

JOHN HALLACY

Approved, SCAO

Original - Court
1st copy - Defendant

2nd copy - Plaintiff
3rd copy - Return

STATE OF MICHIGAN	CASE NO.
JUDICIAL DISTRICT	24 - 3227
37th JUDICIAL CIRCUIT	- 2
Calhoun COUNTY	
SUMMONS	

Court address Calhoun County Court of Claims, 161 Michigan Ave, Battle Creek, MI 49014
Court telephone no. (269) 969-6518

Plaintiff's name, address, and telephone no.
 Steve Frisbie and the Committee to Elect Steve Frisbie to State House

Defendant's name, address, and telephone no.
 Calhoun County Board of County Canvassers
 161 E Michigan Ave.,
 Battle Creek, MI 49014

v

Plaintiff's attorney, bar no., address, and telephone no.
 Cole V. Lussier (P81686)
 Daniel C. Ziegler (P86312)
 123 W. Allegan Street Suite 900
 Lansing, MI 48933-1816
 (517) 371-1730

FILED
 NOV 13
 37TH CIRCUIT COURT CLERK

Instructions: Check the items below that apply to you and provide any required information. Submit this form to the court clerk along with your complaint and, if necessary, a case inventory addendum (MC 21). The summons section will be completed by the court clerk.

Domestic Relations Case

- There are no pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint.
- There is one or more pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint. I have separately filed a completed confidential case inventory (MC 21) listing those cases.
- It is unknown if there are pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint.

Civil Case

- This is a business case in which all or part of the action includes a business or commercial dispute under MCL 600.8035.
- MDHHS and a contracted health plan may have a right to recover expenses in this case. I certify that notice and a copy of the complaint will be provided to MDHHS and (if applicable) the contracted health plan in accordance with MCL 400.106(4).
- There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint.
- A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has been previously filed in this court, _____ Court, where it was given case number _____ and assigned to Judge _____

The action remains is no longer pending. Those actions have been consolidated under 24-000115-MB

Summons section completed by court clerk.

SUMMONS

NOTICE TO THE DEFENDANT: In the name of the people of the State of Michigan you are notified:

1. You are being sued.
2. **YOU HAVE 21 DAYS** after receiving this summons and a copy of the complaint to **file a written answer with the court** and serve a copy on the other party **or take other lawful action with the court** (28 days if you were served by mail or you were served outside of Michigan).
3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.
4. If you require accommodations to use the court because of a disability or if you require a foreign language interpreter to help you fully participate in court proceedings, please contact the court immediately to make arrangements.

Issue date 11-13-24	Expiration date* 2-12-25	Court clerk [Signature]
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*This summons is invalid unless served on or before its expiration date. This document must be sealed by the seal of the court.

PROOF OF SERVICE

TO PROCESS SERVER: You must serve the summons and complaint and file proof of service with the court clerk before the expiration date on the summons. If you are unable to complete service, you must return this original and all copies to the court clerk.

CERTIFICATE OF SERVICE / NONSERVICE

- I served personally by registered or certified mail, return receipt requested, and delivery restricted to the addressee (copy of return receipt attached) a copy of the summons and the complaint, together with the attachments listed below, on:
- I have attempted to serve a copy of the summons and complaint, together with the attachments listed below, and have been unable to complete service on:

Name	Date and time of service
Place or address of service	
Attachments (if any)	

- I am a sheriff, deputy sheriff, bailiff, appointed court officer or attorney for a party.
- I am a legally competent adult who is not a party or an officer of a corporate party. I declare under the penalties of perjury that this certificate of service has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

Service fee	Miles traveled	Fee	
\$		\$	
Incorrect address fee	Miles traveled	Fee	TOTAL FEE
\$		\$	\$

Signature _____
 Name (type or print) _____

ACKNOWLEDGMENT OF SERVICE

I acknowledge that I have received service of a copy of the summons and complaint, together with

_____ on _____
 Attachments (if any) Date and time

_____ on behalf of _____
 Signature

 Name (type or print)

STATE OF MICHIGAN
37TH JUDICIAL CIRCUIT COURT FOR CALHOUN COUNTY

STEVE FRISBIE AND THE COMMITTEE
TO ELECT STEVE FRISBIE TO STATE HOUSE,

Plaintiffs,

v.

