Case No. _____

STATE OF MICHIGAN
IN THE COURT OF APPEALS
DISTRICT III

BLAKE MAZUREK, ROBIN SMITH, and TIMOTHY SMITH,

PLAINTIFFS / APPELLEES,

v.

KATHY BERDEN, MAYRA RODRIGUEZ, MESHAWN MADDOCK, JOHN HAGGARD, KENT VANDERWOOD, JAMES RENNER, MARI-ANN HENRY, CLIFFORD FROST, STRANGELY GROT, TIMOTHY KING, MICHELE LUNDGREN, and KEN THOMPSON,

DEFENDANTS / APPELLEES,

and

MARIAN SHERIDAN, AMY FACCHINELLO, ROSE ROOK, and HANK CHOATE

DEFENDANTS / APPELLANTS.

ON APPEAL FROM THE SEVENTEENTH JUDICIAL CIRCUIT COURT
FOR KENT COUNTY – CIVIL DIVISION
Circuit Court Case No. 2023-00306-CZ (Hon. Christina Mims)

APPENDIX
OF DEFENDANTS / APPELLANTS MARIAN SHERIDAN, AMY FACCHINELLO, ROSE ROOK, and HANK CHOATE

TABLE OF CONTENTS

Register of Actions

Confirmation of whether charges in criminal cases are misdemeanors or felonies is not available from the Kent County Circuit Court Clerk's Office.

Information is available at http://legislature.mi.gov/documents/mcl/pdf/mcl-chap750.pdf.

MAZUREK, BLAKE et al vs. BERDEN, KATHY et al

HENRY, MARI-ANN - DEFENDANT

Other Parties: MAZUREK, BLAKE - PLAINTIFF
Other Parties: SMITH, ROBIN - PLAINTIFF
Other Parties: SMITH, TIMOTHY - PLAINTIFF
Other Parties: BERDEN, KATHY - DEFENDANT
Other Parties: RODRIGUEZ, MAYRA - DEFENDANT
Other Parties: MADDOCK, MESHAWN - DEFENDANT
Other Parties: HAGGARD, JOHN - DEFENDANT
Other Parties: VANDERWOOD, KENT - DEFENDANT
Other Parties: SHERIDAN, MARIAN - DEFENDANT
Other Parties: RENNER, JAMES - DEFENDANT
Other Parties: FACCHINELLO, AMY - DEFENDANT
Other Parties: ROOK, ROSE - DEFENDANT
Other Parties: CHOATE, HANK - DEFENDANT
Other Parties: FROST, CLIFFORD - DEFENDANT
Other Parties: GROT, STANLEY - DEFENDANT
Other Parties: KING, TIMOTHY - DEFENDANT
Other Parties: LUNDGREN, MICHELE - DEFENDANT
Other Parties: THOMPSON, KEN - DEFENDANT

153	10/22/2025	OPINION & ORDER (DEFENDANTS MOTION FOR SUMMARY DISPOSITION IS DENIED) AND POS
152	08/21/2025	NOTICE OF ENTRY OF APPEARANCE, POS (ATTY MONIKA KOLECI MARKU) MONIKA KOLECI MARKU (Attorney) on behalf of STANLEY GROT (DEFENDANT)
151	08/01/2025	UPDATED APPEARANCE OF COUNSEL, POS (ATTY BRADFORD W SPRINGER) BRADFORD W. SPRINGER (Attorney) on behalf of BLAKE MAZUREK, ROBIN SMITH, TIMOTHY SMITH (PLAINTIFF)
150	04/11/2025	NOTICE OF RECEIPT OF RECORD ON APPEAL FROM THE COURT OF APPEALS #368963
149	03/17/2025	TRANSCRIPT OF MOTION FOR SUMMARY DISPOSITION, HELD ON 2/28/25, BEFORE HON CHRISTINA MIMMS, (26 PGS, TRANSCRIBED BY MR KRISTEN J BRINK)
148	02/28/2025	HELD - TAKEN UNDER ADVISEMENT The following event: MOTION FOR SUMMARY DISPOSITION scheduled for 02/28/2025 at 9:00 am has been resulted as follows: Result: HELD - TAKEN UNDER ADVISEMENT Judge: MIMS, HONORABLE CHRISTINA M Location: ZOOM MEETING ID # 665 859 4577 HELD ON THE RECORD COURT REPORTER: FTR 10C Certificate #:
147	02/28/2025	HELD - TAKEN UNDER ADVISEMENT The following event: MOTION FOR SUMMARY DISPOSITION scheduled for 02/28/2025 at 9:00 am has been resulted as follows: Result: HELD - TAKEN UNDER ADVISEMENT Judge: MIMS, HONORABLE CHRISTINA M Location: ZOOM MEETING ID # 665 859 4577 HELD ON THE RECORD COURT REPORTER: FTR 10C Certificate #:

146	02/28/2025	HELD - TAKEN UNDER ADVISEMENT The following event: MISCELLANEOUS MOTION scheduled for 02/28/2025 at 8:30 am has been resulted as follows: Result: HELD - TAKEN UNDER ADVISEMENT Judge: MIMS, HONORABLE CHRISTINA M Location: 17TH CIRCUIT COURT- COURTROOM #10C HELD ON THE RECORD COURT REPORTER: FTR 10C Certificate #:
145	02/28/2025	HELD - TAKEN UNDER ADVISEMENT The following event: MOTION FOR SUMMARY DISPOSITION scheduled for 02/28/2025 at 8:30 am has been resulted as follows: Result: HELD - TAKEN UNDER ADVISEMENT Judge: MIMS, HONORABLE CHRISTINA M Location: ZOOM MEETING ID # 665 859 4577 HELD ON THE RECORD COURT REPORTER: FTR 10C Certificate #:
144	02/24/2025	SCHEDULED Event: MOTION FOR SUMMARY DISPOSITION Date: 02/28/2025 Time: 9:00 am Judge: MIMS, HONORABLE CHRISTINA M Location: ZOOM MEETING ID # 665 859 4577 Result: HELD - TAKEN UNDER ADVISEMENT
143	02/24/2025	SCHEDULED Event: MOTION FOR SUMMARY DISPOSITION Date: 02/28/2025 Time: 9:00 am Judge: MIMS, HONORABLE CHRISTINA M Location: ZOOM MEETING ID # 665 859 4577 Result: HELD - TAKEN UNDER ADVISEMENT
142	02/10/2025	DEFEDNDANT MADDOCK'S MOTION FOR SUMMARY DISPOSITION, NOTICE OF HEARING (2/28/25 AT 8:30 AM) VIA ZOOM, BRIEF & POS NICHOLAS SOMBERG (Attorney) on behalf of MESHAWN MADDOCK (DEFENDANT)
141	02/10/2025	PLAINTIFFS' RESPONSE TO DEFENDANT HENRY'S MOTION TO REQUIRE PLAINTIFFS TO POST SECURITY BRADFORD W. SPRINGER (Attorney) on behalf of BLAKE MAZUREK, ROBIN SMITH, TIMOTHY SMITH (PLAINTIFF)
140	02/10/2025	PLAINTIFFS' RESPONSE TO DEFENDANTS FROST'S AND HAGGARDS' MOTION TO DISMISS UNDER MCR 2.116(C)(8) AND MCR 2.116(C)(4) BRADFORD W. SPRINGER (Attorney) on behalf of BLAKE MAZUREK, ROBIN SMITH, TIMOTHY SMITH (PLAINTIFF)
139	02/10/2025	PLAINTIFFS' RESPONSE TO DEFENDANTS SHERIDAN'S FACCHINELLO'S, ROOK'S, AND CHOATE'S MOTION TO DISMISS UNDER MCR 2.116(C)(8) BRADFORD W. SPRINGER (Attorney) on behalf of BLAKE MAZUREK, ROBIN SMITH, TIMOTHY SMITH (PLAINTIFF)
138	02/10/2025	PLAINTIFF'S RESPONSE TO DEFENDANT HENRY'S MOTION TO DISMISS UNDER MCR 2.116(C)(8) BRADFORD W. SPRINGER (Attorney) on behalf of BLAKE MAZUREK, ROBIN SMITH, TIMOTHY SMITH (PLAINTIFF)
137	02/10/2025	RENOTICE OF HEARING (DEFENDANTS MOTION FOR SUMMARY DISPOSITION) (2/28/25 AT 9:00 AM), POS KEVIN DEAN KIJEWSKI (Attorney) on behalf of CLIFFORD FROST (DEFENDANT)
136	02/10/2025	POS OF PLAINTIFFS RESPONSE TO DEFENDANT HENRY'S MOTION TO DISMISS UNDER MCR 2.116 (C) (8), PLAINTIFFS RESPONSE TO DEFENDANTS SHERIDAN'S FACCHINELLO'S ROOKS AND CHOATE'S MOTION TO DISMIISS UNDER MCR 2.116 (C) (8), PLAINTIFFS RESPONSE TO DEFENDANT FROST'S AND HAGGARD'S MOTION TO DISMISS UNDER MCR 2.116 (C) (8) AND MCR 2.116 (C) (4), PLAINTIFFS RESPONSE TO DEFENDANT HENRY'S MOTION TO REQUIRE PLAINTIFFS TO POST SECURITY
135	02/10/2025	MOTION FEE PAID Receipt: 1405973 Date: 02/10/2025
134	02/10/2025	SCHEDULED Event: MISCELLANEOUS MOTION Date: 02/28/2025 Time: 8:30 am Judge: ELMORE, HONORABLE CHRISTINA Location: 17TH CIRCUIT COURT- COURTROOM #10C Result: HELD - TAKEN UNDER ADVISEMENT
133	01/30/2025	MOTION FEE PAID Receipt: 1404126 Date: 01/30/2025
132	01/29/2025	DEFENDANT KENT VANDERWOOD'S MOTION OF JOINDER AND POS MICHAEL JOSEPH BOVILL (Attorney) on behalf of KENT VANDERWOOD (DEFENDANT)
131	01/28/2025	POS OF ATTORNEY APPEARANCE OF JOSEPH E. RICHOTTE FOR DEFENDANT KATHY BERDEN AND (2) C8 MOTION FOR SUMMARY DISPOSITION BY DEFENDANT KATHY BERDEN
130	01/28/2025	WITHDRAWAL OF APPEARANCE OF BRIAN P LENNON, POS MICHAEL JOSEPH BOVILL (Attorney) on behalf of KENT VANDERWOOD (DEFENDANT)
129	01/28/2025	MOTION FOR SUMMARY DISPOSITION DEFENDANT KATHY BERDEN, NOTICE OF HEARING (2/28/25 AT 8:30 AM) VIA ZOOM AND BRIEF JOSEPH E. RICHOTTE (Attorney) on behalf of KATHY BERDEN (DEFENDANT)
128	01/28/2025	APPEARANCE JOSEPH E. RICHOTTE (Attorney) on behalf of KATHY BERDEN (DEFENDANT)
127	01/28/2025	MOTION FEE PAID Receipt: 1403879 Date: 01/28/2025
126	01/24/2025	POS OF DEFENDANTS SHERIDAN'S FACCHINELLO'S ROOKS AND CHOATES RENOTICE OF MOTION FOR SUMMARY DISPOSITION PURSUANT TO MCR 2.116 (C) (8) AND AWARD OF ATTORNEYS FEES AND COSTS PURSUANT TO MCL 600.2591
125	01/24/2025	DEFENDANT SHERIDAN'S FACCHINELLO'S ROOK'S AND CHOATE'S RENOTICE OF MOTION FOR SUMMARY DISPOSITION PURSUANT TO MCR 2.116 (C) (8) AND AWARD OF ATTORNEYS FEES AND COSTS PURSUANT TO MCL 600.2591, POS ROBERT JOSEPH MUISE (Attorney) on behalf of KATHY BERDEN, MARIAN SHERIDAN, AMY FACCHINELLO, ROSE ROOK, HANK CHOATE (DEFENDANT)
124	01/23/2025	SCHEDULED Event: MOTION FOR SUMMARY DISPOSITION Date: 02/28/2025 Time: 8:30 am Judge: ELMORE, HONORABLE CHRISTINA Location: ZOOM MEETING ID # 665 859 4577 Result: HELD - TAKEN UNDER ADVISEMENT
123	01/22/2025	DEF. MARI ANN HENRY'S MOTION TO DISMISS PURSUANT TO MCR 2.116(C)(8) AND FOR PLAS.' AND PLAS.', NOTICE OF HEARING (2/28/25 @ 8:30 AM), BRIEF & POS KYLE J. BRISTOW (Attorney) on behalf of MARI-ANN HENRY (DEFENDANT)

122	01/22/2025	MOTION FEE PAID Receipt: 1403194 Date: 01/22/2025
121	01/21/2025	OPINION AND ORDER FROM THE STATE OF MICHIGAN COURT OF APPEALS (AFFIRMED)
120	01/17/2025	OPINION AND ORDER FROM THE STATE OF MICHIGAN COURT OF APPEALS (AFFIRMED)
119	08/13/2024	CANCELLED The following event: CASE EVALUATION HEARING scheduled for 09/26/2024 at 2:30 pm has been resulted as follows: Result: CANCELLED Judge: ZPANEL, SEPTEMBER 26, 2024 Location:
118	07/10/2024	CANCELLED The following event: CASE EVALUATION HEARING scheduled for 08/22/2024 at 4:00 pm has been resulted as follows: Result: CANCELLED Judge: ZPANEL, AUGUST 22, 2024 Location:
117	05/17/2024	NOTICE OF ENTRY OF APPEARANCE, POS JOHN J. GILLOOLY (Attorney) on behalf of STANLEY GROT (DEFENDANT)
116	01/29/2024	CONTENT OF TRANSMISSION TO THE COA (COA #368963)
115	01/29/2024	NOTICE OF TRANSMISSION TO THE COA (COA # 368963) SENT TO THE FOLLOWING PARTIES: MAYRA RODRIGUEZ (DEFENDANT); TIMOTHY KING (DEFENDANT); MICHELE LUNDGREN (DEFENDANT); KEN THOMPSON (DEFENDANT); ; CLINTON W. WESTBROOK (Attorney) on behalf of JAMES RENNER (DEFENDANT); NICHOLAS SOMBERG (Attorney) on behalf of MESHAWN MADDOCK (DEFENDANT); KEVIN DEAN KIJEWSKI (Attorney) on behalf of JOHN HAGGARD, CLIFFORD FROST (DEFENDANT); GARETT KOGER (Attorney) on behalf of KATHY BERDEN (DEFENDANT); BARRY R. POWERS (Attorney) on behalf of MARI-ANN HENRY (DEFENDANT); BRIAN P. LENNON (Attorney) on behalf of KENT VANDERWOOD (DEFENDANT); DEREK S. WILCZYNSKI (Attorney) on behalf of STANLEY GROT (DEFENDANT); ROBERT JOSEPH MUISE (Attorney) on behalf of MARIAN SHERIDAN, AMY FACCHINELLO, ROSE ROOK, HANK CHOATE (DEFENDANT); BRADFORD W. SPRINGER (Attorney) on behalf of BLAKE MAZUREK, ROBIN SMITH, TIMOTHY SMITH (PLAINTIFF)
114	01/29/2024	CLAIM OF APPEAL FEE Receipt: 1350949 Date: 01/29/2024
113	01/26/2024	CLAIM OF CROSS APPEAL - DEF. KATHY BERDEN JOSEPH E. RICHOTTE (Attorney) on behalf of KATHY BERDEN (DEFENDANT)
112	01/10/2024	ORDER FROM THE COURT OF APPEALS, DATED 1/10/24 (CA#368963) (MOTION FOR STAY PENDING APPEAL GRANTED AND FURTHER PROCEEDINGS ARE STAYED PENDING RESOLUTION OF THIS APPEAL OR FURTHER ORDER OF THIS COURT)
111	01/09/2024	DEF. MARI-ANN HENRY'S PAYMENT TO TRIAL COURT FOR PENDING APPEAL, POS KYLE J. BRISTOW (Attorney) on behalf of MARI-ANN HENRY (DEFENDANT)
110	01/09/2024	CLAIM OF APPEAL FEE Receipt: 1348203 Date: 01/09/2024 Receipt 1348203 reversed by 1348325 on 01/10/2024. Receipt: 1348979 Date: 01/16/2024
109	01/06/2024	NOTICE OF FILING OF TRANSCRIPT & POS
108	01/06/2024	TRANSCRIPT OF ADJOURNMENT OF MOTIONS FOR SUMMARY DISPOSITION, HELD ON 1/5/24, BEFORE THE HON. CHRISTINA ELMORE (8 PGS, TRANSCRIBED BY WENDY A. WHITE)
107	01/05/2024	NOTICE OF FILING OF TRANSCRIPT & POS
106	01/05/2024	NOT HELD The following event: MOTION FOR SUMMARY DISPOSITION scheduled for 01/05/2024 at 9:00 am has been resulted as follows: Result: NOT HELD Judge: ELMORE, HONORABLE CHRISTINA Location: ZOOM MEETING ID # 665 859 4577
105	01/05/2024	NOT HELD The following event: MISCELLANEOUS MOTION scheduled for 01/05/2024 at 9:00 am has been resulted as follows: Result: NOT HELD Judge: ELMORE, HONORABLE CHRISTINA Location: ZOOM MEETING ID # 665 859 4577
104	01/05/2024	NOT HELD The following event: MOTION FOR SUMMARY DISPOSITION scheduled for 01/05/2024 at 9:00 am has been resulted as follows: Result: NOT HELD Judge: ELMORE, HONORABLE CHRISTINA Location: ZOOM MEETING ID # 665 859 4577
103	01/05/2024	NOT HELD The following event: MOTION FOR SUMMARY DISPOSITION scheduled for 01/05/2024 at 9:00 am has been resulted as follows: Result: NOT HELD Judge: ELMORE, HONORABLE CHRISTINA Location: ZOOM MEETING ID # 665 859 4577
102	01/05/2024	NOT HELD The following event: MOTION FOR SUMMARY DISPOSITION scheduled for 01/05/2024 at 9:00 am has been resulted as follows: Result: NOT HELD Judge: ELMORE, HONORABLE CHRISTINA Location: ZOOM MEETING ID # 665 859 4577
101	01/05/2024	NOT HELD The following event: MISCELLANEOUS MOTION scheduled for 01/05/2024 at 8:30 am has been resulted as follows: Result: NOT HELD Judge: ELMORE, HONORABLE CHRISTINA Location: ZOOM MEETING ID # 665 859 4577
100	01/05/2024	NOT HELD The following event: MISCELLANEOUS MOTION scheduled for 01/05/2024 at 8:30 am has been resulted as follows: Result: NOT HELD Judge: ELMORE, HONORABLE CHRISTINA Location: ZOOM MEETING ID # 665 859 4577
99	01/04/2024	ORDER FROM THE COURT OF APPEALS, DATED 1/4/24 (COA #368963) (MOTION FOR IMMEDIATE CONSIDERATION GRANTED AND APPLICATION FOR LEAVE TO APPEAL GRANTED)
98	01/04/2024	DEF. STANELY GROT'S JOINDER AND CONCURRENCE IN CO-DEF'S PENDING MOTIONS FOR SUMMARY DISPOSITION AND MOTION TO DISMISS, POS DEREK S. WILCZYNSKI (Attorney) on behalf of STANLEY GROT (DEFENDANT)

97	01/04/2024	DEF. MARI-ANN HENRY'S REPLY TO DEF. MARI-ANN HENRY'S MOTION TO DISMISS PURSUANT TO MCR 2.116(C)(8) AND FOR PLAS. AND PLA'S ATTORNEY TO BE SANTIONED FOR FILING A FIVOLOUS CIVIL ACTION, POS KYLE J. BRISTOW (Attorney) on behalf of MARI-ANN HENRY (DEFENDANT)
96	01/03/2024	DEF. JAMES RENNER'S MOTION OF JOINDER & CONCURRENCE IN CO-DEFS' PENDING MOTIONS FOR SUMMARY DISPOSITION, POS CLINTON W. WESTBROOK (Attorney) on behalf of JAMES RENNER (DEFENDANT)
95	01/03/2024	SCHEDULED Event: MISCELLANEOUS MOTION Date: 01/05/2024 Time: 8:30 am Judge: ELMORE, HONORABLE CHRISTINA Location: ZOOM MEETING ID # 665 859 4577 Result: NOT HELD
94	12/29/2023	POS OF PLA'S RESPONSE TO DEFENDANT HENRY'S MOTION TO DISMISS UNDER MCR 2.116(C)(8); PLAS' RESPONSSE TO DEFS SHERIDAN'S, FACCHINELLO'S, ROOK'S, AND CHOATE'S MOTION TO DISMISS UNDER 2.116(C)(8); PLAS' RESPONSE TO DEFS FROST'S AND HAGGARD'S MOTION TO DISMISS UNDER MCR 2.116(C)(8) AND MCR 2.116(C)(4); PLAS' RESPONSE TO DEFENDANT HENRY'S MOTION TO REQUIRE PLANTIFFS TO POST SECURITY; & POS
93	12/29/2023	APPEARANCE OF ATTORNEY & POS GARETT KOGER (Attorney) on behalf of KATHY BERDEN (DEFENDANT)
92	12/29/2023	DEF. KATHY BERDEN'S NOTICE OF JOINDER & CONCURRENCE IN CO-DEF'S PENDING MOTIONS FOR SUMMARY DISPOSITION GARETT KOGER (Attorney) on behalf of KATHY BERDEN (DEFENDANT)
91	12/29/2023	PLA'S RESPONSE TO DEFS. FROST'S AND HAGGARDS' MOTION TO DISMISS UNDER MCR 2.116(C)(8) AND MCR 2.116(C)(4) BRADFORD W. SPRINGER (Attorney) on behalf of BLAKE MAZUREK, ROBIN SMITH, TIMOTHY SMITH (PLAINTIFF)
90	12/29/2023	PLA'S RESPONSE TO DEFS. SHERIDAN'S FACCHINELLO'S, ROOK'S AND CHOATE'S MOTION TO DISMISS UNDER MCR 2.116(C)(8) BRADFORD W. SPRINGER (Attorney) on behalf of BLAKE MAZUREK, ROBIN SMITH, TIMOTHY SMITH (PLAINTIFF)
89	12/29/2023	PLA'S RESPONSE TO DEF. HENRY'S MOTION TO DISMISS UNDER MCR 2.116(C)(8) BRADFORD W. SPRINGER (Attorney) on behalf of BLAKE MAZUREK, ROBIN SMITH, TIMOTHY SMITH (PLAINTIFF)
88	12/29/2023	PLA'S RESPONSE TO DEF. HENRY'S MOTION TO REQUIRE PLA'S TO POST SECURITY BRADFORD W. SPRINGER (Attorney) on behalf of BLAKE MAZUREK, ROBIN SMITH, TIMOTHY SMITH (PLAINTIFF)
87	12/26/2023	DEF MARI-ANN HENRY'S INTRODUCTORY SUMMARY REGARDING DEF MARI-ANN HENRY'S MOTION FOR SUMMARY DISPOSITION AND FOR SANCTIONS, POS KYLE J. BRISTOW (Attorney) on behalf of MARI-ANN HENRY (DEFENDANT)
86	12/26/2023	ORDER, ADJUDGED, AND DRECREED (ATTY. B. TYLER BROOKS AND THE THOMAS MORE SOCIETY ARE RELIEVED AS COUNSEL FOR THE DEFENDANTS KATHY BERDE, MAYRA RODRIGUEZ, MESHAWN MADDOCK, JOHN HAGGARD, KENT VANDERWOOD, JAMES RENNER, AMY FACCHINELLO, ROSE ROOK, HANK CHOATE, MARI-ANN HENRY, CLIFFORD FROST, STANLEY GROT, TIMOTHY KING, AND MICHELE LUNDGREN. & POS
85	12/26/2023	SCHEDULED Event: MISCELLANEOUS MOTION Date: 01/05/2024 Time: 8:30 am Judge: ELMORE, HONORABLE CHRISTINA Location: ZOOM MEETING ID # 665 859 4577 Result: NOT HELD
84	12/26/2023	SCHEDULED Event: MOTION FOR SUMMARY DISPOSITION Date: 01/05/2024 Time: 9:00 am Judge: ELMORE, HONORABLE CHRISTINA Location: ZOOM MEETING ID # 665 859 4577 Result: NOT HELD
83	12/26/2023	SCHEDULED Event: MISCELLANEOUS MOTION Date: 01/05/2024 Time: 9:00 am Judge: ELMORE, HONORABLE CHRISTINA Location: ZOOM MEETING ID # 665 859 4577 Result: NOT HELD
82	12/20/2023	DEF. MARI-ANN HENRY'S MOTION FOR PLAS TO BE REQUIRED TO POST SECURITY FOR COSTS IN THE SUM TOTAL AMOUNT OF $300,000.00, NOTICE OF HEARING (1/5/24 AT 9:00 AM) VIA ZOOM, BRIEF & POS KYLE J. BRISTOW (Attorney) on behalf of MARI-ANN HENRY (DEFENDANT)
81	12/20/2023	MOTION FEE PAID Receipt: 1345778 Date: 12/20/2023
80	12/18/2023	FIRST REQUESTS FOR ADMISSION TO DEFENDANT JAMES RENNER & POS BRADFORD W. SPRINGER (Attorney) on behalf of BLAKE MAZUREK, ROBIN SMITH, TIMOTHY SMITH (PLAINTIFF)

79	12/18/2023	POS OF ORDER DENYING DEFENDANT SHERIDAN'S MOTION TO STAY DISCOVERY OR, ALTERNATIVELY, FOR A PROTECTIVE ORDER, ENTERED BY THE COURT ON 12/4/23; PLA'S FIRST REQUESTS FOR ADMISSION TO DEFENDANT KATHY BERDEN; PLA'S FIRST REQUESTS FOR ADMISSION TO DEFENDANT MAYRA RODRIGUEZ; PLA'S FIRST REQUESTS FOR ADMISSION TO DEFENDANTMESHAWN MADDOCK; PLA'S FIRST REQUESTS FOR ADMISSION TO DEFENDANT JOHN HAGGARD; PLA'S FIRST REQUESTS FOR ADMISSION TO DEFENDANT KENT VANDERWOOD; PLA'S FIRST REQUESTS FOR ADMISSION TO DEFENDANT MARIAN SHERIDAN; PLA'S FIRST REQUESTS FOR ADMISSION TO DEFENDANT AMY FACCHINELLO; PLA'S FIRST REQUESTS FOR ADMISSION TO DEFENDANT ROSE ROCK; PLA'S FIRST REQUESTS FOR ADMISSION TO DEFENDANT HANK CHOATE; PLA'S FIRST REQUESTS FOR ADMISSION TO DEF MARI-ANN HENRY; PLA'S FIRST REQUESTS FOR ADMISSION TO DEF CHILLORD FROST; PLA'S FIRST REQUESTS FOR ADMISSION TO DEFENDANT STANLEY GROT; PLA'S FIRST REQUESTS FOR ADMISSION TO DEFENDANT TIMOTHY KING; PLA'S FIRST REQUESTS FOR ADMISSION TO DEFENDANT MICHELE LUNDGREN; PLA'S FIRST REQUESTS FOR ADMISSION TO DEFENDANT KEN THOMPSON; PLA'S FIRST INTERROGATORIES TO DEF KATHY BERDEN; PLA'S FIRST INTERROGATORIES TO DEF MAYRA RODIGUEZ; PLA'S FIRST INTERROGATORIES TO DEF MESHAWN MADDOCK; PLA'S FIRST INTERROGATORIES TO DEF JOHN HAGGARD; PLA'S FIRST INTERROGATORIES TO DEF KENT VANDERWOOD; PLA'S FIRST INTERROGATORIES TO DEF MARIAN SHERIDAN; PLA'S FIRST INTERROGATORIES TO DEF AMY FACCHINELLO; PLA'S FIRST INTERROGATORIES TO DEF ROSE ROOK; PLA'S FIRST INTERROGATORIES TO DEF HANK CHOATE; PLA'S FIRST INTERROGATORIES TO DEF MARI-ANN HENRY; PLA'S FIRST INTERROGATORIES TO DEF CLIFFORD FROST; PLA'S FIRST INTERROGATORIES TO DEF STANLEY GROT; PLA'S FIRST INTERROGATORIES TO DEF TIMOTHY KING; PLA'S FIRST INTERROGATORIES TO DEF MICHELE LUNDGREN; PLA'S FIRST INTERROGATORIES TO DEF KEN THOMPSON; & POS
78	12/15/2023	DEFS' MOTION FOR SUMMARY DISPOSITION, NOTICE OF HEARING (1/5/23 AT 9:00 AM) VIA ZOOM, BRIEF & POS
77	12/15/2023	MOTION FEE PAID Receipt: 1345505 Date: 12/18/2023
76	12/15/2023	DEFS SHERIDAN'S, FACCHINELLO'S, ROOK'S, AND CHOATES MOTION FOR SUMMRY DISPOSITION PURSUANT TO MCR 2.116(C)(8) AND AWARD OF ATTORNEYS' FEES AND COSTS PURSUANT TO MCL 600.2591, NOTICE OF HEARING (1/5/24 AT 9:00 AM) VIA ZOOM, BRIEF & POS ROBERT JOSEPH MUISE (Attorney) on behalf of MARIAN SHERIDAN, AMY FACCHINELLO, ROSE ROOK, HANK CHOATE (DEFENDANT)
75	12/15/2023	SCHEDULED Event: MOTION FOR SUMMARY DISPOSITION Date: 01/05/2024 Time: 9:00 am Judge: ELMORE, HONORABLE CHRISTINA Location: ZOOM MEETING ID # 665 859 4577 Result: NOT HELD
74	12/15/2023	MOTION FEE PAID Receipt: 1345182 Date: 12/15/2023
73	12/14/2023	SCHEDULED Event: MOTION FOR SUMMARY DISPOSITION Date: 01/05/2024 Time: 9:00 am Judge: ELMORE, HONORABLE CHRISTINA Location: ZOOM MEETING ID # 665 859 4577 Result: NOT HELD
72	12/13/2023	POS (ORDER DENYING DEF SHERIDAN'S MOTION TO STAY DISCOVERY, OR ALTERNATIVELY, FOR A PROTECTIVE ORDER, ENTERED BY THE COURT ON DECEMBER 4, 2023; PLAS' FIRST REQUESTS FOR ADMISSIONS TO DEFS AND POS
71	12/13/2023	FIRST REQUESTS FOR ADMISSION TO DEF. KEN THOMPSON BRADFORD W. SPRINGER (Attorney) on behalf of BLAKE MAZUREK, ROBIN SMITH, TIMOTHY SMITH (PLAINTIFF)
70	12/13/2023	FIRST REQUESTS FOR ADMISSION TO DEF. MICHELE LINDGREN BRADFORD W. SPRINGER (Attorney) on behalf of BLAKE MAZUREK, ROBIN SMITH, TIMOTHY SMITH (PLAINTIFF)
69	12/13/2023	FIRST REQUESTS FOR ADMISSION TO DEF. TIMOTHY KING BRADFORD W. SPRINGER (Attorney) on behalf of BLAKE MAZUREK, ROBIN SMITH, TIMOTHY SMITH (PLAINTIFF)
68	12/13/2023	FIRST REQUESTS FOR ADMISSION TO DEF. CLIFFORD FROST BRADFORD W. SPRINGER (Attorney) on behalf of BLAKE MAZUREK, ROBIN SMITH, TIMOTHY SMITH (PLAINTIFF)
67	12/13/2023	FIRST REQUESTS FOR ADMISSION TO DEF. STANLEY GROT BRADFORD W. SPRINGER (Attorney) on behalf of BLAKE MAZUREK, ROBIN SMITH, TIMOTHY SMITH (PLAINTIFF)
66	12/13/2023	FIRST REQUESTS FOR ADMISSION TO DEF. MARI-ANN HENRY BRADFORD W. SPRINGER (Attorney) on behalf of BLAKE MAZUREK, ROBIN SMITH, TIMOTHY SMITH (PLAINTIFF)
65	12/13/2023	FIRST REQUESTS FOR ADMISSION TO DEF. HANK CHOATE BRADFORD W. SPRINGER (Attorney) on behalf of BLAKE MAZUREK, ROBIN SMITH, TIMOTHY SMITH (PLAINTIFF)
64	12/13/2023	FIRST REQUESTS FOR ADMISSION TO DEF. ROSE ROOK BRADFORD W. SPRINGER (Attorney) on behalf of BLAKE MAZUREK, ROBIN SMITH, TIMOTHY SMITH (PLAINTIFF)
63	12/13/2023	FIRST REQUESTS FOR ADMISSION TO DEF. AMY FACCHINELLO BRADFORD W. SPRINGER (Attorney) on behalf of BLAKE MAZUREK, ROBIN SMITH, TIMOTHY SMITH (PLAINTIFF)
62	12/13/2023	FIRST REQUESTS FOR ADMISSION TO DEF. MARIAN SHERIDAN BRADFORD W. SPRINGER (Attorney) on behalf of BLAKE MAZUREK, ROBIN SMITH, TIMOTHY SMITH (PLAINTIFF)
61	12/13/2023	FIRST REQUESTS FOR ADMISSION TO DEF. KENT VANDERWOOD BRADFORD W. SPRINGER (Attorney) on behalf of BLAKE MAZUREK, ROBIN SMITH, TIMOTHY SMITH (PLAINTIFF)

