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January 22, 2025

Mr. David Vensel
Monroe County Board of Commissioners
Monroe County Courthouse
125 East Second Street
Monroe, MI 48161

RE: Legal Opinion Regarding Mark Brant's Status
as a Monroe County Commissioner Serving District 2

Dear Chairman Vensel:

I have been asked to provide a legal opinion regarding Mark Brant's status as a Monroe County Commissioner serving District 2. I will begin this legal opinion with some general background concerning Mr. Brant's current situation.

I. Background Facts.

On or about March 20, 2024, Mark Brant entered a guilty plea in the United States District Court for the Northern District of Ohio to one count of maintaining a drug-involved premises, a violation of 21 United States Code §856(a)(2), which is a federal felony punishable by imprisonment in a federal prison. Federal records have revealed that on or about September 11, 2024, Mr. Brant was sentenced to serve a prison term of eighteen months. I have been advised that Mr. Brant commenced serving his eighteen month prison term in late November, 2024. In a previous legal opinion dated October 31, 2024, I opined that the elected office of County Commissioner occupied by Mr. Brant for the term which would ordinarily end on December 31, 2024, became vacant upon his conviction of the federal felony. My legal opinion was based in part upon MCL §201.3(5) which states that "every office shall become vacant, on the happening of any of the following events, before the expiration of the term of such office: "(5) His conviction of any infamous crime, or of any offense involving a violation of his oath of office." (emphasis supplied) Mr. Brant's felony conviction occurred during his term of office that expired on December 31, 2024. I believe it is important to note that Mark Brant's term of office which expired on December 31, 2024, was vacated by operation of MCL §201.3(5), as opposed to a future term of office for which Mark Brant had not yet been elected.

Mark Brant was then properly on the November 5, 2024, general election ballot for Monroe County Commissioner, District 2, for a new term to begin January 1, 2025. In other words, Mark Brant fulfilled the statutory requirements to be on the ballot for the November 5, 2024 general election. Further, because Mr. Brant's felony conviction did not involve the performance of his duties and/or obligations as a County Commissioner, he was not barred from being on the November 5, 2024 ballot. Mr. Brant was successful in winning the election for Monroe County Commissioner, District 2. It is my information based upon records maintained by the Monroe County Clerk, that Mr. Brant was administered the Oath of Office for the term of office he was elected to in the November 5, 2024 general election prior to being incarcerated in a West Virginia federal penitentiary.

II. Question Presented for Review.

The legal question presented for review is whether under the Constitution of Michigan of 1963 and applicable sections of Michigan Compiled Laws, Mark Brant continues to hold the office of County Commissioner for District 2 to which he won election in the November 5, 2024 general election.

The qualifications for candidacy for the office of County Commissioner and qualifications to remain a County Commissioner during the term of office are set forth in MCL §46.411, which states, as follows:

“A candidate for the office of county commissioner must be a resident and registered voter of the district that he or she seeks to represent and must remain a resident and registered voter to hold his or her office, if elected.” (emphasis supplied)

At first blush the answer to the question presented seems fairly simple and straightforward. If Mark Brant is a resident and registered voter of Raisinville Township, Monroe County, Michigan, he is qualified to hold the office of County Commissioner for District 2 despite his incarceration in a federal penitentiary. Unfortunately, the answer to the issue presented is anything but simple and straightforward. The Constitution of Michigan of 1963 and Michigan statutes must be reviewed and reconciled to even begin to arrive at a sound legal answer to the question and/or issue presented. The key terms to focus upon to answer the question presented are “resident” and “registered voter” and derivatives thereof.

III. Analysis.

A. Residency. Article II, Section 1 of the Constitution of Michigan of 1963 addresses qualifications of electors and residency. Article II, Section 1 of the Constitution of Michigan of 1963 states, as follows:

“§1 Qualifications of electors; residence.

Sec. 1

Every citizen of the United States who has attained the age of 21 years, who has resided in this state six months, and who meets the requirements of local residence provided by law, shall be an elector and qualified to vote in any election except as otherwise provided in this constitution. The legislature shall define residence for voting purposes.”

