

IN THE STATE OF MICHIGAN
SUPREME COURT

DONNA BRANDENBURG, as a
Michigan Gubernatorial Candidate and
Individually,
Plaintiff,

CASE NO:

v

MICHIGAN BOARD OF STATE CANVASSERS,
JOCELYN BENSON, in her official capacity as Secretary of State,
JONATHAN BRATER, in his official capacity as Director of the Michigan Bureau of Elections,
Defendants.

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**VERIFIED COMPLAINT FOR MANDAMUS, FOR DECLARATORY
JUDGMENT ON CONSTITUTIONAL AND STATUTORY ISSUES, AND
REQUEST FOR INJUNCTION**

MOTION FOR IMMEDIATE CONSIDERATION

There is no other pending or resolved civil action arising out of the transactions or occurrences alleged in this complaint.

(Original Action)

NOW COMES, the above-named Plaintiff by and through her Counsel and for her complaint states as follows:

INTRODUCTION

1. This case and controversy arising out of a final determination by the board of state canvassers that precludes Donna Brandenburg from participating in the August 2, 2022, Republican Primary as a candidate for Michigan Governor on the grounds that her nominating petitions were declared “insufficient”.
2. Donna Brandenburg was one of five (5) Republican Gubernatorial Candidates and 18 other candidates (mostly Republican Candidates and some non-partisan judicial candidates) who the board of state canvassers has stated in a final administrative action are not permitted to have their names on the Republican primary ballot because of an alleged insufficient number of valid signatures.
3. Although putatively all candidates have the same statutory, due process, constitutional, and other legal arguments, Donna Brandenburg has several *unique facts* which distinguish her claims from the other candidates including:
 - a. The board of state canvassers did not even count all the signatures submitted by Donna Brandenburg.
 - b. On information and belief, the Bureau of Elections which functioned as staff for the board of state canvassers omitted consideration of a second submission by Donna Brandenburg which contained an additional 886 petition sheets with a conservatively estimated 8000 additional signatures.

- c. In total the board of state canvassers counted 17,778 signatures initially despite receipts showing submission of an estimated 19,500 and second submission of an estimated 8000 totaling 27,500. More than 1/3 of the estimated signatures submitted are not addressed. No other candidate raises this issue.
- d. No written sworn complaint was filed challenging signatures on the nominating petitions Donna Brandenburg filed. Other candidates received a sworn written complaint identifying specific signatures and the challenges to those signatures.
- e. On information and belief, Both Candidates Perry and Craig received a written complaint and challenge submitted before April 26, 2022, putting those candidates on notice that some of their signatures were under review. Donna Brandenburg was given substantially less notice of the issue regarding challenges to the genuineness of signatures she submitted.
- f. Only 2-3 signatures from all the signatures contained in the nominating petitions submitted by Donna Brandenburg were identified as being compared against the signature in the QVF per the *Review of Nominating Petition of Donna Brandenburg* dated May 23, 2022, and the *Staff Report on Fraudulent Nominating Petitions* dated May 23, 2022 (The “reports”)
- g. Only 2 circulators, Stephen Tinnin (1,156 signatures) and Niccolo Mastromatteo (43 signatures) were identified in the reports as participating in the 8 examples in Appendix 1 of the *Staff Report on Fraudulent Nominating Petitions* circulated nominating petitions submitted by Donna Brandenburg.

- h. Nevertheless, the *Review of Nominating Petition of Donna Brandenburg* identified 19 circulators and 11,144 signatures that were not considered. There is no evidence these signatures (except the 2-3 referenced) were compared to the QVF for genuineness.
4. This is an original action for a writ of mandamus together with a request for declaratory relief on certain constitutional issues and a request for an injunction preventing the Secretary of State from proceeding with the certification of the election or printing ballots for the primary prior to a decision on the merits. This is accompanied by a request for expedited consideration.
 5. The mandamus is appropriate in that Michigan Election Law, Public Act 116 of 1954, in chapter XXIV (MCL 168.542-558) requires that certain ministerial actions be performed by the board of state canvassers relating to Nominating Petitions.
 6. Many ministerial actions were not performed-- some ministerial acts with a clear statutory duty to perform (subject to mandamus) and the certain discretionary ministerial acts which are waived (not subject to mandamus).
 7. In the matter of the signatures contained in the nominating petitions submitted by Donna Brandenburg, there was no complaint or challenge made to any signatures submitted by her, so the process of review is discretionary under MCL 168.552(8).
 8. Without a complaint the board has no authority to investigate or conduct a hearing on the validity of signatures. Deleeuw v State Bd of Canvassers, 263 Mich App 497, 502; 688 NW2d 847 (2004).

