No. 22O155

In the Supreme Court of the United States

STATE OF TEXAS, PLAINTIFF

v.

COMMONWEALTH OF PENNSYLVANIA,
STATE OF GEORGIA, STATE OF MICHIGAN, AND
STATE OF WISCONSIN, DEFENDANTS

ORIGINAL ACTION

STATE OF MICHIGAN'S BRIEF IN OPPOSITION TO MOTIONS FOR LEAVE TO FILE BILL OF COMPLAINT AND FOR INJUNCTIVE RELIEF

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QUESTIONS PRESENTED

1. Whether various jurisdictional deficiencies should persuade or otherwise prevent this Court from exercising original jurisdiction over the proposed bill of complaint?

2. Whether the bill of complaint should be dismissed where Petitioner fails to state a claim upon which relief may be granted as to any of the alleged constitutional violations?

3. Whether Petitioner's requests for injunctive relief, or alternatively, a stay, should be denied?

PARTIES TO THE PROCEEDING

Plaintiff is the State of Texas and Defendants in the proposed Bill of Complaint are the Commonwealth of Pennsylvania, the State of Georgia, the State of Michigan, and the State of Wisconsin.

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JURISDICTION

Plaintiff, the State of Texas, seeks leave to file an original action against Pennsylvania, Georgia, Michigan, and Wisconsin in this Court and pursuant to Article III, § 2, cl. 2 of the U.S. Constitution and 28 U.S.C. § 1251(a).

INTRODUCTION

The Constitution has entrusted the states to determine their electors in a presidential election. Consistent with Michigan law, the State of Michigan has certified its presidential vote and the election in Michigan is over. The challenge here is an unprecedented one, without factual foundation or a valid legal basis. This Court should summarily dismiss the motion to file the bill of complaint. To do otherwise would make this Court the arbiter of all future national elections.

The base of Texas's claims rests on an assertion that Michigan has violated its own election laws. Not true. That claim has been rejected in the federal and state courts in Michigan, and just yesterday the Michigan Supreme Court rejected a last-ditch effort to request an audit. Not only is the complaint meritless here, but its jurisdictional flaws abound and provide solid ground to dispose of this action.

To begin, Texas has not alleged a sufficient case or controversy to support its standing to invoke this Court's original jurisdiction. But even if Texas clears that hurdle, the Court's prudential factors weigh against exercising jurisdiction. Texas does not have a cognizable interest in how Michigan runs its elections, and there plainly are alternative forums to raise these issues. Indeed, the lower courts have already found that similar claims lack legal and factual merit.

Laches also applies to bar review of Texas's complaint. Texas delayed weeks and then filed at the last hour, and that delay has prejudiced Michigan. Michigan certified the election results on November 23. The

State is entitled to enjoy the benefit of the "safe harbor" provision created by Congress, 3 U.S.C. § 5.

But even if the Court were to exercise jurisdiction, there is no merit to Texas's constitutional claims.

First, Texas lacks standing to bring its Electors Clause claim where its asserted injury is nothing more than a generalized grievance that the Clause was violated. And even if Texas has standing, its substantive claim fails because Michigan officials did not violate any of the election laws cited by Texas in conducting its election. Michigan's election was administered lawfully; the Electors Clause was not violated.

Second, Texas's equal protection claim fails where it does not identify a group that has been given preference or advantage—the hallmark of such a claim. And there has been no devaluation of any person's—or group of persons'—votes above or beneath any others'. There has been no violation of equal protection.

Third, Texas's substantive due process claim, assuming that is the claim being brought, fails where the alleged injury—vote dilution—is properly addressed under equal protection, and it fails there.

Finally, Texas fails to establish any of the requisite factors necessary for granting an injunction. It has no likelihood of success on the merits of its claims, and the remaining factors strongly weigh in favor of denying the extraordinary relief Texas seeks—disenfranchising millions of voters.

This Court should deny Texas's motion to file a bill of complaint and its motion for injunctive relief.

STATEMENT OF THE CASE

Michigan, like the other states, held an election on November 3, to select electors for president and vice president. See Mich. Comp. Laws § 168.43.

A. Michigan certified the November election

Michigan's elections are decentralized and principally conducted at the local level by the over 1,600 city and township clerks. In keeping with that structure, local jurisdictions began canvassing results immediately after the polls closed on November 3. Mich. Comp. Laws § 168.801. The boards of county canvassers commenced canvassing two days later, and the 83 county boards completed their canvasses by November 17. Mich. Comp. Laws §§ 168.821, 168.822.

The Board of State Canvassers, a bi-partisan board, see Mich. Comp. Laws § 168.22, met on November 23 and certified the results of the election. Mich. Comp. Laws § 168.842(1).[1] President-elect Biden defeated President Trump by 154,188 votes.[2]

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[1] See 11/23/20 Draft Meeting Minutes, Board of State Canvassers, available at https://www.michigan.gov/documents/sos/112320_draft_minutes_708672_7.pdf.

[2] See November 2020 General Election Results, available at https://mielections.us/election/results/2020GEN_CENR.html., (last accessed December 10.)

That same day, Michigan's Governor certified the presidential electors to the Archivist for the United States. Mich. Comp. Laws § 168.46; 3 U.S.C. § 6.[3]

No presidential candidate requested a recount in Michigan within the time permitted. See Mich. Comp. Laws § 168.879(1)(c). And under federal law, the "safe harbor" provision regarding a state's certification of electors activated on December 8. See 3 U.S.C. § 5. Michigan's presidential electors "shall convene" in the State's capitol on December 14. Mich. Comp. Laws §168.47; 3 U.S.C. § 7.

B. The claims against Michigan.

In its complaint, Texas identifies Michigan's alleged wrongful conduct.

1. Michigan Secretary of State

In 2018, the people amended Michigan's Constitution to provide for no-reason absentee voting and the right of voters to choose to request an application for an absent voter ballot by mail or in person. Mich. Const. art. II, § 4(1)(g). See also Mich. Comp. Laws §§168.759, 168.761.

a. Davis v. *Benson*

Texas alleges that Michigan's Secretary of State violated Mich. Comp. Laws § 168.759(3) by mailing unsolicited absent voter ballot *applications* to millions

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[3] See Michigan's Certificate of Ascertainment, available at https://www.archives.gov/files/electoral-college/2020/ascertainment-michigan.pdf, (accessed December 10.)

of registered voters, when the statute does not give her such authority. (Comp., ¶¶ 79–84.)

