STATE OF MICHIGAN
IN THE 2B DISTRICT COURT FOR COUNTY OF HILLSDALE

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff,

vs

Hon. Megan Stiverson

1. STEPHANIE SCOTT 24-0498-FY
2. STEFANIE LAMBERT 24-0497-FY

Defendants.

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STEPHANIE SCOTT'S & STEFANIE LAMBERT'S CLOSING ARGUMENT

Introduction

The State does not dispute that incorrect and fraudulent registration records were found on the QVF that could affect the Adams Township registration record. The State also does not dispute that Clerk Scott had not only the authority but also the obligation to investigate, pursuant to MCL 168.515, whether incorrect or fraudulent registration records existed in Adams Township. Moreover, the State cannot dispute that Michigan law provides wide latitude to Township clerks in how they conduct such an investigation, which includes the authority to retain outside counsel and experts as necessary to assist in any such investigation. Scott was *obligated* to investigate the duplicate registrations and their impact on elections in Adams Township.

Jonathan Brater, dual Director of Elections for the Bureau of Elections (BOE) and the Director of the Electronic Registration Information Center (ERIC) began targeting Clerk Scott when it became known that she was investigating and correcting fraudulent registration records that existed in Adams Township from the 2020 election. Brater gave numerous unlawful instructions to Clerk Scott including the unlawful demand to delete EPB data.

Brater is the key individual responsible for inflating the Michigan registration/voter roll by at least 700k just weeks prior to the 2020 election. In a statewide newsletter, township clerks were informed that they would not see a paper trail through their office. In other words, the public was told to just trust a 10% statewide increase. **Exhibit 1**.

Brater used every tactic imaginable, from labeling Clerk Scott an "election denier," to issuing demands on her that were not supported by law. Brater's intent was to silence Clerk Scott, instill fear in the thousands of other clerks throughout Michigan, and confuse the people of Adams Township to give the impression that Scott had done something criminal to have her removed from her position by recall.

Brater was the impetus of the AG investigation into Scott (that never contained a legitimate criminal violation in the first place); an investigation that sat idle once it was believed she had been silenced. Only when Scott used her powerful voice again and testified through affidavit in *Butz v. Zelmanski*, No. 2023-002852-CZ (Macomb County Circuit Court) was she once again targeted by Brater. Brater and the Secretary of State intervened through the AG in the *Butz* case to once again attempt to suppress the truth regarding the EPB data. As a result of Clerk Scott's affidavit, criminal charges were invented and brought against her to silence her once and for all. Attorney Lambert was the attorney fighting for Butz to expose that the EPB data in Macomb County did not reconcile with the state QVF data.

Thus, Brater needed to silence Lambert also, as she was an advocate for clients on these critical constitutional matters no matter how unpopular the cause at the time. The AG has been on a warpath to disparage Lambert, and her law office, since January of 2021. The AG had requested sanctions against Ms. Lambert in *King v. Whitmer*, 71 F.4th 511, 531 (6th Cir. 2023), and even filed a bar grievance against Lambert. Lambert won both of these cases, yet the AG to date still has a press release posted giving the entire state of Michigan the impression that the AG had prevailed on the sanctions and grievance.[1] Lambert has continued to be targeted for her knowledge and competence in election related cases. Recall in this case the AG as a condition of Lambert's bond requested that she be "removed" from all election matters, as if they could curtail or suppress her representational rights in other cases.

[1] King was also targeted criminally by the AG as an alternate slate elector and the case was just dismissed at exam by the District Court Judge for failing to establish the intent of fraud.

These facts and additional evidence are important to consider throughout this Closing Argument to understand and give context to Brater's motive to target Scott and Lambert. In short, all charges should be dismissed as a matter of law.

Count I

Count One alleges Scott and Lambert violated **MCL 752.795 *Fraudulent* Access to Computers, Computer Systems, and Computer Networks (Excerpt) Act 53 of 1979**. MCL 752.795 is a computer fraud "hacking" statute. MCL 752.795 states "prohibited conduct" as follows:
Prohibited: a person shall not intentionally and without authorization or by exceeding valid authorization do any of the following:

a) Access or cause access to be made to a computer program, computer, computer system, or computer network.
b) Insert or attach or knowingly create the opportunity for an unknowing and unwanted insertion or attachment of a set of instructions or a computer program into a computer program, computer, computer systems, or computer network, that is intended to acquire, alter, damage, delete, disrupt, or destroy property or otherwise use the services of a computer program, computer, computer system, or computer network. This subdivision does not prohibit conduct protected under Section 5 of article 1 of the state constitution of 1963 or under the first amendment of the constitution of the United States.

MCL 752.795 is not a strict liability statute, and mens rea (criminal intent), is a required element to prove fraudulent access to a computer. The Court in *People v. Green*, unpublished opinion of the Michigan Court of Appeals, decided December 10, 2015, Docket No. 322874, held that the language of MCL 752.795 is unambiguous. **Exhibit 2.** Citing *People v Phillips*, 469 Mich 390, 395; 666 NW2d 657 (2003), for the rules of proper statutory interpretation, the Court reasoned that because the language of MCL 752.795 delineates the elements of the crime, it is unnecessary and improper "to go beyond the words of the statute to ascertain legislative intent." Slip Op. at 3, citing *Phillips*, 469 Mich at 395. The Court ruled that the plain language of MCL 752.795 delineated the elements to be : "(a) intentional and (b) unauthorized (c) access to a computer program, computer system, or computer network (c) to acquire, alter, damage, delete or destroy property or otherwise use the service of a computer program, computer, computer system, or computer network." The Court stated that it was unnecessary and improper to "go beyond the words of the statute to ascertain legislative intent." If the statute's language is clear and unambiguous, it is assumed that the Legislature intended its plain meaning and the statute is enforced as written. Stated differently, *a court may read nothing into an unambiguous statute* as

derived from its words. Only where the statutory language is ambiguous may a court properly go beyond the words of the statute to ascertain legislative intent.

The AG, for purposes of bringing criminal charges against Scott and Lambert has inserted language from MCL 168.509gg into MCL 752.759 in attempt to accomplish a novel judicial construction of MCL 752.759. First, since MCL 752.759 is plain and unambiguous, it is "unnecessary and improper to go beyond the words of the statute to ascertain legislative intent." *Green*, *supra*; *Phillips*, *supra*. Moreover, the statute must be applied and enforced "as written," and thus, the court cannot read any other provision or word into the statute. *Id*. MCL 168.509gg cannot be used to insert meaning or content into MCL 752.759 – the latter statute speaks for itself and it requires specific "unauthorized" access to a computer program, system, or network (which does not apply to the tabulators), and further it requires a showing that the intent is to acquire, alter, damage, delete or destroy property or use the "service" of a computer, system, or network. Under the facts as alleged, the elements are not met by a plain application of this provision, and that is all that can be referred to when considering the charges. Secondly, as noted, courts are not to "borrow" or "substitute" words and phrases in one statute, especially one that is unrelated (MCL 168.509gg discusses exemptions from disclosure under Michigan's Freedom of Information Act (FOIA)), and insert them into another statute to create a criminal act out of whole cloth.

Further, not only does the AG try to inject the language from an unrelated FOIA provision into the specific elements of MCL 752.759, but the AG also seeks to ignore the language of MCL 168.509gg as it was at the relevant time period concerning the charges against Clerk Scott, and apply the "new language" amended in 2024! This, of course, cannot be done. Legislation that did not exist at the time of an alleged criminal act cannot be used to charge someone. This runs counter to the entire foundation of American criminal justice that notice and due process must be accorded to all those who are accuse of a crime. "Due process requires that a person receive fair notice not only of the conduct that will subject him to punishment, but also of the severity of the penalty that a State may impose." *People v. Hall*, 499 Mich. 446, 461, 884 N.W.2d 561, 569 (2016) (internal quotes omitted). See also *People v Babcock*, 469 Mich 247, 262; 666 NW2d 231 (2003).

But that is not all. The AG wants to improperly inject definitions from a hacking statute in place of definitions that were promulgated by the SOS for election matters, all while asking the Court to turn its head to the voluminous evidence (from the AG's own witnesses!) that demonstrates that Clerk Scott had an ongoing voter

registration investigation pursuant to MCL 168.515 to ensure the registration data preserved from 2020 election and its accuracy for future, local, state, and federal elections.[2] The legality of Scott's work as the township's clerk was further supported by testimony related to the preservation of all records pursuant to 52 USC 20701 and MCL 168.811.

As demonstrated herein, all of Scott's actions were not only not proscribed by any criminal statute, but they were authorized and lawful and within the scope of her powers and duties as a constitutional officer.

Even Brater acknowledged the clerk's duty to preserve under state and federal law. **Exhibit 3**.

To be clear, Clerk Scott did not violate any Michigan law, in fact she meticulously followed each one. But for sake of being thorough in addressing the AG allegations, Clerk Scott points out she is also immune from prosecution pursuant to the Supremacy Clause and the Privileges and Immunities Clause.

Analysis of MCL 752.795's elements applied to Lambert and Scott as set forth in *Phillips*:

(a) Intentional:

The AG presented no evidence of criminal intent presented at the preliminary hearing. The AG argues that MCL 752.795 is a strict liability statute. This argument is necessitated by the fact that there was no evidence presented at the preliminary examination supporting the necessary element of intent as explained by the Court of Appeals in *Green*, *supra*, taking the rules of interpretation from *Phillips*, *supra*. The AG needed to present probable cause of criminal intent or mens rea that Scott or Lambert intended to fraudulently hack computers. The AG did not meet its burden of proof.

Lambert and Scott have no burden of proof, and to shift a burden to the defense would be improper. See *People v Rosales*, 160 Mich App 304, 312; 408 NW2d 140

[2] It should also be noted that Clerk Scott did not run the 2020 election. Rather, she fulfilled her statutory duties and obligations as a constitutional officer to keep secure and safe custody of records, and to initiate investigation into potential anomalies or fraud. See Mich. Const. 1963, Art.VII, § 18; MCL 41.65; *McKim v. Green Oak Twp. Bd.*, 158 Mich. App. 200, 205, 404 N.W.2d 658, 660 (1987) (holding that MCL 41.65 bestows a township clerk with the responsibility to exercise control over all township records).

(1987) (stating that the burden of proving a defendant guilty beyond a reasonable doubt may never be shifted from the prosecution, and the defendant is never obligated to prove innocence). The evidence presented revealed the true intent. Clerk Scott was investigating fraudulent registrations and Lambert, as her retained attorney, was advising her as counsel beginning with the false criminal accusations taking place in October of 2021.

On October 15, 2021, Jonathan Brater sent Clerk Scott a letter via email threatening her with a misdemeanor if she did not follow his "instructions" that were demonstrated to be unlawful throughout the preliminary hearing. **Exhibit 4**.

Clerk Scott had been instructed numerous times by Jonathan Brater, and the BOE, to delete the EPB flash drive. **Exhibit 4**. Knowing that the destruction of this data would be violating federal and state law, see, respectively, 52 USC 20701[3] and MCL 168.811,[4] Clerk Scott was forced to find competent outside counsel to address all matters, criminal accusations, and otherwise, due to the lack of knowledge the Hillsdale's attorney had regarding elections and election law. **Exhibit 5.**

Clerk Scott had an ongoing fraudulent registration investigation that she was constitutionally required to conduct. Within a matter of a few weeks, Brater learned that Scott was investigating fraudulent registrations, and that his office, the BOE was subject to an audit by the OAG.

In October 2021, attorney Lambert quickly jumped into action on behalf of Scott. The targeting Scott was experiencing from Brater was moving at lightning speed. Lambert had to quickly review and advise on all applicable laws. There were criminal accusations that included the demand to delete EPB data and threats of

[3] "Every officer of election shall retain and preserve, for a period of twenty-two months from the date of any general, special, or primary election of which candidates for the office of President, Vice President, presidential elector, Member of the Senate, Member of the House of Representatives, or Resident Commissioner from the Commonwealth of Puerto Rico are voted for, all records and papers which come into his possession relating to any application, registration, payment of poll tax…. Any officer of election or custodian who willfully fails to comply with this section shall be fined not more than $1,000 or imprisoned not more than one year, or both."