60	12/13/2023	FIRST REQUESTS FOR ADMISSION TO DEF. JOHN HAGGARD BRADFORD W. SPRINGER (Attorney) on behalf of BLAKE MAZUREK, ROBIN SMITH, TIMOTHY SMITH (PLAINTIFF)
59	12/13/2023	FIRST REQUESTS FOR ADMISSION TO DEF. MESHAWN MADDOCK BRADFORD W. SPRINGER (Attorney) on behalf of BLAKE MAZUREK, ROBIN SMITH, TIMOTHY SMITH (PLAINTIFF)
58	12/13/2023	FIRST REQUESTS FOR ADMISSION TO DEF. MAYRA RODRIGUEZ BRADFORD W. SPRINGER (Attorney) on behalf of BLAKE MAZUREK, ROBIN SMITH, TIMOTHY SMITH (PLAINTIFF)
57	12/13/2023	FIRST REQUESTS FOR ADMISSION TO DEF. KATHY BERDEN BRADFORD W. SPRINGER (Attorney) on behalf of BLAKE MAZUREK, ROBIN SMITH, TIMOTHY SMITH (PLAINTIFF)
56	12/13/2023	APPEARANCE AND POS CLINTON W. WESTBROOK (Attorney) on behalf of JAMES RENNER (DEFENDANT); MATTHEW G. BORGULA (Attorney) on behalf of JAMES RENNER (DEFENDANT)
55	12/12/2023	SCHEDULING ORDER
54	12/12/2023	DEF. MARI-ANN HENRY'S MOTION TO DISMISS PURSUANT TO MCR 2.116(C)(8) AND FOR PLAS AND PLAS' ATTORNEY TO BE SANCTIONED FOR FILING A FRIVOLOUS CIVIL ACTION, NOTICE OF HEARING (1/5/24 AT 9:00 AM) VIA ZOOM, BRIEF & POS KYLE J. BRISTOW (Attorney) on behalf of MARI-ANN HENRY (DEFENDANT)
53	12/12/2023	MOTION FEE PAID Receipt: 1344463 Date: 12/12/2023
52	12/11/2023	SCHEDULED Event: MOTION FOR SUMMARY DISPOSITION Date: 01/05/2024 Time: 9:00 am Judge: ELMORE, HONORABLE CHRISTINA Location: ZOOM MEETING ID # 665 859 4577 Result: NOT HELD
51	12/08/2023	ORDER RELIEVING ATTORNEY B. TYLER BROOKS AND THE THOMAS MORE SOCIETY AS COUNSEL FOR DEFS.; DEF.S SHALL BE DEEMED PRO SE UNLESS AND UNTIL ANOTHER ATTY. ENTERS AN APPEARANCE FOR DEF.
50	12/08/2023	GENERAL APPEARANCE OF ATTORNEY FOR DEF. JOHN HAGGARD AND POS KEVIN DEAN KIJEWSKI (Attorney) on behalf of JOHN HAGGARD (DEFENDANT)
49	12/08/2023	NOTICE OF APPEARANCE AND POS ROBERT JOSEPH MUISE (Attorney) on behalf of AMY FACCHINELLO, ROSE ROOK, HANK CHOATE (DEFENDANT)
48	12/07/2023	APPEARANCE OF ATTORNEY & POS BARRY R. POWERS (Attorney) on behalf of MARI-ANN HENRY (DEFENDANT)
47	12/06/2023	NOTICE OF SUBMISSION OF ORDER UNDER 7-DAY RULE [MCR 2.602(B)(3)] WITH PROPOSED ORDER & POS BRENNAN TYLER BROOKS (Attorney) on behalf of KATHY BERDEN, MAYRA RODRIGUEZ, MESHAWN MADDOCK, JOHN HAGGARD, KENT VANDERWOOD, MARIAN SHERIDAN, JAMES RENNER, AMY FACCHINELLO, ROSE ROOK, HANK CHOATE, MARI-ANN HENRY, CLIFFORD FROST, STANLEY GROT, TIMOTHY KING, MICHELE LUNDGREN, KEN THOMPSON (DEFENDANT)
46	12/05/2023	APPEARANCE OF ATTORNEY ROBERT JOSEPH MUISE (Attorney) on behalf of AMY FACCHINELLO, ROSE ROOK, HANK CHOATE (DEFENDANT)
45	12/05/2023	GENERAL APPEARANCE OF ATTORNEY FOR DEFENDANT JOHN HAGGARD & POS KEVIN DEAN KIJEWSKI (Attorney) on behalf of JOHN HAGGARD (DEFENDANT)
44	12/04/2023	TRANSCRIPT ON SCHEDULING CONFERENCE, HELD ON 11/29/23, BEFORE HON. CHRISTINA ELMORE (PGS 33, TRANSCRIBED BY WENDY WHITE)
43	12/04/2023	TRANSCRIPT OF MOTION TO WITHDRAW AS ATTORNEY AND MOTION TO STAY DISCOVERY OR, ALTERNATIVELY, FOR A PROTECTIVE ORDER, HELD ON 11/17/23, BEFORE THE HON. CHRISTINA ELMORE (28 PGS, TRANSCRIBED BY WENDY A. WHITE)
42	12/04/2023	ORDER DENYING DEF. SHERIDAN'S MOTION TO STAY DISCOVERY OR, ALTERNATIVELY, FOR A PROTECTIVE ORDER
41	12/04/2023	APPEARANCE OF ATTORNEY NICHOLAS SOMBERG (Attorney) on behalf of MESHAWN MADDOCK (DEFENDANT)
40	12/04/2023	POS OF GENERAL APPEARANCE OF ATTORNEY FOR DEFENDANT CLIFFORD FROST; NOTICE OF WITHDRAWAL FROM LIMITED APPEARNCE FOR DEFENDANT CLIFFORD FROST & POS
39	12/01/2023	APPEARANCE OF ATTORNEY & POS KYLE J. BRISTOW (Attorney) on behalf of MARI-ANN HENRY (DEFENDANT)
38	11/30/2023	APPEARANCE OF ATTORNEYS & POS CLINTON W. WESTBROOK (Attorney) on behalf of JAMES RENNER (DEFENDANT); MATTHEW G. BORGULA (Attorney) on behalf of JAMES RENNER (DEFENDANT)
37	11/30/2023	NOTICE OF LIMITED APPEARANCE FOR DEF CLIFFORD FROST & POS KEVIN DEAN KIJEWSKI (Attorney) on behalf of CLIFFORD FROST (DEFENDANT)
36	11/30/2023	NOTICE OF SUBMISSION OF ORDER UNDER 7-DAY RULE [MCR 2.602(B)(3)] WITH PROPOSED ORDER & POS BRENNAN TYLER BROOKS (Attorney) on behalf of KATHY BERDEN, MAYRA RODRIGUEZ, MESHAWN MADDOCK, JOHN HAGGARD, KENT VANDERWOOD, MARIAN SHERIDAN, JAMES RENNER, AMY FACCHINELLO, ROSE ROOK, HANK CHOATE, MARI-ANN HENRY, CLIFFORD FROST, STANLEY GROT, TIMOTHY KING, MICHELE LUNDGREN, KEN THOMPSON (DEFENDANT)

35	11/29/2023	GENERAL APPEARANCE OF ATTORNEY FOR DEFENDANT CLIFFORD FROST, NOTICE OF WITHDRAWAL FROM LIMITED APPEARANCE FOR DEFENDANT CLIFFORD FROST & POS KEVIN DEAN KIJEWSKI (Attorney) on behalf of CLIFFORD FROST (DEFENDANT)
34	11/29/2023	APPEARANCE OF ATTORNEY KYLE J. BRISTOW KYLE J. BRISTOW (Attorney) on behalf of MARI-ANN HENRY (DEFENDANT)
33	11/29/2023	NOTICE OF LIMITED APPEARANCE FOR DEFENDANT CLIFFORD FROST & POS KEVIN DEAN KIJEWSKI (Attorney) on behalf of CLIFFORD FROST (DEFENDANT)
32	11/29/2023	APPEARANCE OF ATTORNEY, NOTICE OF APPEARANCE, & POS DEREK S. WILCZYNSKI (Attorney) on behalf of STANLEY GROT (DEFENDANT)
31	11/29/2023	HELD The following event: SCHEDULING CONFERENCE scheduled for 11/29/2023 at 2:00 pm has been resulted as follows: Result: HELD Judge: ELMORE, HONORABLE CHRISTINA Location: ZOOM MEETING ID # 665 859 4577 HELD ON THE RECORD COURT REPORTER: FTR 10C Certificate #:
30	11/28/2023	SUBSTITUTION AND ORDER OF ATTORNEY (ATTY. BRIAN P. LENNON SUBSTITUTED IN PLACE OF ATTY. B. TYLER BROOKS FOR DEF KENT VANDERWOOD)
29	11/27/2023	NOTICE OF SUBMISSION OF ORDER UNDER SEVEN DAY RULE WITH PROPOSED ORDER & POS BRADFORD W. SPRINGER (Attorney) on behalf of BLAKE MAZUREK, ROBIN SMITH, TIMOTHY SMITH (PLAINTIFF)
28	11/17/2023	MOTION GRANTED The following event: MOTION TO WITHDRAW AS ATTORNEY HEARING scheduled for 11/17/2023 at 8:30 am has been resulted as follows: Result: MOTION GRANTED Judge: ELMORE, HONORABLE CHRISTINA Location: ZOOM MEETING ID # 665 859 4577 HELD ON THE RECORD COURT REPORTER: FTR 10C Certificate #:
27	11/17/2023	MOTION DENIED The following event: MOTION TO STAY scheduled for 11/17/2023 at 8:30 am has been resulted as follows: Result: MOTION DENIED Judge: ELMORE, HONORABLE CHRISTINA Location: ZOOM MEETING ID # 665 859 4577 HELD ON THE RECORD COURT REPORTER: FTR 10C Certificate #:
26	11/13/2023	RESPONSE TO MOTION TO STAY AND POS BRADFORD W. SPRINGER (Attorney) on behalf of BLAKE MAZUREK, ROBIN SMITH, TIMOTHY SMITH (PLAINTIFF)
25	11/03/2023	POS AMENDS AND SUPPLEMENTS THE CERTIFICATES OF SERVICE COUNSEL'S PREVIOUSLY SERVED MOTION TO WITHDRAWAL AS COUNSEL AND NOTICE OF MOTION TO CERTIFY
24	10/30/2023	SCHEDULED Event: MOTION TO WITHDRAW AS ATTORNEY HEARING Date: 11/17/2023 Time: 8:30 am Judge: ELMORE, HONORABLE CHRISTINA Location: ZOOM MEETING ID # 665 859 4577 MOTION TO WITHDRAW AS COUNSEL FOR DEFENDANTS. TYLER BROOKS, ATTORNEY FOR DEFENDANTS Result: MOTION GRANTED
23	10/27/2023	MOTION TO WITHDRAW AS COUNSEL FOR DEFENDANTS, NOTICE OF MOTION (11/17/23 AT 8:30 AM) AND POS BRENNAN TYLER BROOKS (Attorney) on behalf of KATHY BERDEN, MAYRA RODRIGUEZ, MESHAWN MADDOCK, JOHN HAGGARD, KENT VANDERWOOD, MARIAN SHERIDAN, JAMES RENNER, AMY FACCHINELLO, ROSE ROOK, HANK CHOATE, MARI-ANN HENRY, CLIFFORD FROST, STANLEY GROT, TIMOTHY KING, MICHELE LUNDGREN, KEN THOMPSON (DEFENDANT)
22	10/27/2023	MOTION FEE PAID Receipt: 1338362 Date: 10/27/2023
21	10/24/2023	SCHEDULED Event: MOTION TO STAY Date: 11/17/2023 Time: 8:30 am Judge: ELMORE, HONORABLE CHRISTINA Location: ZOOM MEETING ID # 665 859 4577 Result: MOTION DENIED
20	10/23/2023	MOTION TO STAY DISCOVERY OR, ALTERNATIVELY, FOR A PROTECTIVE ORDER, MEMORANDUM, NOTICE OF MOTION (11/17/23 AT 8:30 AM) VIA ZOOM AND POS ROBERT JOSEPH MUISE (Attorney) on behalf of MARIAN SHERIDAN (DEFENDANT)
19	10/23/2023	MOTION FEE PAID Receipt: 1337570 Date: 10/23/2023
18	10/17/2023	NOTICE TO APPEAR (SCHEDULING CONFERENCE) (11/29/23 AT 2:00 PM) VIA ZOOM AND POS
17	10/17/2023	SCHEDULING CONFERENCE (NOTICE & PROOF) Event: SCHEDULING CONFERENCE Date: 11/29/2023 Time: 2:00 pm Judge: ELMORE, HONORABLE CHRISTINA Location: ZOOM MEETING ID # 665 859 4577 Result: HELD
16	10/13/2023	POS (PLAINTIFFS' SUPPLEMENTAL INITIAL DISCLOSURES (DOCUMENTS BATES NUMBERED 000116-000125) UNDER MCR 2.302(A) AND POS)
15	10/11/2023	STIPULATION AND ORDER OF SUBSTITUTION OF ATTORNEY (ATTY ROBERT MUISE SUBSTITUTED IN PLACE OF ATTY B. TYLER BROOKS FOR DEF, MARIAN SHERIDAN) AND POS
14	08/21/2023	POS OF PLA'S INITIAL DISCLOSURES (AND DOCUMENTS NUMBERED 000001-000115) UNDER MCR 2.302 (A) & POS
13	06/26/2023	JUDGMENT FROM THE US DSITRICT COURT, WESTERN DISTRICT OF MICHIGAN - SOUTHERN DIVISION, DATED 6/21/23 (CASE REMANDED TO THE STATE COURT FROM WHICH IT WAS REMOVED)

12	02/24/2023	DEFS' NOTICE OF REMOVAL UNDER 28 USC §§ 1441 AND 1442 TO US DISTRICT COURT WESTERN DISTRICT OF MICHIGAN BRENNAN TYLER BROOKS (Attorney) on behalf of KATHY BERDEN, MAYRA RODRIGUEZ, MESHAWN MADDOCK, JOHN HAGGARD, KENT VANDERWOOD, MARIAN SHERIDAN, JAMES RENNER, AMY FACCHINELLO, ROSE ROOK, HANK CHOATE, MARI-ANN HENRY, CLIFFORD FROST, STANLEY GROT, TIMOTHY KING, MICHELE LUNDGREN, KEN THOMPSON (DEFENDANT)
11	02/24/2023	SUMMONS RETURNED (SERVED ON 1/24/2023) HANK CHOATE (DEFENDANT);
10	02/14/2023	ANSWER TO COMPLAINT FOR DECLARATORY AND OTHER RELIEF, AFFIRMATIVE DEFENSES, JURY DEMAND AND POS BRENNAN TYLER BROOKS (Attorney) on behalf of JOHN HAGGARD, JAMES RENNER, ROSE ROOK, HANK CHOATE (DEFENDANT)
9	02/08/2023	SUMMONS RETURNED (SERVED ON 1/24/2023) JOHN HAGGARD (DEFENDANT);
8	02/08/2023	SUMMONS RETURNED (SERVED ON 1/24/2023) JAMES RENNER (DEFENDANT);
7	02/08/2023	SUMMONS RETURNED (SERVED ON 1/23/2023) ROSE ROOK (DEFENDANT);
6	01/11/2023	JURY DEMAND - PLAINTIFFS DEMAND TRIAL BY JURY
5	01/11/2023	JURY DEMAND Receipt: 1294459 Date: 01/11/2023
4	01/11/2023	ELECTRONIC FILING FEE Receipt: 1294459 Date: 01/11/2023
3	01/11/2023	FILING FEES FOR NEW CASE Receipt: 1294459 Date: 01/11/2023
2	01/11/2023	COMPLAINT FOR DECLARATORY AND OTHER RELIEF (16 PGS & 90 PGS EXHIBITS)
1	01/11/2023	SUMMONS ISSUED KATHY BERDEN (DEFENDANT); MAYRA RODRIGUEZ (DEFENDANT); MESHAWN MADDOCK (DEFENDANT); JOHN HAGGARD (DEFENDANT); KENT VANDERWOOD (DEFENDANT); MARIAN SHERIDAN (DEFENDANT); JAMES RENNER (DEFENDANT); AMY FACCHINELLO (DEFENDANT); ROSE ROOK (DEFENDANT); HANK CHOATE (DEFENDANT); MARI-ANN HENRY (DEFENDANT); CLIFFORD FROST (DEFENDANT); STANLEY GROT (DEFENDANT); TIMOTHY KING (DEFENDANT); MICHELE LUNDGREN (DEFENDANT); KEN THOMPSON (DEFENDANT);

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF KENT

BLAKE MAZUREK, ROBIN SMITH, and TIMOTHY SMITH,

Plaintiffs,

v

KATHY BERDEN, et al

Defendants.
_____/

Case No. 23-00306-CZ

OPINION & ORDER

OPINION & ORDER

At a session of said Court, held in the Kent County Courthouse in the City of Grand Rapids, in said county on October 22, 2025

Present: HON. CHRISTINA MIMS
Circuit Court Judge

Defendants filed Motions for Summary Disposition and a hearing was held on February 28, 2025. The Court subsequently took the motions under advisement. Proceedings were then temporarily stayed pending resolution of an interlocutory appeal and ongoing criminal proceedings involving certain Defendants. The Michigan Court of Appeals has noted that at least one Defendant has a pending motion for summary disposition under MCR 2.116(C)(8). Because such motions challenge the legal sufficiency of the pleadings, this Court must resolve them before discovery may recommence. *Maiden v Rozwood*, 461 Mich 109, 119; 594 NW2d 817 (1999).

For the reasons discussed below, Defendants' motions for summary disposition are DENIED.

I. FACTUAL BACKGROUND

Plaintiffs were nominated by the Michigan Democrat Party to serve as three of the sixteen electors on the Democratic slate of presidential electors for the 2020 presidential election. Defendants are the sixteen nominated Michigan Republican Party electors for the 2020 presidential election. Joe Biden won the Michigan election by more than 154,000 votes. As such, Plaintiffs and the other Democrat Party electors cast their sixteen electoral college votes for Joe Biden on December 14, 2020. Defendants allegedly submitted their own election certificate as electors in favor of Donald Trump to the National Archives and the United States Senate.

II. STANDARD OF REVIEW

Defendants filed for summary disposition pursuant to MCR 2.116(C)(8) regarding Plaintiffs claims of false light, statutory conversion, civil conspiracy, and declaratory judgment. Summary disposition may be granted where "[t]he opposing party has failed to state a claim on which relief can be granted." MCR 2.116(C)(8). When deciding a motion on this ground, a court may consider only the parties' pleadings. MCR 2.116(G)(5). "[A]ll well-pleaded allegations are accepted as true, and construed most favorably to the non-moving party." *Wade v Dep't of Corrections*, 439 Mich 158, 162-163 (1992). "A mere statement of a pleader's conclusions and statements of law, unsupported by allegations of fact, will not suffice to state a cause of action." *Varela v Spanski*, 329 Mich App 58, 79 (2019) (plaintiff failed to plead facts in support of his claim but instead made conclusory statements and conclusions of law). However, "[a] plaintiff or counterplaintiff is not generally required to cite the specific statutory provision under which he is proceeding in order to state a claim." *City of Wayne v Miller*, ___ Mich App ___, ___ (2024). "Rather, pleadings need only contain factual allegations sufficient to reasonably inform the adverse party of the nature of the claims the adverse party is called on to defend." *Id.* at ___ (cleaned up). A motion under MCR 2.116(C)(8) may be granted only where the claims alleged are "so clearly unenforceable as a matter of law that no factual development could possibly justify recovery." *Wade*, 439 Mich at 163.

III. LAW & ANALYSIS

Given that all Defendants raise similar arguments in their motions, the Court addresses them collectively.

A. False Light

Defendants argue Plaintiffs fail to state a claim for false light. Defendants Frost and Haggard specifically contend the claim rests solely on the allegation the Republican Certificate was forged, which they characterize as a form of political protest.

However, Plaintiffs allege Defendant submitted fraudulent electoral certificates purporting to be official state documents to the United States Senate and National Archives. Plaintiffs assert

the documents falsely represented Defendants as legitimate electors; thereby implying Plaintiffs were not legitimate electors and suggesting Plaintiffs were engaged in fraud. Plaintiffs contend these false representations placed them in a highly objectionable and misleading light, contributing to widespread disinformation and reputational harm.

Under Michigan law, a claim for false light requires the Defendants widely disseminated information that was false and highly objectionable, placing Plaintiffs in a false position in the public eye. *Derderian v Genesys Health Care Sys*, 263 Mich App 364, 385 (2004). Taking Plaintiffs' well-pleaded factual allegations as true and construing them in the light most favorable to Plaintiffs as required under MCR 2.116(C)(8), the Court finds Plaintiffs have stated a legally sufficient claim for false light invasion of privacy. To the extent Defendants assert their actions constituted political expression or protest, such arguments raise factual issues not appropriately resolved at the pleadings stage. Accordingly, summary disposition on this claim is denied.

B. Statutory Conversion

Defendants Berden and Henry argue Plaintiffs fail to state a claim for statutory conversion under MCL 600.2919a. They assert public office cannot be considered "property" for purposes of conversion and is not tangible property subject to conversion.

Plaintiffs allege a property interest in their official status as electors, memorialized in the two genuine election certificates attached to the Complaint. They assert Defendants wrongfully exercised dominion over that interest by fraudulently asserting themselves as the duly elected electors, signing false certificates, and submitting those certificates to the federal government to serve as the official public record.

Defendants cite *Aguirre v State of Michigan*, 315 Mich App 706, 718 (2016), for the proposition that public office is a "special trust or charge," not property. While that proposition is accurate, Plaintiffs argue this case presents a novel application of the statutory conversion statute. Specifically, Plaintiffs contend the misuse of their official status as electors, by means of a forged official document submitted to the federal government, constitutes conversion of an intangible property interest.

Though Plaintiffs acknowledge applying statutory conversion to this context is novel and may present an issue of first impression, they cite caselaw recognizing certain intangible property rights may be subject to conversion. Viewing the allegations in the light most favorable to Plaintiffs and accepting them as true, the Court finds the claim for statutory conversion is not so clearly unenforceable as a matter of law that summary disposition would be appropriate under MCR 2.116(C)(8).

C. Civil Conspiracy

Defendants Frost and Haggard argue Plaintiffs have failed to plead a viable civil conspiracy claim because no underlying tort has been established.

A civil conspiracy requires a combination of two or more individuals who, through concerted action, pursue either an unlawful objective or a lawful objective through unlawful means resulting in damage. *Fenestra Inc v Gulf Am Land Corp*, 377 Mich 565, 593; 141 NW2d 36 (1966).

Plaintiffs allege Defendants collectively engaged in a coordinated plan to submit false electoral certificates, thereby committing election fraud and placing Plaintiffs in a false light. Plaintiffs further allege violations of multiple laws, including forgery, obstruction of electors, fraud, and reputational and political harm – including being deterred from serving in public roles in the future.

Accepting these well-pleaded allegations as true and construing them in the light most favorable to Plaintiffs, the Court finds that Plaintiffs have adequately stated a claim for civil conspiracy. Accordingly, summary disposition under MCR 2.116(C)(8) is inappropriate and is denied as to this claim.

D. Declaratory Judgment

Defendants argue Plaintiff's request for declaratory relief fails under MCR 2.116(C)(4) and (8) due to a lack of subject matter jurisdiction and the absence of an actual controversy.

Under MCR 2.605(A), a court may enter a declaratory judgment in any case involving an actual controversy. Plaintiffs seek a declaration that they were Michigan's legitimate electors in the 2020 Presidential Election and that Defendants' actions violated Michigan law.

The Complaint sets forth multiple claims regarding Defendants' submission of documents purporting to represent Michigan's official electoral votes. Defendant Henry's motion even disputes whether President Biden won the election, despite certified election results showing Biden won Michigan by over 154,000 votes.

Because Plaintiffs have stated viable claims for false light, statutory conversion, and civil conspiracy, and because an actual controversy exists between the parties, the Court finds declaratory relief is inappropriate under MCR 2.605. Accordingly, Defendant's request for summary disposition on the declaratory judgment claim is denied. The parties may proceed with any additional discovery needed. The Court does not find a lack of subject matter jurisdiction under this claim under MCR 2.605(A)(2).

IV. CONCLUSION

In light of the applicable legal standards and the facts as pleaded, Defendants' motions for summary disposition under MCR 2.116(C)(8) are denied. Plaintiffs have sufficiently alleged facts

that, if proven true, support viable claims for false light, statutory conversion, civil conspiracy, and declaratory judgment. Michigan law requires that, at the pleading stage, courts accept all well-pleaded allegations as true and construe them in the light most favorable to the non-moving party. The allegations Defendants submitted fraudulent electoral certificates – falsely presenting themselves as Michigan's duly elected electors – are neither conclusory nor legally deficient under the standards articulated in *Wade* and *Derderian, supra*. These claims are not so clearly unenforceable as a matter of law that no factual development could justify recovery. Accordingly, because the Complaint presents an actual controversy and pleads sufficient facts to inform Defendants of the nature of the claims asserted, summary disposition is not warranted at this stage.

Defendants motions for summary disposition are DENIED.

IT IS SO ORDERED.

Dated: October 22, 2025

CHRISTINA MIMS
Circuit Court Judge

ATTEST: A true copy

I do hereby certify and return that I served a copy of the above order upon the parties via email and mail.

Dated:

CHNELL GUYDON, Court Clerk

Approved, SCAO

Original - Court
1st copy - Defendant

2nd copy - Plaintiff
3rd copy - Return

STATE OF MICHIGAN Kent County 17th JUDICIAL DISTRICT JUDICIAL CIRCUIT COUNTY PROBATE	SUMMONS	CASE NO. 23 00306 -CZ

Court address
180 Ottawa Avenue, N.W., Suite 2400, Grand Rapids, MI 49503

Court telephone no.
(616) 632-5480

Plaintiff's name(s), address(es), and telephone no(s).	v	Defendant's name(s), address(es), and telephone no(s).
Blake Mazurek, Robin Smith, and Timothy Smith		Kathy Berden, Hank Choate, Mayra Rodriguez , Mari-Ann Henry, Meshawn Maddock, Clifford Frost, John Haggard, Stanley Grot, Kent Vanderwood, Timothy King, Marian Sheridan, Michelle Lundgren, and James Renner, Ken Thompson Amy Facchinello, Rose Rook,
Plaintiff's attorney, bar no., address, and telephone no. Bradford W. Springer (P67201) Scholten Fant, 100 North Third Street, P.O. Box 454 Grand Haven, MI 49417 616-842-3030 bspringer@scholtenfant.com		

Instructions: Check the items below that apply to you and provide any required information. Submit this form to the court clerk along with your complaint and, if necessary, a case inventory addendum (form MC 21). The summons section will be completed by the court clerk.

Domestic Relations Case

- ☐ There are no pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint.
- ☐ There is one or more pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint. I have separately filed a completed confidential case inventory (form MC 21) listing those cases.
- ☐ It is unknown if there are pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint.

Civil Case

- ☐ This is a business case in which all or part of the action includes a business or commercial dispute under MCL 600.8035.
- ☐ MDHHS and a contracted health plan may have a right to recover expenses in this case. I certify that notice and a copy of the complaint will be provided to MDHHS and (if applicable) the contracted health plan in accordance with MCL 400.106(4).
- ☑ There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint.
- ☐ A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has been previously filed in ☐ this court, ☐ _____ Court, where it was given case number _____ and assigned to Judge _____.

The action ☐ remains ☐ is no longer pending.

Summons section completed by court clerk. **SUMMONS**

NOTICE TO THE DEFENDANT: In the name of the people of the State of Michigan you are notified:

1. You are being sued.
2. **YOU HAVE 21 DAYS** after receiving this summons and a copy of the complaint to **file a written answer with the court** and serve a copy on the other party **or take other lawful action with the court** (28 days if you were served by mail or you were served outside this state).
3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.
4. If you require special accommodations to use the court because of a disability or if you require a foreign language interpreter to help you fully participate in court proceedings, please contact the court immediately to make arrangements.

Issue date	Expiration date*	Court clerk
JAN 11 2023	APR 12 2023	LISA POSTHUMUS LYONS

*This summons is invalid unless served on or before its expiration date. This document must be sealed by the seal of the court.

MC 01 (9/19) **SUMMONS**

MCR 1.109(D), MCR 2.102(B), MCR 2.103, MCR 2.104, MCR 2.105

Exhibit A

JURY FEE PAID

STATE OF MICHIGAN

17th CIRCUIT COURT FOR KENT COUNTY

Blake Mazurek,
Robin Smith, and
Timothy Smith,

Plaintiffs,

v.

Kathy Berden,
Mayra Rodriguez,
Meshawn Maddock,
John Haggard,
Kent Vanderwood,
Marian Sheridan,
James Renner,
Amy Facchinello,
Rose Rook,
Hank Choate,
Mari-Ann Henry,
Clifford Frost,
Stanley Grot,
Timothy King,
Michele Lundgren, and
Ken Thompson,

Defendants.

Case No.: 00306 -CZ

Hon.:

Bradford W. Springer (P67201)
SCHOLTEN FANT
Attorneys for Plaintiffs
100 N. Third Street, P.O. Box 454
Grand Haven, Michigan 49417
(616) 842-3030
bspringer@scholtenfant.com

Jury Demand

Exhibit A

Plaintiffs Blake Mazurek, Robin Smith, and Timothy Smith, through their undersigned counsel, pursuant to MCR 2.508, respectfully demand trial by jury.

Respectfully Submitted,

BLAKE MAZUREK, ROBIN SMITH, and TIMOTHY SMITH

Date: January 10, 2023

By: Bradford Springer
Bradford W. Springer (P67201)
SCHOLTEN FANT
Attorneys for Plaintiffs

STATE OF MICHIGAN

17th CIRCUIT COURT FOR KENT COUNTY

Blake Mazurek,
Robin Smith, and
Timothy Smith,

Plaintiffs,

v.

Kathy Berden,
Mayra Rodriguez,
Meshawn Maddock,
John Haggard,
Kent Vanderwood,
Marian Sheridan,
James Renner,
Amy Facchinello,
Rose Rook,
Hank Choate,
Mari-Ann Henry,
Clifford Frost,
Stanley Grot,
Timothy King,
Michele Lundgren, and
Ken Thompson,

Defendants.

Case No.: 23-00306-CZ

Hon.: _____

Bradford W. Springer (P67201)
SCHOLTEN FANT
Attorneys for Plaintiffs
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Grand Haven, Michigan 49417
(616) 842-3030
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Complaint for Declaratory and Other Relief

There is no other pending or resolved civil action arising out of the transaction or occurrence alleged in the complaint.

Exhibit A

Plaintiffs Blake Mazurek, Robin Smith, and Timothy Smith, for their complaint against defendants for election fraud in connection with the 2020 presidential election in Michigan, respectfully state as follows:

Parties

1. Plaintiff Blake Mazurek is a resident of Kent County.

2. Plaintiff Robin Smith is a resident of Ingham County.

3. Plaintiff Timothy Smith is a resident of Ottawa County.

4. Defendant Kathy Berden is a resident of Sanilac County, based on information and belief.

5. Defendant Mayra Rodriguez is a resident of Wayne County, based on information and belief.

6. Defendant Meshawn Maddock is a resident of Oakland County, based on information and belief.

7. Defendant John Haggard is a resident of Charlevoix County, based on information and belief.

8. Defendant Kent Vanderwood is a resident of Kent County, based on information and belief.

9. Defendant Marian Sheridan is a resident of Oakland County, based on information and belief.

10. Defendant James Renner is a resident of Clinton County, based on information and belief.

11. Defendant Amy Facchinello is a resident of Genesee County, based on information and belief.

12. Defendant Rose Rook is a resident of VanBuren County, based on information and belief.

13. Defendant Hank Choate is a resident of Jackson County, based on information and belief.

14. Defendant Mari-Ann Henry is a resident of Oakland County, based on information and belief.

15. Defendant Clifford Frost is a resident of Macomb County, based on information and belief.

16. Defendant Stanley Grot is a resident of Macomb County, based on information and belief.

17. Defendant Timothy King is a resident of Washtenaw County, based on information and belief.

18. Defendant Michele Lundgren is a resident of Wayne County, based on information and belief.

19. Defendant Ken Thompson is a resident of Ionia County, based on information and belief.

Jurisdiction and Venue

20. This Court has jurisdiction. See, e.g., MCL 600.601, 600.605.

21. Venue is proper. MCL 600.1629.

Facts Relevant to All Counts

22. Leading up to the 2020 presidential election in Michigan, plaintiffs Blake Mazurek, Robin Smith, and Timothy Smith were nominated by the Michigan Democratic Party to serve as three of the sixteen electors on the Democratic slate of presidential electors (i.e., the

Biden/Harris electors), to vote in the Electoral College for President and Vice President of the United States, in the event that the Democratic presidential candidate, Joe Biden, were to win the election in Michigan.

23. Leading up to the 2020 presidential election in Michigan, each of the defendants, except for Mr. Thompson and Mr. Renner, were nominated by the Michigan Republican Party to serve as electors on the Republican slate of presidential electors (i.e., the Trump/Pence electors), to vote in the Electoral College for President and Vice President of the United States in the event that the Republican presidential candidate, Donald Trump, were to win the election in Michigan. Terri Lynn Land and Gerald Wall, neither of whom are parties to this suit, also had been nominated by the Michigan Republican Party to serve as electors on the Republican slate of presidential electors, but they were later replaced by Mr. Thompson and Mr. Renner, respectively.

24. As summarized in the December 22, 2022 *Final Report of the Select Committee to Investigate the January 6th Attack on the United States Capitol* by the 117th Congress, Second Session (House Report 117-663) (hereafter referred to as the "Select Committee Report")[1], Article II of the United States Constitution, as modified by the Twelfth Amendment, governs election of the President. Article II created the electoral college, providing that the States would select electors in the manner provided by State legislatures, and those electors would in turn vote for the President. Today, every State, including Michigan, selects Presidential electors by popular vote, and each State's laws provide for procedures to resolve election disputes, including through lawsuits if necessary. After any election issues are resolved in State or Federal court,

[1] Available at https://www.govinfo.gov/content/pkg/GPO-J6-REPORT/pdf/GPO-J6-REPORT.pdf (last viewed January 10, 2023).

