STATE OF MICHIGAN
IN THE 48TH JUDICIAL CIRCUIT COURT FOR THE COUNTY OF ALLEGAN

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

Circuit Court No. 21-64029-AR
Lower Court No. 20-3569-SM

KATHERINE LINDSEY HENRY,
Defendant-Appellant,
_____/

MYRENE KAY KOCH (P62570)
Attorney for Plaintiff-Appellee
113 Chestnut Street, Allegan, MI 49010
269-673-0280
prosecutor@allegancounty.org
_____/

KATHERINE L. HENRY (P71954)
Defendant In Pro Per-Appellant
[redacted], MI 49426
[redacted] (redacted per MCR 1.109)
[redacted]

APPELLANT'S RESPONSE TO APPELLEE'S MOTION TO DISMISS APPEAL OF *PROCEDURAL* DUE PROCESS VIOLATIONS, BRIEF IN SUPPORT, AND PROOF OF SERVICE

PROOF OF SERVICE

The undersigned certifies the following Appellant's Response to Appellee's Motion to Dismiss Appeal, and Brief in Support, were served upon the parties named herein at the addresses listed above, by US Mail, hand-delivered, emailed (if commonly accepted by opposing counsel, or allowed due to COVID19 Michigan Supreme Court recommendations), or by depositing in their box at the Courthouse on: April 20, 2021.

Respectfully Submitted: April 20, 2021

/s/ Katherine L. Henry
Katherine L. Henry (P71954)

APPELLANT'S RESPONSE TO APPELLEE'S MOTION TO DISMISS APPELLANT'S *PROCEDURAL* DUE PROCESS APPEAL

Defendant-Appellant, Katherine L. Henry (P71954) (hereinafter, Henry), in pro per, responds to Appellee's motion to dismiss appeal under MCR 7.110 and MCR 2.119 based on the attached brief and the following:

1. Henry denies the allegations in Prosecutor's paragraph 1, as Prosecutor's pleadings and prior oral argument have made clear Henry is charged with the "trespass overstay of a car," as repeated by the trial court on 2/4/21, which is *not* covered by the language of MCL 750.552.
2. As to the allegations in Prosecutor's paragraph 2, Henry admits in part, but denies as to Henry's *substantive* due process appeal being untimely. There is *no* 21 day time limit in which the interlocutory appeal based on lack of subject matter jurisdiction must be filed.
3. As to the allegations in Prosecutor's paragraph 3, Henry admits in part, but denies as to Henry's *procedural* due process appeal being untimely (because it is not), and that said appeal relates only to the 2/4/21 hearing and other earlier events (because that is blatantly untrue).
4. Henry denies the allegations in Prosecutor's paragraph 4, as Henry's application for leave is clearly within the page limit requirements of MCR 7.212(B), that Henry's actions are an offense (since her pleadings are appropriate for the circumstances and follow the applicable requirements), that Henry raising *substantive* due process issues in a separate appeal from the *procedural* due process issues is an impermissible "piecemeal approach" (as it is obviously within Henry's rights to challenge both the illegality of the initial charge, as well as the unconstitutional and illegal actions of Prosecutor and the trial court during this case).
5. The township's *Election Day* resolution is preempted by Michigan Election Law, and purporting to regulate parking it is preempted by the Michigan Vehicle Code, Control of Traffic in Parking Areas act and the Uniform Traffic Code. It's illegal to enforce mere resolutions, to prosecute Henry for conduct presumptively protected by the first amendment, or to arrest Henry while serving as an attorney (a public officer). So, the court has no subject matter jurisdiction over

such actions.

6. Moreover, the court has no subject matter jurisdiction over a trespass charge on property open to the public, because there is ***no such crime***.
7. In the alleged parking violations, the court has no subject matter jurisdiction over Henry's person, but only her car; and since there is no criminal trespass by parking, the court lacks subject matter jurisdiction over the charge.
8. So, for many reasons, "the charge is brought under an inapplicable statute," and the court lacks subject matter jurisdiction.[1]
9. The trial court's denial of Henry's right to assistance of counsel at the 2/4/21 hearing also destroyed any subject jurisdiction the court may have had, now requiring the court to dismiss the case with prejudice.
10. Prosecutor's motion to dismiss Henry's appeal ignores several firmly established legal principles.
11. Prosecutor's continuing lack of truthfulness and candor undermines Henry's due process protections *and* the integrity of the adjudicative process.
12. Prosecutor's actions demonstrate the trampling, rather than protection, of Henry's rights, despite Prosecutor's duty to uphold the law, avoid conduct prejudicial to the administration of justice, and ensure that Henry's rights are protected.

Wherefore, Henry asks this court to:

A. Grant Henry's Motion for Immediate Consideration, and therefore, grant all relief requested by Henry in her application to appeal *procedural* due process violations.

B. Issue its decision prior to April 22nd, the date set for the next hearing in district court, and direct the ensuing order to be served upon the parties by email prior to April 22nd, as to make clear the hearing on April 22nd would no longer be needed.

C. Require Prosecutor to fully respond to Henry's 2/15/21 discovery request by April 23rd.

---

[1] *People v Beckner*, 92 Mich App 166, 169 (1979), citing *People v Johnson*, 396 Mich 424, 439-444 (1976), *Blackledge v Perry,* 417 US 21 (1974), *People v Parney*, 74 Mich App 173 (1977).

D. Exclude *all* evidence (including witness testimony, exhibits, etc.) from trial that Prosecutor fails to produce in full to Henry by April 23rd.

E. Dismiss all charges and infractions from Ticket 166684 *with prejudice*.

F. Order that "the arrest record shall be removed from the internet criminal history access tool (ICHAT)," pursuant to MCL 764.26a(1)(a).

G. Order that 60 days from the order of dismissal the "arrest record, all biometric data, and fingerprints shall be expunged or destroyed, or both, as appropriate," and "any entry concerning the charge shall be removed from LEIN," pursuant to MCL 764.26a(1)(b).

H. Order that for all hearings and proceedings on this misdemeanor charge: court participants *shall not* wear masks or other face coverings (as a reasonable accommodation for Henry's need for lip-reading); Henry *shall not* be denied the assistance of counsel of her choice; the public will have full access to be physically present in the courtroom; Henry, the jury, the witnesses and *all* other participants shall be present in the court, and not participate by Zoom; Henry is allowed to share video footage of the proceedings with the public; media access and physical presence *shall not* be denied or abridged in any way.

I. Clarify that she may share with the public the video recordings of the prior hearings in this case.

J. Require Henry's personal identifying information to be redacted immediately from all court pleadings in this matter (and related appeals, etc.).

K. Make the clarifications requested on page 45-46 of Henry's *procedural* due process application for leave to appeal.

L. Order e-filing and e-service shall be used to the greatest extent possible during COVID 19, by the court and Prosecutor.

M. For any and all such other relief that is just and appropriate.

Respectfully Submitted: April 20, 2021

/s/ Katherine L. Henry
Katherine L. Henry (P71954)

STATE OF MICHIGAN
IN THE 48TH JUDICIAL CIRCUIT COURT FOR THE COUNTY OF ALLEGAN

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

Circuit Court No. 21-64029-AR
Lower Court No. 20-3569-SM

KATHERINE LINDSEY HENRY,
Defendant-Appellant,
_____/

MYRENE KAY KOCH (P62570)
Attorney for Plaintiff-Appellee
113 Chestnut Street, Allegan, MI 49010
269-673-0280
prosecutor@allegancounty.org
_____/

KATHERINE L. HENRY (P71954)
Defendant In Pro Per-Appellant
[redacted], MI 49426
[redacted] (redacted per MCR 1.109)
[redacted]

BRIEF IN SUPPORT OF APPELLANT'S RESPONSE
TO APPELLEE'S MOTION TO DISMISS
APPELLANT'S *PROCEDURAL* DUE PROCESS APPEAL

ORAL ARGUMENT NOT REQUESTED

TABLE OF CONTENTS

INDEX OF AUTHORITIES **6**

STATEMENT OF JURISDICTION **11**

STATEMENT OF FACTS **13**

ARGUMENT **15**

Prosecutor's Motion Ignores Firmly Established Legal Principles 16

Prosecutor Routinely Fails to File Required Brief with Motion / Response 16

Prosecutor Failed to Obtain / Serve Required Date for Hearing on Motion 18

Claims of "Untimely" Appeal Violate MCR 2.111 and Ignore MCR 2.116(J)(2)(a) & (c) 18

Prosecutor Has Waived All Defenses to Henry's Procedural Due Process Appeal 24

Prosecutor's Claim of a "Piecemeal Approach" Ignores Henry's Right to Challenge Illegality of Charge AND Continued Violations in Subsequent Proceedings 25

Dismissing Henry's Appeal Not Appropriate Remedy for Alleged Noncompliance 26

Prosecutor's Lack of Truthfulness / Candor Undermines Integrity of Adjudicative Process 28

Prosecutor Routinely States Inaccurate Date of Service Upon Henry 29

Prosecutor Intentionally Misleads the Court Regarding Substance of This Appeal 30

Prosecutor Blatantly Lies About Henry's Appeal Exceeding Rule on Page Limits 31

Prosecutor Grossly Mischaracterizes Henry's Due Process Appeals as Late 31

Prosecutor Tramples Upon Henry's Rights, Not Protecting Them as Required 33

Prosecutor Fails to Timely Serve Henry by Email as Required by Supreme Court 33

Prosecutor Refuses to Answer Any of Henry's Discovery Requests or Emails 34

Prosecutor Violated Henry's Disability Rights 36

Prosecutor Makes Henry's Protected Personal Identifying Information Public 36

Seeking Criminal Record & Possible Jail Time for Henry's Alleged Parking Violation Tramples her Eight Amendment Protections Against Cruel & Unusual Punishment 37

CONCLUSION **38**

INDEX OF AUTHORITIES

Constitutions/Statutes/Rules

US Const Due Process Clauses (Am V, Am XIV)	*passim*
US Const, Am I	20
US Const, Am VI	22, 23, 32
US Const, Am VIII	38
Const 1963, art I, § 16	38
Const 1963, art I, § 20	22
Const 1963, art I, § 3	21
Const 1963, art I, § 5	21
Const 1963, art VI, § 13	12, 13
Const 1963, art XII, § 2	20
Americans with Disabilities Act	13
MCL 37.1606	13
MCL 41.183	21
MCL 42.20	21
MCL 257.605	21, 37
MCL 257.606	21, 37, 38
MCL 257.672-.675d	37
MCL 257.676b	37
MCL 257.942	21, 37
MCL 257.943	21, 37
MCL 257.951	21, 37
MCL 600.1825	21, 22
MCL 600.605	13
MCL 600.615	12
MCL 600.8311	21
MCL 600.8342	12, 13
MCL 600.901	20

