the correlation the sixth degree polynomial and provide a baseline to understand how the fraud that occurred in Antrim County. Without reviewing the data in other counties, we will never know the extent of the files that were deleted in Antrim County.

#### **15. Hand recount and audits; the subpoenas are not an abuse of discovery**

Defendants and other counties argue that the subpoenas issued are an "abuse of the discovery process." *Defendants' Joint Motion for Protective Order*, at 5. They further argue that "[t]here is no basis in law and fact for the issuance of the afore-mentioned subpoenas. *Id.* In their brief, Defendants argue very briefly that the subpoenas are abusive because Plaintiff "failed to provide any explanation or justification for the subpoenas and how the information sought to be obtained through the subpoenas is relevant to any of Plaintiff's claims considering that Plaintiff's claims pertain to the November 3, 2020 election held in Antrim County and not any other county in Michigan." This initial objection is without merit. There is no requirement in the Michigan Court Rules that a subpoena must "explain" or "justify" itself on its face. For this reason, Defendants' motion must be denied.

Defendants further argue that Defendant Benson has already performed a "hand recount" of the result and "conducted statewide audits." As support, Defendants point to self-serving press releases. As an initial argument, we must disabuse the world of the false narrative that Benson performed a "hand recount" of the Antrim County results or that she "conducted statewide audits." She did neither.

As to the issue of a "hand recount of the results", Defendant Benson only performed a very limited hand recount of the presidential election only. She has refused to perform a hand recount of any down-ballot elections in Antrim County. Indeed, Benson initially announced to the world that she would be performing an "audit" of the election results [Exhibit 13]. We can see from the notice dated December 15, 2020 that this was scheduled to be an "ALL COUNTY AUDIT" scheduled for 2 days. Even her email from December 15, 2020 stated that an audit was scheduled [Exhibit 14]. But at the last minute, Benson changed the time to only 1 day and only performed a hand recount of the presidential election. The results of the hand recount revealed a gross disparity of the election results as initially reported on November 3, 2020 [Exhibit 15]. In fact, the results revealed that in 9 of the 16 precincts, votes were flipped from Jorgenson to Trump, then Trump to Biden, and Biden's votes disappeared. But surprisingly, Hawkins did not flip to Jorgenson, Blankenship did not flip to Hawkins, and De La Fuente did not flip to Blankenship. And how did the votes for Biden evaporate?

Diagram 1 shows the discrepancy of votes on 4 occurrences. Benson has publicly stated that the December 17, 2020 hand recount only changed 12 votes from Donald Trump. Of course, she refuses to discuss the substantial discrepancy of votes from November 3, 2020 until December 17, 2020.

DIAGRAM 1:

Date	Registered Voters	Total Votes Cast	Biden	Trump	Third Party	Write-In	TOTAL VOTES for President
Nov 3	22,082	16,047	7,769	4,509	145	14	12,423
Nov 5	22,082	18,059	7,289	9,783	255	20	17,327
Nov 21	22,082	16,044	5,960	9,748	241	23	15,949
Dec 17	22,082		5,959	9,759	244	20	15,962

But even if we accept Benson's analysis that only 12 votes were changed, then we have 12 errors out of 15,962 ballots. The allowable error rate established by the Federal Election Commission guidelines is 1 in 250,000 ballots. Based solely on Defendant Benson's claim, Antrim County has errors of 191 in 15,962, which is 16 times the allowable rate.

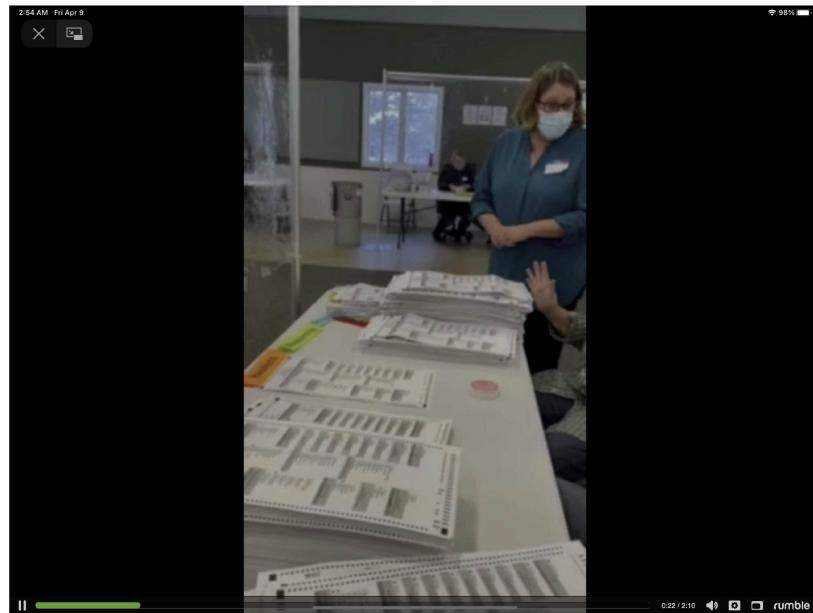
DIAGRAM 2:

