

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

PEOPLE OF THE STATE OF MICHIGAN

No. 20-3569-SM

v.

Hon. William A. Baillargeon

KATHERINE LINDSEY HENRY  
\_\_\_\_\_ /

MYRENE KAY KOCH (P62570)  
Allegan County  
113 Chestnut Street, Allegan, MI 49010  
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\_\_\_\_\_ /

KATHERINE L. HENRY (P71954)  
Defendant In Pro Per  
\_\_\_\_\_ Hudsonville, MI 49426  
\_\_\_\_\_ (redacted per MCR 1.109)  
\_\_\_\_\_

**DEFENDANT'S MOTION TO DISMISS THE COMPLAINT  
(a.k.a. MOTION FOR SUMMARY DISPOSITION)**

*ORAL ARGUMENT REQUESTED PURSUANT to MCR 2.119(E)*

The Defendant, Katherine L. Henry, in proper person, moves this Court to grant these consolidated motions to dismiss the complaint for the following reasons:

1. Defendant was arrested and issued a Civil Infraction for Trespass under MCL 750.552.
2. This arrest stems from her circulating a constitutional amendment petition on election day, during voting hours, in Leighton Township parking lot 229 feet from the door to the precinct. Defendant was not impeding traffic or pedestrian access to the Township Hall. The clerk claimed she was violating an "ordinance" and wanted her to leave.
3. The deputy arrested Defendant, enlisting two other deputies to physically and forcibly restrain her with handcuffs, placing her in custody in his SUV, telling her she was going to jail, CPS was taking her 6 year old daughter, and her car was being impounded.
4. The service of process was insufficient; as a matter of law, constitutional due process

protections, and MCR 2.116(C)(3), this matter must be dismissed. The ticket served upon Defendant is nearly impossible to read, undoubtedly denying her proper notice. It also is substantially different from the ticket the deputy later filed with the court; meaning, he substantially altered the ticket after serving it upon her, thus committing a 15-year felony himself. Despite this case being commenced and served upon Defendant as a *civil infraction*, it is being prosecuted as a misdemeanor.

5. Incomplete citations also yield insufficient service, and he failed to write a description of the alleged illegal conduct, etc., serving Defendant with an incomplete citation; thereby committing misconduct in office (grounds for his termination) per MCL 257.728(7).
6. Defendant is entitled to a MCR 2.116(C)(2) dismissal because the *process issued* was insufficient. It was *issued and served* as a civil infraction on the *Civil Infraction Copy*, with the *civil infraction* box selected, and the box checked that “I served a copy of the *civil infraction* complaint upon the defendant.” The ticket cites “Trespass” MCL 750.552 but there is no *civil infraction* in MCL 750.552, nor is there a civil infraction elsewhere in the law for trespassing. Law enforcement cannot *enforce* a law that does not exist, and there exists no civil infraction trespass law with which Defendant may be charged.
7. The State has failed to state a claim on which relief can be granted; thus Defendant is entitled to a dismissal under MCR 2.116(C)(8). There is no “trespass” for a person on government property generally open to the public. On election day, additional interests apply, for both citizens and the state, therefore, state election law must be observed.
8. The “ordinance” used by the clerk and deputy is not an ordinance, but a resolution. The document declares itself to be a *resolution*. State law and case precedent clearly explain that resolutions may *not* be used to regulate the people; only ordinances can.

9. The resolution is preempted by state election law. The state can preempt a local regulation expressly, because the local regulation conflicts with the law, or because the state has “occupied the field” of regulation. Part 4 of the resolution itself recognizes it is preempted. The Michigan Constitution, giving the legislature sole authority to regulate elections, creates express preemption of local election regulations by state election law.
10. A township cannot legally enact a resolution in conflict with the state statutory scheme. State election law painstakingly describes the election powers of the township clerk, and those powers do *not* include the unilateral authority to determine which people may be outside the township building on election day. State law, prior Attorney General Opinions, and many Michigan Supreme Court cases all recognize that any member of the general public has the right to be present *even inside* the polls on election day, let alone *outside*, subject only to the specific provisions in state election law that ensure the integrity of the election process. One of these is the requirement to be 100 feet away from the door of the precinct, which Defendant abided by in circulating her petition 229 feet away from the door. Thus, a direct conflict exists between the resolution and state law because the resolution prohibits what the statute permits.
11. Since the state has occupied the entire field in the area of election regulation, the state has preempted local regulation of the same. Further, the comprehensiveness of the statutory scheme established by the state shows the preemptive intent.
12. Since the nature of the regulated subject matter demands uniform, statewide treatment, the local regulation here has been preempted by state regulation. It is solely the legislature’s job to maintain Michigan’s election integrity. Indeed, the *legislature* was

given constitutional authority to enact laws governing the entire election process. After all, unfettered discretion by the clerk, or even allowing the many municipalities to create their own set of election laws, would undermine the fairness and evenhandedness required by law to ensure the purity of elections here in Michigan.

