

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

v

STEFANIE LAMBERT JUNTILA,

Defendant.

Case No. 23-199245-CZ
Hon. Phyllis C. McMillen

OPINION AND ORDER

At a session of Court

Held On

July 12, 2023

This matter is before the Court on Plaintiff's Complaint for Declaratory Judgment. The Court heard oral argument on July 7, 2023.

I. FACTS AND PROCEEDINGS¹

Plaintiff, the People of the State of Michigan, acting through the Special Prosecutor on behalf of the Attorney General of the State of Michigan, filed this action seeking a declaratory judgment to obtain a legal determination as to the applicable legal standards concerning the crime of undue possession of a voting machine and to clarify the legal prohibitions contained in MCL 168.932(b).

Defendant, Stefanie Lambert Junttila, filed an Answer to the Complaint in which she denies that the Court has jurisdiction to hear this action, denies that there is an actual

¹ A more detailed explanation of the factual background is contained in this Court's Opinion and Order denying Defendant's motion for summary disposition, entered June 6, 2023.

controversy, and alleges that the Special Prosecutor has violated multiple laws and rules in bringing this action.²

II. DECLARATORY JUDGMENTS GENERALLY

MCR 2.605 governs declaratory judgments. MCR 2.605(A)(1) provides, “In a case of actual controversy within its jurisdiction, a Michigan court of record may declare the rights and other legal relations of an interested party seeking a declaratory judgment, whether or not other relief is or could be sought or granted.”

Generally, an actual controversy exists where a declaratory judgment is necessary to guide a plaintiff’s future conduct in order to preserve the plaintiff’s legal rights. *Shavers v Attorney General*, 402 Mich 554, 588–589; 267 NW2d 72 (1978); *Durant v State of Michigan, Dep’t of Ed (On Remand)*, 238 Mich App 185, 204–205; 605 NW2d 66 (1999). “[W]hat is essential to an ‘actual controversy’ under the declaratory judgment rule is that plaintiff plead and prove facts which indicate an adverse interest necessitating a sharpening of the issues raised.” *Shavers*, 402 Mich at 589; *Fieger v Comm’r of Ins*, 174 Mich App 467, 470–471; 437 NW2d 271 (1988).

The Court of Appeals has stated that the purpose of a declaratory judgment is

to enable the parties to obtain adjudication of rights *before an actual injury occurs*, to settle a matter *before it ripens into a violation of the law* or a breach of contract, or to avoid multiplicity of actions by *affording a remedy for declaring in expedient action the rights and obligations of all litigants*. [*UAW v Central Mich Univ Trustees*, 295 Mich App 486, 496; 815 NW2d 132 (2012) (citation omitted; emphasis in original)]

² Defendant previously filed a motion for summary disposition in lieu of an answer to the complaint, arguing that this Court lacks subject matter jurisdiction to enter a declaratory judgment; Plaintiff lacks the legal capacity to sue; the Attorney General has already tried and failed to bring these charges before a court; and the Special Prosecutor cannot change the language of the statute to suit his client’s interests. The motion also asked the Court to sanction the prosecutor for violating court rules and the Michigan Rules of Professional Conduct. The Court addressed these arguments in its June 6, 2023 opinion and order.

III. ANALYSIS

The “Michigan Election Law”, MCL 168.1 *et seq.*, includes a list of felonies related to elections at MCL 168.932, which provides in relevant part:

(b) 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. [emphasis added]

“If the statute’s language is clear and unambiguous, we assume that the Legislature intended its plain meaning and we enforce the statute as written. In other words, when statutory language is unambiguous, judicial construction is not required or permitted because the Legislature is presumed to have intended the meaning it plainly expressed.” *People v Weeder*, 469 Mich 493, 497; 674 NW2d 372 (2004) (citations omitted).

A. Plaintiff’s Arguments

According to Plaintiff, the language of MCL 168.932(b) is clear and unambiguous, and its plain meaning provides for multiple, distinct felony violations as follows:

- 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.

