STATE OF MICHIGAN
IN THE 57TH JUDICIAL DISTRICT FOR THE COUNTY OF ALLEGAN

PEOPLE OF THE STATE OF MICHIGAN

v.

KATHERINE LINDSEY HENRY
_____/

No. 20-3569-SM

Hon. William A. Baillargeon

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

KATHERINE L. HENRY (P71954)
Defendant In Pro Per
[redacted] Ormond Beach, FL 32175
[redacted] (redacted per MCR 1.109)
[redacted]

HENRY'S RESPONSE TO PROSECUTOR'S MOTION TO QUASH SUBPOENAS, AND PROOF OF SERVICE

HENRY'S RESPONSE TO PROSECUTOR'S MOTION

Defendant-Appellant, Katherine L. Henry (P71954) (hereinafter, Henry), in pro per, responds to Prosecutor's *motion to quash subpoenas* based on the following:

1. Henry denies the allegations in Prosecutor's paragraph 1, as Prosecutor added a second charge of "disturbing the peace" in July 2021, and amended the original charge of "trespass" on the same document.

2. Henry objects to the form of the allegations raised in Prosecutor's paragraph 2, as they are not limited to one topic. Rather, Prosecutor challenges the subpoena of Prosecutor Koch, then challenges the subpoena of Sheriff Baker, and also provides additional argument regarding "relevant evidence."

3. Henry denies the allegations in Prosecutor's paragraph 2 that "Prosecutor Koch is not a res gestae witness to the case." It is undisputed that, after being unable to resolve the issue (regarding the petition circulators being told they had to leave township property) with the deputy over the phone, Henry stated that she would come to the scene, *as legal counsel* for the petition and the petition circulators, to discuss the relevant law with the deputy in person, and Deputy Langlois said that he would be there waiting to talk with her. Upon her arrival, though, the deputies outright refused to discuss the law (or the township's resolution), stating several

times that Prosecutor Koch was the one directing them to arrest Henry. See Exhibit 8 (originally filed by Henry in January 2021, and also available at https://youtu.be/SyCYNwo_4JA) at 00:53, 01:03, and 10:29, for example. Also, see generally Exhibit 1 Affidavits, as filed by Henry in January 2021.

Since "the Constitution guarantees criminal defendants a meaningful opportunity to present a complete defense,"[1] Henry has the right to present evidence (or challenge the Prosecutor's evidence) on each element of the offense. As stated in her briefs, To establish guilt of MCL 750.552 criminal trespass, Prosecutor must prove, *beyond a reasonable doubt*, that Henry

- Remained on the property
- without lawful authority ***or*** a good faith claim of lawful authority,
- after someone told her to leave
- and that person had lawful authority to remove Henry

Thus, Henry has the right to present evidence challenging each of these elements. This includes testimony relating to her purpose of being on the property, the issue of her claim of lawful authority to be there, who exactly was the person directing Henry's "legal" removal from the property, and the lawful authority (or lack thereof) of that person to remove Henry. Prosecutor Koch's direct involvement in the incident, even by phone, email or text, provides important evidence on each of these key elements of the offense charged.

Further, Prosecutor offers absolutely *no* legal authority for the claim that Henry can be estopped from presenting evidence (testimony) from witnesses who were not physically present at the time of her arrest. That is because *there is no legal authority* supporting such a ridiculous claim. Prosecutor argues that only res gestae witnesses provide *relevant* evidence. However, parties are *not* limited to res gestae witnesses only, as other witnesses are an important part of the trial process, including material witnesses and rebuttal witnesses. In fact, MRE 602 only precludes testimony from witnesses lacking personal knowledge of *any* elements of the case.

4. Henry denies the allegations in Prosecutor's paragraph 2 that Sheriff Baker only has irrelevant testimony because he was not "present at the scene." He was not physically present at the scene, but had direct involvement with the incident, and direct contact with Henry while in custody. Exhibit 8 at 4:08 describes that Sheriff Baker had been on phone and said the petitioners (and Henry) can be there beyond 100ft. Direct communications with Sheriff Baker regarding the incident is also referenced at 5:54. At 21:23 and 21:41, the communication with Sheriff Baker (as the deputy's "supervisor") is again referenced. The conversation between Henry and Sheriff Baker is also referenced starting at 21:58, which focuses *entirely* on Henry's authority to be on the property *and* the authority of the township clerk to remove her. The videos and affidavits are replete with examples of the discussions Sheriff Baker had that day

[1] *Holmes v South Carolina,* 547 US 319, 324 (2006), citing *Crane* at 690; *People v Unger*, 749 NW 2d 272, 300 (Mich App 2008), citing *Kurr* at 326.

regarding the issues of lawful authority.