MCL 750.543 20, 21
MCL 750.552 20
MCL 761.1 21
MCL 763.8 35
MCL 764.26a 4, 41, 42
MCR 1.105 35
MCR 1.109 *passim*
MCR 2.104 30
MCR 2.105 31
MCR 2.107 30, 34
MCR 2.111 17, 19, 25, 26, 32
MCR 2.116 17, 18, 19, 22, 28, 32
MCR 2.119 2, 17, 18, 26, 27, 32, 35
MCR 6.001 16, 17
MCR 6.002 36
MCR 6.110 29
MCR 6.201 14, 35
MCR 6.610 13, 15, 22, 31, 35
MCR 7.102 13
MCR 7.103 13
MCR 7.105 19, 25, 28, 32
MCR 7.110 2, 18, 25
MCR 7.111 27, 28
MCR 7.112 41
MCR 7.113 14, 28
MCR 7.211 18, 25, 26, 27, 32
MCR 7.212 2, 28, 32
MCR 7.216 41
MCR 9.104 29

MRPC 1.0 29, 30, 33
MRPC 1.1 30
MRPC 1.3 30
MRPC 1.6 29, 33, 34
MRPC 3.3 29
MRPC 3.8 30, 33, 34
MRPC 6.5 30
MRPC 8.4 29

Cases

Barnard Mfg Co v Gates Performance Eng'g, Inc, 285 Mich App 362 (2009) 18
Berger v US, 295 US 78 (1935) 16
Brewer v Williams, 430 US 387 (1977) 22
Brookhart v Janis, 384 US 1 (1966) 12
Brown v Louisiana, 383 US 131 (1966) 20
Builders Ass'n v Detroit, 295 Mich 272 (1940) 37
Charles Reinhart Co v Winiemko, 444 Mich 579 (1994) 26
Cox v Louisiana, 379 US 559 (1965) 26,41
Crawford v Washington, 541 US 36 (2004) 12
Ex Parte Milligan, 71 US 2 (1866) 12, 16
Faretta v California, 422 US 806 (1975) 22, 23
Food Employees v Logan Valley Plaza, 391 US 308 (1968) 20
Gideon v Wainwright, 372 US 335 (1963) 12, 22, 32
Hague v Committee for Industrial Organization, 307 US 496 (1939) 20
Hannah v Larche, 363 US 420 (1960) 26
Harlow v Fitzgerald, 457 US 800 (1982) 33
Holmes v South Carolina, 547 US 319 (2006) 23, 36
In re Certified Questions, __ Mich __ (2020) (Docket No. 161492) 26,41
Johnson v Zerbst, 304 US 458 (1938) 22, 23, 32

Mapp v Ohio, 367 US 643 (1961) 36,38
Meyer v Grant, 486 US 414 (1988) 20
MI Coalition of State Empl Unions v Civil Serv Com'n, 465 Mich 212 (2001) 12, 41
Michigan Gun Owners v Ann Arbor Public Schools, 502 Mich 695 (2018) 13
Midland Publishing Co v District Court Judge, 420 Mich 148 (1984) 20
Neder v United States, 527 US 1 (1999) 12
People v Beckner, 92 Mich App 166 (1979) 22, 23
People v Buie, 298 Mich App 50 (2012) 12, 22, 32
People v Buie, 491 Mich 294 (2012) 28, 37
People v Carpentier, 446 Mich 19 (1994) 22, 32
People v Clement, 254 Mich App 387 (2002) 20, 33
People v Collison, 85 Mich 105 (1891) 20
People v Duncan, 494 Mich 713 (2013) 22, 28, 32, 37
People v Erwin, 212 Mich App 55 (1995) 19, 20, 32, 33
People v Hartwick, 498 Mich 192 (2015) 22
People v Johnson, 396 Mich 424 (1976) 20, 22, 23, 33
People v Murray, 89 Mich 276 (1891) 12, 16
People v New, 427 Mich 482 (1986) 23
People v Richards, 205 Mich App 438 (1994) 19, 32
People v Russell, 471 Mich 182 (2004) 12, 22, 32
People v Torres, 452 Mich 43 (1996) 23
People v Trapp, __ Mich App __, __ (2020) (Docket No. 345239) 36
People v Turmon, 417 Mich 638 (1983) 30
People v Unger, 749 NW 2d 272 (Mich App 2008) 23, 36
People v Willing, 267 Mich App 208 (2005) 12, 22, 23, 32
People v Wilson, 500 Mich 521 (2017) 13
People v Wood, __ Mich __ (2020) (Docket No. 159063) 12
Rose v Clark, 478 US 570 (1986) 12
Spurlock v Satterfield, 167 F3d 995 (1999) 34

Upper Peninsula Power v Village of L'anse, _ Mich App _ (2020) (No. 349833) 26

US Postal Service v Council of Greenburgh Civic Ass'ns, 453 US 114 (1981) 26

US v Cronic, 466 US 648 (1984) 12

US v Gonzalez-Lopez, 548 US 140 (2006) 12, 22, 32

Wright v Georgia, 373 US 284 (1963) 20

STATEMENT OF JURISDICTION

Defendant (Henry) appeals district court denials of: assistance of counsel, redaction of Personal Identifying Information, *public* hearings, a face-to-face trial, reasonable requests for disability accommodations, sharing hearing videos with the public, and mandatory discovery. The "safeguards of liberty . . . should receive the watchful care of those intrusted with the guardianship of the Constitution and laws. In no other way can we transmit to posterity unimpaired the blessings of liberty." *Ex Parte Milligan*, 71 US 2, 124 (1866). So, "it is the *duty of courts* to see that the constitutional rights of the defendant in a criminal case shall not be violated."[2] Thus, the "court has the authority, and, in appropriate cases, *the duty*, to enter *permanent* injunctive relief against a constitutional violation."[3] The original duty belongs to the trial court, but when a district court denies the accused basic constitutional and statutory protections, the accused may seek leave for an interlocutory appeal in the circuit court.[4] The circuit court also has "appellate jurisdiction" in Const 1963, art VI, § 13, as the Framers "knew that judges, like other government officers, could not always be trusted to safeguard the rights of the people."[5] Further, where there is

> a defect affecting the framework within which the trial proceeds, rather than simply an error in the trial process itself, [s]uch errors infect the entire trial process, and necessarily render a trial fundamentally unfair. Put another way, these errors deprive defendants of 'basic protections' without which a trial cannot reliably serve its function as a vehicle for determination of guilt or innocence . . . and no criminal punishment may be regarded as fundamentally fair.[6]

Consequently, defects such as denial of counsel, biased trial judge, denial of confrontation, and denial of public hearings are structural errors requiring automatic reversal by the appellate court,[7] necessarily indicating jurisdiction in the appellate court. These issues are "so basic to a fair trial that [they] can never be harmless,"[8] either because they "aborted the basic trial process [or]

---

[2] *People v Murray*, 89 Mich 276, 285 (1891) (emphasis added), citing *Hill v People,* 16 Mich 351, 357 (1868).
[3] *MI Coalition of State Empl Unions v Civil Serv Com'n*, 465 Mich 212, 219 (2001).
[4] *People v Wood*, ___ Mich ___ (2020) (Docket No. 159063).
[5] *Crawford v Washington,* 541 US 36, 67 (2004).
[6] *Neder v United States*, 527 US 1, 8-9 (1999) (cleaned up).
[7] *Neder* at 8. See also, *Rose v Clark*, 478 US 570, 577 (1986); *Brookhard v Janis*, 384 US 1 (1966); *US v Gonzalez-Lopez*, 548 US 140, 150 (2006); *People v Buie*, 298 Mich App 50, 61-62 (2012); *People v Willing*, 267 Mich App 208, 224 (2005); *US v Cronic*, 466 US 648, 659 n 25 (1984); *Gideon v Wainwright*, 372 US 335 (1963); *People v Russell,* 471 Mich 182, 194 n 29 (2004).
[8] *Rose v Clark*, 478 US 570, 579 (1986).

denied it altogether." *Id* at n 6. Also, MCR 7.103(B)(3), working with MCL 600.615, MCL 600.8342, Const 1963, art VI, § 13, and AO No. 2012-4, confer jurisdiction in circuit court on the assistance of counsel, right to public hearings and a face-to-face trial, Henry's ability to share video of these proceedings, and discovery disclosures. These violations have been occurring throughout the case, and are scheduled to continue into the jury trial. Henry may raise these issues within 6 months *post-trial*, so raising them *pretrial* she is within the jurisdictional time frame.

Also, MCR 7.102(2) provides for "judicial review by the circuit court of a judgment, order, or decision of a 'trial court' . . . even if the statute or constitutional provision authorizing circuit court appellate review uses a term other than 'appeal.'" The "expressio unius est exclusio alterius doctrine," where the expression of one thing suggests the exclusion of all others[9] means Subchapter 7.100 applies to *all* circuit court review of lower court actions *except* "actions commenced under the Freedom of Information Act, . . . proceedings described in MCR 3.302 through MCR 3.306, and motions filed under MCR 6.610(H)." MCR 7.102(2). With the ADA violations (including the court's violation of an accommodation approved in prior court orders), Title II of the ADA (covering trials, hearings, etc.) allows enforcement through individual claims, where neither a prior Department of Justice complaint nor a "right-to-sue" letter are required before going to court.[10] Also for the disability rights violations, MCL 37.1606, MCL 600.605, MCL 600.8342, MCR 7.103(B)(3), and AO No. 2012-4 confer jurisdiction in circuit court. As the *court has a continuing duty to provide reasonable accommodations* for Henry's disability, yet has set Henry's upcoming hearings and other court proceedings by Zoom in violation of these legal protections, *this appeal is being filed timely to prevent the further violations* from taking place. Moreover, each denial of reasonable disability accommodation is a distinct violation subject to an appeal.

Further, MCR 7.103(B)(3), ADM File No. 2017-28 (as amended on May 22, 2019), and MCR 1.109(D)(9)(d)(ii) confer jurisdiction to appeal the district court's denial of Henry's request to

---

[9] *Michigan Gun Owners, Inc. v Ann Arbor Public Schools,* 502 Mich 695, 707 (2018); *People v Wilson*, 500 Mich 521, 526 (2017).

[10] US Department of Justice, Civil Rights Division, Disability Rights Section, *A Guide to Disability Rights Laws*, February 2020, available at https://www.ada.gov/cguide.htm, accessed February 12, 2021.

redact her personal identifying information (PII) from the prosecution's pleadings. Despite Henry's request to get this trial court decision in a written order, the court has refused to do that to-date, thus her appeal is timely (where Henry has been patiently awaiting the court's written order, but is now appealing to get it handled before further damage can be done to her privacy and personal identity). Also, MCR 6.201(J) provides authority for the court to "order the party to provide the discovery" and to "prohibit the party from introducing in evidence the material not disclosed." Yet, per the language and requirements of MCR 7.113(A), 7.111(D) and 7.105(G), this court does *not* have the power to dismiss Henry's appeal due to Henry's *alleged* briefing nonconformities.

STATEMENT OF FACTS

Henry is a licensed attorney.[11] In April 2020, she began explaining EOs, state law, and the US and Michigan Constitutions to citizens statewide, appearing on dozens of radio and TV shows to do just that. She continues to do videos and events explaining the constitution to thousands of people regularly.[12] Countless Michiganders continually reach out to Henry for help in combating government overreach, many voicing appreciation for the way she uses current situations to explain the proper roles and functions of government. Last May, she authored the Restore Freedom Initiative (RFI) constitutional amendment petition. On Election Day 2020, RFI volunteers were threatened with arrest for circulating the petition in the Leighton Town Hall parking lot. Henry, as RFI's lead attorney, tried resolving the situation with the deputy on the phone. When that did not work, she told him she'd just go to the town hall to speak with him directly about it. Upon arriving, he would *not* discuss the law though, instead arresting Henry for trespassing on public property.

