

AGREEMENT

This agreement (“Agreement”) dated October 21, 2020 is made in reference to Case No. 20-013685-AW (the “Litigation”). The parties to the Agreement are Alexander Ganik and the American Civil Liberties Union of Michigan (“Plaintiffs”), and Janice M. Winfrey, in her official capacity as City Clerk for the City of Detroit (“Defendant”) (collectively, the “Parties”).

WHEREAS Plaintiffs filed a complaint in the Circuit Court for the County of Wayne on October 16, 2020 alleging that Defendant failed her duty under Michigan law to mail or deliver absentee ballots immediately upon receipt of an absentee ballot application (the “Complaint”);

WHEREAS Plaintiffs also filed a motion for a temporary restraining order and a motion to show cause why a Writ of Mandamus should not issue (the “Motions”);

WHEREAS Defendant denies the allegations in the Complaint and maintains that she has abided by Michigan law;

WHEREAS the Parties concur that a mutually agreed-upon resolution to this matter without further intervention from the Court is the appropriate course of action to address concerns for the 2020 general election;

NOW, THEREFORE in consideration for Plaintiffs’ temporary forbearance from perfecting service of their Complaint to Defendant, Defendant agrees to:

1. Process all currently outstanding ballot applications within 24 hours of execution of the Agreement;
2. Process all ballot applications received (by any method) after execution of the Agreement, within 24 hours of receipt. For the purposes of this Agreement, online ballot applications submitted through the Qualified Voter File (“QVF”) shall be deemed “received” by Defendant on the next business day¹ after the application becomes electronically available to Defendant’s office via the QVF inbox. Notwithstanding any of these provisions, Defendant shall not be required to mail ballots by First-Class Mail after 5 p.m. on Friday, October 30, pursuant to MCL 168.759;
3. Once the Agreement is signed, if Plaintiffs notify Defendant of an individual ballot application that has not been processed within the 24-hour time period, Defendant will process that application within 24 hours’ of receiving notice from Plaintiffs’ counsel and will provide an explanation to Plaintiffs’ counsel as to why that application had not previously been processed;
4. Provide a daily report to Plaintiffs’ counsel stating (a) the number of ballot applications received the prior day (broken down by applications received by

¹ For the purposes of this Agreement, Parties agree that “business day” includes weekends.

mail, online through Secretary of State, or in person) and, (b) the number of ballots issued and applications rejected the prior day (the “Daily Report”). For the first Daily Report, Defendant will provide a cumulative number of ballot applications received (broken down by applications received by mail, online through Secretary of State, or in person) and the number of ballots issued and applications rejected to date;

5. Provide to Plaintiffs’ counsel by email, within 24 hours of the execution of this Agreement, information and data on Defendant’s capacity for processing ballot applications, including identifying each type of task that is necessary to process ballot applications, the number of staff assigned to each task, and the average number of applications they are collectively able to process in a day;
6. Extend voter hotline hours to 9 am – 9 pm and increase staff to ensure calls are answered or returned within 24 hours;
7. Expedite shipping of all ballots in which the voter has requested that the ballot be sent to an address outside Detroit, by sending the ballot using a reliable next-day shipping service. For ballots sent to addresses outside Detroit on or after October 25, 2020, such voters shall also be provided with postage paid, priority return mail envelopes; and
8. Work diligently and in good faith with Plaintiffs to correct mistakes, redress difficulties, and provide ballots as quickly as possible in order to give every voter their best opportunity to vote.

This Agreement shall be binding on Defendant as provided for below. If Plaintiffs have a good faith basis to believe Defendant is violating or has violated the Agreement, Plaintiffs may provide notice to Defendant’s counsel by email, at which point Defendant’s counsel shall immediately accept service of the Summons and Complaint and join Plaintiffs in seeking a hearing on Plaintiffs’ pending Motions that is no later than the business day following Plaintiffs’ notice to Defendant, or the earliest date supplied by the court.

If there has been no identified breach of this Agreement prior to the completion of the November 3, 2020 general election, Plaintiffs will voluntarily withdraw the complaint without perfecting service. Plaintiffs are not required to stay or dismiss the Litigation until after the completion of the November 3, 2020 general election.

IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement as of the date first dated above.

ALEXANDER GANIK
AMERICAN CIVIL LIBERTIES UNION

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Daniel S. Korobkin (P72842)
Counsel for Plaintiffs

JANICE M. WINFREY

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