9. MCL 168.552(13) requires that when conducting an investigation pursuant to MCL 168.552 of the genuineness of any signature that the board of state canvassers MUST make direct comparisons to the QVF of signatures (or if not present to the signature on file at the local election office). The failure to follow this process during any investigation is a violation of a clear legislative duty. If the investigation is discretionary (such as when the complaint is filed untimely) the failure to follow this process would constitute an abandonment of a discretionary process.
10. The failure of the board of state canvassers to follow MCL 168.552 (10) with a recheck by the city or township clerk of the comparison for determining genuineness is also a violation of clear statutory process and would constitute an ABANDONMENT of the discretionary investigation under MCL 168.552.
11. When there is an abandonment of the discretionary review of the genuineness of a signature, then the signature must be presumed valid—just as if there was no investigation.
12. Applying MCL 168.552 in its entirety to the signatures submitted by Donna Brandenburg and in light of the absence of a complaint, direct signature comparison, and a recheck by the local jurisdictional clerk, there is NO legal authority to reject any of the signatures.
13. In the event the Court agrees with this contention, then the proper remedy will be mandamus certifying her as a candidate and causing her to be included on the August 2, 2022, primary ballot.
14. The grant of mandamus to restore the candidacy to the ballot would alleviate the need for mandamus to finish identifying all signatures that were submitted as the additional

signatures would be cumulative as there would be sufficient signatures that are presumptively valid.

15. While not all of the authorized acts identified in MCL 168.552 are required (some are discretionary tasks) it is clear that all of the acts are ministerial. Mandamus is only available for mandatory ministerial duties.

16. When there is no legislative authority for an action, the action is *ultra vires* and is an unconstitutional exercise of executive authority and a violation of the doctrine of separation of powers which requires the legislature to grant authority of the executive branch to act. This doctrine is present in both the federal and state constitutions.

17. Donna Brandenburg seeks declaratory relief on statutory overreach and certain *ultra vires* actions committed which exceed the statutory authority by the board of state canvassers which include:

- a. The commencement of an *investigation* of the genuineness of signatures is mandatory on the filing of a complaint

MCL 168.552 (8) (clause 2)

If the board of state canvassers receives a sworn complaint, in writing, questioning the registration of or the genuineness of the signature of the circulator or of a person signing a nominating petition filed with the secretary of state, the board of state canvassers **shall commence an investigation**.

- b. The conduct of a *hearing* on the genuineness of the signatures is discretionary but only authorized by the legislature after a sworn complaint is filed in writing.

MCL 168.552 (9) [In part]

The board of state canvassers **may hold a hearing** upon a complaint filed or for a purpose considered necessary by the board of state canvassers to conduct an investigation of the petitions.

The hearing is discretionary upon a complaint filed or to conduct an investigation on a complaint filed. There is no other grant of authority by the legislature to the board of state canvassers to conduct a hearing on a nominating petition submission.

- c. Creation of a novel procedure to “sample” signatures and to extrapolate these samples to all signatures gathered by the circulator—which was even extended to petitions submitted by a different candidate.
- d. Creation of a remedy not authorized by statute. The novel remedy was to strike all signatures submitted by a circulator deemed unworthy by the Bureau of Elections and to abandon the statutory requirement to check each signature.

The invalidity of 1 or more signatures on a petition does not affect the validity of the remainder of the signatures on the petition. MCL 168.544(c)(2).

- e. A determination was made by the board of state canvassers that a deadlock vote of 2-2 by the board of state canvassers was action declaring the petitions insufficient and creating a presumption of validity in the staff report *Review of Nominating Petition of Donna Brandenburg* dated May 23, 2022, rather than the actual presumption of validity of the signatures. This was an improper delegation of authority to the Director of the Bureau of Elections and his staff to decide the issue. The law requires the presumption of validity to be followed. Deleeuw v State Bd of Canvassers, 263 Mich App 497, 502; 688 NW2d 847 (2004).
- f. A determination that signatures were “fraudulent” authority for making the determination in the statute is not permitted by law. Deleeuw v State Bd of Canvassers, 263 Mich App 497, 502; 688 NW2d 847 (2004).

- i. The only provision for determining a signature to be fraudulent is under MCL 168.544c which requires a crime to be committed.
- ii. The crimes that are sufficient to determine are violations of MCL 168.544c (8), (10) or (12).
- iii. The crimes essentially require an individual to sign as someone another individual or to make a false statement in the certification.
- iv. The determination of obvious fraud is only permitted after a hearing conducted pursuant to MCL 168.552 which can only be conducted after a sworn written complaint is filed and an investigation commenced. MCL 168.544c (11) and (13)
- v. The conclusion of “fraud” was reported by the Bureau of Elections which has tainted all candidates causing prejudice to their campaigns when picked up and repeated by the media and public.
- vi. As to Donna Brandenburg, there was no complaint, no proper investigation, and no hearing on the investigation or complaint and so there can be no finding of fraud.

18. Donna Brandenburg requests declaratory relief on Federal and State constitutional issues including:

- a. Procedural Due Process
- b. Substantive Due Process
- c. Violation of Separation of Powers Doctrine
- d. Violation of Equal Protection Clause

- e. That there was no finding that signatures were submitted by her that have been determined to be fraudulent.
19. While other candidates are advancing legal arguments, pursuing different legal strategies, and have filed at different times and places, there are some legal issues that will overlap and some which will be advanced and presented uniquely. Donna Brandenburg has a right to consideration of her legal issues independently of other candidates.

JURISDICTION

20. Jurisdiction is proper in the Michigan Supreme Court.MCL168.479
21. Donna Brandenburg is aggrieved by a determination made by the board of state canvassers that disqualified her from the Republican Party Primary.
22. The statute conveying jurisdiction is MCL 168.552 (12).
- MCL 168.552 (12) A person who filed a nominating petition with the secretary of state and who feels aggrieved by a determination made by the board of state canvassers may have the determination reviewed by mandamus, certiorari, or other appropriate process in the supreme court.
23. While there are orders where the Supreme Court has directed a filing be made in the Court of Appeals, the statute has been amended in 2018, and no orders have been entered.