Henry filed a motion to dismiss, being entitled to dismissal as a matter of law. Her motion to dismiss (with brief, affidavits, and exhibits) was filed on 1/13/21; Prosecutor's six-page response had no brief, affidavits or exhibits. At the 2/4/21 hearing, the trial court denied the motion, and Henry filed a *substantive* due process appeal, since the court lacks subject matter jurisdiction. The circuit court denied that appeal on 4/5/21 in a one-sentence order accompanied by no opinion.

[11] First admitted in MN, then MI, East. Dist. MI, West. Dist. MI, Saginaw Chippewa Tribal Ct, US Sup. Ct.
[12] Attorney Katherine Henry's Video Views, App 99.

Henry appealed that order to the Court of Appeals on 4/9/21. Henry also filed a written request for discovery on 2/15/21, sending a reminder email on 3/2/21 and a final follow up email on 3/29/21, all receiving no response from Prosecutor. Henry then filed a motion to compel discovery and bar introduction of evidence on 3/31/21 with an in person hearing set for 4/8/21. On 4/6/21, the trial court removed Henry's hearing from the court's calendar with no notice to Henry. When Henry discovered this, she emailed the court, app 137, asking it to put the hearing back on the calendar. The court did so, but then notified Henry the hearing would only be held by Zoom, app 138, despite her reasonable requests for disability accommodation. At the 4/8/21 hearing, the trial court ruled it would only be fair for Prosecutor to get *another* two weeks to respond to Henry's discovery request, and with no written order, simply set the matter for another *Zoom* hearing on 4/22/21.

On 4/7/21, Henry filed this appeal, wherein she detailed the denials of her right to: counsel, *public* hearings, reasonable requests for disability accommodations, redactions of her PII under *updated* MCR 1.109(D)(9), discovery under *updated* MCR 6.610(E), and E-filing/E-service per Administrative Orders from the Michigan Supreme Court. To-date, though, Prosecutor has *not* responded to *any* emails from Henry since prior to the 2/4/21 hearing, to Henry's discovery request (or even the court's direction to respond), nor to *any* of Henry's motions or briefs (Application for Leave to Appeal *Substantive* Due Process Violations to Circuit Court, Motion for Immediate Consideration; Motion to Compel Discovery, Motion for Immediate Consideration, Brief in Support; Motion to Stay Proceedings Pending Appeal, Motion for Immediate Consideration, Brief in Support; Application for Leave to Appeal *Procedural* Due Process Violations to Circuit Court, Motion for Immediate Consideration; Application for Leave to Appeal to Court of Appeals for Lack of Subject Matter Jurisdiction (*substantive* due process), Motion for Immediate Consideration).

ARGUMENT

Prosecutor still claims this is a simple case of *Prohibited Parking*. Yet, this is nothing other than a *Constitutional Catastrophe.* It started with Henry being charged, following a violent arrest, with criminal trespass for "violating" a *resolution* regulating township property parking on Election

Day. The *substantive* due process deficiencies were challenged by Henry in her Motion to Dismiss, her initial appeal to this court, and in her more recent appeal to the Court of Appeals. However, the *Constitutional Catastrophe* continued with blatant *procedural* due process violations by the court and Prosecutor. These violations were challenged in Henry's *procedural* due process appeal, on which Prosecutor now files a Motion to Dismiss, violating many court rules and constitutional requirements in so doing.

While it's true Prosecutor operates as a distinct branch of government, Prosecutor is nonetheless bound to follow the same court rules and other rules of procedure that the accused must follow. In fact, Prosecutor has even *more* procedural requirements and duties than the accused in a criminal case. And it is as much Prosecutor's "duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one." *Berger v US*, 295 US 78, 88 (1935). For it's by "the protection of the law human rights are secured; withdraw that protection, and they are at the mercy of wicked rulers." *Ex Parte Milligan* at 119. Yet, Prosecutor continually fails to comply with relevant court rules and other procedural requirements, while employing improper methods to obtain a wrongful conviction. Prosecutor's instant special motion to dismiss ignores firmly established legal principles. Also, Prosecutor's lack of truthfulness and candor in this case undermines the integrity of the adjudicative process. Further, Prosecutor's actions trample upon Henry's rights, instead of protecting them as Prosecutor is required to do. Consequently, since "it is the *duty of courts* to see that the constitutional rights of the defendant in a criminal case shall not be violated,"[13] Henry urges this court to act now to prohibit the trial court and Prosecutor from continually violating Henry's rights.

I. Prosecutor's Motion Ignores Firmly Established Legal Principles

Our court "rules do not provide for motion practice in criminal proceedings; [so,] the rules for civil motion practice apply. See MCR 6.001(D)." *Criminal Proceedings Benchbook,* Vol 1, Rev Ed., §9.2. Moreover, in general, the other rules of civil procedure also apply in criminal cases.

[13] *People v Murray*, 89 Mich 276, 285 (1891) (emphasis added), citing *Hill v People,* 16 Mich 351, 357 (1868).

MCR 6.001(D). And of course rules in Chapter 1 also apply. Consequently, MCR 1.109(E)(5) states Prosecutor's signature on the instant motion "constitutes a certification [that] after reasonable inquiry, the document is . . . warranted *by existing law or a good-faith argument for*" its reversal.

However, Prosecutor's instant motion ignores several firmly established legal principles or procedural requirements. Prosecutor failed, yet again, to file the required brief with the motion to dismiss Henry's appeal. Prosecutor also failed to obtain, and serve notice upon Henry for, a hearing date on the instant motion to dismiss. In claiming Henry's appeals are untimely, Prosecutor violates MCR 2.111 and ignores MCR 2.116(J)(a) and (c). With the filing of this special motion to dismiss, Prosecutor waived *all* defenses, under court rule, to Henry's *procedural* due process appeal. Prosecutor's claim of Henry's appeals being a "piecemeal approach" ignores Henry's right to challenge the illegality of the charge *and* the continued legal and constitutional violations occurring in subsequent proceedings. Court rules on nonconforming briefs require them to be *substantially* nonconforming before remedial actions are implemented. Here, Prosecutor is requesting the court to dismiss Henry's appeal based on alleged rule violations. However, it is *Prosecutor*'s pleadings that demonstrate *substantial nonconformity* with the rules. Moreover, dismissing Henry's appeal is *not* an appropriate remedy for Henry's alleged noncompliance. Each of these legal principles is well-established, yet Prosecutor's pleading is comprised to ignore them all.

A. Prosecutor Routinely Fails to File Required Brief with Motion / Response

According to MCR 2.119(A)(2), a "motion or response to a motion that presents an issue of law must be accompanied by a brief citing the authority on which it is based." However, in the only two documents filed by Prosecutor throughout the life of the underlying case and subsequent appeals (Prosecutor's response to Henry's original motion to dismiss the charges, and now Prosecutor's motion to dismiss Henry's appeal), Prosecutor filed each without the *required* brief.

In addition to the many factual deficiencies, Prosecutor's response to Henry's motion to dismiss was also willfully disobedient to the requirements of raising legal arguments. MCR 2.116(G)(1)(a)(ii) requires the "response to the motion (**including brief** and any affidavits) [to] be

filed and served;" timely to allow for Henry's Reply Brief which must rebut the arguments in Prosecutor's "response **brief**." MCR 2.116(G)(1)(a)(iii). Indeed, a "response to a motion that presents an issue of law **must** be accompanied by a **brief** citing the authority on which it is based." MCR 2.119(A)(2); MJI, Criminal Proceedings Benchbook, Vol 1, Rev Ed., §9.2. And in MCR 2.116(C)(10), the nonmovant's **brief** must set forth specific facts demonstrating a genuine issue for trial. *Barnard Mfg Co v Gates Performance Eng'g, Inc,* 285 Mich App 362 (2009). However, in responding to Henry's MCR 2.116(C)(10) motion, Prosecutor filed and served *no briefs*. Violating 2.111(C) and (D) by simply stating "Deny" to the allegations of Henry's motion, Prosecutor's unsupported denials also rejected many well established legal principles, such as regulations must give citizens fair warning as to what is illegal (¶14), and townships may not enact regulations repugnant to the Constitution (¶15).

Likewise, Prosecutor now files its own motion to dismiss, pursuant to MCR 7.110 and 7.211(C), without a brief. However, MCR 7.211(C) special motions to dismiss are *required* to be filed with a supporting brief. MCR 7.211(A)(3). Also, the text of MCR 7.110 clearly states that "[m]otion practice in a circuit court appeal is governed by MCR 2.119." Thus, MCR 2.119(A)(2)'s requirement to file a supporting brief applies to Prosecutor's instant motion. When the court rules absolutely *require* a brief to be filed in support of the motion, Prosecutor's request of the court cannot be considered without it.

B. Prosecutor Failed to Obtain / Serve Required Date for Hearing on Motion

As aforementioned, Prosecutor's motion to dismiss Henry's appeal must conform with MCR 2.119. Accordingly, MCR 2.119(C)(1) requires that Prosecutor serve the motion, "notice of the hearing on the motion, and any supporting briefs" upon Henry "at least 9 days before the time set for the hearing." Additionally, MCR 2.119(E)(1) states that "Contested motions should be noticed for hearing at the time designated by the court for the hearing of motions," and will be heard on that date. Even MCR 7.110 references "the hearing date" when explaining when the court's decision on the motion is due. However, Prosecutor obtained and served upon Henry *no* hearing date.

Attempting to get Henry's appeal thrown out without providing her the proper notice and opportunity to be heard amounts not only to *substantial noncompliance* with the court rules, but also to *another* denial of Henry's due process rights.

C. Claims of "Untimely" Appeal Violate MCR 2.111 and Ignore MCR 2.116(J)(2)(a) & (c)

In Prosecutor's ridiculously deficient 9-sentence motion to dismiss Henry's appeal, Prosecutor refers to Henry's appeals as "untimely" three separate times. The first time, Prosecutor calls Henry's *substantive* due process appeal untimely; however, such claims violate MCR 2.111, MCR 2.116(J)(2), *and* basic constitutional requirements of subject matter jurisdiction.

Although originally raised under MCR 2.116(C)(8) and (10), the legal issues raised by Henry in her motion to dismiss the charge also established the basis for dismissal required under 2.116(C)(4), as the court lacks subject matter jurisdiction in this case. MCR 2.111(F)(2) states that a "defense not asserted in the responsive pleading or by motion as provided by these rules is waived, except for the defenses of **lack of jurisdiction over the subject matter** of the action, and failure to state a claim on which relief can be granted." Further, under MCR 2.116(J)(2)(a) and (c), Henry may either "seek interlocutory leave to appeal as provided by these rules" or "proceed to final judgment and raise errors of the court committed under this rule in an appeal taken from final judgment." Why is this the case with MCR 2.111(F)(2) and 2.116(J)(2)? Because of the special nature of subject matter jurisdiction.