In May of 2020, the Secretary mailed applications for absent voter ballots to all registered voters in Michigan, *except* to voters in jurisdictions in which local clerks indicated they would conduct their own mailing.[4] The City of Detroit conducted its own mailing. Voters who received the Secretary's mailing were free to use the application or discard it and apply for an absent voter ballot using some other format, or vote in person.

The Secretary's mailing was challenged on the basis that it violated Mich. Comp. Laws § 168.759, and was contrary to a prior published state appellate decision. The Secretary prevailed in the three consolidated cases filed in the state court of claims. (MiAppx 163a–175a, *Davis* Ops.) In September, the Michigan Court of Appeals affirmed, concluding in a published decision that it was within the Secretary's constitutional and statutory authority to mail the unsolicited applications to registered voters. See *Davis* v. *Secretary of State*, 2020 WL 5552822 at *6 (Sept. 2020). An appeal to the Michigan Supreme Court remains pending.[5]

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[4] See *Benson: All voters receiving applications to vote by mail*, 5/19/20, available at https://www.michigan.gov/minewswire/0,4629,7-136-3452_3516-529536--,00.html, (Accessed December 10.)

[5] See Michigan Supreme Court Case No. 162007, docket sheet available at https://courts.michigan.gov/opinions_orders/case_search/Pages/default.aspx?SearchType=1&CaseNumber=354622&CourtType_CaseNumber=2.

Thus, the law in Michigan is that the Secretary has authority to mail applications to registered voters. As a result, registered voters who utilized the Secretary's mailed applications for obtaining a ballot for the November election did so lawfully.

b. Election Integrity Fund, et al. v. *Secretary of State.*

Texas next alleges that the Secretary violated the law when she launched an online platform for applying for an absent voter ballot because Mich. Comp. Laws § 168.759(4) requires an applicant to sign an application, and Mich. Comp. Laws § 168.761(2) prohibits a clerk from delivering a ballot to a voter who has not signed the application, and requires the clerk to compare the application signature to the signature on file. (Compl., ¶¶ 85–87.)

The Secretary implemented the platform in June of 2020, which permitted registered voters who possessed a Michigan driver's license or state identification card, to apply for an absent voter ballot online using the voter's electronically stored signature. (MiAppx 207a–212a, Brater declaration.)[6]

In August, a group filed suit in state court alleging that the online process violated Mich. Comp. Laws §168.759 by not requiring a contemporaneous handwritten signature from the voter and requested injunctive relief. (MiAppx 176a–206a, *Election Integrity* Compl.) The court denied the motion for a preliminary

[6] See *Michigan Department of State launches online absentee voter application*, 6/12/20, available at https://www.michigan.gov/sos/0,4670,7-127--531796--,00.html.

injunction based on laches, (MiAppx 213a–219a, *Election Integrity* Op.), and the case remains pending in the state court.

The State disagrees that any part of this process is unlawful. These same claims are pending in Michigan's court of claims. That court declined to enjoin or limit the operation of the platform in relation to the November election, and no appeal was taken.

Texas further alleges that "Secretary Benson's unconstitutional modifications of Michigan's election rules resulted in the distribution of millions of absentee ballot applications without verifying voter signatures as required by MCL §§ 168.759(4) and 168.761(2). This means that *millions* of absentee ballots were disseminated in violation of Michigan's statutory signature-verification requirements." (Compl., ¶ 89.) But this allegation is incorrect for several reasons.

First, any voter who utilized the Secretary's mailed application was required to complete and sign the application and return it to the local clerk, who then performed the signature verification. Mich. Comp. Laws §§ 168.759, 168.761. For voters who used the online platform, when the online application was returned electronically to the voter's local clerk, the clerk was still required to review the electronic signature on the application. (MiAppx 209a–210a, Brater declaration, ¶7.) Moreover, in both cases, the voter must still physically sign his or her absent voter ballot, and that signature is then reviewed by the local clerk upon receipt. Mich. Comp. Laws § 168.662.

Second, to the extent Texas refers to "millions" of absent voter ballots being disseminated unlawfully, setting aside the fact that the Secretary's processes are not unlawful, there is no way of knowing how many voters used the Secretary's mailing to obtain a ballot absent physically examining every application in the possession of every clerk in the state. With respect to the online platform, a query could be performed to determine how many voters used the platform to request an absent voter ballot. But in either case, there is no way to associate the voter who used a particular application with his or her ballot after it is voted.

2. City of Detroit officials

The remainder of Texas's allegations relate to the City of Detroit's election, and to events that purportedly occurred at the TCF Center, where Detroit's 134 absent voter counting boards (counting boards) performed their duties. The TCF Center has been the subject of several lawsuits.

a. Donald J. Trump for President, Inc., et. al. v. *Secretary of State.*

On November 4, the Trump committee and a Republican poll challenger filed a complaint in state court generally alleging that insufficient numbers of Republican election inspectors or challengers were present at absent voter counting boards in Michigan, and that challengers were being denied access to surveillance videotapes of absent voter ballot drop boxes at absent voter counting boards. (MiAppx 1a–12a, *Trump* Compl.) The plaintiffs sought to halt the

canvass. The court denied the plaintiffs' motion for emergency declaratory or injunctive relief because their request for relief was essentially moot and the Secretary of State was not the proper party since she did not control election-day activities related to the presence or absence of inspectors and challengers. (MiAppx 13a–18a, *Trump* Order.) Plaintiffs appealed to the Michigan Court of Appeals, which denied relief.[7] The plaintiffs' appeal to the Michigan Supreme Court remains pending.[8]

b. Costantino, et. al. v. *City of Detroit, et. al.*

On November 8, voters and Republican challengers filed suit against Detroit and Wayne County officials in state court, alleging a litany of errors in the processing of absent voter ballots at the TCF Center. Including that: (a) defendants counted ballots from voters whose names failed to appear in the voter file; (b) defendants instructed election workers to not verify signatures on absentee ballots and to backdate absentee ballots; (c) election officials received late batches of ballots that were unsealed ballots without envelopes; (d) defendants instructed election workers to process ballots that appeared after the election

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[7] See December 4, 2020, Michigan Court of Appeals order denying leave, Docket Nos. 355378, 355397, available at http://publicdocs.courts.mi.gov/coa/public/orders/2020/355378_17_01.pdf, (accessed December 10.)