Exhibit A

each State's government transmits a certificate of ascertainment of the appointed electors to Congress and the National Archives. *Select Committee Report*, Executive Summary, p. 29.

25. Following the November election at which the office of President of the United States is on the ballot, the electoral college meets in mid-December to cast their votes, and all of the electoral votes are then ultimately counted by Congress on January 6th. The Vice President of the United States, as President of the United States Senate, presides over the joint session of Congress to count these votes. The Twelfth Amendment provides the following straight-forward instruction: "The president of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall be counted; The person having the greatest number of votes for President shall be the President . . . ." The Vice President has only a ministerial role, opening the envelopes and ensuring that the votes are counted. *Select Committee Report*, Executive Summary, p. 30.

26. The Presidential race in the State of Michigan was called on Wednesday November 4, 2020, after the general election held on Tuesday, November 3, 2020. Joe Biden won the election in Michigan by more than 154,000 votes.

27. Michigan Election Law is clear that the one and only slate of electors from Michigan for President and Vice President of the United States is the slate of electors nominated by the political party of the candidate receiving the greatest number of votes at the November Presidential election. MCL 168.42.

28. Following the procedure mandated by Michigan Election Law, MCL 168.46, after the State Board of Canvassers ascertained the result of the election as to the electors of President and Vice President of the United States, the Governor of the State of Michigan certified the results of the election in Michigan and the names of the electors in this State chosen as electors

of President and Vice President of the United States. This is evidenced by the Amended Certificate of Ascertainment of the Electors of the President and Vice President of the United States of America signed and certified by Governor Gretchen Whitmer, under the Great Seal of the State of Michigan. A copy is attached as **Exhibit A.**

29. The Amended Certificate of Ascertainment certified that the slate of electors nominated by the Democratic Party were duly elected as Electors of the President and Vice President of the United States, having received 2,804,040 votes for the winning candidate (Joe Biden) compared to the slate of electors nominated by the Republican Party, which received 2,649,852 votes for the losing Republican candidate (Donald Trump). The Amended Certificate of Ascertainment ultimately was sent according to law to Congress and the National Archives.

30. Following the procedure mandated by Michigan Election Law, MCL 168.47, the slate of electors nominated by the Democratic Party and elected in the general election held in the State of Michigan (i.e., the Biden/Harris Electors, including plaintiffs) duly convened in the State Capitol in Lansing on December 14, 2020, at 2 p.m., and formally cast their 16 electoral votes for Joe Biden for President of the United States. This is reflected in the State of Michigan Certificate of Votes for President and Vice President attached here as **Exhibit B**.

31. Despite the results of a free and fair election in Michigan, canvassed and certified according to Michigan Election Law, the defendants participated in a fraudulent scheme to steal the election and install the losing candidate (Donald Trump) as President.

32. Specifically, the defendants conspired and agreed to submit fraudulent election certificates (1) falsely claiming their candidate had won the election in Michigan, when in fact he had lost by over 153,000 votes; (2) falsely claiming they were "the duly elected and qualified Electors for President and Vice President of the United States of America from the State of

Michigan," when in fact the appropriate government officials in Michigan had already certified Michigan's official election results for Joe Biden; and (3) falsely purporting to "certify" that they had "convened and organized in the State Capitol" on December 14, 2020 to cast Michigan's 16 electoral votes for Donald Trump, when in fact none of this was true. A copy of their fake election "certificate" signed by the defendants and styled "Certificate of the Votes of the 2020 Electors from Michigan," which they offered as an official public record, is attached here as **Exhibit C**.

33. The fraudulent election certificates were sent by the defendants to the President of the Senate of the United States and the Archivist of the United States with an accompanying "Memorandum" from defendant Kathy Berden. Defendant Berden falsely identified herself in the Memorandum as "Chairperson, Electoral College of Michigan" and she falsely claimed to enclose "duplicate originals of Michigan's electoral votes for President and Vice President . . . ." See Exhibit C.

34. Defendant Berden has represented the Michigan Republican Party in the Republican National Committee since 2015.

35. The defendants' fake elector scheme was closely coordinated with the Trump campaign and with others, including Republican National Committee Chair Ronna McDaniel, such that similar fraudulent election certificates from similar fake Trump slates of electors in other states that Biden won and Trump lost, were submitted to Executive Branch officials at the National Archives, and to the Legislative Branch, including to the Office of the President of the Senate, Vice President Mike Pence. *Select Committee Report*, Executive Summary, pp. 41-43, including fn. 231.

36. The purpose of the fake elector scheme was to give the President of the United States Senate (which, under the Constitution, is the Vice President) a purported justification to refuse to count the real electoral votes on January 6, stealing the election and installing the loser as President. However, the fake elector scheme failed when Vice President Pence and the Senate parliamentarian ultimately refused to recognize or count the unofficial fake electoral votes. *Select Committee Report*, Executive Summary, p. 43.

37. Defendant Meshawn Maddock, a co-chair of the Michigan Republican Party, later told an audience in January 2022 regarding the false Trump electors: "We fought to seat the electors. The Trump campaign asked us to do that." *Select Committee Report*, p. 351.

38. Defendants' scheme attempted to subvert the sacred right of qualified voters in Michigan, enshrined in the State Constitution, to have their votes counted. Michigan Constitution of 1963, Art. II, Sec. 4.

39. In participating in this fake elector scheme, defendants violated multiple state and federal criminal laws, including the following: MCL 168.932(d) (making it a felony to "in any manner obstruct or attempt to obstruct any elector in the exercise of his or her duties as an elector under this act"); MCL 168.933a(a) (making a person guilty of election forgery if he or she "Knowingly makes, files, or otherwise publishes a false document with intent to defraud"); MCL 750.248(1) ("A person who falsely makes, alters, forges, or counterfeits a public record . . . with intent to injure or defraud another person is guilty of a felony punishable by imprisonment for not more than 14 years"); 18 U.S.C. Section 371 ("If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five

years, or both"); and 18 U.S.C. Section 1001 (which applies, in relevant part, to "whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully—(1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact; (2) makes any materially false, fictitious, or fraudulent statement or representation; or (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry.")

40. Defendant Kathy Berden (described on the fake election certificates and accompanying memorandum as the "Chairperson" of the purported "Electoral College of Michigan") and Defendant Mayra Rodriguez (described on the fake election certificates as the "Secretary" of the fake Trump electors) were subpoenaed for depositions by the Congressional Select Committee to Investigate the January 6th Attack on the United States Capitol. Each was asked simple questions about their signatures on the fake election certificates and why they signed the certificates purporting to cast electoral college votes for Donald Trump despite the fact that he had lost the State of Michigan. Instead of answering these questions, each repeatedly invoked their privilege under the Fifth Amendment against self-incrimination, on the basis that their truthful answers might tend to incriminate them in a later criminal proceeding. A copy of defendant Berden's deposition transcript is attached here as **Exhibit D**. A copy of defendant Rodriguez's deposition transcript is attached here as **Exhibit E**.

41. Defendants' invocation of their Fifth Amendment privilege against incrimination, while protective in a criminal case, allows an adverse inference in a civil case like this one that their truthful answers would support the plaintiffs' claims. *Phillips v. Deihm*, 213 Mich. App. 389, 399-400 (1995) ("The privilege against self-incrimination not only permits a person to refuse to testify against himself at a criminal trial in which he is a defendant, but also permits

him not to answer official questions put to him in any other proceeding, civil or criminal, formal or informal, where the answers might incriminate him in future criminal proceedings. *Allen v. Illinois*, 478 U.S. 364, 368, 106 S.Ct. 2988, 2991, 92 L.Ed.2d 296 (1986); *In re Stricklin*, 148 Mich.App. 659, 663, 384 N.W.2d 833 (1986). However, the Fifth Amendment does not forbid adverse inferences against parties to civil actions when they refuse to testify in response to probative evidence offered against them: the amendment does not preclude the inference where the privilege is claimed by a party to a civil cause.") (citing *Baxter v. Palmigiano*, 425 U.S. 308, 318 (1976) ("the Fifth Amendment does not forbid adverse inferences against parties to civil actions when they refuse to testify in response to probative evidence offered against them.") (citation omitted). *See also* M Civ JI 6.01 (Michigan's relevant civil jury instruction explicitly instructs the jury regarding the allowable adverse inference against a party for the failure to produce a witness or evidence under the party's control).

42. Defendants' fraudulent election certificates falsely portrayed themselves as the real electors, conversely implying that the Biden electors, including plaintiffs, were invalid and illegitimate, at best, or fraudulent and criminal, at worst.

43. Defendants' fake elector scheme fueled widespread disinformation and confusion about the outcome of the election and falsely cast doubt on the legitimacy of the Biden Electors performing their civic and legal duty as the only true Electors of the State of Michigan for President and Vice President of the United States in the 2020 election. This is despite the fact that calling into question the legitimacy of the Biden Electors, including plaintiffs, was utterly lacking any good faith basis.

44. The defendants' conduct is highly offensive to any reasonable citizen. Indeed, defendants' fake elector scheme is contrary to and undermines the basic democratic principles

upon which our country is founded. Almost everyone in our society recognizes that lying, cheating, and stealing is wrong, and to do so in connection with a presidential election is traitorous, anti-democratic, and utterly outrageous.

45. Plaintiffs were highly offended by being cast in the false light created by defendants. Plaintiffs viewed themselves as performing a civil and lawful duty as presidential electors in support of a country they love, only to have their legitimacy questioned and their integrity falsely and publicly denigrated by defendants' lies in their fake election certificates that defendants were the real Electors of the State of Michigan for President and Vice President of the United States.

46. Plaintiffs suffered humiliation, mental anguish, and stress as a result of being cast in the false light created by defendants' election fraud and lies.

47. Defendants' election fraud and the resulting humiliation, mental anguish, and stress has made plaintiffs apprehensive about again seeking to be nominated as presidential electors in 2024.

48. Defendants' election fraud cynically perpetuated the "Big Lie" that the election was stolen, while in truth it was the defendants and their co-conspirators who were attempting to steal the election. Defendants' conduct has weakened our democracy by eroding public trust in our elections, including future elections in which plaintiffs might serve as electors.

Count I: Declaratory Judgment

49. Plaintiffs incorporate by reference the preceding paragraphs as if restated here.

50. Plaintiffs are entitled to a declaratory judgment, under MCR 2.605, declaring that they were legitimate Electors of the State of Michigan for President and Vice President of the

United States in the 2020 presidential election and that defendants' conduct violated Michigan law.

Count II: Invasion of Privacy – False Light

51. Plaintiffs incorporate by reference the preceding paragraphs as if restated here.

52. Defendants' fake elector certificates were purportedly public documents and indeed were publicized to many people, including by submission to the United States National Archives and the President of the United States Senate.

53. Defendants' fake elector certificates placed plaintiffs in a false light, falsely portraying defendants as the only real electors and necessarily implying that plaintiffs were not legitimate or valid electors.

54. Defendants' fake elector certificates, falsely implying that defendants, not plaintiffs, were the real electors, were highly offensive to a reasonable person and also to plaintiffs.

55. Defendants acted with actual malice. They knew when they submitted their election certificates that the certificates were fraudulent, that they were fake electors, and that the real Biden electors would be placed in a false light as a result of defendants' scheme.

56. Defendants' conduct has harmed plaintiffs in multiple ways, including by causing reputational harm, humiliation, mental anguish, and stress, and defendants' conduct has made plaintiffs apprehensive about again seeking to be nominated to serve as presidential electors in 2024. In addition, defendants' conduct has undermined public trust and confidence in elections and the willingness to accept future election results, including future elections in which plaintiffs may serve as Electors of the State of Michigan for President and Vice President of the United States.

Count III: Statutory Conversion in Violation of MCL 600.2919a

57. Plaintiffs incorporate by reference the preceding paragraphs as if restated here.

58. Plaintiffs had an intangible personal property interest in their lawful office as true Electors of the State of Michigan for President and Vice President of the United States, having been duly and lawfully elected in the General Election held in the State of Michigan on November 3, 2020.

59. Plaintiffs' property interest and status as true Electors is officially memorialized in the State of Michigan Amended Certificate of Ascertainment of the Electors of the President and Vice President of the United States of America (Exhibit A), and in the State of Michigan Certificate of Votes for President and Vice President (Exhibit B).

60. Plaintiffs were vested with possession of their property interests as recognized and memorialized in (1) the State of Michigan Amended Certificate of Ascertainment of the Electors of the President and Vice President of the United States of America and (2) the State of Michigan Certificate of Votes for President and Vice President.

61. Defendants wrongfully exerted dominion over plaintiff's property interest as true Electors in a manner inconsistent with the plaintiff's rights. Specifically, by signing their fake election certificates described above (i.e., the "Certificate of the Votes of the 2020 Electors from Michigan" attached as Exhibit C); by falsely claiming therein that they were "the duly elected and qualified Electors for President and Vice President of the United States of America from the State of Michigan"; by falsely purporting to "certify" that they had cast Michigan's 16 electoral votes for Donald Trump; and by mailing the fake election certificates to the President of the Senate of the United States and the Archivist of the United States to serve as an official public record purportedly from the true Electors of the State of Michigan, defendants purported to

perform a function that only the true Electors had the right and duty to perform. Defendants purported to vote for the losing candidate, entirely contradicting the right and the duty of the true Electors to vote for the winning candidate.

62. Defendants put plaintiffs' converted property to their own use as described above by fraudulently holding themselves out as the true Electors and purporting to cast their fake electoral votes for the losing candidate, basing their action on the fake election certificates that contradicted the true certificates in which plaintiffs had an interest – (1) the State of Michigan Amended Certificate of Ascertainment of the Electors of the President and Vice President of the United States of America and (2) the State of Michigan Certificate of Votes for President and Vice President.

63. As a result, defendants engaged in conversion in violation of MCL 600.2919a, entitling plaintiffs to treble damages and attorney fees as provided by statute.

64. Defendants' conduct has caused plaintiffs to suffer actual damages as described above, including reputational harm, humiliation, mental anguish, and stress. In addition, defendants' conduct has made plaintiffs apprehensive about again seeking to be nominated to serve as presidential electors in 2024. In addition, defendants' conduct has undermined public trust and confidence in elections and the willingness to accept future election results, including future elections in which plaintiffs may serve as Electors of the State of Michigan for President and Vice President of the United States.

Count IV: Civil Conspiracy

65. Plaintiffs incorporate by reference the preceding paragraphs as if restated here.

66. Defendants combined together with each other to engage in concerted action to accomplish the criminal violations alleged in paragraph 39 above by submitting their fake elector certificates.

67. Defendants also combined together with each other to engage in concerted action to accomplish an unlawful purpose in portraying the Biden electors, including plaintiffs, in a false light, by falsely portraying defendants as the real electors and necessarily implying that plaintiffs were invalid and illegitimate electors.

68. Defendants also combined together with each other to engage in concerted action to accomplish an unlawful purpose in falsely portraying themselves as the real electors from the State of Michigan, thereby converting plaintiff's intangible property interest in their lawfully acquired position as true electors.

69. Defendants' conduct has caused plaintiffs to suffer actual damages as described above, including reputational harm, humiliation, mental anguish, and stress. In addition, defendants' conduct has made plaintiffs apprehensive about again seeking to be nominated to serve as presidential electors in 2024. In addition, defendants' conduct has undermined public trust and confidence in elections and the willingness to accept future election results, including future elections in which plaintiffs may serve as Electors of the State of Michigan for President and Vice President of the United States.

Relief Requested

Plaintiffs respectfully request that this Court enter judgment in their favor, against defendants, including the following relief:

(a) A declaration that plaintiffs, not defendants, were true Electors of the State of Michigan for President and Vice President of the United States, and that defendants' fake elector scheme was illegal under Michigan law;

(b) Damages in an amount in excess of $25,000 to be proven at trial;

(c) Treble damages and reasonable attorney fees as provided by MCL 600.2919a;

(d) Exemplary damages;

(e) Costs of suit; and

(f) Such further relief in plaintiffs' favor and against defendants as this Court deems equitable and just.

Respectfully Submitted,

BLAKE MAZUREK, ROBIN SMITH, and TIMOTHY SMITH

Date: January 10, 2023

By: Bradford Springer
Bradford W. Springer (P67201)
SCHOLTEN FANT
Attorneys for Plaintiffs

Exhibit A

EXHIBIT

A

GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
OFFICE OF THE GOVERNOR
LANSING

GARLIN GILCHRIST II
LT. GOVERNOR

AMENDED CERTIFICATE OF ASCERTAINMENT OF THE ELECTORS OF THE PRESIDENT AND VICE PRESIDENT OF THE UNITED STATES OF AMERICA

I, Gretchen E. Whitmer, Governor of the State of Michigan, certify that at the general election held in Michigan on Tuesday, November 3, 2020:

The following persons nominated by the **Democratic Party**, each having received **2,804,040 votes**, were duly elected as Electors of the President and Vice President of the United States of America:

Chris Cracchiolo	5140 Arrowhead Ct., Williamsburg, MI 49690
Timothy E. Smith	14883 Crescent St., 105, Grand Haven, MI 49417
Blake Mazurek	3458 Olderidge Dr. NE, Grand Rapids, MI 49525
Bonnie J. Lauria	3931 Mines Rd., West Branch, MI 48661
Bobbie Walton	8412 Mapleview Dr., Davison, MI 48423
Mark Edward Miller	122 Sydelle Ave., Kalamazoo, MI 49006
Conner Wood	319 N. Bowen St., Jackson, MI 49202
Robin Smith	3004 Andrea Dr., Lansing, MI 48906
Walter C. Herzig III	320 Stratford Rd., Ferndale, MI 48220
Carolyn Holley	727 White St., Port Huron, MI 48060
Susan Nichols	44099 Deep Hollow Circle, Northville, MI 48168
Steven Rzeppa	2985 Anna Ct., Trenton, MI 48183
Helen Moore	8335 Indiana St., Detroit, MI 48204
Michael Kerwin	17517 Birchcrest Dr., Detroit, MI 48221
Chuck Browning	20091 Herzog Dr., Rockwood, MI 48173
Marseille Allen	4442 Jena Ln., Flint, MI 48507

Votes received by other candidates for the office of Elector of the President and Vice President of the United States of America are as follows:

The following persons nominated by the **Republican Party** each received **2,649,852 votes**: John Haggard; Kent Vanderwood; Terri Lynn Land; Gerald Wall; Amy Facchinello; Rose Rook; Hank Choate; Mari-Ann Henry; Clifford Frost; Stanley Grot; Marian Sheridan; Timothy King; Michele Lundgren; Mayra Rodriguez; Meshawn Maddock; and Kathy Berden.

The following persons nominated by the **Libertarian Party** each received **60,381 votes**: David Holmer; Alexander Avery; Vicki Hall; Richard Hewer; Angela Thornton; Rafael Wolf; James Lewis Hudler; Jon Elgas; Greg Stempfle; Jim Fulner; Joseph LeBlanc; Claranna Gelineau; Andrew Chadderdon; Scott Avery Boman; Connor Nepomuceno; and Andy Evans.

Exhibit A

The following persons nominated by the **Green Party** each received **13,718 votes**: Stephen Boyle; Destiny Clayton; Jean-Michel Creviere; Frank Foster, Jr.; Jennifer Kurland; Melissa Noelle Lambert; John Anthony La Pietra; Robin Laurain; Daniel Martin-Mills; Jessica McCallie-Arquette; Louis Novak; Jeffery Jon Rubley II; Rick Sauermilch; Amanda Slepr; N. J. Sparling; and Marcia Squier.

The following persons nominated by the **U.S. Taxpayers Party** each received **7,235 votes**: Mary Sears; Christine Schwartz; William Mohr II; Doug Levesque; Patrick Lambert; Aaron Nichols; Edward J. Sanger; Victoria Monroe; Lester Townsend; Christopher Rudy; William A. Kohn, Jr.; Paul Stahl; Marc Sosnowski; Cecile A. Harrity; Robert Gale; and Gerald Van Sickle.

The following persons nominated by the **Natural Law Party** each received **2,986 votes**: Connie Tewes; Mary Schutt; Dan Royer; Paul A. Natke; Shelly L. Reynolds; Donald Meyer; Gene Capatina; Ramzi Masri-Elyafaoui; Jacob Schlau; James Radatz; Daniel S. Smith; Mark Moylan; Guy Purdue; Nicholas Malzone; Robert Forreider; and Daniel B. Smith.

The following persons nominated by write-in candidate Brian T. Carroll each received **947 votes**: Michael Maturen; Robert Clark II; Jason Kennedy Duncan; Paul L. DuBois; Timothy Doubblestein; Jason Gatties; Lucy Ellen Moye; Lloyd A. Conway; Linnaea Joyce Licavoli; Tsai-Yi Watts; John Henry Svoboda; Benjamin Setterholm; Brandon Barry Mullins; Daniel Patrick Meloy; Elisa J. Kolk; and Matthew James Williams.

The following persons nominated by write-in candidate Jade Simmons each received **88 votes**: Cecilia Lester; Tyler Prough; James Ryans; Chelsea Slocum; Raymond Hall; Dana Morris; Janasia Johnson; Terrel Boyd; Constance Clay; Erika Couch; Tyrone Pickens; Karalyn Schubring; Michele Coleman; Grant Philson; Jherrard Hardeman; and Gertrude Taylor.

The following persons nominated by write-in candidate Tom Hoefling each received **32 votes**: Mark A. Aungst; Scott Suchecki; Richard Nagel; Mark Zimmerman; Justin Phillips; Kimberly Cleveland; Thomas Frederick; Kurt Richards; Georgia S. Halloran; Dawne Worden; Kim Millard; Alan G. Sides; DaWone Allison; Samuel Denson; Joshua Ohlman; and Suzanne M. Stuut.

The following persons nominated by write-in candidate Kasey Wells each received **5 votes**: Sandra Murrell; Ronald Klett; Andrew Colclasure; Charity Archer; Paul Atkins; Shiquita Reed; Mark Jeffrey; Brian W. Gibbs, Jr.; William W. Brown; Patricia Gorzelski; Anthony Jackson; Jeremy Mortensen; Justen Grieve; Shiesha Davis; Matthew Shepard; and Miranda Ames.

(cont.)

Given under my hand and the Great Seal of the State of Michigan.

Date: November 23, 2020

Time: 5:30pm

GRETCHEN WHITMER
GOVERNOR

By the Governor:

SECRETARY OF STATE

STATE OF MICHIGAN
OFFICE OF THE GOVERNOR
LANSING

GRETCHEN WHITMER
GOVERNOR

GARLIN GILCHRIST II
LT. GOVERNOR

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The following persons nominated by the **U.S. Taxpayers Party** each received **7,235 votes**: Mary Sears; Christine Schwartz; William Mohr II; Doug Levesque; Patrick Lambert; Aaron Nichols; Edward J. Sanger; Victoria Monroe; Lester Townsend; Christopher Rudy; William A. Kohn, Jr.; Paul Stahl; Marc Sosnowski; Cecile A. Harrity; Robert Gale; and Gerald Van Sickle.

The following persons nominated by the **Natural Law Party** each received **2,986 votes**: Connie Tewes; Mary Schutt; Dan Royer; Paul A. Natke; Shelly L. Reynolds; Donald Meyer; Gene Capatina; Ramzi Masri-Elyafaoui; Jacob Schlau; James Radatz; Daniel S. Smith; Mark Moylan; Guy Purdue; Nicholas Malzone; Robert Forreider; and Daniel B. Smith.

The following persons nominated by write-in candidate Brian T. Carroll each received **963 votes**: Michael Maturen; Robert Clark II; Jason Kennedy Duncan; Paul L. DuBois; Timothy Doubblestein; Jason Gatties; Lucy Ellen Moye; Lloyd A. Conway; Linnaea Joyce Licavoli; Tsai-Yi Watts; John Henry Svoboda; Benjamin Setterholm; Brandon Barry Mullins; Daniel Patrick Meloy; Elisa J. Kolk; and Matthew James Williams.

The following persons nominated by write-in candidate Jade Simmons each received **89 votes**: Cecilia Lester; Tyler Prough; James Ryans; Chelsea Slocum; Raymond Hall; Dana Morris; Janasia Johnson; Terrel Boyd; Constance Clay; Erika Couch; Tyrone Pickens; Karalyn Schubring; Michele Coleman; Grant Philson; Jherrard Hardeman; and Gertrude Taylor.

The following persons nominated by write-in candidate Tom Hoefling each received **32 votes**: Mark A. Aungst; Scott Suchecki; Richard Nagel; Mark Zimmerman; Justin Phillips; Kimberly Cleveland; Thomas Frederick; Kurt Richards; Georgia S. Halloran; Dawne Worden; Kim Millard; Alan G. Sides; DaWone Allison; Samuel Denson; Joshua Ohlman; and Suzanne M. Stuut.

The following persons nominated by write-in candidate Kasey Wells each received **5 votes**: Sandra Murrell; Ronald Klett; Andrew Colclasure; Charity Archer; Paul Atkins; Shiquita Reed; Mark Jeffrey; Brian W. Gibbs, Jr.; William W. Brown; Patricia Gorzelski; Anthony Jackson; Jeremy Mortensen; Justen Grieve; Shiesha Davis; Matthew Shepard; and Miranda Ames.

(cont.)

Given under my hand and the Great Seal of the State of Michigan.

Date: December 30, 2020

Time: 9:37am

GRETCHEN WHITMER
GOVERNOR

By the Governor:

SECRETARY OF STATE

EXHIBIT B

STATE OF MICHIGAN

CERTIFICATE OF VOTES FOR PRESIDENT AND VICE PRESIDENT

We, the undersigned Electors of the State of Michigan for President and Vice President, elected in the General Election held in the State of Michigan on November 3, 2020, and duly convened at the State Capitol in Lansing, Michigan, this 14th day of December, 2020, do hereby certify that the following are lists of all votes given by us for the offices of President and Vice President, respectively, of the United States:

1. Votes cast for **Joseph R. Biden** for President of the United States ... **Sixteen ... 16.**
2. Votes cast for **Kamala D. Harris** for Vice President of the United States ... **Sixteen ... 16.**

In Witness Whereof, we have hereto set our hands at Lansing, Michigan, this 14th day of December, 2020.

ELECTORS OF THE STATE OF MICHIGAN FOR PRESIDENT AND VICE PRESIDENT OF THE UNITED STATES

Chris Cracchiolo — Chris Cracchiolo
Sharon Baseman — Sharon Baseman
Timothy E. Smith — Timothy E. Smith
Carolyn Holley — Carolyn Holley
Blake Mazurek — Blake Mazurek
Susan Nichols — Susan Nichols
Bonnie J. Laguna — Bonnie J. Laguna
Steven Koppa — Steven Koppa
Bobbie Walton — Bobbie Walton
Helen Moore — Helen Moore
Mark Edward Miller — Mark Edward Miller
Michael Kerwin — Michael Kerwin
Conner Wood — Conner Wood
Chuck Browning — Chuck Browning
Robin Smith — Robin Smith
Marseille Allen — Marseille Allen

Exhibit A

State of Michigan

DEPARTMENT OF STATE

TO ALL TO WHOM THESE PRESENTS SHALL COME:

*I, Jocelyn Benson, Secretary of State of the State of Michigan and custodian of the Great Seal of the State, hereby certify that the attached documents are true copies of (1) the resignation of Elector Walter C. Herzig III and (2) the Certificate of Filling Vacancy for Sharon Baseman for the Electoral College meeting on December 14, 2020 in the State of Michigan. *****end of certification******

IN TESTIMONY WHEREOF, I have hereto affixed my signature and Great Seal of the State, at Lansing, this 10th day of December in the year of our Lord two thousand and twenty.

Jocelyn Benson

Secretary of State

257493-1-661848-OGS

This certification attests only to the authenticity of the signature of the official who signed the affixed document, the capacity in which that official acted, and where appropriate, the identity of the seal or stamp which the document bears. This certification is not intended to imply that the contents of the document are correct, nor that they have the approval of the State of Michigan.

December 10, 2020

Governor Gretchen Whitmer
P.O. Box 30013
Lansing, Michigan 48909

Dear Governor Whitmer,

I hereby resign from the office of Elector of President and Vice-President of the United States.

Sincerely,

Walter C. Heraig III

Cc: Lavora Barnes

Exhibit A

State of Michigan

Certificate of Filling Vacancy

At the meeting of the Electors of President and Vice President,

SHARON BASEMAN

was duly elected by the Electors present, in the manner provided by law, as an Elector of President and Vice President for the State of Michigan to fill the vacancy in the office caused by the

RESIGNATION

of Elector

WALTER C. HERZIG, III

In Witness Whereof, We the Chairperson and Secretary of the Electoral College of Michigan, have hereto set our hands at Lansing, Michigan, the 14th day of December, A.D. 2020.

Chairperson

Secretary

Exhibit A

EXHIBIT C

MEMORANDUM

TO: President of the Senate (By Registered Mail)
United States Senate
Washington, D.C. 20510

Archivist of the United States (By Registered Mail)
700 Pennsylvania Avenue, NW
Washington, DC 20408

Secretary of State (By Certified Mail)
State of Michigan
430 Allegan Street
Richard H. Austin Bldg., 4th Floor
Lansing, MI 48918

Chief Judge, U.S. District Court (By Certified Mail)
Western District of Michigan
113 Federal Building
315 West Allegan Street
Lansing, MI 48933

FROM: Kathy Berden, Chairperson, Electoral College of Michigan

DATE: December 14, 2020

RE: Michigan's Electoral Votes for President and Vice President

Pursuant to 3 U.S.C. § 11, enclosed please find duplicate originals of Michigan's electoral votes for President and Vice President, as follows: two (2) duplicate originals for the President of the Senate and the Archivist, and one (1) duplicate original for the Secretary of State and Chief Judge.

CERTIFICATE OF THE VOTES OF THE 2020 ELECTORS FROM MICHIGAN

****

WE, THE UNDERSIGNED, being the duly elected and qualified Electors for President and Vice President of the United States of America from the State of Michigan, do hereby certify the following:

(A) That we convened and organized in the State Capitol, in the City of Lansing, Michigan, and at 2:00 p.m. Eastern Standard Time on the 14th day of December, 2020, performed the duties enjoined upon us;

(B) That being so assembled and duly organized, we proceeded to vote by ballot, and balloted first for President and then for Vice President, by distinct ballots; and

(C) That the following are two distinct lists, one, of all the votes for President; and the other, of all the votes for Vice President, so cast as aforesaid:

FOR PRESIDENT

Names of the Persons Voted For	Number of Votes
DONALD J. TRUMP of the State of Florida	16

FOR VICE PRESIDENT

Names of the Persons Voted For	Number of Votes
MICHAEL R. PENCE of the State of Indiana	16

IN WITNESS WHEREOF, we, the undersigned, have hereunto, in the City of Lansing, in the State of Michigan, on this 14th day of December, 2020, subscribed our respective names.

Kathy Berden, Chairperson

Rose Rook

Mayra Rodriguez, Secretary

Hank Choate

Meshawn Maddock

Mari-Ann Henry

John Haggard

Clifford Frost

Kent Vanderwood

Stanley Grot

Marian Sheridan

Timothy King

James Renner

Michele Lundgren

Amy Facchinello

Ken Thompson

Exhibit A

CERTIFICATE OF FILLING VACANCY
OF THE 2020 ELECTORS FROM MICHIGAN

****

Upon the call of the roll, a vacancy became known due to the absence of Elector

TERRI LYNN LAND

Thereupon, by nomination duly made and seconded,

KEN THOMPSON

Was elected by the Electors present, as an Elector of President and Vice President of the United States of America for the State of Michigan to fill the vacancy in the manner provided by law. This Elector participated in the proceedings as set forth in the record of the Electoral College.

IN WITNESS WHEREOF, the undersigned Chairperson and Secretary of the Electoral College of Michigan hereunto Subscribe their names this 14th day of December, 2020.

Kathy Berden, Chairperson

Mayra Rodriguez, Secretary

Exhibit A

CERTIFICATE OF FILLING VACANCY
OF THE 2020 ELECTORS FROM MICHIGAN

****

Upon the call of the roll, a vacancy became known due to the absence of Elector

GERALD WALL

Thereupon, by nomination duly made and seconded,

JAMES RENNER

Was elected by the Electors present, as an Elector of President and Vice President of the United States of America for the State of Michigan to fill the vacancy in the manner provided by law. This Elector participated in the proceedings as set forth in the record of the Electoral College.

IN WITNESS WHEREOF, the undersigned Chairperson and Secretary of the Electoral College of Michigan hereunto Subscribe their names this 14th day of December, 2020.

Kathy Berden, Chairperson

Mayra Rodriguez, Secretary

Exhibit A

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(A) That we convened and organized in the State Capitol, in the City of Lansing, Michigan, and at 2:00 p.m. Eastern Standard Time on the 14th day of December, 2020, performed the duties enjoined upon us;

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FOR PRESIDENT

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DONALD J. TRUMP of the State of Florida	16

FOR VICE PRESIDENT

Names of the Persons Voted For	Number of Votes
MICHAEL R. PENCE of the State of Indiana	16

Exhibit A

Exhibit A

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Kathy Berden, Chairperson

Rose Rook

Mayra Rodriguez, Secretary

Hank Choate

Meshawn Maddock

Mari-Ann Henry

John Haggard

Clifford Frost

Kent Vanderwood

Stanley Grot

Marian Sheridan

Timothy King

James Renner

Michele Lundgren

Amy Facchinello

Ken Thompson

Exhibit A

CERTIFICATE OF FILLING VACANCY
OF THE 2020 ELECTORS FROM MICHIGAN

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IN WITNESS WHEREOF, the undersigned Chairperson and Secretary of the Electoral College of Michigan hereunto Subscribe their names this 14th day of December, 2020.