It is true that Henry filed an interlocutory application for leave to appeal from the trial court's legally incorrect ruling, which the circuit court denied on 4/5/21. There was *no* opinion issued by the circuit court, rather just a one-sentence order stating "Appellant's Application for Leave to Appeal is DENIED due to lack of compliance with MCR 7.105(A)." However, while the typical appeal period is the 21 days noted in MCR 7.105(A), "[d]efects in subject-matter jurisdiction cannot be waived and may be raised *at any time*."[14] Further, "the court is [even] required to recognize that it lacks subject matter jurisdiction, 'regardless of whether the parties

[14] *People v Erwin,* 212 Mich App 55, 64 (1995) (emphasis added); *People v Richards*, 205 Mich App 438, 444 (1994); see also MCR 2.116 2007 Staff Comment.

raised the issue."[15] Even the MJI explains a "trial court ***must*** dismiss an action when there is a lack of subject matter jurisdiction, and a *party cannot be estopped* from raising the issue."[16]

While Henry already detailed the entire legal analysis of the court's lack of subject matter jurisdiction in her *substantive* due process appeal, since Prosecutor raises that issue in the instant motion to dismiss, it is important to note a few things about the court's lack of subject matter jurisdiction. First, the trial court has *no* subject matter jurisdiction over a trespassing charge for an accused who was on property open to the general public. It's long recognized that "ownership [of public properties] is in the whole people of the state." *People v Collison*, 85 Mich 105, 108 (1891). So, government owns property, like courthouses, in trust for the public. *Hague v Committee for Industrial Organization*, 307 US 496, 515 (1939). Further, the First Amendment "protects a right of access to places traditionally open to the public,"[17] while Equal Protection guarantees that for *all* property open to the public, *all* "members of the public [have] an equal right of access." *Food Employees v Logan Valley Plaza*, 391 US 308, 321 (1968). This all means members of the public may *not* be excluded from property open *to the public* "through the **use of [] trespass laws**."[18]

Further, "a prosecuting agency shall not prosecute any person . . . for conduct presumptively protected by the first amendment to the constitution." MCL 750.543z. Henry is charged because she and/or her car were allegedly trespassing on township property while there for work related to circulating a constitutional amendment petition. But, engaging in that very petition work is protected core political speech, *Meyer v Grant*, 486 US 414, 421-22 (1988), that divests subject

---

[15] MJI, *Criminal Proceedings Benchbook*, Vol 1, Rev Ed, § 2.2; quoting *People v Clement,* 254 Mich App 387, 394 (2002); *People v Johnson*, 396 Mich 424, 442 (1976); *Erwin* at 64.
[16] MJI, *Crim Proc Benchbook*, Vol 1, §2.2; quoting *In re Contempt of Dorsey,* 306 Mich App 571, 581 (2014).
[17] *Midland Publishing Co v District Court Judge*, 420 Mich 148, 161 (1984).
[18] *Logan* at 319. And, there being *no* trespassing of government property *open to the general public*, the only regulations upheld are those preventing direct interference with the public's use of the property, like banning picketing done in a manner to "unreasonably interfere with free ingress or egress" or to intentionally interfere with "the administration of justice," etc. *Id* at 320. MCL 750.552 was *not* written to apply to property open to the general public anyway. Just like in *Brown*, the "sole statutory provision invoked by the State contains not a word about . . . punish[ing] the bare refusal to obey an unexplained command to withdraw from a public street, . . . or public building." *Brown v Louisiana,* 383 US 131, 141(1966). Rather, here, like in *Brown*, the "statute was deliberately and purposefully applied solely to terminate the reasonable, orderly, and limited exercise of the right to protest [at] a public facility. Interference with this right, so exercised, by state action is intolerable under our Constitution." *Id* at 142, citing *Wright v Georgia*, 373 US 284, 292 (1963).

matter jurisdiction through US Am I; Const 1963, art I, §§ 3, 5; Const 1963, art XII, § 2; and MCL 750.543z. Likewise, it is undisputed that Henry was at the township solely in her capacity as an attorney, and as such, she was serving as a public officer which divests the court of subject matter jurisdiction. MCL 600.901; Compiler's Note of MCL 600.901, citing *Falk v State Bar*, 418 Mich 270 (1983); MCL 600.1825(3); M Crim JI 22.19.

Also, a district court has *no* subject matter jurisdiction to enforce township *resolutions*, but rather only township *ordinances* and charters. MCL 42.20; MCL 41.183; MCL 761.1(c); MCL 761.1(o)(i); MCL 600.8311; Michigan Judicial Institute (MJI), *District Court Magistrate Manual - Revised Edition* (2021) at 1-21. Being unconstitutionally vague and overbroad, with no *compelling* state interest, and being implemented in a way that is *not narrowly tailored* to the interest, the resolution was *not* able to provide the township clerk authority to remove Henry from the township's *public* parking lot, thus the court has no subject matter jurisdiction over the ensuing charges. The resolution also attempts to specifically regulate use of township property outside the polls on *Election Day*, and as such, is express, conflict, and field preempted by the Michigan Constitution *and* Michigan *Election* Law, and is therefore, unable to provide the clerk with authority to remove Henry from the property, thus divesting the court of subject matter jurisdiction over charges based on the same.

Moreover, charging someone with a *crime*, with possible jail time and a criminal record, for a *singule* alleged parking violation is preempted by several portions of the Michigan Vehicle Code (MVC), Control of Traffic in Parking Areas act (CTPA), and the Uniform Traffic Code (UTC), including, but not limited to, MCL 257.672-.675d; MCL 257.951(1); MCL 257.942; MCL 257.605; MCL 257.606; and MCL 257.943, which completely voids all subject matter jurisdiction for such charges. Furthermore, even *if* this were an enforceable parking regulation, a "violation" would only provide the court subject matter jurisdiction over Henry's *car*, not her *person*. However, criminal trespass clearly only exists when a *person* intentionally remains on property of another without legal authority after someone with legal authority to remove them has told them to leave. Thus, the

court has no subject matter jurisdiction in this case. So, for many reasons, "the charge is brought under an inapplicable statute," and the court lacks subject matter jurisdiction.[19]

So it makes sense where the accused is protected "*from* prosecution," such as here with a lack of subject matter jurisdiction, the issue must be raised and the decision must be made before trial. By its very nature, protection under MCR 2.116(C)(4), MCL 600.1825, or MCL 750.543z must be decided by the court as a matter of law, in *pretrial* proceedings, in order to establish the protection *from* trial. *People v Hartwick*, 498 Mich 192, 213 (2015).

Henry also filed this circuit court appeal on several *procedural* due process violations on 4/7/21. These violations include the trial court's denial of: Henry's assistance of counsel at the 2/4/21 motion hearing, her right to *public* hearings (at the arraignment, 2/4/21 motion hearing, 4/8/21 motion hearing, and upcoming 4/22/21 motion hearing, and 4/28/21 jury trial), her right to reasonable requests for disability accommodations (at the 2/4/21 motion hearing, 2/9/21 pretrial conference, 4/8/21 motion hearing, and upcoming 4/22/21 motion hearing, 4/23/21 settlement conference, and 4/28/21 jury trial), her right to in-person hearings (at the 2/9/21 pretrial conference, 4/8/21 motion hearing, and upcoming 4/22/21 motion hearing, 4/23/21 settlement conference, and 4/28/21 jury trial), her right to redact her personal identifying information per MCR 1.109, her right to mandatory discovery under MCR 6.610(E) and 6.201, and more. It is the appeal for these issues that Prosecutor's two additional references of "untimely" come into play.

Henry being denied the assistance of counsel at the 2/4/21 motion hearing now operates as a jurisdictional bar to the case continuing against her.[20] Henry being denied the assistance of counsel in this criminal case is a structural error requiring dismissal with prejudice.[21] Both the Sixth Amendment to the US Constitution[22] and art I, § 20 of Const. 1963 guarantee each person accused of a crime the right to have the assistance of counsel for her defense, including at *all* pretrial

---

[19] *People v Beckner*, 92 Mich App 166, 169 (1979), citing *People v Johnson*, 396 Mich 424, 439-444 (1976), *Blackledge v Perry,* 417 US 21 (1974), *People v Parney*, 74 Mich App 173 (1977).
[20] *People v Carpentier*, 446 Mich 19, 28 (1994).
[21] *People v Russell,* 471 Mich 182, n 29 (2004), citing *Gideon v Wainwright*, 372 US 335 (1963), and *People v Duncan,* 462 Mich 47, 51-52 (2000); *People v Buie*, 298 Mich App 50, 61-62 (2012); *People v Willing*, 267 Mich App 208, 224 (2005); *US v Gonzalez-Lopez*, 548 US 140, 150 (2006).
[22] *Faretta v California*, 422 US 806, 807 (1975).

hearings.[23] So, denying Henry the assistance of counsel at the 2/4/21 pretrial motion hearing essentially denied her the hearing at all, in the constitutional sense,[24] and since the assistance of counsel "requirement of the Sixth Amendment is not complied with, the court *no longer has jurisdiction* to proceed."[25]

No matter how you look at it, "the state never had the power to proceed against her in the first place,"[26] and lacking subject matter jurisdiction negates the very authority to bring Henry to trial.[27] The trial court's denial of the assistance of counsel just *further* divested it of subject matter jurisdiction. And with the lack of jurisdiction being "a complete defense to a criminal prosecution,"[28] and "the Constitution guarantee[ing] criminal defendants a meaningful opportunity to present a complete defense,"[29] Henry is being robbed of this fundamental constitutional guarantee.

Henry can raise subject matter jurisdiction at any time, so certainly she can do so before an unjust trial, otherwise, "the injury itself would have already been sustained." *People v Torres*, 452 Mich 43, 61, 71 (1996). The "embarrassment, expense, and ordeal of living in a continued state of anxiety created by the [] trial" can't be erased afterward on appeal, so Henry can only avoid the substantial harms to her personal life, legal work, and political efforts "by seeking an immediate appeal." *Id*. Further, Henry must not be forced "to endure the personal strain, public embarrassment, and expense of a criminal trial"[30] when the "practical result" of a successful challenge to subject matter jurisdiction "is to prevent a trial from taking place at all, rather than to prescribe procedural rules that govern the conduct of a trial."[31] This is especially important since

---

[23] *People v Willing*, 267 Mich App 208, 228 (2005), quoting *Bell v Cone*, 535 US 685, 69; *Brewer v Williams*, 430 US 387, 398 (1977), citing *Powell v Alabama*, 287 US 45, 57 (1933).
[24] *Faretta v California*, 422 US 806, n 43 (1975); quoting *Powell v Alabama*, 287 US 45, 69 (1932).
[25] *Johnson v Zerbst*, 304 US 458, 468 (1938).
[26] *People v Beckner*, 92 Mich App 166, 169 (1979), citing *People v Johnson*, 396 Mich 424, 439-444 (1976).
[27] *People v New,* 427 Mich 482, 490, 495 (1986); see also, *People v Hall*, 97 Mich App 143, 146 (1980); *People v Cook*, 323 Mich App 435, 443-444 (2018).
[28] *People v New,* 427 Mich 482, 490, 495 (1986); see also, *People v Hall*, 97 Mich App 143, 146 (1980); *People v Cook*, 323 Mich App 435, 443-444 (2018).
[29] *Holmes v South Carolina*, 547 US 319, 324 (2006), citing *Crane v Kentucky,* 476 US 683, 690 (1986); *People v Unger*, 749 NW 2d 272, 300 (Mich App 2008), citing *People v Kurr*, 253 Mich App 317, 326 (2002).
[30] *Torres* at 61, quoting *Abney v US,* 431 US 651, 661 (1977).
[31] *Johnson* at 442; *Blackledge v Perry*, 417 US 21, 30 (1974).

the "judgment of conviction pronounced by a court without jurisdiction is void."[32]

So, in other words, Henry was not limited to the typical 21-day time period for this subject matter jurisdiction appeal. Also, the sheer magnitude of the legal issues raised by the ongoing actions of the deputies, prosecuting attorneys, and trial court provide more than ample good cause for why this appeal was filed 33 days after the typical appeal deadline.