THE PARTIES

24. Plaintiff Donna Brandenburg is a Michigan resident who filed as a Republican candidate for the Office of Governor on the August 2, 2022, primary ballot.
25. Defendant Board of State Canvassers is a four-member public body created by the Michigan Constitution of 1963 Article 2 Section 7 and by MCL168.22. The Board of State Canvassers has two Republican and two Democratic representatives who are appointed by the governor.

26. Defendant Jocelyn Benson is the Michigan Secretary of State. The Secretary of State is a publicly elected position created by the Michigan Constitution of 1963 in Article 3 Section 21. The Michigan Secretary of State supervises the Director of the Board of Elections.
27. Defendant Jonathan Brater is Michigan's Director of the Bureau of Elections and is vested with the executive authority to administer Michigan's election laws under the supervision of the Secretary of State. MCL 168.32(1). The Director of the Board of Elections provided staff support for the board of state canvassers and created many of the processes at issue in the case.

FACTUAL BACKGROUND

28. Donna Brandenburg is a valid candidate for the office of Governor.
29. Donna Brandenburg announced she was seeking the office of governor.
30. Nominating petitions were circulated to put Donna Brandenburg on the August 2, 2022, Republican primary ballot.
31. As is the custom and practice of candidates for office both volunteer and paid circulators were engaged in the process. Donna used two separate petition circulating companies as well as volunteers for circulating her petitions.
32. Attached as Exhibit 1 is the receipt for the original filing in which Donna Brandenburg submitted approximately 19,500 signatures dated April 14, 2022, along with her Affidavit of Identify and her filing fee.
33. Attached as Exhibit 2 is the supplemental receipt of filing in which Donna Brandenburg submitted approximately 8000 signatures on 886 pages dated April 19, 2022.
34. Both submissions of nominating petitions were timely made. This is not contested.

35. In total, the estimated signatures of 27,500 were significantly more than the 15,000 minimum and less than the maximum allowed of 30,000.
36. One of those companies has been accused of fraudulently obtaining signatures. The first report of this problem was made on May 23, 2022, in the *Staff Report on Fraudulent Nominating Petitions (Staff Report)* attached as Exhibit 3.
37. The secretary of state published a staff report directly about Donna Brandenburg petitions on May 23, 2022, which is attached as Exhibit 4 and titled a *Review of Nominating Petitions Donna Brandenburg (Review)* dated May 23, 2022. This *Review* only consisted of a total of two pages.
38. The *Review* started with identifying only 17,778 signatures. This count was reported to have been determined before any of the ministerial duties involved in determining the (1) facial validity of the signatures and (2) the qualification or registration of the signers as this was the process identified in Section III of the *Staff Report*.
39. The candidate Donna Brandenburg submitted approximately 27,500 signatures. The absence of these 10,000-signatures was raised to the board of state canvassers on May 26, 2022, and never resolved.
40. This failure to account for all timely submitted nominating petitions is unconscionable as this is the first requirement that the Bureau of Election MUST accurately count all submitted signatures.
41. The Bureau of Elections has still not addressed the missing signatures. Donna Brandenburg has speculated that the Bureau of Elections merely overlooked her second submission.

42. This still does not resolve the fact that the *Review* somehow discounted her original submission of 19,500 estimated signatures by 1800.
43. To date no explanation of the uncounted signatures has been offered by the Director of the Bureau of Elections.
44. This failure of the initial minitrial duty to identify the starting number correctly is a tremendous problem for the credibility of the entire *Review*.
45. The failure to address the issue of the missing signatures with a response after it was raised is flagrant Nonfeasance and Malfeasance of office.
46. The *Staff Report* focused on a novel process which was described in *Section III Processing Petition Sheets*.
47. The process was summarized by a member of the board of state canvassers as “unique and on the fly.”
48. On information and belief, a hearing of the board of state canvassers on May 2, 2022, reviewed the process that was to be used to verify signatures after the complaints challenging other candidates’ signature submissions were filed and responded to by the candidates who received a sworn written challenge prior to April 26, 2022.
49. Donna Brandenburg was not subject to a sworn written complaint challenging any of her signature submissions and was not present at the hearing.
50. On information and belief, the Director of the Bureau of Elections assured the candidates and the board of state canvassers that every signature on every petition would be compared to the QVF.