Kathy Berden, Chairperson

Mayra Rodriguez, Secretary

Exhibit A

CERTIFICATE OF FILLING VACANCY OF THE 2020 ELECTORS FROM MICHIGAN

****

Upon the call of the roll, a vacancy became known due to the absence of Elector

GERALD WALL

Thereupon, by nomination duly made and seconded,

JAMES RENNER

Was elected by the Electors present, as an Elector of President and Vice President of the United States of America for the State of Michigan to fill the vacancy in the manner provided by law. This Elector participated in the proceedings as set forth in the record of the Electoral College.

IN WITNESS WHEREOF, the undersigned Chairperson and Secretary of the Electoral College of Michigan hereunto Subscribe their names this 14th day of December, 2020.

Kathy Berden, Chairperson

Mayra Rodriguez, Secretary

Exhibit A

ELECTORAL VOTES OF THE
STATE OF MICHIGAN
FOR PRESIDENT AND VICE PRESIDENT
OF THE UNITED STATES

Exhibit A

EXHIBIT

D

SELECT COMMITTEE TO INVESTIGATE THE
JANUARY 6TH ATTACK ON THE U.S. CAPITOL,
U.S. HOUSE OF REPRESENTATIVES,
WASHINGTON, D.C.

DEPOSITION OF: KATHY BERDEN

Friday, March 11, 2022

Washington, D.C.

The deposition in the above matter was held via Webex, commencing at 10:07 a.m.

Appearances:

For the SELECT COMMITTEE TO INVESTIGATE THE JANUARY 6TH ATTACK ON THE U.S. CAPITOL:

[redacted] SENIOR ADMINISTRATIVE ASSISTANT
[redacted] PROFESSIONAL STAFF MEMBER
[redacted] SENIOR INVESTIGATIVE COUNSEL
[redacted] INVESTIGATIVE COUNSEL
[redacted] CHIEF CLERK
[redacted] PROFESSIONAL STAFF MEMBER

For THE WITNESS:

MICHAEL COLUMBO
DAVID A. WARRINGTON
ERIN POTTER
Dhillon Law Group Inc.
177 Post Street, Suite 700
San Francisco, CA 94108

[redacted] It is 10:07 a.m., on March 11th, and this is a deposition of Ms. Kathy Berden conducted by the House Select Committee to Investigate the January 6th Attack on the United States Capitol, pursuant to House resolution 503.

At this time, Ms. Berden, I'd ask you to please introduce yourself by stating your full name and spelling your last name for the record.

The Witness. My name is Kathleen Berden, B-e-r-d-e-n.

[redacted] Thank you, Ms. Berden, and good morning.

And then, counsel, if you could please introduce yourself as well as others who are attending this Webex deposition.

Mr. Columbo. Good morning. Michael Columbo, C-o-l-u-m-b-o, on behalf of Ms. Berden. And on the line today also is David Warrington.

[redacted] Very well. And then --

Mr. Columbo. Sorry, we also have Erin Potter, P-o-t-t-e-r, paralegal in our office.

[redacted] Okay. And do you anticipate anybody else joining you or being in the room with you and Ms. Berden?

Mr. Columbo. I don't believe so.

[redacted] Okay.

Mr. Columbo. That's everybody today. I don't believe Mr. Lacowski (ph) will be with us today.

[redacted] Okay. And if at any time that changes, if anybody else is planning to join from your side, please do let us know so we can make that known on the record.

As I introduced to you, Ms. Berden, my name is [redacted] I am a senior investigative counsel for the select committee. Sitting to my right in the room is [redacted] [redacted] He is a professional staff member for the committee. And we have a few

others joining via with Webex platform as well, also staff for the committee.

Members are permitted to join and ask questions, and if any members do join, I will let you know as soon as I know so that you're aware that they're here.

This will be a staff-led deposition, which means that I will be the one primarily doing the questioning. If others have questions, of course, I will give up the floor and the microphone to them, but I anticipate being the one who asks most if not all of the questions today.

Under the House deposition rules, neither committee members nor staff may discuss the substance of the testimony that you provide unless the committee approves its release. You and your attorneys will have an opportunity to review the transcript after we're completed today, and I'll be in touch with Mr. Columbo and Mr. Warrington about that opportunity that you'll have.

So there are a few ground rules generally, and we do follow the House deposition rules that we've provided to you with the subpoena. There are official reporters. You can see a few of them listed in the Webex platform there. They are going to be taking the official record of this deposition. They're doing it with the court reporter keyboard platform. So it's important that you use complete sentences as your answers, and they can't take down things like head nods or incomplete responses like uh-huh, so please use complete sentences or words to respond to answers.

Because it's also being taken down by them, it's very helpful if you wait until I finish my question before answering, and I will make sure, as best as I can, to wait for you to finish your answer before asking my next question. That makes their lives quite a bit easier.

We do ask that you provide complete answers based on your best recollection. If the question that I ask you is not clear, please ask for clarification. I'd be happy to

rephrase it, and I'd prefer that you understand what I'm asking rather than having you answer something that you don't fully understand.

If you don't know the answer to something, you can say so, and please do so. But you can only refuse to answer a question to preserve a privilege that's recognized by the select committee. If you do refuse to answer a question based on any privilege, then staff may either proceed with the deposition or seek a ruling from the chairman on the objection. And, if the chairman overrules such an objection, you are required to answer the question.

At this time, I am going to ask that you stand and raise your right hand to be sworn by the reporter.

The Witness. Okay. You might lose me. I don't know.

Mr. Columbo. There we go.

The Witness. Okay.

The Reporter. Do you solemnly declare and affirm under the penalty of perjury that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth?

The Witness. I do.

[redacted] Okay. So along those lines, I do want to remind you that it is unlawful to deliberately provide false information to Congress. And since you were just sworn and you are now under oath, deliberately providing false information could result in criminal penalties for perjury or providing false statements.

So, with all of that that I just said about the ground rules, do you understand what I went over?

The Witness. Yes.

[redacted] And do you have any questions about any of that?

The Witness. No.

[redacted] Very good. So, logistically, if you do need to take a break to consult with your attorneys or for comfort, just please let us know and we'd be happy to do that. We can go off the record for any time that you need. Very good.

And, counsel, do you see any reason not to go ahead and proceed?

Mr. Columbo. No, [redacted] Fine to go ahead.

BY [redacted]

Q All right. Thank you. So if we can pull up exhibit No. 1. And part of what we're going to do is show you a few documents on the screen, and I'll make sure that you can see them before we talk about them. But can you see what we're putting up as exhibit NO. 1, Ms. Berden?

A Uh-huh.

Q Okay. Very good. So that is a subpoena that the select committee sent to you. Do you recognize that?

A I do.

Q All right. And you are the person listed in the select committee subpoena that's exhibit 1. Is that right?

A I am.

Q Okay. Part of the subpoena asks you to produce documents to the select committee that were responsive to a schedule, a number of requests that accompanied the subpoena. Did you search for documents or provide documents to your attorneys to search and produce to the select committee?

A Yes.

Q Okay. And did that include documents, if any, that would've come from your email accounts?

A Yes.

Q All right. I understand you have an email account that involves your name as well as RNC@gmail.com. Was that one of the email accounts you provided your attorneys with access or searched for responsive documents?

A Yes.

Q Okay. And I understand you have a phone number ending in [redacted]?

A I do.

Q Okay.

A I'm sorry.

Q Did you -- that's quite all right. Nope. Thank you, Ms. Berden.

Did you look at the phone that uses that number for any responsive documents or messages to provide to the select committee?

A Hmmm?

Mr. Columbo. May we take a moment for just a second, [redacted]?

[redacted] Yes, of course.

Mr. Columbo. Ms. Berden is about to explain that, you know, we conducted a forensic examination on her behalf. So you can go ahead, but, you know, you're getting into maybe things that are technical that happened with her permission and on her behalf.

BY [redacted]

Q Okay. Understood. Was the phone that uses that phone number, did you provide that or -- to allow this examination that Mr. Columbo just mentioned?

A Yes.

Q Okay. Very well. And how about any hard copy documents? Did you review or look for any hard copy documents that you may have that could be responsive

to the select committee's subpoena?

A I can't think of what a hard copy is.

Mr. Columbo. Things like papers.

The Witness. Oh, I -- yes.

Mr. Columbo. I guess, do you want to ask for clarification?

The Witness. Clarification, please.

[redacted] Yeah, of course.

Mr. Columbo. She wants to know what you meant by hard copy.

BY [redacted]

Q Yeah, sure. I guess, I'll -- the best way to do this would be by providing an example. So we're going to be talking about several electoral college vote certificates that you signed. I imagine a hard copy of that, of actual paper, physical copy exists somewhere in the world. So did you look to see whether you had any physical copies of documents or physical documents that would be responsive to the select committee's subpoena?

A I provided whatever they asked.

Q Okay. Excellent. And we did receive one audio voicemail and one image of an address label from your attorneys, and I'll plan to go over those with you today.

All right. Ms. Berden, so where do you live?

A The whole address? I live in Snover, Michigan.

Q How long have you lived in Michigan?

A Oh, probably -- all of my life, since I was 9 months old.

Q Okay. What do you do for a living?

A Well, I'm a retired organic farmer -- was.

Q And I understand that you may be still but you certainly were the

national – or a national committees person for Michigan for the Republican National Committee since about 2015. Is that right?

A Correct.

Q Are you still --

A Yes. Yes.

Q Okay. Can you tell me what that means?

A The national committee woman position?

Q Yes.

A It means I represent the Michigan Republican Party on a national level. I attend meetings and take back information and provide information to how our State is doing, and I attend Lincoln Day Dinners as a spokesperson and things like that.

Q Okay. Is that a statewide position, or do you represent just a small portion of Michigan in your role?

A It is statewide. There's one man and one woman per each State.

Q I see. That's helpful. Thank you.

Now, I understand that you were a Republican elector for the 2020 Presidential election. Is that right?

A On the advice of counsel, I assert my constitutional privilege under the Fifth Amendment and respectfully decline to answer that question, [redacted]

Q Okay.

Mr. Columbo. And would it be a permissible shorthand for her assertion of that privilege going forward to just say the word "Fifth"?

BY [redacted]

Q Yes, that's right. I am going to ask to clarify. And I do understand that the Fifth Amendment provides that no person shall be compelled in a criminal case to be a

witness against him or herself, and I just want to be clear that that's the portion of the Fifth Amendment that you're invoking here today, Ms. Berden. Is that correct?

A Yes.

Q Okay. Thank you. So, yes, moving forward, it would be permissible if you'd like to just say "Fifth" --

A Thank you.

Q -- in response to other questions.

A Thank you, yes.

Q Certainly. I am still going to plan to ask you questions that we would ask you, Ms. Berden. And so I understand that you may be asserting the Fifth Amendment right, but I'm still going to ask you the questions.

So had you been a Republican elector before the 2020 Presidential election?

A Fifth.

Q How did you become a Republican elector for the 2020 election?

A Fifth, please.

Q Are you familiar with the other Republican electors for the 2020 Presidential election, including Mayra Rodriguez, Meshawn Maddock, and others listed on the forms that we're going to be looking at in just a moment?

A The Fifth, please, [redacted]

Q Who provided you with information about the electoral college meeting on December 14th where elector -- Republican electors met and cast votes for Donald Trump?

A Fifth, please.

Q The State of Michigan was called -- or the Presidential race in the State of Michigan was called on Wednesday, November 4th, after the election. Do you recall

that?

A The Fifth, please.

Q And, ultimately, now, President Biden won that State by about 155,000 votes. Do you recall that?

A Fifth.

Q If you could please pull up exhibit No. 3.

All right. Do you see what I'm showing you there, Ms. Berden?

A Yes, I do.

Q Okay. Very good. That's exhibit No. 3. It's on State of Michigan Office of the Governor letterhead, and it's titled "Amended Certificate of Ascertainment of the Electors of the President and Vice President of the United States."

In this document -- if you scroll down just a bit, please, Grant -- it's issued by the Governor of Michigan and signed by the Governor of Michigan that shows that the Democratic electors in the Presidential election won approximately 2.8 million votes while the Republican Party won about 2.65 million votes during the Presidential election, and as a result, the Democratic electors were going to meet. Do you remember ever seeing this document?

A The Fifth, please.

Q Now, President Trump did not request a recount in Michigan. Is that your understanding, Ms. Berden?

A The Fifth.

Q Okay. You can take that down. Thank you, [redacted]

When did you first hear any talk about casting electoral votes for President Trump following the 2020 Presidential election in States that President Trump had lost?

A The Fifth.

Q Who did you first hear that idea from, that President Trump or his campaign would ask Republican electors to cast votes for him in States that he had lost?

A The Fifth, please.

Q When did you first hear about that? Specifically, did you hear about it before the election?

A Fifth.

Q When did you get specifics that you and other Republican electors in the State of Michigan would be meeting, or where you would be meeting and when it was supposed to happen?

A Fifth.

Q And from whom did the Republican electors for the State of Michigan obtain information about where the Republican electors would be meeting on December 14th?

A Fifth.

Q Did you ever discuss the plan to have Republican electors meet and cast votes in the State of Michigan for President Donald Trump with Stu Sandler?

A Fifth.

Q Did you ever discuss that plan with Troy Hudson?

A Fifth.

Q Did you communicate about any plans to have the Republican electors meet in the State of Michigan to cast votes for Donald Trump with anybody from the Trump campaign?

A Fifth.

Q And I'm just going to list off a number of people. Did you ever discuss it with Boris Epshteyn?

A Fifth.

Q Did you ever --

A Fifth.

Q Did you ever discuss it with Jesse Law?

A Fifth.

Q Did you ever discuss it with Jesse Binnall?

A Fifth.

Q Did you ever discuss with Sean Flynn?

A Fifth.

Q Did you ever discuss with Jenna Ellis?

A Fifth.

Q Did you ever discuss it with Rudy Giuliani?

A Fifth.

Q Did you ever discuss it with Christina Bobb?

A Fifth.

Q Did you ever discuss it with Kenneth Chesebro?

A Fifth.

Q Did you ever discuss it with John Eastman?

A Fifth.

Q Did you ever discuss this plan with Ron McDaniel?

A Fifth.

Q Did you ever communicate with anybody in the White House about the plan to have Republican electors meet and cast votes in State -- in -- or excuse me, cast votes for Donald Trump in Michigan, where he had lost the popular vote?

A Fifth.

Q When you first heard that Republican electors would be meeting to cast

votes for Donald Trump in Michigan, what were you told the justification or purpose for that meeting would be?

A Fifth.

Q Did you ever discuss the effort to have Republican electors cast votes for Donald Trump in Michigan with other Michigan electors who didn't participate, including Gerald Wall or Terri Lynn Land?

A Fifth.

Q Did you ever talk about this plan from Republican electors from other States, including Pennsylvania, Georgia, Arizona, New Mexico, or Wisconsin?

A Fifth.

Q Did you ever discuss this plan in conference calls with lawyers for the campaign or the President or otherwise?

A Fifth.

Q Now, as far as the meeting itself, did you see any of the paperwork that you would sign and discuss to cast these electoral votes for Donald Trump before the meeting on December 14th?

A Fifth.

Q Did you see any legal memos that the campaign or anybody else provided justifying or discussing issues with the meeting of Republican electors in any State related to the 2020 election?

A Fifth.

Q I'm going to show you exhibit No. 4. Okay. Ms. Berden, can you see what we pulled up about exhibit No. 4? It says "memorandum" at the top.

A I do.

Q Okay. So that is a memo from Judge James R. Troupis. Do you know who

that is?

A No. No, I don't.

Q Okay. And that's from Kenneth Chesebro. Do you know who that is?

A Fifth.

Q It's dated November 18, 2020, and then, in brackets, it says: 12/10 streamlined revision. And it says: RE: The real deadline for settling a State's electoral votes.

Do you recall ever seeing this memorandum in relation to the 2020 Presidential election?

A The Fifth.

Q Could you pull up exhibit No. 5, please. All right. This is another memo, though it looks very similar. We've pulled it up as exhibit No. 5. Can you see exhibit No. 5, Ms. Berden?

A It looks like the same one as before.

Q Okay. So you can see it, and I'll go over it, but this one does say "memorandum" at the top. It's to James R. Troupis from Kenneth Chesebro, dated December 9, 2020. I represent to you the one we just looked at was dated November 18.

A Okay. Yeah, I see it then. It's on your --

Q Yes, okay. And this is: RE: Statutory requirements for December 14th electoral votes.

And then it says: Here's a summary of the requirements under Federal law and under the law of the six States in controversy concerning what is required for Presidential electors to validly cast and transmit their vote.

Do you recall ever seeing this memo before December 14, 2020?

A The Fifth.

Q If you can go to page four of exhibit No. 5, please. So, on page four of exhibit No. 5, which is still the memo we were just talking about, sub point C says: Michigan: 16 electors. And then it talks about various provisions of the Michigan code. And it says: Michigan is much more specific about the location in which electors must meet, which could be a bit awkward.

It goes on to say: Under section 168.47, the electors, quote, shall convene in the senate chamber at the Capitol of the State at 2 p.m. eastern standard time, and then, unquote. However, there is no requirement that they convene on the senate floor where presumably the Biden-Harris electors will convene. Presumably they could convene in the senate gallery.

And then, if you go to page 5, please, the very bottom. It says: In conclusion, it appears that voting by an alternate slate of electors is unproblematic in Arizona and Wisconsin, slightly problematic in Michigan -- and it goes on -- somewhat dicey in other places and very problematic in others.

Those provisions we just discussed about where Republican electors would need to meet in Michigan and questions about whether that this is appropriate that are raised in this memo, were those ever discussed among the Republican electors who met to cast votes for Donald Trump in the State of Michigan despite the fact that he had lost in the State of Michigan?

A The Fifth.

Q Who organized the actual meeting place and time of the Republican electors in Michigan for December 14, 2020?

A The Fifth.

Q And you can take that down. Thank you, [redacted]

Who found replacements for the two Republican electors who opted not to participate on December 14, 2020, including Gerald Wall and Terri Lynn Land?

A The Fifth.

Q I understand that the Republican electors did not meet to cast votes at the Capitol itself but rather met at GOP headquarters on Seymour Street in Lansing, Michigan. Is that correct?

A The Fifth.

Q Were there any restrictions on who was allowed to attend the meeting of the Republican electors that day?

A The Fifth.

Q I understand that press was not allowed in to the building and that cell phones from the electors were taken before going in with a request that no pictures be taken of the proceedings. Is that correct?

A The Fifth.

Q I understand that Ian Northon attended at least parts of the meeting of the electors. What was his role that day?

A The Fifth.

Q I understand that Sean Flynn, who was associated with the Trump campaign, spoke to the Republican electors before they cast votes or at least some point during that day and included references to Hawaii, among other justifications for the Republican electors to cast votes. Is that correct?

A The Fifth.

Q Can you pull up exhibit No. 6, please.

Okay. Ms. Berden, we have put up on the screen exhibit No. 6, page 1. Can you see the document that we've put up there?

A Yes, I can.

Q Okay. And this is a memorandum addressed to the President of the Senate, the Archivist of the United States, the secretary of state for the State of Michigan, as well as the Chief Judge for the United States District Court in the Western District of Michigan. And if you scroll down a bit more, it is from Kathy Berden, Chairperson, electoral college of Michigan, dated December 14, 2020, regarding Michigan's electoral votes for President and Vice President.

Do you recognize this document, Ms. Berden?

A The Fifth.

Q If we can go to page 2, please. So page 2 of exhibit No. 6 is the certificate of the votes of the 2020 electors from Michigan. And, if you go down, it shows that for President the 16 electoral votes from Michigan would go to Donald J. Trump of the State of Florida and for Vice President to Michael R. Pence for the State of Indiana.

And, if you go to page 3, please, there are a list of signatures, including from Kathy Berden, Mayra Rodriguez, Meshawn Maddock, John Haggard, and others. Are you the Kathy Berden that's mentioned in the "from" line of this document as well as the person whose signature appears on page 3?

A The Fifth, please.

Q Have you ever seen this document before today?

A The Fifth.

Q If we can go to page 10 of exhibit No. 6. And I apologize; this is going to appear somewhat sideways. Oh, it appears correctly. This is a photocopy of a -- looks like a mailing envelope, registered mail that says, from -- on the right-hand side, from Kathy Berden, chair of the Michigan Republican electoral college to the Archivist of the United States in Washington, D.C.

Are you the Kathy Berden who sent this priority mail -- mailing envelope with the electoral college vote from the Republican electors that we've been looking at in exhibit No. 6?

A The Fifth.

Q And why did you send these votes to the Archivist of the United States on December 15, 2020?

A Fifth.

Q What happened with the paperwork? I understand that there are multiple copies of the votes. What did you do with them?

A Fifth.

Q You produced to us a document that we have as exhibit No. 2.

If you could please pull that up, [redacted]

This was provided to us yesterday from your counsel. And do you recognize that?

A The Fifth.

Q I understand that this was taken from your cell phone. Is that correct?

A The Fifth.

Q And why did you take a picture of this mailing label, Ms. Berden?

A The Fifth.

Q You can leave that down. Thank you.

So I understand that, after the electoral votes were cast by the Republican electors at the GOP headquarters in Michigan on December 14, 2020, at least some of the electors went to the Michigan State Capitol in Lansing. Did you join the electors who went to the Michigan State Capitol in Lansing?

A The Fifth.

Q I'm going to play for you part of a video of folks going to the Capitol that day, exhibit No. 9.

[Video shown.]

BY [redacted]

Q We can stop the video there. And, just for the record, we're stopping that exhibit at the timestamp 3 minutes and 4 seconds.

Were you in that group of people who went to the Capitol on December 14, 2020?

A The Fifth.

Mr. Columbo. [redacted] may I interject a question?

[redacted] Of course.

Mr. Columbo. I'm sorry. Is that a publicly available video?

[redacted] I believe it is, yes.

Mr. Columbo. Thank you.

BY [redacted]

Q That individual in the kind of light tan jacket who represented himself as Ian Northon, did you speak to Mr. Northon on that day on December 14, 2020?

A The Fifth.

Q Obviously, the electors -- the Republican electors, excuse me, did not make it into the Michigan State Capitol that day. What was the purpose of going in the first place?

A The Fifth.

Q So, by that point, December 14, 2020, Michigan had certified Mr. Biden as the winner of the Presidential election. Why do this at all, Ms. Berden?

A The Fifth.

Q I understand that some people have suggested that the State legislature

could've taken action to select the Republican slate of electors. It's essentially ratifying them in order to cast Michigan's electoral votes for Donald Trump. Was that a justification that you had ever heard before casting votes on December 14, 2020?

A The Fifth.

Q And were you aware that, on December -- or before that, before December 14, 2020, Senator Mike Shirkey said that the legislature wouldn't be taking that action essentially?

A The Fifth.

Q And I would ask you to pull up exhibit No. 7, please.

Can you see exhibit No. 7 that I just pulled up, Ms. Berden?

A Yes.

Q Okay. And that is titled "Shirkey issues statement regarding the election." And Senator Mike Shirkey is senate majority leader, a Republican from Clarklake. And he said at the bottom of this document that Michigan's Democratic slate of electors should be able to proceed with their duty free from threats of violence and intimidation. President-elect Biden and Vice President-elect Harris won Michigan's Presidential election. It is our responsibility as leaders to follow the law and move forward in pursuit of policies that contribute to the betterment of Michigan.

At that point, did you think that the Michigan legislature would take any actions to select Republican electors instead of Democratic electors in the Presidential election of 2020?

A The Fifth.

Q One of the things that we looked at before -- and you can take this down, please.

One of the things we looked at in the memo from Mr. Chesebro talked about the

place of the meeting for electoral college voters, and that said that the electoral college voters had to meet in the senate chamber at the Capitol at 2 p.m. eastern standard time.

Another provision of law, 168.46, says that a person is not an elector until the Governor sends a certificate to the person in triplicate bearing the seal of the State of his or her election as an elector based on the popular vote as ascertained by the State Board of Canvassers.

So the first question I'll ask you is, did you ever receive a certificate from the Governor designating you as an elector based on the popular vote as ascertained by the State Board of Canvassers?

A The Fifth.

Q Did you have any concerns that you didn't receive such a document for the 2020 Presidential election?

A The Fifth.

Q Did any of the Republican electors who meant to cast votes for Donald Trump in the State of Michigan express concern that they had not received such a document from the Governor certifying his or her election as an elector based on the popular vote?

A The Fifth.

Q And did any electors, including yourself, have any concerns that you are meeting in the GOP headquarters rather than in the senate chamber of the Capitol at 2 p.m. as required by law on December 14, 2020?

A The Fifth.

Q If we could pull up exhibit No. 6, please, page two.

So this is going back to a document we looked at a few moments ago, but it's called "The Certificate of the Votes of the 2020 Electors from Michigan."

And if you could zoom in just a little bit on that. A little bit more. There we go. Can you see the page that I'm showing you, Ms. Berden?

A Yes.

Q Okay. It says: We, the undersigned, being the duly elected and qualified electors for President and Vice President of the United States of America from the State of Michigan, do hereby certify the following: That we convened and organized in the State Capitol, in the city of Lansing, Michigan, and at 2 p.m. Eastern Standard Time on the 14th day of December, 2020, performed the duties enjoined upon us.

So I'll start with that first paragraph. Did you or anybody else discuss concerns about stating that the Republican electors who met in Michigan on December 14th were not actually duly elected and qualified for the State of Michigan?

A The Fifth.

Q Were there any concerns about saying that the Republican electors actually convened and organized in the State Capitol at 2 p.m. eastern standard time on December 14th when, in fact, that meeting occurred at GOP headquarters?

A The Fifth.

Q Did any of the lawyers who were present or helping this effort express any concerns that you're aware of about either of those two statements that we just discussed on page two of exhibit 6?

A The Fifth.

Q And you can take that down. Thank you, [redacted]

By this time, December 14, 2020, efforts by the former President or his supporters to overturn the results through the courts had been rejected by at least 86 judges, including 9 Supreme Court Justices in Texas – in the case of Texas v. Pennsylvania, as I understand it.

Was there an expectation that you or the others who met to cast votes as Republican electors in Michigan had that the courts would actually accept the Republican votes that you sent to the Archivist and President of the Senate following the meeting on December 14, 2020?

A The Fifth.

Q Meshawn Maddock, another of the Republican electors in Michigan, publicly stated that, quote, we fought to seat the electors. The Trump campaign asked us to do that. Under a lot of scrutiny for that today.

Was Ms. Maddock's statement that the Trump campaign asked us to seat electors accurate, as you understand it?

A The Fifth.

Q And her comment that the Trump campaign asked us to do it and that we fought to seat the electors, does that suggest there were disagreements about whether or not to seat the Republican electors before casting votes --

A The Fifth.

Q -- for President Trump on December 14th?

A The Fifth. Sorry for interrupting.

Q That's quite all right. Thank you, Ms. Berden.

Okay. We received from you a voicemail, and it said, in sum and substance -- I'm not going to read verbatim here -- but it says: Kathy, it's Anita.

Who's Anita?

A My sister-in-law.

Q It says: I have a couple that's very interested in going to the meeting in Washington, D.C., on January 6th. What was that about?

A I don't recall. I didn't answer -- re-answer her phone message.

Q Were you aware of a meeting in Washington, D.C., on January the 6th?

A The Fifth.

Q Did that have anything to do with the joint session of Congress that convened on January the 6th, 2021?

A The Fifth.

Q When did you receive this voicemail that you provided to the committee?

A I don't recall -- or I don't recall.

Mr. Columbo. [redacted]

[redacted] Yes.

Mr. Columbo. We've got that information in the metadata, and I think that in the information that was provided via the electronic vendor, you may have that information.

[redacted] Okay. I will look for that. I had not seen that loaded yet, but I will go back and look for it. I appreciate that, Mr. Columbo.

BY [redacted]

Q I understand that Ms. Maddock may have had some role or understanding of a number of buses that traveled from Michigan to Washington, D.C., for -- on January the 6th, or to be present on January the 6th. Do you know anything about that effort to have buses take people to the -- Washington, D.C., on January the 6th?

A The Fifth.

Q Do you know who funded those buses and paid for them to take people to Washington, D.C., on January the 6th?

A The Fifth.

Q Where were you on January the 6th, Ms. Berden?

A I was at the RNC meeting on Amelia Island in Florida.

Q Okay. Somewhat separately, I understand that President Trump called William Hartman and Monica Palmer after Wayne County certified its election results in November of 2020. Do you know anything about that call?

A The Fifth.

Q Do you know whether Sean Flynn was a part of that call?

A The Fifth.

Mr. Columbo. Hey, [redacted]

[redacted] Did you understand that there was an effort -- yes.

Mr. Columbo. [redacted] could I have just about 10 seconds or 15 seconds? I just have to --

[redacted] Of course. Absolutely. Take your time. We'll go off the record.

Mr. Columbo. Great. Thank you.

[Discussion off the record.]

BY [redacted]

Q All right. Let's go back on the record. It's 10:52, and we're resuming the deposition of Ms. Kathy Berden.

I also understand that a State Board of Canvassers member, Aaron Van Langevelde, received outreach from a number of people before the statewide certification of the vote for the Presidential election in Michigan, and I believe that took place in late November. Do you know anything about outreach to Mr. Van Langevelde?

A The Fifth.

[redacted] Bear with me just one moment. I will see if there's anybody on. And I don't know that any members have joined us, Ms. Berden, but I'll see if there's any questions from anyone. It doesn't look like it.

In that case, I think, at this point, we have concluded the deposition.

And, for Ms. Berden, I appreciate your time and appearance before the select committee today, and we will go off the record and close the deposition.

[Whereupon, at 10:53 a.m., the deposition was concluded.]

Certificate of Deponent/Interviewee

I have read the foregoing ____ pages, which contain the correct transcript of the answers made by me to the questions therein recorded.

_____

Witness Name

_____

Date

EXHIBIT E

SELECT COMMITTEE TO INVESTIGATE THE
JANUARY 6TH ATTACK ON THE U.S. CAPITOL,
U.S. HOUSE OF REPRESENTATIVES,
WASHINGTON, D.C.

DEPOSITION OF: MAYRA RODRIGUEZ

Tuesday, February 22, 2022

Washington, D.C.

The deposition in the above matter was held via Webex, commencing at 3:56 p.m.

Appearances:

For the SELECT COMMITTEE TO INVESTIGATE THE JANUARY 6TH ATTACK ON THE U.S. CAPITOL:

[redacted], SENIOR INVESTIGATIVE COUNSEL
[redacted] CHIEF INVESTIGATIVE COUNSEL
[redacted] INVESTIGATIVE COUNSE
[redacted] PROFESSIONAL STAFF MEMBER
[redacted] PROFESSIONAL STAFF MEMBER
[redacted] CHIEF CLERK

For MAYRA RODRIGUEZ:

WRIGHT BLAKE

[redacted] It is 3:56 and we are beginning the deposition of Mayra Rodriguez with the Select Committee to Investigate the January 6th Attack on the United States Capitol.

So this is a deposition of Mayra Rodriguez conducted by the committee pursuant to House Resolution 503.

At this time, I'd ask you, Ms. Rodriguez, to introduce yourself and spell your last name for the record.

The Witness. Sure. Mayra Rodriguez. My last name is R-o-d-r-i-g-u-e-z.

[redacted] Fantastic. Thank you, Ms. Rodriguez.

And, counsel, can you please introduce yourself?

Mr. Blake. Sure. My name is Wright Blake, W-r-i-g-h-t, last name is Blake, B-l-a-k-e, and I'm the attorney for Ms. Rodriguez.

[redacted] My name is [redacted] I am a senior investigative counsel to the select committee. I will be leading the deposition, but others may jump in with questions as well.

And in the room with me are [redacted] he's staff for the select committee, along with [redacted] investigative counsel for the select committee. Also joining us on the Webex are several members of the select committee staff, including [redacted] who's chief investigative counsel.

So before we begin, I do just want to go over a few of the ground rules for depositions with the House.

You are appearing pursuant to subpoena, and there is an official reporter who will be transcribing the entire interview. As you probably heard, this is also being recorded

on the Webex platform, but the official record of this deposition is the one that's being taken by the reporter.

There are two of them there. There's only one who's taking the record at a time, generally, and they may trade off. But there is going to be one continuous record which you will be able to review, if you choose to, after the deposition is complete.

Because the official record, though, is the reporter, they can't take things down like nonverbal responses or shaking your head. So we just ask that you answer the questions in words and not gestures.

And also for ease of the reporter, if you let me finish my question before you answer, then I'll also let you finish answering before my next question, and that should make it a fairly easy process.

We do ask that you provide complete answers based on your best recollection. If you don't recall something, that's fine, you can say so. And if I ask a question that's not clear to you, please feel free to ask for clarification and I will do so.

If you do refuse to answer a question, you can only do so based on privileges recognized by the select committee. And if you do have an objection, then the staff, we can either proceed with the deposition or seek a ruling of the chairman on the objection. And if the chairman overrules any objection, you would be required to answer the question.

Do you understand everything we've gone over so far?

The Witness. Yes.

[redacted] Great. Thank you.

I do also want to remind mind you that it is unlawful to deliberately provide false information to Congress. And since this deposition is under oath, doing so could expose you to criminal penalties, including lying to Congress, under 18 U.S.C. 1001 for criminal

charges for perjury.