5. Henry denies the allegations in Prosecutor's paragraph 2 that the testimony of Prosecutor Koch and Sheriff Baker would be irrelevant, and thus, inadmissible. Since Henry's lawful authority (or good faith claim thereof) to remain on the property, and the township's authority to remove Henry are essential elements of the claim, Henry is certainly allowed to present evidence on those points, which necessarily includes the testimony of Prosecutor Koch and Sheriff Baker regarding their direct knowledge of and involvement in the events of that day.

6. Henry denies the allegations in Prosecutor's paragraph 3, as inaccurate and misleading. MCR 2.506(H) does *not* allow the Assistant Prosecuting Attorney to object to these two subpoenas. Rather, MCR 2.506(H)(1) only allows the "person served with a subpoena" to appear before the court in person or by writing to explain why the person should not be compelled to comply with the subpoena." So, the Assistant Prosecuting Attorney may *not* raise these issues on behalf of witnesses Prosecuting Attorney Koch and Sheriff Baker.

   Further, Prosecutor claims "MCL[sic] 2.302(C), incorporated by reference in 2.506(H)," allows the court to issue an order quashing the subpoenas here "to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense." However, MCR 2.506(H)(5) does *not* apply that provision of MCR 2.302(C) to *all* subpoenas. Rather, MCR 2.506(H)(5) merely references that challenges to discovery subpoenas under MCR 2.302(C) may also be raised in the same manner that trial subpoenas are challenged in MCR 2.506(H). But MCR 2.302(C) remains limited to challenging ***discovery*** subpoenas, and Prosecutor offers no legal authority to the contrary. Indeed, the language of MCR 2.302(C) explicitly pertains to motions regarding "the person from whom *discovery is sought*." Appearance subpoenas for trial, thus, are not permitted to be challenged so a person may avoid "annoyance embarrassment, oppression, or undue burden or expense." But here, Prosecutor fails to *even allege* that requiring the testimony of these two material witnesses would cause either witness "annoyance, embarrassment, oppression, or undue burden or expense." And any such allegation would have required *substantiating proof* to establish the "good cause shown" requirement.

7. Henry denies the allegations in Prosecutor's paragraph 4 as they are irrelevant, incorrect and misleading statements of "law." First, Prosecutor cites *People v Petri* as stating "a prosecutor is not a necessary witness if the substance of the testimony can be elicited from other witnesses." However, Prosecutor intentionally leaves off the second half of that sentence, and also removes the context sentence immediately prior. ("A defendant seeking to disqualify a prosecutor as a necessary witness bears the burden of proof. *Id*. at 144, 739 N.W.2d 689. A prosecutor is not a necessary witness if the substance of the testimony can be elicited from other witnesses, and the party seeking disqualification did not previously state an intent to call the prosecutor as a witness. *Id*.") The determination of Prosecutor as a "necessary witness" is in the context of a defendant seeking to disqualify a prosecutor from prosecuting the case. Since Prosecuting Attorney Koch is *not* the attorney actually prosecuting Henry's case - nor has she filed any of

the pleadings *or* appeared in court for any proceedings for this case over the last two years, Henry is *not* seeking to disqualify her from personally handling the case. Therefore, Prosecutor's reference to this case is misplaced, at best.