51. The new process actually employed was simply to remove all signatures submitted by certain circulators that the Director of the Bureau of Elections deemed had submitted fraudulent signatures.
52. The new process would only canvass signatures if the remainder exceeded the 15,000-signature statutory requirement.
53. This new violates the chapter XXIV of the Michigan Election code and in essence makes the Director of the Bureau of Elections the sole arbiter of which circulators collect signatures—and after the fact.
54. In short, the new process failed to either consider signatures individually or to canvass signatures--which is the primary statutory duty of the board of state canvassers.
55. In the case of Donna Brandenburg, the application of this process per their *Review* removed 11,144 collected by 19 paid circulators and per the Director of the Bureau of Elections made Donna Brandenburg ineligible to be on the primary ballot.
56. The only material issue raised as to signatures on nominating petitions submitted by Donna Brandenburg was whether any of 19 of the identified circulators obtained fraudulent or invalid signatures.
57. No evidence was presented of any individual actually signing a name other than their own in violation of MCL 168.544c (8) or signing multiple names in violation of MCL 168.544c (10). In addition, no evidence was presented of a circulator making a false certification in violation of MCL 168.544c (8).
58. All other issues, (1) facial validity or (2) qualification of the elector; or (3) registration of electors in the proper jurisdiction were NEVER addressed in a canvass (excluding the two voters identified in the *Review*).

59. The *Review* reports one signature was claimed as being associated with a deceased voter and another with a voter who had moved from the address. These two signatures raise a suspicion that someone had signed the names inappropriately. Donna Brandenburg has not investigated the report related to these two signatures due to the abbreviated response time.
60. At this point, these issues must be deemed as waived in that a canvass was not completed timely. This is particularly true when no sworn complaint challenged any of the signatures submitted by Donna Brandenburg at any time.
61. There is no duty to consider the genuineness of a signature that is unchallenged or is challenged after April 19, 2022.
62. No evidence was submitted by the Director of the Bureau of Elections of any comparisons *between* the signature on ANY of the nominating petitions and the signature on file in the QVF beyond 2-3 signatures referenced in the reports.
63. In fact, there is no list of signatures (or other records) that signatures submitted by Donna Brandenburg were even canvassed for facial validity, for qualifications, for proper registration or for genuineness by individual comparison to the QVF.
64. At the May 26, 2022, hearing, it was conceded by the Director of the Bureau of Elections that only ‘representative signatures’ were examined referred to as ‘targeted reviews’.
65. To add insult to injury the Director of the Bureau of Elections Director then stated on May 26, 2022, hearing that the total amount checked signatures against the QVF (7000 among all candidates) were determined invalid *without* providing the selected signatures or supporting evidence to support the 7000 claim that could be reviewed by the candidates.

66. The *Staff Report* states on page 16 that there does tally sheets which were not provided or presented at the hearing.
67. There was no evidence presented that any portion of the estimated 7000 claimed comparisons were specifically to the Donna Brandenburg nominating petitions.
68. Of course, the opportunity for candidates to review the evidence started with a full four-day holiday weekend leaving less than a full week of notice before the primary petitions are scheduled to be certified and printed. The unfairness is the juxtaposition of two months used by the Bureau of Elections to the few remaining days leftover to Donna Brandenburg to prepare for the resolution of the controversy.
69. Donna is prejudiced uniquely in that some other candidate had notice of challenges to their signatures on April 26, 2022. No challenge was filed to any of the signatures on any nominating petition submitted by Donna Brandenburg.
70. Any challenge to the signatures was made *sua sponte* by the staff of the board of elections based on the unilateral determination by the Director of the Bureau of Election that all signatures collected by certain circulators would be rejected wholesale.
71. There is no legislative authority for this act or process. A challenge on a doubtful signature has a legislatively mandated procedure that was not followed.
72. The challenge is REQUIRED to be filed with a written complaint sworn under oath. MCL 168.552 (8) (But may be disregarded if filed after April 26, 2022 or fails to specify the signatures which are challenged.) MCL 168.552 (8)
73. Only after a valid challenge is their legislative authorization for the board of state canvassers to conduct a hearing to resolve the *challenge*. Deleeuw v State Bd of Canvassers, 263 Mich App 497, 502; 688 NW2d 847 (2004).

74. A single 8-hour hearing was held on May 26, 2022, to consider the nominating petitions of all candidates.

- a. No evidence was submitted related to any signature submitted by Donna Brandenburg except the reports.
- b. Conclusions and general statements were made by the Director of the Bureau of Elections.
- c. The board of state canvassers did not subpoena any witnesses
- d. The board of state canvassers relied primarily upon the reports prepared by the Director of the Bureau of Elections and his staff comments and process descriptions during the hearing.
- e. The sworn testimony was not of any witnesses to the signature-gathering but was instead used to place comments made by the board, the Staff, candidates, challengers, and the public under oath.
- f. These comments were then considered as evidence under oath even though the comments were merely comments and arguments.
- g. No real hearing was conducted that resembled the purposes or procedures of MCL 168.552 (8-12).

75. The board of state canvassers deadlocked 2-2 on party lines when asked to address the signatures submitted by Donna Brandenburg.

76. Without a majority of the board of state canvassers acting there is no action. This is a final determination (the determination not to act).