Moreover, by categorizing as untimely Henry's appeal on the procedural due process violations of her right to *public* hearings, her right to reasonable requests for disability accommodations, her right to in-person hearings, her right to electronic filing and service considering the current COVID restrictions, and her right to redact her personal identifying information, Prosecutor fails to acknowledge the clear legal requirements for the court to *continue* to observe these rights. The trial court *must* protect Henry's rights, such as these, going forward, and given the repeated manner in which the trial court is refusing to do so, Henry's current procedural due process appeal is the only chance Henry has at securing fair and just proceedings.

As discussed, Henry has the right to raise the issue of subject matter jurisdiction at any time, even *after* the trial, so by raising the issue *before* trial, Henry is within the required timeframe for this appeal. Further, the denial of the public hearings, the denial of counsel, and the denial of in person hearings are structural errors that *require* reversal, even if not appealed until *after* the trial. Also, because Henry requested the court's order denying PII redaction to be issued in a *written* order, but the court has refused thus far to put the denial in a written order, the 21 day appeal period has not yet begun on this issue. However, with the sensitive nature of the information involved, Henry is not precluded from seeking appellate relief on this issue while waiting for the trial court to issue a written order that may never come. Certainly, the court has a continuing obligation to hold hearings publicly and to provide Henry with reasonable disability accommodations. Therefore, each of these *procedural* due process issues raised on appeal herein are raised timely.

---

[32] *Johnson v Zerbst*, 304 US 458, 468 (1938).

D. Prosecutor Has Waived All Defenses to Henry's *Procedural* Due Process Appeal

The irony here is that Prosecutor is asking the court to dismiss Henry's appeal for alleged court rule violations, when those very court rules make it clear that Prosecutor has waived the opportunity to respond to any of the arguments presented by Henry in *either* appeal. Prosecutor's special motion to dismiss Henry's procedural due process appeal is the *only* responsive pleading Prosecutor has filed for this appeal. Prosecutor has filed *no* brief in response to Henry's application for leave, nor a response to Henry's motion for immediate consideration. Prosecutor's special motion to dismiss does *not* qualify as a responsive pleading to either of those filings by Henry, as it does not even attempt to do so, let alone in conformity with MCR 2.111(C) and (D). Indeed, a "defense not asserted in the responsive pleading or by motion as provided by these rules is waived." MCR 2.111(F)(2). In fact, "[a]llegations in a pleading that requires a responsive pleading, other than allegations of the amount of damage or the nature of the relief demanded, are admitted if not denied in the responsive pleading." MCR 2.111(E). Considering the entire purpose of Henry's motion for immediate consideration, as well as the underlying application for leave to appeal, is to dismiss the case against Henry, both are certainly pleadings requiring a responsive pleading.

Also, MCR 7.110 allows for special motions pursuant to MCR 7.211(C). Henry's motion for immediate consideration was filed under MCR 7.211(C)(6), as well as MCR 7.105(F). Accordingly, MCR 7.211(B)(2), requires that when "a motion for immediate consideration has been filed, all answers to all affected motions must be filed within 7 days if the motion for immediate consideration was served by mail." Therefore, even if Henry had served Prosecutor by mail, Prosecutor's answer to the motion for immediate consideration *and* the affected application for leave to appeal were due within 7 days, which would have been 4/14/21. However, Henry served the motion for immediate consideration and application for leave to appeal by personal service *and* email, so the time to file the answer could have been shortened by the court. Thus, by Prosecutor filing *only* one responsive pleading - the motion to dismiss the appeal, which fails to conform with

any of the requirements of MCR 2.111(C) and (D) and MCR 2.119, Prosecutor has waived *all* defenses to Henry's appeal, pursuant to MCR 2.111(E) and (F) and MCR 7.211(B)(2).

E. Prosecutor's Claim of a "Piecemeal Approach" Ignores Henry's Right to Challenge Illegality of Charge *AND* Continued Violations in Subsequent Proceedings

Prosecutor mischaracterizes Henry's *substantive* and *procedural* due process appeals as a "piecemeal approach" that exacerbates her other alleged offense. This claim by Prosecutor ignores that Henry has the right to challenge the illegality and unconstitutionality of the offense charged, as well as the various illegal and unconstitutional actions by Prosecutor and the court as the case proceeds. Certainly, the "province of the court in our constitutional system is to determine the law, regardless of its procedural posture in any given case."[33] Indeed, "constitutional safeguards relating to the integrity of the criminal process attend every stage of a criminal proceeding, starting with arrest and culminating with a trial." *Cox v Louisiana*, 379 US 559, 574 (1965). And when government officials violate the Constitution, it "does not permit judges to look the other way; [rather, they] must call foul when the constitutional lines are crossed."[34]

The prosecutor's and trial court's actions continue to violate Henry's constitutional and statutory rights, leaving Henry fighting an uphill battle just to receive fair and open access to the court. Thus, their egregious lack of adherence to constitutionally required procedures has led to a multifaceted appeal, the likes of which Henry never thought she'd ever have to assemble. Further, the prosecution "may not by its own ipse dixit destroy,"[35] the long-held principle that due process requires a way for the accused to challenge unconstitutional or illegal government action occuring at *any* stage in the case. Indeed, the US and Michigan Supreme Courts have consistently held that procedural due process requires the alleged to be given notice of the proceedings against her, an opportunity to defend herself, as well as the assurance that the matter will be **conducted in a fair manner**.[36] The procedural due process violations raised in this appeal demonstrate how Henry has

---

[33] *Charles Reinhart Co v Winiemko*, 444 Mich 579, 593 (1994).
[34] *In re Certified Questions,* __ Mich __, __ (2020) (Docket No. 161492), slip op at 41 (citations omitted).
[35] *US Postal Service v Council of Greenburgh Civic Ass'ns,* 453 US 114, 133 (1981).
[36] *Hannah v Larche*, 363 US 420 (1960), reh den 364 US 855 (1960); *Upper Peninsula Power Co*, slip op at 8 (citations omitted).

been denied those very guarantees of proper notice, an opportunity to defend herself, and the assurance of the matter being conducted in a fair manner.

In Prosecutor's response to Henry's initial motion to dismiss the charge, Prosecutor claimed that Henry's only option to raise a motion to dismiss is a motion for directed verdict *after* the close of the people's proofs. However, as Henry pointed out in her Reply Brief, the accused is not precluded from the ability to file one kind of motion by the virtue of being able to file another kind of motion. Similarly, Prosecutor *now* argues that Henry is precluded from appealing the later and continuing *procedural* due process violations because she is also appealing the original *substantive* due process violations. No where in the US Constitution, Michigan Constitution, or Michigan Court Rules does it allow for that to happen.

F. Dismissing Henry's Appeal *Not* Appropriate Remedy for Alleged Noncompliance

Prosecutor's motion alleges two court rule violations by Henry in her procedural due process appeal, and asks for a dismissal of the appeal for such alleged violations. However, a dismissal is *not* the appropriate remedy for the alleged noncompliance. Despite Prosecutor's motion to dismiss being required to state with particularity the grounds *and* authority on which it is based (per MCR 2.119(A)(1)(b)), and to distinctly state the facts and grounds on which it is based (per MCR 7.211(A)(1)), it fails to do so. As a result, Henry is left to fill in the gaps just to be able to respond to these allegations, as *no* specifics are alleged by Prosecutor, simply the generalizations of Henry's brief (application) on interlocutory appeal being "untimely" and over the page limit. In filling in these gaps and in looking at the court rules, we see Prosecutor conflated an MCR 7.211(C)(2) motion to dismiss with an MCR 7.111(D) remedy for a nonconforming brief.

First, we must certainly note that Henry's application for leave to appeal *procedural* due process violations is *not* late, as described in detail in the application itself, the motion for immediate consideration, and in this response above. Also, as detailed in a later section of this brief, Henry's application is clearly *not* in excess of the applicable page limits.

However, *if* Henry's brief had been over the page limit, a motion under MCR 7.111(D)

would be the appropriate course of action. That rule allows a court, *after concluding* that a brief does not *substantially comply* with the requirements in MCR 7.111, to order the party filing the brief to correct the deficiencies within a specified time or it may strike the nonconforming brief. If dismissal of the appeal were meant to be the remedy whenever a brief is nonconforming, then MCR 7.111(D) would so state, but it does not. MCR 7.212(I) has the same wording. Indeed, we interpret court rules the same as statutes,[37] and so, begin with the rule's plain language. If it's unambiguous, we simply follow its plain meaning. *Duncan* at 723.

Likewise, *if* Henry's brief had been late, it is *not* automatically dismissed. MCR 7.105(G) expressly allows for a late appeal to be filed with a statement explaining the delay. Again, Henry's application for leave to appeal was *not* late, but it also included a statement explaining the facts to show why a late filing should be permitted regardless. Late applications (with accompanying explanations) are permitted to be filed up to 6 months after the entry of the underlying decision appealed, MCR 7.105(G)(2)(a). Even if we use Prosecutor's baseless allegation that everything in Henry's *procedural* due process appeal happened at or prior to the February 4th hearing, with the order for that hearing being issued on February 5th, that means Henry's appeal would have been due February 26th, making her appeal only 33 days late. Such a fictitious scenario is still well within the timeframe required by MCR 7.105(G)(2)(a).

Moreover, before the court can issue a dismissal under MCR 7.113(A) pursuant to a motion filed under 7.211(C)(2)(b), the court has to notify the parties that the appeal will be dismissed unless the deficiency is remedied within 14 days after service of the notice. While Henry does not claim to be perfect, or to file perfect pleadings, she has certainly demonstrated an unwavering commitment to researching and following the procedural requirements to the best of her ability. In contrast, Prosecutor's pleadings and actions have consistently demonstrated substantial nonconformity with all types of procedural requirements, as discussed herein and in Henry's prior pleadings (for example, filing motions *without* the required brief; responding to an MCR 2.116(C)(10) motion

[37] *People v Buie*, 491 Mich 294, 304 (2012), citing *Ligons v Crittenton Hosp.,* 490 Mich 61, 70 (2011).

without submitting *any* affidavits or other evidence; entirely failing to respond to mandatory discovery requests per MCR 6.110(E) and 6.201(A), (B) and (J); failing to respond *at all* to Henry's Motion to Compel Discovery or Henry's Motion to Stay Proceedings Pending Appeal; failing to file the required responsive pleading to Henry's motion for immediate consideration, or underlying application on *procedural* due process violations; failing to file (in circuit court or the court of appeals) the required responsive pleading to Henry's motion for immediate consideration, or underlying application on *substantive* due process violations; failing on *every single document* filed with the district court, circuit court, and court of appeals to include Henry's state bar number, as required by MCR 1.109(D)(1)(b)(v), etc.).