Prosecutor then cites *People v Morton*, an unpublished opinion. However, MCR 2.119(A)(2) not only requires Prosecutor's motion "to be accompanied by a brief citing the authority on which it is based," which Prosecutor has yet again failed to do, but also requires Prosecutor to "comply with the provisions of MCR 7.215(C) regarding citation of unpublished Court of Appeals opinions." However, MCR 7.215(C)(1) declares that "**[u]npublished opinions should not be cited** for propositions of law for which there is published authority." Further, it states if "a party cites an unpublished opinion, the party **shall explain** the reason for citing it and how it is relevant to the issues presented." Yet, Prosecutor offered *no* such explanation. Moreover, *Morton* simply relies upon *Petri*, and only covers the determination of a prosecutor as a "necessary witness" in the context of disqualifying the prosecutor from trying the case. That is not at issue here. Furthermore, in *Morton*, the prosecutor was *not* a direct witness with personal knowledge of events leading up to the arrest, but instead knew of pertinent material only after interviewing a victim. Thus, *Morton* provides absolutely no basis to support Prosecutor's claims.

8. Ironically, Prosecutor then claims "MCR 2.506 is not a tool for discovery." After attempting to use MCR 2.302(C) as support for the instant motion (despite its applicability to *discovery* subpoenas only), Prosecutor *insinuates* (failing to make any actual allegations in paragraph 5, as required) that the subpoenas in question are for purposes of *discovery*. Black's Law Dictionary, 8th Deluxe Edition at p 498, defines discovery as the "process of finding or learning something that was previously unknown." In contrast, it defines evidence as "something (including testimony . . .) that tends to prove or disprove the existence of an alleged fact." *Id* at 595. By issuing these subpoenas for Prosecutor Koch and Sheriff Baker *to appear at the jury trial,* Henry is obviously requiring their testimony as *evidence* in the trial, *not* as discovery to help develop her defense *in preparation for trial*. Thus, this offers no support for Prosecutor's claims.

Henry further affirmatively states the following:

9. Prosecutor has a history throughout this entire 20-month case of using and misusing the court rules and procedures to play games and negatively impact Henry's right to a fair and impartial case. From continually failing to file a *required* brief in many instances (which happened *again* here, as well as with the Motion to Dismiss Henry's Appeal filed in Circuit Court in the same week as the instant motion - which is discussed in paragraphs 24-26 of Henry's Response, attached here as Henry's Exhibit 15), to missing filing deadlines (as with Prosecutor's 5/31/22 pleadings), to failing to provide the *required* discovery, to failing to even allege the *required* elements of the offenses in the charging documents (even the amended Complaint), and including the failure to serve Henry pleadings (as evidenced in paragraphs 1-7 in Exhibit 15), Prosecutor now files this Motion to Quash based on *no legal authority whatsoever*, wasting

Henry's resources and further denying Henry a fair and impartial proceeding.

10. The history of this case, including Prosecutor's many violations of state law, court rules, constitutional guarantees, court orders and case precedent, demonstrates how it is ***Prosecutor's*** continued actions that are "illegal and create[] unreasonable confusion and wasted resources" (as cited in Exhibit 15). These egregious actions not only **require** the immediate dismissal of the underlying case, but also punitive consequences for each of the 5 prosecuting attorneys who have handled parts of this case.

Wherefore, Henry asks this court to:

A. Deny Prosecutor's Motion to Quash the subpoenas of Prosecutor Koch and Sheriff Baker.

B. Grant all relief requested by Henry in *her properly* pending motions.

C. Dismiss the charges with prejudice in the interests of justice on account of Prosecutor's prosecutorial misconduct.

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

Respectfully Submitted: June 29, 2022 /s/ Katherine L. Henry
Katherine L. Henry (P71954)

PROOF OF SERVICE

The undersigned certifies the foregoing Response to Prosecutor's Motion to Quash was 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: June 29, 2022.

Respectfully Submitted: June 29, 2022 /s/ Katherine L. Henry
Katherine L. Henry (P71954)

Exhibit 15

STATE OF MICHIGAN
IN THE 48th JUDICIAL CIRCUIT FOR THE COUNTY OF ALLEGAN

PEOPLE OF THE STATE OF MICHIGAN

v.