77. However, this deadlock was interpreted by the state board of canvassers as advised by the Director of the Bureau of Elections, as a ruling that the petition was insufficient as reported by his team.
78. This deadlock interpretation means that in effect, the Bureau of Elections made the determination of the sufficiency of the number of valid signatures submitted by Donna Brandenburg.
79. To be clear a 2-2 deadlock means merely that the board could not agree either that the signatures were invalid.
80. It is not acceptance of the report of the Bureau of Elections by default.
81. The presumption of the signature validity is controlled when the board is deadlocked or fails to act and therefore Donna Brandenburg must be placed on the primary ballot.
Deleeuw v State Bd of Canvassers, 263 Mich App 497, 502; 688 NW2d 847 (2004).
82. Donna Brandenburg was limited in her participation at the hearing due to time constraints after receiving about two days' notice of the hearing
83. Donna Brandenburg did not receive individual consideration rather she was lumped together with other candidates in the board of state canvassers' deadlocked vote.
84. During the May 26, 2022, hearing, the timeline concerning the time left to print the ballots was raised suggesting that the urgency required Donna Brandenburg to act expeditiously with mere days left before the printing of the ballots.
85. The board of state canvassers and the bureau of elections began working in silence on the circulator issue in March, so they had more than six weeks to prepare for the hearing.

86. There was an abundance of time to issue a public advisory (or other direct notice to known candidates) which could have alerted candidates to the specific problem circulators as they were identified.
87. Timely notice could have been made more than 3 weeks before the deadline of April 19, 2022, and with sufficient time for candidates to replace the signatures circulated by questioned individuals. This is patently unfair to withhold notice to the campaigns and the public that a threat to the veracity of the election process was actively occurring.
88. Donna Brandenburg was not advised that any of the circulators who gathered signatures were under suspicion any time prior to April so that she could review her submissions or validate signatures. Even though Donna Brandenburg lacked access to a QVF she could have instigated some of the signatures as other candidates were able to with some fair notice.
89. The board of state canvassers and the Director of the Bureau of Elections know that the primary election process begins immediately with the certification of candidates followed by the printing of primary ballots and could have acted to provide notice sooner. This is a lack of good faith.
90. The delayed notice has prejudiced Donna Brandenburg and both a violation of procedural and substantive due process.
91. An injunction on the printing of ballots must be entered. This primary election process needs to be halted until after the resolution of these claims.
92. The claims must be considered with a fair opportunity to address and not be unfairly pressured to rush the resolution of valid issues raised herein
93. Therefore, an expedited hearing is requested and required.

COUNT I- Mandamus

94. The plaintiff realleges all of the preceding paragraphs as if alleged here.

95. Donna Brandenburg has a clear legal right to the performance of the duty sought to be compelled, to wit:

- a. the certification of her eligibility to be on the primary ballot and the determination that her nominating petitions were sufficient.
- b. The counting of all the signatures that were submitted and to account for both submissions in the total signatures.
- c. The application of the *presumption of validity* to signatures that were not determined invalid for lack of genuineness pursuant to MCL 168.552 which were:
 - i. Subject to a sworn and written complaint and
 - ii. Subject to a statutorily authorized investigation, and
 - iii. Subject to a statutorily compliant process of direct comparison of *each* signature to the QVF (or if the signature is not in the QVF the local registration record).
 - iv. Rechecked by the local clerk
- d. The proper application of the presumption of validity when the board of state canvassers deadlocks.

96. The defendant board of state canvassers has a clear legal duty under Michigan Election Law chapter XXIV.

97. All of these actions are ministerial in nature such that it involves no discretion or judgment.

98. Donna Brandenburg has no other adequate legal or equitable remedy and is expressly authorized by MCL 169.552 (12) to seek relief by mandamus.

COUNT II-DUE PROCESS:

MICHIGAN CONSTITUTION ARTICLE I, SECTION 17

99. Plaintiff realleges and incorporates the above paragraphs as if fully set forth in this Count.

100. Donna Brandenburg has a right to seek office which is protected by the “due process” clauses of both the Michigan and United States Constitutions. Us Constitution Amendment V and XIV, Michigan Constitution 1963, Art 1§17.

101. The thousands of voters who exercised their right to sign petitions in support of Donna. Brandenburg have a constitutional right to have their preference counted pursuant to the Michigan Constitution and statutory and decisional law.

102. Brandenburg’s right to due process requires at a minimum “notice and opportunity to be heard.”

- a. The board has not considered all of the signatures submitted by Donna Brandenburg and is missing an estimated 10,000 signatures.
- b. The board has not accounted to or responded to the Brandenburg receipts which show a submission estimated to be about 10,000 more signatures that were counted and the request they confirm that they canvassed the second submission.
- c. Brandenburg received insufficient notice less than 2 days and no meaningful right to be heard.
- d. The board provided no notice that it would divert from utilizing MCL 168.522 to disqualify nominating petitions.

- e. On May 2,2022 at a public meeting the Board represented that no nominating signature would be disqualified without a comparison to the OVF. See You Tube Video of the Board of State Canvassers, public meeting for May 2, 2022.
 - f. There was never a complaint filed against Brandenburg therefore there is no process for the board of state canvassers to conduct an investigation or hearing onto the genuineness of the signatures submitted.
 - g. The legislature declined to authorize the board of state canvassers expressly to initiate their own investigation absent a complaint.
 - h. The process to determine the sufficiency of the signatures which was adopted as explained in Section 3 of the *Staff Report* adopted a new process not authorized by statute and fashioned a new remedy not authorized by statute.
 - i. The process in which the signatures were not directly compared to the QVF (or if not present the local election record)
 - j. The process in which no fact witnesses were presented at the hearing or subpoenas issued to establish claimed fraud and the board of state canvassers relied upon the conclusions of staff.
103. There is no fundamental fairness in denying Donna Brandenburg and the voters who signed her petition the opportunity to participate in the August Primary.
104. The conduct of the Defendants violated Donna Brandenburg’s right to procedural and substantive due process” under the Michigan and Federal Constitutions.