[4] "All election returns, including poll lists, statements, tally sheets, absent voters' return envelopes bearing the statement required by section 761, absent voters' records required by section 760, and other returns made by the election inspectors of the several precincts must be carefully preserved and may be destroyed after the expiration of 22 months following the primary or election at which the same were used…. All ballots containing a federal office, and all presidential primary ballot selection forms, may be destroyed after the expiration of 22 months following the primary or election at which those ballots were cast or forms were used."

criminal charges against her client were actively taking place for failing to follow the unlawful instructions related to refusal to delete election data on the EPB flash drive and tabulator. Lambert was aware that suspected inaccurate/fraudulent data had been discovered by Scott and other clerks necessitating the preservation of all data to eventually allow the source of the inaccuracy to be discovered. **Exhibit 6**.

The evidence showed that within days of Clerk Scott transitioning to attorney Lambert for legal advice, her office took swift action to defend her client by obtaining an expert to rebut all sham accusations from Brater. **Exhibit 7**.

Initial concerns included an accusation from Brater that Clerk Scott had "tampered" with the Adams Township tabulator. To rebut this accusation, Lambert had an expert, Benjamin Cotton, travel to Adams Township and document that he had observed the tabulator under lock and key and that it was sealed. **Exhibit 8**.

Almost simultaneously, on November 1, 2021, Lambert sought advice on EPB data preservation from expert, Benjamin Cotton. Lambert's request for advice was triggered by review of multiple instructions from Brater (BOE) to delete EPB data that should remain preserved pursuant to 52 USC 20701 and MCL 168.811. See footnotes 3 and 4, *supra*. Lambert suspected these instructions to be unlawful and needed to be able to advise her client accordingly. **Exhibit 4.**

In this quick time frame, Lambert did her best to obtain all information from her client in order to provide the best legal advice. This is contrary to the AG's timeframe in their closing concerning Lambert and Cotton's involvement.

Brater's efforts to silence Clerk Scott with sham charges is demonstrated by State Trooper Barkley's testimony. He was taking instructions from the BOE and the AG. Independently, Barkley had no idea what he was investigating. Barkley testified that the instant case was the very first investigation involving election law in his career. Transcript at p. 18, 3-4.

Trooper Barkley had never dealt with another statute as it relates to instructions in his career. *Id*., p. 38, 22-24. Barkley further conceded that he does not know how an instruction becomes a lawful instruction. *Id*., p. 40, 17-22. More concerning, Barkley's entire basis for determination that the instruction to Clerk Scott was lawful was based upon the AG's representation. *Id*., p. 48, 4-7.

To complicate the investigation further, Barkley was unaware that Clerk Scott was required by federal and state law to retain election evidence, including EPB data for 22 months. *Id.*, p. 27, 2-5.

But, Trooper Barkley did recall a conversation with Clerk Scott's attorney, Stefanie Lambert. His testimony showed that he recalled the conversation with Lambert involved the requirement to preserve evidence of elections pursuant to law. It's undisputed that the AG knew that Lambert was acting as counsel to Clerk Scott while the state pursued an investigation against her in 2021. *Id.*, p. 34, 13-18.

Trooper Barkley was aware that Lambert was a criminal defense attorney at the time he was executing the search warrant and that she was representing Clerk Scott. *Id.*, p. 35, 18-21. **Exhibit 9**.

The preliminary hearing demonstrated that the AG investigation took place in 2021, and that following that investigation, Clerk Scott was recalled by 2022. The recall effort was not testified to at the preliminary hearing but it can easily be inferred that the Adams Township Community was confused due to the impression created by the AG that Clerk Scott had somehow done something illegal when in fact she was following all laws and protecting the accuracy of elections through pursuit of reconciliation of registration/voter roll in Adams Township. See MCL 41.65 (explaining the duties of the constitutional office of township clerk, which includes custody of all township records and the duty to ensure that they are preserved). Further, as a constitutional officer, Clerk Scott had an obligation to preserve records and investigate their potential adulteration). See Mich. Const. 1963, Art. VII, § 18. Under MCL 41.65, township clerks, who are constitutional officers, have custody of all records and books, including all tabulators and voting machines.

Township Clerks are elected constitutional officers and have powers and duties granted by the constitution, common law and statute. No legislative act, much less, executive or administrative, can encroach upon or invade these powers and duties. With respect to the security of voting records, ballots, and information (including the integrity and data of voting machines), the township clerk has the duty to ensure their safekeeping and their integrity. The township clerk is required by statute to ensure the security and integrity of those things in his or her possession. This would, of course, include the power, indeed, the duty, to alert appropriate officials of any suspected attempts to take or otherwise adulterate these records. No other entity has the right to encroach upon the township clerk's powers and duties, and not even the legislature can alter or abolish them under Michigan's Constitution and the case

law interpreting the scope of a constitutional officer's powers and duties. The Township Clerk acting in his or her capacity as a constitutional officer with specific duties to perform on behalf of his or her constituency has a duty to protect records and information, including all records, documents, data, information and equipment in his or her possession from being adulterated, manipulated, or taken. A constitutional officer has powers and duties that may not be encroached upon by any other authority without a clear legislative mandate explicitly providing that the power under consideration is within the realm of another official. Constitutional officers whose duties and responsibilities and rights are prescribed by jurisprudence and positive enactment (statute) cannot have these duties, rights, and responsibilities infringed upon or taken over by any other entity or individual. See, e.g., *Allor v Bd of Auditors of Wayne County*, 43 Mich 76, 101-103; 4 NW 492 (1880) (no one in whom constitutional powers and duties has been entrusted can be deprived of them by any other official or entity and elected constitutional officers have responsibilities prescribed by law which cannot be interfered with by those who are not elected by the citizens). These powers and duties are established by common-law and by statute.

As the Supreme Court of Michigan stated in *Allor*, *supra*, while "[i]t may be competent for the legislative or executive branch to expand the powers and duties of a constitutional officer…they can no more invade them and shift them to another, as remove them. See also, *McKim v Green Oak Twp Bd*, 158 Mich App 200, 205; 404 NW2d 658 (1987) (holding that under MCL 41.65, a township's clerk is charged with the responsibility of controlling and keeping safe all of the township's papers, including the mail and bills and a resolution entrusting control of the township's mail and bills to anyone other than the clerk or restricting the removal of township records constitutes an unlawful restraint upon the clerk's duties).

This principle has been expressly extended to township officers who are elected constitutional officers. *Davies v Bd of Sup'rs*, 89 Mich. 295, 298; 50 N.W. 862 (1891). The Court there stated:

> The functions of township officers who are continued by Constitutional enactment are as clearly within the contemplation and protection of the Constitution as are the officers themselves, and the Legislature has no more power to deprive those officers of their authority, and confer that authority upon officers *not of local selection*, than it has to abolish the offices. It is just as essential to local self-government that the functions of elective officers be preserved to such officers as that the right of election be protected; indeed, it is the local management of local concerns, by and through the medium of officers of their own selection,

> that is sought to be protected. Strip the officers of a municipality of their functions, and you rob the municipality of its vitality.

County and township clerks are constitutional officers in Michigan, and as such, they have unilateral and exclusive constitutional, common-law and statutory duties to include keeping and maintaining "all records". See, 1963 Mich Const Art. VII, § 4; § 18; MCL 41.65. The latter statute states, in pertinent part, the following: "The township clerk of each township shall have custody of all the records, books, and papers of the township, when no other provision for custody is made by law…." MCL 41.65. No duties provided by law under the Constitution to constitutional officers can be transferred or delegated to another by statute, executive order, or otherwise. *Dubois v. Riley Twp. Bd.*, 126 Mich. 587; 85 NW 1067 (1901).See also *McKim v. Green Oak Twp. Bd.*, 158 Mich. App. 200, 205, 404 N.W.2d 658, 660 (1987) (holding that MCL 41.65 bestows a township clerk with the responsibility to exercise control over all township records). Any interpretation of MCL 168.932(b) which would ignore these statutes and constitutional hierarchy would be error.

As is consistent with the unassailable powers and duties of a constitutional officer expressed in *Allor*, *supra*, the court in *McKim* found no other statutory provision authorizing a person other than the clerk to have control of the *township's* papers. *McKim*, *supra*. Therefore, the Court concluded that the township board's resolutions entrusting control of *township* mail and bills to the general township secretary was in contravention of MCL 41.65. The Court found support for this exclusive duty of the township clerk in MCL 41.69, which requires the *clerk* – not the general township secretary – to file a bond "especially for the safekeeping of the records, books, and papers of the township in the manner required by law…." The Court stated: "A clerk without custody or control of township papers can hardly fulfill her duty of safekeeping those records." See also, *Grabow v Macomb Twp*, 270 Mich App 222, 231; 714 NW2d 674 (2006).

Clerk's Scott's Statutorily Obligated Investigation of Incorrect/Fraudulent Registration Records:

Scott had numerous reasons requiring investigation related to registration including the BOE September 2020 inflation of 700k to the "Chloe" and other inaccurate records. Testimony from Abe Dane revealed that he encouraged the registration records investigation to be conducted by Scott in September of 2021. Clerk Scott began an investigation into the registration records, and in the days and weeks after Scott informed Brater of her registration concerns, she began receiving threats and unlawful instructions from Brater.

The evidence specifically showed that County Clerk, Abe Dane, suggested reconciling registration by checking names, with drivers' license numbers, and date of birth which of course Clerk Scott was entitled to do so pursuant to MCL 168.515.[5]

Defense Exhibit 35 is an email from Dane to Scott on September 1, 2021. The subject line states "Check your voter rolls." The email goes on to state:

> "Recently, one of the local clerks within our county discovered multiple duplicate voter registrations that were entered into the QVF by the Secretary of State branch offices. There were 3 of them that occurred within a 3-month period just in a single jurisdiction. The duplicated voter registrations were very similar with only slight differences in the driver's license/voter identification numbers or in one case the year of birth was off by a couple of years. In all instances the local clerk was able to verify it was the same individual and requested a merge in QVF. After our county office contacted QVF to inquire why this was happening their explanation was simply: 'The clerks who work in Secretary of State branch offices are human and sometimes they will make a typo on a name, When this happens, a new DLN is created, as they were previously created off of the name structure.' In another email the state worker referred to this as a 'rare occasion,' We wanted to make all of you aware of this situation for obvious reasons and encourage all clerks within Hillsdale County to stay vigilant in performing maintenance on your registered voter rolls. For tips on how to use QVF reporting features to quickly identify potential duplicates, please don't hesitate to reach out to us. Thank you, and have a nice day!"

In September of 2021, accurate registration concerns became rampant in Hillsdale County, and Clerk Scott had an obligation to correct any errors as a constitutional officer running, local, state, and federal elections. As Dane echoes in his September 1, 2021, email, the data can only be reconciled by looking at all of the data, the drivers license number, data of birth, name, and social security number.

Clerk Scott's obligation and duty to reconcile the registration data is supported by MCL 168.515 (Registration records; verification by house-to-house canvass) has never been repealed by the Michigan Legislature and states: "The several township, city and village clerks may conduct a house-to-house canvass ***or use such other means of checking the correctness of registration records as may seem***

[5] "The several township, city and village clerks may conduct a house-to-house canvass or use such other means of checking the correctness of registration records as may seem expedient."

expedient." The statute thus gives broad discretion to the clerk to check the correctness of the registration record and does not prohibit conduct of any sort, and leaves it the clerk to determine actions necessary to conduct the investigation. If the legislature wanted to constrain or limit clerks from working with outside experts or counsel—they would have said so.

Dane further explained Clerk Scott's very real and legitimate concern she had at the time that there was fraud in Adams Township. Dane Transcript, Aug. 12, 2025, p. 22-23, [11-4] **Exhibit 10**.