[8] See docket sheet for Case No. 162320, available at https://courts.michigan.gov/opinions_orders/case_search/pages/default.aspx?SearchType=1&CaseNumber=162320&CourtType_CaseNumber=1, (accessed December 10.)

deadline; (e) defendants systematically used false information to process ballots, such as using incorrect or false birthdays; (f) officials coached voters to vote for Democrats; (g) unsecured ballots arrived at the TCF Center loading garage, not in sealed ballot boxes, without any chain of custody, and without envelopes; (h) defendants refused to record challenges by Republican challengers and removed challengers from TCF; (i) defendant election officials and workers locked credentialed challengers out of the counting room so they could not observe the process; and (j) defendant election officials and workers allowed ballots to be duplicated by hand without allowing poll challengers to check if the duplication was accurate. (MiAppx 21a–23a, *Costantino* Compl.)

The plaintiffs moved for injunctive relief, asking the court to order an independent audit to determine the accuracy of the November 3 election; to prohibit the defendants from certifying the election results; and to issue an order voiding the election results. (MiAppx 43a–44a.) The court denied the motion. (MiAppx 74a, *Costantino* Order.) The court concluded that the claims of fraud and improprieties lacked credibility and were often based on misunderstandings of the law and the actual processes that occurred at TCF, as demonstrated by the affidavit of Christopher Thomas, Michigan's former Director of Elections, who worked at the TCF Center as a consultant for Detroit. (See MiAppx, 73a–74a; see also MiAppx 46a–59a, Thomas Affidavit.)

The plaintiffs appealed and both the Michigan Court of Appeals,[9] and the Michigan Supreme Court, denied relief.[10] This case remains pending before the state court.[11]

c. Texas's claims against Detroit have been rejected.

Relevant here, a city or township may choose to establish absent voter counting boards to process and count absent voter ballots. See Mich. Comp. Laws §168.765a. Counting boards perform these duties under the supervision of a board of election inspectors appointed by city or township election officials, which board must have at least three inspectors, and at least one inspector from each of the major political parties. See Mich. Comp. Laws §§ 168.672, 168.674(2), 168.765a(1), (4). "At all times, at least 1 election inspector from each major political party must be present at the absent voter counting place[.]" Mich. Comp. Laws § 168.765a(10).

Michigan law also provides for the appointment of poll "challengers" by political parties. Mich. Comp.

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[9] See November 16, 2020, Michigan Court of Appeals order denying leave, Docket No. 355443, available at http://publicdocs.courts.mi.gov/coa/public/orders/2020/355443_25_01.pdf.

[10] See November 23, 2020, Michigan Supreme Court order denying leave, Case No. 162245, available at http://publicdocs.courts.mi.gov/sct/public/orders/162245_41_01.pdf.

[11] A similar case was filed in the same court against virtually the same officials. See *Stoddard, et al.* v. *Detroit Election Commission, et al.*, Wayne Circuit Case No. 20-014604. The court denied the request for injunctive relief there as well. (MiAppx 75a–81a.)

Laws § 168.730. Challengers have a right to be present at a counting board "to observe the counting of the ballots," and to engage in other permitted activity. Mich. Comp. Laws §§ 168.733(2), 168.733(1).[12] An election official that interferes with the rights of a challenger may be prosecuted. Mich. Comp. Laws §168.734. However, an election inspector may expel a challenger from a counting board for engaging in "disorderly conduct." Mich. Comp. Laws §§ 168.733(1), 168.678.

Texas alleges that Michigan law "requires that poll watchers and inspectors have access to vote counting and canvassing," citing Mich. Comp. Laws §§168.674–675. (Compl., ¶ 90.) This allegation is correct only as to election inspectors. Texas then alleges that "[l]ocal election officials in Wayne County made a conscious and express policy decision not to follow M.C.L. §§ 168.674-675 for the opening, counting, and recording of absentee ballots." (*Id.*, ¶ 91.) But Texas does not otherwise explain how these laws were violated.

Texas next alleges that "Michigan also has strict signature verification requirements for absentee ballots" and that Detroit officials violated these requirements. (Compl., ¶¶ 92–93.)

Michigan law requires voters to sign the return envelopes used for delivering their voted ballots to

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[12] Poll "watchers" are not "challengers.". See The Appointment, Rights and Duties of Election Challengers and Poll Watchers, available at https://www.michigan.gov/documents/SOS_ED_2_CHALLENGERS_77017_7.pdf, (accessed December 10.)

their local clerk, otherwise the ballot will not be counted. Mich. Comp. Laws § 168.764a. After an absent voter ballot is returned to the local clerk's office, it is either delivered to the election inspectors in the voter's precinct, Mich. Comp. Laws § 168.765(2), or to a counting board, if the jurisdiction uses a counting board, Mich. Comp. Laws § 168.765a(1), (6). But in either case, the city or township clerk first reviews the voter's return envelope and compares the signature to the voter's signature in the qualified voter file or on the registration card. Mich. Comp. Laws § 168.766.

A clerk must stamp the voter's return envelope with the date and time it was received and include a statement that the signature on the envelope matches the signature on file. Mich. Comp. Laws § 168.765a(6). In a jurisdiction that uses a counting board, if the clerk determines that the signatures do *not* agree, the absent voter ballot is *not* delivered to the counting board for tabulation and is marked rejected by the clerk and preserved. (*Id.*) Under this process, signature comparisons are performed by the clerk before an absent voter ballot is delivered to a counting board. Thus, signature comparisons are not performed by counting boards.

Texas alleges that Detroit officials "ignored" these "statutory signature verification requirements." (Compl., ¶¶ 92–93.) Texas points to the affidavit of Jessy Jacob, who worked as an election official for Detroit, stating that she "was instructed not to look at any of the signatures on the absentee ballots, and I was instructed not to compare the signature on the absentee ballot with the signature on file." (*Id.*, ¶ 94.) But the instruction to Ms. Jacob was correct since

counting boards do not perform signature comparisons. Notably, Jacob's affidavit was soundly discredited by the state court. (MiAppx 63a–64a, *Costantino* Order, pp 3–4.) The court instead found Mr. Thomas to be more credible. (MiAppx 53a, Thomas Affidavit, ¶ 19.)

Texas alleges that these "non-legislative modifications" resulted in a number of "constitutionally tainted votes." (*Id.*, ¶ 96.) But Texas has not shown any violation of Michigan law occurred.