Do you understand that?

The Witness. Yes.

[redacted] Very good. Then at this time I would ask that you stand and raise your right hand to be sworn in.

The Reporter. Do you solemnly declare and affirm under the penalty of perjury that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth?

The Witness. I affirm.

[redacted] Thank you.

And before we jump into the questions, just logistically, if you ever need a break or you want to stop and speak with your attorney, please let us know and we can certainly do that. I think we've found in this process that it's usually easiest if you want to speak with your attorney to both turn off your camera and go on mute, and that way we won't hear anything you guys discuss.

EXAMINATION

BY [redacted]

Q So the first thing to go over is you received a subpoena from the select committee to produce documents and appear today. Is that right?

A Yes.

Q All right. And you are the Mayra Rodriguez who's listed in the subpoena that you received. It's also shown up on the screen, if you're able to see that. Is that right?

A Yes.

Q Okay. We did receive and I'm going to show exhibit 2, a letter from you

dated February the 10th, from you. And it says, "I do not have any documents to produce," followed by a signature.

Is that the document that you provided to the select committee in response to the request for documents?

A Yes.

Q Okay. So did you search for documents? Did you look in your email, for example, for any documents that are responsive to the select committee's subpoena?

A Yes. I looked through my emails. I couldn't find anything.

Q Okay. And did you look through text messages that you may have had to look for documents responsive to the subpoena?

A I would not have received a text. So I did not look through my texts.

Q Okay. Not even a text about, like, planning or organizing or showing up at a certain date or time?

A I don't believe that I received a text.

Q Okay. What about saved documents, hard copy documents, if you had any, did you look for those?

A Yeah. I received nothing.

Q All right. And as we go through this, I'll ask you certain planning or organizing that happened. And if you do think of anything, like you have an email or a text message that you can recall as we're going through this, I would just ask that you let us know about that. And then we can work with Mr. Blake to get any responsive documents that you end up having.

And I would ask, to the extent that you haven't already looked through your text messages for any responsive documents, that you do so there as well.

So, Ms. Rodriguez, where do you live?

A I live in the city of Grosse Pointe Farms, Michigan.

Q How long have you been in Michigan?

A Golly. Let's see. I would say 30 years-plus.

Q Okay. What do you do for a living?

A I'm a lawyer.

Q What type of law do you practice?

A I practice probate and child welfare.

Q Okay. Now, you were a Republican elector -- or a proposed Republican elector -- for the 2020 Presidential election. Is that right?

A Yes.

Q Had you done that before in previous elections?

A Never.

Q How did you become a proposed elector for the 2020 Presidential election?

A At a 14th District meeting, I was selected by the members that were there.

Q District meeting of whom, which group?

A The 14th -- Michigan 14th District.

Q The Republican Party?

A Yes.

Q So is it fair to say you're active in party politics in Michigan?

A I was.

Q Okay. Now, at the time, the Michigan GOP chair was Laura Cox. Is that right?

A Yes.

Q Do you know her?

A She was the chair of the party, so for 2 years I knew her.

Q Did you have personal interactions with her or was it really just a kind of a business relationship so to speak?

A It was just going to Republican events and I would see her there.

Q And we may get into some additional questions about her, but there are a few others that I'll ask you about, including other people who acted as electors for the 2020 Presidential election.

Do you know Kathy Berden?

A Yes, I do.

Q Who is that?

A She is our RNC person from Michigan.

Q And did you communicate with her about meeting as alternate electors for the 2020 election?

A No.

Q You never did?

A When we went to the meeting, we -- that's when I talked -- well, not her in particular, just the group.

Q Okay. And we'll get into the specifics about how the meeting came to be and who organized it.

But what about Meshawn Maddock, do you know her?

A Yes, I do.

Q And did you interact with her during -- or, excuse me, before you met to vote as alternate electors in the 2020 election?

A No, I did not.

Q So the Michigan election -- or the Presidential election in Michigan -- was called on Wednesday, November the 4th, after the election, so the day after the election.

Do you recall that?

A Generally, yes.

Q Okay. And President Biden was declared the winner, and he won by approximately 155,000 votes.

Are you familiar with that?

A I am.

Q Okay. If you could pull up exhibit No. 3, please.

Are you able to see exhibit No. 3 that's shown there on the screen?

A Yes.

Q Okay. And this is an amended certificate of ascertainment of the electors of the President and Vice President of the United States of America. And this is from the Governor of Michigan, Governor Whitmer, where she essentially certifies that the people listed there would be electors for the electoral college from the State of Michigan.

Are you familiar with this document?

Mr. Blake. Repeat your message. You have to repeat your message.

The Witness. No.

BY [redacted]

Q No? Do you recall ever receiving this document from anybody?

A No.

Q Do you recall ever receiving a document like this with your name on it designating you as an elector from the State of Michigan?

A At this time, I'd like to invoke my Fifth Amendment right to remain silent.

Q Okay. And is that because you think your answers might tend to incriminate you in a proceeding, a later criminal proceeding?

A I just take the Fifth. Thank you.

Q Okay. When did you first hear talk about casting electoral votes for Donald Trump, even if he did not win the State of Michigan?

A I take my Fifth Amendment right to remain silent.

Q Okay. From whom did you first hear that the Republican electors would meet to vote for then President Trump, despite the fact that he lost the State of Michigan?

A I invoke my Fifth Amendment right to remain silent.

Q Are you aware of any efforts to start planning for Republican electors to meet in the State of Michigan even if President Trump lost and -- let me rephrase that.

Were you aware before the election on November 3rd that Republican electors would meet to vote for President Trump even if he lost the State of Michigan?

A I take my Fifth Amendment right to remain silent, please.

Q Did you ever communicate with Laura Cox about the Republican electors meeting to cast electoral college votes for President Trump even though he lost the State of Michigan?

A I take the Fifth Amendment to remain silent.

Q Did you ever communicate with anybody in the Trump campaign about Republican electors meeting to vote and cast electoral college votes for President Trump, despite him losing the popular vote in Michigan?

A No. No.

Q You did not communicate with anybody in the Trump campaign?

A No, never.

Q Okay. Do you know who Boris Epshteyn is?

A Who? Which? I'm sorry, the name? Give me the name, please.

Q Sure. Boris Epshteyn?

A No, I don't know that person.

Q Do you know the name Mike Roman?

A Don't know that person.

Q Do you know the name Mike Brown?

A Don't know that person.

Q How about Jesse Law?

A Don't know that person.

Q Jesse Binnall? And that is B-i-n-n-a-l-l.

A Don't know that person.

Q Shawn Flynn?

A I don't know that person.

Q I believe Mr. Flynn, I'd represent to you, that he may have been there when you met and cast votes as Republican electors for President Trump, as a lawyer for the campaign and election day operations coordinator.

Does that change your mind about whether you know Mr. Flynn?

A I wasn't introduced to Mr. Flynn. He could have been there, but I was not introduced to him.

Q Okay. How about Christina Bobb, former news reporter, also working alongside the campaign?

A No, don't know that name.

Q Okay. Did you ever talk to or see Mr. Rudy Giuliani in any dealings in Michigan related to electoral college votes?

A Never.

Q Do you know the name Jenna Ellis?

A No, does not ring a bell.

Q How about Matt Morgan. Do you know him?
Do you know Justin Clark?
A No.
Q Do you know somebody named Kenneth Chesebro, C-h-e-s-e-b-r-o?
A No.
Q Okay. I'd represent to you that Mr. Chesebro wrote several memoranda about electoral college votes and alternate electors meeting to cast votes for President Trump. Does that ring a bell as far as Mr. Chesebro in your mind?
A No, not at all.
Q Do you know Judge James Troupis?
A No.
Q How about John Eastman, do you know him?
A No.
Q Okay. And you never communicated with any of the people on the list we just went through. Is that right?
A Right.
Q Okay. When you first learned that you would be meeting to cast votes for Donald Trump -- excuse me. When you -- let me rephrase that.
When you first learned that you'd be meeting to cast electoral college votes for then President Trump, despite the fact that he lost in Michigan, what were you told was the reason for doing so?
A I invoke my Fifth Amendment right to remain silent.
Q Did you ever have any discussions with the alternate electors who didn't actually show up to cast electoral college votes on December 14th? And specifically I'll start with Mr. Gerald Wall.

A No.

Q Do you know who that is?

A You're saying he was an elector. That's what you're telling me, he was an elector, so -- I don't know who that is.

Q Okay. Do you remember at the meeting on December 14th, before casting votes, electoral college votes for then President Trump, do you remember having to replace electors who didn't show up?

A Yes.

Q Okay.

A There were some people who did not show up. Yes.

Q Do you remember Gerald Wall being one of them?

A I don't know. I don't -- there were -- I think there were, like, two or three that didn't show up. So he could have been one. I don't know him personally, though, so --

Q Did you ever learn why those people didn't show up?

A No.

Q Never provided a reason as to why they didn't come on December 14th to cast electoral college votes?

A I have no idea.

Q What was the reason in your mind for casting an electoral college vote for then President Trump on December 14th, despite the fact that he had lost the State of Michigan?

A I assert my Fifth Amendment right to remain silent. Thank you.

Q Did you talk to any alternate electors from other States? And I'd represent to you that Pennsylvania, Georgia, Wisconsin, New Mexico, Nevada, and Arizona all had

separate slates of electors that cast votes for then President Trump.

A No, I didn't speak with anyone from out of State.

Q Did you ever have a conference call with lawyers about casting votes, electoral college votes, for President Trump?

A No.

Q When you showed up to the meeting on December 14th, did you have any paperwork that you brought with you, namely electoral college vote certificates or affidavits?

A I assert my right to invoke my Fifth Amendment right. Thank you.

Q Who organized the actual meeting place and time for the meeting of these alternate electors on December the 14th?

A I don't know.

Q Was it you? It wasn't you, I take it.

A No, it wasn't me.

Q Do you know if it was Ms. Berden, Kathy Berden?

A I don't know. I don't know who did that.

Q I understand that alternate electors were not allowed to bring their phones into the meeting on December 14th. Do you remember that?

A I do remember that. That's correct.

Q Do you know why?

A No.

Q What happened? Was there somebody who was taking phones before you went into the building where you met as alternate electors?

A I left mine in my car. So I don't know if there was someone taking the phones if you didn't leave it in your car.

Q Okay. But you were told to not to bring it in beforehand?
A Yes, I was.
Q Do you remember who told you that?
A It would have been a MIGOP staff member.
Q Do you remember which one?
A I want to say Tony Zammit. That's someone that I know. I don't know them that well. So I remember him being there.
Q Were you ever told why that was necessary to not bring phones in?
A No.
Q And where did you meet as alternate electors on December the 14th?
A I invoke the Fifth Amendment, my Fifth Amendment right to remain silent.
Q Do you remember if this person, Mr. Zammit, did he come with paperwork that ultimately the alternate electors filled out and signed?
A I invoke my Fifth Amendment right to remain silent.
Q Did you meet at the capitol building to cast electoral college votes for then President Trump on December 14th?
A I invoke my Fifth Amendment right to remain silent.
Q Just to back up to one thing you mentioned. I believe you said you met at GOP headquarters. Is that on Seymour Street in Lansing, to the best of your knowledge?
A It is Lansing. Now, the street, I think it's Seymour. It was in Lansing for sure.
Q Okay. Close to the capitol, though?
A I'm in a very different area from Lansing. The capitol is in Lansing, so I don't know the proximity.
Q Okay. Were there restrictions on the people who were allowed into the

GOP headquarters to cast votes in the -- on December 14th?

A I don't know what you mean by restrictions.

Q Like, was the public allowed to be there with you?

A I don't know. I went in there as elector, you know. I don't know who was allowed [inaudible].

Q Do you remember -- and you were cut off at the end there -- but do you remember anybody other than electors who were there meeting on December 14th at the GOP headquarters?

A Yes, there were other people there.

Q Who else was there?

A Don't know them by name, but Trump people were there.

Q And why do you say Trump people?

A Because I was told that there's Trump people here, so --

Q And when you say Trump people, do you mean campaign people?

A No. When I say Trump people, people who -- actually, that's probably a fair assessment. People associated with President Trump.

Q Do you remember who any of them were?

A Probably some of the names that you read off. But I was never introduced to any of them.

Q How many of those people associated with the Trump campaign were there?

A Hard to say. More than 1, less than 20.

Q Fair enough.

I understand that Meshawn Maddock showed up with her husband Matt Maddock, as well as lawyers from the Amistad Project and a camera crew. Do you remember that?

A I remember -- Meshawn Maddock was there. Her husband I don't believe was there, but I could be wrong. And the Amistad Project, I don't even know what that is. Sorry.

Q Okay. That's fine.

Do you remember a camera crew being there?

A I remember when I walked into the MIGOP headquarters there was -- there were cameras there. But I don't know --

Q Were they allowed inside to witness and record the meeting of electors on December 14th?

A No, they were outside of the building. I don't know if they ever came in. That I don't know.

Q Do you know if they were restricted from coming in in any way or you just don't know either way?

A I just saw them when I came into the building, they were outside the building.

Q Were you interviewed at any point related to your role as an alternate elector on December 14th?

A I was not.

Q Did those camera crews that were there, did they ask you for an interview?

A They could have. I don't -- I did not interview.

Q Now, a gentleman named Ian Northon was there and accompanied a group to the capitol after the vote of the alternate electors on December 14th.

Do you remember Ian Northon being there?

A I don't know who that is.

Q All right. And we'll show you a video in just a little. He's featured on the

video and maybe you'll recognize him that way.

Not yet.

I understand that somebody who was associated with the Trump campaign, the individual I identified before, Shawn Flynn, was there and spoke to the group about an example of alternate electors meeting and casting votes from 1960 in Hawaii.

Do you remember somebody from the Trump campaign talking about the Hawaii election of 1960 on December 14th?

A I only remember Meshawn Maddock talking about that this had been done in another State. That's all. So if someone else talked about it, I don't remember.

Q Do you remember what she said specifically?

A I can't be specific. Just that alternate electors were done in another State.

Q Do you remember that State being Hawaii?

A No. I really don't remember which State she mentioned.

Q I understand that the electors convened in the basement of the GOP headquarters building. Do you remember that?

A Yeah, it was the lowest floor.

Q Was there any reason in particular that the basement was selected for this, that you're aware of?

A I have no idea.

Q I also understand that people were brought up a couple at a time to sign an affidavit, essentially attesting to who you are. Do you remember doing that?

A I invoke my Fifth Amendment right to remain silent. Thank you.

Q Bring up exhibit No. 6, please.

On the screen is exhibit No. 6, and page one is titled "Memorandum." It's written to the President of Senate, the Archivist of the United States, the secretary of

state for the State of Michigan, as well as the Chief Judge for the United States District Court in the Western District of Michigan. And then at the bottom there it says from Kathy Berden, chairperson, electoral college of Michigan.

If you can keep scrolling, please.

It's dated December 14th, 2020. And it says, "RE: Michigan's Electoral Votes for President and Vice President."

And then I'll read it. It says: "Pursuant to 3 U.S.C. section 11, enclosed please find duplicate originals of Michigan's electoral votes for President and Vice President, as follows: two" -- and then the number 2 -- "duplicate originals for the President of the Senate and the Archivist, and one" -- numeral 1 -- "duplicate original for the Secretary of State and Chief Judge."

And if you can go to the next page.

Do you recognize this document, Ms. Rodriguez?

A No, I do not.

Q Okay. The next page, page 2, is titled "Certificate of the Votes of the 2020 Electors from Michigan." I won't read the whole thing, but I will read the first paragraph there.

It says: "We, the undersigned, being the duly elected and qualified Electors for President and Vice President of the United States of America from the State of Michigan, do hereby certify the following." And then it lists a number of things it's certifying, followed by votes at the bottom for President, casting 16 votes for Donald J. Trump and also 16 votes for Vice President Michael R. Pence.

And if you can go to the next page, please.

Do you recognize that document that we just looked at, page 2?

A I invoke my Fifth Amendment right to remain silent.

Q On page 3 it has a series of signatures that says, in sum and substance, that on this 14th day of December the following people signed these documents. And the second down from the left is Mayra Rodriguez, Secretary.

Is that you?

A I take the Fifth Amendment to remain -- invoke my Fifth Amendment right to remain silent.

Q And do you recognize this signature page?

A I take the Fifth Amendment -- I invoke my Fifth Amendment right to remain silent.

Q Thank you. You can take that down.

I understand that Ms. Maddock took pictures -- or at least one picture, I should say -- from the meeting of the alternate electors on December the 14th. Do you recall that picture?

A Yes, I recall having a group picture taken. Yes.

Q Do you have a copy of that picture?

A No.

Q Why did you take a group picture?

A Well, we were just told to let's take a picture, so we took a picture.

Q Who told you that?

A I don't remember who said it.

Q Did that occur before the electors met and filled out paperwork or after?

A I invoke my Fifth Amendment right to remain silent.

Q Did you ever get a copy of the paperwork that you filled out and signed as an alternate elector for Michigan?

A No.

Q So after the electors met at the GOP headquarters in Michigan, I understand that there was a walk or a march to the capitol in Lansing. Do you recall that?

A Yes, there was a march.

Q Were you -- did you go in that march to the capitol in Lansing?

A No.

Q Why didn't you go with them?

A I didn't see a need to go.

Q Okay. Did you ever talk to anybody who did go and ask them about their experience?

A No. I don't recall talking to anybody afterwards.

Q All right.

If you can play exhibit No. 9, please.

This is a video of what happened at the capitol on December 14th. To be clear, the State capitol in Lansing.

[Video shown.]

BY [redacted]

Q All right. We just paused exhibit No. 9, which is a video, at 1 minute and 54 seconds. You can see the back of two people's heads there. The first is the woman on the right with short brown hair and it looks like a blue scarf or bandana with white stars on it.

Do you recognize who that is?

A No.

Q Okay. And that gentleman who is -- we're looking at the back of his hair as well. It's kind of gray hair. He's wearing a blue mask and a tan overcoat it appears.

Do you recognize him?

Q Did you contact any State legislators, either in the Michigan House or Michigan Senate, about having them choose a slate of electors?

A I don't recall. Now, I was chair of the 14th District and there may have been something out of our district. But I don't recall.

Q Okay. Is there something that's giving you that memory that maybe something happened? Are you thinking of anything in particular?

A Well, I know that the group was very active with the election and the election results. So we were putting out a lot of resolutions, but I don't know if there was one in particular with this.

Q All right. Now, this, exhibit 7, that you're looking at, it is a statement from Senate Majority, Mike Shirkey. And he issued a statement on -- either on or just before the date that the electoral college met, December 14th, and said essentially that then President Biden was the winner and there's nothing that really anybody could do about that in the State of Michigan.

I'm summarizing here. And if you'd like to read it, I'd be happy to pause and let you do so.

Were you aware that Senator Shirkey came out and said that the legislature effectively wasn't going to do anything to change the results of the election in Michigan?

A It may have -- nothing was ever sent to me personally, but there was a lot of news articles around this time. So he may have said that. I don't know.

Q Okay. And at that time do you remember Senator Shirkey indicating that now President Biden had won and there's no reason to change it?

A Again, I don't have any communication with this person. So whatever I read in the newspapers. I don't know what was out there at the time. So I don't have any -- I just don't recall that.

saying?

A You mentioned other States. I don't know anything about other States.

Mr. Blake. But with Michigan, you're taking the Fifth.

The Witness. Yes. With Michigan, I am asserting the Fifth.

BY [redacted]

Q Okay. And are you aware that by December 14th in Michigan there had been, I believe, at least six cases that had rejected challenges to the election by the time of the electoral college meeting on December 14th, those being at least Constantino v. City of Detroit, Trump v. Benson, Trump v. Benson in Federal court, Johnson v. Benson, Stoddard v. Detroit, and King v. Whitmer?

Were you aware that at some level the courts had rejected electoral challenges in those cases before December 14th?

A I assert the Fifth Amendment, please. Thank you.

Q Meshawn Maddock gave an interview, I believe to Crossroads, a reporter associated has a YouTube channel and others, and during that -- we have the recording. I believe it's exhibit No. 8. And we'll play that for you.

[Audio recording played.]

BY [redacted]

Q We'll stop it there.

Do you recognize that voice as being Meshawn Maddock?

A Yeah, I do.

Q And in there she said the Trump campaign -- or, excuse me, I'll back up. She said, "We fought to seat the electors. The Trump campaign asked us to do that."

Do you agree that the Trump campaign asked the Republican Party or parts of the Republican Party in Michigan, to seat the electors as Ms. Maddock said?

commission.

Q What about Ms. Maddock? Did you talk to her about how or whether to produce documents or testimony to the select committee?

A Did not speak with her regarding documents. I told her, as I told Kathy, I didn't have anything. And testimony, did not go over testimony at all. That was it.

[redacted] Okay. I'll ask one more time, [redacted] if you have anything before we conclude here.

[redacted] I don't, [redacted] No, thank you.

[redacted] All right. Very well.

Then at this time, I think we've reached the end of the deposition. I appreciate you, Ms. Rodriguez and Mr. Blake, for showing up. I apologize for the technical difficulties that we're having. Sometimes this isn't always the easiest with virtual depositions. But I appreciate you being here.

We are going to leave for purposes of procedure the deposition open at this time, and I'll be in touch with you, Mr. Blake, about that. But at this point we can go off the record.

[Whereupon, at 4:46 p.m., the deposition was recessed, subject to the call of the chair.]

Certificate of Deponent/Interviewee

I have read the foregoing ____ pages, which contain the correct transcript of the answers made by me to the questions therein recorded.

_____

Witness Name

_____

Date

STATE OF MICHIGAN
17th CIRCUIT COURT FOR KENT COUNTY

Blake Mazurek, Robin Smith, and Timothy Smith, Plaintiffs, v. Kathy Berden, Mayra Rodriguez, Meshawn Maddock, John Haggard, Kent Vanderwood, Marian Sheridan, James Renner, Amy Facchinello, Rose Rook, Hank Choate, Mari-Ann Henry, Clifford Frost, Stanley Grot, Timothy King, Michele Lundgren, and Ken Thompson, Defendants.	Case No. 23-00306-CZ Hon. Christina Elmore

DEFENDANTS SHERIDAN'S, FACCHINELLO'S, ROOK'S, AND CHOATE'S MOTION FOR SUMMARY DISPOSITION PURSUANT TO MCR 2.116(C)(8) AND AWARD OF ATTORNEYS' FEES AND COSTS PURSUANT TO MCL 600.2591

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NOW COMES Defendants Marian Sheridan, Amy Facchinello, Rose Rook, and Hank Choate ("Defendants"), by and through their undersigned counsel, and they hereby move this Court for judgment as a matter of law pursuant to MCR 2.116(C)(8) and for an award of attorneys' fees and costs pursuant to MCL 600.2591.

As set forth in Defendants' accompanying brief, Plaintiffs' claims lack any legal merit whatsoever and are frivolous. Accordingly, the Court should dismiss the Complaint and award Defendants their attorneys' fees and costs.

WHEREFORE, Defendants move this court for an order dismissing the Complaint for failure to state a claim as a matter of law and for an award of attorneys' fees and costs.

Respectfully submitted,

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Date: December 14, 2023.

STATE OF MICHIGAN
17th CIRCUIT COURT FOR KENT COUNTY

Blake Mazurek, Robin Smith, and Timothy Smith, Plaintiffs, v. Kathy Berden, Mayra Rodriguez, Meshawn Maddock, John Haggard, Kent Vanderwood, Marian Sheridan, James Renner, Amy Facchinello, Rose Rook, Hank Choate, Mari-Ann Henry, Clifford Frost, Stanley Grot, Timothy King, Michele Lundgren, and Ken Thompson, Defendants.	Case No. 23-00306-CZ Hon. Christina Elmore

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INTRODUCTION

Undoubtedly, the 2020 general election was contentious. But so are most general elections. For example, Al Gore repeatedly claimed that the 2000 election was "stolen" by George W. Bush. (See https://gop.com/video/12-minutes-of-democrats-denying-election-results/). Hillary Clinton continues to claim that the 2016 election was "stolen" by Donald Trump (*id*), and she has publicly proclaimed that Donald Trump was an "illegitimate president." (https://abcnews.go.com/theview/video/hillary-clinton-calls-donald-trump-illegitimate-president-66010832). It's the nature of politics.

But not until recent times has a political party (the Democratic Party) sought to weaponize the courts and the legal process to punish those who questioned a general election. Unfortunately, a dangerous precedent has been set, and it is unclear how this will turn out. Typically, what is good for the goose is good for the gander. Should Republicans prevail in the next general election and the losers seek to challenge various aspects of the election, claiming that it was illegitimate (which history shows is inevitable), the precedent has been set to unleash the power of federal and state attorneys general to target political opponents with burdensome and costly criminal indictments and for politically-motivated litigants to pursue civil lawsuits for similar reasons. This dangerous practice must stop, and this Court can play a role in helping to do so by granting this motion, dismissing the Complaint, and awarding Defendants their reasonable attorneys' fees and costs for having to defend against this politically-motivated and patently frivolous lawsuit.

Unlike Plaintiffs' Complaint, the point of this motion is <u>*not*</u> to relitigate the 2020 election—that shot is down range. Rather, the goal of this motion is to put a stop to the

weaponization of the legal process to attack political opponents. Our republican form of government will not long sustain such an abusive use of the courts.

At the end of the day, Plaintiffs cast their ballots for their candidates, their candidates won, and their candidates are and have been serving as President and Vice-President of the United States as a result. Defendants' "fake ballots" were of no consequence to the outcome of the election, and they similarly had no impact on *any* cognizable legal interest of Plaintiffs—individuals who *willingly* jumped into the rough and tumble fray of contentious national politics. This lawsuit has no legal merit and should be dismissed.

STANDARD OF REVIEW

Pursuant to MCR 2.116(C)(8), a party may move for summary disposition when the opposing party has failed to state a claim on which relief can be granted. See MCR 2.116(C)(8). A motion under this provision tests the legal basis of the complaint on the pleadings alone. See *Maiden v Rozwood*, 461 Mich 109, 119 (1999). When reviewing the motion, "[a]ll well-pleaded factual allegations are accepted as true and construed in a light most favorable to the nonmovant." *Id*. "However, mere conclusions, unsupported by allegations of fact, will not suffice to state a cause of action." *Eason v Coggins Mem'l Christian Methodist Episcopal Church*, 210 Mich App 261, 263 (1995). The trial court should grant the motion when the claim alleged is "so clearly unenforceable as a matter of law that no factual development could possibly justify recovery," *Maiden*, 461 Mich at 119 (internal quotations and citation omitted), as in this case.

ISSUES PRESENTED

I. Whether the Complaint should be dismissed for failure to state a claim as a matter of law.

Plaintiffs' Answer: presumably No.

Defendants' Answer: Yes.

II. Whether the court should award Defendants' their legal fees and costs for having to defend against this patently frivolous lawsuit.

Plaintiffs' Answer: presumably No.

Defendants' Answer: Yes.

RELEVANT ALLEGATIONS

Leading up to the 2020 presidential election in Michigan, Plaintiffs Blake Mazurek, Robin Smith, and Timothy Smith were nominated by the Michigan Democratic Party to serve as three of the sixteen electors on the Democratic slate of presidential electors (*i.e.*, the Biden/Harris electors) to vote in the Electoral College for President and Vice President of the United States, in the event that the Democratic presidential candidate, Joe Biden, were to win the election in Michigan. (Compl. ¶ 22).

The Presidential race in the State of Michigan was called on Wednesday, November 4, 2020, after the general election held on Tuesday, November 3, 2020. Joe Biden won the election in Michigan by a little more than 154,000 votes. (Compl. ¶ 26).

Michigan Election Law provides that the one and only slate of electors from Michigan for President and Vice President of the United States is the slate of electors nominated by the political party of the candidate receiving the greatest number of votes at the November Presidential election.[1] (Compl. ¶ 27).

Following the procedure mandated by Michigan Election Law, after the State Board of Canvassers ascertained the result of the election as to the electors of President and Vice President of the United States, the Governor of the State of Michigan certified the results of the election in

[1] As Plaintiffs admit in their Complaint, Michigan law already designated Plaintiffs as the true electors in this case. There is nothing for this Court to say further or otherwise on this point.

Michigan and the names of the electors in this State chosen as electors of President and Vice President of the United States. This is evidenced by the Amended Certificate of Ascertainment of the Electors of the President and Vice President of the United States of America signed and certified by Governor Gretchen Whitmer, under the Great Seal of the State of Michigan. A copy is attached to the Complaint as Exhibit A. (Compl. ¶ 28, Ex. A).

The Amended Certificate of Ascertainment certified that the slate of electors nominated by the Democratic Party were duly elected as Electors of the President and Vice President of the United States, having received 2,804,040 votes for the winning candidate (Joe Biden) compared to the slate of electors nominated by the Republican Party, which received 2,649,852 votes for the losing Republican candidate (Donald Trump). The Amended Certificate of Ascertainment ultimately was sent according to law to Congress and the National Archives. (Compl. ¶ 29).

Following the procedure mandated by Michigan Election Law, the slate of electors nominated by the Democratic Party and elected in the general election held in the State of Michigan (*i.e.*, the Biden/Harris Electors, including Plaintiffs) duly convened in the State Capitol in Lansing on December 14, 2020, at 2 p.m., and formally cast their 16 electoral votes for Joe Biden for President of the United States. This is reflected in the State of Michigan Certificate of Votes for President and Vice President, which is attached to the Complaint as Exhibit B. (Compl. ¶ 30, Ex. B).

Plaintiffs claim "an intangible personal property interest in their lawful ***office*** as true Electors of the State of Michigan for President and Vice President of the United States, having been duly and lawfully elected in the General Election held in the State of Michigan on November 3, 2020." (Compl. ¶ 59 [emphasis added]).

Plaintiffs further allege that "defendants conspired and agreed to submit fraudulent election certificates (1) falsely claiming their candidate won the election in Michigan, when in fact he lost by over 153,000 votes; (2) falsely claiming they were 'the duly elected and qualified Electors for President and Vice President of the United States of American from the State of Michigan,' when in fact the appropriate government officials in Michigan ***had already certified Michigan's official election results for Joe Biden***; and (3) falsely purporting to 'certify' that they had 'convened and organized in the State Capitol' on December 14, 2020 to cast Michigan's 16 electoral votes for Donald Trump, when in fact none of this was true. A copy of their fake election 'certificates' signed by the defendants and styled 'Certificate of the Votes of the 2020 Electors from Michigan,' which they offered as an official public record, is attached [to the Complaint] as **Exhibit C**." (Compl. ¶ 32 [emphasis added], Ex. C). Notably, no Plaintiff is named or identified in Exhibit C—the alleged "publication." Accordingly, nothing in Exhibit C says *anything* about the characteristics, conduct, or beliefs of *any* Plaintiff.

Plaintiffs' electoral college votes were in fact cast for their candidates, Joe Biden/Kamala Harris. Joe Biden and Kamala Harris were elected President of the United States and Vice-President of the United States respectively, and they are currently serving in that capacity. In other words, no defendant prevented *any* Plaintiff from casting his or her electoral vote for Joe Biden/Kamala Harris. No defendant prevented Plaintiffs' candidates, Joe Biden/Kamala Harris, from taking their respective offices. No electoral vote of any Defendant was counted. That is, there was nothing that any Defendant did that prevented Plaintiffs from casting their electoral votes or that prevented those electoral votes from counting.[2] *Nothing*.

[2] Insofar as it is necessary, this Court can take judicial notice of the fact that Plaintiffs successfully cast their electoral votes for Biden/Harris, that those were the only votes from Michigan that were actually counted, that Biden/Harris prevailed in the election, and that Joe

The remaining allegations (largely allegations of a "fake elector scheme") in the Complaint are immaterial. That is, they are of no legal consequence, as the discussion below illustrates.

ARGUMENT

I. PLAINTIFFS' DECLARATORY JUDGMENT CLAIM IS MOOT AS IT SEEKS TO OBRAIN A JUDGMENT ON A "PRETENDED CONTROVERSY" AND THUS FAILS AS A MATTER OF LAW.

Plaintiffs seek a declaration from this Court that they, and "not defendants, were true Electors of the State of Michigan for President and Vice President of the United States, and that defendants' fake elector scheme was illegal under Michigan law." (Compl, Relief Req. ¶ (a)). But it is without question that Plaintiffs' votes were the only ones considered (*i.e.*, they were in fact the actual electors under existing Michigan law), resulting in the election of *their* candidates. In short, there is no controversy for this Court to resolve via the prospective remedy of a declaratory judgment. It is patently frivolous to pretend otherwise. Plaintiffs' claim is moot.[3]

"It is universally understood by the bench and bar . . . that a moot case is one which seeks to get a judgment on a pretended controversy, when in reality there is none . . . ." *League of Women Voters of Mich v Sec'y of State*, 506 Mich 561, 580 (2020) (quoting *Anway v Grand Rapids R Co*, 211 Mich 592 (1920)). An issue is moot if a judicial decision on that issue would have *no practical legal effect*, as in this case.

Biden is currently serving as President of the United States and Kamala Harris is currently serving as Vice-President of the United States as a direct result. See MRE 201(b) (providing that a judicially noticeable fact is one that is "either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned").

[3] This point is further illustrated by the fact that Plaintiffs are not seeking injunctive relief as there is nothing to enjoin.

In *Equity Funding, Inc v Village of Milford*, 342 Mich App 342 (2022), the Michigan Court of Appeals made the following relevant ruling:

> Equity's arguments regarding the validity of the lien and who paid it off are irrelevant. The fact remains that following the payment, Milford released the lien. To declare the lien invalid then, by entering a declaratory judgment or quieting title in Equity, would have had ***no practical legal effect on the parties***. *Adams*, 340 Mich App at 251, 2022 Mich App LEXIS 533 at *8. The lien had already been discharged, and Equity, in effect, achieved the result it sought—clearing title to the property. Therefore, with regard to the quiet-title and declaratory-judgment claims, there was no controversy left to resolve, and the circuit court correctly concluded they were moot.