Plaintiff argues that this plain meaning is further supported by the legislative history of the statute. The initial version of MCL 168.932(b) was written as a single sentence, where the time limitation of “during the progress of any election or primary election or after the closing of the polls and before the ballots are counted and the result ascertained” applied to the undue possession provision. The statute was later amended in 1957 to be distinct phrases separated by semi-colons, thus removing the applicability of the time limitation to the other phrases. Then, in 1995, the Legislature further delineated the phrases as separate offenses by making each phrase into a separate and distinct sentence, each with its own subject, verb, and prohibited conduct. See *In re MCI Telecommunications Complaint*, 460 Mich 396, 415; 596 NW2d 164 (1999) (“Where the Legislature has considered certain language and rejected it in favor of other language, the resulting statutory language should not be held to explicitly authorize what the Legislature explicitly rejected.”). Thus, Plaintiff asserts that the time limitation, “during the progress of any election or after the closing of the polls and before the final results of the election have been ascertained” does *not* apply to the prohibited conduct of “A person shall not obtain undue possession of that ballot box or voting machine”.

Plaintiff further asserts that “undue possession” must be that which is not allowable by law, and the only lawful authority that can be given for the possession of voting machines is by the Secretary of State or court order. Specifically, Plaintiff alleges

that a local election official under the direct supervision of the Secretary of State does not have the authority to release voting machines independently.

Pursuant to MCL 168.21, “[t]he secretary of state shall be the chief election officer of the state and shall have supervisory control over local election officials in the performance of their duties under the provisions of this act.” And, “the Legislature [has] granted the Secretary a broad measure of discretion in conducting and supervising elections.” *Davis v Secretary of State*, 333 Mich App 588, 598; 963 NW2d 653 (2020). The Secretary of State has the obligation to make rules and instructions for the conduct of elections. MCL 168.31. “Under MCL 168.32, the Legislature authorized a Bureau of Elections within the office of the Secretary of State and authorized the Secretary of State to appoint a Director of Elections to whom is delegated the powers to perform the duties of the Secretary of State respecting the supervision and administration of election laws.” *Davis*, 333 Mich App at 598. Further, it is the duty of local election officials to follow the instructions of the Secretary of State. See *id.*, citing *Secretary of State v Berrien Co Bd of Election Comm’rs*, 373 Mich 526, 530-531; 129 NW2d 864 (1964) (“*Berrien County*”) (“Under MCL 168.31, local election officials must follow the Secretary of State’s instructions regarding the conduct of elections.”).

The duty of local election officials to follow the directives of the Secretary of State exists even where the directives relate to rules for the use of voting equipment that is owned by the local government. In *Berrien County*, *supra*, the local election officials asserted that “because the voting machines are the property of the people of the township it was beyond the power of the [Secretary of State] to order or direct the manner of their use and competent for the township board to direct, as they did by resolution adopted, use

of the voting machines” in a manner contrary to the Secretary of State’s instruction. The Supreme Court rejected that contention, holding that it was the duty of the local election officials to follow the instructions received by the Secretary of State despite the local election officials’ resolution. *Id.* at 530-531.

Further, in 2021-2022, the Michigan Constitution provided, “Every citizen of the United States who is an elector qualified to vote in Michigan shall have the following rights:...(h) The right to have the results of statewide elections audited, in such manner as prescribed by law, to ensure the accuracy and integrity of elections.” Art. § 4, Sec (1)(h).³

Michigan Election Law allows for the Secretary of State to engage in audits and to supervise local election officials in conducting audits. MCL 168.31a(2), effective December 28, 2018, provides:

(1) In order to ensure compliance with the provisions of this act, after each election the secretary of state may audit election precincts.

(2) The secretary of state shall prescribe the procedures for election audits that include reviewing the documents, ballots, and procedures used during an election as required in section 4 of article II of the state constitution of 1963. The secretary of state and county clerks *shall* conduct election audits, including statewide election audits, as set forth in the prescribed procedures. The secretary of state shall train and certify county clerks and their staffs for the purpose of conducting election audits of precincts randomly selected by the secretary of state in their counties. An election audit must include an audit of the results of at least 1 race in each precinct selected for an audit. A statewide election audit must include an audit of the results of at least 1 statewide race or statewide ballot question in a precinct selected for an audit. An audit conducted under this section is not a recount and does not change any certified election results. The secretary of state *shall* supervise each county clerk in the performance of election audits conducted under this section...[emphasis added]

It is noteworthy that the Secretary of State’s involvement in a supervisory capacity of local audits is not discretionary, but mandatory, as indicated by the use of the word

³ Michigan voters in the November 2022 election decided to expand and clarify this audit provision, but the changes did not become effective until December 24, 2022, after the events at issue in this case.