Texas next alleges that "[a]dditional public information confirms the material adverse impact on the integrity of the vote in [Detroit] caused by these unconstitutional changes to Michigan's election law." (*Id.*, ¶ 97.) "For example, the Wayne County Statement of Votes Report lists 174,384 absentee ballots out of 566,694 absentee ballots tabulated (about 30.8%) as counted without a registration number for precincts in the City of Detroit." (*Id.*, ¶ 97.) "The number of votes not tied to a registered voter by itself exceeds Vice President Biden's margin of 146,007 votes by more than 28,377 votes." (*Id.*)

Michigan is at a loss to explain these allegations. It is unclear what Texas and Mr. Cicchetti mean by "counted without a registration number." If they are suggesting that they could not determine the number of registered voters in each precinct, that is information that can be obtained under Michigan's Freedom of Information Act. See Mich. Comp. Laws §168.509gg(1).

They then suggest that the "extra ballots cast" were likely the result of Detroit election workers at

the TCF Center running ballots through the tabulators multiple times while Republican poll watchers were obstructed or denied access, or had their challenges rejected, "as documented by numerous declarations." (Compl., ¶ 98.) But again, it is unclear why they think extra ballots or votes were cast. Moreover, the theories or claims that large numbers of unaccounted for ballots showed up at the TCF Center, and that Republican challengers were wrongly denied access or had challenges improperly rejected, have been explained or rejected. (See MiAppx 60a–74a, *Costantino* Order; MiAppx 48a, 52a, 54–59a, Thomas Affidavit, ¶¶ 6, 17, 21, 24–26, 32–35, 39).

Texas also notes that a Republican member of the Wayne County Board of Canvassers, "determined that 71% of Detroit's [counting boards] were unbalanced—i.e., the number of people who checked in did not match the number of ballots cast—without explanation." (Compl., ¶ 99.) Michigan law requires the county boards of canvassers to disclose the number of out-of-balance precincts that are not reconciled after the county canvass concludes. Mich. Comp. Laws §168.824a. But the existence of out-of-balance precincts does not provide a basis for refusing to certify results. Further, as the Director of Elections explained to the Board of State Canvassers, out-of-balance precincts are a common occurrence, they can happen for a number of innocuous reasons, and Detroit improved its performance overall in this election from that in 2016. (MiAppx 223a–240a, Excerpt 11/23/20 Tr. & 11/23/20 Staff Report.)

3. Other Michigan and federal courts have rejected similar legal claims against the state.

a. Johnson, et. al. v. *Whitmer, et. al.*

On November 26, two voters filed a petition for writ of mandamus in the Michigan Supreme Court against the Secretary, the Governor, the Board of State Canvassers and its chairperson. (MiAppx 82a–153a, *Johnson* Pet.) The plaintiffs alleged that defendants violated their substantive due process rights under the federal and state constitutions by failing to ensure a fair election process (MiAppx 144a–147a, ¶¶ 238–256); violated their right to equal protection under the federal and state constitutions by causing the dilution of their votes (MiAppx 148a, ¶¶ 258–263); and violated the Electors Clause of the U.S. Constitution by failing to follow Michigan election law, (MiAppx 149a, ¶¶ 265–269). The plaintiffs requested that the court issue an injunction enjoining the Board from certifying the election and the Governor from certifying the electors, along with requesting that the court take possession of election materials. (MiAppx 151a–153a.)

On December 9, the Michigan Supreme Court denied the complaint for writ of mandamus "because the Court is not persuaded that it can or should grant the requested relief."[13]

[13] See December 9, 2020, Michigan Supreme Court order denying leave, Case No. 162286, available at https://bit.ly/3qJGedJ.

b. King, et. al. v. Benson, et. al.

On November 25, several Republican Party electors filed a complaint and motion for a temporary restraining order in federal court against the Secretary, the Governor, and the Board of State Canvassers.

These plaintiffs allege the same litany of irregularities in the City of Detroit's election as in the *Costantino* case. And plaintiffs allege the same legal claims presented to the Michigan Supreme Court in *Johnson,* and now to this Court. (ECF No. 6, Am. Compl., *King* v. *Whitmer*, No. CV 20-13134, 2020 WL 7134198 (E.D. Mich. Dec. 7, 2020) (Parker, J).) The plaintiffs requested that the court direct the defendants to decertify the election results; enjoin the Governor from sending the electors certificates; order the Governor to certify results the President Trump won the election; impound voting machines and software; order the rejection of various ballots; and declare other various forms of relief. *Id*. at *1–3.

On December 7, the district court denied the motion for injunctive relief. *Id.* at *13. The court concluded that the Eleventh Amendment barred the plaintiffs' claims; that their claims were moot; that their claims were barred by laches; that abstention applied; that the plaintiffs lacked standing to bring their equal protection, Electors Clause and Elections Clause claims; and that the plaintiffs had no likelihood of succeeding on the merits of their constitutional claims. (*Id*. at *3–13.)

On December 8, the plaintiffs filed a notice of appeal. See (ECF No. 64, PageID.3332.)[14]

REASONS FOR DENYING THE COMPLAINT

I. This Court should decline to exercise original jurisdiction over this case.

This original action comes too late, after its top executive election officials have confirmed the validity of Michigan's presidential vote under Michigan law. This Court should decline to exercise original jurisdiction, particularly given the other actions pending that raise these same basic—meritless—challenges. In fact, just yesterday, the Michigan Supreme Court refused to grant review on a request to "audit" Michigan's vote. The election in Michigan is over. Texas comes as a stranger to this matter and should not be heard here.

A. The factors for invoking original jurisdiction are not present.

This Court has consistently held that it has discretion whether to invoke its original jurisdiction to hear a "controvers[y] between two or more States" under Article III, § 2, cl. 2 of the U.S. Constitution and 28 U.S.C. § 1251(a). The Court has consistently "reaffirmed" that its "original jurisdiction should be invoked sparingly." See, e.g., *Arizona* v. *New Mexico*,

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[14] Three similar lawsuits were filed in federal court but then dismissed. See *Donald J. Trump for President, Inc, et al.* v. *Secretary of State, et al.*, Case No. 20-01083 (W.D. Mich. 2020). Texas incorporates the exhibits from the Trump case in support of its complaint. See (Compl., p. 5, n.2.)