Id at 351 (emphasis added). Here, Plaintiffs' request for declaratory relief has no practical legal effect on the parties. None. Defendants' "fake elector scheme" was rejected.[4] Plaintiffs' electoral votes were cast and counted pursuant to Michigan law, Plaintiffs' candidates won the election, and they are currently serving as President and Vice-President of the United States. In sum, there is no legal controversy to resolve. To claim otherwise is patently frivolous.

II. PLAINTIFFS' INVASION OF PRIVACY – FALSE LIGHT CLAIM FAILS AS A MATTER OF LAW.

Plaintiffs allege that Defendants' failed attempt to offer an alternate slate of electors in support of Donald Trump violated the tort of invasion of privacy/false light by publicizing "fake elector certificates" that apparently invaded Plaintiffs' privacy and/or attributed to Plaintiffs highly objectionable characteristics with actual malice. The claim is patently frivolous.

[4] As the Court knows, Defendants in this civil case have been indicted by the Michigan Attorney General for their involvement in the 2020 election—the very same "fake electors scheme" alleged here. (Insofar as necessary, the Court can take judicial notice of this fact pursuant to MRE 201, and Defendant Sheridan previously provided this Court with a copy of the criminal complaint as exhibit 1 in support of her motion to stay/for a protective order). Similar to how a conviction in the criminal case will have *no* impact on any cognizable *legal* interest of any Plaintiff (it may make them "feel" good, but that is irrelevant), a declaration in this case will similarly have *no* impact on any cognizable *legal* interest of any Plaintiff. At the end of the day, this is a politically-motivated, pretend controversy designed to harass Defendants and to take a political "victory lap." It is objectively an abuse of the legal process.

There are four types of invasion-of-privacy claims: "(1) intrusion upon the plaintiff's seclusion or solitude or into his private affairs; (2) public disclosure of embarrassing private facts about the plaintiff; (3) publicity that places the plaintiff in a false light in the public eye; and (4) appropriation, for the defendant's advantage, of the plaintiff's name or likeness." *Puetz v Spectrum Health Hosps*, 324 Mich App 51, 69 (2018) (citation and quotation marks omitted).

To establish a claim for false-light invasion of privacy, a plaintiff must prove "the defendant broadcast to the public in general, or to a large number of people, information that was ***unreasonable*** and *highly objectionable* ***by attributing to the plaintiff*** *characteristics, conduct*, or *beliefs* that were false and placed the plaintiff in a false position." *Puetz*, 324 Mich App at 69 (quotation marks and citation omitted) (emphasis added). "[M]alice is an element of false-light invasion of privacy, regardless of whether the plaintiff is a public or private figure." *Found For Behavioral Resources v WE Upjohn Unemployment Trustee Corp*, 332 Mich App 406, 413 (2020). Consequently, "the defendant must have known of or acted in reckless disregard as to the falsity of the publicized matter and *the false light in which the plaintiff would be placed*." *Id* at 410 (quotation marks and citation omitted) (emphasis added). As described by the Michigan Court of Appeals:

> [T]he actual malice test mandates a *subjective* inquiry concentrating on the knowledge of a defendant at the time of a publication. See *Harte-Hanks Communications, Inc v Connaughton*, 491 US 657, 688 (1989). Adoption of an objective standard that would concentrate on what readers' inferences "'should have been foreseen'" by a defendant "would permit liability to be imposed not only for what was not said but also for what was not intended to be said." *Newton v Nat'l Broadcasting Co, Inc*, 930 F2d 662, 680, 681 (CA 9, 1990). In a case such as this, where the plaintiffs are claiming injury from an allegedly harmful *implication* arising from the defendant's article, plaintiffs "*must show with clear and convincing evidence that the defendant[] intended or knew of the implications that the plaintiff is attempting to draw* . . . ." *Saenz v Playboy Enterprises, Inc*, 841 F2d 1309, 1318 (CA 7, 1988). Further, that conclusion is refuted if only a "*strained reading of the article itself" would yield the offensive interpretation that a plaintiff alleges*. *Howard v Antilla*, 294 F3d 244, 254 (CA 1, 2002).

Battaglieri v Mackinac Ctr for Pub. Policy, 261 Mich App 296, 305-06 (2004) ("We have conducted the constitutionally required independent examination of the evidence presented here and conclude that, under the actual malice requirements imposed by the First Amendment, *plaintiffs' complaint should have been dismissed as a matter of law*.") (emphasis added). Thus, whether the allegations support a finding of "actual malice" is a question of law. See *Garvelink v Detroit News*, 206 Mich App 604, 608 (1994) ("The question whether the evidence in a defamation case is sufficient to support a finding of actual malice is a question of law.").

Finally, the "publicity must lift the *curtain of privacy* on a subject matter that a *reasonable* man of ordinary sensibilities would find offensive and objectionable: *super-sensitiveness* is not protected[.]" *Reed v Ponton*, 15 Mich App 423, 426 (1968) (emphasis added).

To summarize, Plaintiffs' claim fails as a matter of law for at least five reasons. First, there was no publication by Defendants about or concerning *any* Plaintiff. Second, assuming, *arguendo*, that the submission of the "fake elector certificates" is a publication about or concerning Plaintiffs, nothing in the certificates convey "unreasonable and highly objectionable" matter and, moreover, nothing in the publication "attribut[es]" any objectionable "characteristic[], conduct, or belief[]" to any Plaintiff. Third, Plaintiffs' alleged "implication" theory that the "fake elector certificates" cast Plaintiffs in a false light is defeated by the fact that Plaintiffs were already determined as a matter of law to be the actual electors well before the "fake elector certificates" were submitted. Fourth, assuming, *arguendo*, that the submission of the "fake elector certificates" is a publication about or concerning Plaintiffs, nothing in the certificate "lift[s] the curtain of privacy on a subject matter that a reasonable man of ordinary

sensibilities would find offensive and objectionable." And fifth, Plaintiffs' strained "implication" theory does not meet the actual malice standard as a matter of law.

Here, Plaintiffs claim that Defendants' "fake elector certificates," which were "purportedly public documents," "were publicized to many people," which included submitting them to the "United States National Archives and the President of the United States Senate." And this submission allegedly placed Plaintiffs "in a false light" by "*implying* that plaintiffs were not legitimate or valid electors," (Compl. ¶¶ 52, 53 [emphasis added]), which, of course, is an absurd assertion as Plaintiffs were already determined to be the actual electors as a matter of Michigan law, and that has never changed. Moreover, *no* Plaintiff is named or identified in any "fake elector certificate." Accordingly, nothing was "publicized" by any Defendant about any Plaintiff.

Plaintiffs' "implication" argument is further undermined by their allegations, which acknowledge that "the appropriate government officials in Michigan *had already certified Michigan's official election results for Joe Biden*" before any "fake elector certificate" was allegedly "publicized." (Compl. ¶ 32 [emphasis added]). In other words, the "fake elector certificates" had no potential to convey anything adverse because Governor Whitmer's certification issued and delivered to Congress on November 23, 2020 was deemed "conclusive" as to the identity of the Michigan electors. This Certification was made weeks before the "fake elector certificates" were executed and delivered (*i.e.*, "publicized") to any government official. Thus, the "fake elector certificates" had no effect or impact (and thus no adverse "implication") whatsoever. This is a pretend controversy.

Thus, Plaintiffs' "implied" invasion of privacy/false light claim is unreasonable as a matter of law as Plaintiffs' *own allegations* demonstrate that the "fake elector certificates" were

obviously *not* the legitimate elector certificates. Consequently, as a matter of law, no reasonable person would remotely imply from these "fake elector certificates" that Plaintiffs' were not the actual electors.

Additionally, according to Plaintiffs, this fabricated "implication" is somehow "highly offensive." (*Id* at ¶ 54). Plaintiffs also allege in a conclusory fashion that this was done with "actual malice," but they do so without presenting "clear and convincing evidence" showing that Defendants recklessly sought and intended to invade the privacy of each *Plaintiff* and/or to cast each *Plaintiff* in the alleged false light, nor could they as Defendants *never* named *nor* identified any Plaintiff (nor said/publicized *anything* about the Biden/Harris electors in general) in the "fake elector certificates."

Defendants were selected as the Trump/Pence alternate slate of electors. The submission of their electoral votes, which were promptly rejected, said nothing about any Plaintiff. At best, Defendants' actions were either a failed political protest to the results of the general election[5] or an effort to create an alternate slate of electors should any of the ongoing litigation succeed and change the election result. What these "fake elector certificates" plainly are not is a statement about any particular Plaintiff. Whoever the electors were for Biden/Harris was of no consequence.

In short, this case simply does not fit a cause of action for false-light/invasion of privacy as a matter of law. The circumstances do not involve any Plaintiffs' right to *privacy* or concern the need to protect Plaintiffs' privacy whatsoever. It's not a close call. There is no "lifting" of a

[5] This also raises First Amendment issues. See *Wesberry v Sanders*, 376 US 1, 17 (1964) ("No right is more precious in a free country than that of having a voice in the election of those who make the laws."); *Hand v Scott*, 285 F Supp 3d 1289, 1299 (ND Fla 2018) ("In our democratic society where the people are sovereign, voting is the citizen's ultimate form of political expression.").

"curtain of privacy" in this matter. And the matter "publicized" fails to mention any specific Plaintiff (or the Biden/Harris electors in general), let alone publicize anything about them that is "offensive and objectionable." Plaintiffs have also failed to show by *clear and convincing evidence* that Defendants intended or knew of the implications Plaintiffs are attempting to draw here. Plaintiffs have failed to meet this "actual malice" standard as a matter of law as even a "strained reading" of the "fake elector certificates" wouldn't yield the "offensive interpretation" that Plaintiffs allege. And finally, Plaintiffs' bogus theory of the harm allegedly caused by the "fake elector certificates" doesn't even rise to the level of "super-sensitiveness." Whatever hurt feelings Plaintiffs are suffering do not constitute any basis for advancing this or any other legal claim. And this is particularly the case when you consider the context of their claim: Plaintiffs *willingly* jumped into the political fray of a highly contentious and public national election.

In sum, Plaintiffs' tortured attempt to make out a false-light/invasion of privacy claim is patently frivolous.

III. PLAINTIFFS' CONVERSION CLAIM FAILS AS A MATTER OF LAW.

Plaintiffs allege a claim of statutory conversion in violation of MCL 600.2919a, which requires, in relevant part, the "converting [of] property to the other person's own use." MCL 600.2919a(1)(a). "[T]he Legislature's inclusion of the phrase 'to the other person's own use' in § 2919a(1)(a) indicates its intent to limit § 2919a(1)(a) to a subset of common-law conversions in which the common-law conversion was to the other person's 'own use.'" *Aroma Wines & Equip, Inc v Columbian Distribution Servs, Inc*, 497 Mich 337, 354-55 (2015).

"[S]omeone alleging conversion to the defendant's 'own use' under MCL 600.2919a(1)(a) must show that the defendant employed the *converted property* for some

purpose *personal* to the defendant's interests, even if that purpose is not the object's ordinarily intended purpose." *Id* at 359.

Under the common law, conversion is "'any distinct *act of dominion* wrongfully exerted over another's personal property *in denial of or inconsistent with his rights therein*.'" *Aroma Wines & Equip, Inc*, 497 Mich at 346 (emphasis added); see also *Foremost Ins Co v. Allstate Ins Co*, 439 Mich 378, 391 (1992) ("In the civil context, conversion is defined as any distinct act of domain wrongfully exerted over another's personal property in denial of or inconsistent with the rights therein."). "The gist of conversion is the interference with control of the property." *Sarver v Detroit Edison Co*, 225 Mich App 580, 585 (1997) (quotations and citation omitted).

The Michigan Supreme Court has held that an action for "trover" will not lie for intangible property, such as a business's goodwill. *Powers v Fisher*, 279 Mich 442, 449 (1937). And the Court has continued to describe a claim for conversion as applying to tangible chattel property. See *Thoma v Tracy Motor Sales, Inc*, 360 Mich 434, 438-439 (1960). Nevertheless, the Michigan courts have recognized that common-law conversion has been extended to some forms of intangible property. More specifically, the courts have extended the tort to cover intangible property that was represented or connected by something tangible. See *Sarver*, 225 Mich App at 585-86. However, the intangible property must be of a kind that is capable of being "owned and possessed to the exclusion of others"—that is, the intangible item must possess property-like traits. *Id* at 586 (internal citation and quotation omitted); see also *id* (holding that an intangible idea even if produced in a written document was not property capable of being converted, stating that "although plaintiff expressed her idea for an automated turn-on/disconnect process in written form, she did not thereby transform the idea into intangible property *that was subject to private ownership*") (emphasis added).

"Under Michigan law, . . . an elected official has no property right to public office." *Wayne Co Retirees Ass'n v Wayne Co*, ___F Supp 3d___; 2017 US Dist LEXIS 225011, at *16 (ED Mich, Feb. 24, 2017) (citing cases). In short, "[a] public office cannot be called 'property' . . . ." *Aguirre v State*, 315 Mich App 706, 718 (2016) (citing cases).

As stated by the Michigan Supreme Court:

> [W]e believe that public offices should not be treated like private property. As *Davies* observed, "To treat political rights as economic commodities *corrupts the political process.*" Such treatment fundamentally misunderstands the nature of public office: the law has long been clear that there is no property interest in holding public office. As we have stated, "A public office cannot be called 'property,' within the meaning of" various constitutional provisions protecting property interests, including the Due Process Clause. Instead, "[p]ublic offices are created for the purposes of government. They are delegations of portions of the sovereign power for the welfare of the public. They are not the subjects of contract, but they are agencies for the State . . . ." Thus, public offices cannot be commoditized for the personal benefit of the officeholder or aspiring officeholder.

People v Smith, 502 Mich 624, 638-39 (2018); see also *LaPointe v Winchester Bd of Educ*, 366 F App'x 256, 257 (CA 2, 2010) ("[E]lected officials lack such a protected property interest in their elected offices because public offices are mere agencies or trusts, not property.") (internal quotation marks and alterations omitted); *Haney v Winnebago Co Bd*, ___F Supp 3d___; 2020 US Dist LEXIS 46645, at *16 (ND Ill, Mar. 18, 2020) ("[T]his Court remains bound by the Supreme Court's instruction that, as an elected official, Haney lacks a constitutionally cognizable protected property interest in his elected position . . . ."); *Taylor v Beckham*, 178 US 548, 576 (1900) ("The view that public office is not property has been generally entertained in this country.").

Plaintiffs' conversion claim is frivolous for at least four reasons. First, Plaintiffs allege "an intangible personal property interest in their lawful *office* as true Electors of the State of Michigan for President and Vice President of the United States." (Compl. ¶ 59 [emphasis

added]). Unquestionably, this is a *public* "office." Plaintiffs were serving a public function. That is, they were elected to a public and political office to serve a public purpose. They did not accept this public office for personal gain; doing so is called corruption.[6] As stated by the Michigan Supreme Court, "To treat political rights as economic commodities *corrupts* the political process. Such treatment fundamentally misunderstands the nature of public office . . . ." *Smith*, 502 Mich at 638 (emphasis added). Because Plaintiffs have no personal property interest whatsoever in this public "office," there was no "property" for Defendants to convert as a matter of law. It is frivolous to argue otherwise.

Second, the "intangible property" interest that Plaintiffs' assert is only subject to conversion if it is of a kind that is capable of being "*owned and possessed* to the exclusion of others." See *Sarver*, 225 Mich App at 586 (internal citation and quotation omitted) (emphasis added). Plaintiffs' alleged interest in "their lawful *office* as true Electors of the State of Michigan for President and Vice President of the United States" is not an interest that is capable of being owned or possessed to the exclusion of others. Indeed, this "office" is not "*subject to private ownership*" and thus not subject to conversion as a matter of law. See *id* at 587. It is frivolous to argue otherwise.

Third, no Defendant took dominion over Plaintiffs' "intangible property." There was no "interference with control of the property." Plaintiffs' electoral votes were submitted and counted, resulting in the election of their candidates. Plaintiffs' purposes for submitting the electoral votes were achieved. Defendants' actions did nothing to prevent any of this from

[6] Plaintiffs are asking for $25,000 in damages (and treble damages for conversion). Do they think they could have sold their electoral vote for that amount of money (or for any amount of money for that matter) without running afoul of public corruption laws? See MCL 168.931. This all demonstrates that Plaintiffs had nothing of *personal* value in their "office" to be converted in the first instance.

occurring. In short, no Defendant exercised any "dominion" whatsoever over any property (or property interest) of Plaintiffs. It is frivolous to argue otherwise.

Finally, to convert property (which didn't happen here as a matter of law as set forth above) to Defendants' "own use" under MCL 600.2919a(1)(a), Plaintiffs must show that Defendants *converted this property* for some purpose *personal* to Defendants. Defendants never obtained anything of personal value from Plaintiffs by submitting the "fake elector certificates." Moreover, Defendants did nothing with the Biden/Harris slate of electors (*i.e.*, the tangible connection to Plaintiffs' alleged intangible property interest). It is frivolous to argue otherwise.

In the final analysis, Plaintiffs' conversion claim is patently frivolous.

IV. PLAINTIFFS' CONSPIRACY CLAIM FAILS AS A MATTER OF LAW.

As set forth above, Plaintiffs have not alleged any viable claims. Consequently, as a matter of law, Plaintiffs have also failed to allege a conspiracy. "A civil conspiracy is a combination of two or more persons, by some concerted action, to accomplish a criminal or unlawful purpose, or to accomplish a lawful purpose by criminal or unlawful means." *Advocacy Org for Patients & Providers v Auto Club Ins Ass'n*, 257 Mich App 365, 384 (2003) (internal quotations and citation omitted). To support a claim of civil conspiracy, Plaintiffs are required to assert some underlying tortious conduct. *Urbain v Beierling*, 301 Mich App 114, 132 (2013) ("Given that plaintiff has not established that defendants committed an underlying tort, she cannot sustain her claims of concert of action and civil conspiracy."). "[A] claim for civil conspiracy may not exist in the air; rather, it is necessary to prove a separate, actionable tort." *Advocacy Org. for Patients & Providers*, 257 Mich App at 384 (internal quotations and citation omitted).

Accordingly, "[i]t is well settled that a claim for civil conspiracy, standing alone, is not actionable. *Cousineau v Ford Motor Co*, 140 Mich. App. 19, 36-37 (1985). In other words, a civil conspiracy claim may not be maintained where there are no legal and equitable claims remaining, as in this case. See *Detroit Bd of Ed v Celotex Corp*, 196 Mich App 694, 713 (1992).

In sum, Plaintiffs' civil conspiracy claim, which stands alone as there is no separate and actionable tort, must be dismissed.

V. DEFENDANTS ARE ENTITLED TO THEIR ATTORNEYS' FEES AND COSTS.

MCL 600.2591 provides, in relevant part, as follows:

> (1) Upon motion of any party, if a court finds that a civil action or defense to a civil action was frivolous, the court that conducts the civil action shall award to the prevailing party the costs and fees incurred by that party in connection with the civil action by assessing the costs and fees against the non-prevailing party and their attorney.
>
> * * *
>
> (3) As used in this section:
>
> (a) "Frivolous" means that at least 1 of the following conditions is met:
>
> (i) The party's primary purpose in initiating the action or asserting the defense was to harass, embarrass, or injure the prevailing party.
>
> * * *
>
> (iii) The party's legal position was devoid of arguable legal merit.

MCL 600.2591.

Pursuant to MCL 600.2591 and as set forth above, Defendants are entitled to their attorneys' fees and costs as Plaintiffs' "legal position was devoid of arguable legal merit." Indeed, the claims are patently frivolous. Moreover, given the frivolous nature of the claims and the context in which these claims arise, it is evident that the "primary purpose" of this lawsuit is to "harass, embarrass, or injure" Defendants, who are Plaintiffs' political opponents.

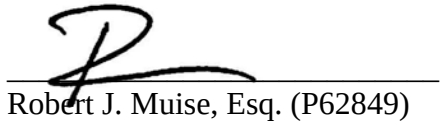
Upon granting this motion, Defendants will submit for the Court's review and approval their application for attorneys' fees and costs.

CONCLUSION

The Court should grant this motion, dismiss Plaintiffs' frivolous Complaint, and award Defendants their reasonable attorneys' fees and costs.

Respectfully submitted,

AMERICAN FREEDOM LAW CENTER



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Date: December 14, 2023.

STATE OF MICHIGAN

17th CIRCUIT COURT FOR KENT COUNTY

Blake Mazurek, Robin Smith, and Timothy Smith,

Plaintiffs,

v.

Kathy Berden, Mayra Rodriguez, Meshawn Maddock, John Haggard, Kent Vanderwood, Marian Sheridan, James Renner, Amy Facchinello, Rose Rook, Hank Choate, Mari-Ann Henry, Clifford Frost, Stanley Grot, Timothy King, Michele Lundgren, and Ken Thompson,

Defendants.

Case No.: 23-00306-CZ

Hon.: Christina Elmore

Plaintiffs' Response to Defendant Henry's Motion to Dismiss Under MCR 2.116(C)(8)

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Plaintiffs' Response to Defendant Henry's Motion to Dismiss Under MCR 2.116(C)(8)

Plaintiffs Blake Mazurek, Robin Smith, and Timothy Smith, respectfully submit this response in opposition to defendant Mari-Ann Henry's motion to dismiss under MCR 2.116(C)(8).

Introduction

Defendant Henry's motion to dismiss must be denied for two related reasons. First, defendant's motion is procedurally improper. Defendant gives lip service to, but does not honor, the requirement that in reviewing a motion to dismiss under MCR 2.116(C)(8), all of the factual allegations in the complaint must be accepted as true. Second, defendant ignores the relevant legal authorities in Michigan supporting the conclusion that plaintiffs' complaint adequately states claims upon which relief can be granted. Accepting as true the factual allegations in plaintiffs' complaint, as required under MCR 2.116(C)(8), plaintiffs' complaint pleads the necessary elements to state valid claims under Michigan law for declaratory judgment (Count I), invasion of privacy – false light (Count II), statutory conversion (Count III), and civil conspiracy (Count IV). Accordingly, defendant's motion under MCR 2.116(C)(8) must be denied.

Legal Standard under MCR 2.116(C)(8)

The controlling legal standard under MCR 2.116(C)(8) is well-settled. It was succinctly stated by the Michigan Supreme Court in *Maiden v. Rozwood*, 461 Mich. 109, 119-120 (1999):

> A motion under MCR 2.116(C)(8) tests the legal sufficiency of the complaint. All well-pleaded factual allegations are accepted as true and construed in a light most favorable to the nonmovant. *Wade v. Dep't of Corrections*, 439 Mich. 158, 162, 483 N.W.2d 26 (1992). A motion under MCR 2.116(C)(8) may be granted only where the claims alleged are "so clearly unenforceable as a matter of law that no factual development could possibly justify recovery." *Id.* at 163, 483 N.W.2d 26. When deciding a motion brought under this section, a court considers only the pleadings. MCR 2.116(G)(5).

See also, El-Khalil v. Oakwood Healthcare, Inc., 504 Mich. 152, 159-160 (2019) (same); MCR 2.116(G)(5) ("Only the pleadings may be considered when the motion is based on subrule (C)(8) or (9)"). It is reversible error to conduct what amounts to analysis under MCR 2.116(C)(10) in deciding a motion under MCR 2.116(C)(8) by requiring evidentiary support for the claimant's allegations rather than accepting them as true. *El-Khalil,* 504 Mich. at 166.

The Allegations in the Complaint

Applying the controlling legal standard cited above, the factual allegations in plaintiffs' complaint must be accepted as true and construed in a light most favorable to plaintiffs as the nonmovants. The allegations relevant for purposes of the present motion include the following:

* * *

> 22. Leading up to the 2020 presidential election in Michigan, plaintiffs Blake Mazurek, Robin Smith, and Timothy Smith were nominated by the Michigan Democratic Party to serve as three of the sixteen electors on the Democratic slate of presidential electors (i.e., the Biden/Harris electors), to vote in the Electoral College for President and Vice President of the United States, in the event that the Democratic presidential candidate, Joe Biden, were to win the election in Michigan.
>
> 23. Leading up to the 2020 presidential election in Michigan, each of the defendants, except for Mr. Thompson and Mr. Renner, were nominated by the Michigan Republican Party to serve as electors on the Republican slate of presidential electors (i.e., the Trump/Pence electors), to vote in the Electoral College for President and Vice President of the United States in the event that the Republican presidential candidate, Donald Trump, were to win the election in Michigan. . . .

* * *

> 26. The Presidential race in the State of Michigan was called on Wednesday November 4, 2020, after the general election held on Tuesday, November 3, 2020. Joe Biden won the election in Michigan by more than 154,000 votes.
>
> 27. Michigan Election Law is clear that the one and only slate of electors from Michigan for President and Vice President of the United States is the

slate of electors nominated by the political party of the candidate receiving the greatest number of votes at the November Presidential election. MCL 168.42.

28. Following the procedure mandated by Michigan Election Law, MCL 168.46, after the State Board of Canvassers ascertained the result of the election as to the electors of President and Vice President of the United States, the Governor of the State of Michigan certified the results of the election in Michigan and the names of the electors in this State chosen as electors of President and Vice President of the United States. This is evidenced by the Amended Certificate of Ascertainment of the Electors of the President and Vice President of the United States of America signed and certified by Governor Gretchen Whitmer, under the Great Seal of the State of Michigan. A copy is attached as Exhibit A.

29. The Amended Certificate of Ascertainment certified that the slate of electors nominated by the Democratic Party were duly elected as Electors of the President and Vice President of the United States, having received 2,804,040 votes for the winning candidate (Joe Biden) compared to the slate of electors nominated by the Republican Party, which received 2,649,852 votes for the losing Republican candidate (Donald Trump). The Amended Certificate of Ascertainment ultimately was sent according to law to Congress and the National Archives.

30. Following the procedure mandated by Michigan Election Law, MCL 168.47, the slate of electors nominated by the Democratic Party and elected in the general election held in the State of Michigan (i.e., the Biden/Harris Electors, including plaintiffs) duly convened in the State Capitol in Lansing on December 14, 2020, at 2 p.m., and formally cast their 16 electoral votes for Joe Biden for President of the United States. This is reflected in the State of Michigan Certificate of Votes for President and Vice President attached here as Exhibit B.

31. Despite the results of a free and fair election in Michigan, canvassed and certified according to Michigan Election Law, the defendants participated in a fraudulent scheme to steal the election and install the losing candidate (Donald Trump) as President.

32. Specifically, the defendants conspired and agreed to submit fraudulent election certificates (1) falsely claiming their candidate had won the election in Michigan, when in fact he had lost by over 153,000 votes; (2) falsely claiming they were "the duly elected and qualified Electors for President and Vice President of the United States of America from the State of Michigan," when in fact the appropriate government officials in Michigan had already certified Michigan's official election results for Joe Biden; and (3) falsely purporting to "certify" that they had "convened and organized in the State Capitol" on December 14, 2020 to cast Michigan's 16 electoral votes for Donald Trump, when in fact none of this was true. A copy of their fake election "certificate" signed by the defendants and styled "Certificate of the Votes of the 2020 Electors from

Michigan," which they offered as an official public record, is attached here as Exhibit C.

33. **The fraudulent election certificates were sent by the defendants to the President of the Senate of the United States and the Archivist of the United States** with an accompanying "Memorandum" from defendant Kathy Berden. Defendant Berden falsely identified herself in the Memorandum as "Chairperson, Electoral College of Michigan" and she falsely claimed to enclose "duplicate originals of Michigan's electoral votes for President and Vice President . . . ." See Exhibit C.

* * *

35. The defendants' fake elector scheme was closely coordinated with the Trump campaign and with others, including Republican National Committee Chair Ronna McDaniel, such that similar fraudulent election certificates from similar fake Trump slates of electors in other states that Biden won and Trump lost, were submitted to Executive Branch officials at the National Archives, and to the Legislative Branch, including to the Office of the President of the Senate, Vice President Mike Pence. *Select Committee Report*, Executive Summary, pp. 41-43, including fn. 231.

36. The purpose of the fake elector scheme was to give the President of the United States Senate (which, under the Constitution, is the Vice President) a purported justification to refuse to count the real electoral votes on January 6, stealing the election and installing the loser as President. However, the fake elector scheme failed when Vice President Pence and the Senate parliamentarian ultimately refused to recognize or count the unofficial fake electoral votes. *Select Committee Report*, Executive Summary, p. 43.

37. Defendant Meshawn Maddock, a co-chair of the Michigan Republican Party, later told an audience in January 2022 regarding the false Trump electors: "We fought to seat the electors. The Trump campaign asked us to do that." *Select Committee Report*, p. 351.

38. Defendants' scheme attempted to subvert the sacred right of qualified voters in Michigan, enshrined in the State Constitution, to have their votes counted. Michigan Constitution of 1963, Art. II, Sec. 4.

39. In participating in this fake elector scheme, defendants violated multiple state and federal criminal laws, including the following: MCL 168.932(d) (making it a felony to "in any manner obstruct or attempt to obstruct any elector in the exercise of his or her duties as an elector under this act"); MCL 168.933a(a) (making a person guilty of election forgery if he or she "Knowingly makes, files, or otherwise publishes a false document with intent to defraud"); MCL 750.248(1) ("A person who falsely makes, alters, forges, or counterfeits a public record . . .

with intent to injure or defraud another person is guilty of a felony punishable by imprisonment for not more than 14 years") . . . .

40. Defendant Kathy Berden (described on the fake election certificates and accompanying memorandum as the "Chairperson" of the purported "Electoral College of Michigan") and Defendant Mayra Rodriguez (described on the fake election certificates as the "Secretary" of the fake Trump electors) were subpoenaed for depositions by the Congressional Select Committee to Investigate the January 6th Attack on the United States Capitol. Each was asked simple questions about their signatures on the fake election certificates and why they signed the certificates purporting to cast electoral college votes for Donald Trump despite the fact that he had lost the State of Michigan. Instead of answering these questions, each repeatedly invoked their privilege under the Fifth Amendment against self-incrimination, on the basis that their truthful answers might tend to incriminate them in a later criminal proceeding. . . .

41. Defendants' invocation of their Fifth Amendment privilege against incrimination, while protective in a criminal case, allows an adverse inference in a civil case like this one that their truthful answers would support the plaintiffs' claims. . . .

42. **Defendants' fraudulent election certificates falsely portrayed themselves as the real electors, conversely implying that the Biden electors, including plaintiffs, were invalid and illegitimate, at best, or fraudulent and criminal, at worst.**

43. **Defendants' fake elector scheme fueled widespread disinformation and confusion about the outcome of the election and falsely cast doubt on the legitimacy of the Biden Electors performing their civic and legal duty as the only true Electors of the State of Michigan for President and Vice President of the United States in the 2020 election.** This is despite the fact that calling into question the legitimacy of the Biden Electors, including plaintiffs, was utterly lacking any good faith basis.

44. **The defendants' conduct is highly offensive to any reasonable citizen.** Indeed, defendants' fake elector scheme is contrary to and undermines the basic democratic principles upon which our country is founded. Almost everyone in our society recognizes that lying, cheating, and stealing is wrong, and to do so in connection with a presidential election is traitorous, anti-democratic, and utterly outrageous.

45. **Plaintiffs were highly offended by being cast in the false light created by defendants. Plaintiffs viewed themselves as performing a civil and lawful duty as presidential electors in support of a country they love, only to have their legitimacy questioned and their integrity falsely and publicly denigrated by defendants' lies in their fake election certificates that**

defendants were the real Electors of the State of Michigan for President and Vice President of the United States.

46. Plaintiffs suffered humiliation, mental anguish, and stress as a result of being cast in the false light created by defendants' election fraud and lies.

47. Defendants' election fraud and the resulting humiliation, mental anguish, and stress **has made plaintiffs apprehensive about again seeking to be nominated as presidential electors in 2024.**

48. Defendants' election fraud cynically perpetuated the "Big Lie" that the election was stolen, while in truth it was the defendants and their co-conspirators who were attempting to steal the election. Defendants' conduct has weakened our democracy by eroding public trust in our elections, **including future elections in which plaintiffs might serve as electors.**

Count I: Declaratory Judgment

49. Plaintiffs incorporate by reference the preceding paragraphs as if restated here.

50. Plaintiffs are entitled to a declaratory judgment, under MCR 2.605, declaring that they were legitimate Electors of the State of Michigan for President and Vice President of the United States in the 2020 presidential election and that defendants' conduct violated Michigan law.

Count II: Invasion of Privacy – False Light

51. Plaintiffs incorporate by reference the preceding paragraphs as if restated here.

52. **Defendants' fake elector certificates were purportedly public documents and indeed were publicized to many people, including by submission to the United States National Archives and the President of the United States Senate.**

53. Defendants' fake elector certificates placed plaintiffs in a false light, falsely portraying defendants as the only real electors and necessarily implying that plaintiffs were not legitimate or valid electors.

54. Defendants' fake elector certificates, falsely implying that defendants, not plaintiffs, were the real electors, were highly offensive to a reasonable person and also to plaintiffs.

55. Defendants acted with actual malice. **They knew when they submitted their election certificates that the certificates were fraudulent, that**

they were fake electors, and that the real Biden electors would be placed in a false light as a result of defendants' scheme.