One example would be the March 2021 "Chloe" exhibit demonstrating exactly why the EPB data needed to be reconciled. The signature was signed incorrectly. This is clear evidence of fraud. **Exhibit 11**. And the need for investigation was clear. Witness after witness testified that Clerk Scott was investigating fraud and desired to preserve all data. The evidence presented at the preliminary hearing showed over and over again Scott was properly preserving data, and investigating fraudulent registrations.

The evidence showed, Clerk Scott wasn't the only one with an investigation. Things really began heating up in August of 2021 when the OAG announced its audit of the BOE. Clerk Scott was really proving to be a problem for Brater and the OAG audit every time she sent up a registration flare to the BOE. No wonder Brater wanted all of the data wiped on tabulators and EPB as fast as possible. **Exhibit 12**.

Federal and State law obligated Clerk Scott to preserve election records/which were part of her lawful investigation of inaccurate registration/that Brater unlawfully ordered to be destroyed

The preliminary hearing clearly established that the instructions from Brater to Clerk Scott were unlawful, that Clerk Scott insisted data be preserved pursuant to state and federal law, and that Clerk Scott had an ongoing, dutybound, constitutionally required investigation into fraud related to the inaccurate voter roll/registration in Adams Township. Brater knew this and testified to it. **Exhibit 13**.

Clerk Scott was required by law to maintain and preserve the data the OAG needed for its audit of the BOE. Clerk Scott's desire to reconcile the data and preserve it pursuant to law was again demonstrated though another former BOE employee, Joshua McAlpine. McAlpine testified that he needed Adams EPB data from Clerk Scott in April of 2021 because the state data "did not save" and this data

was needed to recreate provisional totals. **Exhibit 14** (email); **Exhibit 15** (transcript).

The "intent" of Attorney Lambert must be also evaluated through what the evidence revealed at the time in 2021, and not what has later been established by amendments to legislation. From this lens we know that the Hillsdale attorney recommended experts because he lacked election/election law knowledge. **Exhibit 5.**

Attorney Lambert began representation of Clerk Scott at that time initially addressing the most imminent fires for her client. Those would be allegations of crimes. Ms. Scott had not been charged with a crime, but threats were contained in writing from Brater. Lambert like the township's attorney, thought experts were essential to Scott's defense. In fact, Attorney Lambert was required to seek out expertise because she would otherwise be subject to a Ginther hearing and lose her bar license if she failed to obtain critical and necessary experts.

The evidence at the preliminary hearing showed that Lambert was confronted with analysis of a misdemeanor allegation from Brater that appeared to conflict with state and federal law, including, 52 USC 20701 and MCL 168.811, which requires clerks to preserve *all* data. The evidence further showed that client Scott had an ongoing, constitutional investigation involving fraud of registration in Adams Township. Lambert was therefore duty bound to defend her client and get ready to rebut a misdemeanor allegation that Clerk Scott failed to delete EPB data.

Lambert was also required to do so quickly. Attorneys cannot possibly have sufficient background in accounting, engineering, forensic DNA evidence, fire science, medical conditions, and the impact of underinflated tires on a wet road surface as it relates to stopping distance to be expected to practice law without the assistance of expert "interpreters" to allow them to obtain the information they need to evaluate the case and advise their clients. As long as the purpose of consulting an expert is to provide assistance to the attorney rendering legal advice, the privilege is not waived. *United States v. Korvel*, 296 F.2d 918, 922 (2d Cir. 1961). See also, *People v. Ackley*, 497 Mich. 381, 870 N.W.2d 858 (2015) (defense attorney had duty to use experts to investigate properly in defense of her client).

ABA Standard 4-4.1(a) requires defense attorneys to investigate in all cases to determine if there is a sufficient basis for criminal charges. ABA Standard 4-4.1(d) states defense attorneys should determine if a client's interests would be served by engaging fact investigators, forensic, accounting or other experts, or other

professional witnesses. ABA Standard 4-3.7(g) states that whenever defense counsel is confronted with specialized factual or legal issues with which counsel is unfamiliar, counsel should consider engaging or consulting with an expert in a specialized area. **Exhibit 16**.

ABA Standard 4-3.7(b) further states that defense counsel should "promptly" seek to obtain and review all information relevant to the criminal matter. See also https://blog.expertpages.com/expertwitness/failure-to-request-funding-for-expert-violates-a-defendants-rights.htm (detailing attorneys' obligations to use experts to defend their clients).

Attorney Lambert's actions on behalf of Clerk Scott in the conduct of Scott's investigation were consistent with Michigan law and her ethical obligations to her client, Clerk Scott

As Lambert's work must be evaluated with the evidence presented related to "intent" in November of 2021, and there is simply no criminal intent that was presented at the hearing. In fact, to the contrary, the evidence showed Lambert did exactly what she was required to do for her client, and she did it well. Lambert required an expert to opine if her client could be charged by Hillsdale County, the Adams city attorney, or the federal government if she deleted the EPB data in violation of 52 USC 20701 or MCL 168.811. It turns out the answer was yes. The EPB did contain original election data required to be preserved that was not contained as misrepresented by Brater in "printouts". Cotton Affidavit, **Exhibit 17**. Law firms routinely provide retainers on behalf of clients, including in criminal defense matters and Lambert would have been required to seeks funds from the court to if Scott had been indigent.

The AG argues that the retainer to Cotton is somehow evidence of a crime. First, MCL 168.515 contains ***no prohibition*** to a law office retaining an expert. The ethical rules state Lambert must act quickly for clients, and waiting for Scott to be charged would have subjected her to professional malpractice claims. More importantly, Scott would not have had her professional witness to rebut all of Barter's initial round of false accusations.

It is important to note, that the one certainty that existed at the time Lambert began representation in October of 2021, was that her client was a target of Brater's for revealing she was investigating registration inaccuracies. It was impossible for Lambert to forecast exactly what sham accusation would be pursued by Brater.

Lambert successfully, used professional witness Cotton to rebut the accusation that the tabulator was not under lock and key, that it was alleged it was "tampered" with (Cotton observed seals), and the unlawful instruction to delete the EPB data—and now the AG is dissecting the fact that she defended her client with a professional witness.

Moreover, this the EPB contained the very data needed by Clerk Scott, the OAG, and McAlpine to reconcile the registration data. Lambert had her answer to use it to advise her client. Next, Lambert needed to address strange allegations that were part of the threat for a misdemeanor allegation from Brater. She did so again with professional witnesses. **Exhibit 7**.

Cotton testified that Lambert asked him to observe the state of the tabulator and document it. *Id*. He did so and his affidavit revealed that it was properly stored under two layers of locks in the Adams Township Clerks Office and that it was properly sealed.

During this time, election matters were certainly unpopular causes that brought on negative legacy media attention, and unwarranted bar grievances and sanctions. The AG had requested sanctions against Ms. Lambert in *King v. Whitmer*, 71 F.4th 511, 531 (6th Cir. 2023), and even filed a bar grievance against Lambert. Lambert won both of these cases. But Lambert had a duty to Clerk Scott who could not find any other attorney to help her when she was threatened by Brater.

In Michigan, lawyers have a duty, and obligation to "never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay any cause for lucre or malice." **Exhibit 18**.

While Scott's only intent was to preserve the data and investigate the fraud, both Scott and Lambert had to review numerous unlawful instructions from Brater that were demonstrated to be unlawful.

(b) unauthorized:

The state did not and cannot meet its burden of proof to establish probable cause supporting the second element, "unauthorized." Scott was charged by the AG just a few *days* after her May 8, 2024 affidavit was filed in the Butz case. Brater and the AG reviewed the compelling affidavit and decided to silence Scott and Lambert midstream in the litigation with criminal charges. *People v. Holkeboer*, No. 365964,

2024 Mich. App. LEXIS 2984 (Ct. App. Apr. 18, 2024) (**Exhibit 19**) had just come down in spring 2024, and the AG ignored just about everything the court said about statutory and judicial construction. In that case, the Court held state prosecutors were out of bounds interpreting MCL 168.932 and MCL 752.795 (two of the charges in the instant case) resulting in dismissal of the counts against Holkeboer. Copying a list of voters without proof affecting the quality or integrity of the document did not violate these statutes.

The Court reasoned that these statutes exist to ***prevent election fraud*****, not prosecute those charged with the duty to investigate elections and potential election fraud after they occur.** The Court further held, as has been argued, that MCL 168.932 only applies to prohibit conduct that "affects the integrity" of an ongoing election, i.e., before the election is certified. The Court in *Holkeboer* used two *irrelevant* statutes (FOIA and cyber bullying) to demonstrate there was no need to add a word such as "copy" or change the definitions of technology when considering MCL 168.932 and MCL 752.795. The Court explained in explicit detail that courts cannot change statutory language and shall not reach to legislative intent or dictionary definitions unless the plain meaning is unclear. *Id*., Slip Op. at 3-5. The *Holkeboer* decision was clear that Courts cannot add new terms to a statute that the legislature could have amended to add. It was even more clear that prosecutions under MCL 168.932 and MCL 752.795 can only proceed ***where intent to affect the integrity of an election is proved***. The AG is presumed to know the interpretations of provisions she is charged with executive function to administer and prosecute. This case, for one, clearly demonstrates that the charges against Clerk Scott and Attorney Lambert are baseless and frivolous.

All provisions of the penal code shall be construed according to a fair import their terms. *People v Jackson*, 176 Mich App 620, 627 n 2; 440 NW2d 39 (1989) (stating "[w]e note that in the Michigan Penal Code it is provided: The rule that a penal statute is to be strictly construed shall not apply to this act or any of the provisions thereof. All provisions of this act shall be construed according to the fair import of their terms, to promote justice and to effect the objects of the law. [MCL 750.2; MSA 28.192.])." If there is no language or "term" in a criminal statute words and terms and meanings of such words and terms cannot be inferred. "While the words of a penal statute are to be construed in harmony with the purpose and intent of the statute, still the 'rule of strict construction confines an offense to the words of the statute,' *Hightower v Detroit Edison Co*, 262 Mich 1, 7; 247 NW 97 (1933)" and "[i]t is the task of the Legislature to define criminal offenses, and courts *are not to infer*, based on judicial ideas as to policy, the existence of crimes *not* defined

by statute." *Pascals v Berrien Co Prosecutor*, 138 Mich App 561, 567; 360 NW2d 243 (1984), citing *People v Kubasiak*, 98 Mich App 529, 534; 296 NW2d 298 (1980), *lv den* 409 Mich 948 (1980).

The AG needs to go back and reread *Holkeboer* because it's pretty obvious with the timing of that decision and the Scott testimony in the Butz case that the AG saw MCL 168.509 cited by the Court in the *Holkeboer*, and decided to shoehorn it into MCL 752.795. This was exactly what *Holkeboer* said courts *cannot* do through judicial construction.

Moreover, MCL 168.932 clearly recognizes, as acknowledged by Brater himself, that the township clerks have the authority necessary to conduct post-election investigations, including lawful possession as noted by MCL 41.65, and including the hiring of attorneys and experts. If the clerks have such authority, then an attorney and experts hired by the clerk to assist in an authorized investigation cannot be in undue possession and cannot be acting unlawfully by defending them.

MCL 168.932(b) provides:

> A person not duly authorized by law shall not, during the progress of any election or after the closing of the polls and before the final results of the election have been ascertained, break open or violate the seals or locks of any ballot box or voting machine used or in use at that election. A person shall not willfully damage or destroy any ballot box or voting machine. A person shall not obtain undue possession of that ballot box or voting machine. A person shall not conceal, withhold, or destroy a ballot box or voting machine, or fraudulently or forcibly add to or diminish the number of ballots legally deposited in the box or the totals on the voting machine. A person shall not aid or abet in any act prohibited by this subdivision.

Brater testified that there was no prohibition on a clerk's investigation powers and bringing attorneys and experts in: [p. 168:03 – 170:03] **Exhibit 20**.