425 U.S. 794, 796 (1976) (quoting *Illinois* v. *City of Milwaukee*, 406 U.S. 91, 93–94 (1972)).

This Court is "structured to perform as an appellate tribunal, ill-equipped for the task of factfinding and so forced, in original cases, awkwardly to play the role of factfinder without actually presiding over the introduction of evidence." *Ohio* v. *Wyandotte Chemicals Corp.*, 401 U.S. 493, 498 (1971). These prudential considerations apply with particular force here.

1. There is no case or controversy supporting jurisdiction.

"In order to constitute a proper 'controversy' under our original jurisdiction, 'it must appear that the complaining State has suffered a wrong *through the action of the other State*, furnishing ground for judicial redress, or is asserting a right against the other State which is susceptible of judicial enforcement according to the accepted principles of the common law or equity systems of jurisprudence.' " *Maryland* v. *Louisiana,* 451 U.S. 725, 735–36 (1981) (quoting *Massachusetts* v. *Missouri,* 308 U.S. 1, 15 (1939)) (emphasis added).

Each count of Texas's Bill of Complaint—although framed as federal claims—is in reality a state-law claim that would be barred by the Eleventh Amendment if raised by a citizen of Texas. See, e.g., *Pennhurst State Sch. & Hosp.* v. *Halderman*, 465 U.S. 89, 100 (1984). The claims against Michigan explicitly center on allegations that *state or local* officials violated *state* law. (Compl., ¶82, 86–87, 90, 92, ¶132, 137–138, 144.)

The claims are particularly striking as no Michigan court has found a violation of state law, despite a rash of litigation. And, pertaining to the Secretary of State's mailing of absent voter ballot applications, courts have found that the act did *not* violate state law. See *Davis* v. *Secretary of State*, 2020 WL 5552822 (Sept. 2020). Similarly, Michigan's courts have not found any violation of Michigan's election law arising from the counting of absent ballots at Detroit's TCF Center. (MiAppx 60–74a, *Costantino* Order.) It is difficult to conceive of a greater intrusion upon Michigan's sovereignty than to have another state hale it before this Court to answer whether Michigan has followed its own laws in its own elections where its own courts have found no violation. Yet, Texas has done just that.

It is true that the Eleventh Amendment does not apply to claims brought by one state against another before this Court. See *Maryland,* 451 U.S. at 745 n.21. But Texas's Bill of Complaint raises the same concerns of federalism and state sovereignty that typically insulates state officials from federal claims premised on violations of state law. These concerns similarly counsel against this Court exercising jurisdiction.

2. The discretionary factors do not support jurisdiction.

This Court has imposed its own "prudential and equitable limitations" on its exercise of original jurisdiction. *California* v. *Texas*, 457 U.S. 164, 168 (1982). In determining whether it should exercise its discretion to hear a case within its original jurisdiction, the

Court has considered a variety of factors, although two have explicitly been consulted:

> (1) "the nature of the interest of the complaining State, focusing on the seriousness and dignity of the claim." *Mississippi* v. *Louisiana*, 506 U.S. 73, 77 (1992) (citations omitted); and
>
> (2) "the availability of an alternative forum in which the issue tendered can be resolved." *Id.* at 77.

Both factors support declining jurisdiction.

First, the "seriousness and dignity of the claim," *Mississippi*, 506 U.S. at 77, are wanting. While Texas casts its claims as being of the utmost significance, the unanswered question is what Michigan has done to injure Texas. Texas asserts that Michigan and the other States failed to administer their elections in accordance with their own state laws. But there is no allegation or argument that a single vote in Texas was changed as a result of any event in Michigan or in the other States.

As a result, it is not plain what interest Texas has in the conduct of elections in other states—other than, perhaps, as a premise to invoke this Court's original jurisdiction.

Moreover, the claims raised by Texas, and their factual predicates, have been raised against Michigan officials—and rejected by the lower federal courts. (See *King*, 2020 WL 7134198 at *3–13; MiAppx 60–74a, *Costantino* Order.) The claims raised here do not justify Texas's intrusion into the internal election

operations of Michigan, seeking effective nullification of 5.5 million votes.

The impossibly short time framework Texas requests for a determination highlights the ill fit. Typically, resolution of an original-jurisdiction case is no quick task. See, e.g., *Arizona* v. *California*, 373 U.S. 546, 551 (1963) (subsequent procedural history omitted) (the Special Master conducted a two-year trial concerning a battle over water rights of the Colorado River and its tributaries, involving 340 witnesses and 25,000 pages of transcripts). The "rampant lawlessness" (Compl. ¶ 7), alleged by Texas is quite a factual predicate to prove.

Texas effectively asks this Court to exercise superintending control over our country's single national election. This is not the proper process by which to resolve these claims.

Second, "alternative forums" exist in spades, and have been employed by numerous entities challenging the results of the election. Across the board, state and federal courts have rejected the challenges as baseless. This Court considers "the essential quality of the right asserted—but we must also inquire whether recourse to [original] jurisdiction . . . is necessary for the State's protection." *Washington* v. *Gen. Motors Corp.*, 406 U.S. 109, 113 (1972) (citation omitted). This is borne out by Paragraphs 7 and 91 of the Complaint, which show that litigants have already unsuccessfully challenged Michigan's elections, and to no avail—as recently as yesterday in Michigan's highest court, refusing to order an audit of the election.

B. The doctrine of laches bars review of the bill of complaint.

The defense of laches is rooted in the principle that equity does not aid those who slumber on their rights. See *U.S.* v. *Clintwood Elkhorn Min. Co.*, 553 U.S. 1, 9 (2008) ("A constitutional claim can become time-barred just as any other claim can."). Courts apply laches in election cases. See *Detroit Unity Fund* v. *Whitmer*, 819 F. App'x 421, 422 (6th Cir. 2020). Cf. *Benisek* v. *Lamone*, 138 S. Ct. 1942, 1944 (2018) ("[A] party requesting a preliminary injunction must generally show reasonable diligence. That is as true in election law cases as elsewhere.").

An action may be barred by laches if: (1) the plaintiff delayed unreasonably in asserting their rights and (2) the defendant is prejudiced by this delay. *Brown-Graves Co.* v. *Central States, Southeast and Southwest Areas Pension Fund*, 206 F.3d 680, 684 (6th Cir. 2000). Laches applies in this case for both reasons.