KATHERINE LINDSEY HENRY
_____/

Circuit Ct No. 22-65775-AR
District Ct No. 20-3569-SM

Hon. Margaret Bakker

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

KATHERINE L. HENRY (P71954)
Defendant In Pro Per
[redacted] Ormond Beach, FL 32175
[redacted] (redacted per MCR 1.109)
[redacted]

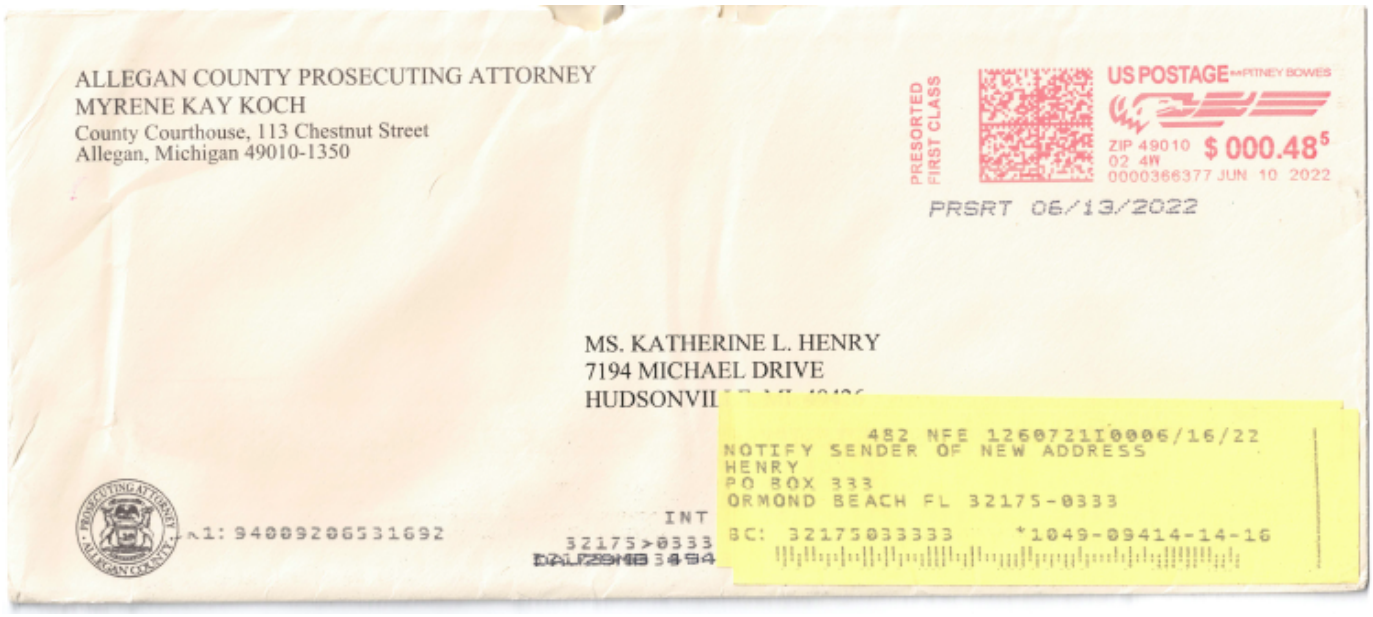
APPELLANT'S RESPONSE TO APPELLEE'S
MOTIONS TO DISMISS APPEAL AND FOR IMMEDIATE CONSIDERATION,
AND PROOF OF SERVICE

APPELLANT'S RESPONSE TO APPELLEE'S MOTIONS

Defendant-Appellant, Katherine L. Henry (P71954) (hereinafter, Henry), in pro per, objects to the filing of Prosecutor's **Proof of Service** of Prosecutor's Motion to Dismiss Appeal and Motion for Immediate Consideration based on the following:

1. Prosecutor's proof of service claims these two motions were served on Henry on June 9th by US Mail to Henry's address at 7194 Michael Drive, Hudsonville, MI 49426. However, Prosecutor did NOT serve the documents on June 9th, and they were intentionally served upon an incorrect address for Henry.

2. Prosecutor dated these motions June 8th, and claimed service on Henry on June 9th. However, the red stamp from Prosecutor's postage machine shows the envelope was not given postage until June 10th, whereas the gray stamp from USPS shows it was not mailed until June 13th.



3. Prosecutor claims these motions were "served" upon Henry by mailing them to 7194 Michael Drive, Hudsonville, MI 49426. However, MCR 2.107(C) states "Except under MCR 1.109(G)(6)(a), service on a party must be made by delivery or by mailing to the party **at the address stated in the party's pleadings**." The address in Henry's pleadings is in Florida:

PEOPLE OF THE STATE OF MICHIGAN

v.