As established by *Holkeboer*, MCL 168.932 applies, as it is plainly written, to efforts to affect or alter an election. This is why the plain language of subsection (b) applies only to acts "***during the progress of any election*** or after the closing of the polls and ***before the final results***." It is an anti-fraud measure. Secondly, town clerks have "authorized possession" of all that is in their custody. See MCL 41.65; *McKim v. Green Oak Twp. Bd.*, 158 Mich. App. 200, 205, 404 N.W.2d 658, 660 (1987) (holding that MCL 41.65 bestows a township clerk with the responsibility to exercise

control over all township records). As a constitutional officer who is in authorized possession of township property, and who is charged with the responsibility to keep those records secure and to investigate irregularities, Clerk Scott had authority to provide access after the election to attorneys and experts in order to fulfill her constitutional duties.

Courts have consistently construed MCL 168.932 as an anti-election-fraud provision.

- *People v Hawkins*, ___NW2d___; 2022 Mich. App. LEXIS 396, at *21-22 (Ct App, Jan. 20, 2022) (affirming trial court decision to bind defendant over on the offense of falsifying election records in violation of MCL 168.932(c), the prosecution had to present evidence that defendant: (1) was a clerk; (2) had custody of a record, election list of voters, certificates, poll book, or of any paper, document, or vote of any description, which must be made, filed, or preserved under the Michigan Election Law; and (3) willfully falsified or fraudulently made any entry, erasure, or alteration on any or all of such items***. "The intent to defraud is the specific intent to cheat or deceive." People v Miller, 326 Mich App 719, 739; 929 NW2d 821 (2019) (citation omitted). Again focuses on election fraud, and notably specific intent provisions.***

- *People v O'Hara*, 278 Mich 281, 289; 270 NW 298 (1936) (predecessor 1 Comp. Laws 1929, § 3299, used to prosecute group accused of altering ballots during recount and this law is described as a provision to prevent "general *election* fraud") (my emphasis).

- *People v Pinkney*, 501 Mich 259, 284; 912 NW2d 535 (2018) (this recent case again looked at these provisions, 932 as general election fraud provisions, meaning they are used to prosecute actual election fraud).

- *People v Burkman*, ___NW2d___; 2022 Mich. App. LEXIS 3187, at *17-18 (Ct App, June 2, 2022) (addressing election "robocalling" and finding it illegal as "menacing" under MCL 168.932(a) because it focuses on efforts to alter or change an election).

- *Mich. All. for Retired Ams. v. Sec'y of State*, 334 Mich. App. 238, 259 (2020) (provisions of MCL 168.932(f) are reasonable and nondiscriminatory and warranted to further an important regulatory interest: protecting against voter fraud).

- *People v Marklein*, 358 Mich 471, 472; 101 NW2d 348 (1960) (people's charge was that the defendants named in the information including chief of police up for election conspired fraudulently to register voters / unlawful under MCL

168.932 as it prohibits actual general voter fraud and its subdivisions are used to effectuate that purpose)

"[C]ourts do not have the power to rewrite statutes to ensure they have some substantive effect." *People v. Pinkney*, 501 Mich. 259, 287, 912 N.W.2d 535, 550 (2018).

Aside from the clear plain language requiring the prohibition to be committed during the relevant election proceedings, and clearly allowing one who is duly authorized to have possession delegate and assign (or grant / or bail) to another with such possession, and thus, the latter (the defendants here) cannot be in "undue possession," within the plain and strictly construed meaning of this criminal provision, there are other problems with prosecuting under this statute. In this case there is no allegation of undue. She is charged with concealing it and failing to present it for updates.

The AG's argument for "unauthorized" is not found anywhere in Michigan law

In an attempt to establish that it has met the "unauthorized" element of MCL 752.759, the AG attempts a novel, unprecedented argument not grounded anywhere in law. The AG, in violation of the *Phillips* holding that 752.795s statutory language is clear on its plain meaning, refers to "unauthorized" to include "confidential information" pursuant to MCL 168.509gg in an attempt to satisfy this element of "unauthorized." This too runs contrary to the Court of Appeals decisions in *Green*, *supra*; *Phillips*, *supra*; and *Holkeboer*, *supra*. Words, phrases, and definitions from other, unrelated statutes, cannot be injected into another statute just to create an alleged criminal act where the charging statute itself does not do so.

In addition, the preliminary hearing established a date of November 1, 2021, as the date the data was transferred to Clerk Scott's expert, Benjamin Cotton's firm. **Exhibit 21**. The law in 2021 did not refer to MCL 168.509gg as "confidential," and in fact it was just the opposite. The legislature required the data to be made *public* at the clerk's office rather than distributed via FOIA "copy." The FOIA data was required by Scott to be made public pursuant to MCL168.516.

Michigan Rules of Professional Conduct require candor toward the Court. Specifically, MRPC 3.3(a)(1) states "A lawyer shall not knowingly make a false statement of material fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the Lawyer."

The attorney general in its closing argument makes material misstatements of law related to MCL 168.509gg. The AG refers to MCL 168.509(gg) as "confidential data" and "confidential voter information" throughout its closing argument.

The word "confidential" was only contemplated by the Michigan Legislature as it relates to the amended version of MCL 168.509(gg)(3) for pre-registered voters under the age of 18. The word confidential is not used by the legislature in any respect to voter information, including electronic Poll book, and the list of voters to reconcile the registration as to who voted in an election. The version of MCL 168.509(gg) that contains the word "confidential" as it relates to pre-registration of minors, was amended and went into effect February 13, 2024.

Prior to February 13, 2024, MCL 168.509(gg), the Michigan Legislature did not include the word "confidential" when it was amended and placed into effect on April 13, 2014. In fact, the Michigan Legislature clearly contemplated what clerks should provide by "copy" and what should be made available for "public inspection."

The AG misleads throughout its brief that registration records, requested by Freedom of Information (FOIA), are "confidential" when in fact the Michigan legislature MCL 168.516 requires these very records to be made available for *public* inspection. MCL 168.516 is titled: "Registration records; public inspection" and Sec. 516 states "The registration record must be open for public inspection."

The Michigan Legislature contemplated FOIA requests related to the registration of minors, and amended MCL 168.516 on February 13, 2024, to state under Sec. 516:

> "Sec. 516
>
> (1) Except as otherwise provided in subsection (2) and section 509gg, the registration record must be open for public inspection.
> (2) If an individual preregisters to vote under section 496a, the information contained in the registration record for that individual is confidential and must not be open for public inspection as provided under subsection (1) until that individual is 17-1/2 years of age."

But the facts in this case do not involve Clerk Scott responding to a FOIA request nor does the AG make such an allegation.

In addition to no FOIA request being received by Clerk Scott, and the fact that 509gg is inapplicable to MCL 752.795, Clerk Scott has full immunity pursuant to the Supremacy Clause to not only preserve the EPB data, but to conduct an audit and /or use the EPB data to reconcile registrations in Adams Township. Add 2020 federal election piece.[6]

While there is no need to consider the legislative intent (because the plain meaning of MCL 752.795 is clear) it's important to note that the legislature contemplated in 1995 when amending MCL 752.795 that it is a rebuttable presumption (meaning it's true unless proven otherwise) that "a person was not authorized or had exceeded authorization of the owner, system operator, or another person who had authority for the owner, system operator to grant permission to gain access to a computer program, computer, computer system, computer network, unless one or more of the following circumstances existed at the time of access: written or oral permission had been granted by the owner, system operation, or someone authorized by them to grant permission for access," and "access had been achieved without the use of a set of instructions, code, or computer program that had bypassed, defrauded, or otherwise circumvented a pre-programmed access procedure for the computer system." House Legislative Analysis Section, House Bills 5748-5755 (5-7-96).

Cotton did not hack Adams Township. Cotton testified that he had a password to the "data" and that he was "authorized" and working in a professional capacity as an expert. MCL. 752.975. The purpose of Public Act 53 of 1979 (MCL 752.795 et al.), which prohibits a person from *illegally using a computer system with the intent to defraud or obtain money, or from harming the computer system*.

The purpose of the amendment was to prevent additional concerns of "inserting, attaching, or knowingly creating the opportunity an unwanted insertion or attachment of a set of instructions or a computer program into a computer program, computer system or computer network, that was intended to acquire, alter, damage, delete, disrupt, or destroy property or otherwise use the services of a computer program, computer, computer system, or computer network. The bill specifies that it would not prohibit conduct protected by the Article I of the State Constitution or under the First Amendment of the United States." The testimony

[6] 52 USC 20701 is not limited to paper records, and defines "records" to include digital and electronic media.

showed no intent by Scott and Lambert to do anything with criminal intent as described in the House Legislative Analysis Section.

To the contrary, Clerk Scott desired to protect data, verify it, and used her Frist Amendment rights to pursue just that. As a matter of law, the clerk has full authority, and the lawyer and the expert stand in the same shoes as the clerk to review files, and data in order to advise the client. The AG has failed to establish an unlawful intent of "unauthorized." And the purpose is simple. To allow access to counsel. Ironically, here Brater seeks to criminally penalize access to counsel and force clerks to worship his unlawful instructions or be subject to criminal prosecution.

Clerk Scott, who had a constitutional duty, and duty in statute, to reconcile and verify the undisputed inaccurate registration records, subject to preservation, and therefore, is immune to state prosecution of the charged counts and the court lacks jurisdiction.

The Supremacy Clause (Article VI, Clause 2 of the U.S. Constitution) establishes that federal law is the "supreme law of the land", and that state laws conflicting with federal law are preempted. From this principle, courts have recognized an immunity for individuals acting under federal authority—protecting them from state criminal or civil liability when they are performing their federal duties lawfully.

In *In re Neagle*, 135 U.S. 1 (1890), a U.S. Marshal assigned to protect a Supreme Court Justice shot and killed an attacker. California charged him with murder. The Supreme Court held that Neagle was immune from state prosecution because he was acting within the scope of his federal duty to protect the Justice. The Court reasoned that allowing a state to prosecute a federal officer for performing federal duties would undermine federal supremacy. While *Neagle* involved a federal officer, the same principle is extended to **state or local officials by statute when carrying out federal functions**.

Under 8 U.S.C. § 1357 (immigration laws) state or local officials performing functions under federal authority are considered to be acting under color of federal authority. This provision explicitly states that such officials are treated as acting under federal authority *for purposes of determining liability and immunity* from suit under federal or state law 8 U.S.C. § 1357. Similarly, 21 U.S.C. § 885 provides immunity to federal, state, and local officials lawfully engaged in enforcing federal laws related to controlled substances, shielding them from civil or criminal liability.

Thus, immunity from state prosecution extends to state or local officials temporarily carrying out a federal function when they are acting under valid federal authority, performing duties required or authorized by federal law or federal directive, their actions are necessary and proper to fulfill that federal function; and they do not violate federal or constitutional law.

If these conditions are met, state or local officials can claim Supremacy Clause immunity from state prosecution or interference.

Clerk Scott cannot be prosecuted for fulfilling her federal duties and obligations by protecting election records. Federal statute provides that "[e]very officer of election shall retain and preserve" for 22 months after an election for federal office "all records and papers … relating to any application, registration, payment of poll tax, or other act requisite to voting in such election." 52 U.S.C. § 20701. ("The materials covered by Section [20701] extend beyond 'papers' to include other 'records.' Jurisdictions must therefore also retain and preserve records created in digital or electronic form.") Failure to comply with this duty exposes a clerk to not more than one year in prison, and a fine of not more than $1,000.

The Supremacy Clause provides:

> This Constitution, and the Laws of the United States … shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

U.S. CONST. art. VI, cl. 2. As a result, "the states have *no power* … to retard, impede, burden, or in any manner control" the execution of federal law. *McCulloch v. Maryland,* 17 U.S. 316, 436 (1819) (emphasis added). The immunity at issue here is "rooted" in the Supremacy Clause. *Wyoming v. Livingston,* 443 F.3d 1211, 1217 (10th Cir. 2006). At bottom,

> [t]he Constitution implicitly reserves to the federal government the power not only to enforce its laws but also to "execute its functions"; that power is inherent in the federal government qua government, and does not depend on congressional authorization. Supremacy Clause immunity is simply a reflection of that power.