Texas unreasonably delayed, filing here over a month after the general election and months after the Michigan Secretary of State took any action to mail absent voter ballot applications to voters. Claims that either event violated the rights of Texas could and should have been raised sooner than on the eve of 3 U.S.C. § 5's "safe harbor" deadline.

The counting of votes in Michigan was completed by its 83 boards of county canvassers on November 17, and by the Board of State Canvassers on November 23. See Mich. Comp. Laws §§ 168.822(1), 168.841, 168.842(2), 168.845. Yet Texas waited an additional two weeks before bringing this action. Further, the

Michigan Secretary of State's mailing of absent voter ballot applications occurred months prior to the election, yet Texas waited until after results were certified.

"[L]ast-minute injunctions changing election procedures are strongly disfavored." *Serv. Employees Int'l Union Local 1* v. *Husted,* 698 F.3d 341, 345 (6th Cir. 2012) (citing *Purcell* v. *Gonzalez,* 549 U.S. 1, 4–5 (2006) ("Court orders affecting elections . . . can themselves result in voter confusion . . . As an election draws closer, that risk will increase.")).

This Court recently reaffirmed that principle in *Republican Nat'l Comm.* v. *Democratic Nat'l Comm.*, 206 L.Ed.2d 452, 454 (2020), staying portions of an injunction modifying process for mailing ballots on the eve of a primary election. Texas's claims for injunctive relief based on election fraud are not just last-minute—they are after the clock has gonged the twelfth hour. While Plaintiffs delayed, the ballots were cast, the votes were counted, and the results were certified. The rationale for interposing the doctrine of laches is at its peak. See *Soules* v. *Kauaians for Nukolii Campaign Committee,* 849 F.2d 1176, 1180 (9th Cir. 1988) (laches applies in post-election suits since "parties who could raise a claim [could] lay by and gamble upon receiving a favorable decision of the electorate and then, upon losing, seek to undo the ballot results in a court action").

The State of Michigan has been prejudiced by Texas's delay. The Michigan Board of State Canvassers certified the election results on November 23, and certificates of election have now been issued for all candidates. Michigan's slate of electors was

transmitted by the Governor to the U.S. Archivist the same day. Further, the federal safe harbor transpired on December 8, and presidential electors are due to convene in less than one week—on December 14. Mich. Comp. Laws § 168.47; 3 U.S.C. § 7. Michigan cannot reasonably be expected to fully respond to the Texas's naked claims of fraud—let alone obtain the services of necessary experts to controvert the unusual statistical claims—in sufficient time to fully litigate and disprove these unsupported allegations before December 14, a situation owing solely to Texas's own unexcused failure to act promptly to advance its claims. The election in Michigan is over.

II. The bill of complaint should be dismissed because Petitioner fails to state a claim upon which relief may be granted as to any of the alleged constitutional violations.

Besides, Texas's claims are meritless. Not only does Texas lack standing, but the gravamen of the claims is predicated on factual assertions that have been universally rejected by federal courts in Michigan and by its state courts. This Court should reject the motion to file a bill of complaint here.

A. The Electors Clause claim fails as a matter of law.

1. Texas lacks standing to challenge Michigan's election results.

To begin, Texas lacks standing to bring claims under the Electors Clauses. The elements of Article III standing require a plaintiff to have (1) suffered an

injury-in-fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision. *Lujan* v. *Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992).

To plead an injury-in-fact, the party invoking federal jurisdiction must establish the "invasion of a legally protected interest"; that the injury is both "concrete and particularized"; and that the injury is "actual or imminent, not conjectural or hypothetical." *Id.* at 560. The second sub-element requires that the injury "affect the plaintiff in a personal and individual way." *Id.* at n.1. Allegations of "possible" future injury simply are not enough. *Id.* at 560 (quoting *Whitmore* v. *Arkansas*, 495 U.S. 149, 158 (1990)).

This Court has held that federal courts are not venues for plaintiffs to assert a bare right "to have the Government act in accordance with law." *Allen* v. *Wright*, 468 U.S. 737, 754 (1984), abrogated on other grounds by *Lexmark Int'l, Inc.* v. *Static Control Components, Inc.,* 572 U.S. 118, 126–27 (2014). When the alleged injury is undifferentiated and common to all members of the public, courts routinely dismiss such cases as "generalized grievances" that cannot support standing. *United States* v. *Richardson*, 418 U.S. 166, 173–75 (1974).

In Count I, Texas claims that the Electors Clause grants it a right to have Michigan conduct its elections in conformity with Michigan state law. But the only injury Texas has alleged is that the Electors Clause has not been followed. This is no more than an undifferentiated, generalized grievance about the conduct of government. See *Lance* v. *Coffman*, 549 U.S. 437,

442 (2007). Texas fails to establish an injury-in-fact and thus standing to bring its Electors Clause claims.

The analysis of the Third Circuit in recently rejecting the standing of *private* plaintiffs to sue for alleged injuries attributable to a state government's violations of the Elections Clause is instructive here. See *Bognet* v. *Sec'y Pennsylvania*, 980 F.3d 336 (3d Cir. 2020). In that case, the Third Circuit held that because the Elections Clause and Electors Clause have "considerable similarity," the same logic applies to alleged violations of the Electors Clause. *Id.* at 349. The Third Circuit relied on *Lance*, 549 U.S. at 442, in which this Court held that the plaintiffs lacked Article III standing because the claimed harm was only to their interest, and the interest of every citizen, in proper application of the Elections Clause. The same is true here. In fact, Texas has even *less* of an interest in how Michigan runs its elections than would a citizen of Michigan.

Further, as the Third Circuit observed in *Bognet*, because the Elections Clause grants to "the Legislature" of "each State" the right to prescribe the "times, places, and manner" of holding elections, any claims under that Clause belong to the state legislature. *Bognet,* 980 F.3d at 349. Similarly, the Electors Clause vests the right to direct the manner in which Electors are appointed. U.S. Const. art. II, § 1, cl. 2. So, claims brought under the Electors Clause likewise belong to that State's legislature.

The State of Texas has no role in, or connection to, Michigan's legislature or Michigan's elections. Accordingly, it lacks standing to raise claims on behalf of the Michigan legislature under the Electors Clause.