II. Prosecutor's Lack of Truthfulness / Candor Undermines Integrity of Adjudicative Process

Throughout the life of this case, Prosecutor (through pleadings and oral argument) has consistently made allegations about Henry and her pleadings, each time having no facts or law to back up such claims. But the *ipse dixit* "it is because I say it is, and no proof is needed" model doesn't work in the law. In fact, MCR 1.109(E)(5) states that Prosecutor's signature on pleadings "constitutes a certification [that] after reasonable inquiry, the document is well grounded in fact and is warranted by existing law or a good-faith argument for" its reversal. Moreover, MRPC 3.3 states a "lawyer shall not knowingly make a false statement of material fact or law to a tribunal." Also, Prosecutor's lack of truthfulness and candor continues to undermine the integrity of the adjudicative process, and directly violates MRPC 8.4 and MCR 9.104. This is because as "officers of the court, lawyers have special duties to avoid conduct that undermines the integrity of the adjudicative process." MRPC 3.3, Official Comment.

Prosecutor consistently fails to follow court procedures, and shows utter indifference to Henry's constitutionally protected rights. Yet, a lawyer is "an officer of the legal system . . . having special responsibility for the quality of justice,"[38] who must "be mindful of deficiencies in the administration of justice,"[39] and fulfill their "duty to uphold legal process."[40] So, whether due to

[38] MRPC 1.0, Preamble.
[39] *Id.*
[40] *Id.* See also, MRPC 1.6, Official Comment.

lack of diligence[41] or something else, an attorney, especially a prosecutor, must be responsible for the impact of their actions.[42]

A. Prosecutor Routinely States Inaccurate Date of Service Upon Henry

MCR 2.104(A)(3) and 2.107(D) require proofs of service to be verified under MCR 1.109(D)(3), meaning the signer is stating under oath or affirmation, or declaring under penalties of perjury, that the documents were mailed or otherwise served on the date stated on the proof of service. In relation to Henry's initial motion to dismiss the case, Prosecutor filed a proof of service indicating she served Henry with her Response by mailing the same on 1/25/21, however, the Prosecutor's internal stamping machine placed the postage on the envelope on 1/26/21, and the USPS datestamp states the Response was not actually mailed until 1/27/21. Henry was able to receive the Response at the end of the business day on 1/29/21, but Prosecutor failing to mail the documents on the date verified to the court that they are sent robs Henry of proper due process.

Similarly, Prosecutor filed a proof of service for this motion to dismiss, claiming to have mailed it to Henry on 4/9/21, but it was not received by the post office until 4/12/21 (the date of the postmark). App 139. This, along with Prosecutor's refusal to serve Henry electronically, as *required* by MCR 2.107(C) as modified by Michigan Supreme Court Administrative Order (AO) 2020-9, denies Henry adequate opportunity to prepare and respond, and consequently, due process. After all, the Supreme Court's rules on service "are intended to satisfy the due process requirement that a defendant be informed of an action by the *best means available under the circumstances*."

---

[41] MRPC 1.3 requires us to "act with reasonable diligence," while MRPC 1.1 prohibits a lawyer from handling "a legal matter without [adequate] preparation." "**Thoroughness and Preparation.** Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements . . . , and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation." MRPC 1.1, Official Comment. And a "lawyer should strive to attain the highest level of skill" (MRPC 1.0, Preamble) because "ignorance of the law is no excuse." *People v Turmon*, 417 Mich 638, 657 (1983).

[42] MRPC 6.5, Official Comment reminds us a "lawyer is an officer of the court who has sworn to uphold the federal and state constitutions [and] to proceed only by means that are truthful and honorable." MRPC 3.8 emphasizes the "Special Responsibilities of a Prosecutor": "The prosecutor in a criminal case shall (a) refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause." The Official Comment explains this is because a "prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice . . . . Applicable law may require other measures by the prosecutor. . . . This rule imposes on a prosecutor an obligation to make reasonable efforts and to take reasonable care . . . . to assure that the defendant's rights are protected."

MCR 2.105(J). Indeed, Henry has always served Prosecutor by email, as to not only follow the *requirements* of the Michigan Supreme Court, but also provide Prosecutor the greatest opportunity to prepare and respond.

B. Prosecutor Intentionally Misleads the Court Regarding Substance of This Appeal

In the third paragraph of Prosecutor's motion to dismiss Henry's appeal, Prosecutor states that Henry's *procedural* due process appeal is "related to the February 4 hearing as well as to events that occurred prior to February 4." However, this intentional misleading of the court couldn't be any further from the truth. As stated clearly in the application for leave and motion for immediate consideration thereof, the *procedural* due process appeal filed on 4/7/21 includes violations for the trial court's denial of: Henry's assistance of counsel at the 2/4/21 motion hearing, her right to *public* hearings (at the arraignment, 2/4/21 motion hearing, 4/8/21 motion hearing, and upcoming 4/22/21 motion hearing, and jury trial), her right to reasonable requests for disability accommodations (at the 2/4/21 motion hearing, 2/9/21 pretrial conference, 4/8/21 motion hearing, and upcoming 4/22/21 motion hearing, 4/23/21 settlement conference, and 4/28/21 jury trial), her right to in-person hearings (at the 2/9/21 pretrial conference, 4/8/21 motion hearing, and upcoming 4/22/21 motion hearing, 4/23/21 settlement conference, and 4/28/21 jury trial), her right to redact her personal identifying information per MCR 1.109, her right to mandatory discovery under MCR 6.610(E) and 6.201, and more. With the procedural due process violations of the same kind continuing even into all future proceedings in the underlying case, it is unfathomable how Prosecutor could even attempt to argue that Henry's *procedural* due process appeal is based only on events from 2/4/21 and prior.

It is clear Prosecutor is grasping at straws. Claiming Henry's procedural due process appeal is based only on events from 2/4/21 and earlier is a poor attempt to support Prosecutor's argument that Henry's appeal is untimely. But failing to have a leg to stand on with the truth is *no* excuse for blatantly lying to the court.

C. Prosecutor Blatantly Lies About Henry's Appeal Exceeding Rule on Page Limits

And the blatant lies continue. Henry's brief (application for leave to appeal) is obviously

not in excess of the page limits of MCR 7.212(B), which allows 50 pages *exclusive of* tables, indexes and appendixes. Although in typical motion practice, under MCR 2.119(A)(2)(a), a motion and supporting brief share the same page limit, that is not applicable here. MCR 2.119 shared page limits apply to a motion and the brief required to be filed in support of that motion. But MCR 7.212(B) page limits apply to the brief only (or application for leave to appeal). Henry's motion for immediate consideration of the application for leave to appeal is *not* required to have a supportive brief filed, per MCR 7.211(A)(3), so the application on leave to appeal should not be confused with a supportive brief, with which it shares page limits. Further, when you skip over the excluded tables and indexes, Henry's brief begins on page 9 and ends halfway into page 57, which equals 48.5 pages. That obviously does not exceed the 50 page limit.

D. Prosecutor Grossly Mischaracterizes Henry's Due Process Appeals as Late

In Prosecutor's ridiculously deficient 9-sentence motion to dismiss Henry's appeal, Prosecutor refers to Henry's appeals as "untimely" three separate times. As discussed in detail above, the first time Prosecutor makes this claim, Prosecutor calls Henry's *substantive* due process appeal untimely; however, such claims violate MCR 2.111, MCR 2.116(J)(2), *and* basic constitutional requirements of subject matter jurisdiction. In other words, while the typical appeal period is the 21 days noted in MCR 7.105(A), "[d]efects in subject-matter jurisdiction cannot be waived and may be raised *at any time*."[43]

The other times Prosecutor refers to Henry's appeal as untimely, it is referring to Henry's *procedural* due process appeal. However, Henry being denied the assistance of counsel at the 2/4/21 motion hearing now operates as a jurisdictional bar to the case continuing against her,[44] and is a structural error requiring dismissal with prejudice.[45] This is because when the assistance of counsel "requirement of the Sixth Amendment is not complied with, the court *no longer has*

---

[43] *People v Erwin,* 212 Mich App 55, 64 (1995) (emphasis added); *People v Richards*, 205 Mich App 438, 444 (1994); see also MCR 2.116 2007 Staff Comment.
[44] *People v Carpentier*, 446 Mich 19, 28 (1994).
[45] *People v Russell,* 471 Mich 182, n 29 (2004), citing *Gideon v Wainwright*, 372 US 335 (1963), and *People v Duncan,* 462 Mich 47, 51-52 (2000); *People v Buie*, 298 Mich App 50, 61-62 (2012); *People v Willing*, 267 Mich App 208, 224 (2005); *US v Gonzalez-Lopez*, 548 US 140, 150 (2006).

jurisdiction to proceed,"[46] and "the court is required to recognize that it lacks subject matter jurisdiction, 'regardless of whether the parties raised the issue."[47]

Additionally, Prosecutor argues that Henry's *procedural* due process appeal is based only on events from 2/4/21 and prior. This couldn't be further from the truth, as described in detail above. All in all, the denials of Henry's right to *public* hearings, reasonable requests for disability accommodations, in-person hearings, and electronic filing and service per AO 2020-1 and 2020-9 have continued to happen, and are scheduled to take place at all proceedings through the jury trial. The court has a *continuing duty* to provide these things to Henry, so the appeal on these issues is not limited to what happened on 2/4/21, nor does the appeal time limit begin on that date. Also, the court has refused thus far to put its decision denying PII redaction in a *written* order, so the 21 day appeal period has not yet begun on that issue. Moreover, the court rules and state and federal constitutions require Prosecutor to answer Henry's discovery requests, which Prosecutor has failed to do to-date. But related to Prosecutor's argument that Henry's appeal of the discovery issues is untimely as being from 2/4/21 or earlier, we must note that Henry's request for discovery wasn't sent to Prosecutor until 2/15/21, with follow up emails sent to Prosecutor on 3/2/21 and 3/29/21, and a Motion to Compel Discovery being filed on 3/31/21. Furthermore, the trial court has yet to issue a written order regarding Henry's Motion to Compel Discovery.

III. Prosecutor Tramples Upon Henry's Rights, Not Protecting Them as Required

A prosecutor is "an officer of the legal system . . . having special responsibility for the quality of justice,"[48] who must "be mindful of deficiencies in the administration of justice,"[49] and fulfill the "duty to uphold legal process."[50] MRPC 3.8 also emphasizes the "Special Responsibilities of a Prosecutor," with the rule's Official Comment explaining that a "prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility

---

[46] *Johnson v Zerbst*, 304 US 458, 468 (1938).
[47] MJI, *Criminal Proceedings Benchbook*, Vol 1, Rev Ed, § 2.2; quoting *People v Clement,* 254 Mich App 387, 394 (2002); *People v Johnson*, 396 Mich 424, 442 (1976); *Erwin* at 64.
[48] MRPC 1.0, Preamble.
[49] *Id.*
[50] *Id.* See also, MRPC 1.6, Official Comment.

carries with it specific obligations to see that the defendant is accorded procedural justice . . . . Applicable law may require other measures by the prosecutor. . . . This rule imposes on a prosecutor an obligation to make reasonable efforts and to take reasonable care . . . . to assure that the defendant's rights are protected." So, whether due to lack of diligence[51] or something else, an attorney, especially a prosecutor, must be responsible for the impact of their actions.[52] Indeed, "a reasonably competent public official should know the law governing his conduct."[53] However, despite these responsibilities of prosecutors, Prosecutor seems to bend over backwards to avoid providing Henry procedural justice or fairness in administration. Instead, Prosecutor continually engages in conduct that is prejudicial to the administration of justice.