COUNT III- VIOLATION OF MICHIGAN CONSTITUTION 2, § 4(2)

105. Plaintiff realleges and incorporates the above paragraphs as if fully set forth in this Count.

106. The purity of elections clause in art 2, § 4(2) of the Michigan Constitution demands “fairness and evenhandedness in the election laws of this state.” Socialist Workers Party v Secretary of State, 412 Mich 571, 598; 317 NW2d 1 (1982). It requires that “every elector’s franchise [be] of equal value to every other elector,” such that “every elector has an equal voice in the choice of those who shall represent the people.” Maynard v Bd of Dist Canvassers, 84 Mich 228, 240-242; 47 NW 756 (1890).
107. The legislature has implemented the purity of elections clause by codifying MCL 168.552 as a way of preventing the Executive branch from arbitrarily eliminating petition signatures and disenfranchising voters and candidates.
108. The Board by permitting the so-called “targeting sampling” has overstepped its authority and infringed on the power of the legislature breaching the “separation of powers” of the state’s branches of government.
109. In the event the Board can not apply the existing statutory scheme, the only remedy to protect Donna Brandenburg and those voters who exercised their constitutional rights by signing primary nominating petitions is to place Plaintiff Donna Brandenburg on the Republican Gubernatorial Ballot.

COUNT IV: Violation of the Separation of Powers Doctrine

110. Plaintiff realleges and incorporates the above paragraphs as if fully set forth in this Count.
111. The board of state canvassers cannot take action that is not authorized by law. The authority derives from laws passed by the legislature.
112. The board of state canvassers did in fact make up a new process and remedy and used this to disqualify the signatures submitted by Donna Brandenburg.

113. The board of elections ignored or refused to follow statutes that have been established by the legislature

COUNT V EQUAL PROTECTION

114. Plaintiff realleges all the above paragraphs as if fully set forth in this count.
115. The Plaintiff is entitled to equal protection under the laws, and this requires that the application of the laws must meet a standard that is uniform.
116. The application of an arbitrary and capricious standard for determining signature validity from a target sample fails to meet an objective standard and was applied in an unequal manner.
117. Members of the same party were provided different standards for the application of the determination of the genuineness of signatures.
118. Donna was selected for enforcement without a sworn complaint in writing challenging the validity of signatures when other candidates without a complaint did not have their submission considered insufficient.
119. On information and belief, there was an unequal application of law.

COUNT VI: Declaratory Relief

120. Plaintiff realleges and incorporates the above paragraphs as if fully set forth in this Count.
121. The plaintiff is entitled to a clear statement that there was no process to find or finding of fraud in the signatures that Donna Brandenburg submitted, and that this determination is outside the scope of the authority of the board of state canvassers.
122. The plaintiff is entitled to a clear statement of the legal duties the board of state canvassers is obligated to perform.

123. The plaintiff is entitled to a clear statement of the limits of the authority the board of canvassers is obligated to perform.
124. The plaintiff is entitled to a clear statement of the procedural process the board of state canvassers is required to follow in evaluating signatures.
125. The plaintiff is entitled to a clear statement of the demarcation of the power of the executive branch and the legislative branch.
126. Donna Brandenburg requests this court declare what the effect of deadlock by the board of state canvassers means as to the presumptive validity of the signatures and as to whether this is a ratification of the Bureau of Election report, recommendations, and conclusions.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff Donna Brandenburg respectfully requests this Court:

- A. Grant Mandamus and order the Board to respond to and consider the additional 10,000 signatures that are not accounted for in the *Review*: or
- B. Grant Mandamus or Injunctive Relief and order Donna Brandenburg be certified and appear on the August 2, 2022, Primary Ballot for the Republican Party;
- C. Order an expedited hearing on the merits of the complaint to be completed by June 3, 2022 and enter a scheduling order pursuant to MCL168.479.
- D. Enter an order extending the certification of the election to June 7, 2022, and prohibiting the printing of ballots until further order of the court;
- E. Provide declaratory relief on the process, duties, and limits of authority of the board of canvassers and the Director of the Bureau of Elections

- F. Declare that the board of state canvassers violated the constitutional rights of Donna Brandenburg and the persons who signed her petitions
- a. A violation of federal and Michigan due process substantive and procedural.
 - b. A violation of the purity clause of the Michigan Constitution
 - c. A violation of the Separation of Powers Doctrine
 - d. A violation of Equal protection

Respectfully submitted,

Smith Law Group

Dated: June 1, 2022

By: /s/Scott F. Smith
Scott Smith (P 28472)
Attorney for Plaintiff
30833 Northwestern Hwy, Suite 200
Farmington Hills, MI 48334
(248) 626-1962

Law Office of Daniel J. Hartman

By: /s/Daniel J. Hartman

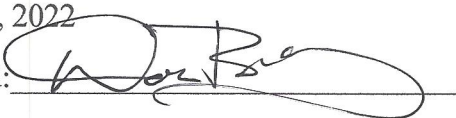
Daniel J. Hartman (P52632)
Attorney for Plaintiff
PO BOX 307
Petoskey, MI 49770
(231) 348-5100

VERIFICATION

I, Donna Brandenburg declare that the above statements are true to the best of my information, knowledge, and belief

June 1, 2022

Signed:

A handwritten signature in black ink, appearing to read "Donna Brandenburg", written over a horizontal line.