Seth Waxman & Trevor Morrison, *What Kind of Immunity? Federal Officers, State Criminal Law, and the Supremacy Clause,* 112 YALE L.J. 2195, 2250 (2003)(internal citations omitted)("*What Kind of Immunity?*").

Supremacy Clause immunity has been recognized for over a century, since the landmark case of *Cunningham v. Neagle,* 135 U.S. 1 (1890), which held a deputy marshal immune from state prosecution for murder when he killed a man he suspected was about to stab Justice Stephen Field. The Court put the principle in no uncertain terms: "[I]f the prisoner is held in the state court to answer for an act which he was authorized to do by the law of the United States, which it was his duty to do as marshal of the United States, and if in doing that act he did no more than what was necessary and proper for him to do, he *cannot* be guilty of a crime under ... [state] law ...." *Id.,* at 75 (emphasis added). Justice Holmes echoed the point in *Johnson v. Maryland*: "[E]ven the most unquestionable and most universally applicable of state laws, such as those concerning murder, will not be allowed to control the conduct of a marshal of the United States acting under and in pursuance of the laws of the United States." 254 U.S. 51, 56-57 (1920).

"Importantly, 'Supremacy Clause immunity does not require that federal law explicitly authorize a violation of state law.'" *United States v. Moll,* Cr. Action No. 22-cr-00266-NYW, 2023 WL 2042244, at *7 (D.Colo. Feb. 16, 2023) (quoting *Livingston,* 443 F.3d at 1227). As the Tenth Circuit pointed out in *Livingston,* "'The question is not whether federal law expressly authorizes violation of state law, but whether the federal official's conduct was reasonably necessary for the performance of his duties.'" 443 F.3d at 1227-28. The *Livingston* Court went on to explain that, in determining whether a federal actor "had an objectively reasonable and well-founded basis to believe that [her] actions were necessary to carry out [her] duties," *id.*, at 1228, "Supremacy Clause immunity cases require courts to evaluate the circumstances as they appear to federal officers at the time of the act in question, rather than the more subtle and detailed facts later presented to a court." *Id.,* at 1229.

The Supremacy Clause operates to "secure federal rights by according them priority *whenever* they come in conflict with state law." *Chapman v. Hous. Welfare Rights Org.,* 441 U.S. 600, 613 (1979)(emphasis added). It "precludes the use of state prosecutorial power to frustrate the legitimate and reasonable exercise of federal authority," *Livingston,* 443 F.3d at 1213, blocking interference "with the operation of the federal government in ways much subtler than passing inconsistent laws." *Idaho v. Horiuchi*, 253 F.3d 359, 364–65 (9th Cir.), *vacated as moot,* 266 F.3d 979 (9th Cir. 2001)(citing cases). Supremacy Clause immunity is triggered *by definition* when state authorities claim that federal law is being enforced by "illegal means" under state law.

In *Livingston,* for example, federal officials were held immune from prosecution for their violations of state trespass and littering laws to install monitoring devices on wolves. *Livingston,* 443 F.3d at 1213-15. And, as Justice Holmes in *Johnson v. Maryland* pointed out, Supremacy Clause immunity can shield a federal actor even when state law involves life-and-death interests. In *Petition of McShane,* 235 F.Supp. 262 (N.D.Miss. 1964), Supremacy Clause immunity protected federal marshals from state prosecution when they violated state laws concerning breach of the peace and the unlawful use of force by provoking a riot in which people were killed in their efforts to secure James Meredith's entrance into the University of Mississippi. In *Clifton v. Cox,* 549 F.2d 722 (9th Cir.1977), a federal agent, mistakenly believing that one of his team had been shot, fatally shot the subject of an arrest warrant in the back as he tried to run away. *Id.,* at 724. The Ninth Circuit held that the agent was entitled to Supremacy Clause immunity from state prosecution for second-degree murder and involuntary manslaughter. *Id.,* at 728. "In short, a federal officer's entitlement to immunity from state criminal prosecution does not depend on an assessment of his conduct under state law." *What Kind of Immunity?* at 2234. Rather, "entitlement to Supremacy Clause immunity is to be ascertained by looking only at federal law." *Id.,* at 2233.

Supremacy Clause immunity deprives a state court of subject-matter jurisdiction. Officers "discharging duties under federal authority pursuant to and by virtue of valid federal laws, are not subject to arrest or other liability under the laws of the state in which their duties are performed." *Ohio v. Thomas,* 173 U.S. 276, 283 (1899). "[B]y providing immunity from suit rather than a mere shield against liability, the defense of federal immunity protects federal operations from the chilling effect of state prosecution." *New York v. Tanella*, 374 F.3d 141, 147 (2d Cir. 2004). Indeed, the goal of Supremacy Clause immunity "is not only to avoid the possibility of *conviction* of a federal agent, but also to avoid the necessity of undergoing the entire process of the state criminal procedure." *Kentucky v. Long*, 837 F.2d 727, 752 (6th Cir. 1988)(emphasis in original). *See also Livingston,* 443 F.3d at 1221("Both qualified immunity and Supremacy Clause immunity reduce the inhibiting effect that a civil suit or prosecution can have on the effective exercise of official duties by enabling government officials to dispose of cases against them at an early stage of litigation."); *Texas v. Kleinert*, 143 F. Supp. 3d 551, 556 (W.D. Tex. 2015), *aff'd,* 855 F.3d 305 (5th Cir. 2017)(When Supremacy Clause immunity applies, "[a] state court is without jurisdiction to prosecute a federal officer."); *Arizona v. Files*, 36 F. Supp. 3d 873, 877 (D. Ariz. 2014)("Once a Supremacy Clause immunity defense is established, it is not left to a federal or state jury to acquit the defendant of state-law criminal charges, or

to a federal or state judge to direct a verdict in the defendant's favor; the federal or state court is instead stripped of any jurisdiction over the defendant.").

Supremacy Clause immunity is one of a certain category of rights for which "a constitutional provision *itself* contains a *guarantee* that a trial will not occur," and so gives rise to a "right not to be tried." *United States v. Wampler,* 624 F.3d 1330, 1336 (10th Cir. 2010) (emphasis in original). *See also United States v. Quaintance,* 523 F.3d 1144, 1146 (10th Cir. 2008) ("A right not to be tried rests upon an explicit statutory or constitutional guarantee that trial will not occur."). *Cf. Nixon v. Fitzgerald,* 457 U.S. 731, 742 (1982) (holding that a President's absolute immunity from suit for civil damages arising from actions taken while in office allows "an immediate appeal to vindicate this right to be free from the rigors of trial.").

Supremacy Clause immunity "extends to any person, including a private citizen …, who acts under the direction and control of federal authorities or pursuant to federal law or court order." *Connecticut v. Marra*, 528 F. Supp. 381, 385 (D. Conn. 1981). Supremacy Clause immunity has protected a railroad clerk selling tickets pursuant to a federal court order which contradicted state law, *Hunter v. Wood*, 209 U.S. 205 (1908), private individuals supporting an FBI undercover operation, *Brown v. Nationsbank Corp.*, 188 F.3d 579 (5th Cir. 1999), members of a posse comitatus called upon to assist a federal marshal, *West Virginia v. Laing,* 133 F. 887 (4th Cir. 1904), and the foreman of a private construction gang building a federally authorized telegraph line, *Ex Parte Conway*, 48 F. 77 (C.C.D.S.C.1891).

The protections of the Supremacy Clause for those executing federal law are also reflected in the Fourteenth Amendment's Privileges and Immunities Clause, which, even within its narrow scope, protects "the right of the citizen of this country…to engage in administering [the national government's] functions." *Slaughter-House Cases,* 83 U.S. 36, 79 (1872). *Cf. In re Quarles,* 158 U.S. 532, 535 (1895).

Clerk Scott is immune from state prosecution for the conduct that is the subject of the charges under the Supremacy Clause and the Privileges and Immunities Clause of the United States Constitution.

Supremacy Clause immunity applies to the conduct of (a) a federal official taken within his federal authority (b) that "he reasonably believed … were necessary and proper in the performance of his duties." *Moll,* 2023 WL 2042244, at *7 (quoting

Hawaii v. Broughton, 2013 WL 328881, at 5 (D. Haw. June 28, 2013)). The text and logic of the Privileges and Immunities Clause buttresses that immunity.

The first "question is not whether federal law expressly authorizes violation of state law, but whether the federal official's conduct was reasonably necessary to the performance of his duties." *Livingston,* 443 F.3d at 1227-28. Clerk Scott, serving as Adams Townships' designated election official, had an undisputable federal duty under 52 U.S.C. §20701's command that "every officer of election shall retain and preserve" election records for 22 months after an election. In complying with this body of federal law, Clerk Scott acted as a federal official. Nothing in the charging warrant, or otherwise alleged by the prosecution remotely offers any basis to contest this proposition.

Second, the officer must have had "an objectively reasonable and well-founded basis to believe that his actions were necessary to fulfill his duties." *Livingston,* 443 F.3d at 1222. Importantly, "Supremacy Clause immunity cases require courts to evaluate the circumstances as they appear to federal officers at the time of the act in question, rather than the more subtle and detailed facts later presented to a court." *Id.,* 1229. Clerk Scott properly preserved the EPB data, and properly investigated the accuracy of the registration/voter roll in Adams Township. Clerk Scott could use any means as expedient pursuant to MCL 168.515 to have the data reviewed to allow her to defend baseless criminal allegations from Brater, and pursue any litigation as necessary to address fraud and/or inaccurate registration.

No evidence indicates Clerk Scott acted out of maliciousness or other corrupt motives. Clerk Scott's motives were solely directed toward, and congruent with, taking only those actions that were reasonably necessary to fulfill her federal duty and her state duty. No evidence suggests that, *from the circumstances as they appeared to Clerk Scott*, *Livingston,* 443 F.3d at 1229, her conduct was anything other than a measured response to the dilemma confronting her as she fairly understood it, fitting comfortably within the bounds of Supremacy Clause immunity. Indeed, given that the bottom-line goal here was preserving election records as required by federal law, Clerk Scott's conduct to simply seek legal advice and follow all laws including maintaining accurate registration records for Adams Township.

The immunity enveloping Clerk Scott's conduct here – and depriving this Court of jurisdiction – is not simply a matter of recognizing some personal right conferred on Clerk Scott. What is at work here is the far more fundamental consequence of our Constitution's structure of government. "The Supremacy Clause is the structural

fulcrum upon which the American system of federalism balances—the Clause protects structural rights ... by establish[ing] a structure of government which defines the relative powers of states and the federal government." *Texas Voters All. v. Dallas Cnty.*, 495 F. Supp. 3d 441, 464 (E.D. Tex. 2020) (internal quotations omitted). The mandate of federal law under 52 U.S.C. §20701 that "every officer of election" must maintain election records for 22 months, and related federal mandates, "trump a contrary state law by operation of the Supremacy Clause." *City of Hugo v. Nichols (Two Cases)*, 656 F.3d 1251, 1256 (10th Cir. 2011). As described above, it does not matter if the compliance with federal law causes a violation of state law; the execution of federal law has priority. *Virginia Uranium, Inc. v. Warren,* 139 S.Ct. 1894, 1901 (2019). Indeed, even if it were illegal under state law for Clerk Scott to obtain expert review to advise on federal preservation law/fraudulent registration/defending threat of misdemeanor for failing to delete EPB– which it was not – that would not prevent Clerk Scott from being shielded by Supremacy Clause immunity from any criminal liability under state law. Because Clerk Scott was "acting under and in pursuance of the laws of the United States," *Johnson,* 254 U.S. at 57, and "did no more than what was necessary and proper for [her] to do, [she] cannot be guilty of a crime under … [state] law." *Neagle,* 135 U.S. at 75. Thus the Supremacy Clause guarantees that a person acting pursuant to federal law will not be subject to a state prosecution for those actions. Supremacy Clause immunity operates "not only to avoid the possibility of *conviction* of a federal agent, but also to avoid the necessity of undergoing the entire process of the state criminal procedure," *Kentucky v. Long*, 837 F.2d at 752, and so entails a right not to be tried. That is, it asserts a "right the legal and practical value of which would be destroyed if it were not vindicated before trial." *United States v. MacDonald,* 435 U.S. 850, 860 (1978). *See also Livingston,* 443 F.3d at 1221 ("Supremacy Clause immunity reduce[s] the inhibiting effect that a civil suit or prosecution can have on the effective exercise of official [federal] duties.").

