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- -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)
[redacted]

MOTION FOR IMMEDIATE CONSIDERATION
OF APPELLANT'S APPLICATION FOR LEAVE

Defendant-Appellant, Katherine L. Henry (P71954), in pro per, moves for immediate consideration under MCR 7.110, 7.211(C)(6), and 7.105(F):

1. On 11/3/20, Henry was charged with Trespassing in violation of MCL 750.552. Nearly 9 months later, Prosecutor added a charge of Disturbing the Peace, a violation of MCL 750.170.

2. Henry filed a Motion for Immediate Consideration of her simultaneously filed Motion to Dismiss (Trespass charge), Motion to Dismiss (Disturbing the Peace charge), Motion for Declaratory Relief (right to file Motions to Dismiss), Motion for Declaratory Relief (right to open hearings), Motion for Declaratory Relief (right to ADA accommodations), and Motion for Declaratory Relief (re: assistance of counsel, presenting a *complete* defense, discovery, e-service, and redaction of personal identifying information).

3. Henry emailed these documents on May 26, 2022, as service by email is completed when the email transmission is completed. MCR 1.109(G)(6)(b).

4. The hearing on these motions was set for June 2, 2022, with the Settlement Conference set for June 10th and the Jury Trial set for June 15th.

5. This case has had thousands of pages filed - in different levels of court, raising a myriad of issues - so why file *these* pleadings? Despite the voluminous pleadings here, not one of the issues raised by Henry has been *fully* adjudicated *on the merits*.

6. Why are there so many issues raised? Henry did not look through a catalog and shop for the most interesting ones; they are not issues she has brought to the table. Rather, these issues all

arise out of constitutionally and statutorily guaranteed rights to which each accused is entitled. And I don't use the word "entitled" lightly. But these God-given liberties are guaranteed to us, and no person should have to choose which of their guaranteed rights they want more, just to keep things simpler in court. If the prosecution wanted to keep things simple - they would have done their job to ensure Henry's rights were protected, not trampled (let alone continuously).

7. Prosecutor filed an "Answer" to Henry's motions, claiming he had at least until June 17th to respond in full. He argued about business days. However, business days are irrelevant in the computation of time. MCR 1.108(1) clearly indicates the *only* time Saturdays, Sundays or court holidays are *excluded* from the time for service is when they are the *last* day of the period. That is clearly *not* the case here. Thus, there is no special exclusion for any of the 7 days between the date Henry served the Prosecutor and the date of the hearing.

8. Prosecutor wants more time to respond because he's "not even sure" what has already happened in this case, but that is never a legitimate justification for postponing an accused's hearing on a Motion to Dismiss.

9. Despite what Prosecutor thinks *may have been* already decided in this case, *no* court has issued any orders *fully* adjudicating these issues *on the merits*.

10. Prosecutor acknowledges that "the Michigan Rules of Civil Procedure apply" here. Prosecutor then points to Rule 2.108(B), claiming he has "at least [until] June 17, 2022" to respond to Henry's motions. However, this completely disregards the actual text of the rule.

11. MCR 2.108(B) states "A motion raising a defense or an objection to a pleading **must be served and filed within the time for filing the responsive pleading** or, if no responsive pleading is required, within 21 days after service of the pleading to which the motion is directed." Prosecutor ignores this point, as well as other applicable rules.

12. Keeping in mind Prosecutor acknowledges that "the Michigan Rules of Civil Procedure apply" here, Prosecutor fails to acknowledge that MCR 2.119(C) applies to the service and filing of motions and responses. Furthermore, (C)(1)(b) clearly requires Henry's motions to be served 7 days prior to the hearing, and (C)(2)(b) requires Prosecutor's response, including briefs and affidavits, to be filed and served electronically 3 days before the hearing. So, Prosecutor's response served today is already late.

13. Prosecutor seems to then make the argument that it wouldn't be fair to require Prosecutor to respond to these motions before June 17, 2022. However, Prosecutor offers no legal support for this contention. Further, as Henry explained in her Motion for Immediate Consideration, these are not issues *Henry* has brought to the table. Rather, Henry is simply trying to ensure a *fair* process in this criminal case - something that is *guaranteed* to her by the US and Michigan Constitutions.