Affidavit of Identity and Receipt of Filing

candidate
information

1 DONNA LYNN BRANDENBURG
first name middle last
6842 BYRON SHORES CT. BYRON CENTER 49315
residential address city / zip
mailing address, if applicable city / zip

additional
information

2 616.340.7625 9/26/1963
phone number date of birth
contact@donna4mi.com BRANDENBURG FOR GOVERNOR
email address campaign website

office sought/
ballot
information

☐ my name formally changed in the last 10 years for a reason
other than marriage or divorce; if checked, print full former name: _____
GOVERNOR
office name jurisdiction district/circuit/ward
3 REPUBLICAN
political party, if a partisan office. if running without party affiliation list "No Party Affiliation."
Donna Brandenburg
exact name I would like printed on the ballot (use upper and lower case letters)
term (check one): ☒ regular term ☐ partial term expiring 1/1 ☐ recall
election (check one): ☒ primary election 8/12/2022 ☒ general election 11/8/2022
judicial candidates only: ☐ incumbent position ☐ non-incumbent position ☐ new judgeship

filer's
acknowledge-
ment (check one)

4 ☒ nominating or qualifying petitions (estimated number of signatures 19,500) to be ☐ destroyed ☒ returned in January
☒ a filing fee of \$100 (if applicable)
☐ certification of party nomination and certificate of acceptance (if applicable)
judicial candidates only: ☐ affidavit of constitutional qualification ☐ affidavit of candidacy (incumbents only)

statements
and
attestation

5 ☒ I am a citizen of the United States and I meet the statutory and constitutional requirements for the office sought.
I swear, or affirm, that the facts I have provided and the facts contained in the statement set forth below are true.
At this date, all statements, reports, late filing fees, and fines due from me or any Candidate Committee organized to support my election to office under the Michigan Campaign Finance Act, PA 388 of 1976, have been filed or paid.
I acknowledge that making a false statement in this affidavit is perjury - a felony punishable by a fine up to \$1,000.00 or imprisonment for up to 5 years, or both and may result in disqualification from the ballot (MCL 168.558, 933, and 936).

sign
here

notary signature

date
here

notary name

subscribed and sworn to me on the

day of

notary public, state of Michigan, county of

my commission expires

acting in the county of

for office
use only

received by

number of petition sheets

receipt number

reviewed by

date of filing

jurisdiction/district of office sought

campaign finance number

Michigan Department of State
Bureau of Elections

RECEIVED/FILED
MICHIGAN DEPT OF STATE

2022 APR 19 AM 11:48

ELECTIONS/GREAT SEAL

SUPPLEMENTAL FILING RECEIPT

Date: 4/19/22

Received of:

Candidate name (if different than person
submitting supplemental filing):

Donna Brandenburg

Office: Governor

District/Circuit: _____

Petition Sheets: 886

Estimated Signatures: 8,000

Signature of person submitting supplemental
filing:

[Signature]

Received by:

[Signature]



STATE OF MICHIGAN
BUREAU OF ELECTIONS
LANSING

May 23, 2022

REVIEW OF NOMINATING PETITION

DONNA BRANDENBURG
Republican Candidate for Governor

NUMBER OF VALID SIGNATURES REQUIRED: 15,000 signatures.

TOTAL FILING: 17,778 signatures.

RESULT OF REVIEW: 6,634 facially valid signatures, 11,144 invalid signatures.

Total number of signatures filed	17,778
Number of signatures on sheets submitted by fraudulent- petition circulators	Less: 11,144
TOTAL	6,634

Staff reviewed each petition sheet submitted by Ms. Brandenburg. During that review, staff flagged each sheet which was signed by a fraudulent-petition circulator. For additional information on sheets submitted by fraudulent-petition circulators, see *Staff Report on Fraudulent Nominating Petitions*.

In total, staff's review of Ms. Brandenburg's petition sheets identified 11,144 invalid signatures and 6,634 facially valid signatures, which dropped her below the 15,000 threshold and rendered her ineligible for the ballot.

Signatures from the following fraudulent-petition circulators were included in Ms. Brandenburg's submission:

Siarra Bergami	749 signatures
Davon Best	280 signatures
Antonio Braxton	535 signatures
Nicholas Carlton	750 signatures
DeShawn Evans	686 signatures
Jehvon Evans	276 signatures
Justin Garland	202 signatures
Corey Hampton	573 signatures
Jonell Hampton	961 signatures
LeVaughn Hearn	197 signatures
Aaliyah Ingram	216 signatures

Danyil Lancaster	216 signatures
Niccolo Mastromatteo	43 signatures
Ryan Snowden	789 signatures
Trevon Stewart	146 signatures
Stephen Tinnin	1,156 signatures
Yazmine Vasser	1,078 signatures
Diallo Vaughn	220 signatures
William Williams	2,071 signatures
	<u>11,144 signatures</u>

Many of the petition sheets—especially those submitted by more frequent fraudulent-petition circulators—displayed little effort to vary handwriting, including the example below.