At bottom, then, Clerk Scott is immune from this prosecution, and this case must be dismissed.

> **(c) access to a computer program, computer system, or computer network to acquire, alter, damage, delete or destroy property or otherwise use the service of a computer program, computer, computer system, or computer network:**

The state failed to present evidence of the third element, that Clerk Scott's expert, Benjamin Cotton and his firm were given "access" to a "computer" to acquire, alter, damage, delete, destroy, or use a service of the "computer." And, as discussed *infra*, the statute itself requires this intent, and a violation is shown only upon the

acts of election manipulation (which could never have occurred in this case). It was also legal for Clerk Scott pursuant to MCL 168.515 ("The several township, city, and village clerks may conduct a house-to-house canvass or use such other means of checking the correctness of registration records as may seem expedient"). Clerk Scott could use any means "as expedient." in her registration investigation. But out of an interest of being thorough, element (c) fails for numerous other reasons.

As a matter of law, MCL 168.515 is uncontested and gives the clerk the right to investigate and all that MCL 168.515 entails, including the hiring of counsel and experts.

Brater did not disagree when he testified at the preliminary hearing. **Exhibit 22**. At p. 132:3-15]

There are additional arguments to rebut the AG's assertions. First, the tabulator and EPB etc concern elections and election laws. The AG is seeking to amend (without the legislature) not with a wedge and shoehorn of 509gg into MCL 752.795, but it's by changing the definition of computer just for the purposes of prosecution of Clerk Scott.

The SOS must promulgate rules to have the full force and effect of law. MCL 168.31(1)(a) states the secretary of state shall issue instructions and promulgate rules pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, for the conduct of elections and registrations in accordance with the laws of this state.

The SOS did promulgate the definition of "computer" as it should be applied to elections. The SOS failed to promulgate a new definition of computer despite awareness that technology had changed over time.

The applicable promulgated rule, Rule 168.771, states:

> "the Department of State Bureau of Elections Electronic Voting Systems section (J) defines "computer" as one or more pieces of automatic tabulating equipment which examines, tabulates, and counts votes recorded on ballot cards or magnetic tapes and prints results."

The evidence at the preliminary hearing demonstrated in many ways that Clerk Scott was keenly aware of the election laws, applicable contracts, and promulgated rules. It is patently unfair, and violates due process for the AG to now

ignore the promulgated Rule 168.771 related to computers used in elections, mislead the court with 509gg and wedge 509gg it right into MCL 752.759, a hacking statute, passed to address fraudulent activities.

EPB flash drives do not meet the definition of computer under Rule 168.771. But it could. If the SOS had updated it's promulgated rules, as it is required to do so, prior to its 2025 request.

The Michigan Secretary of State was aware that it had failed to update promulgated rules and definitions, and suggested clerks "substitute language" in the manual. Of course, a recommendation to substitute words does not meet the equivalent of a promulgated rule or amendment of a statute by the legislature. **Exhibit 23**.

As of 2021, a poll book/ EPB flash drive does not "count votes" nor does it use "ballot cards" or "magnetic tapes" to "print results." These outdated terms are referring to the old punch voting system. Rule 168.771(e) defines "ballot card" as a data processing card approved by the state board of canvassers. **Exhibit 24**.

But once again, in the interest of being thorough, only evidence of "data" being transferred at the preliminary hearing. Cotton did not "access" any election equipment in Adams Township. He was merely given a copy of "data" which does not meet the access or acquire element. See *People v. Holkeboer*, No. 365964, 2024 Mich. App. LEXIS 2984 (Ct. App. Apr. 18, 2024) (**Exhibit 25**) There, the Court held state prosecutors were out of bounds interpreting MCL 168.932 and MCL 752.795 (two of the charges in the instant case) resulting in dismissal of the counts against Holkeboer. Copying a list of voters without proof that there was intent and purpose to affect the quality or integrity of the document did not violate these statutes.

The Court reasoned that these statutes exist to ***prevent election fraud*, not prosecute those charged with the duty to investigate elections and potential election fraud after they occur.** The Court further held, as has been argued, that MCL 168.932 only applies to prohibit conduct that "affects the integrity" of an ongoing election, i.e., before the election is certified. The Court in *Holkeboer* used two *irrelevant* statutes (FOIA and cyber bullying) to demonstrate there was no need to add a word such as "copy" or change the definitions of technology when considering MCL 168.932 and MCL 752.795. The Court explained in explicit detail that courts cannot change statutory language and shall not reach to legislative intent or dictionary definitions unless the plain meaning is unclear. *Id.*, Slip Op. at 3-5. The

Holkeboer decision was clear that Courts cannot add new terms to a statute that the legislature could have amended to add. It was even more clear that prosecutions under MCL 168.932 and MCL 752.795 can only proceed ***where intent to affect the integrity of an election is proved***. The AG is presumed to know the interpretations of provisions she is charged with executive function to administer and prosecute. This case, for one, clearly demonstrates that the charges against Clerk Scott and Attorney Lambert are baseless and frivolous.

Clerk Scott was required to preserve the data, and can do so with a professional for review to obtain legal advice. Cotton testified that he was a professional expert working on behalf of Ms. Scott and was to keep the data confidential in the scope of her legal expert. In context of analysis, Clerk Scott at relevant times had the authority and duty to sue the BOE, SOS, and vendor for breach of contract among other causes of action. Further, as explained throughout Attorney Lambert and Cotton had duties and authority delegated from Clerk Scott and as her attorney and expert to provide legal advice as acknowledged by Clerk Dane and Hillsdale's Attorney.

Clerk Scott did not violate any Michigan law or lawful order by the Secretary of State

"There is precious little difference between a secret law and a published regulation that cannot be understood." Lynch, Introduction to *In the Name of Justice: Leading Experts Reexamine the Classic Article "The Aims of the Criminal Law"* (Lynch ed) (Washington, DC: Cato Institute, 2009), p. xi. "Many *malum prohibitum* offenses are defined in significant part by administrative rules and regulations. Vague regulations, amorphous definitions of the elements of the crime, and rules not altogether compatible with the provisions of the statute ar distinguishing and continuingly problematic aspects of prosecutions of those administratively defined offenses." *People v Taylor*, 495 Mich 923, 929-30; 844 NW2d 707 (2014). As the United States Supreme Court has recognized:

> A criminal statute cannot rest upon an uncertain foundation. The crime, and the elements constituting it, must be so clearly expressed that the ordinary person can intelligently choose, in advance, what course it is lawful for him to pursue. Penal statutes prohibiting the doing of certain things, and providing a punishment for their violation, should not admit of such a double meaning that the citizen may act upon the one conception of its requirements and the courts upon another. *Id.*, citing

Connally v Gen Constr Co, 269 U.S. 385, 393; 46 S. Ct. 126; 70 L. Ed. 322 (1926)

The Supreme Court has warned that in drafting and interpreting criminal statutes involving malum prohibitum administrative offenses, i.e., offenses that are not inherently wrongful such as homicide and theft but are wrongful only because they are prohibited by law, our Legislature might wish to take care in defining critical terms and elements with as much specificity as possible and in terms that are as accessible to ordinary citizens as possible so that they might readily understand what course of conduct it is lawful, and unlawful, to pursue. To the extent that this is not done, ***the terms and elements will come to be defined by administrative regulators, whose judgments in many instances may vary from those of the Legislature and in other instances may give rise to inconsistent obligations and duties on citizens by the effective enactment of a second law pertaining to the same subject matter.*** The applicability of administrative criminal offenses is not confined to large and sophisticated businesses, replete with their own legal counsel's office, as evidenced by the instant case; they apply equally to smaller enterprises, as well as to individuals. *People v Taylor*, 495 Mich 923, 930; 844 NW2d 707 (2014).

Moreover, orders or instructions that have not been passed through the Administrative Procedures Act do not have the force of law.

"Interpretive Rules" no sanction i.e., it's the statute that matters *Green*, *supra*; *Taylor*, *supra*. See also *O'Halloran v Secretary of State*, 348 Mich App 652, 659-60; 20 NW3d 297 (2023).

While a rule promulgated in accordance with the APA has the force of law, *Slis v Michigan*, 332 Mich App 312, 346; 956 NW2d 569 (2020), other pronouncements do not, *Twp of Hopkins v State Boundary Comm'n*, 340 Mich App 669, 689; 988 NW2d 1 (2022). As explained in *Hopkins Twp*:

> The APA "applies to all agencies and agency proceedings not expressly exempted." MCL 24.313. An "agency" is defined as a "state department, bureau, division, section, board, commission, [**303] trustee, authority or officer, created by the constitution, statute, or agency action." MCL 24.203(2). There is no dispute that the Commission is a state agency. HN3 The APA defines a "rule" to include "an agency regulation, statement, [***7] standard, policy, ruling, or instruction of general applicability that implements or [*660] applies law enforced or

> administered by the agency, or that prescribes the organization, procedure, or practice of the agency . . . ." MCL 24.207. A "rule" does not include a "guideline" "that in itself does not have the force and effect of law but is merely explanatory." MCL 24.207(h). The APA defines "guideline" as "an agency statement or declaration of policy that the agency intends to follow, that does not have the force or effect of law, and that binds the agency but does not bind any other person." MCL 24.203(7). The APA prescribes how agencies adopt guidelines, MCL 24.224 and MCL 24.225 and specifies that "[a]n agency shall not adopt a guideline in lieu of a rule," MCL 24.226. [340 Mich App at 689.]

Moreover, an administrative rule cannot conflict with a statute. *Brightmoore Gardens, LLC v Marijuana Regulatory Agency*, 337 Mich App 149, 161; 975 NW2d 52 (2021) ("[A]n agency is not empowered to change law enacted by the Legislature. . . . When an administrative rule conflicts with a statute, the statute controls."). Because this case involves an interpretation of a statute, we review de novo the trial court's decision. *Slis*, 332 Mich App at 335. *O'Halloran v Secretary of State*, 348 Mich App 652, 659-60; 20 NW3d 297 (2023)

Brater agreed, **Exhibit 26**.

Furthermore, the Secretary of State and Brater cannot give inconsistent instructions and such that are contrary to the statutory language, which is what Clerk Scott is bound by. Brater can't give instructions that are not promulgated because it would give him the ability to give inconsistent instructions to clerks and change then weekly if he wanted all while threatening them with crimes. This is exactly what happened in the instant case, and the Michigan Supreme Court has stated that this is error as a matter of law, because it is the statute that is accessible to the public and the statute controls because of the Legislature's prerogative under the Constitution.

It is even more disingenuous for the AG to prosecute Clerk Scott and Attorney Lambert where, as here, Brater admitted that in fact Clerk Scott *had authority* to have investigations conducted after the election was complete. The AG and Brater are either talking out of both sides of their collective mouths, or they are specifically making up a crime to target Clerk Scott and Attorney Lambert. In either case, as a matter of law, the charges cannot stand, because the facts do not fall within the scope of prohibited conduct *defined by the statutes* under a proper interpretation of their language and without injecting meaning or terms from other provisions or administrative regulations, and second, because the Secretary of State and Brater do not possess the authority to deem acts illegal or criminal by applying an artificial and concocted non-existent criminal provision.

Count 2

For the same reasons stated above addressing Count 1, the state cannot meet its burden to establish probable cause that Clerk Scott and attorney Lambert engaged in a conspiracy to violate Michigan law.