14. As Henry's 5/26/22 pleadings further explained, she filed a Motion to Dismiss the original *trespassing* charge, a Motion to Dismiss the much later added *disturbing the peace* charge, and a motion for declaratory relief that she does have the right to file these motions.

15. In the event the court does not order *dismissal with prejudice* on both charges, and proceeds with the case, Henry also filed a Motion for Declaratory Relief regarding her rights to open

hearings, ADA accommodations, assistance of counsel, the opportunity to present a complete defense, discovery, E-service, and redaction of her personal identifying information on Prosecutor's pleadings. On these issues, Henry can't imagine why Prosecutor would even be interested in fighting against Henry's request. There is simply *no legal support* for Prosecutor to deny these constitutionally and statutorily guaranteed rights. No amount of time to respond is going to change that.

16. As to the Motions to Dismiss, Prosecutor already acknowledges "the Michigan Rules of Civil Procedure apply" here, which includes MCR 2.116 and MCR 2.504(B). Prosecutor has had plenty of time to respond to the legal challenges raised in the Motions to Dismiss, as Prosecutor was given notice of these legal deficiencies in January 2021. Prosecutor has already had almost 17 months to file the *required* responsive *Brief* and *Affidavits*.

17. So, what is so urgent? Subject matter jurisdiction (SMJ)! 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."[1] In fact, 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. *Id.* Moreover, this lack of jurisdiction may be raised at any time, and cannot be waived.[2]

18. Indeed, Henry would suffer irreparable harm if she was forced to endure a criminal trial where the court has no jurisdiction, especially since the court has such a duty to enter permanent injunctive relief against this constitutional violation. *MI Coalition* at 219.

19. All of the issues raised herein by Henry either already indicate the lack of SMJ in this case, would lead to a lack of SMJ if allowed to continue, or constitute a general due process issue where Henry's timely interests are involved.

20. To establish guilt of MCL 750.552 criminal trespass, Prosecutor must prove, *beyond a reasonable doubt*, that Henry 1) Remained on the property 2) without lawful authority or a good faith claim of lawful authority, 3) after someone told her to leave 4) and that person had lawful authority to remove Henry. While everyone agrees that Henry remained on township property after the township clerk told her to leave, Prosecutor is legally unable to prove that Henry *lacked* authority to be there, or that the clerk *had* lawful authority to remove her. These legal reasons leaving Prosecutor unable to prove the two elements on *authority* also demonstrate why the court lack's SMJ over this charge.

21. One reason this court lacks SMJ is because Henry is charged with trespassing on government property ***open to the general public,*** which is blatantly unconstitutional and is not, nor can it ever be, a crime. *Food Employees v Logan Valley Plaza*, 391 US 308, 321 (1968); *Brown v Louisiana*, 383 US 131, 141 (1966).

22. This court also has *no* SMJ 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;

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[1] MJI, *Crim Proc Benchbook*, Vol 1, §2.2; quoting *In re Contempt of Dorsey,* 306 Mich App 571, 581 (2014).
[2] *MI Coalition of State Empl Unions v Civil Serv Com'n*, 465 Mich 212, 219 (2001).

Michigan Judicial Institute (MJI), *District Court Magistrate Manual - Revised Edition* (2021) at 1-21.

23. Undisputed facts also show Henry was only on the property in her capacity as an attorney, and thus, a public official (M Crim JI 22.19; MCL 600.901), which deprived the court of jurisdiction over this misdemeanor trespass charge under MCL 600.1825(3). MCL 750.543z (conduct presumptively protected by the first amendment) and MCL 600.1825(3) (public officers, such as attorneys, privileged from arrest) each protect Henry *from prosecution*, resulting in a lack of SMJ. *People v Hartwick*, 498 Mich 192, 213 (2015).