13. To the extent a part of the township's resolution is not preempted by state election law, it is preempted by state traffic/vehicle laws. The comprehensiveness of the statutory scheme established shows a preemptive intent meaning local regulation regarding the movement and parking of vehicles is *field preempted* by the state laws. The resolution conflicts with state traffic/vehicle law in many ways, resulting in *conflict preemption* by the state law, as well. Further, MCL 257.605 *expressly preempts* the resolution.
14. The township's resolution is also an impermissibly overbroad regulation. There is a requirement for regulations to give citizens fair warning as to what is illegal, and for regulation involving freedom of speech and assembly to not be so broad as to stifle First Amendment freedoms. Thus, regulations prohibiting a substantial amount of constitutionally protected conduct may be facially overbroad even if they have a legitimate compelling state interest. So, with the resolution susceptible of regular application to protected expression, it is substantially overbroad and facially invalid.
15. By not providing adequate notice of the prohibited conduct and conveying unfettered discretion to the clerk, the resolution is also void for vagueness. Indeed, regulations must have appropriate limitations on the discretion public officials may exercise where speech and assembly are intertwined with the regulated conduct.
16. There is no genuine issue of material fact, and Defendant is entitled to judgment as a matter of law (MCR 2.116(C)(10)). Soliciting petition signatures involves protected

speech. The speech involved here is at the core of our electoral process and First Amendment freedoms - an area where protection of robust discussion is at its zenith. Since townships cannot legitimately enact regulations repugnant to the Constitution, and the expression of political preference is the bedrock of self-governance, it is not reasonable to conclude the resolution allowed the deputy to arrest Defendant for the expression of political preference done in compliance with state laws.

17. Under MCR 2.116(F), Defendant is allowed to file more than one motion on the various grounds found in MCR 2.116(C), and may combine these into one pleading.

18. Pursuant to MCR 6.002, this pleading is filed to ensure a “just determination of [this] criminal proceeding.” Moreover, Defendant files the four (4) distinct Motions (MCR 2.116(C)(2) Motion to Dismiss, MCR 2.116(C)(3) Motion to Dismiss, MCR 2.116(C)(8) Motion to Dismiss, and MCR 2.116(C)(10) Motion to Dismiss) in this one consolidated pleading, so as to “secure simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay” according to MCR 6.002.

19. Pursuant to MCR 2.119(A)(2), each distinct motion (with accompanying brief, exclusive of attachments and exhibits) may not exceed 20 pages. By consolidating the four distinct motions in one pleading, Defendant’s filing is at least 20 pages less than the combined maximum of pages per court rule. Further, the attached brief complies with the requirements of briefs under MCR 7.212, including page limits.

20. Our state constitution was established to secure our blessings of freedom from Almighty God *undiminished* to ourselves and our posterity. We, thus, guaranteed our right to free speech, to petition the government for a redress of grievances, and to

amend the state constitution. Therefore, soliciting petition signatures involves protected speech and any attempt to regulate it necessarily infringes upon that speech.

21. So, although the deputy claims Defendant was in violation of state law, he charged her with criminal trespass upon public property while circulating a petition on election day - an act which is constitutionally protected and which was done with full compliance of relevant state laws. Indeed, a person could not be a trespasser while in the pursuit of her lawful business, i.e., cannot be treated as a trespasser for doing what she had a right to do. So, if she is given a command to stop engaging in speech constitutionally protected under the circumstances, the command is by definition, unlawful.

22. Deputy Langlois obviously forgot the oath he took to support the US and Michigan Constitutions, but Defendant has not forgotten *her* Constitutional oath. She is asking the prosecutor and this Court to remain mindful of theirs.

Therefore, with it being the duty of the courts (and prosecutors) to ensure the constitutional rights of the defendant in a criminal case shall not be violated, Defendant asks this Court:

- A. To dismiss the complaint with prejudice.
- B. To order that “the arrest record shall be removed from the internet criminal history access tool (ICHAT),” pursuant to MCL 764.26a(1)(a).
- C. To 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).

Respectfully Submitted: January 13, 2021

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

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**BRIEF IN SUPPORT OF DEFENDANT'S  
MOTION TO DISMISS THE COMPLAINT  
(a.k.a. MOTION FOR SUMMARY DISPOSITION)**

ORAL ARGUMENT REQUESTED

Respectfully Submitted: January 13, 2021

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## STATEMENT OF FACTS

Defendant is a licensed attorney in Michigan.<sup>1</sup> In April 2020, Defendant began explaining the Executive Orders, relevant state law, and the US and Michigan Constitutions to citizens across Michigan, and has been asked to appear on dozens of radio and TV shows to do just that. She started posting informational Facebook videos in May 2020, adding YouTube in October. Tens of thousands of people regularly watch her video updates about legal topics. In May 2020, Defendant authored the Restore Freedom Initiative (RFI) Petition, which appeared on the secretary of state website a week later. RFI is a constitutional amendment petition to better ensure fundamental rights of Michiganders and providing clearer boundaries for government action. Much of 2020 the state was on lockdown with most of the “usual” larger events cancelled, which severely limited the opportunities for collecting larger amounts of signatures. Thus, the RFI team decided having circulators at the polls on election day was the best way to secure having enough signatures (425,059) by the deadline of November 26, 2020. In preparation, an Election Day circulator application, Success Toolkit (a summary of relevant laws),<sup>2</sup> and training video were posted on the RFI website. Knowing questions would arise from petition circulators on election day, Defendant was taking calls and answering text messages. She was preparing to head to a nearby polling precinct to help a circulator<sup>3</sup> when she received text messages from Doreen Dill, who was circulating the petition with Rebecca Pfauth in the Leighton Township Hall parking lot, which houses two polling precincts.

Doreen and Rebecca had arrived at the township at 11:00am, setting a small table

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<sup>1</sup> First admitted in MN, then MI, East. Dist. of MI, West. Dist. of MI, Saginaw Chippewa Tribal Ct, US Sup. Ct.

<sup>2</sup> Exhibit 2, Election Day Success Kit.