Count Two alleges both Scott and Lambert violated MCL750.157a Conspiracy to commit offense or legal act in illegal manner; penalty. MCL 750.157 Sec. 157a states:

Any person who conspires together with 1 or more persons to commit an offense prohibited by law, or to commit a legal act in an illegal manner is guilty of the crime of conspiracy punishable as provided herein:

(a) Except as provided in paragraphs (b), (c) and (d) if commission of the offense prohibited by law is punishable by imprisonment for 1 year or more, the person convicted under this section shall be punished by a penalty equal to that which could be imposed if he had been convicted of committing the crime he conspired to commit and in the discretion of the court an additional penalty of a fine of $10,000.00 may be imposed.

(b) Any person convicted of conspiring to violate any provision of this act relative to illegal gambling or wagering or any other acts or ordinances relative to illegal gambling or wagering shall be punished by imprisonment in the state prison for not more than 5 years or by a fine of not more than $10,000.00, or both such fine and imprisonment.

(c) If commission of the offense prohibited by law is punishable by imprisonment for less than 1 year, except as provided in paragraph (b), the person convicted under this section shall be imprisoned for not more than 1 year nor fined more than $1,000.00, or both such fine and imprisonment.

(d) Any person convicted of conspiring to commit a legal act in an illegal manner shall be punished by imprisonment in the state prison for not more than 5 years or by a fine of not more than $10,000.00, or both such fine and imprisonment in the discretion of the court.

Conspiracy is a two-fold specific intent crime: the defendant must intend to combine with others; and the defendant must intend to accomplish the illegal objective. *People v. Carter*, 415 Mich. 558, 568; 330 N.W.2d 314 (1982).

Because there can be no conspiracy without a combination of two or more persons, the prosecution must prove that both the defendant and at least one other person had the required specific intent. *People v Anderson (James)*, 418 Mich 31, 35 (1983); *People v Williams (Charles)*, 240 Mich App 316, 325 (2000). Thus, where only one person can be shown to have had the *mens rea* to commit an illegal act, no conspiracy exists. See *People v Barajas*, 198 Mich App 551, 559 (1993), aff'd 444 Mich 556 (1994) (no conspiracy to deliver over 650 grams of cocaine was found where the defendant's coconspirator intended to defraud the defendant at the time the criminal agreement was made, by planning to deliver baking soda in place of most of the cocaine).

The rule barring a one-person conspiracy is commonly used to prevent inconsistent verdicts where coconspirators are tried jointly by a single fact finder for a conspiracy in which no additional persons are implicated. Under the rule barring a one-person conspiracy, a verdict finding one coconspirator guilty but not the other requires a judgment of acquittal as to both coconspirators. *Williams (Charles)*, 240 Mich App at 325, quoting *Anderson (James)*, 418 Mich at 36

Here, the AG failed to present any evidence that Scott or Lambert had an intent to commit a crime or a culpable mindset. Given the misstatements of "confidential" data under 509gg, the "computer" referenced in MCL 752.759 is inconsistent with election definition that have been promulgated its also a legal impossibility that they had intent to have the data reviewed by an expert in an illegal manner. It simply does not exist in law nor fact.

As previously established, it is error to allow reading of 509gg into MCL 752.795. See *People v. Green*, unpublished opinion of the Michigan Court of Appeals, decided December 10, 2015, Docket No. 322874, held that the language of MCL 752.795 is unambiguous. **Exhibit 2.** Citing *People v Phillips*, 469 Mich 390, 395; 666 NW2d 657 (2003), for the rules of proper statutory interpretation, the Court reasoned that because the language of MCL 752.795 delineates the elements of the crime, it is unnecessary and improper "to go beyond the words of the statute to ascertain legislative intent." Slip Op. at 3, citing *Phillips*, 469 Mich at 395. The Court ruled that the plain language of MCL 752.795 delineated the elements to be : "(a) intentional and (b) unauthorized (c) access to a computer program, computer system, or computer network (c) to acquire, alter, damage, delete or destroy property or otherwise use the service of a computer program, computer, computer system, or computer network." The Court stated that it was unnecessary and improper to "go beyond the words of the statute to ascertain legislative intent." If the statute's language is clear and unambiguous, it is assumed that the Legislature intended its

plain meaning and the statute is enforced as written. Stated differently, *a court may read nothing into an unambiguous statute* as derived from its words. Only where the statutory language is ambiguous may a court properly go beyond the words of the statute to ascertain legislative intent.

Count 3

Count Three alleges both Scott and Lambert violated MCL 752.796 Use of computer program, computer, computer system, or computer network to commit crime.

Sec. 6.

(1) A person shall not use a computer program, computer, computer system, or computer network to commit, attempt to commit, conspire to commit, or solicit another person to commit a crime.
(2) This section does not prohibit a person from being charged with, convicted of, or punished for any other violation of law committed by that person while violating or attempting to violate this section, including the underlying offense.
(3) This section applies regardless of whether the person is convicted of committing, attempting to commit, conspiring to commit, or soliciting another person to commit the underlying offense.

Similarly, as stated in the prior counts, the state cannot establish probable cause that Clerk Scott and attorney Lambert violated MCL 752.796 the AG, for purposes of bringing criminal charges against Scott and Lambert has inserted language from MCL 168.509gg into MCL 752.759 in attempt to accomplish a novel judicial construction of MCL 752.759. First, since MCL 752.759 is plain and unambiguous, it is "unnecessary and improper to go beyond the words of the statute to ascertain legislative intent." *Green*, *supra*; *Phillips*, *supra*. Moreover, the statute must be applied and enforced "as written," and thus, the court cannot read any other provision or word into the statute. *Id*. MCL 168.509gg cannot be used to insert meaning or content into MCL 752.759 – the latter statute speaks for itself and it requires specific "unauthorized" access to a computer program, system, or network (which does not apply to the tabulators), and further it requires a showing that the intent is to acquire, alter, damage, delete or destroy property or use the "service" of a computer, system, or network. Under the facts as alleged, the elements are not met by a plain application of this provision, and that is all that can be referred to when considering the charges. Secondly, as noted, courts are not to "borrow" or "substitute" words and phrases in one statute, especially one that is unrelated (MCL 168.509gg discusses exemptions from disclosure under Michigan's Freedom of Information Act

(FOIA)), and insert them into another statute to create a criminal act out of whole cloth.

Further, not only does the AG try to inject the language from an unrelated FOIA provision into the specific elements of MCL 752.759, but the AG also seeks to ignore the language of MCL 168.509gg as it was at the relevant time period concerning the charges against Clerk Scott, and apply the "new language" amended in 2024! This, of course, cannot be done. Legislation that did not exist at the time of an alleged criminal act cannot be used to charge someone. This runs counter to the entire foundation of American criminal justice that notice and due process must be accorded to all those who are accuse of a crime. "Due process requires that a person receive fair notice not only of the conduct that will subject him to punishment, but also of the severity of the penalty that a State may impose." *People v. Hall*, 499 Mich. 446, 461, 884 N.W.2d 561, 569 (2016) (internal quotes omitted). See also *People v Babcock*, 469 Mich 247, 262; 666 NW2d 231 (2003).

But that is not all. The AG wants to improperly inject definitions from a hacking statute in place of definitions that were promulgated by the SOS for election matters, all while asking the Court to turn its head to the voluminous evidence (from the AG's own witnesses!) that demonstrates that Clerk Scott had an ongoing voter registration investigation pursuant to MCL 168.515 to ensure the registration data preserved from 2020 election and its accuracy for future, local, state, and federal elections. The legality of Scott's work as the township's clerk was further supported by testimony related to the preservation of all records pursuant to 52 USC 20701 and MCL 168.811. As demonstrated herein, all of Scott's actions were not only not proscribed by any criminal statute, but they were authorized and lawful and within the scope of her powers and duties as a constitutional officer. To be completely thorough in addressing the AG's closing argument, Clerk Scott is also immune from prosecution pursuant to the Supremacy Clause and the Privileges and Immunities Clause.

Finally, as a matter of law the facts as testified to by state witnesses demonstrate that the expert was given mere data – this is not a crime within the meaning of the statute – again, in *Holkeboer* the Court rejected this very analysis. It used two *irrelevant* statutes (FOIA and cyber bullying) to demonstrate there was no need to add a word such as "copy" or change the definitions of technology when considering MCL 168.932 and MCL 752.795. The Court explained in explicit detail that courts cannot change statutory language and shall not reach to legislative intent or dictionary definitions unless the plain meaning is unclear. *Id.*, Slip Op. at 3-5. The

Holkeboer decision was clear that Courts cannot add new terms to a statute that the legislature could have amended to add. It was even more clear that prosecutions under MCL 168.932 and MCL 752.795 can only proceed ***where intent to affect the integrity of an election is proved***. What the Court meant in section "B" was *intent* to mess with tally prior to certification. Clearly there was no evidence of this at the preliminary hearing.

Brater himself testified that there was no evidence of any destruction of records or that she failed to preserve them. **Exhibit 27**. At p.29:13-18 – 34:11 he testified:

The prosecutor has the burden and this is not a question of fact. See *People v Rosales*, 160 Mich App 304, 312; 408 NW2d 140 (1987) (stating that the burden of proving a defendant guilty beyond a reasonable doubt may never be shifted from the prosecution, and the defendant is never obligated to prove innocence). The AG did not establish probable cause that a crime was being committed because their case fails on law-not questions of fact. For the reasons stated above, Lambert had no intent to commit a crime using her phone because it is not proper to inject words and definitions into criminal statutes and cherry pick those facts that make it convenient for the prosecution to reduce their burden to proof guilt beyond a reasonable doubt in accordance with the plain and unambiguous language of the statute at issue.

Count 4

Count Four alleges Scott violated MCL 750.505

750.505 Punishment for indictable common law offenses.
Sec. 505.

Any person who shall commit any indictable offense at the common law, for the punishment of which no provision is expressly made by any statute of this state, shall be guilty of a felony, punishable by imprisonment in the state prison not more than 5 years or by a fine of not more than $10,000.00, or both in the discretion of the court.

For the same reasons stated above, the state cannot establish probable cause that Clerk Scott violated MCL 750.505. Additionally, *People v. Waterstone*, Mich. App. 121 (2012) requires proof or corruption on the part of Ms. Scott. There was no evidence presented by the AG that Ms. Scott had acted with a corrupt motive. She was simply

trying to do her job, and do it well as a new clerk. The evidence reflected that Ms. Scott was election on Nov. 4, 2020, and took office in December of 2020. The evidence showed that she was attempting to do each and every step of her job as clerk *properly*. The First Amendment of the United States Constitution thankfully allows Scott and other clerks to question Brater, and others to make sure elections are secure and accurate for their community. She certainly had a duty to do so. The state presented no evidence that Clerk Scott had a corrupt motive. As discussed above the undisputed records reflects that Clerk Scott followed federal and state record retention laws, and conducted an investigation of the registration in accordance with MCL 168.515.

In *People v Coutu*, 235 Mich App 695, 706-07; 599 NW2d 556 (1999) the court stated, "Therefore there can be no malfeasance. "Corruption" in this context means a "sense of depravity, perversion or taint." *Id.* at 542. "Depravity" is defined as "the state of being depraved" and "depraved" is defined as "morally corrupt or perverted." *Random House Webster's College Dictionary* (1997). "Perversion" is "the act of perverting," and the term "perverted" includes in its definition "misguided; distorted; misinterpreted" and "turned from what is considered right or true." *Id.* The definition of "taint" includes "a trace of something bad or offensive. [***16] " *Id.* Pursuant to the definitions, a corrupt intent can be shown where there is intentional or purposeful misbehavior or wrongful conduct pertaining to the requirements and duties of office by an officer. See also Perkins & Boyce, supra at 542 ("It is *corrupt* [*707] for an officer purposely to violate the duties of his office."). The corrupt intent needed to prove misconduct of office does not necessarily require an intent for one to profit for oneself. *Thomas, supra* at 461, n 6.

The evidence demonstrates Clerk Scott was thorough and her only intent was verification of the data. Once she began her verification process, she was labeled an "election denier" and targeted by Brater for exercising her First Amendment rights.