24. Henry was charged with Trespass because she allegedly violated a local parking regulation by parking on township property for work related to circulating a constitutional amendment petition. See, *Prosecutor's Response*, App 159, 162. Engaging in that very petition work is protected core political speech, *Meyer v Grant*, 486 US 414, 421-22 (1988), that divests subject matter jurisdiction through US Am I; Const 1963, art I, §§ 3, 5; Const 1963, art XII, § 2; and MCL 750.543z.

25. 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.

26. Furthermore, charging someone with a *crime*, with possible jail time and a criminal record, for a *singular* alleged parking violation is express, conflict, and field preempted by several portions of the Michigan Vehicle Code, Control of Traffic in Parking Areas act, and the Uniform Traffic Code, 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.

27. As to the disturbing the peace charge, there is no SMJ where there is no ***intentional*** act. There is no SMJ where there is no conduct that threatens public safety or violence to others; disrupts peace and quiet for other persons present; or interferes with the ability of other persons to perform legal actions or duties. There is also no SMJ where the intentional conduct did not go beyond stating an opinion or position.

28. And no matter how you look at it, "the state never had the power to proceed against her in the first place,"[3] 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).

29. Denial of the right to a speedy trial also results in a lack of subject matter jurisdiction (SMJ). See *Strunk v. United States,* 412 US 434 (1973). In cases at least 18 months past arrest, not only is the speedy trial issue required to be investigated, but prejudice to the accused is presumed, shifting the burden to Prosecutor. Here, this case is over 19 months past arrest, and denial of Henry's right to a speedy trial necessitates dismissal. Therefore, it makes no sense - nor is it grounded in any legal support whatsoever - for Prosecutor to get *additional* time to fight against

[3] *People v Beckner*, 92 Mich App 166, 169 (1979), citing *People v Johnson*, 396 Mich 424, 439-444 (1976).

Henry's right to a speedy trial.

30. Furthermore, defects such as denial of counsel, denial of confrontation, and denial of public hearings are structural errors requiring automatic reversal.[4] As such, having denied Heny the assistance of counsel and public hearings, the trial court has divested itself of subject matter jurisdiction.

31. A "judgment of conviction pronounced by a court without jurisdiction is void" and a "judge of the United States . . . should be alert to examine the facts for himself when if true as alleged they make the trial absolutely void." *Johnson v Zerbst*, 304 US 458, 468 (1938).

32. However, when Henry raised these issues in her January 2021 Motion to Dismiss, the trial court ruled that she had no right to raise legal challenges to the charge. More recently, on 6/1/22, 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.

33. If the reviewing court doesn't act now, Henry will be unable to present a *complete* defense (an opportunity *guaranteed* by the Constitution[5]), as she is being precluded by the trial court from raising any *legal* defenses she has to the charge, including lack of subject matter jurisdiction. Further, unless this Court decides Henry's interlocutory appeal before the trial date, Henry will be irreparably harmed by going to trial on unsupported charges.

34. Indeed, it is the court's duty to recognize when it has no authority to proceed.[6] But since the trial court fails to acknowledge its lack of subject matter jurisdiction here, with it being the judiciary's duty to enter permanent injunctive relief for these due process violations, *this court* must act now.[7]

35. 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.

36. 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."[8] In fact, 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*,

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[4] *Neder* at 8. See also, *Rose v Clark*, 478 US 570, 577 (1986); *Brookhart 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).

[5] *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).

[6] MJI, *Criminal Proceedings Benchbook*, Vol 1, Rev Ed, § 2.2; quoting *People v Clement,* 254 Mich App 387, 394 (2002); *Johnson* at 442.

[7] *MI Coalition of State Empl Unions v Civil Serv Com'n*, 465 Mich 212, 219 (2001).

[8] MJI, *Crim Proc Benchbook*, Vol 1, §2.2; quoting *In re Contempt of Dorsey,* 306 Mich App 571, 581 (2014).

452 Mich 43, 71 (1996).

37. 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 she can only avoid these substantial harms to her personal life, legal work, and political efforts "by seeking an immediate appeal." *Id*.