<sup>3</sup> Defendant pasted relevant election laws on a PDF, and printed copies for circulators and police to discuss; also posting it on the RFI website, so other circulators experiencing similar issues could quickly reference a more detailed explanation of the laws involved. See Exhibit 3, Detailed Election Day Laws.

at her tailgate, with four yard signs and some small American flags placed in the ground right next to her vehicle. At 11:20am, the township clerk came to tell them they couldn't be there because of the township's "ordinance." Deputy Langlois came over, threatening to arrest Doreen if she did not leave because the clerk said she didn't want people there circulating the petition. When Rebecca asked Deputy Langlois where the property line was, so she could ask the neighbor to set up there, he said she couldn't do that (even with the property owner's permission) because people could not walk across the grass from the township parking lot to sign the petition. With the deputy there, people did not come to sign as often. When Deputy Langlois was talking to Doreen, a guy came to sign, so Rebecca told him about RFI. Deputy Langlois interrupted her, saying she had to stop telling him about it *and* that the guy couldn't sign. Rebecca walked to the guy's vehicle with him and gave him a small paper with some info on it and told him to check out the website.

When Defendant spoke with the deputy on the phone, he kept saying they were violating MCL 168.931k. Defendant read the entire sentence of that law, but the deputy insisted she had not read the entire thing. She asked him to check it then to make sure he was viewing the most current version. He became combative and said he was not going to argue with her about the law and that he was simply going to arrest Doreen if she did not leave. Defendant said he did not have the right to do that and told him she was on her way to discuss it with him in person. He said he would be waiting there for Defendant.

Upon arriving at the township hall, Defendant saw the deputy was not there, but the circulators were set up on the far West edge of the lot, the vehicle backed onto the grass with the tailgate opened toward the parking lot.<sup>4</sup> She parked right next to them, backing

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<sup>4</sup> See Exhibit 4, Satellite View of Parking Lot.

into the grass so her car was also entirely off the pavement. Her 6 year old daughter Emma was in the backseat, doing school work and eating snacks. With her car backed into the space, and Emma facing forward in her car seat, she saw everything Defendant was doing, which was roughly 10-15 feet from Defendant's car. Several people came to sign the petition while Defendant was there. She continued checking on Emma to make sure she stayed focused on her school work. Defendant was informed the township had a painted marker indicating the 100-ft line in the pavement of the parking lot. Defendant and her car were quite a ways away from that 100-ft line.<sup>5</sup> Their vehicles, their few yard signs, and Doreen's 18"-wide three-foot-long table were set up so that none were impeding traffic nor the ability for people to have ingress or egress with the polling precinct in any way.

When the deputy arrived, he was immediately combative. He barked that they had to leave or he would arrest them. Defendant tried talking with him about the law and he said he didn't care what the law said, that was not his job and she could bring up all that when she had her day in court. She tried repeatedly to get him to look at the law to no avail. He then said they were violating a township "ordinance."<sup>6</sup> Defendant asked him to read the language of paragraph four of the resolution, as it clearly explained they had the right to be there on election day as long as they were behind the 100-ft line. He refused.

He went into the township hall, coming back to tell them the property owner asked them to leave so if they did not leave, they would be guilty of criminal trespass. Defendant asked him who he thought the property owner was and he said it was the clerk. Defendant told him 'we the people' own that public property. He asked her if she was the one who paid the bill to cut the grass. A voter there to sign the petition said that he, as a voter who

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<sup>5</sup> See Exhibit 5, Scene Photos, and Exhibit 6, Satellite Measurement from Door to Defendant.

<sup>6</sup> Exhibit 7, Township Property Public Access Resolution.

pays taxes in the township, is an owner of the property who pays to cut the grass. Deputy Langlois just said it was private property, and the “ordinance” said they couldn’t be there.

The deputy had two more deputies come on scene. He then went inside and had the clerk come out. When Doreen tried to talk with her, the deputy interrupted and said the clerk needed to talk. The clerk said paragraph three of the resolution says Defendant (and those with her) can't be there after they “completed township business.” The clerk and the deputies said the only “township business” would be voting in that precinct. Defendant explained paragraph four applies to the whole resolution and acknowledges the resolution cannot diminish their right to circulate a petition beyond the 100 ft. The clerk replied that paragraph four had nothing to do with her demand that Defendant leave the property.

The deputies continued to insist that they leave and told them if they did not, they would be arrested. When voters approached to sign the petition, the deputies told them they were not allowed to sign and must leave.<sup>7</sup> When deputies asked Defendant if she was going to leave, she asked for a few minutes to talk with them about what the law actually said, but they refused. One deputy whispered to the other, then they quickly walked back toward Defendant, where one violently and aggressively grabbed her left arm. The other deputies got involved, all three men now manhandling her. She asked to set her phone down, so it didn’t break, but they refused, also refusing to allow her to hand her car keys to Doreen. They forcefully dragged her away from her car. She yelled that her child was in her car, so she needed to give her car key to Doreen or Rebecca to supervise her.

The deputies used excessive force, hurting Defendant the entire time they had their hands on her. She cried out that they were hurting her; they all ignored her. She feared

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<sup>7</sup> Exhibit 8, Video of Incident at 25:05 and Exhibit 1, Affidavits of Witnesses.

what would happen next. None put a hand on her head so it wouldn't hit the door frame while literally being thrown into the deputies' SUV. She begged them to allow her to *sit down* in the SUV instead of being *thrown* in so violently. They refused. One deputy picked her up, shoving her in while another pulled her in, slamming the door shut. Screaming in pain, she realized something was very wrong with both arms, especially her left wrist.