KATHERINE LINDSEY HENRY
_____/

Circuit Ct No. 22- -AR
District Ct No. 20-3569-SM

Hon.

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

KATHERINE L. HENRY (P71954)
Defendant In Pro Per
[redacted] Ormond Beach, FL 32175
[redacted] (redacted per MCR 1.109)

DEFENDANT'S APPLICATION FOR LEAVE TO APPEAL DISTRICT COURT'S REFUSAL TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION

4. Henry moved to Florida in July 2021, and Prosecutor knew that, and knew her new address, **for the last year**, yet "attempted" service at her old address. In July 2021, when Henry asked the court to modify bond conditions so that she could move to Florida, Prosecutor objected:

Meredith Beidler <MBeidler@allegancounty.org>
To: Gina Shashaguay <GShashaguay@allegancounty.org>, William Baillargeon <WBaillargeon@allegancounty.org>, Carole Carr <CCarr@allegancounty.org>
Cc: Robert Baker <rjbaker@rjbaker-law.com>, Katherine Henry <[redacted].com>
Wed, Jul 14, 2021 at 1:24 PM

Your Honor,

This email was forwarded to me and I wanted to indicate that the People would object to any modification in bond. Ms. Henry has also indicated in several filings to this court, the circuit court, and the Court of Appeals that she is unable to appear for hearings via zoom. Unless something has changed that gives her the ability to appear via zoom, I find it unlikely that she will travel back to Michigan for a simple Trespass hearing. Therefore, the People would object to a modification allowing the Defendant to move out of state.

5. While Prosecutor claims to have served *these* motions on June 9th, Prosecutor also filed a proof of service upon Henry on June 7th showing Prosecutor knew Henry's correct address (keep in mind this is the exact same Assistant Prosecuting Attorney who filed the current motions):

Plaintiff,
vs
KATHERINE LINDSEY HENRY,
Defendant,

CASE NO.: 203569SM

MOLLY SCHIKORA (P46997)
Assistant Prosecutor
113 Chestnut Street
Allegan, Michigan 49010
Phone: (269) 673-0280

KATHERINE LINDSEY HENRY
In Pro Per
P. O. Box 333
Ormond Beach, FL 32175
Phone: (616)[redacted]

ROBERT J. BAKER (P57964)
Attorney for Defendant
225 Hubbard Street
Allegan, Michigan 49010
(269) 686-9448

PROOF OF SERVICE

STATE OF MICHIGAN)
) SS
COUNTY OF ALLEGAN)

Gina M. Shashaguay, being duly sworn, deposes and says that on June 7, 2022 she served a copy of the following:

People's Motion to Quash Subpoenas of Prosecutor Myrene Koch and Sheriff Frank Baker

And again on June 17th:

Plaintiff,

vs

CASE NO.: 203569SM

KATHERINE LINDSEY HENRY,
Defendant,

MOLLY SCHIKORA (P46997)
Assistant Prosecutor
113 Chestnut Street
Allegan, Michigan 49010
Phone: (269) 673-0280

KATHERINE LINDSEY HENRY
In Pro Per
P. O. Box 333
Ormond Beach, FL 32175
Phone: (616) [redacted]

ROBERT J. BAKER (P57964)
Attorney for Defendant
225 Hubbard Street
Allegan, Michigan 49010
(269) 686-9448

PROOF OF SERVICE

STATE OF MICHIGAN)
) SS
COUNTY OF ALLEGAN)

Gina M. Shashaguay, being duly sworn, deposes and says that on June 17, 2022 she served a copy of the following:

People's Supplemental Answer to Defendant's Motions to Dismiss for Declaratory

6. Prosecutor argues the consideration of their motion to dismiss requires *immediate* attention, yet Prosecutor did not find it urgent enough to serve Henry by email, as indicated in MCR 2.107(C) and MCR 1.109(G)(6)(a), and as Prosecutor had done on June 7th and 17th in the proofs of service discussed above (and in many other pleadings throughout 2021 and 2022):

and Proof of Service via email to:

Katherine Lindsey Henry: ([redacted]com) and ([redacted]kh.com)

Robert J. Baker, Esq.: (kristle.goins@rjbaker-law.com) and (rjb@rjbaker-law.com)

I declare the above statement is true to the best of my information, knowledge and belief.