38. Moreover, this lack of jurisdiction may be raised at any time, and cannot be waived.[9]

39. But since the trial court fails to acknowledge its lack of subject matter jurisdiction here, with it being the judiciary's duty to enter permanent injunctive relief for these due process violations, *this court* must act now.[10]

40. In fact, 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."[11]

41. *Henry* did *not* initiate the arrest, the prosecution of the case, the deprivation of her rights throughout the case, the adding of the second unfounded charge, etc. It is not *Henry* who filed a complaint that failed to *state all the facts and circumstances constituting the statutory offense,*[12] as required; failed to serve and file briefs and affidavits as required by multiple court rules; failed to provide the *required* discovery; failed to comply with court rules and MSC Administrative Orders on E-service and redacting personal identifying information. Henry has a right to be protected from these due process violations, and the Prosecutor is not owed *extra* time to further deny Henry these rights.

42. Furthermore, if Prosecutor does not want Henry raising all of these due process violations in motions, then Prosecutor should have refrained from violating Henry's rights in the first place. The vast number of pages involved do not show Henry is unreasonable in asking the court to protect her *constitutionally* and *statutorily guaranteed rights* - but they *do* show how unjust and unreasonable the Prosecutor has been in prosecuting this case. Bottom line - *no accused* should have to pick which of their *constitutionally guaranteed rights* they want more. These rights are *all* guaranteed to each accused, and they are not mutually exclusive.

43. 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).

44. Prosecutor may think of this whole situation as just another "misdemeanor file," as referenced in Prosecutor's Statement of Question Presented on appeal, but this case has greatly impacted

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[9] *MI Coalition of State Empl Unions v Civil Serv Com'n*, 465 Mich 212, 219 (2001).
[10] *MI Coalition of State Empl Unions v Civil Serv Com'n*, 465 Mich 212, 219 (2001).
[11] *In re Certified Questions,* __ Mich __, __ (2020) (Docket No. 161492), slip op at 41 (citations omitted).
[12] *People v Husted*, 52 Mich 624 (1884).

Henry's entire life and health, and that of her husband and 8 year old daughter for over 19 months. Henry's daughter Emma was traumatized at 6 years old at seeing her mom so violently arrested for simply doing her job as an attorney. Being only 6 years ol on the date of the incident, the torture of this case has now continued for Emma for a *quarter of her life!*

45. Indeed, Henry would suffer irreparable harm if she was forced to endure a criminal trial where the court has no subject matter jurisdiction, especially 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]

46. Further, unless this Court grants Henry's requests for relief before the trial date, Henry will be *substantially* and *irreparably* harmed by going to trial on unsupported charges, with significant detrimental impacts on her personal life, legal work, and political efforts.

47. Henry must not be forced "to endure the personal strain, public embarrassment, and expense of a criminal trial"[14] when 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."[15] This personal strain, public embarrassment, expense of criminal proceedings has spanned more than 19 months already.

THEREFORE, Henry requests this Court look past the alleged *prohibiting parking* argument, recognizing this case for the *Constitutional Catastrophe* it is, and, therefore, grant her motion for immediate consideration and grant her interlocutory application for leave to appeal before the date of the settlement conference (7/7/22), ordering the trial court to dismiss the case with prejudice.

Respectfully Submitted: June 7, 2022

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

PROOF OF SERVICE FOR IMMEDIATE CONSIDERATION

The undersigned certifies the foregoing Motion for Immediate Consideration and Application for Leave to Appeal was served upon the parties named herein, pursuant to MCR 7.110, 7.211(C)(6), and 2.107(C)(1)(a) at the addresses listed above, by hand-delivery or email (if commonly accepted by opposing counsel, or allowed due to COVID19 Michigan Supreme Court recommendations) on June 6, 2022.

Respectfully Submitted: June 7, 2022

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

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[13] *People v Murray*, 89 Mich 276, 285 (1891) (emphasis added), citing *Hill v People,* 16 Mich 351, 357 (1868).
[14] *People v Torres*, 452 Mich 43, 61 (1996), quoting *Abney v US,* 431 US 651, 661 (1977).
[15] *Johnson* at 442; *Blackledge v Perry*, 417 US 21, 30 (1974).