Combined with Defendant's asthma, and with her crying out in pain, the heat in the SUV made it extremely difficult for her to breathe. She was begging for the deputies right outside the door to either open the door a crack or open the window so she could breathe, but they refused. Eventually, they opened the door. She asked them to allow her to call her husband to come pick up their daughter. She had been hearing her phone ring several times and asked them to please answer it if they saw it was her husband. They refused. She asked for her bottled water, explaining her medical condition made it harder to talk or answer their questions. Deputy Langlois refused, saying "since you're being difficult, you can't call your husband." She asked "are you saying I'm being difficult because I asked to drink my water?" He replied "yes." She asked if he could either remove her handcuffs or, at least, move them to the front of her body. She explained they were causing her quite a bit of pain. He flat out refused and instructed the other deputies to do the same. He said she was arrested for trespassing and going to jail, and since she was not allowed to call her husband, CPS would come take Emma, and her car would be impounded. He never did let her call her husband, and she was never read her Miranda rights.

Deputy Langlois walked away and Defendant asked the other deputies if she could have some of her bottled water that was nearby. Deputy Anderson agreed and tried to assist her in drinking some water out of the tall bottle, but it was too difficult with her arms

behind her back, so he started moving the handcuffs to the front. Upon him unlocking the handcuffs, Defendant realized how badly her arms and wrists were hurting, asking him to give her a moment without them on to reduce some of the pain. He did not allow that, but Deputy Bussell said that he would double lock the handcuffs, this time, so they would not continue to tighten on her as they had been doing. Deputy Anderson then handed her the water again so she could drink it on her own. They shut the door on her for a while.

When Deputy Langlois came back, he told Defendant she had one last chance to vote, take her child home, and avoid having her car impounded. He said she could go to jail for trespassing, have CPS take Emma and have her car impounded, *or* leave, take Emma home, go vote, and accept responsibility for trespass charges. She said she would leave so she could care for Emma and go vote. He said he would only let her do that if she was not “difficult” anymore, which scared her because he was calling her difficult for merely needing some water. He then noticed she had her water in her hands and that her handcuffs had been switched to the front. He looked angrily at the other deputies and said “you moved her handcuffs to the front!?!” Having confirmed Emma was truly in the car, he confronted her saying she should not have brought her there. Defendant explained she brought her, as she would be exercising her constitutionally protected rights to circulate a petition. He then suggested he was going to have CPS come and take Emma after all.

Deputy Langlois then got in the front of the SUV, shut all of the doors and continued to ask her questions. He said she was receiving trespass charges and started looking for the appropriate MCL. He stated he wanted to charge her with an “election day” statute, but was not able to find it. When the other deputies and dispatch were unable to give him the answer he was looking for, Defendant told him the MCL for circulating petitions on

Election Day at the polls was 168.744 subd. 2, but since she was beyond 100 ft, he would likely not want to use that one in charging her. She said if he is looking for the general trespass statute, it is probably in chapter 750 of MCL, and if he wanted to hand Defendant her cell phone, she could find the exact MCL within that chapter. He did not respond.

Deputy Langlois' SUV had been parked at an angle blocking the entire northwest corner of the parking lot. Deputy Bussell came to the window and told Deputy Langlois he needed to move his SUV because Langlois' SUV was impeding traffic for voters. Six cars were seen then trying to maneuver around Langlois' SUV which blocked their ability to flow naturally out of the lot. Deputy Langlois then moved his SUV opposite of the precinct entrance, and directly in front of Defendant's car. He then said the Sheriff offered to speak with her. The call on speakerphone included the Captain, the Sheriff, and a third person. Deputy Langlois started the call saying he tried to peacefully resolve the situation all along, but Defendant had been aggressive by live streaming it and telling him he didn't have legal authority to arrest her for circulating. Defendant asked the Sheriff how the clerk could stop her from collecting signatures on election day. He said she could ask to have Defendant prosecuted for trespassing since the clerk had control over the property. The call ended, Deputy Bussell unlocked the handcuffs, and Deputy Langlois handed Defendant the ticket. The carbon copy being very hard to read, she asked Deputy Langlois questions to ensure she was reading it correctly. He acted very irritated and told her she just needed to leave.

Out of the SUV, Defendant now saw her friends and husband, whose cars impeded no traffic or pedestrian access. Deputy Langlois threatened to arrest anyone staying, so they picked a nearby park to discuss the incident. In her car, Defendant saw Emma crying, having seen it all. Crying more, Emma said she was scared to see "the police putting

chains on mommy and dragging her away.” At the park moments later, Defendant realized her entire body hurt, elbow was bleeding, left wrist was visibly swollen and the skin cut from the handcuffs, her upper right arm felt severely bruised, as did her right thigh.<sup>8</sup>

Around 5:45pm, Deputy Anderson went to Otsego Township Hall, approached some circulators and asked about their petition, and signed it.<sup>9</sup> He then thanked them for doing “it” right, telling them he had to fine a circulator earlier because there is not only the “100 ft requirement” to circulate a petition at a polling precinct on election day, but it is still trespassing if the township officials simply don’t want you there and they tell you to leave.

Deputy Langlois did not file the ticket with the court until after Defendant called the court and the sheriff’s office on November 12, 2020, asking for a court date.