Dated: June 7, 2022

Gina M. Shashaguay, Legal Administrative Specialist

and Proof of Service via email to:

Katherine Lindsey Henry: ([redacted]om) and ([redacted]kh.com)

Robert J. Baker, Esq.: (kristle.goins@rjbaker-law.com) and (rjb@rjbaker-law.com)

I declare the above statement is true to the best of my information, knowledge and belief.

Dated: June 17, 2022

Gina M. Shashaguay
Legal Administrative Specialist

7. Consequently, due to Prosecutor's failure to *serve* Henry, as defined by the court rules, and continuation of these procedural games which deny Henry of due process, Prosecutor's motions are not properly before the court and must be denied outright.

Henry responds to Prosecutor's *motion to dismiss appeal* under MCR 7.110 and MCR 2.119 based on the following:

8. Henry admits the allegations in Prosecutor's paragraph 1.

9. As to the allegations in Prosecutor's paragraph 2, Henry admits in part, but denies as to the reasoning for the adjournment as claimed by Prosecutor. The trial court simply stated "The Court deems this to be sufficient notice for parties to present pleadings and responses as necessary." Prosecutor had "adequate" time to consider and respond to Henry's motions as originally scheduled to be heard on June 2, 2022, and the trial court made no finding to the contrary.

10. Henry denies the allegations in Prosecutor's paragraph 3 as wholly untrue and misleading. First, Prosecutor claims the trial court has issued ***no*** **judgments or orders** on Henry's underlying motions. However, Prosecutor's paragraph 2 references **the June 1, 2022 Order** of the trial court. Next, Prosecutor alleges Henry "fails to mention [her May 2022 motions are] among the issues for consideration by the court on July 7." However, as stated in Henry's Application for Appeal, at p 9, in the June 1st order, the "trial court summarily **adjourned** not only **the motion hearing**, but also the jury trial - again. This appeal follows." Henry also states in her Motion for Immediate Consideration of this Appeal, at ℙ 32, " the court **adjourned the Motion Hearing** on the issue of its lack of subject matter jurisdiction **to July 7, 2022**, also adjourning the Settlement Conference to July 7th and Jury Trial to July 13th. Having adjourned this case 7 prior times, this is now the 8th trial date."

11. Henry admits the allegations in Prosecutor's paragraph 4.

12. Henry denies the allegations in Prosecutor's paragraph 5 because they are total nonsense, based on absolutely ***no*** legal support, and completely ignore all of the statutes, court rules, binding

court precedent, and constitutional provisions cited in Henry's appeal pleadings that **require** the case to be dismissed **immediately**, and that the appellate court do so upon the trial court's failure to do so. Henry further points out the irony here - Prosecutor claims Henry "misleadingly cites a hybrid of case law, statutes and court rules," yet Prosecutor cites **not one** case, court rule or statute to support **any** of her claims, arguments or requests of the court in this Motion to Dismiss Henry's appeal.

13. Henry denies the allegations in Prosecutor's paragraph 6 as they are total nonsense, based on absolutely ***no*** legal support, and completely ignore all of the statutes, court rules, binding court precedent, and constitutional provisions cited in Henry's appeal pleadings that **require** the case to be dismissed **immediately**, and that the appellate court do so upon the trial court's failure to do so.

14. Henry denies the allegations in Prosecutor's paragraph 7, as there are ***no*** grounds for dismissing this appeal which demonstrates the trial court has *no* subject matter jurisdiction over this case, rendering it **mandatory** for the underlying case to be dismissed with prejudice **immediately.** Henry further states that simply because the trial court may eventually follow the law by dismissing the underlying case, that does *not* negate the need for the appellate court to act now that Henry has brought these issues before it.