Jurisdiction	Biden			Trump			Jorgenson		
	Democratic Party			Republican Party			Libertarian Party		
	Original	Hand Count	Net	Original	Hand Count	Net	Original	Hand Count	Net
TOTAL VOTES	7769	5959	-1810	4509	9759	5250	93	190	97
TOTAL CHANGE			-1810			5250			97

Banks Township, Precinct 1	349	349	0	756	758	2	11	11	0
Central Lake Township, Precinct 1	549	549	0	908	906	-2	16	16	0
Chestonia Township, Precinct 1	197	93	-104	3	197	194	0	3	3
Custer Township, Precinct 1	523	240	-283	11	521	510	4	11	7
Echo Township, Precinct 1	392	198	-194	8	392	384	1	8	7
Elk Rapids Township, Precinct 1	1198	984	-214	625	1029	404	8	17	9
Forest Home Township, Precinct 1	755	610	-145	19	753	734	1	19	18
Helena Township, Precinct 1	432	306	-126	4	430	426	0	4	4
Jordan Township, Precinct 1	372	182	-190	13	369	356	1	14	13
Kearney Township, Precinct 1	744	470	-274	16	743	727	0	16	16
Mancelona Township, Precinct 1	276	277	1	835	835	0	20	20	0
Mancelona Township, Precinct 2	247	247	0	646	646	0	13	13	0
Milton Township, Precinct 1	686	767	81	484	1023	539	14	18	4
Star Township, Precinct 1	462	166	-296	10	468	458	0	10	10
Torch Lake Township, Precinct 1	527	461	-66	8	526	518	1	7	6
Warner Township, Precinct 1	60	60	0	163	163	0	3	3	0

In Diagram 2 we can all see that in Chestonia Township (for example) Joe Biden received 197 votes on November 3, 2020. Simultaneously, Donald Trump received 3 votes. In reality, Joe Biden received 93 votes and Donald Trump received 197 votes. This proves there was a direct flip from Jorgenson to Trump to Biden. This same result occurred in 9 of the 16 precincts. Defendants have yet to answer the question of how this happened. This was not "human error." This was a result of system design that should not occur in a simple additive function. Likewise, Defendant has also refused to provide a real, nonpolitical answer as to how the following errors occurred. They have refused to answer discovery.

We must also consider what actually happened at the "hand recount" on December 15, 2020. As previously reported, a Secretary of State official told two of the volunteers to count approximately 138 ballots with the very same signature in Central Lake Township.<sup>13</sup>



SOS official: "So, you need to move forward with the audit, so we can get the numbers, so we can see how many ballots are here."

The female counter asks, "So when we're done with the audit, there's still the opportunity to challenge the fact that we have multiple ballots with the very same signature?" she asks.

"I don't know if 'challenge' is the right word," the SOS official says.

"But we're challenging—" the volunteer says.

The male volunteer tells the SOS, "We'll go ahead and count the ballots moving forward, but we will separate out, and count those—there's going to be an asterisk, saying 'these ballots have the same signature.'"

<sup>13</sup> <https://www.thegatewaypundit.com/2020/12/mi-sec-state-official-caught-video-telling-volunteers-count-multiple-ballots-signature-audit-votes-antrim-county/>

"And again, we know that you have a concern with this precinct," she tells them, explaining, "That's not your role at this very moment," as she continues to push for them to ignore the multiple matching signatures and only count the ballots.

"What I need you to do right now is finish the audit," she tells them again. Both of the volunteers explain that they are going to make a note of the ballots, to which the SOS official replies, "Again, that is not the process."

The SOS official implores them to continue to count the presidential ballots.

At no point does the SOS official assure them that the issue of the multiple potentially fraudulent ballots will be addressed, but instead demands that they count them as if they were all legitimate ballots.