### **ARGUMENT**

We the people hold the sovereign power.<sup>10</sup> Government is instituted to secure our God-given unalienable rights:<sup>11</sup> to be free from discrimination, bills of attainder and ex post facto laws, unreasonable searches and seizures, excessive bail and fines, cruel and unusual punishments, forced self-incrimination, and deprivation of life, liberty or property without due process of law; rights to speedy and public jury trials, to be informed of the nature of the accusation, to appeal, etc.<sup>12</sup> To secure these rights so fundamental to a free society, we are guaranteed the freedom of speech and the press, the right to bear arms,

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<sup>8</sup> Exhibit 9, Injury Photos.

<sup>9</sup> Exhibit 10, Signed Petition.

<sup>10</sup> See, our Republican Form of Government (US Const, art VI) and Const 1963, art I, § 1 “All political power is inherent in the people.” “We the People of the United States” to “secure the Blessings of Liberty” “establish[ed] [the] Constitution.” US Const, Preamble. “We, the people of the State of Michigan, grateful to Almighty God for the blessings of freedom and earnestly desiring to secure these blessings undiminished to ourselves and our posterity,” “establish[ed] [our state] constitution.” Const 1963, Preamble.

<sup>11</sup> The Declaration of Independence explains we are all “endowed by [our] Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed.” Also, we have the right to worship God according to the dictates of our own conscience (Const 1963, art I, § 4) and exercise our many unenumerated rights (Const 1963, art I, § 23 and US Const, Am IX), etc.

<sup>12</sup> Const 1963, art I, §§ 2, 10, 11, 16, 17, 20.

peaceably assemble, consult for the common good, instruct our representatives, and petition the government for a redress of grievances; the right to recall elective officers, initiate legislation, and amend the state constitution.<sup>13</sup> These rights are retained by us to be enjoyed “undiminished,” unrestrained, and unabridged.<sup>14</sup>

So, it is unfathomable how so many of these rights were violated in this one case.<sup>15</sup> These violations provide ample basis for dismissal on four distinct grounds. And if local 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.”<sup>16</sup> The “Court’s fidelity to the Michigan Constitution”<sup>17</sup> is crucial because “[g]overnments act *on behalf of the people*”<sup>18</sup> with all their authority *derived from* the people.<sup>19</sup> In other words, “the Constitution created a form of government under which ‘The people, not the government, possess the absolute sovereignty.’”<sup>20</sup> The Supreme Court explained “there is no more constitutionally significant

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<sup>13</sup> Const 1963, art I, §§ 5, 6, 3; art II, §§ 8, 9; art XII, § 2.

<sup>14</sup> See, Const 1963, Preamble, and art I, § 5.

<sup>15</sup> This being Defendant’s first responsive pleading, she must raise each now or risk being prohibited from doing so. MCR 4.001 applies rules of civil procedure to actions in district court, while MCR 6.001(D) makes the rules of civil procedure applicable to misdemeanors. Thus, according to MCR 2.111(F)(2), Defendant must assert her defenses in this responsive pleading, which may otherwise be waived. MCR 2.111(F)(3) requires her affirmative defenses to be stated in this pleading, including “defense[s] that by reason of other affirmative matter seek to avoid the legal effect of or defeat the claim of the opposing party.” Defendant’s affirmative defenses overlap with the grounds for her Motion for Summary Disposition (MSD) under MCR 2.116(C)(2), (3), (8) and (10). Further, the grounds for her MSD must (at least in part) be raised in this first responsive pleading, or else they are waived, per MCR 2.116(D)(1). Thus, according to MCR 2.116(E), Defendant is consolidating her affirmative defenses into the grounds asserted for this MSD.

<sup>16</sup> *In re Certified Questions*, \_\_ Mich \_\_, \_\_ (2020) (Docket No. 161492), slip op at 41 (internal citations omitted). Similarly, it “is beyond reasonable dispute that a trial court has the authority, and, in appropriate cases, *the duty*, to enter permanent injunctive relief against a constitutional violation.” *MI Coalition of State Empl Unions v Civil Serv Com’n*, 465 Mich 212, 219 (2001).

<sup>17</sup> *Lansing Sch Ed Ass’n v Lansing Bd of Ed*, 487 Mich 349, 369 (2010).

<sup>18</sup> *Upper Peninsula Power Co v Village of L’anse*, \_\_ Mich App \_\_ (2020) (Docket No. 349833), n 6 (emphasis added).

<sup>19</sup> “A constitution is made for the people and by the people. . . . [T]he Constitution . . . derive[s] its force from the . . . people who ratified it” (*Citizens Protecting Michigan’s Constitution v Sec’y of State*, 503 Mich 42, 61 (2018)) and contains “every thing that relates to the complete organization of a civil government, and the principles on which it shall act, and by which it shall be bound.” *Id.* at n 90 (internal citations omitted). “Its most basic functions are to create the form and structure of government, define and limit the powers of government, and provide for the protection of rights and liberties.” *Id.* at 81.

<sup>20</sup> *Citizens* at n 90 (internal citations omitted).

event than when the wielders of '[a]ll political power' under that document, Const 1963, art I, § 1, choose to exercise their extraordinary authority to directly approve or disapprove of an amendment thereto,"<sup>21</sup> thus recognizing the people's right to amend the constitution by petition finds protection in First Amendment and Const 1963, art I, § 5 free speech, *and* Const 1963, art XII, § 2 petition rights.<sup>22</sup> The US Supreme Court tells us "the solicitation of signatures for a petition involves protected speech . . . [covered by] the First Amendment, and [] any attempt to regulate solicitation would necessarily infringe that speech."<sup>23</sup>

On this basis, we address the authority of the deputy to arrest Defendant for trespass for circulating a constitutional amendment petition on township property on election day beyond the 100 ft. mark. Inasmuch, the "decision whether alleged conduct falls within the statutory scope of a criminal law involves a question of law,"<sup>24</sup> thus properly within the scope of a motion to dismiss. Indeed, "[i]f a defendant is given a command to stop engaging in speech that is constitutionally protected under the circumstances [like circulating a petition on township property on election day outside of the 100 ft. required boundary], the command is by definition unlawful."<sup>25</sup> Consequently, with only the law, and not the facts, being disputed here, the Defendant is entitled to a dismissal without delay.