A. Prosecutor Fails to Timely Serve Henry by Email as Required by Supreme Court

AO 2020-9, extended indefinitely under AO 2020-12 and AO 2020-19, states that "all service of process under [MCR 2.107(C)] must be performed using electronic means (e-Filing where available, email, or fax, where available) to the greatest extent possible. Email transmission does not require agreement by the other party(s) during the effective period of this order, but should otherwise comply as much as possible with the provisions of MCR 2.107(C)(4)." Further, Henry has repeatedly asked Prosecutor to serve all documents on Henry by email. However, despite Henry's requests and the AOs on point, Prosecutor continually serves Henry by mail (even later than the proof of service indicates), purposely shorting Henry of necessary time to prepare and adequately respond to pleadings.

B. Prosecutor Refuses to Answer Any of Henry's Discovery Requests or Emails

Surely, while all attorneys have a "duty to uphold legal process,"[54] a prosecutor has a special responsibility to ensure the accused is accorded procedural justice and that her rights are protected. MRPC 3.8, Official Comment. But here, the prosecutor has failed to uphold legal process, provide Henry procedural justice, or protect Henry's rights. Prosecutor has ignored the obligations of court

[51] See n 41 herein.
[52] See n 42 herein.
[53] *Spurlock v Satterfield,* 167 F3d 995, 1006 (1999), citing *Harlow v Fitzgerald,* 457 US 800, 818-819 (1982).
[54] *Id.* See also, MRPC 1.6, Official Comment.

rules, state law and due process to fully inform Henry of the substance and nature of the charges against her. These issues are discussed in detail in the Brief in Support of Henry's Motion to Compel Discovery, which was included as pages 122-135 of Henry's Appendix to the *procedural* due process appeal.

On February 15th, Henry served on Prosecutor a Request for Discovery pursuant to MCR 6.201, MCR 6.610(E), MCL 763.8(5), and other authority, providing notice pursuant to MCR 6.201(F) and (J) that if the prosecution fails to comply with the requests made within 21 days, Henry will request the Court to order the testimony or evidence excluded. The 21 days were up on March 8th, yet Prosecutor has *failed to respond to the request to-date*. Prosecutor also failed to even respond to the email sent about the discovery on March 2nd and again on March 29th (this last one being the last attempt to have Prosecutor provide the required discovery without having to file the motion to compel). With Henry serving Prosecutor with the Motion to Compel (and supporting documents) on March 31st, under MCR 2.119(C)(2), Prosecutor's response to the motion was due by April 3rd if served by US Mail or April 8th if served by email. However, *Prosecutor has not yet provided the requested discovery, nor even responded in any way* to Henry's communications about it or her Motion to Compel.

All pleadings from the prosecution thus far have failed to include factual allegations that would support the trespass charge. Moreover, Prosecutor's willful disregard of the court rules requiring disclosure of the state's evidence has made it near impossible for Henry to prepare a defense for herself. Further, the changes to MCR 6.610(E) (making discovery in misdemeanors mandatory) have been in effect for more than six months now, while the constitutional guarantees of procedural due process have been in effect since before Michigan even became a state.

Also, our court rules "are to be construed, administered, and employed by the parties and the court to secure the just, speedy, and economical determination of every action," according to MCR 1.105. Certainly, then, an accused should be given timely disclosure of evidence the state may have against them. Specifically in the criminal context, the court rules must be enforced to ensure "a just

determination of every criminal proceeding." MCR 6.002. Further, the rules "are to be construed to secure simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay." *Id.* Surely, it is *not* simple for an accused to have to send multiple requests and file a motion with the court just to receive discovery from the state, nor is it fair to require an accused to jump through a bunch of hoops just to secure the discovery materials required to be given to them by court rule. It certainly creates unnecessary efforts, expenses, and delays to have a prosecutor fail to respond to discovery requests in any way.

Given how Prosecutor fails to follow basic procedural requirements, relevant state laws and court rules, or Henry's constitutional guarantees, the prosecution should "lose its right to raise factual issues . . . [because] it has failed to raise such . . . in a timely fashion during the litigation."[55] Failure to comply with a discovery request may seem like no big deal for a misdemeanor. But it "is the duty of courts to be watchful for the constitutional rights of the citizen, and against any *stealthy* encroachments thereon."[56] Further, "the Constitution guarantees criminal defendants a meaningful opportunity to present a complete defense,"[57] and failing to provide Henry with the discovery robs her of this fundamental constitutional guarantee.

C. Prosecutor Violated Henry's Disability Rights

Court staff informed Henry that with COVID, the prosecutor's office does all pretrials by phone. Henry said it would be hard for her to do by phone due to her hearing disability. Court staff suggested they do the Pretrial via Zoom, where the prosecutor and Henry both go into a breakout room by themselves. When Henry expressed concern about doing the Pretrial by Zoom due to her hearing disability, court staff informed her that with just the two participants in the breakout room, they wouldn't have to have the screen on gallery view, so both of their pictures would appear much larger. See, Zoom 101 Benchcard, App 90. Henry said she could try that, especially if it was quiet on the prosecutor's end, and she would be able to see the prosecutor's face much larger, which

[55] *People v Trapp,* __ Mich App __, __ (2020) (Docket No. 345239), slip op at 2, n 1, quoting *Steagald v US*, 451 US 204, 209 (1981).
[56] *Mapp v Ohio*, 367 US 643, 647 (1961), quoting *Boyd v US*, 116 US 616, 630 (1886).
[57] *Holmes v South Carolina*, 547 US 319, 324 (2006), citing *Crane v Kentucky,* 476 US 683, 690 (1986); *People v Unger*, 749 NW 2d 272, 300 (Mich App 2008), citing *People v Kurr*, 253 Mich App 317, 326 (2002).

would help with lip-reading.[58]

However, despite the Notice to Appear requiring the Pretrial Conference between Prosecutor and Henry to take place in a Zoom breakout room with just the two of them, Prosecutor went along with the court's denial of that previously scheduled reasonable disability accommodation. Further, when the judge kicked Henry out of the Zoom hearing, instead requiring her to confer with Prosecutor by telephone (despite her need for lip-reading), Prosecutor kept his computer volume turned up loud. He claimed he had to continue listening to the other hearings happening over Zoom, even while on the phone with Henry, and did nothing to reduce the conflicting background noise even after asking Henry if she could hear him - and her expressing difficulty due to the background noise and inability to read lips. Additionally, despite Henry's need for lip-reading, Prosecutor remained masked during the entire 2/4/21 motion hearing, leaving Henry largely unable to hear his statements in the proceeding.

D. Prosecutor Makes Henry's Protected Personal Identifying Information Public

We interpret court rules the same as statutes,[59] and so, begin with the rule's plain language. If it's unambiguous, we simply follow its plain meaning. *Duncan* at 723. The plain language of MCR 1.109, as updated on 1/1/21, requires personal identifying information (PII) to be redacted on court filings. Prosecutor has a duty to comply with that plain language of the updated rule, yet has not redacted the original ticket, nor any subsequent filings. Consequently, the longer Henry's personal identifying information is available to the public, the more her privacy is destroyed, and the greater the risk she has for her identity to be stolen.

E. Seeking Criminal Record & Possible Jail Time for Henry's Alleged *Parking* Violation Tramples her Eight Amendment Protections Against Cruel & Unusual Punishment

State law allows localities to regulate the "standing or parking of vehicles," under certain explicit, limited conditions. MCL 257.606; 257.605; 257.942.[60] MCL 257.605 also raises the

[58] Notice to Appear 2/09 "ZOOM HEARING (DEF READS LIPS) **NO PHONE CALL**" (all pink and yellow highlighting done by court staff, not Henry), App 7.
[59] *People v Buie*, 491 Mich 294, 304 (2012), citing *Ligons v Crittenton Hosp.,* 490 Mich 61, 70 (2011).
[60] MJI explains "[l]ocal ordinances addressing traffic laws must be consistent" with the MVC and those that "conflict with the MVC are void to the extent of the conflict." *Dist Court Mag Manual - Rev Ed* (2021), 1-21, citing *Builders Ass'n v Detroit*, 295 Mich 272, 277 (1940).

crucial *punishment* issue. In prohibiting that which "block[s], obstructs, impedes, or otherwise interferes with" access to town hall, the resolution syncs with the MVC saying one may not "block, obstruct, impede, or otherwise interfere with the normal flow of vehicular or pedestrian traffic" - but MCL 257.676b makes this a *civil infraction*. Indeed, ***all*** MVC *Stopping, Standing and Parking* violations are classified as *civil infractions*. MCL 257.672 - 257.675d. Also, MCL 257.943 states violations of local regulations made per the Control of Traffic in *Parking* Areas act are *civil infractions*. Therefore, this township resolution, as paired with the trespass statute, "imposes a *criminal* penalty for an act . . . that is a *civil infraction*" under the MVC, making it conflict with the MVC and, thus, "void." MCL 257.605; 257.951(3).

With the UTC, CTPA, and MVC limiting parking violations to *civil infractions*, the disproportionate punishment sought for this "parking violation" is highly alarming. The *only* legal punishments for *single* parking violations are fines, with 6 or more unanswered parking violations allowing vehicle impoundment or immobilization. See, e.g., MCL 257.606. Similarly, the common sense approach tells us that in an alleged *prohibited parking* situation, *if* there was any authority for punishment, it would be over Henry's car, not her body. So, stretching *criminal* trespass, with up to a $250 fine and *jail time,* to prosecute her for an alleged *parking* violation, Prosecutor is pursuing the infliction of cruel and unusual punishment. Thus, beyond the lack of subject matter jurisdiction, US Const, Am. VIII and Const 1963, art I, § 16 prohibitions against cruel and unusual punishments stand as due process bars to this prosecution.

Further, *if* this was an enforceable *parking* regulation, as Prosecutor contends, it would be merely a *parking* violation, for which you cannot get jail time or a criminal record. Sure, you can get heftier charges if you park your car in front of a fire hydrant or in the middle of an interstate, but then you would be breaking *other* laws. State law is clear, though - a *parking* violation is a *civil infraction* only. Thus, charging Henry with a *crime*, with possible jail time and a criminal record, for an alleged *parking* violation is an outrageous violation of her Eighth Amendment protections against cruel and unusual punishment.

CONCLUSION

Judicial integrity is essential, as "[n]othing can destroy a government more quickly than its failure to observe its own laws, or worse, its disregard of the charter of its own existence,"[61] especially where "no distinction can be taken between the Government as prosecutor and the Government as judge." *Id* (citation omitted). Procedural due process protections exist so that the government may not abuse the accused - at any stage of the case. These protections are provided through requirements of court rules, rules of professional conduct, statutes, and the US and Michigan Constitutions. Judicial integrity *and* individual liberties crumble when these requirements are not observed by the government. This case is a perfect example of that happening.