CALHOUN COUNTY BOARD OF COUNTY
CANVASSERS,

Defendant.

Case No. 24-3227 cz
Hon.

JOHN HALLACY

EMERGENCY ELECTION
CASE
IMMEDIATE RELIEF
REQUESTED

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FILED

NOV 13 2024

37TH CIRCUIT COURT CLERK

VERIFIED COMPLAINT
FOR MANDAMUS AND DECLARATORY JUDGMENT

Now come Plaintiffs Steve Frisbie and the Committee to Elect Steve Frisbie to State House and state the following as their Complaint against the Defendant Calhoun County Board of County Canvassers:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this Complaint, and venue in this Court is proper, because the Defendant is the Calhoun County Board of County Canvassers, all its members are residents, or maintain their principal places of business, in Calhoun County, Michigan, and because

all or part of the claim for relief at issue in this litigation arose in Calhoun County, Michigan. *See* MCL 600.605; MCL 600.1621; MCR 2.605.

PARTIES

2. Plaintiff Steve Frisbie is the Republican nominee in the November 5, 2024 general election to represent District 44 in the Michigan House of Representatives. District 44 is located wholly within Calhoun County. Plaintiff Frisbie has a direct, personal, and substantial interest in this litigation because the Calhoun County Board of County Canvassers' failure to follow Michigan Election Law may determine the outcome of his campaign and otherwise affect his legal rights. Likewise, Plaintiff the Committee to Elect Steve Frisbie to State House has a direct, personal, and substantial interest in this litigation because its sole purpose is to aid Plaintiff Frisbie in being elected the State House.

3. Defendant Calhoun County Board of County Canvassers is the board of county canvassers for the County of Calhoun pursuant to MCL 168.24a. The Calhoun County Board of County Canvassers' official address is located within Calhoun County at 161 E Michigan Ave., Battle Creek, MI 49014.

DEFENDANT'S VIOLATION OF MCL 168.822(3) AND MCL 168.823(3)

4. Plaintiffs bring this action for mandamus to prevent Defendant from ordering a recounting of all votes already tabulated at Battle Creek Absent Voter Counting Boards ("ACVBs") as part of the canvassing process. Such an action by Defendant is not consistent with its authority provided by the Michigan Election Law and would functionally preempt the detailed mechanisms that law provides for canvassing the vote prior to the decision to order a recount—which is simply not Defendant's call. All ballots have been cast, and the canvass of the election results is ongoing. The same is true in Calhoun County, where the Calhoun County Board of

County Canvassers has been working to canvass the ballots cast early and on election day—importantly, the Calhoun County Board of County Canvassers has not reviewed the statement of returns for absent voter ballots.

5. Michigan law provides that the Calhoun County Board of County Canvassers must meet no later than the second Thursday after an election to canvass and certify the statement of returns from the election. See MCL 168.821; MCL 168.822. Since that day, Defendant has worked to complete the canvass but have not done so. Notably, they have not begun the review of the statement of returns from the Battle Creek AVCBs.

6. Michigan law further provides that “[i]t is the ministerial, clerical, and nondiscretionary duty of each board of county canvassers, and each of the members of the board of county canvassers, to certify election results based solely on the statements of returns from the election day precincts, early voting sites, and absent voter counting boards in the county and any corrected returns.” MCL 168.822(3) (emphasis added).

7. Under Michigan Law “[t]he board of county canvassers may, if necessary for a proper determination, summon the election inspectors before them, and require them to count any ballots that the election inspectors failed to count, to make correct returns *in case, in the judgment of the board of county canvassers after examining the returns, poll lists, or tally sheets, the returns already made are incorrect or incomplete*, and the board of county canvassers shall canvass the votes from the corrected returns.” MCL 168.823(3) (emphasis added).

8. Put another way, MCL 168.822 requires the Calhoun Board of County Canvassers to certify based solely on the statement of returns, but if the statement of returns is facially wrong, then the Board has discretion to order election inspectors to take certain limited steps to fix the returns under MCL 168.823.