INSTRUCTIONS ON REVERSE SIDE

NOMINATING PETITION
(COUNTYWIDE PARTISAN)

* The "Countywide" Partisan Petition form may be used by any partisan candidate. Exception: the form may not be used by a partisan candidate who seeks the office of County Commissioner; such candidates must use the "City/Township" Partisan Petition form.

We, the undersigned, registered and qualified voters of the County of Spokane, and State of Michigan, nominate Donna Lynn Brandenburg 6842 Byron Shores Ct as a candidate of the Republican Party for the office of Governor (City or Township) (Street Address or Rural Route) (Title of Office/Term Expiration Date) (District, if Any)

to be voted for at the Primary Election to be held on the 2 day of August, 2022. 1568

WARNING - A PERSON WHO KNOWINGLY SIGNS MORE PETITIONS FOR THE SAME OFFICE THAN THERE ARE PERSONS TO BE ELECTED TO THE OFFICE, SIGNS A PETITION MORE THAN ONCE, OR SIGNS A NAME OTHER THAN HIS OR HER OWN IS VIOLATING THE PROVISIONS OF THE MICHIGAN ELECTION LAW.

Signature	Printed Name	Street Address or Rural Route	Name of City or Township	Zip Code	DATE OF SIGNING Month Day Year
<i>Rosalie Stein</i>	Rosalie Stein	6248 anderson	west bloomfield	48322	3 6 22
<i>April Moore</i>	April Moore	2401 Denton Ct	Midland	48380	3 6 22
<i>Barry Lemon</i>	Barry Lemon	1155 Anderson	Commerce	48390	3 6 22
<i>Connie Johnson</i>	Connie Johnson	1375 Indian Hills	Midland	48380	3 6 22
<i>Beth Borson</i>	Beth Borson	6555 berry Creek Ct	west bloomfield	48322	03 06 22
<i>Jeffrey Self</i>	Jeffrey Self	1920 Chestnut St	Commerce	48390	3 6 22
<i>Shannon Biesel</i>	Shannon Biesel	1171 Prudent	Oxford	48370	3 06 22
<i>Thomas Ditch</i>	Thomas Ditch	6066 Brook	Westland	48382	3 6 22
<i>Michael Deane</i>	Michael Deane	386 Grand vista dr	Midland	48380	3 6 22
<i>Rebel Docker</i>	Rebel Docker	1764 botkins st	Commerce township	48390	03 06 22

CERTIFICATE OF CIRCULATOR
The undersigned circulator of the above petition asserts that he or she is 18 years of age or older and a United States citizen; that each signature on the petition was signed in his or her presence; that he or she has neither caused nor permitted a person to sign the petition more than once and has no knowledge of a person signing the petition more than once; and that, to his or her best knowledge and belief, each signature is the genuine signature of the person purporting to sign the petition, the person signing the petition was at the time of signing a registered elector of the City or Township indicated preceding the signature, and the elector was qualified to sign the petition.

☐ If the circulator is not a resident of Michigan, the circulator shall make a cross [X] or check mark [v] in the box provided, otherwise each signature on this petition sheet is invalid and the signatures will not be counted by a filing official. By making a cross or check mark in the box provided, the undersigned circulator asserts that he or she is not a resident of Michigan and agrees to accept the jurisdiction of this state for the purpose of any legal proceeding or hearing that concerns a petition sheet executed by the circulator and agrees that legal process served on the Secretary of State or a designated agent of the Secretary of State has the same effect as if personally served on the circulator.

WARNING - A CIRCULATOR KNOWINGLY MAKING A FALSE STATEMENT IN THE ABOVE CERTIFICATE, A PERSON NOT A CIRCULATOR WHO SIGNS AS A CIRCULATOR, OR A PERSON WHO SIGNS A NAME OTHER THAN HIS OR HER OWN AS CIRCULATOR IS GUILTY OF A MISDEMEANOR.

CIRCULATOR — DO NOT SIGN OR DATE CERTIFICATE UNTIL AFTER CIRCULATING PETITION.

Stephen Tinnin
Signature of Circulator (Date) 3 7 22
(Printed Name of Circulator)
62915 Thompson
(Complete Residence Address (Street and Number or Rural Route)) - (Do not enter a post office box)
Donna Lynn MA 48373
(City or Township, State, Zip Code)
(County of Registration, if Registered to Vote, of a Circulator who is not a Resident of Michigan)

Form Approved by the Director of Elections, State of Michigan
www.PrintingSystems.us (800) 95-12345 (R 10/19) FORM #402

Others included outdated voter information, including signatures purported to be from voters who had in fact moved from the listed address years prior or who were deceased.

Brandenburg petition sheet 233, line 4: died in 2016.

<i>Ruth May</i>	Ruth May	4155 Sheddenwood Dr #63	Plymouth	48170	1 24 22
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Brandenburg petition sheet 302, line 7: moved from listed address in 2017.

<i>Levi Robinson</i>	Levi Robinson	22965 Cedar Ridge Ct	Warren	48093	2 3 22
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Further examples of the fraudulent signatures can be found in Staff Report on Fraudulent Nominating Petitions.

CHALLENGE: None.

STAFF RECOMMENDATION: Determine petition insufficient.