DIAGRAM 3:

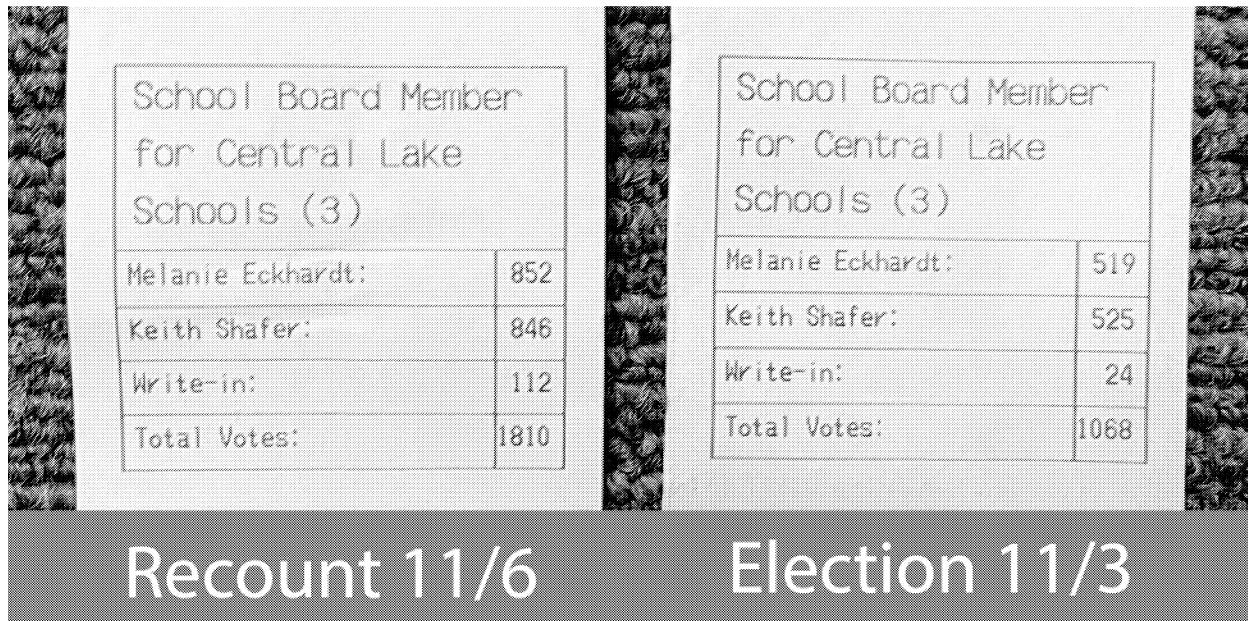


DIAGRAM 4:



Diagrams 3 and 4 also demonstrate significant errors that should not occur in this system. Without a proper, scientific and nonpolitical explanation by Defendants, and based on their refusal to answer discovery, we must assume fraud.

Next, Benson never performed any "audit" in Antrim County. Her own publication titled *Post-Election Audit Manual* [Exhibit 16] details "audit" procedures:

- "Election notices, election inspector appointments and training, ePollbook security, test deck procedures, military and overseas voter applications, and a review of the *Pollbook* and ballot containers used on election day will be the primary focus of the audit. In addition, an audit of the results of up to three contests in a General election and one contest in other elections on the ballot in each precinct will be conducted." *Id.* at 3.
- "A vital component to a successful election is the conduct of the preliminary and public Logic and Accuracy Testing prior to the election." *Id.* at 6.
- "Review the *Voter Assist Terminal Preparation Checklist and Test Certification Form* and verify it was properly completed." *Id.* at 7. Likewise Guy never performed a VAT Test Deck.
- "Review the *Applications to Vote*. Physically count the *Applications to Vote* and determine if there is the same number of *Applications to Vote* as voters in the *Pollbook*." *Id.* at 8.