9. Defendant has convened and begun its canvass of early and election day ballots, but it has not begun reviewing the statement of returns from the Battle Creek AVCBs. Despite having not considered the AVCB returns to determine if there may be a discrepancy, on November 12, 2024 at approximately 9:00 A.M., Defendant violated the requirements of the Michigan Election Law by voting to conduct an ad hoc, *ultra vires* recount of all Battle Creek AVCBs. Defendant has not begun their canvass of the Battle Creek ACVBs and have not “examin[ed] the returns, poll lists, or tally sheets.” MCL 168.823(3). Accordingly, they are without a proper basis to summon election inspectors before them or require election inspectors to recount any ballots. Indeed, they are also violating MCL 168.822(3) because they are considering information outside the as-yet-unexamined statement of returns when deciding whether to certify the election.

10. To be sure, Defendant is functionally creating an end-run around Michigan Election Law, which provides detailed procedures and safeguards for recounts. For example, MCL 168.879(c) provides for a candidate for state representative in a district wholly within one county to submit a petition for a recount to the Secretary of State “not later than 48 hours *after* the certification of determination is filed with the Secretary of the Board of State Canvassers.” In submitting such a petition, a candidate must, among other things, set forth “as nearly as possible the nature and character of the fraud or mistakes alleged and the counties, cities, or townships and the precincts in which they exist.” MCL 168.879(f). Such a petition must be printed, signed, and “sworn to by the candidate.” MCL 168.879(e). A candidate requesting a recount is also required to provide a monetary deposit for each precinct in which the recount is requested, the amount of which depends on the margin of votes reflected in the official canvass—which in this case has not yet been completed. MCL 168.881.

11. Michigan Election Law also affords certain protections to a non-petitioning candidate that have been abrogated by Defendant's action in this case. For instance, a candidate can file a counter petition and objections to the recount petition, MCL 168.882, in which case the Board of State Canvassers "shall rule on the objections no later than 4 calendar days after the deadline for filing objections." MCL 168.882(2), (3).

12. If such a recount goes forward, it does so "subject to the direction, supervision, and control of" the State Board of Canvassers and the Michigan Bureau of Elections staff. "Said board shall provide each board of county canvassers with such rules and regulations as in the opinion of the said board of state canvassers shall be necessary to conduct such recount in a fair, impartial and uniform manner in the said several counties. Observance of such rules and regulations shall be enforced by said board or its representatives hereinafter provided for." MCL 168.889.

13. Defendant has now created a novel third procedure for tabulating Calhoun County absent voter ballots. Instead of waiting to examine the returns, as MCL 168.823(3) requires, or for a petition for recount, as required by MCL 168.879, Defendant has ordered all Battle Creek absentee ballots to be counted again on the basis of "national news"¹— evidence that is entirely extrinsic to the "returns, poll lists, and tally sheets." MCL 168.823(1). This violates their duty to (A) only consider the statement of returns and (B) consider the statement of returns before taking any other action.

14. Plaintiffs through counsel immediately notified Defendant that a decision to order

¹ Before voting to order that all ballots at the Battle Creek AVCBs again be tabulated, Defendant did not explain what that "national news" may be or explain the stories that would justify this action. Presumably those news reports are in relation to reports that certain Battle Creek ACVB precincts did not include certain votes in initial unofficial results because of a software issue. Plaintiffs are aware of no reports that suggest the initial tabulation of any ballots was done in error. Such a late reporting of unofficial results simply cannot justify the drastic action that Defendant now attempts.

a recounting of Battle Creek absentee ballots should certainly not occur prior to the completion of the canvass for Battle Creek AVCBs—i.e., a review of the returns to determine if an actual discrepancy may exist. During public comment at the canvass on November 12, 2024, Plaintiffs’ counsel further requested that Defendant follow the proper process and complete the canvass as to the Battle Creek AVCB before taking any further action—including any attempt to order a recounting of votes. Accordingly, until Defendant examine the statement of returns to determine if the returns are in some way defective, Defendant will not know whether they have an unconditional duty to certify.

15. Defendant Calhoun County Board of County Canvassers refused to take timely and effective action to cease its illegal recount.