#### **I. The service of process was insufficient**

The service of process was insufficient, thus, this case must be dismissed.<sup>26</sup> In a criminal case, "the accused shall . . . be informed of the nature of the accusation."<sup>27</sup> This

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<sup>21</sup> *Citizens* at 59.

<sup>22</sup> See *Citizens* at n 18 (discussing the right to amend the Constitution by direct initiative, propose and enact statutes by initiative, reject statutes by referendum, and to recall elected officials).

<sup>23</sup> *Meyer v Grant*, 486 US 414, n 5 (1988).

<sup>24</sup> *People v Noble*, 238 Mich App 647, 658 (1999).

<sup>25</sup> *People v Hamlin*, unpublished per curiam opinion of the Court of Appeals, issued December 10, 2015 (Docket No. 321352), vacated in part on other grounds by *People v Hamlin*, \_\_\_ Mich \_\_\_, \_\_\_; 894 NW2d 547 (2017), Exhibit 13, 321352\_dual.pdf.

<sup>26</sup> MCR 2.116(C)(3).

<sup>27</sup> Const 1963, art I, § 20. See also US Const, Am VI.

gets the procedural aspect of due process protections (*how* the case proceeds), but also the substantive aspect (*what kind* of case is proceeding). After all, “the Due Process Clause offers two separate types of protections - substantive and procedural [where] [p]rocedural due process requires notice, an opportunity to be heard, and an impartial decisionmaker.”<sup>28</sup> Further, the “constitutional safeguards relating to the integrity of the criminal process attend every stage of a criminal proceeding, starting with arrest.”<sup>29</sup> Yet, Defendant’s substantive *and* procedural due process rights were infringed throughout this incident, even the manner in which she was provided “notice” of these court proceedings.

#### **A. Illegible citation provides insufficient service**

On November 3, 2020, Defendant was issued Ticket SH 166684,<sup>30</sup> and the copy with which Defendant was served is nearly impossible to read for the incident number section, date, case type, MCL Cite, Description, Complainant’s Signature, Officer’s Name, and Officer’s ID number. This undoubtedly denies Defendant proper notice when much of the ticket is illegible. In utilizing the carbon copy tickets, the officer *must* ensure that the copy given to the defendant is legible. If the officer does *not* so ensure legibility, the defendant has not been given notice of those elements at all. Leaving Defendant to a guessing game to figure out what was written on the ticket is nowhere near complying with the due process requirements of the Fifth and Fourteenth Amendments of the US Constitution or of art I, § 17 of Const 1963; nor does it come close to complying with the aforementioned right of defendants to be informed of the nature of the accusation.

#### **B. The ticket served is substantially different than the ticket filed**

There is also insufficient service of process upon a defendant when the ticket

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<sup>28</sup> *Upper Peninsula Power Co*, slip op at 8 (internal citations omitted).

<sup>29</sup> *Cox v Louisiana*, 379 US 559, 562 (1965).

<sup>30</sup> Exhibit 11, Civil Infraction Copy of Ticket 166684.

served upon defendant is substantially different than the ticket *filed* by the deputy in court. Again, Defendant was issued Ticket SH 166684 on the CIVIL INFRACTION COPY, with the civil infraction “C/I” box checked for TYPE, 750.552 listed for MCL CITE and the DESCRIPTION listed as Trespass. But *when the ticket was turned in to the court*,<sup>31</sup> the time had been filled in, the date of birth had been filled in, the “C/I” box for TYPE was scribbled out and the “Misd” box had been checked, REMARKS had been added (“Asked to leave many times”), ACTIVE MILITARY STATUS was marked “No,” and the APPEARANCE CERTIFICATE box was checked. In other words, the ticket filed with the court had been substantially altered by Deputy Langlois *after* serving it upon Defendant.

However, “[A] civil infraction action is commenced upon the *issuance and service* of a citation,”<sup>32</sup> so, the case against Defendant commenced on November 3rd upon Deputy Langlois issuing and serving Defendant civil infraction Ticket SH 166684. Pursuant to MCL 257.742(1), the “original and 3 copies of [the] written citation, which shall be a notice to appear in court” were “prepared and subscribed” by Deputy Langlois. Then, according to MCL 257.742(5) and MCL 257.727c (d), Defendant was served the “third copy” of the citation. Thus, according to MCL 257.727c and MCL 764.1e(2), signing the citation and serving Defendant with a copy served as Deputy Langlois’ declaration “under the penalties of perjury that the statements [served upon Defendant, and also on the copy filed with the court] are true.” Yet, the statements he filed with the court - in the substantially modified ticket - are a false representation of the ticket issued and served upon Defendant.

With this in mind, we turn to MCL 257.728d, which states that “[w]hoever knowingly *falsifies a citation or copies thereof or a record of the issuance of the same . . . or attempts*

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<sup>31</sup> Exhibit 12, Court Copy 1 of Ticket 166684.