MCR 1.109(D)(3) states that in "addition to the sanctions provided by subrule (E), a person who knowingly makes a false declaration under this subrule may be found in contempt of court." Here, Prosecutor knowingly made multiple false statements and declarations to the court. MCR 1.109(E)(5)(b) states signing pleadings certifies that "to the best of his or her knowledge, information, and belief formed after reasonable inquiry, the document is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law." However, the arguments asserted by Prosecutor throughout this case (in district court and now in circuit court) have *no* basis in fact or law, and Prosecutor has never even attempted to substantiate any of these factual or legal claims with proper documentation, such as *required* briefs and affidavits. Prosecutor doesn't even bother responding to *any* of Henry's motions or applications for leave (in district court, circuit court or the court of appeals). Additionally, the pleadings show Prosecutor is either not conducting a reasonable inquiry into the law involved or is purposely putting forth groundless arguments, or both.

Further, MCR 1.109(E)(5)(c) explains that Prosecutor's signature on documents filed with the court certifies "the document is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation." Prosecutor constantly puts

---

[61] *Mapp* at 647, quoting *Elkins v US*, 364 US 206, 222 (1960).

forward the absolute least amount of effort possible to comply with court procedures while also doing everything possible to ensure Henry does *not* receive fair treatment by the justice system. Certainly this motion to dismiss Henry's appeal is no exception. The 9-sentence motion filed in violation of countless court rules and constitutional protections, serves an entirely improper purpose, including harassment of Henry, and delay and increase of costs in this litigation. Any way you look at Prosecutor's pleadings and actions, MCR 1.109(E)(6) provides for mandatory sanctions for violating these requirements: "If a document is signed in violation of this rule, the court, on the motion of a party or on **its own initiative**, **shall impose** upon the person who signed it, a represented party, or both, an appropriate sanction."

Moreover, Prosecutor's motion to dismiss Henry's appeal ignores several firmly established legal principles. Prosecutor routinely fails to file the required brief with motions or responses to motions based on arguments of law. Prosecutor failed to obtain a court date and serve a notice of hearing on Henry for the instant motion to dismiss the appeal. Prosecutor refers to Henry's appeal for lack of subject matter jurisdiction as being "untimely," yet such an appeal can literally be made at *any* time between the beginning of the case and extending through 6 months *after* the trial and final judgment. Prosecutor also argues Henry's *procedural* due process appeal is untimely, thereby ignoring the court's (and often times, Prosecutor's) continuing duty to observe and protect Henry's right to *public* hearings, assistance of counsel, reasonable disability accommodations, in-person hearings, sharing the videos of court proceedings, redaction of her personal identifying information, e-filing and e-service, and mandatory discovery. Prosecutor further blatantly lies to the court about the substance of Henry's appeal, and ignores Henry's right to challenge *both* the illegality of the charge *and* the continuing due process violations by Prosecutor and the court. Prosecutor seeks a remedy that is *not* appropriate for the *alleged* rule violations by Henry, just as Prosecutor seeks a grossly inappropriate remedy (a criminal record, fines, and possible jail time) for an alleged parking violation.

Prosecutor's continual lack of truthfulness and candor with the court severely undermine the

integrity of the adjudicative process, while Prosecutor's actions demonstrate the trampling, instead of the protection, of Henry's constitutionally and statutorily protected rights. It is for situations precisely like this that the rules provide for **the court, on its own initiative**, to assess damages and take other disciplinary action because Prosecutor's pleadings are "grossly lacking in the requirements of propriety, violate[] court rules, [and] grossly disregard[] the requirements of a fair presentation of the issues to the court." MCR 7.216(C)(1)(b); MCR 7.112.

Further, unless this Court grants the requests of Henry's interlocutory appeal before the trial date, Henry will be irreparably harmed by going to trial on unsupported charges. Failure to grant the requested immediate appellate relief will cause significant harm to our state's judicial integrity and the public's confidence in our judicial system, but also *substantial* and *irreparable harm to Henry*, from significant detrimental impacts on her personal life, legal work, and political efforts. Moreover, failure of this court to correct the due process violations addressed in this appeal will subject Henry to *additional imminent* deprivations of procedural rights, despite the fact that "constitutional safeguards relating to the integrity of the criminal process attend every stage of a criminal proceeding, starting with arrest and culminating with a trial." *Cox* at 574 (1965).

Indeed, when government officials violate the Constitution, it "does not permit judges to look the other way; [rather, they] must call foul when the constitutional lines are crossed."[62] Here, those lines have obviously been crossed. Thus, since the court has the authority, and *the duty*, to enter injunctive relief against a constitutional violation,"[63] Henry asks this court to enter an order:

A. Requiring Prosecutor to fully respond to Henry's February 15th Discovery Request by April 23rd; and excluding all evidence (including witness testimony, exhibits, etc.) from trial that Prosecutor fails to produce in full to Henry by April 23rd.
B. Dismissing all charges and infractions from Ticket 166684 *with prejudice*.
C. That "the arrest record shall be removed from the internet criminal history access tool (ICHAT)," pursuant to MCL 764.26a(1)(a).

---

[62] *In re Certified Questions,* __ Mich __, __ (2020) (Docket No. 161492), slip op at 41 (citations omitted).
[63] *MI Coalition of State Empl Unions v Civil Serv Com'n*, 465 Mich 212, 219 (2001).

D. That 60 days from the order of dismissal the "arrest record, all biometric data, and fingerprints shall be expunged or destroyed, or both, as appropriate," and "any entry concerning the charge shall be removed from LEIN," pursuant to MCL 764.26a(1)(b).

E. That for all hearings and proceedings on this misdemeanor charge: court participants *shall not* wear masks or other face coverings (as a reasonable accommodation for Henry's need for lip-reading); Henry *shall not* be denied the assistance of counsel of her choice; the public will have full access to be physically present in the courtroom; Henry, the jury, the witnesses and *all* other participants shall be present in the court, and not participate by Zoom; Henry is allowed to share video footage of the proceedings with the public; media access and physical presence *shall not* be denied or abridged in any way.

F. Clarifying Henry may publicly share the video recordings of the prior hearings in this case.

G. Requiring Henry's personal identifying information to be redacted immediately from all court pleadings in this matter (and related appeals, etc.).

H. Making the clarifications requested on page 45-46 of Henry's *procedural* due process application for leave to appeal.

I. That e-filing and e-service must be used to the greatest extent possible during COVID 19.

So, Henry asks this court to look past the fiction of *Prohibited Parking* and untimely appeals, and issue immediate appellate relief for this *Constitutional Catastrophe.*

Respectfully Submitted: April 20, 2021

/s/ Katherine L. Henry
Katherine L. Henry (P71954)

STATE OF MICHIGAN
IN THE 48TH JUDICIAL CIRCUIT COURT FOR THE COUNTY OF ALLEGAN

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

Circuit Court No. 21-64029-AR
Lower Court No. 20-3569-SM

KATHERINE LINDSEY HENRY,
Defendant-Appellant,
_____/

MYRENE KAY KOCH (P62570)
Attorney for Plaintiff-Appellee
113 Chestnut Street, Allegan, MI 49010
269-673-0280
prosecutor@allegancounty.org
_____/

KATHERINE L. HENRY (P71954)
Defendant In Pro Per-Appellant
[redacted], MI 49426
[redacted] (redacted per MCR 1.109)
[redacted]

APPENDIX TABLE OF CONTENTS FOR
APPELLANT'S EXHIBITS FILED IN
RESPONSE TO APPELLEE'S MOTION TO DISMISS
APPLICATION FOR LEAVE TO APPEAL
PROCEDURAL DUE PROCESS VIOLATIONS

Item	Page
Henry Email to Court re Motion Hearing Removed from Calendar	137
Email from Court re Motion Hearing Now By Zoom	138
Prosecutor Envelope Mailing Motion to Dismiss on April 12, 2021	139

Respectfully Submitted: April 20, 2021

/s/ Katherine L. Henry
Katherine L. Henry (P71954)
Defendant In Pro Per

Gmail **Katherine Henry <[redacted]>**

People v Katherine Lindsey Henry, Attorney, In Pro Per 20-3569-SM

Katherine Henry <[redacted]> Wed, Apr 7, 2021 at 11:32 AM
To: Carole Carr <CCarr@allegancounty.org>, District Court <districtcourt@allegancounty.org>
Cc: Myrene Koch <MKoch@allegancounty.org>, "rjbaker@rjbaker-law.com" <rjbaker@rjbaker-law.com>, Stephen Vargo <steve.vargo@rjbaker-law.com>, Kristle Goins <kristle.goins@rjbaker-law.com>

Thank you for sending this order. There appears to be some clerical error, though, because my hearing set for tomorrow on the Motion to Compel Discovery has been removed from the online court calendar. It was properly noticed and follows the court rules, so I can't imagine that the judge is intentionally prohibiting me from having access to the court. Please confirm that the hearing is still on for tomorrow, or that the discovery has been ordered to be produced.

Thank you,

Restore Freedom with
Katherine Henry, P.C.
Katherine Henry
Constitutional Attorney, Educator & Advocate
More Freedom; Less Government
RestoreFreedomKH.com [redacted]

Restoring our government of the people, by the people, and for the people

[Quoted text hidden]

Gmail

Katherine Henry <[redacted]>

Phase I Local Administrative Order regarding 57th District Court, MI v K Henry, 20-3569-SM, Motion to Compel

Linda Lenahan <LLenahan@allegancounty.org> Wed, Apr 7, 2021 at 2:27 PM
To: Katherine Henry <[redacted]>, "Steve.Vargo@rjbaker-law.com" <Steve.Vargo@rjbaker-law.com>, Robert Baker <rjbaker@rjbaker-law.com>, Kristle Goins <kristle.goins@rjbaker-law.com>
Cc: Carole Carr <CCarr@allegancounty.org>, Chris Gates <CGates@allegancounty.org>, District Court <DistrictCourt@allegancounty.org>, Gina Shashaguay <GShashaguay@allegancounty.org>, Myrene Koch <MKoch@allegancounty.org>, Judith Kasson <JKasson@allegancounty.org>

Due to COVID-19 positivity rates rising above 15% in Allegan County, the Courts are being moved back into Phase I of our operational plan. All hearings are now required to be by Zoom while we are in Phase I with the exception of a few felony matters. Your motion hearing tomorrow will be conducted as a Zoom proceeding. Please follow the Zoom instructions attached. If you have any questions, please let me know.

Linda L. Lenahan

Court Administrator

57th District Court

113 Chestnut Street

Allegan, MI 49010

Phone: (269) 673-0482

Fax: (269) 686-4642

Zoom Court B BAILLARGEON directly into proceedings.docx
20K

ALLEGAN COUNTY PROSECUTING ATTORNEY
MYRENE KAY KOCH
County Courthouse, 113 Chestnut Street
Allegan, Michigan 49010-1350

Received
4/14/21

PRESORTED
FIRST CLASS

U.S. POSTAGE » PITNEY BOWES
ZIP 49010 $ 000.45⁰
02 4W
0000366377 APR 12 2021

MS. KATHERINE L. HENRY
[redacted]9426

B4J2SMB 49426