56. Defendants' conduct has harmed plaintiffs in multiple ways, including by causing reputational harm, humiliation, mental anguish, and stress, and defendants' conduct has made plaintiffs apprehensive about again seeking to be nominated to serve as presidential electors in 2024. In addition, defendants' conduct has undermined public trust and confidence in elections and the willingness to accept future election results, including future elections in which plaintiffs may serve as Electors of the State of Michigan for President and Vice President of the United States.

Count III: Statutory Conversion in Violation of MCL 600.2919a

57. Plaintiffs incorporate by reference the preceding paragraphs as if restated here.

58. Plaintiffs had an intangible personal property interest in their lawful office as true Electors of the State of Michigan for President and Vice President of the United States, having been duly and lawfully elected in the General Election held in the State of Michigan on November 3, 2020.

59. Plaintiffs' property interest and status as true Electors is officially memorialized in the State of Michigan Amended Certificate of Ascertainment of the Electors of the President and Vice President of the United States of America (Exhibit A), and in the State of Michigan Certificate of Votes for President and Vice President (Exhibit B).

60. Plaintiffs were vested with possession of their property interests as recognized and memorialized in (1) the State of Michigan Amended Certificate of Ascertainment of the Electors of the President and Vice President of the United States of America and (2) the State of Michigan Certificate of Votes for President and Vice President.

61. Defendants wrongfully exerted dominion over plaintiff's property interest as true Electors in a manner inconsistent with the plaintiff's rights. Specifically, by signing their fake election certificates described above (i.e., the "Certificate of the Votes of the 2020 Electors from Michigan" attached as Exhibit C); by falsely claiming therein that they were "the duly elected and qualified Electors for President and Vice President of the United States of America from the State of Michigan"; by falsely purporting to "certify" that they had cast Michigan's 16 electoral votes for Donald Trump; and by mailing the fake election certificates to the President of the Senate of the United States and the Archivist of the United States to serve as an official public record purportedly from the true Electors of the State of Michigan, defendants purported to perform a function that only the true Electors had the right and duty to perform. Defendants purported to vote for the

losing candidate, entirely contradicting the right and the duty of the true Electors to vote for the winning candidate.

62. Defendants put plaintiffs' converted property to their own use as described above by fraudulently holding themselves out as the true Electors and purporting to cast their fake electoral votes for the losing candidate, basing their action on the fake election certificates that contradicted the true certificates in which plaintiffs had an interest – (1) the State of Michigan Amended Certificate of Ascertainment of the Electors of the President and Vice President of the United States of America and (2) the State of Michigan Certificate of Votes for President and Vice President.

63. As a result, defendants engaged in conversion in violation of MCL 600.2919a, entitling plaintiffs to treble damages and attorney fees as provided by statute.

64. Defendants' conduct has caused plaintiffs to suffer actual damages as described above, including reputational harm, humiliation, mental anguish, and stress. In addition, defendants' conduct has made plaintiffs apprehensive about again seeking to be nominated to serve as presidential electors in 2024. In addition, defendants' conduct has undermined public trust and confidence in elections and the willingness to accept future election results, including future elections in which plaintiffs may serve as Electors of the State of Michigan for President and Vice President of the United States.

Count IV: Civil Conspiracy

65. Plaintiffs incorporate by reference the preceding paragraphs as if restated here.

66. Defendants combined together with each other to engage in concerted action to accomplish the criminal violations alleged in paragraph 39 above by submitting their fake elector certificates.

67. Defendants also combined together with each other to engage in concerted action to accomplish an unlawful purpose in portraying the Biden electors, including plaintiffs, in a false light, by falsely portraying defendants as the real electors and necessarily implying that plaintiffs were invalid and illegitimate electors.

68. Defendants also combined together with each other to engage in concerted action to accomplish an unlawful purpose in falsely portraying themselves as the real electors from the State of Michigan, thereby converting plaintiff's intangible property interest in their lawfully acquired position as true electors.

> 69. Defendants' conduct has caused plaintiffs to suffer actual damages as described above, including reputational harm, humiliation, mental anguish, and stress. In addition, defendants' conduct has made plaintiffs apprehensive about again seeking to be nominated to serve as presidential electors in 2024. In addition, defendants' conduct has undermined public trust and confidence in elections and the willingness to accept future election results, including future elections in which plaintiffs may serve as Electors of the State of Michigan for President and Vice President of the United States.

(Emphasis added.)

* * *

In her brief, defendant ignores almost all of these allegations. She instead smugly mischaracterizes plaintiffs' complaint as attempting to state a claim against defendants for "having voted for Donald Trump." Defendant's Brief, p. 4, n.1. She later asserts that the fake elector scheme alleged in the complaint was merely a "ceremonial protest vote by Defendants" similar to what was done by Trump electors in seven other states that Trump lost. Defendant's Brief, p. 9.

Defendant's mischaracterization and her assertion of disputed fact are not relevant for purposes of a motion under MCR 2.116(C)(8). *Rozwood, supra; El-Khalil, supra.* A motion under MCR 2.116(C)(8) tests the legal sufficiency of the pleading at issue, and all factual allegations are taken as true, in a light most favorable to the nonmovant. *Rozwood, supra,* 461 Mich. at *119-120*; *El-Khalil, supra*, 504 Mich. at 155 ("We emphasize that a motion for summary disposition under MCR 2.116(C)(8) must be decided on the pleadings alone and that all factual allegations must be taken as true.")

Argument

Accepting as true the factual allegations in plaintiffs' complaint, and construing those allegations in a light most favorable to plaintiffs as the nonmovants, as required under MCR 2.116(C)(8), leads to this inescapable conclusion: plaintiffs' complaint states claims upon which

relief can be granted. Plaintiffs' complaint pleads the necessary elements under Michigan law to state valid claims for declaratory judgment (Count I), false light invasion of privacy (Count II), statutory conversion (Count III), and civil conspiracy (Count IV). As a result, defendant's motion must be denied.

Plaintiffs' complaint states a valid claim for declaratory judgment.

Count I of plaintiffs' complaint states a valid claim for declaratory judgment. In paragraph 50 of plaintiffs' complaint, plaintiffs seek a declaration that plaintiffs were legitimate electors of the State of Michigan for president and vice president of the United States and that defendants' conduct violated Michigan law. Complaint, paragraph 50. This falls squarely within the Court's authority to enter declaratory judgment as established by the governing court rule. MCR 2.605(A)(1) ("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 declaratory judgment, whether or not other relief is or could be sought or granted.") This rule is liberally construed to provide a broad, flexible remedy with a view toward making the courts more accessible to the people. *Allstate Ins. Co. v. Hayes*, 442 Mich. 56, 65 (1993).

Assuming the existence of a case or controversy within the subject matter of the court, the determination to make a declaration is ordinarily a matter entrusted to the sound discretion of the court. *Hayes*, 442 Mich. at 74. An actual controversy exists when plaintiffs seek a declaratory judgment to guide future conduct in order to preserve their legal rights. *Shavers v. Attorney Gen. of Michigan*, 402 Mich. 554, 588 (1978). Of course, for there to be an actual controversy, the party seeking declaratory relief must have standing. A "litigant has standing whenever there is a legal cause of action." *Lansing Sch. Educ. Ass'n v. Lansing Bd. of Educ.*, 487 Mich. 349, 372 (2010). In addition, "whenever a litigant meets the requirements of MCR

2.605, it is sufficient to establish standing to seek a declaratory judgment." *Id.* at 353, 372.[1]

In this case, plaintiffs meet the requirements of MCR 2.605 and therefore have standing to seek declaratory judgment. There is an actual controversy because defendants have not acknowledged their wrongdoing or plaintiffs' status as legitimate electors, and plaintiffs expressly allege that defendants' election fraud has made plaintiffs apprehensive about serving as presidential electors in future elections. Complaint, paragraphs 47-48. For these reasons, defendant's motion to dismiss must be denied as to Count I.

Plaintiffs' complaint states a valid claim for false light invasion of privacy.

Count II of plaintiffs' complaint states a valid claim for false light invasion of privacy. The Michigan Supreme Court recognizes this tort. *Dadd v. Mount Hope Church*, 486 Mich. 857 (2010). "False light" is one of the four types of invasion of privacy. *Beaumont v. Brown*, 401 Mich. 80, 95 (1977).

In order to state a claim for false light invasion of privacy, a plaintiff must allege that defendants disclosed to the public in general, or to a large number of people, information that was unreasonable and highly objectionable by attributing to the plaintiff characteristics, conduct, or beliefs that were false and placed the plaintiff in a false position. *Puetz v. Spectrum Health Hospitals*, 324 Mich. App. 51, 69 (2018). In addition, a plaintiff must allege that defendants must have known of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the plaintiff would be placed. *Id.* *Accord* M Civ JI 114.05 (instructing Michigan juries on the three elements for false light invasion of privacy: (1) a disclosure to the

[1] Defendant argues that plaintiffs' claim is moot, but this ignores the prospective use of the requested declaration to guide plaintiffs' conduct in future elections to preserve their rights. Regardless, the mootness doctrine will not be applied to dismiss a publicly significant case involving issues capable of repetition but evading review. *Turunen v. Dir. of Dept. of Nat. Resources*, 336 Mich. App. 468, 480 (2021); *Gleason v. Kincaid*, 323 Mich. App. 308, 315 (2018) (same).

general public or to a large number of people, (2) of information that was highly objectionable to a reasonable person, which attributed to plaintiff characteristics, conduct, or beliefs that were false and placed plaintiff in a false light, and (3) the defendant must have had knowledge of or acted in reckless disregard as to the falsity of the disclosed information and the false light in which the plaintiff would be placed.) It is reversible error to grant a motion to dismiss a claim for false light invasion of privacy when a complaint adequately pleads the elements of this claim. *Deitz v. Wometco West Michigan TV*, 160 Mich. App. 367, 380, 382 (1987) (trial court erred in dismissing claim for false light invasion of privacy).

In this case, plaintiffs' complaint alleges the necessary elements to state a claim for false light invasion of privacy. Plaintiffs' complaint alleges (1) a disclosure to the general public or to a large number of people, (2) of information that was highly objectionable to a reasonable person, which attributed to plaintiffs characteristics, conduct, or beliefs that were false and placed plaintiffs in a false light, and (3) the defendants had knowledge of or acted in reckless disregard as to the falsity of the disclosed information and the false light in which the plaintiffs would be placed. Specifically, plaintiffs' complaint alleges that (1) defendants' fraudulent election certificates purported to be official, public documents that defendants disseminated to the United States Senate and National Archives; (2) the fraudulent election certificates were highly objectionable to any reasonable citizen who believes in free and fair elections, because the certificates falsely portrayed defendants as the true electors, necessarily and falsely implying that plaintiffs were illegitimate electors and fueling widespread disinformation about the election and plaintiffs' role in it (e.g., that plaintiffs were committing fraud); and (3) defendants knew when they submitted their election certificates that they were false and that plaintiffs would be placed in a false light as a result. *See, e.g.*, Complaint, paragraphs 33, 38, 42-45, 48, 52-55.

Defendant argues that defendants' fraudulent election certificates could not put plaintiffs in a false light because defendants' certificates only assert that defendants are the true electors and do not expressly state that plaintiffs are not the true electors. Defendant's Brief, p. 9. This argument does not accept as true the allegations in the complaint in a light most favorable to plaintiffs. *Rozwood, supra, 461* Mich. at *119-120*; *El-Khalil, supra*, 504 Mich. at 155. Plaintiffs allege that by defendants portraying themselves as true electors, defendants necessarily implied that plaintiffs were not true electors, but were illegitimate or fraudulent and criminal. Complaint, paragraph 42. This is a necessary implication because as alleged in the complaint, Michigan Election Law is clear that there can be only one true slate of presidential electors from Michigan. Complaint, paragraph 27 (citing MCL 168.42). In other words, defendants could be legitimate electors only if plaintiffs were not legitimate electors. These are mutually exclusive because there was only one winner in the election. Declaring oneself the winner of a presidential election necessarily implies the other candidate lost, even if not expressly named; when defendants declared and certified themselves as the winning electors, they were necessarily and impliedly claiming that plaintiffs were not the winning electors. Thus, defendants falsely portrayed plaintiffs in a false light by implication, as election losers or thieves or both. *See Reighard v. ESPN, Inc.*, 341 Mich. App. 526 (2022).

Reighard involved plaintiff's claims of defamation and false light invasion of privacy based on statements that were implied. The court recognized that a cause of action for defamation by implication exists in Michigan. *Id.* at 540-541 ("A defamation by implication stems not from what is literally stated, but from what is implied.") (Internal quotation omitted). The court held that defamation and false light invasion of privacy claims are governed by the same legal standards, and it therefore reversed the trial court's grant of summary disposition on

plaintiff's false light invasion of privacy claim for the same reasons it reversed the trial court's grant of summary disposition on plaintiff's defamation claim. *Id.* at 554. *See also, Hawkins v. Mercy Health Services, Inc.*, 230 Mich. App. 315, 328, 334-335 (1998) (it was reversible error to grant summary disposition in favor of defendants against plaintiff's defamation claim when the *implication* raised by the defendant's statements was defamatory, even though the statements "were literally accurate.")

Furthermore, contrary to defendant's suggestion, Michigan law does not require that a defendant expressly refer to a plaintiff by name in order to sustain a claim for false light invasion of privacy; rather, it is sufficient if the identity of the plaintiff is reasonable to infer. *See Puetz*, 324 Mich. App. at 73 (it was reasonable to infer that defendant was referring to plaintiff even without using plaintiff's name, but trial court did not err in dismissing claim under (C)(10) because plaintiff could not establish that the alleged statements were made with knowledge that they were false or in reckless disregard of whether they were true of false). *See also, Hawkins,* 230 Mich. App. at 321 (alleged defamatory statement by defendant hospital employer referring to plaintiff nurse not by name but merely as "one employee" was sufficient to sustain claim, and summary disposition was inappropriate). *Cf. Restatement (Second) Torts, Section 564* (1977) ("Applicability of Defamatory Communication to Plaintiff"), *Reporter's Note* ("The communication need not refer to the plaintiff by name if it is reasonably understood as referring to him")[2]; *Restatement (Second) of Torts*, Section 564A ("Defamation of a Group or Class"), *Comment b.* ("When the group or class defamed is sufficiently small, the words may reasonably

[2] Michigan courts have looked to the Restatement (Second) of Torts in analyzing questions involving the tort of invasion of privacy. *See, e.g., Harkey v. Abate*, 131 Mich. App. 177, 182 (1983). Michigan courts also recognize that a claim for false light invasion of privacy is similar to a defamation claim, *Battaglieri v. Mackinac Center for Public Policy*, 261 Mich. App. 296, 304 (2004), and governed by the same legal standards. *Reighard,* 341 Mich. App. at 554.

be understood to have personal reference and application to any member of it, so that he is defamed as an individual.") Defendant inexplicably cites and quotes three pages of *Battaglieri v. Mackinac Center for Public Policy*, 261 Mich. App. 296, 303-306 (2004) for the suggestion that the false light in which a plaintiff is placed cannot be inferred. But *Battaglieri* does not support this proposition, which would conflict with the authorities cited above.

Defendant also seems to suggest that the First Amendment protects defendants against plaintiffs' claim for false light invasion of privacy. Defendant's Brief, p. 9. This is not true. The "actual malice" requirement avoids any violation of the First Amendment, and this is expressly incorporated in the third element of this cause of action as set forth above (i.e., the defendant must have had knowledge of or acted in reckless disregard as to the falsity of the disclosed information and the false light in which the plaintiff would be placed). *See Foundation for Behavioral Resources v. W.E. Upjohn Unemployment Trustee Corp.*, 332 Mich. App. 406, 411-412 (2020) (recognizing that malice has long been a required element of a claim for false light invasion of privacy under Michigan law, regardless of whether the plaintiff is a public or private figure). In this case, plaintiffs' complaint expressly alleges that defendants acted with actual malice, specifically, that they knew when they submitted their election certificates that the certificates were false, that they were fake electors, and that the real electors would be placed in a false light as a result of defendants' scheme. Complaint, paragraph 55.

For all of these reasons, defendant's motion to dismiss must be denied as to Count II.

Plaintiffs' complaint states a valid claim for statutory conversion.

Common law conversion broadly encompasses "any conduct inconsistent with the owner's property rights." *Aroma Wines & Equipment, Inc. v. Columbian Distribution Services, Inc.*, 497 Mich. 337, 353 (2015). In this context, the Legislature enacted statutory conversion in

MCL 600.2919a, *Aroma Wines*, 497 Mich. at 353, which plaintiffs allege in Count III. Statutory conversion is common law conversion with the added element that the property be converted for the converter's "own use". MCL 600.2919a(1)(a); *Aroma Wines*, 497 Mich. at 358-359. This means that someone alleging conversion to the defendant's "own use" under MCL 600.2919a(1)(a) "must show that the defendant employed the converted property for some purpose personal to the defendant's interests, even if that purpose is not the object's ordinarily intended purpose." *Aroma Wines*, 497 Mich. at 359.

In this case, plaintiffs allege a property interest in their status as true electors, as officially memorialized in the two true election certificates attached to the complaint. Plaintiffs assert a right to vote as true electors, and plaintiffs allege that defendants wrongfully exerted dominion over plaintiffs' property interest as true electors by engaging in the following acts: signing fake election certificates; falsely claiming therein that they were "the duly elected and qualified Electors" from Michigan; falsely purporting to "certify" that they had cast Michigan's 16 electoral votes for Donald Trump; and mailing the fake election certificates to the federal government to serve as an official public record purportedly from the true electors of the State of Michigan, thereby purporting to perform a function that only the true electors had the right and duty to perform. Complaint, paragraphs 57-63. Thus, plaintiffs' complaint alleges that defendants have engaged in statutory conversion by engaging in "conduct inconsistent with the owner's property rights", *Aroma Wines*, 497 Mich. at 353, and doing so for their "own use" within the meaning of MCL 600.2919a(1)(a).

Plaintiffs concede that application of the legal theory of statutory conversion to defendants' conduct here is novel, presenting an issue of first impression, and that there are no analogous cases in Michigan. Plaintiffs respectfully submit that the lack of precedent is due to

the unprecedented and shocking nature of defendants' alleged conduct, but plaintiffs respectfully submit that the alleged claim falls within the law of statutory conversion as broadly stated in *Aroma Wines* or within a reasonable extension of the law to bring within it the unique conduct alleged here in this case of public importance.

Defendant asserts that intangible property is not capable of being converted. Defendant's Brief, p. 13. Defendant is mistaken. *Sarver v. Detroit Edison Co.*, 225 Mich. App. 580, 586 (1997) ("Michigan appellate courts have held that certain intangible property can be the subject of a conversion action") (citing cases.) *See also, Tuuk v. Andersen*, 21 Mich. App. 1, 13 (1969) ("intangible personal property can be the subject of conversion . . . .") *Cf. Johnson v. Secretary of State*, 506 Mich. 975, 311-312 (2020) (Clement, J., concurring) (recognizing that the election certificate issued to the winner of an election evidences the winner's "title" to the office).

Here, plaintiffs assert a property interest in their status as electors, memorialized in the true election certificates, which defendants interfered with when they cast doubt on the true certificates with their fake certificates. While it is doubtful under existing caselaw whether plaintiffs' alleged property interest is the type of "property" subject to conversion[3], plaintiffs respectfully submit that the law of conversion can be clarified to accommodate, or should be extended to accommodate, these facts. *See Restatement (Second) of Torts* Section 242 ("Conversion of Documents and Intangible Rights") (1965), *Comment f.* (noting that while liability for conversion has not been extended beyond the kind of intangible rights which are customarily represented by and merged in a document, the process of extension of the law of

[3] *Compare People ex rel. Metevier v. Therrien*, 80 Mich. 187, 196 (1890) (recognizing that the right to hold public office "is a property right" that can be divested only in conformance with statute) *with Attorney General v. Jochim*, 99 Mich. 358, 367 (1894) (stating that a public office "cannot be called 'property,'" within the meaning of Due Process Clause). *See also, Aguirre v. State of Michigan*, 315 Mich. App. 706, 718 (2016) (citing *Jochim* but omitting *Therrien*).

conversion "has not, however, necessarily terminated; and nothing that is said in this Section is intended to indicate that in a proper case liability for intentional interference with some other kind of intangible rights may not be found.")

For these reasons, plaintiffs respectfully submit that Count III adequately states a claim for statutory conversion under existing case law, but if not, the law should be modified or extended to allow such a claim under the egregious facts alleged in this case.

Plaintiffs' complaint states a valid claim for civil conspiracy.

Count IV of plaintiffs' complaint states a valid claim for civil conspiracy. "A conspiracy is a combination of two or more persons, by some concerted action, to accomplish a criminal or unlawful purpose, or to accomplish a purpose not unlawful by criminal or unlawful means." *Fenestra Inc. v. Gulf American Land Corp.*, 377 Mich. 565, 593 (1966). The gist or gravamen of the action is not the conspiracy but the wrongful acts causing the damages. *Id.* at 593-594. *See also, Temborius v. Slatkin*, 157 Mich. App. 587, 599-600 (1986) ("Civil conspiracy is a combination of two or more persons, by some concerted action, to accomplish a criminal or unlawful purpose, or to accomplish a lawful purpose by criminal or unlawful means. The agreement, or preconceived plan, to do the unlawful act is the thing which must be proved.") (Footnote omitted). *Accord Cross v. Hoffa*, 368 Mich. 671, 676 (1962) (allegations are sufficient to state a claim for civil conspiracy if "they show acts involving an illegal purpose and resulting damage to the plaintiffs.")

In this case, plaintiffs' complaint satisfies these elements necessary to state a claim for civil conspiracy. For example, plaintiffs' complaint alleges that defendants combined together to engage in concerted action, specifically, a fake elector scheme, to submit fraudulent election certificates, thereby committing election fraud and harming plaintiffs by portraying them in a

false light, deterring plaintiffs from serving as electors in future elections, and converting plaintiffs' interest in serving as true electors. *See, e.g.,* Complaint paragraphs 31-48, 65-69.

Contrary to defendant's attempt to mischaracterize plaintiffs' complaint in her brief, plaintiffs are not "essentially" suing defendants for giving false testimony. Defendant's Brief, p. 14. Rather, plaintiffs are suing defendants for the range of unlawful conduct alleged above.

Defendant also asserts that plaintiffs' claim for civil conspiracy must fail because, according to defendant, a civil conspiracy must be based on an underlying actionable tort. Defendant's Brief, p. 14. This is not true. Defendant ignores numerous cases in Michigan stating that a claim for civil conspiracy can be based on underlying tortious conduct *or criminal or otherwise unlawful activity*. *See, e.g., Fenestra Inc. v. Gulf American Land Corp.*, 377 Mich. at 593 ("A conspiracy is a combination of two or more persons, by some concerted action, to accomplish a *criminal or unlawful* purpose . . .") (emphasis added); *Temborius v. Slatkin*, 157 Mich. App. at 599 ("Civil conspiracy is a combination of two or more persons, by some concerted action, to accomplish a *criminal or unlawful* purpose . . .") (emphasis added). *Cf., Cousineau v. Ford Motor Co.*, 140 Mich. App. 19, 37 (1985) ("This claim lacks meaning without an underlying tortious *or criminal* activity") (emphasis added); *Goldsmith v. Moskowitz*, 74 Mich. App. 506, 521 (1977) ("A conspiracy is a combination of two or more persons who by some concerted action attempt to accomplish an *unlawful* purpose. To establish a conspiracy to defraud, one must show both an *illegal* purpose and damages.") (Emphasis added).

In this case, plaintiffs' allege that defendants' fake elector scheme violated multiple criminal laws, including MCL 168.932(d) (making it a felony to "in any manner obstruct or attempt to obstruct any elector in the exercise of his or her duties as an elector under this act"); MCL 168.933a(a) (making a person guilty of election forgery if he or she "Knowingly makes,

files, or otherwise publishes a false document with intent to defraud"); and MCL 750.248(1) ("A person who falsely makes, alters, forges, or counterfeits a public record . . . with intent to injure or defraud another person is guilty of a felony punishable by imprisonment for not more than 14 years"). Complaint, paragraph 39. Plaintiffs also allege that they were uniquely harmed by defendants' conduct, which cast plaintiffs in a false light, eroded public confidence in their legitimacy, caused stress, and made them apprehensive about serving as electors in future elections. Complaint, paragraphs 46-48.

Even if defendant were correct that a claim for civil conspiracy must be based on an underlying tort (and cannot be based on an otherwise unlawful or criminal act as set forth above), this would not be a basis for dismissing plaintiffs' claim for civil conspiracy because plaintiffs complaint sufficiently alleges that their civil conspiracy claim is based on defendants' tortious conduct (i.e. false light invasion of privacy), in addition to defendants' criminal and unlawful activity. Complaint, paragraphs 65-68.

Conclusion

Accepting the allegations in plaintiff's complaint as true, as required when reviewing a motion to dismiss under MCR 2.116(C)(8), plaintiffs' complaint sufficiently states claims upon which relief can be granted. As a result, defendant's motion must be denied, including her request for sanctions.[4]

---

[4] Defendant's current counsel asserts that plaintiffs' complaint allegedly is "frivolous" and devoid of arguable legal merit under MCL 600.2591. Defendant's Brief, p. 15. This accusation is a remarkable departure from her previous attorney's statement to the *Detroit News* after plaintiffs' complaint was filed, in which defendants' counsel described the case as a "historic case of nationwide importance." **Exhibit A**. Surely any case truly devoid of arguable legal merit could not be described as a "historic case of nationwide importance." Indeed, all of the defendants sought to literally make a federal case out of this state law case, removing the case to federal court earlier this year and causing months of needless delay—an effort further inconsistent with their new position that plaintiffs' case is allegedly "frivolous".

Respectfully Submitted,

BLAKE MAZUREK, ROBIN SMITH, and
TIMOTHY SMITH

Date: December 28, 2023

By: Bradford Springer
Bradford W. Springer (P67201)
Scholten Fant, P.C.
Attorneys for Plaintiffs

EXHIBIT

A

Insider: Conservative legal group steps in to aid Michigan's Trump electors

detroitnews.com/story/news/politics/michigan/2023/02/25/conservative-thomas-more-society-steps-in-to-aid-michigan-fake-donald-trump-electors-lawsuit/69941303007

POLITICS

0:03

1:34

Lansing — The Thomas More Society, a conservative nonprofit law firm based in Chicago, has begun providing legal representation for the 16 Republicans who signed a document in December 2020, attempting to cast Michigan's electoral votes for GOP candidate **Donald Trump**.

A group of Democratic electors who cast votes for Democrat **Joe Biden**, Michigan's winner, sued the 16 Republicans in January in Kent County Circuit Court. The Democrats, seeking at least $25,000 in damages, said they had suffered humiliation, mental anguish and stress as a result of being cast in a false light by the Trump electors' "election fraud and lies."

Last week, the Republican electors filed a notice that they were moving the case from state court to federal court in Michigan's Western District. The GOP electors' lawyers for the filing were **Erick Kaardal** of Minnesota, who's special counsel for the Thomas More Society, and **B. Tyler Brooks** of North Carolina, who's also connected with the society.

In a statement, Kaardal said the legal fight represented a "historic case of nationwide importance."

"The Thomas More Society saw a need in the public interest that the defendants be adequately represented," Kaardal said.

The Thomas More Society was previously involved in unsuccessful efforts to challenge Michigan's November 2020 presidential election. One of them included asking a judge to require legislatures in battleground states to sign off on their states' election results.

Michigan marijuana regulator scored $75,000 loan from firm in pot business

Trump lost Michigan to Biden by more than 154,000 votes. The result has been upheld by more than 200 audits, a series of court rulings and an investigation by a Republican-controlled state Senate committee.

However, Trump and some of his supporters tried to reverse the outcome by creating what they described as "alternative" slates of presidential electors. The Trump electors met in the basement of Michigan Republican Party headquarters on Dec. 14, 2020. The convening came the same day the state's true electors were gathering in the state Capitol.

The Trump supporters eventually submitted a false certificate to the National Archives and Congress, stating that Trump had won Michigan's 16 electoral votes. The strategy is currently under investigation by Democratic **Attorney General Dana Nessel**.

John Haggard, one of the Trump electors, said he had previously asked Michigan Republican Party leadership to provide legal counsel for the GOP electors but was told it wasn't the party's obligation.

"They're broke anyhow," Haggard said of the state GOP.

Bergman opposes Camp Grayling plan

U.S. Rep. Jack Bergman, a Republican and retired Marine Corps lieutenant general, has come out against the National Guard's requested expansion of Camp Grayling in the northern Lower Peninsula, saying its proponents haven't provided a "compelling justification" for the need for the plan and should reconsider it.

The proposal, which has faced months of local opposition, would allow the National Guard to more than double its footprint in Grayling by leasing an additional 162,000 acres of state-owned property from the Michigan Department of Natural Resources. Bergman's 1st Congressional District includes Grayling and Crawford County.

Bergman wrote an op-ed in the Petoskey News-Review saying he understands the importance of training the military for "agility, adaptability and lethality," but that the plan falls in the category of government entities seeking to expand "beyond their intended scope of operation." He worries the widespread opposition will strain and weaken the relationship between Camp Grayling and the wider community.

"Nearly every township and county impacted by this proposed expansion has formally come out against the proposal, clearly articulating their rationale for opposing the lease. It should be noted that this level of agreement is nearly impossible to find today among elected officials," Bergman wrote.

"...it's my belief, and the belief of many First District constituents, that the proposal has yet to be adequately justified, and at a minimum should be right-sized to reflect reality. Given the existing acreage and airspace — particularly the underutilized components — this massive expansion effort has left constituents with more questions than answers."

More: Camp Grayling expansion opponents question private testing at facility

Bergman, R-Watersmeet, highlighted concerns ranging from environmental and noise pollutants, "unresolved" PFAS pollution, disruptions to and contamination of wildlife, as well as effects on tourism, and said the state and National Guard need to hear those concerns.

"The National Guard and Michigan DNR must legitimately listen to the people affected by this proposal," he concluded.

"The genuine and valid concerns stemming from the impacted parties should prompt the Guard and DNR to reconsider, regroup, and reassess the situation as the outgrowth could cause unnecessary damage to our resources, community relations, and general welfare."

House Dem, GOP campaign teams set

The Michigan House Democratic and Republican caucuses have cemented their campaign teams for the coming election cycle, as House Republicans announced Tuesday that second-term state **Rep. Andrew Beeler** will lead the GOP campaign arm since the party lost control of the chamber in November.

The GOP announcement came three months after House Democrats announced their caucus campaign leaders: **Rep. Regina Weiss**, D-Oak Park, as chair, and **Rep. John Fitzgerald**, D-Wyoming, as vice chair.

In a statement Tuesday, **House Republican Leader Matt Hall** said Beeler, R-Port Huron, was appointed chair after he conducted a review of the "tactics and strategy" used in the failed 2022 attempt to retain the majority and made "recommendations to maximize opportunities" to win back the majority.

"I have full confidence that he'll be able to put together an effective and disciplined team that will maximize tactics and strategy to win," Hall, R-Richland, said in a statement.

More: Whitmer sees 'foundational moment' in push to outlaw LGBTQ discrimination

Beeler will take the helm of the House Republican Campaign Committee with first-term **Rep. Bill G. Schuette** of Midland serving as vice chair.

Weiss and **Rep. Samantha Steckloff**, a Farmington Hills Democrat who serves as finance chair, were "instrumental" to winning in November, **House Speaker Joe Tate**, D-Detroit, said in announcing the campaign team.

"I could not be more confident in this team's ability to lay the groundwork to expand our majority in 2024 and that work starts right now," Tate said in November.

Ford on track for $1B in aid for battery plant. State says site needs $750M more

Other leaders on the House Democratic campaign board include **Rep. Ranjeev Puri** of Canton Township, who serves as strategy chair, and **Rep. Penelope Tsernoglou** of East Lansing, who serves as outreach chair.

Other members of the House Republican campaign leadership team include **Rep. Mike Harris** of Clarkston as recruitment chair and **Rep. Graham Filler** of St. Johns as finance chair.

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STATE OF MICHIGAN

17th CIRCUIT COURT FOR KENT COUNTY

Blake Mazurek, Robin Smith, and Timothy Smith,

Plaintiffs,

v.

Kathy Berden, Mayra Rodriguez, Meshawn Maddock, John Haggard, Kent Vanderwood, Marian Sheridan, James Renner, Amy Facchinello, Rose Rook, Hank Choate, Mari-Ann Henry, Clifford Frost, Stanley Grot, Timothy King, Michele Lundgren, and Ken Thompson,

Defendants.

Case No.: 23-00306-CZ

Hon.: Christina Elmore

Plaintiffs' Response to Defendants Sheridan's, Facchinello's, Rook's, and Choate's Motion to Dismiss Under MCR 2.116(C)(8)

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Plaintiffs' Response to Defendants Sheridan's, Facchinello's, Rook's, and Choate's Motion to Dismiss Under MCR 2.116(C)(8)

Plaintiffs Blake Mazurek, Robin Smith, and Timothy Smith respectfully submit this response in opposition to the motion to dismiss under MCR 2.116(C)(8) filed by defendants Marian Sheridan, Amy Facchinello, Rose Rook, and Hank Choate.

Defendants Sheridan's, Facchinello's, Rook's, and Choate's motion to dismiss under MCR 2.116(C)(8) should be denied for the same reasons stated in plaintiffs' response to defendant Mari-Ann Henry's motion to dismiss. The motions to dismiss contain essentially the same arguments. To avoid needless repetition of the same opposing arguments and authorities, plaintiffs respectfully rely on their separately-filed response in opposition to defendant Henry's motion to dismiss. However, plaintiffs respond separately here to highlight several points, as briefly as possible:

1. Defendants' brief, with its mildly disturbing invective, and with its vaguely violent combat metaphor (about the ominous possibility of relitigating the 2020 election being a "shot [that] is down range"), appears to invite using defendants' present motions as battlegrounds in the culture wars. Plaintiffs respectfully decline. The only relevant legal issue presented by the motions to dismiss under MCR 2.116(C)(8) is whether the allegations in the complaint, when taken as true and viewed in a light most favorable to plaintiffs as the nonmovants, adequately state claims upon which relief can granted under Michigan law. Plaintiffs respectfully submit that the answer is yes for the reasons presented in their accompanying response.