“shall”. Neither the Constitution nor the statute allows for an individual voter to conduct an independent audit. *Bailey v Antrim Co*, 341 Mich App 411, 423; 990 NW2d 372 (2022), lv den, 982 NW2d 175 (2022). Thus, authorization to release the physical voting equipment under any purported “audit” must be supervised by the Secretary of State and cannot be initiated by a private citizen.

Further, MCL 168.799a(4) requires that following the final determination by the board of canvassers following an election, the original seal may be removed from an election program, but “shall be secured and preserved for the time period required by this act and the rules promulgated by the secretary of state.” Again, indicating that secured storage is incumbent upon the local election official, and the device must be preserved until the Secretary of State or its rules allow for the removal from the secured location.

Additionally, Michigan Election Law provides the Secretary of State with the discretion to release voting machines and equipment under certain circumstances. MCL 168.847 provides:

The secretary of state may authorize the release of all ballots, ballot boxes, voting machines, and equipment after 30 days following certification of an election by the board of state canvassers in a precinct other than a precinct in which 1 or more of the following occur:

- (a) A petition for recount has been filed with the board of state canvassers.
- (b) A petition has been filed pursuant to [MCL 168.879].
- (c) A court of competent jurisdiction has issued an order restraining interference with ballots, ballot boxes, voting machines, and equipment.

Mich Admin Code R 168.772 provides, in relevant part:

- (3) Where the board of county commissioners provides for the purchase and use of an electronic voting system in a county, the county clerk shall have custody of the devices and be responsible for their maintenance, repair, and preparation for elections.
- (4) Where the legislative body of a city, township, or village provides for the purchase and use of an electronic voting system, the clerk of the city,

township, or village shall have custody of the devices and be responsible for their maintenance, repair, and preparation for elections.

Thus, a clerk shall have custody and shall be responsible for three specific actions: maintenance, repair, or preparation for elections. Nowhere in this code does the rule allow for a clerk to be independently responsible for an audit. Nor does it allow for a clerk to unilaterally relinquish the custody of a voting machine, when read in conjunction with MCL 168.847 which only provides the Secretary of State with discretion to release voting machines. Particularly, under the plain language of this rule when coupled with the Constitution and the Michigan Election Law, a clerk does not have authorization under this provision to relinquish custody for purposes of an audit.

In sum, looking at the Michigan Constitution, Michigan Election Law, and Michigan Administrative Code, it is clear that “undue possession” means possession not authorized by the Secretary of State or valid court order, such as a search warrant. Thus, the language “A person shall not obtain undue possession of that ballot box or voting machine” means that an individual cannot possess a ballot box or voting machine without authorization from the Secretary of State or a valid court order.

Plaintiff asks the Court to enter a declaratory judgment finding that

- (1) the prohibition against the undue possession of voting machines is not limited to events that occur “during the progress of any election or after the closing of the polls and before the final results of the election have been ascertained”; and
- (2) “undue possession” is possession that is not authorized by the Secretary of State or by court order.

B. Defendant's Arguments

In her Answer to the Complaint, Defendant asserts that Plaintiff is seeking relief outside the Michigan Court Rules, and particularly the civil and criminal rules of procedure, and in doing so is violating several sections of the Michigan Rules of Professional Conduct and the United States and Michigan Constitutions. Defendant further states that this Court does not have jurisdiction to provide the relief wrongfully requested by Plaintiff. Defendant asserts that Plaintiff is wrongfully using this action, and this Court, in an attempt to undermine the adversarial legal system of the State of Michigan and the United States.

Defendant denies that there is an "actual controversy" existing between the prosecutor and the Defendant, or the Plaintiff and Defendant, within the meaning of the jurisprudence of the State of Michigan or the United States, or MCR 2.605. Defendant notes that the prosecutor admits in the Complaint that he is acting on his own behalf, or on behalf of the Attorney General of the State of Michigan, and not on behalf of the People of the State of Michigan. Defendant admits that the Secretary of State for the State of Michigan has the obligation to make rules and instructions for the conduct of elections. In response to the remaining allegations in the Complaint regarding the interpretation of the relevant statutes, Defendant's answer states:

Defendant denies an actual controversy between the Plaintiff and Defendant, or the prosecutor and defendant (see paragraph 10 of plaintiff's complaint wherein which the prosecutor admits he is acting on his own behalf, or on behalf of the Attorney General of the State of Michigan, and not on behalf of the people of the State of Michigan.)