Henry also affirmatively states as follows:

15. The facts and the law are quite simple here: Where the court lacks SMJ, it has *no authority to hear the case* at all. The "practical result" of a successful challenge to this lack of jurisdiction "is to **prevent a trial from taking place at all,** rather than to prescribe procedural rules that govern the conduct of a trial." *People v Johnson*, 396 Mich 424, 442 (1976). Thus, the only thing the trial court had the authority to do was dismiss the case with prejudice. However, the court has continued to make rulings on this case for over 19 months and adjourned the proceedings yet again.

16. Indeed, it is the court's duty to recognize when it has no authority to proceed.[1] Furthermore, citing case precedent, MJI's *Criminal Proceedings Benchbook* clarifies 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."[2] Further, the trial court has the duty to enter permanent injunctive relief against a constitutional violation.[3]

17. Prosecutor argues Henry should just **keep waiting** for the trial court to dismiss the case for its lack of subject matter jurisdiction, and that the appellate court would never have jurisdiction to hear appeals based on lack of subject matter jurisdiction as long as the trial court *might* still

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[1] MJI, *Criminal Proceedings Benchbook*, Vol 1, Rev Ed, § 2.2; quoting *People v Clement,* 254 Mich App 387, 394 (2002); *Johnson* at 442.
[2] MJI, *Crim Proc Benchbook*, Vol 1, §2.2; quoting *In re Contempt of Dorsey,* 306 Mich App 571, 581 (2014).
[3] *MI Coalition of State Empl Unions v Civil Serv Com'n*, 465 Mich 212, 219 (2001).

dismiss the case down the road. But, no matter how you look at it, "the state never had the power to proceed against her in the first place,"[4] so the "very initiation of the proceedings against [Henry] thus operated to deny [her] due process of law." *Blackledge v Perry*, 417 US 21, 30-31 (1974). Allowing this case to proceed for 20 months (as of Henry's birthday next week) operates as a continued denial of Henry's rights to due process of law.

18. It is the appellate court's duty to correct these constitutional violations by the lower courts. In fact, when government officials (including prosecuting attorneys and trial court judges) violate the Constitution, it "does not permit [appellate] judges to look the other way; [rather, they] must call foul when the constitutional lines are crossed."[5]

19. Therefore, it is preferred for a party to raise SMJ *before* an unjust trial or "the injury itself would have already been sustained." *People v Torres*, 452 Mich 43, 71 (1996). Also, the "embarrassment, expense, and ordeal of living in a continued state of anxiety created by the [] trial" cannot be erased ***afterward*** on appeal, so Henry can only avoid these substantial harms to her personal life, legal work, and political efforts "by seeking an **immediate appeal**." *Id*.

20. Our "blessings of freedom" from Almighty God are secured in the Michigan Constitution "undiminished to ourselves and our posterity," including our rights to speedy trials, due process of law, equal protection of the law, petitioning our government for redress of grievances, and more. As these God-given rights are ***guaranteed*** to Henry, the trial court ***and*** the appellate court have no discretion to deny them. At this point, this means the appellate court has the duty to dismiss the underlying charges with prejudice.

Henry responds to Prosecutor's *motion for immediate consideration* under MCR 7.110 and MCR 2.119 based on the following:

21. Henry denies the allegations in Prosecutor's paragraph 1, as Prosecutor added a second charge of "disturbing the peace" in July 2021.

22. Henry admits that she filed motions in the trial court, including a motion to dismiss the case for lack of subject matter jurisdiction and denial of a speedy trial. However, by the trial court issuing an adjournment order on June 1, 2022, the trial court is attempting to continue exercising the very jurisdiction it does not have. Further, the order adjourning the motion to dismiss for denial of speedy trial *itself* further delays the trial, which has now been set for 8 separate dates over the last 20 months.

23. Henry denies the allegations in Prosecutor's paragraph 3 as wholly untrue and without any legal support whatsoever. As amply stated above, Henry has the ***right*** to challenge the court's lack of subject matter jurisdiction ***at any time***, and cannot be estopped from doing so. What *IS* illegal is

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[4] *People v Beckner*, 92 Mich App 166, 169 (1979), citing *People v Johnson*, 396 Mich 424, 439-444 (1976).
[5] *In re Certified Questions,* __ Mich __, __ (2020) (Docket No. 161492), slip op at 41 (citations omitted).

prosecuting Henry for her conduct presumptively protected by the First Amendment (petition circulating), let alone while she's serving in her role as a public official. MCL 750.543z and 600.1825(3).