2. Defendants appear to cast the complaint as one seeking to "relitigate" the 2020 election. Defendants' Brief, p. 1. Defendants miss the point. The complaint seeks relief on the claims asserted. The fact that the election is over and that plaintiffs were valid electors under

Michigan law is a truism and does not moot the case because it does not resolve the claims alleged or the relief requested.

3. Defendants state, but fail to follow, the required standard that when reviewing a motion under MCR 2.116(C)(8), all of the factual allegations must be taken as true, in a light most favorable to the nonmovant. For example, defendants assert that their actions "were either a failed political protest to the results of the general election or an effort to create an alternate slate of electors should any of the ongoing litigation succeed and change the result." Defendants' Brief, p. 11 (footnote omitted). These alleged facts contradict what is alleged in the complaint. Plaintiffs allege that defendants' fraudulent election certificates falsely portrayed defendants as the true electors, falsely implying that plaintiffs were illegitimate electors and fueling widespread disinformation about the election and plaintiffs' role in it (e.g., that plaintiffs were committing fraud), and that defendants knew when they submitted their election certificates that they were false and that plaintiffs would be placed in a false light as a result. *See, e.g.*, Complaint, paragraphs 33, 38, 42-45, 48, 52-55. These allegations—and all reasonable inferences that may be drawn from them—must be taken as true for purposes of defendants' motion.[1]

4. In arguing that the complaint fails to state a claim for false light invasion of privacy, defendants claim that, "as a matter of law, no reasonable person would remotely imply from these 'fake elector certificates' that Plaintiffs were not the actual electors." Defendants'

[1] The controlling authorities establishing this required standard when reviewing a motion under MCR 2.116(C)(8) are set forth in plaintiffs' response to defendant Mari-Ann Henry's motion to dismiss. *See also, Singerman v. Municipal Serv. Bureau*, 455 Mich. 135, 139 (1997) ("All factual allegations must be taken as pleaded, as well as any reasonable inferences that may be drawn therefrom.")

Brief, p. 11. Defendants ignore that this is exactly what plaintiffs allege happened, and the alleged evidence is overwhelming. *See* Complaint, paragraphs 42-48.

5. Defendants argue that plaintiffs have failed to allege, except in "conclusory fashion", clear and convincing evidence of "actual malice", i.e., that when defendants broadcast their fake election certificates, they had knowledge of or acted in reckless disregard as to the falsity of the disclosed information and the false light in which the plaintiff would be placed. Defendants' Brief, p. 11. This is not accurate. Plaintiffs expressly allege that defendants "knew when they submitted their election certificates that the certificates were fraudulent, that they were fake electors, and that the real Biden electors would be placed in a false light as a result of defendants' scheme." Complaint, paragraph 55. These are alleged facts, not conclusions, and they must be accepted as true. Furthermore, these factual allegations about defendants' knowledge are based on numerous other factual allegations in the complaint regarding the fake elector scheme and defendants' knowing participation in it. *See, e.g.,* Complaint, paragraphs 31-48. Furthermore, as alleged in the complaint, two of the defendants were asked simple questions about their signatures on the fake election certificates and why they signed the certificates purporting to cast electoral college votes for Donald Trump despite the fact that he had lost the State of Michigan. Instead of answering these questions, each repeatedly invoked their privilege under the Fifth Amendment against self-incrimination, on the basis that their truthful answers might tend to incriminate them in a later criminal proceeding. Complaint, paragraph 40. These allegations serve as further support for the allegation of "actual malice" because defendants allegedly worked together in signing their fake certificates, and an adverse inference is permissible that the reason they would not answer for signing the certificates is because they *knew* it was wrong. *Phillips v. Deihm*, 213 Mich. App. 389, 400 (1995) ("the Fifth Amendment

does not forbid adverse inferences against parties to civil actions when they refuse to testify in response to probative evidence offered against them: the amendment does not preclude the inference where the privilege is claimed by a party to a civil cause") (citing *Baxter v. Palmigiano*, 425 U.S. 308, 318 (1976).

6. Defendants rely on *Battaglieri v. Mackinac Center For Public Policy*, 261 Mich. App. 296 (2004) for their argument that plaintiffs' complaint does not adequately allege actual malice, but *Battaglieri* is distinguishable. The statements at issue in *Battaglieri* involved the defendant truthfully and accurately quoting plaintiff's own words plaintiff made at a press conference. *Battaglieri*, 261 Mich. App. at 298-299. The plaintiff even conceded that he was not misquoted. *Id.* at 305. The court held, correctly and unsurprisingly, that a "strained reading" would be required to interpret the quoted statements in a way that would portray plaintiff in a false light; and because plaintiff presented no meaningful evidence that defendant intended or knew that the statements would do so, the complaint should have been dismissed for failure to meet the actual malice requirement. *Id.* at 305-306.

The facts in *Battaglieri* are dramatically different than the facts alleged in the complaint here, and plaintiffs' claim for false light invasion of privacy by implication is amply supported by the authorities cited in plaintiff's response to defendant Henry's motion to dismiss. Those authorities include *Reighard v. ESPN, Inc.*, 341 Mich. App. 526, 540-541, 554 (2022) (recognizing claims of defamation and false light invasion of privacy based on statements that were implied, and reversing summary disposition on both claims after holding that the same legal standard applies to both); and *Hawkins v. Mercy Health Services, Inc.*, 230 Mich. App. 315, 328, 334-335 (1998) (it was reversible error to grant summary disposition in favor of defendants against plaintiff's defamation claim when the *implication* raised by the defendant's statements

was defamatory, even though the statements "were literally accurate.") Defendants do not cite either of these cases.

Defendants also cite *Reed v. Ponton*, 15 Mich. App. 423 (1968) in support of their argument that "supersensitiveness" is not protected by the tort of false light invasion of privacy. Defendants' Brief, p. 9. In *Reed*, the plaintiff alleged that the defendant department store manager said in the presence of two store clerks and some customers that plaintiff had failed to pay for her layaway purchase; plaintiff claimed that this was not true and was an invasion of her privacy. *Id.* at 425. In a split decision, the Court of Appeals affirmed the trial court's dismissal of the case because the statement was not publicized to a large number of people and because a "reasonable man of ordinary sensibilities" would not find the defendant's statement offensive and objectionable. *Id.* at 246.

Reed is not persuasive here. Unlike in *Reed*, Plaintiffs' complaint alleges publication, to a large number of people, of defendants' fake election certificates that necessarily implied that plaintiffs were illegitimate or fraudulent electors. *E.g.*, Complaint, paragraphs 33, 42-45, 51-56. Knowingly and falsely portraying true electors in a presidential election as illegitimate or fraudulent, fueling widespread disinformation about the election and undermining confidence in their legitimacy, is not merely offensive to a reasonable citizen but utterly outrageous. This is hardly comparable to a department store manager losing his composure with an overly sensitive customer within earshot of a few other people.

7. In arguing that plaintiffs' conversion claim should be dismissed, defendants cite *People v. Smith*, 502 Mich. 624 (2018) in support of their position that there can be no property interest in elected office. Defendants' Brief, p. 14. As plaintiffs plainly acknowledge in their response to defendant Mari-Ann Henry's motion to dismiss, there is conflicting Michigan

Supreme Court authority relevant to the question. However, *Smith* is not one of them. The passage relied on by defendants was not in the majority opinion and is not precedent on the issue. *Smith*, 502 Mich. at 638-640 (only three of seven Justices joined the cited opinion).

Defendants rail against plaintiffs for including a count for conversion in their complaint, but if the allegations in plaintiffs' complaint are true, defendants are just blaming the victims. If defendants truly believed that they themselves, and not plaintiffs, were the true electors, their only legal remedy to challenge plaintiffs' titles to office would have been through an action for *quo warranto*. *In re Servaas*, 484 Mich. 634, 644 (2009) ("our caselaw has held for more than a century that the *only way* to try titles to office finally and conclusively is by *quo warranto*.") (emphasis in original; internal quotations and footnote omitted). But defendants did not follow the law. Instead, as alleged in the complaint, they tried to lie, cheat, and steal, including by portraying themselves in their fake election certificates as the real electors, necessarily implying that plaintiffs' true certificates were illegitimate or fraudulent. *See, e.g.*, Complaint, paragraphs 31-32, 42-48. Under these unique circumstances, there is a novel but good faith factual and legal basis to recognize a claim for conversion for defendants' unlawful, unprecedented, and shocking conduct. Accordingly, including such a count in plaintiffs' complaint is appropriate, not "frivolous" as defendants claim.

8. Finally, defendants' request for sanctions under MCL 600.2591 is without merit. Defendants repeatedly assert that plaintiffs' claims are "patently frivolous", *see, e.g.*, Defendants' Brief, pp. 3, 7, 12, 16, 17, but defendants completely ignore the relevant and controlling legal authorities cited in plaintiffs' response to defendant Mari-Ann Henry's motion to dismiss. These cited authorities belie defendants' claim that plaintiffs' complaint meets the statutory definition of "frivolous" under MCL 600.2591 for being "devoid of arguable legal

merit." Indeed, the authorities cited by plaintiffs in their response to defendant Henry's motion to dismiss demonstrate that plaintiffs' claims are amply supported and that it is defendants' request for sanctions—not plaintiffs' complaint—that appears to be "frivolous."

A trial court's finding that an action is "frivolous" is reviewed for clear error. *Kitchen v. Kitchen*, 465 Mich. 654, 661 (2002). Merely because a court might conclude that a legal position asserted by a party should be rejected does not mean that the party's position was "frivolous," and it is clear error for a trial court to award sanctions predicated on a finding that a suit was frivolous in the absence of controlling authority that clearly and unequivocally establishes the controlling legal principle. *See id.* at 662-663 (reversing award of sanctions as clearly erroneous because plaintiffs advanced a claim sufficiently grounded in law and fact). *See also, Bauer-Rowley v. Humphreys*, 344 Mich. App. 52, 64 (2022) (the Court of Appeals noted that "It is relatively rare for trial courts to grant sanctions for frivolous litigation," and the Court held that the trial court clearly erred in finding that plaintiffs' amended complaint was frivolous and warranted sanctions); *Lakeside Oakland Development, L.C. v. H & J Beef Co.*, 249 Mich. App. 517, 532 (2002) (reversing the trial court's award of attorney's fees because the award was clearly erroneous where the party's legal position was not "devoid of arguable legal merit" and thus did not meet the statutory standard of "frivolous"). These controlling authorities establish that defendants' request for sanctions is without merit, if not frivolous.

Respectfully Submitted,

BLAKE MAZUREK, ROBIN SMITH, and
TIMOTHY SMITH

Date: December 28, 2023

By: Bradford Springer
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S T A T E O F M I C H I G A N

17TH JUDICIAL CIRCUIT COURT - (KENT COUNTY)

BLAKE MAZUREK, ROBIN SMITH
AND TIMOTHY SMITH
Plaintiffs

Case No. 23-00306-CZ

V

KATHY BERDEN, MAYRA RODRIGUEZ,
JOHN HAGGARD, KENT VANDERWOOD,
MARIAN SHERIDAN, JAMES RENNER,
AMY FACCHINELLO, ROSE ROOK,
HANK CHOATE, MARI-ANN HENRY,
CLIFFORD FROST, STRANGELY GROT,
TIMOTHY KING, MICHELLE LUNDGREN,
KENT THOMPSON AND MESHAWN MADDOCK

Defendants
_____/

MOTION FOR SUMMARY DISPOSITION

BEFORE THE HONORABLE CHRISTINA MIMMS, CIRCUIT COURT JUDGE

Grand Rapids, Michigan - Friday, February 28, 2025

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TABLE OF CONTENTS

Grand Rapids, Michigan

Friday, February 28, 2025, 10:45 a.m.

THE COURT: Mazurek et al versus Berden et al and -- okay. So I'm going to add in folks. I'm going to add in Mr. Springer on behalf of plaintiff Mazurek, Smith, and Smith. I'm going to add Kevin Kijewski who's here for defendant Frost and Haggard. I'm adding Mr. Bristow who is defendant -- for defendant Henry. Adding Robert Muise, attorney for defendant Choate, Facchinello, Rook, and Sheridan. Adding Mr. Westbrook attorney for Defendant Renner. And adding defendant Choate, defendant Facchinello, defendant Sheridan, defendant Henry. Looks like Mr. Ostrander's here on behalf of defendant Vanderwood. Adding defendant Rook. And attorney Richotte, who I don't know who that individual is representing. Mr. -- is it Richotte?

MR. RICHOTTE: Yes, your Honor.

THE COURT: Who are you here on behalf of?

MR. RICHOTTE: I'm on behalf of Ms. Berden.

THE COURT: Okay. And I think that's everyone that's here. And we're here on -- there's several motions for summary disposition in this matter. And although I -- I hate to do this with all these people present and ready, I -- I guess I can leave it up to you how you want to proceed talking to -- to everyone pretty much. And that is because I don't have the file back from the Court of Appeals yet. So I feel

like I'm at a disadvantage for preparing for these motions.

And so I would like to suggest adjourning to allow that file to return back. It usually doesn't take very long. I'm actually surprised we don't have it back already. But -- but we don't. So I guess I'll ask the group if there's any objection to adjourning and I would do it for two weeks to allow that -- that file to return to the court. And I guess I'll just call people by -- well, I'll just call by name to -- to see if there's any objection.

So start with Mr. Springer, do you have any objection?

MR. SPRINGER: Your Honor, I don't have but could I please add this thought. Would the Court like to have the defendants give their oral arguments so that perhaps when you do have the file, you could just -- having had the oral argument, then take it under advisement with the papers that you haven't seen yet?

THE COURT: Yeah, I can certainly do that if that's agreeable to everyone. I usually like to prepare ahead of time, but we can proceed that way. That would work too. And so given that, what I'll do is start with -- I don't know who -- is --

MR. MUISE: Your --

THE COURT: -- elected to argue or yes, --

MR. MUISE: Your Honor, if I --

THE COURT: Yeah, go ahead Mr. Muise.

MR. MUISE: Your Honor, if I may -- the -- my understanding we have three -- there's three summary disposition motions pending. There's one motion for a joinder and concurrence on the motions.

THE COURT: Right.

MR. MUISE: The -- the counsel for the movants, we've had communications earlier this -- this week. And I -- I think the way that we'd like to proceed is I would -- I'd like to start off and I can provide a summary of the claims and then they can kind of the -- the broader overview, and if they have anything they want to add to that, we can -- we can do that. That I -- I think was an approach and -- and it might be the most streamlined way to go.

And I know I would certainly like to at least make the argument having obviously most of us have been waiting on the call here for about two hours, so I think it would be the best use of time --

THE COURT: Okay.

MR. MUISE: -- I'll -- I'll probably take less than ten minutes to summarize our arguments and I think that might be beneficial. So I would agree with Mr. Springer's approach. And then I'll defer to my -- to my colleagues about the -- the approach I just outlined.

THE COURT: Okay. I think I have more than three

motions too.

MR. MUISE: There is a motion for joinder and concurrence.

THE COURT: Right. I have a motion for summary disposition for Frost and Haggard. I have one for Maddock. I have one for Berden and I have one for Henry.

MR. MUISE: Your Honor, you should also have the one that the we filed on --

THE COURT: Yes.

MR. MUISE: -- behalf of Sheridan --

THE COURT: I -- yes. Sheridan --

MR. MUISE: Okay.

THE COURT: -- Facchinello, Rook, and Choate. I have that -- that too. So really, I have one, two, three, four, five motions for summary disposition in addition to defendant Vanderwood's motion for joinder and a motion to require a security be posted.

MR. WESTBROOK: Your Honor, you should also have a motion for joinder from -- from -- from me for Mr. Renner. I've asked to join in two of the motions for summary disposition along with the request for attorney fees.

THE COURT: Okay. I don't -- I don't have that in front of me. That doesn't mean it's not in a temporary file down in the clerk's office. But you stated it for the record that you're joining so I think that's sufficient as well.

MR. WESTBROOK: Thank you, your Honor.

THE COURT: And then Mr. -- is Muise, am I saying it correctly?

MR. MUISE: You are, your Honor. Thank you. Yes.

THE COURT: Okay. Go ahead with your argument.

MR. MUISE: All right. Thank you, your Honor. As we set forth in the -- in the -- in our motion and certainly there's a lot of overlap for obvious reasons in the other motions as well, all the plaintiffs' claims fail as a matter of law. There's no factual development that could possibly justify recovery. As I mentioned, the issues are fully briefed and I'd like to summarize, certainly I think the main arguments for -- for why each of these should be dismissed.

Starting with the first claim advanced by the plaintiffs for declaratory relief. Judge, there's no controversy for this Court to resolve via the perspective remedy of a declaratory judgment. Plaintiffs' claim is moot. This is a direct quote from *League of Women Voter's* case which we've cited, "It is universally understood by the bench and bar that a moot case is one which seeks to get a judgment on a pretend controversy when in reality there is none."

An issue is moot if a judicial decision on that issue would have non practical legal effect as in this case. And we cited the *Equity Funding*, again it's all laid in our -- in our brief.

The plaintiffs' requests for declaratory relief declaring that they were the legitimate electors has no practical legal effect on the parties. The defendants so called fake elector scheme was rejected. Plaintiffs' electoral votes were cast and counted pursuant to Michigan law. Plaintiffs' candidates won the election and they served as president and vice president of the United States.

There is no legal controversy to resolve between or amongst the parties. Judge, the claim is moot.

Moving on to the second claim, the claim for false light invasion of privacy. This claim fails as a matter of law for at least five reasons. First, there was no publication by defendants about or concerning any plaintiff. The Court will look in vein for any statement about any specific plaintiff or reference to any specific plaintiff as a generic Biden Harris elector in the alleged publication. And this publication is the so-called fake elector certificates which they attached as Exhibit C to the complaint.

Two primary cases that the plaintiffs' relied on, the *ESPN* case and the *Mercy Health Service,* they either expressly named the plaintiff, that was the *ESPN* case or expressly referred to the plaintiff as the employee in question and that was the *Mercy* case.

There's no such reference here and this is made worse because the plaintiffs are making a false light by

implication claim. They can't even get past the first part attributing anything to a plaintiff, never mind the flawed implication aspect of this claim which I will address momentarily. So that's number one.

Number two, assuming for argument sakes that the submission of the fake elector certificates is a publication about a concerning a plaintiff, there's nothing in the certificates that convey this is a -- what the the case law requires, unreasonable and highly objectionable matter. Moreover, there's nothing in the publication that attributes any objectionable characteristic, conduct, or belief, again quotes from the cases we cited, to any plaintiff.

Third, plaintiffs implication theory that the fake elector certificates cast plaintiff in a false light is defeated by the fact that plaintiffs were already determined as a matter of law to be the actual electors well before the -- the fake elector certificates were submitted.

The implication the plaintiffs are seeking to fabricate is not only unreasonable, it is fundamentally flawed. In other words, the fake elector certificates had no potential to convey anything adverse because Governor Whitmer's certification issued and delivered to Congress on November 23rd, 2020 was deemed conclusive as to the identity of the Michigan electors.

This certification was made weeks before the fake

elector certificates were ex -- executed and delivered. The public -- the publication to any government official. That the fake electoral certificates had no effect or impact, invest no adverse implication whatsoever. This is a pretend controversy.

Four, assuming again for argument sakes, that the submission of the fake elector certificates is a publication about or concerning plaintiffs, nothing in this certificate and this again is a direct quote from the *Reed* case, nothing in this certificate quote, "Lifts the curtain of privacy on a subject matter that a reasonable man of ordinary sensibilities would find offense and objective -- objectionable." End quote.

And finally, the plaintiffs' strained implication theory does not meet the actual malice standard as a matter of law.

Now the courts have said that malice is an element of false light invasion of privacy regardless of whether the plaintiff is a public or private figure. Certainly, I think in this case they would qualify as public figures being the -- the -- given the context of this case in this -- this very public electoral controversy.

Consequently, plaintiffs and this is a direct quote from the *Battaglieri* case which we cite, quote "Must show with clear and convincing evidence that the defendant's intended or

knew of the implications that the plaintiff is attempting to draw." End quote.

Here there are no facts, clusory(sic) -- a conclusory assertions don't count and -- and when you're dealing with defamation of false light, you must plead with specificity. There has to be specific facts that would amount to clear and convincing evidence that the defendants intended or knew that submitting the certificates would be interpreted by others in the manner that the plaintiffs are arguing.

This claim artily fails as a matter of law. I mean, just look at their complaint in paragraph 36. This is what they -- the plaintiffs state, quote "The purpose of the fake electoral scheme was to give the President of the United States Senate, which under the constitution is the Vice President are purported justification to refuse to count the real electoral votes on January 6th." End quote.

In other words, it had nothing to do with saying anything about any plaintiff. The false light implication plaintiffs seek to create here is a fantasy that exists only in their minds. It's beyond super sensitivity.

As the court in *Battaglieri* said, allowing a claim like this to proceed quote, "Would permit liability to be imposed not only for what was not said but also for what was not intended to be said." End quote.

Judge the claim must be dismissed.

Turning to the conversion claim. This claim fails for at least four reasons. First, the plaintiffs elect an intangible personal property interest in their lawful office as true electors. That's a direct quote from their complaint, paragraph 59. This is a public office. Plaintiffs were serving a public function -- function, serving a public purpose.

They did not accept this public office for personal gain. If they did, that's called political corruption. And this is what the Michigan Supreme Court said in *People versus Smith*, quote "To treat political rights as economic commodities corrupts the political process. Such treatment fundamentally misunderstands the nature of public office." End quote.

Because plaintiffs have no personal property interest whatsoever in this public office and we cited multiple cases making that point, there was no property for defendants to convert as a matter of law.

Second argument. The intangible property interests that plaintiffs assert is not subject to conversion as it's not of a kind that is capable of being quote, "owned and possessed to the exclusion of others." And that's from the *Sarver* case *versus Detroit Edison*. This office, this public office is not subject to private ownership and thus not subject to conversion as a matter of law.

Third argument on conversion, why it fails. No defendant took dominion over plaintiffs' intangible property. There's no interference with control of the property. Plaintiffs' electoral votes were submitted. They were counted. Resulting in the election of their candidate. Defendants' actions did nothing to prevent any of this from con -- from occurring.

And finally, to convert property to defendants own use, that's what's required, own use, plaintiffs must show that defendants converted this property for some purpose personal to defendants. Defendants never obtained anything of personal value from plaintiffs by submitting these so called fake elector certificates.

This claim -- the claim of conversion fails and it must be dismissed as a matter of law.

Finally, the plaintiffs' civil conspiracy claim. Remember, this is a claim of civil conspiracy. Accordingly, plaintiffs are required to assert some underlying tortious conduct. They have failed to do so as all the underlying claims fail as a matter of law.

This is what the Michigan Court of Appeals said in the *Advocacy Org -- Organization for Patients* case which we cited, quote "A claim for civil conspiracy may not exist in the air, rather it is necessary to prove a separate actionable tort." End quote.

The fact that his other three tort claims or the declaratory judgment, the false light, and the conversion claims fail, there is no underlying tort to conspire. I think he argued in his brief while there -- they may have violated some criminal law. This isn't a criminal case. This isn't a civil -- a criminal conspiracy case. This a civil conspiracy case that requires an -- a -- an underlying actionable tort and there are none because those other claims all should be dismissed as a matter of law.

Again, plaintiffs' civil conspiracy claim cannot be maintained as they are no legal and equitable claims remaining because they all fail as a matter of law.

Judge this -- this case should be dismissed. We all should move for attorney fees and costs pursuant to MCL 600.2591. Defendants are entitled to them because plaintiffs' legal position is devoid of any legal merit.

Moreover, when you -- when you consider the, really the frivolous nature of these claims in the context in which these claims arise, a very contentious political controversy, it's evident that the primary purpose of this litigation was to harass, embarrass, or injure the defendants.

For both those reasons, your Honor, the -- the defendants are entitled to their attorney fees for having to defend against this -- this meritless litigation. Thank you, your Honor.

THE COURT: Okay. And let's see --

MR. RICHOTTE: Mr. Bristow, do you want to go first and then I can back cleanup?

MR. BRISTOW: Sure. I would -- I would just say that I'm in agreement with what brother counsel just said. The case should be dismissed. The only thing I would add is that amendment of the complaint would be futile and so this case should be dismissed with prejudice. There should be no opportunity for the plaintiffs to amend their complaint.

They pleaded everything as best they can. It's completely devoid of merit. And I do agree with what brother counsel wrote in his motion. This case is patently frivolous. I have nothing further.

MR. RICHOTTE: Your Honor, Ms. Berden -- I just want to add a couple of points and before I do that, I want to formally join all the arguments that my brother counsel have made on behalf of their clients. I think they're equally applicable to Ms. Berden.

And just very quickly going through those counts, I think Mr. Muise did a nice job on the declaratory judgment argument. There was one point I wanted to draw to the Court's attention and that is the claimed injury that we're dealing with here.

The plaintiffs allege that they are apprehensive about serving as presidential electors in the future. That

may very well be, but judicial proceedings aren't therapy sessions. We're not here to work through peoples' feelings. The question that's before you is, what are the legal rights that are -- you are being asked to adjudicate.

How would a declaratory ruling as to the party's candidate who won the presidential election in 2020 adjudicate the rights of the parties? Is that ruling necessary for plaintiffs to be legally eligible to serve as presidential electors in the future? No.

Their position basically boils down to it would make me feel better, more confident about serving in that role in the future if I ever want to do it again. And that might be, but that's not a legally cognizable dispute.

With respect to false light, the only thing I will add to Mr. Muise's presentation is that this is a privacy tort. And so under the *Cetera versus Mileto* case, the threshold question, before you get to any of the elements is whether anything private or about the private life of the plaintiff has been disclosed.

Here, there's nothing in the complaint about the private lives of the plaintiffs that are at issue. They contended, vied for public office, they got it. There's nothing here that discloses, even -- even on the implication theory that they've advanced, there's nothing here speaking to their private life and so that would not support a false light

claim.

I think Mr. Muise touched on this as well but I -- just in case, the publicity has to be widespread. There are a handful of cases that we've cited where publication to 25 people was deemed too small of a publication to sustain a false light claim. Here, there is an alleged disclosure to two people. The archivist to the United States and the President of the US Senate. That's it. Two is not enough to sustain a false light claim.

I suspect what Mr. Springer will say but the National Archives has republished this. And they very well be but on the National Archives website, the defendants' alternate certificate of votes are identified as just that. The unofficial alternate electoral votes.

The website even redirects the reader to the official votes, the votes of Mr. Springer's clients. And for the benefit of the record that's www.archives.gov/foia/2020-presidential-election-unofficial-certificates. And so that would mean that any republication of those alternate certificate of votes can't be the basis of their false light claim either.

With respect to the statutory conversion count, and this will be the last point that I -- I raise, Judge. I noted in Mr. Springer's response brief to one of the other parties and I will flag that there has been no response filed as to

our motion to dismiss. They point out that *Smith* was a non-presidential plurality opinion. And they say only justices supported the idea that there is no property interest in holding public office.

And I would submit, your Honor, a closer inspection of the dissent shows that they're three votes short. The three dissenters agreed that there is no property right in a public office. The point of disagreement between the lead opinion and the dissenters was whether that principle had anything to do with enforcing a voluntary plea agreement not to run for office.

So to contextualize this, Judge, you may remember state senator Virgil Smith got into trouble a couple of years ago. He ended up pleading guilty to MDOP in exchange for dismissal of some other counts, domestic violence, felonious assault, felony firearms. He also agreed to resign from office and to not seek reelection until after completing his term of probation.

The lead opinion was unwilling to enforce that because it viewed it as a contract treating a public office as a property right to be bargained away. The dissent in contrast didn't see it as bargaining away a property right. They agreed no one could stop Senator Smith from running for office even though he had agreed not to do that. If he went and filed paperwork, it'd have to be processed, he'd be a

candidate, he'd be put on the ballot. At the same time though, he got something for his promise, a deal. And if he reneged on the deal, then the prosecutor was free to withdrawal from the deal and reinstate the dismissed charges. Nothing about that in the dissent's view treated public office as a property interest.

So again, no disagreement between the lead and the dissenting opinions that public offices are not property interests. They just disagreed on whether that principle applied in the *Smith* case. It certainly does here. They are quite expressly alleging a property interest in a public office and that just doesn't exist.

And so the statutory conversion claim has to fall for that reason in addition to all the others that Mr. Muise argued.

And with that, your Honor, unless the Court has any questions, I will yield the floor.

THE COURT: No, I don't have any questions. But except for if anyone has anything to add that's not repetitive that they'd like to say.

MR. KIJEWSKI: Yes, your Honor. Kevin Kijewski on behalf of Mr. Frost and Mr. Haggard. Of course, I join all my brother counsel, my brethren in what we have put forward in our respective motions for summary disposition.

I would just raise this particular fine point and

that is this is also subject and it's ripe for adjudication under 2.116(C)(4) for a lack of subject matter jurisdiction before this Court as it relates to the declaratory relief that is being sought.

And of the case of *Gyarmati versus Bielfield* G-y-r -- or I'm sorry, G-y-a-r-m-a-n-t-i(sic) v Bielfield, B-i-e-l-f-i-e-l-d, 245 Mich App 602, 2001 case quote, "A court does not have subject matter jurisdiction to enter a declaratory judgment unless there is a case of actual controversy." End quote.

As Mr. Muise said and I completely agree and concur, this is moot. The votes were actually cast and more so they were counted on January 6th, 2021. So there is no live controversy there. And -- and certainly when it comes to (C)(8), I completely join Mr. Muise in everything that he has said regarding the false light claim in addition to the statutory conversion.

This is essentially a (inaudible). This is essentially the defendants having to kind of just put up a fight against the democrats and all of these other individuals trying to come after them. I'm not trying to get political but they are actually politicizing the legal process. The proper way to adjudicate a political dispute is not trying to seek relief from a jury box. It's the ballot box. And they did not do that here.

So this is absolutely patently frivolous and we also join in the claim in the request for attorney fees. Thank you, your Honor.

THE COURT: All right. And anyone else? And Mr. Springer, did you want to respond today or --

MR. SPRINGER: Yes, your Honor. Just briefly. Primarily I would like to rely on my written responses to the various motions for summary disposition. But let me highlight a few points please.

First of all, these motions are not procedurally proper. The defendants, all of them give lips service to the requirement that facts must be taken as true but they don't actually do that. And I've highlighted at length in my primary response brief the facts in the complaint that must be taken as true and when taken as true, do establish the claims alleged. That's point number one, your Honor.

Point number two is just a remarkable point that until today, none of the defendants even mentioned the controlling cases that I've cited in my response brief. Mr. Muise finally today mentions the *ESPN* case and the *Holly* (sic) case in short order, he mentioned those. But those cases were cited and explained at length in the response briefs as the foundation for plaintiff's false light invasion of privacy claim that explains the plaintiffs' theory of false light be implication which is a recognized tort in Michigan.

And it's just remarkable that none of the defendants in their -- all of the paper that's been filed don't address any of those cases or any of the other controlling cases that have been cited in my response briefs.

The arguments that you've heard today are simply just repeating points that they've already put forth in their written papers. I mean, I've read their papers. I presume the Court will too, I'm not sure what use that really serves when I put forward controlling case law in defense of each of the challenged claims and those cases are just not even addressed. It's just remarkable to me.

Finally, your Honor, let me just highlight Mr. Richotte made the point in his comments that he wanted to flag for the Court that I did not respond to his motion for summary disposition. Your Honor, I did that intentionally and that is because his motion largely repeats and piggybacks and reiterates all of the other motions for summary disposition that had already been filed a year before his.

I have already responded to maybe four, maybe five of the previous motions for summary disposition. I did not see a need to file yet another response and by the way, you'll see when you have the file returned to the court that most of my responses to the various motions for summary disposition attempted to in one paper, have a primary response and I tried to separately address additional points that were raised in

the other motions.

But anyway, my point, your Honor, is that I responded -- did not response separately to Mr. Richotte's motion because all of the points had already been raised before and I didn't see a need to inundate the Court with yet another response in addition to what had -- have already been filed.

So with that, your Honor, I would like to please rely on my written submissions in response to the -- to the various motions. Thank you.

THE COURT: Okay. So what I will do is -- as discussed previously, is -- is take the matter under advisement. And then once I receive the file back from or once it comes back from the Court of Appeals, I will grab it and then I will come out with an order and opinion with respect to these motions for summary disposition. And then I'll also withhold any decision with respect to costs or security for the same reason, I don't have the file. So okay?

All right.

MR. MUISE: Thank you, your Honor.

THE COURT: Thank you.

MR. KIJEWSKI: All right. Thank you, your Honor.

THE COURT: Thank you again.

MR. RICHOTTE: Thank you. Enjoy the weekend.

THE COURT: Thanks.

MR. BRISTOW: Thank you everyone. Have a good day.

(At 10:18 a.m. court adjourned as to this matter)

STATE OF MICHIGAN)

COUNTY OF KENT)

I certify that this transcript, consisting of 26 pages is a complete, true and correct transcript to the best of my ability of the proceedings held on the record in this case on Friday, February 28, 2025.

March 6, 2025

Kristen J. Brink, CER 7740

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