Mark Brant appears to meet two of the basic requirements of an elector in Michigan. He is over the age of 21 (now 18) and has resided in the State of Michigan for more than six months. Brant also appears to meet the requirements for residency for District 2 of Monroe County, Michigan. Mark Brant has a permanent primary residence situated in Raisinville Township, Monroe County, Michigan, and despite his current incarceration in a federal penitentiary in West Virginia, by statements publicly made he intends to return to his primary residence and place of dwelling in Raisinville Township, Monroe County, Michigan. Based upon Mark Brant’s public statements there is nothing to suggest that Mark Brant intends to make West Virginia his residence.

MCL §8.3f defines the term “inhabitant”. MCL §8.3f states, as follows:

“The word "inhabitant" means a resident of a city, township, village, district or county.”

It is important to recognize that the Revised Statutes of 1846 of which MCL §8.3f is a part, defines “inhabitant” as a resident of a township. This is noteworthy given the fact that MCL §201.3 states in pertinent part that:

“Every office shall become vacant, on the happening of any of the following events, before the expiration of the term of such office:

. . . 4. His ceasing to be an inhabitant of this state; or, if the office be local, of the district, county, township, city, or village, for which he shall have been appointed, or within which the duties of his office are required to be discharged.” MCL §201.3(4) (emphasis supplied)

The language of MCL 8.3f is very important when reviewing MCL 168.11, which is an excerpt of Michigan election law. MCL 168.11 defines the term “residence”, and states as follows:

“ (1) “Residence” as used in this act, for registration and voting purposes means that place at which a person habitually sleeps, keeps his or her personal effects, and has a regular place of

lodging. If a person has more than 1 residence, or if a person has a residence separate from that of his or her spouse, that place at which the person resides the greater part of the time shall be his or her official residence for the purposes of this act. This section does not affect existing judicial interpretation of the term residence.

(2) An elector does not gain or lose a residence while employed in the service of the United States or of this state, while engaged in the navigation of the waters of this state, of the United States, or of the high seas, while a student at an institution of learning, while kept at any state facility or hospital at public expense, or while confined in a jail or prison. Honorably discharged members of the armed forces of the United States or of this state who reside in the veterans' facility established by this state may acquire a residence where the facility is located. The residence of a person who is a patient receiving treatment at a hospital or other facility under the mental health code, 1974 PA 258, MCL 330.1001 to 330.2106, is the village, city, or township where the person resided immediately before admission to the hospital or other facility." (emphasis supplied)

The terms "inhabitant" and "resident" are synonymous terms pursuant to MCL 8.3f, which is an excerpt of the Revised Statutes of 1846. Further, pursuant to MCL 168.11(2) an elector does not gain or lose a residence while confined in a jail or prison. Accordingly, even though Mark Brant is presently incarcerated in a West Virginia federal penitentiary, he remains a resident and inhabitant of Raisinville Township, Monroe County, Michigan, which is situated within District 2.

The residency requirements set forth in MCL 46.411, which mandates that a County Commissioner must remain a resident to hold his or her office, is only one part of the legal question for review. It is my opinion that Mark Brant remains a resident of Raisinville Township, Monroe County, Michigan.

B. Registered Voter/Qualified Elector. The second part of the question presented for review is whether Mark Brant retains his status as a registered voter and qualified elector while incarcerated in the West Virginia federal penitentiary. To answer this question the Michigan Constitution must again be consulted. As heretofore set forth, Article II, Section 1 of the Constitution of Michigan of 1963 states, as follows:

"Sec. 1

Every citizen of the United States who has attained the age of 21 years, who has resided in this state six months, and who meets the requirements of local residence provided by law, shall be an elector

and qualified to vote in any election except as otherwise provided in this constitution. The legislature shall define residence for voting purposes.” (emphasis supplied)

Article II, Section 2 of the Constitution of Michigan of 1963 states, as follows:

“Sec. 2.

The legislature may by law exclude persons from voting because of mental incompetence or commitment to a jail or penal institution.” (emphasis supplied)

It is noteworthy that the phrase “elector and qualified to vote” set forth in Article II, Section 1 of the Constitution of Michigan of 1963 is repeated by the state legislature in MCL 168.10. MCL 168.10 defines the term “qualified elector”, as follows:

“ (1) Except as provided in subsection (2), the term “qualified elector”, as used in this act, means a person who possesses the qualifications of an elector as prescribed in section 1 of article II of the state constitution of 1963 and who has resided in the city or township 30 days.”