Defendant further states in response that whether the plain language of the statute is clear and unambiguous or ambiguous, then the prosecutor/attorney general's claims in representing themselves in this action rather than the People of the State of Michigan (see paragraph 10, *infra*), should be set forth in an action on their own behalf against Defendant and then file an action to request a declaratory judgment, rather than abuse the power of office and the citizens of this state.

Defendant denies that the Court should enter a declaratory judgment as to the "two points of law" referred to in the Complaint, and asserts that Plaintiff failed to articulate the "two points of law". Moreover, Defendant asserts that if the language of the statutes and regulations is indeed plain and unambiguous as alleged in the Complaint, then the prosecutor admits that no controversy exists. And further, the prosecutor admits that bringing this action is an attempt to obtain a judgment on the definition of the law when no case or controversy exists presently between the prosecutor and Defendant.

Moreover, the prosecutor admits he wants an explanation of the law to have this Court perform the function of his position in a sealed grand jury proceeding of which he previously stated Defendant was not the subject. What is more, the prosecutor admits that he wants this Court, which he knows is the Court presiding over the grand jury, and which he anticipates will preside over any criminal proceeding in the future relative to the

outcome of the grand jury proceeding, to make determinations of the law to relieve the grand jury of its duty, as well as to have a preordained outcome in any potential criminal action in the future. The timing of the prosecutor's actions supports Defendant's position. Indeed, if the prosecutor is truly seeking a declaratory statement of the law, he would not have initiated the grand jury proceeding, assured Defendant she was not the subject of same, and then immediately brought a declaratory action feigning a "controversy". Rather, the prosecutor would have informed Defendant of the prosecuting attorney's intent to bring a grand jury, and then filed the declaratory action.

Defendant asks the Court to deny Plaintiff's request for relief and dismiss the action. Defendant further alleges that Plaintiff has violated MCL 767.19f(1), which provides:

Except as otherwise provided by law, a person shall not publish or make known to any other person any testimony or exhibits obtained or used, or any proceeding conducted, in connection with any grand jury inquiry. A person who violates this subsection is guilty of a misdemeanor punishable by imprisonment in the county jail for not more than 1 year or by a fine of not more than \$1,000.00, or both.

Defendant asks the Court to find and hold Plaintiff in contempt and refer Plaintiff to the Attorney Grievance Commission of the State Bar of Michigan. Defendant argues that Plaintiff has publicly disclosed the "secret" grand jury proceedings in a *Detroit Free Press* article on June 29, 2023, in which he not only violated this statute but also implicated this Court's participation in an attempt to trap Defendant in civil proceedings by making her litigate this case, waive her rights and privileges and potentially those of her clients. Defendant also alleges that Plaintiff should be held in contempt for abusing the process and powers of this Court by attempting to violate Defendant's constitutional and civil rights, by seeking through these "civil declaratory judgment" proceedings to

maliciously prosecute Defendant and to further violate her rights, which conduct is actionable under both Michigan law and the United States Code, e.g., MCL 691.1407 and 42 USC § 1983.

C. Findings

The Court finds that Plaintiff is entitled to a declaration as to the interpretation of the statute. The Court agrees with Plaintiff that the statutory interpretation set forth in the Complaint is supported by the plain language of the statutes. Defendant does not dispute that the statutory language is clear and unambiguous, and has not offered any contrary interpretation of the statutes.

Regarding Defendant's arguments that this Court lacks jurisdiction to hear this matter, and that there is no actual controversy, the Court has already addressed these arguments in its June 6, 2023 Opinion and Order and will not re-address them here.

Regarding Defendant's assertion that the prosecutor has violated MCL 767.19f(1), there is no evidence that the prosecutor has disclosed any testimony, exhibits, or proceeding in violation of the statute. Defendant's assertion that the Special Prosecutor has violated the Michigan Court Rules, federal and state laws and Constitutions, and the Michigan Rules of Professional Conduct are without merit. Defendant's allegations that this action is a "trap" or that it is causing her to waive her rights and privileges and potentially those of her clients are without merit.

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WHEREFORE, IT IS HEREBY ORDERED AND ADJUDGED that

(1) the prohibition in MCL 168.932(b) against the undue possession of voting machines is not limited to events that occur “during the progress of any election or after the closing of the polls and before the final results of the election have been ascertained”;
and

(2) for purposes of MCL 168.932(b), “undue possession” is possession that is not authorized by the Secretary of State or by court order.

This Order resolves the last pending claim and closes the case.

IT IS SO ORDERED.

Phyllis McMillen
Phyllis McMillen, Circuit Judge