- "If auditing an election with a state or federal office, review the absent voter information posting required to be posted before and on election day." *Id.*
- "Verify the completion of a Receiving Board checklist on election day." *Id.*
- "Finally, review the remaining components of the *Pollbook*." *Id.*
- "Review the Clerk's Preparation Certificate." *Id.* at 9.
- "Ensure all checkboxes are completed in the Election Inspectors' Preparation Certificate and that the inspectors signed." *Id.*
- "Ensure all inspectors (including the chairperson) subscribed to the Constitutional Oath of Office." *Id.*
- "Ensure the oath administrator signed in the appropriate location(s)." *Id.*
- "Compare the signatures of the election inspectors with the Election Commission appointments to ensure all that signed the oath were appointed." *Id.*
- "If applicable, ensure the write-in portion of the *Pollbook* was completed. Votes should be properly totaled after the tally marks." *Id.*
- "Ensure the tabulator tape/statement of votes (should be affixed to the Statement of Votes signature page in the back of *Pollbook*) was signed by all election inspectors." *Id.*
- "Ensure the number of ballots tabulated on the totals tape matches the number of voters listed in the *Pollbook*." *Id.*
- "Ensure the Ballot Summary (found in the *Pollbook*) is completed, balanced, and totals are accurate. The **Difference** should always be zero. If there is a valid discrepancy, was it remarked? If so, check the Remark box." *Id.*
- "Review the *Provisional Ballot Forms* with the *Pollbook* to ensure the number issued matches the number in the Ballot Summary." *Id.* at 11.
- "Determine based on the information provided on the form if the Envelope ballot was appropriately processed by the election inspector and/or the local Clerk." *Id.*
- "Ensure a master card is available for each voter issued an Affidavit or Envelope ballot verifying the voter was registered to vote after the election. Finally, if an envelope ballot was counted, verify it was sealed in an approved ballot container." *Id.*
- Does the number of spoiled ballots in the *Spoiled Ballot Envelope* equal the number of spoiled ballots listed in the *Pollbook*?" *Id.* at 12. In fact, on December

17, 2020, we saw that the number of spoiled ballots did not match the ballots in the envelope.

We know that Antrim County never performed any pre-election "accuracy test," "stress test," or "test deck." The scope of the recount was limited to presidential race which is insufficient to validate the explanations provided by the Defendants or satisfy any criteria above. If their argument were valid, it would be evident in down ballot races not simply the presidential race. The recount also did not analyze election records with sufficient rigor to determine if the election record chain of custody (QVF, Poll Books, Ballots, Vote Tallies) was maintained. Indeed, Antrim County failed to comply with every single benchmark set forth above. According to Benson's own manual, this presents enormous complications and is most likely the reasons she converted the scheduled audit to the hand recount. In truth, based on the failures to perform the tests above and the deletion of vital election records, the Antrim County results are not auditable and decertification is required. Antrim County Clerk Sheryl Guy committed gross negligence when she failed to perform these pre and post-election tests. Instead, she just "winged it."

Defendants offer no other objections and their motion for a protective order must be denied.

#### **16. Plaintiff's second, third, and fourth discovery requests**

Defendants make an over reaching argument that everything requested in the second, third, and fourth discovery requests should not be permitted because it is excessive or abusive. Yet they don't explain how. They don't point to any particular interrogatory or identify it by number. The truth is that the discovery requests are actually quite tailored and specific. Without identifying any particular request, Defendants' motion must fail because it is impossible to respond to the objection and Plaintiff is not required to craft the argument for Defendants.

Next, Defendants claim that the discovery seeks "confidential information pertaining to IP and MAC addresses which, if disclosed would compromise the security and integrity of the Defendants' cyber systems including, but not limited to, election systems." This is an interesting argument because IP and MAC addresses are fully disclosed at the time of purchase of computer equipment. Nevertheless, Plaintiff is willing to enter into a protective order stating that Plaintiff will not disclose the information to the public. Plaintiff has no interest in compromising Defendants' elections systems. To the contrary, Plaintiff's goal is to help provide a secure election system for everyone in Michigan. But Defendants' statement is most curious. Defendants have claimed that the voting system is not connected to the internet. John Poulis, the CEO of Dominion, testified before the Michigan Senate on December 15, 2020 that

"Secondly, none of Antrim's tabulators were connected to the internet. Antrim County does not have modems, they do not use modems . . . No they're not connected, as I said they're not connected to the internet."

This statement is false. A quote from Dominion shows that Antrim County purchased 17 external wireless modems [[Exhibit 17](#)] in 2017. They also purchased an ImageCast Listener Express Server and a RAS System. These items inherently connect to the internet. Indeed, the sole purpose of these items it to transfer data through the internet. If Defendants dispute this, then they can produce the documents requested to verify the actual purchases made from 2017 through the present. Further, as described above, we have already showed a connection through Taiwan and Antrim County. But perhaps more importantly, let's look again at the quotation (which is an admission) from the Defendants' brief:

*"confidential information pertaining to IP and MAC addresses which, if disclosed would compromise the security and integrity of the Defendants' cyber systems including, but not limited to, election systems."*

If the systems are not connected to the internet, then there is no way that providing IP and MAC addresses could compromise a cyber system, let alone an election system – ***UNLESS*** the systems are connected to the internet. Defendants just admitted what they previously denied, *i.e.* the election systems are connected to the internet.