MCL 168.10 is an excerpt from Michigan election law. Further, MCL 168.509t(1) states, as follows:

“(1) Notwithstanding another provision of law to the contrary, a person who is a qualified elector in this state and who registers to vote in a manner consistent with the national voter registration act of 1993 is considered a registered voter under this act.” (emphasis supplied)

Accordingly, to be a “registered voter” an individual must also be a qualified elector. Thus, taken to its most logical conclusion, MCL 46.411 requires a County Commissioner to remain a resident, registered voter, and qualified elector to hold his or her office.

This legal opinion previously cited Article II, Section 2 of the Constitution of Michigan of 1963, which states:

“The legislature may by law exclude persons from voting because of mental incompetence or commitment to a jail or penal institution.” (emphasis supplied)

In fact, the Michigan legislature has taken such action. MCL 168.758b states, as follows:

“Sec. 758b.

A person who, in a court of this or another state or in a federal court, has been legally convicted and sentenced for a crime for which the penalty imposed is confinement in jail or prison shall not vote, offer to vote, attempt to vote, or be permitted to vote at an election while confined.” (emphasis supplied)

Given this provision of Michigan election law, the question becomes whether Mark Brant is a “qualified elector”. Mark Brant has been excluded from voting pursuant to Article II, Section 2 of the State Constitution of 1963 and MCL 168.758b by virtue of his confinement in federal prison. During Mr. Brant’s term of confinement he cannot vote. It therefore follows that he is not a “qualified elector”. MCL 168.509t(1) requires an individual to be a qualified elector to be considered a registered voter. MCL 46.411 requires a County Commissioner to remain a “registered voter” to hold his or her office. Accordingly, Mr. Brant is neither a qualified elector or registered voter. Notwithstanding this constitutional and statutory analysis, it is important to recognize that Mark Brant’s prohibition against voting while confined in prison is a temporary prohibition and the right to vote is automatically restored upon release from prison. However, while confined in prison one may not vote, and therefore, it follows that during such period of confinement one is not a qualified elector, or registered elector pursuant to Michigan election law.

IV. Summary.

The Constitution of Michigan of 1963 and Michigan election law do not directly contemplate the situation presented by Mark Brant’s imprisonment in a federal penitentiary. It is clear that Mark Brant remains a resident of Raisinville Township, Monroe County, Michigan, as previously set forth in this letter. What is much less clear and/or unresolved in the law is whether MCL 46.411 disqualifies Mark Brant from holding his office as County Commissioner for District 2 due to his temporary confinement in prison, even if the temporary confinement in prison equates to him not being recognized as a qualified elector and registered voter. This may be a question that can only be answered by a court of competent jurisdiction.

MCL 201.3 does not provide for Mark Brant’s office to be automatically vacated if it is determined, based upon this legal analysis, that Mark Brant was not a qualified elector and thus not a registered voter on January 1, 2025, when he would have otherwise taken office. Given the fact that the office is not automatically vacated, and further given the fact that the Governor of the State of Michigan does not have the authority to remove a County Commissioner from office, there is no official to declare that the office of County Commissioner for District 2 is vacant. One option to consider is the filing of a declaratory action lawsuit seeking a judicial determination that because Mark Brant was not a qualified elector and registered voter on January 1, 2025, as required by MCL 46.411, the office to which he was elected is vacant. It is important

to note that this opinion stands for the proposition that Mark Brant is not a qualified elector by virtue of his confinement in prison. This is a temporary situation. Once Mark Brant is released from prison his status as a qualified elector is automatically restored. Accordingly, this legal opinion relies upon the fact that Mark Brant was not a qualified elector and registered voter on January 1, 2025, when he was supposed to take office as a Commissioner representing District 2.

The following bullet points summarize this legal opinion:

- Mark Brant was legally on the November 5, 2024, general election ballot for Monroe County Commissioner, District 2.
- Mark Brant was a resident and registered voter of District 2 at the time of his candidacy for office and at the time he was elected to office.
- Mark Brant was successful in winning the election for Monroe County Commissioner, District 2 in the November 5, 2024 general election.
- The Oath of Office was properly administered to Mr. Brant prior to his incarceration at the West Virginia federal penitentiary.
- Mark Brant remained a resident of Raisinville Township, Monroe County, Michigan (District 2) even after his confinement in prison pursuant to MCL 168.11.
- Article II, Section 1 of the Michigan Constitution of 1963 sets forth the qualification of electors and states that “every citizen of the United States who has attained the age of 21 years, who has resided in this state six months, and who meets the requirements of local residence provided by law, shall be an elector and qualified to vote in any election except as otherwise provided in this constitution. The legislature shall define residence for voting purposes.”
- Article II, Section 2 of the Michigan Constitution of 1963 states that “the legislature may by law exclude persons from voting because of mental incompetence or commitment to a jail or penal institution.”
- The State legislature at MCL 168.758b has stated that “a person who, in a court of this or another state or in a federal court, has been legally convicted and sentenced for a crime for which the penalty imposed is confinement in jail or prison shall not vote, offer to vote, attempt to vote, or be permitted to vote at an election while confined.”
- MCL 168.10 states that “except as provided in subsection (2), the term “qualified elector”, as used in this act, means a person who possesses the qualifications of an elector as prescribed in section 1 of article II of the state constitution of 1963 and who has resided in the city or township 30 days.”

- On January 1, 2025, when Mark Brant was scheduled to take office, he could not vote in any election. In other words, if an election is held while Mark Brant is incarcerated, he is not qualified to vote in that election by virtue of Article II, Section 2 of the Constitution of Michigan of 1963 and MCL 168.758b.

- MCL 168.509t(1) requires an individual to be a qualified elector to be considered a registered voter.

- On January 1, 2025, Mark Brant was not a registered voter and/or qualified voter which is required for him to continue to hold his office.

- The fact that Mark Brant is disqualified from voting while confined in prison is temporary. Notwithstanding that fact, Mark Brant was not qualified to vote at the commencement of his term of office on January 1, 2025, and therefore not qualified to hold his office as of that time and during the time he is incarcerated.

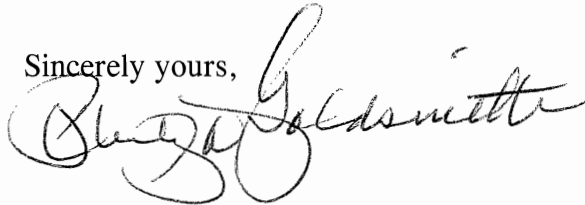
As previously set forth in this legal opinion, the legal analysis set forth in this letter does not provide for the automatic vacation of Mr. Brant's office. Further, no one individual has been legislatively vested with the authority to remove a County Commissioner from elected office under existing law and the present facts. It may take a court of competent jurisdiction to determine by way of declaratory judgment that Mr. Brant was not a registered voter and qualified elector as of January 1, 2025, and as a result thereof did not meet the legal requirements to hold the office to which he was elected.

The alternative to a determination that Mark Brant was not qualified to hold office on January 1, 2025, as set forth in this legal opinion, is to rely upon the recall provision set forth in Michigan election law. MCL 168.951 addresses recall of elected officers. MCL 168.951(1) states in pertinent part that "if an officer's term of office is more than 2 years, a recall petition shall not be filed against the officer until the officer has actually performed the duties of the office to which elected for a period of 1 year during the current term of office and a recall petition shall not be filed against an officer during the last 1 year of the officer's term of office." This provision of Michigan election law presents its own challenges, given the fact that it addresses an officer performing the duties of the office to which elected for a period of one year during the current term of office. The challenge could be whether or not Mark Brant has actually commenced performing the duties of office to which he was elected. In a separate legal opinion dated December 27, 2024, I offered the opinion that Mr. Brant cannot perform the duties of a County Commissioner due to his confinement in prison. Notwithstanding the challenges presented, the recall process could be considered an alternative to a determination that Mr. Brant has failed to fulfill the conditions to hold his office. Obviously, a recall would have to be initiated by registered electors of District 2.

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The issues presented in this letter are difficult to say the least. There is no clear direction under Michigan law regarding the situation Monroe County currently finds itself in. Nevertheless, it is my hope that this legal opinion will assist the Monroe County Board of Commissioners in determining the best course of action under all of the facts and circumstances. As always, I stand ready to discuss this legal opinion with the Board, possibly in a closed session at a special meeting called for that purpose.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Philip D. Goldsmith". The signature is fluid and cursive, with the first name "Philip" and last name "Goldsmith" clearly legible.

Philip D. Goldsmith

PDG/blg

cc: Mr. J. Henry Lievens, Vice Chairman