<sup>32</sup> MCL 257.741(1), emphasis added.

so to falsify or dispose . . . shall be fined not more than \$500.00 or imprisoned in the county jail for a term not to exceed 1 year, or both.” Even more so, an “officer who, knowing the statement is false, makes a materially false statement in a citation issued under section 742 is guilty of perjury, a felony punishable by imprisonment for not more than 15 years, and in addition is in contempt of court.”<sup>33</sup> Likewise, MCL 764.1e(2) states “[a] peace officer who, knowing the statement is false, makes a materially false statement in a complaint signed under subsection (1) is guilty of perjury, a felony punishable by imprisonment for not more than 15 years, and in addition, is in contempt of court.”

Comparing the ticket served upon Defendant to the one Deputy Langlois subsequently filed in court reveals that he falsified the original ticket by significantly altering it *after* commencement of the action (when he served Defendant with the copy - which, by definition, must be identical to the original filed with the court) and falsified the “record of issuance of the same” by misleading the court to believe Defendant had been served with a criminal misdemeanor citation. Considering that “[c]riminal statutes must be strictly construed, with each word interpreted according to its ordinary and common meaning,”<sup>34</sup> it is clear that the service of process upon Defendant is grossly and intentionally insufficient, that Deputy Langlois has committed a felony in this case, and that because he is guilty of perjury and contempt of court, this case must be immediately dismissed with prejudice.

**C. Despite case being commenced and served as a civil infraction, it is being prosecuted as a misdemeanor**

Contemplating *criminal charges*, the deputy threatened another petition circulator with *arrest*, before Defendant even arrived. When she did arrive and ask to speak with the deputy about the situation (as stated on the phone call), he refused, saying that if she did

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<sup>33</sup> MCL 257.744a.

<sup>34</sup> *Noble*, at 659 (1999), citing *People v McCullough*, 221 Mich App 253, 255 (1997).

not leave, *she* would be *arrested*. After a few minutes of Defendant attempting to speak with the deputy about her legal right to be there, *he did arrest her*, enlisting the help of two other deputies to physically and forcibly restrain her with handcuffs, *placing her in custody* in the back of his vehicle. He repeatedly stated he was taking Defendant to jail, having her vehicle towed, and having a CPS worker come to take custody of her 6 year old daughter.

However, officers are *not* allowed to arrest people for civil infractions.<sup>35</sup> When an officer witnesses a person violating a civil infraction law, the officer “may [only] stop the person, detain the person temporarily for purposes of making a record . . . and prepare and subscribe, as soon as possible and as completely as possible, an original and 3 copies of a written citation, which shall be a notice to appear in court.”<sup>36</sup> Indeed, MCL 764.15 only allows an officer to arrest a person without a warrant under certain circumstances, one of which is when a “felony, misdemeanor, or ordinance violation<sup>37</sup> is committed in the peace officer’s presence.”<sup>38</sup> However, once a lawful arrest has been made, the officer must either immediately take the defendant before a magistrate, presenting the complaint stating the criminal charges,<sup>39</sup> or “issue to and serve upon the person an appearance ticket”<sup>40</sup> “directing [the defendant] to appear in a designated local *criminal* court at a *designated* future time.”<sup>41</sup> However, the deputy delivered to Defendant

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<sup>35</sup> This complies with US Const, Am. IV, which secures the people “against unreasonable searches and seizures,” and the similar provision found in Const 1963, art I, § 11.

<sup>36</sup> MCL 257.742(1). MCL 257.742(5) states “the officer shall inform the person of the alleged civil infraction or infractions and shall deliver the third copy of the citation to the alleged offender.” But the copy given to Defendant did *not* list an alleged civil infraction, nor did the officer inform her of any alleged civil infraction.

<sup>37</sup> An “ordinance violation” is defined by Act 175 of 1927 as “a violation of an ordinance or charter . . . that is punishable by imprisonment or a fine that *is not* a civil fine.” MCL 761.1 (o)(i).

<sup>38</sup> A fundamental concept law enforcement must understand is when they have legal authority to arrest. And a *lawful* arrest is “the taking of a person into legal custody either *under a valid warrant* or on probable cause that the person has *committed a crime*.” *Black’s Law Dictionary* (8th ed), p 116.

<sup>39</sup> MCL 764.13.

<sup>40</sup> MCL 764.9c (1).

<sup>41</sup> MCL 764.9f (1).

“the third copy” of the ticket to be used when “the violation is a civil infraction,” and *not* “the second copy which shall be delivered to the alleged violator if the violation is a misdemeanor.”<sup>42</sup> Meaning, Deputy Langlois *never* served Defendant a *criminal* ticket, let alone one directing her to report to the local criminal court at a designated future time.

Why is this distinction so important? Civil infractions are processed much differently than misdemeanors, and they have vastly different consequences. Act 300 of 1949 explains that “‘Civil infraction’ means an act or omission prohibited by law which is not a crime.”<sup>43</sup> “A civil infraction action is a *civil* action,”<sup>44</sup> whereas misdemeanor cases are governed by *criminal* procedure.<sup>45</sup> “If a person wishes to deny responsibility for a civil infraction, the person shall do so by appearing for an informal or formal hearing,”<sup>46</sup> and “[a]n informal hearing will be held unless a party expressly requests a formal hearing.”<sup>47</sup> However, misdemeanor cases include arraignments and pre-trials,<sup>48</sup> and defendants pleading not guilty are scheduled for a trial by jury.<sup>49</sup> The 57th District Court explains how “an informal hearing [is] different from a trial” by stating “The attorney magistrate, rather than the district judge, usually presides over the hearing. Neither side may be represented by an attorney. There is no jury and no court reporter.”<sup>50</sup> Civil infraction appeals are governed by MCR 4.101(H), while misdemeanor appeals are governed by MCL 770.3 and MCR Chapter 7. Additionally, misdemeanor defendants have a “right to [a] speedy trial,”<sup>51</sup>

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<sup>42</sup> MCL 257.727c (1)(c)-(d).