Defendants also claim that the Dominion Voting System manuals are subject to a confidentiality agreement. Yet they provide no provision in the contract that describes how a common manual, delivered to hundreds of people, is confidential or proprietary. Other states and the EAC provide Dominion manuals online.<sup>14</sup> Why does Michigan make it a secret?

Other than this, Defendants provide no objections tailored to any specific request. They only argue that "everything" is not relevant. To the contrary, everything is relevant and specifically tied to this case and how the vote was calculated in Antrim County. Based on Defendants failure to actually identify an offending request, their motion must fail.

## **17. Non-Party Counties objections**

Four non-party counties have also filed motions to quash and made various arguments that are without merit. They will be addressed in this section.

a. **Relevance.** The relevance has already been addressed above. These counties provide a baseline test group that will help us understand how the deleted files in Antrim County affected the election. The spoliation issue alone demands that the motions to quash be denied.

b. **14-day rule.** Any objection to the 14-day requirement set forth in MCR 2.305(A)(3) is without merit. At the time the subpoenas were served, this case was under a court

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<https://www.sos.state.co.us/pubs/elections/VotingSystems/systemsDocumentation/DominionDocumentation.html>. See also <https://www.sos.texas.gov/elections/forms/sysexam/oct2019-mechler.pdf>. See also [https://www.eac.gov/sites/default/files/voting\\_system/files/COMPLIANCE%20MATRIX%20DOMINION%204.0%20FINAL.pdf](https://www.eac.gov/sites/default/files/voting_system/files/COMPLIANCE%20MATRIX%20DOMINION%204.0%20FINAL.pdf)

order to respond to discovery within 7-days. The subpoenas complied with that order and directive.

c. **Overbroad.** The non-parties make an objection that the subpoenas are "overbroad." But they don't articulate how it is overbroad. Plaintiff is not required to make this argument for them. Rather, the subpoenas are tailored specifically to conduct forensics of tabulators and the election management system and review ballots and documents. That is not "overbroad."

d. **Undue burden.** The non-parties make an objection that the subpoenas are "unduly burdensome." They appear to argue that the burden is time, labor, cost, and a fear regarding the procedure. Plaintiff can satisfy each of these objections. Nothing done will interfere with the security and preparedness of the system for the May 2021 election. There is nothing invasive that occurs when forensic images are captured. A forensic image is done using a baffle type procedure and using equipment that only permits a download. No upload can happen. No county needs to retrieve any EMS information or hire anyone to do it. Our forensic team only needs access to the tabulators, EMS system, and ballots. The only cost to the county will be the labor required to provide access, which Plaintiff is willing to share. No county will need to replace any tally server. There is no security risk.

As stated in *State Farm Mut. Auto Ins. v. Elite Health Ctrs., Inc.*, 364 F. Supp. 3d 758, 767 (E.D. Mich. 2018), "[t]he Court recognizes that responding to discovery is generally *bothersome*, and may indeed be, at least to some extent, burdensome. It also recognizes that only the rare recipient of a discovery request would relish the task of responding, particularly if it also entailed a privilege review. But the fact that it will be either bothersome or burdensome to

respond to a discovery request does not necessarily mean that it will be *unduly* so." Further, "it is clear that 'undue burden' for purposes of nonparty discovery does not mean no burden at all." *Id.*

As stated in *Cahoo v SAS Inst Inc*, 377 F Supp 3d 769, 774-77 (ED Mich. 2019), "FAST's request here is broad, but the likelihood of discovering important information is great. And the information sought is simply not available from other sources. The UIA maintains the information for the precise purpose of administering its unemployment compensation system, which is the system the plaintiffs allege it wrongfully administered, causing the injuries in this case. All of the parties to this case will benefit in having the information available to them, as the files presumably will illustrate the manner in which MiDAS was used to make the fraud determinations as to the claimants."

Plaintiff has no ability to obtain the information other than as requested in the subpoenas. The likelihood of discovering important information is great. All parties to this case will benefit, as the files will illustrate what was deleted from the Antrim County system and whether fraud occurred in the election.