Count 5

The state has not presented any evidence establishing probable cause as thoroughly addressed above in Counts 1-4 that Clerk Scott unlawfully "concealed" the Adams Township tabulator. In fact, it was properly under lock and key in the clerks office where she was to *maintain sole custody*.

Count Five alleges Scott violated MCL 168.932(b). As previously explained this provision as established by *Holkeboer*, MCL 168.932 applies, as it is plainly written, to efforts to affect or alter an election. This is why the plain language of subsection

(b) applies only to acts "***during the progress of any election*** or after the closing of the polls and ***before the final results***." It is an anti-fraud measure. Secondly, town clerks have "authorized possession" of all that is in their custody. See MCL 41.65; *McKim v. Green Oak Twp. Bd.*, 158 Mich. App. 200, 205, 404 N.W.2d 658, 660 (1987) (holding that MCL 41.65 bestows a township clerk with the responsibility to exercise control over all township records). As a constitutional officer who is in authorized possession of township property, and who is charged with the responsibility to keep those records secure and to investigate irregularities, Clerk Scott had authority to provide access after the election to attorneys and experts in order to fulfill her constitutional duties.

Courts have consistently construed MCL 168.932 as an anti-election-fraud provision.

- *People v Hawkins*, ___NW2d___; 2022 Mich. App. LEXIS 396, at *21-22 (Ct App, Jan. 20, 2022) (affirming trial court decision to bind defendant over on the offense of falsifying election records in violation of MCL 168.932(c), the prosecution had to present evidence that defendant: (1) was a clerk; (2) had custody of a record, election list of voters, certificates, poll book, or of any paper, document, or vote of any description, which must be made, filed, or preserved under the Michigan Election Law; and (3) willfully falsified or fraudulently made any entry, erasure, or alteration on any or all of such items***. "The intent to defraud is the specific intent to cheat or deceive." People v Miller, 326 Mich App 719, 739; 929 NW2d 821 (2019) (citation omitted). Again focuses on election fraud, and notably specific intent provisions.***

- *People v O'Hara*, 278 Mich 281, 289; 270 NW 298 (1936) (predecessor 1 Comp. Laws 1929, § 3299, used to prosecute group accused of altering ballots during recount and this law is described as a provision to prevent "general *election* fraud") (my emphasis).

- *People v Pinkney*, 501 Mich 259, 284; 912 NW2d 535 (2018) (this recent case again looked at these provisions, 932 as general election fraud provisions, meaning they are used to prosecute actual election fraud).

- *People v Burkman*, ___NW2d___; 2022 Mich. App. LEXIS 3187, at *17-18 (Ct App, June 2, 2022) (addressing election "robocalling" and finding it illegal as "menacing" under MCL 168.932(a) because it focuses on efforts to alter or change an election).

- *Mich. All. for Retired Ams. v. Sec'y of State*, 334 Mich. App. 238, 259 (2020) (provisions of MCL 168.932(f) are reasonable and nondiscriminatory and

warranted to further an important regulatory interest: protecting against voter fraud).

- *People v Marklein*, 358 Mich 471, 472; 101 NW2d 348 (1960) (people's charge was that the defendants named in the information including chief of police up for election conspired fraudulently to register voters / unlawful under MCL 168.932 as it prohibits actual general voter fraud and its subdivisions are used to effectuate that purpose)

"[C]ourts do not have the power to rewrite statutes to ensure they have some substantive effect." *People v. Pinkney*, 501 Mich. 259, 287, 912 N.W.2d 535, 550 (2018).

Aside from the clear plain language requiring the prohibition to be committed during the relevant election proceedings, and clearly allowing one who is duly authorized to have possession delegate and assign (or grant / or bail) to another with such possession, and thus, the latter (the defendants here) cannot be in "undue possession," within the plain and strictly construed meaning of this criminal provision, there are other problems with prosecuting under this statute.

In an attempt to establish that it has met the "unauthorized" element of MCL 752.759, the AG attempts a novel, unprecedented argument not grounded anywhere in law. The AG, in violation of the *Phillips* holding that 752.795s statutory language is clear on its plain meaning, refers to "unauthorized" to include "confidential information" pursuant to MCL 168.509gg in an attempt to satisfy this element of "unauthorized." This too runs contrary to the Court of Appeals decisions in *Green*, *supra*; *Phillips*, *supra*; and *Holkeboer*, *supra*. Words, phrases, and definitions from other, unrelated statutes, cannot be injected into another statute just to create an alleged criminal act where the charging statute itself does not do so.

Further, in 2015, the Michigan Legislature amended The Revised Statutes of 1846 (EXCERPT) Chapter 1. Of the Statutes. Rule 8.9(9)(1) states:

> (1) Except as otherwise provided in this section, a person is not guilty of a criminal offense committed on or after January 1, 2016 unless both of the following apply:
>
> (a) The person's criminal liability is based on conduct that includes either a voluntary act or an omission to perform an act or duty that the person is capable of performing.

(b) The person has the requisite degree of culpability for each element of the offense as to which a culpable mental state is specified by the language defining the offense.

In other words, there must be an act that has the requisite mens rea for each element in the statute.

Rule 8.9(1)(7) exempts this mens rea requirement for each element from:

(a) The Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923.
(b) The public health code, 1978 PA 368, MCL 333.1101 to 333.25211.
(c) The identity theft protection act, 2004 PA 452, MCL 445.61 to 445.79c.
(d) The Michigan penal code, 1931 PA 328, MCL 750.1 to 750.568. Chapter 752 of the Michigan Compiled Laws.

The election code was not exempt by the Michigan Legislature, therefore Rule 8.9 applies to MCL 168.932(b).

Rule 8.9(1)(9) states: The mere absence of a specified state of mind for an element of a covered offense shall not be construed to mean that the legislature affirmatively intended not to require the prosecution to prove any state of mind.

Clerk Scott's intent (and duty) was to preserve pursuant to law. MCL 41.65; MCL 168.811 and 52 USC 20701. As previously established she had a legal duty to preserve all records. *McKim v Green Oak Twp Bd*, 158 Mich App 200, 205; 404 NW2d 658 (1987) (holding that under MCL 41.65, a township's clerk is charged with the responsibility of controlling and keeping safe all of the township's papers, including the mail and bills and a resolution entrusting control of the township's mail and bills to anyone other than the clerk or restricting the removal of township records constitutes an unlawful restraint upon the clerk's duties). The federal and state laws, 52 USC 20701 and MCL 168.811, requires clerks to preserve *all* data. Clerk Scott cannot be prosecuted for fulfilling her federal duties and obligations by protecting election records. Federal statute provides that "[e]very officer of election shall retain and preserve" for 22 months after an election for federal office "all records and papers … relating to any application, registration, payment of poll tax, or other act requisite to voting in such election." 52 U.S.C. § 20701. ("The materials covered by Section [20701] extend beyond 'papers' to include other 'records.' Jurisdictions must therefore also retain and preserve records created in digital or electronic form.") Failure to comply with this duty exposes a clerk to not more than one year in prison, and a fine of not more than $1,000. MCL 168.811 further provides: "All election returns, including poll lists, statements, tally sheets, absent voters' return envelopes bearing

the statement required by section 761, absent voters' records required by section 760, and other returns made by the election inspectors of the several precincts must be carefully preserved and may be destroyed after the expiration of 22 months following the primary or election at which the same were used…. All ballots containing a federal office, and all presidential primary ballot selection forms, may be destroyed after the expiration of 22 months following the primary or election at which those ballots were cast or forms were used."

Count 6

Similarly, for the same reasons stated above in argument of counts 1-5, the state failed to present any evidence of probable cause that Brater's instruction was lawful, and that Clerk Scott had a criminal intent to violate the instruction. To the contrary, she was preserving registration/election data on the tabulator pursuant to state and federal law. She was also compliant with the terms of the relevant contract.

Count Six charges MCL 168.931(1)(h) Election Law-Failure to Perform Duty And alleges Scott disobeyed a lawful instruction or order of the Secretary of State by failing to present a voting tabulator for routine maintenance contrary to MCL 168.931(1)(h). [168.9311M] Misdemeanor: 90 Days and/or $500.00 (see MCL 168.934)

While the AG's warrant document incorrectly lists MCL 168.931(1)(h), Scott understands that they are attempting to establish violation of MCL 168.931(g) and will stipulate to the amendment to expedite the processing of this case.

> (g) An individual shall not willfully fail to perform a duty imposed upon that individual by this act or disobey a lawful instruction or order of the secretary of state as chief state election officer or of a board of county election commissioners, board of city election commissioners, or board of inspectors of election.

The relevant contract did not legally require an update at the time Brater was demanding Scott update the tabulator. Scott expressed concerns that the data on the tabulator would have been erased had she performed the update, and she was suggesting a loaner tabulator.

The contract specifically states that the update should be performed by December 27, 2021, on an odd rotation of calendrer years. Scott intended to preserve the registration data on the tabulator as her investigation pursuant to

MCL 168.515 continued. Scott had the ability, with all of the preserved data, to sue both the BOE and the vendor as her investigation and reconciliation of the data continued. But, that certainly is not possible for her to consider as Clerk when Brater's created a false narrative prompted a removal from office for simply doing her job well.

Again, there is no evidence Scott intended to disobey Brater. The evidence showed she was following a contract, investigating and verifying pursuant to MCL.515, and properly preserving records pursuant to MCL 168.811 and 52 USC 20701. The contract states:

> "6. **Schedule A, Statement of Work, 1.6A Service and Maintenance.** a. Add the following sentence: "The warranty start date for the County and all local jurisdictions within Hillsdale County shall be December 27, 2017, as long as delivery and acceptance of all election systems to the County and local jurisdictions within Hillsdale County occurs no later than January 15, 2018."
>
> No maintenance was required prior to the election.

Conclusion

All six counts fail as a matter of law. The state failed to meet its burden to provide probable cause of any of the crimes listed in the six counts. Moreover, the facts established do not fall within the scope of the plain an unambiguous language of the statutes' as drafted and passed by the legislature. Additionally, there was no evidence of criminal intent for any of the charged elements and counts, as a matter of law there was no law violation, and the prosecution failed to establish Michigan jurisdiction and venue. There was no testimony that the charged offenses took place in Michigan, in addition to no law violations/no criminal mens rea presented at the preliminary examination. Cotton observed Clerk Scott had complied with laws to properly secure her tabulator in Michigan, but there was no jurisdiction or venue presented on any element of counts 1-4. In addition to all law referenced above, Scott and Lambert have immunity to prosecution pursuant to the First Amendment of the US Constitution, and the Michigan Constitution.

All instructions from Brater were unlawful. There is no precedent that allows for a clerk with an investigation pursuant to MCL 168.515 that subjects her to felony criminal trial to defend their very investigation that is incomplete due to disruption from Brater. The AG seeks to set precedent through this case that Brater can

"instruct" clerks through email, make inconsistent instructions to various clerks and the same time, and change them week to week if he so desires all while threatening criminal charges to constitutional officers. This precedent would give him full control of the state elections, making Michigan's decentralized check and balance of local clerks moot. Brater must timely promulgate rules through the APA as required under Michigan law. Brater has no authority to act as the legislature and make up criminal law as he goes. The Courts in *Genetski* and *O'Halloran* have chastised him for doing just that in a civil capacity. Brater certainly cannot invent crimes and deploy the state police on every clerk in the State of Michigan.

Ms. Scott and Ms. Lambert thank the Court for a thorough hearing that allowed a full presentation of circumstances that clearly established there could be no violation of any Michigan law. In fact, the hearings held revealed that Scott and Lambert followed all laws as they were statutorily, and professionally obligated to follow.

The AG should have dismissed this case in the best interest of justice after hearing the testimony, but rather were targeted for speech as the prosecution concedes they are viewed as "election deniers." Like the alternate slate electors, the AG never had evidence of criminal intent of any of the charged individuals, and the Court properly disposed of the case at the preliminary hearing. Now Scott and Lambert ask this Honorable Court to do the same, and dismiss all counts.

Respectfully submitted,

/s/Stefanie Lambert

October 10, 2025