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 BRIEF IN SUPPORT OF 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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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 <u>*any*</u> 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] <u>*Nothing*</u>.

[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.

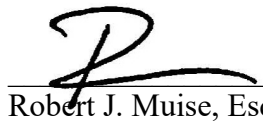
Upon granting this motion, Defendants will submit for the Court's review and approval their application for attorneys' fees and costs.

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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