2. Michigan has not violated the Electors Clause.

Even assuming Texas had standing, the claim based upon the Electors Clauses fails. The "Electors Clause" of the Constitution states: "Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors ...." U.S. Const. art. II, § 1, cl. 2. Count I contends that, because the Michigan Legislature has established laws for the administration of elections, including presidential elections, Michigan violated the Electors Clause by "conscious and express actions by State or local election officials to nullify or ignore requirements of election statutes." (Bill of Complaint, ¶131.) Texas's theory would constitutionalize any claimed violation of state election law—no matter how minor, fleeting, or inconsequential—any time there was a presidential election.

If adopted by this Court, Texas's argument would dramatically expand this Court's oversight of state elections. Not surprisingly, Texas offers no support for such an expansive reading of the Electors Clause, and indeed, neither this Court nor any other federal court appears to have adopted this invasive and unjustified approach. To the contrary, as discussed in greater detail below, addressing Texas's equal protection claim, such federal court management of state elections has been rejected by other courts.

In *Bush* v. *Palm Beach County Canvassing Bd.*, 531 U.S. 70, 76 (2000), this Court held that state legislatures enacting laws governing the selection of presidential electors are acting under a grant of authority under Article II, § 1, cl. 2 of the U.S. Constitution. This Court has also held that the power to define

the method of selecting presidential electors is exclusive to the state legislature, *McPherson* v. *Blacker*, 146 U.S. 1, 27 (1892), and cannot be "taken or modified" even by the state constitutions, *Bush* v. *Gore*, 531 U.S. 98, 112–13 (2000) (C.J. Rehnquist, concurring). From this modest premise, Texas contends that any violation of the Michigan Election Law—even by local officials—is tantamount to a modification of the Legislature's enactments. But neither *Bush* nor *McPherson* holds as much.

The most basic problem with Texas's argument, of course, is that Michigan has not violated its election law. Ordinarily, public officials are presumed to have "properly discharged their official duties." *Bracy* v. *Gramley*, 520 U.S. 899, 909 (1997). Texas has failed to offer any actual evidence rebutting that presumption. Texas fails to demonstrate how Michigan officials violated Michigan Election Law. Absent from Texas's complaint is any reference to any act or decision by any state official that supposedly "violates" state law, let alone the Electors Clause.

The closest allegation relates to the Michigan Secretary of State's mailing of absent voter ballot applications. Again, this act was found by Michigan state courts to be consistent with the Secretary's authority under state law. Texas rests its claims on general allegations that unidentified "local election officials" failed to follow laws providing for poll watchers and inspectors. It neglects to offer any details on where, how, and when such violations occurred.

In *Bush* v. *Gore*, Justice Rehnquist observed that federal courts' review of state court decisions affecting presidential electors under Article II was "still

deferential." 531 U.S. at 114 ("there are of course areas in which the Constitution requires this Court to undertake an independent, if still deferential, analysis of state law"). Here, no state court has taken any action or made any finding of a violation of state law. Rather than deferring to Michigan courts on the interpretation of its own laws, Texas *ignores* it, and then invites this Court to do the same.

The Michigan election was held in accordance with state law. The election in Michigan was held on November 3, 2020. Canvass of the votes at the precinct level began immediately after the polls closed, Mich. Comp. Laws § 168.801; the boards of county canvassers met on the Thursday immediately following the election to commence the canvass of the counties' returns of votes; and the county canvass was completed by the 14th day after an election, which is November 17 this year, Mich. Comp. Laws §§ 168.821, 168.822. Michigan law was followed.

Pursuant to Mich. Comp. Laws § 168.842(1), the Board of State Canvassers met on the twentieth day after the election to certify the results—this cycle, it was November 23. This meeting was both widely reported and streamed live over the internet. No presidential candidate subsequently requested a recount as provided under state law. Mich. Comp. Laws § 168.879(1)(c).

Under Mich. Comp. Laws § 168.46, "[a]s soon as practicable after the state board of canvassers has" certified the results the Governor must certify the list of presidential electors to the U.S. Secretary of the Senate. See also 3 U.S.C. § 6. This, too, has already been done.

Lastly, Michigan law provides, under Mich. Comp. Laws § 168.47, that the presidential electors "shall convene" in the State's capitol "on the first Monday after the second Wednesday in December following their election," which is December 14 for this election cycle. Mich. Comp. Laws § 168.47; 3 U.S.C. § 7.

Texas's requested relief would imperil Michigan's ability to comply with this statutory deadline. As of today, less than one week remains before the electors must, by state law, convene. And Texas's requested relief—an order directing the Michigan legislature to appoint new electors or no electors at all—would itself violate the Electors Clause because such electors would not have been appointed in the manner provided by state law.

Texas has failed to show that Michigan failed to follow its own state election law, or that the Electors Clause was violated. Thus, it is not likely to succeed on the merits of this claim.

B. The Equal Protection Clause claim fails as a matter of law.

"Equal protection of the laws" means "[h]aving once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person's vote over that of another." *Bush*, 531 U.S. at 104–05. Voting rights can be impermissibly burdened "by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise." *Id.* (quoting *Reynolds* v. *Sims*, 377 U.S. 533 (1964)). "Our Constitution leaves no room for classification of people in a way that unnecessarily abridges this right

[to vote]." *Reynolds*, 377 U.S. at 559 (quoting *Wesberry* v. *Sanders*, 376 U.S. 1, 17–18 (1964)).

Here, no group has been given preference or advantage. Texas fails to identify by name a single Michigan voter who voted when they should not have—let alone anything resembling widespread election fraud. Similarly, Texas has not identified any election workers who supposedly engaged in misconduct or malfeasance. Upon information and belief, none of the affiants or witnesses suggested by Texas (largely from other federal cases) have submitted any complaints of election fraud to a Michigan law enforcement agency.

Moreover, there has been no valuation of any person's—or group of persons'—votes as being more valuable than that of others. There has been no disparate treatment, and so nothing to violate "one-person, one-vote jurisprudence." *Bush*, 531 U.S. at 107. While Texas appears to believe that some poll challengers were treated inappropriately, even if true, that has no bearing on the validity or integrity of any votes. The penalty for interfering with a poll challenger is to punish the person who violated the law—not to punish voters by invalidating their votes for reasons over which they had no control. See Mich. Comp. Laws § 168.733(4).

Texas's minimal allegations in Count II leave much guesswork. The final paragraph of Count II, however, argues that—by virtue of the President and Vice-President being elected nationally—an equal protection violation in one state may "adversely affect and diminish the weight of votes cast in States that lawfully abide by the election structure set forth in the

Constitution." (Bill of Complaint, ¶139.) There is no support for this proposition.