24. Prosecutor claims Henry's motions to dismiss the case in district court and this appeal in circuit court create "unreasonable confusion." However, Prosecutor's confusion has nothing to do with Henry but everything to do with lack of proper training and education within the prosecutor's office. Prosecutor's various pleadings in the trial court, in the prior appeals, and in this appeal clearly demonstrate confusion about (or willful disregard of) MCR 6.101; MCR 2.116; MCR 2.111; MCR 7.212(D)(3)(b); MCR 7.212(C)(6)(c) (applicable through 7.212(D)(1)); MCR 6.201; MCR 6.610; MCL 763.8(5); MCL 750.543z; MCL 600.1825(3); MCR 7.110; MCR 2.119, etc. For example, in these motions, Prosecutor raises *legal* arguments but fails to cite any legal support, or even file the required brief!

25. According to MCR 2.119(A)(2), 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 vast majority of Prosecutor's pleadings raising issues of law (in the trial court, in the prior appeals, and in this current appeal), Prosecutor filed each without the *required* brief. MJI, Criminal Proceedings Benchbook, Vol 1, Rev Ed., §9.2.

26. However, Prosecutor now files its 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.

27. Prosecutor claims Henry's motions to dismiss the case in district court and this appeal in circuit court create "wasted resources." However, Prosecutor pursing the initial charge in direct violation of state law and the US and Michigan Constitutions wasted State resources, as well as Henry's. Prosecutor adding the second charge in July 2021 - also in direct violation of law - wasted State resources, as well as Henry's. Prosecutor failing to provide the required discovery, failing to follow required court procedures, and willfully disregarding many court rules ***throughout*** this case indeed wastes State resources *and* Henry's resources.

28. Henry does not have paid staff, ICLE, WestLaw, LexisNexis, or other similar services (as she does all her work for the people of Michigan on a donation basis), receiving no hourly or flat fees for such services, and that has added significant time to the completion of legal research and writing. The longer this case drags on, the more Henry's personal life, legal work and political efforts are substantially harmed and her resources wasted. These certain emotional and financial costs of defending a charge that cannot properly be brought are addressed by ICLE in Michigan Criminal Procedure § 2.3; Circuit Court Judge Dennis Kolenda in *Potentially*

Dispositive Pre-Trial Motions (2015), app 279-84; and *People v Sierb*, 456 Mich 519, n 19 (1998), quoting *US v MacDonald*, 456 US 1, 8-9 (1982).

29. Circuit Court Judge Dennis Kolenda puts it this way:

> Even criminal cases, which have preference on the docket, take time to bring to trial, and when it finally occurs, a trial is, we all know, expensive and a difficult experience, not only for the defendant, but for the victim and the witnesses, and waiting for a trial causes anxiety and concern for those same people and deprives the defendant of liberty, be it pre-trial confinement or the restrictions of bond. *Potentially Dispositive Pre-Trial Motions* (2015).

30. Likewise, the Michigan and US Supreme Courts have noted that:

> Arrest is a public act that may seriously interfere with the defendant's liberty, whether he is free on bail or not, and that may disrupt his employment, drain his financial resources, curtail his associations, subject him to public obloquy, and create anxiety in him, his family and friends. . . . Certainly the knowledge of an ongoing criminal investigation will cause stress, discomfort, and perhaps a certain disruption in normal life.[6]

31. The history of this case, including Prosecutor's many violations of state law, court rules, constitutional guarantees, court orders and case precedent, demonstrates how it is ***Prosecutor's*** continued actions that are "illegal and create[] unreasonable confusion and wasted resources." These egregious actions not only **require** the immediate dismissal of the underlying case, but also punitive consequences for each of the 5 prosecuting attorneys who have handled parts of this case.

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.

B. Issue its decision prior to July 7th, 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 July 7th, as to make clear the hearing on July 7th would no longer be needed.

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

Respectfully Submitted: June 27, 2022

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

[6] *People v Sierb*, 456 Mich 519, n 19 (1998), quoting *US v MacDonald*, 456 US 1, 8-9 (1982).