The non-party counties also point to the cost factor. As stated in *Cahoo*, "The UIA also says it should not be required to produce the information because it would be costly to assemble. The thrust of this argument, however, is not so much that it should be relieved from compliance altogether, but that it should not be required to shoulder the costs of production." *Id.* at 776. The court in *Cahoo* went on to discuss whether the cost burden should be shifted at some length. The county's election integrity/security argument is very surface-level and doesn't hold up. Plaintiff is only asking that his experts to be allowed to make a forensic copy and examine ballots and some documents, such as paper tally rolls. Additionally, the argument about needing to rent a venue

and have tons of clerk staff present is low-hanging fruit. They don't need all of that to comply with the subpoena. Nevertheless, Plaintiff is willing to share the cost.

**18. Non Party County requests can be satisfied**

Barry County, Livingston County, and Grand Traverse County raise several identical requests that are all easily satisfied. Plaintiff is also willing to extend these courtesies to Macomb County also.

	CONDITION	RESPONSE
A	Require prepayment by Plaintiff for the reasonable costs of complying with the subpoena, including all personnel costs incurred by [*] County while monitoring Plaintiff's inspection process;	Plaintiff is willing to share in the cost.
B	Require a reasonable deadline commensurate with the size and scope of the subpoena (so as not to interfere with the security and integrity of the May 2021 election)	Plaintiff is willing to set a deadline. The work should be concluded in 5 days per county provided each county provides all requested data and materials.
C	Require Plaintiff to articulate the process in which equipment will be inspected	All analysis of devices will be performed in a manner that is in complete accord with the best practices of digital forensics. Beginning with the chain of custody, all devices and equipment will be accounted for and the evidentiary chain of command maintained. All original evidence will be digitally preserved and a forensic image created of the original device ensuring that write protection techniques and devices are employed to ensure that there is no change to the original device. This digital image will be a bit for bit copy of the original device and two copies will be made. On copy will be preserved as best evidence and the second copy will be utilized for analysis purposes. The initial analysis will follow traditional digital device analysis, leveraging keyword searching and artifact analysis to determine if, when and how this device was used during the electoral process. In addition to the traditional

		forensics, a copy of the evidence file will be leveraged to perform analysis of the system live. This live analysis allows for not only simulation of the device as it ran, but also allows for live analysis of the communications traffic through the capture of the TCP/IP of network packet traffic. Ideally, provided the completeness of the device discovery, the entire networked system and communications infrastructure of the voting system would be replicated, allowing for a complete analysis of the inter-device communications and dependencies can be analyzed and forensically recorded for further analysis to detect anomalies.
D	Require Plaintiff's inspection team to show that they have the requisite training, knowledge, skill, experience, and credentials to access [*] County election equipment	See resumes and curriculum vitae for (1) Jeffrey Lenberg who has 30 years of classified top secret experience for Sandia National Laboratories, (2) Cyber Ninjas and Douglas Logan, (3) CyTech/CyFIRm, Inc. and Benjamin Cotton, and (4) Tenacity Cyber, LLC and James Penrose. The Arizona Senate just vetted and hired Cyber Ninjas and Douglas Logan and CyTech/CyFIRm, Inc. and Benjamin Cotton to conduct a forensic examination of Maricopa County. <u>[Exhibit 18]</u>
E	Require Plaintiff to establish and guarantee that his inspection of election equipment will not alter, damage, or compromise [*] County Election Equipment.	Plaintiff agrees.

**19. Conclusion and relief requested**

For the reasons stated above, Plaintiff respectfully requests this Court deny Defendants' joint motion for protective order and deny each counties motion to quash, or in the alternative limit the scope, and grant such other relief the Court deems just and proper.

Respectfully submitted

DePERNO LAW OFFICE, PLLC

Dated: April 9, 2021

*/s/ Matthew S. DePerno*  
Matthew S. DePerno (P52622)  
Attorney for Plaintiff

## **PROOF OF SERVICE**

On the date set forth below, I caused a copy of the following documents to be served on all attorneys of record at the addresses listed above

1. Plaintiff's Collective Response to Defendants' and Non-Party Counties' Motions to Quash and for Protective Orders

Service was electronically using the MiFile system which will send notification of such filing of the foregoing document to all attorneys of record.

Dated: April 9, 2021

*/s/ Matthew S. DePerno*  
Matthew S. DePerno (P52622)