16. Plaintiffs have a clear, legal right to Defendant’s performance of their duty to adhere to Michigan election laws. MCL 168.823(3) obliges Defendant to only “summon the election inspectors before them, and require them to count any ballots that the election inspectors failed to count . . . *after examining the returns*, poll lists, or tally sheets, the returns already made are incorrect or incomplete.” *Id.* (emphasis added). Further, MCL § 168.822(3) requires them to certify the election based solely on the statement of returns—Defendant cannot know whether their duty to certify is complete until they *at a minimum* examine the statement of returns.

17. Simply, Defendant has side-stepped Michigan law and engaged in a baseless process in which certain absent voter ballots that may or may not have been tabulated already are tabulated again. Plaintiffs do not know if the ballots in question have been tabulated because Defendant refuses to examine the statement of returns to determine if they are incorrect or inaccurate. Instead, Defendant has *assumed* the statement of returns is inaccurate and *ultra vires* ordered a re-tabulation.

18. As a candidate for the office of Michigan House of Representative's Member for District 44, Plaintiff Frisbie and his candidate committee are clearly entitled to Defendant's proper performance of their obligations under Michigan law.

19. MCL § 168.822(3), gives Defendant a clear legal duty to certify the Calhoun County election results based solely on the statement of returns.

20. And MCL § 168.823(3) permits Defendant to order the election inspectors to count ballots they may not have counted only "after examining the returns, poll lists, or tally sheets."

21. The act to be performed—examining the returns and certifying the election results—are purely ministerial. MCL 168.822(3); MCL 168.823(3). And Michigan Election Law clearly prescribes and defines Defendant's duty to certify the election based solely on the statement of returns and to only order the election inspectors to correct returns "after examining the returns," leaving nothing to Defendant's discretion or judgment. To be clear, Defendant will have discretion on whether to direct Calhoun County election inspectors to re-tabulate absent voter ballots they failed to initially tabulate after the Board examines the returns, poll lists, or tally sheets; but before Defendant reviews those documents, they have no discretion to order Calhoun County election inspectors to do anything.

22. No other adequate relief is available. See *League of Women Voters of Michigan v. Sec'y of State*, 333 Mich. App. 1, 8, 959 N.W.2d 1, 6 (2020) ("[M]andamus is the proper remedy for a party seeking to compel election officials to carry out their duties.") (quoting *Citizens Protecting Mich.'s Constitution v. Secretary of State*, 324 Mich. App. 561, 583, 922 N.W.2d 404 (2018)).

23. Without immediate action by this Court compelling Defendant to cease unlawfully tabulating ballots, Plaintiffs' right to an election conducted according to Michigan Election Law

will forever be lost. For that reason, Plaintiffs move this Court pursuant to MCR 3.305(G) to issue an ex parte order to show cause. Plaintiffs further move under MCR 2.605(D) for this Court to advance this case on its calendar and order immediate relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

- a. Issue an ex parte order to show cause under MCR 3.305(C) for why this Court should not issue a writ of mandamus.
- b. A declaratory judgment under MCR 2.605 that Defendant violated MCL 168.822(3) and MCL 168.823(3);
- c. A declaratory judgment that before re-tabulating any ballots, Defendant must canvass the statement of returns by, at a minimum, examining the statement of returns to determine if, on its face, it has incorrect or incomplete;
- d. A writ of mandamus compelling Defendant to withdraw their *ultra vires* direction to the election inspectors in Calhoun County to tabulate absent voter ballots;
- e. A writ of mandamus compelling Defendant to follow MCL 168.822(3) and MCL 168.823(3) and to complete the canvass based solely on the statement of returns and to examine the statement of returns before taking any other action;

Dated: November 13, 2024

Respectfully submitted,

/s/ Cole V. Lussier

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Counsel for Plaintiffs

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VERIFICATION

I hereby swear or affirm under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Plaintiff Steve Frisbie

Sworn to and subscribed before me
this 13th day of November, 2024

GLIN A. WINSOR
Notary Public, State of Michigan
County of Calhoun
My Commission Expires Oct. 05, 2025
Acting in the County of Calhoun

[Handwritten Signature]

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