Putting aside that there has been no violation of Michigan law, this argument makes no sense. Under the Electors Clause—on which it bases Count I—Texas is entitled to only a number of electors equal to the whole number of its senators and representatives in Congress. U.S. Const. art. II, § 1, cl. 2. Nothing that happens in Michigan would add or remove a single electoral vote for Texas, and Texas has no entitlement to any of Michigan's electoral votes. It is not a pie.

As explained by the Third Circuit in *Bognet*—in rejecting a similar "vote-dilution" claim brought by state voters, this "is not how the Equal Protection Clause works." *Bognet*, 890 F.3d at 355 (emphasis added). Similarly, the Eighth Circuit has held that, "[t]he Constitution is not an election fraud statute." *Minn. Voters All.* v. *Ritchie*, 720 F.3d 1029, 1031 (8th Cir. 2013). Although Texas sees the Constitution that way, its claim finds no support in law.

Texas also fails to establish that the alleged injury of "vote dilution" can be redressed by a favorable determination by this Court. Texas asks this Court to set aside the results of Michigan's election and have the state legislature make a new selection of electors. But an order negating the votes of over 5.5 million people would not reverse the alleged dilution of Texas's votes. As this Court has held, standing is not "dispensed in gross: A plaintiff's remedy must be tailored to redress the particular plaintiff's injury." *Gill* v. *Whitford*, 138 S. Ct. 1916, 1934 (2018). Texas's alleged injury does not entitle it to the requested remedy because the harm of having one's vote diluted is

not remedied by denying millions of others *their* right to vote. Texas lacks standing on this claim.

C. The Due Process Clause claim fails as a matter of law.

Count III is entirely comprised of five paragraphs, in which Texas refers both to substantive and procedural due process. First, Texas cites to a number of Circuit Court decisions addressing election practices found to violate substantive due process through "patent and fundamental unfairness." (Complaint, ¶141.) The next paragraph recites some of this Court's decisions on procedural due process. (Complaint, ¶142.) Michigan is left to guess the nature of Texas's claim. In its best guess, Michigan assumes that Texas alleges a violation of substantive due process.

Texas alleges that the Defendant States "acted unconstitutionally to lower [its] election standards—including to allow invalid ballots to be counted and valid ballots not to be counted—with the express intent to favor their candidate for President and to alter the outcome of the 2020 election." (Complaint, ¶143.) It is unclear what Texas means by the reference to the State of Michigan having a favored candidate for President. But Texas goes on to allege that its earlier-alleged violations of Michigan Election Law constitute intentional violations by state election officials and their designees. (Complaint, ¶144.) Texas offers no further elucidation of its due process claim.

This Court, however, has not recognized the right to vote as a right qualifying for substantive due process protection. See, e.g., *San Antonio Indep. Sch. Dist.* v. *Rodriguez,* 411 U.S. 1, 35, n.78 (1973). Instead,

this Court has held that "[w]here a particular Amendment provides an explicit source of constitutional protection against a particular sort of government behavior, that Amendment, not the more generalized notion of 'substantive due process,' must be the guide for analyzing these claims." *Albright* v. *Oliver*, 510 U.S. 266, 273 (1994). Vote-dilution claims are typically analyzed under the Equal Protection Clause. For the reasons stated in the argument above, there is no violation of the Equal Protection Clause. Consequently, there is also no violation of substantive due process.

III. Texas fails to satisfy the requirements for injunctive relief.

A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits and suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest. *Winter* v. *NRDC,* 555 U.S. 7, 20 (2010). Texas does not meet the injunction factors.

1. Texas has no likelihood of succeeding on the merits of its claims.

As discussed above, each of Texas's three Counts suffer from insurmountable factual and legal deficiencies. Indeed, these claims have already been rejected by multiple courts based upon the same factual and legal failings.

2. Texas will suffer no irreparable harm absent an injunction.

Texas dedicates a single paragraph to discussion of its claim of irreparable harm, which centers on two arguments: (1) Texas would be "denied representation" in the presidency and in the Senate, and (2) that would permanently sow distrust in federal elections. Neither argument supports an "irreparable harm" to Texas.

This Court requires plaintiffs seeking preliminary relief to demonstrate that irreparable injury is "*likely* in the absence of an injunction." *Los Angeles* v. *Lyons*, 461 U.S. 95, 103 (1983). This claim fails for three reasons.

First, because Texas has not shown there was any violation of Michigan Election Law, its claim of harm is hypothetical and abstract. *Second*, because Texas cannot demonstrate a likelihood of success, it also cannot show that harm is likely through the violation of any constitutional right. *Third*, Texas fails to explain how setting aside election results and disenfranchising the majority of the electorate in the states would work to stem "distrust in federal elections."

3. Michigan will suffer critical harm if the requested injunction is issued.

Preventing Michigan's electors from voting in the Electoral College would irreparably harm Michigan. Michigan courts have long recognized that the will of the majority should not be defeated as a result of errors by election officials. See *Gracey* v. *Grosse Pointe Farms Clerk,* 452 N.W.2d 471, 478 (Mich. 1989). Texas

fails to explain why it would be less harmful to invalidate the votes of an entire state than to address individual claims of wrongdoing according to established state law.

4. The public interest will be harmed if the requested injunction is issued.

This Court has held that it is contrary to the public interest for courts to interfere in election laws in the run-up to an election. See, e.g., *North Carolina* v. *League of Women Voters of N. Carolina*, 574 U.S. 927 (2014) (granting stay to prevent interference with election procedures roughly one month before election).

If the Court issues the injunction Texas requests, it will upend the statutory process for the selection of presidential electors. Moreover, it will disenfranchise millions of Michigan voters in favor of the preferences of a handful of people who appear to be disappointed with the official results. The same is true for the other States named in this complaint. The State of Michigan agrees with Georgia, Pennsylvania, and Wisconsin in their efforts to safeguard their sovereignty and to rebuff the action by one state that attempts to undermine the authority of their respective state election laws. The public interest weighs in favor of judicial restraint.

CONCLUSION

For the reasons set forth above, this Court should deny Texas's motion for leave to file a bill of complaint against the name states and should deny Texas's motion for a preliminary injunction.

Respectfully submitted,

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