<sup>43</sup> MCL 257.6a.

<sup>44</sup> MCL 257.741 (1).

<sup>45</sup> MCR 6.001(B).

<sup>46</sup> MCL 257.745 (5).

<sup>47</sup> MCR 4.101(F) and MCL 257.745 (5).

<sup>48</sup> 57th District Court website, *District Court - Criminal* <[cms.allegancounty.org/sites/office/DC/SitePages/Criminal.aspx](https://cms.allegancounty.org/sites/office/DC/SitePages/Criminal.aspx)> (accessed December 10, 2020).

<sup>49</sup> MCL 774.1b.

<sup>50</sup> 57th District Court website, *Hearing FAQs*

<[cms.allegancounty.org/sites/office/DC/Lists/HearingFAQs/Default.aspx](https://cms.allegancounty.org/sites/office/DC/Lists/HearingFAQs/Default.aspx)> (December 10, 2020).

<sup>51</sup> MCR 6.004(A).

while civil infraction defendants do not. Likewise, “the trial of criminal cases must be given preference over the trial of civil cases.”<sup>52</sup> Thus, issuing a defendant a civil infraction ticket provides entirely insufficient notice for a criminal case to proceed against her.

But Defendant was issued Ticket SH 166684 on the “Civil Infraction Copy,” with the civil infraction (C/I) box checked for TYPE, listing the MCL CITE as 750.552 and “Trespass” as the DESCRIPTION. The deputy even checked the box “I served a copy of the civil infraction upon the defendant . . . I declare under penalties of perjury that the statements above are true to the best of my information, knowledge, and belief.” By serving Defendant the Civil Infraction Copy, checking the civil infraction box for type, and checking that he “served a copy of the civil infraction upon the defendant,” the deputy put Defendant on notice she was charged with a civil infraction for the November 3rd events.

Thus, as aforementioned, from that point on November 3rd, the civil infraction action had commenced, and Deputy Langlois was required by MCL 257.728a(1) to “deliver to his . . . [chief law enforcement officer of the department] or to a person duly authorized by [that] chief to receive citations all copies of such citation duly signed” by “the completion of his . . . tour of duty” that day. MCL 257.728a(1) also requires the chief law enforcement officer of the department “or a person duly authorized by” in the department to “deposit the original of the citation with the court . . . not later than 3 days after the date of the citation,” which was Friday, November 6th. However, as explained in detail in Exhibit 1, upon Defendant calling both the district court and the Allegan County Sheriff’s Office, it was revealed Deputy Langlois had not even turned in the ticket to his superiors, nor filed it with the court, by Thursday, November 12th. (This precluded Defendant from being able to

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<sup>52</sup> MCR 6.004(B).

make her denial within the time period required by MCR 4.101 and the 10-day Appearance Date printed on the ticket.) After receiving the call from Defendant inquiring about the status of the ticket, Allegan County Sheriff's Office ticket processor Amber contacted Deputy Langlois regarding turning in and filing the ticket, which led to him filing the ticket near the close of business on November 12th. Due to the misrepresentations made by Deputy Langlois, the matter was from that point on treated as a misdemeanor case.

#### **D. Incomplete citations yield insufficient service**

Whether charging the accused with a civil infraction or misdemeanor, due process in both the US and Michigan Constitutions requires adequate notice and opportunity to be heard.<sup>53</sup> The law requires the "notice" be "prepare[d] . . . as completely as possible,"<sup>54</sup> yet the ticket given to Defendant has *absolutely no descriptive words* of the alleged illegal conduct. So too, MCL 257.728(1) orders "the arresting officer shall prepare, as soon as possible and *as completely as possible*, an original and 3 copies of a written citation to appear in court containing . . . the violation charged," yet the deputy failed to describe the violation at all, let alone completely. The Code of Criminal Procedure also requires that "[a] complaint shall recite the substance of the accusation against the accused," but the deputy included no substance of the accusation, instead just listing "MCL 750.552 Trespass." Also, MCL 257.742 (5) commands that the "officer shall inform the person of the alleged civil infraction or infractions *and* shall deliver the third copy of the citation to the alleged offender," yet the deputy never informed Defendant of any alleged civil infraction, instead merely delivering to her the third copy of the citation. So, while the ticket served on Defendant provides inadequate notice since the only law cited on the *civil infraction*

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<sup>53</sup> "Procedural due process requires notice, an opportunity to be heard, and an impartial decisionmaker." *Upper Peninsula Power Co*, slip op at 8 (internal citations omitted).

<sup>54</sup> MCL 257.742(1). See MCL 257.743(1), "the citation issued . . . shall contain . . . the civil infraction alleged."

ticket is *not a civil infraction*, it is also deficient in providing notice because it does not describe the alleged illegal conduct in any way. These notice provisions are so essential to due process that MCL 257.728 (7) even declares that any “officer or magistrate who violates this section is guilty of misconduct in office and subject to removal from office.”

## **II. The process issued in the action was insufficient**

In addition to the *service* of process being wholly insufficient, so too is the process of action itself, giving rise to another reason why this case must be dismissed.<sup>55</sup> The “Due Process Clause offers two separate types of protections - substantive and procedural.”<sup>56</sup> In criminal cases, “the accused shall . . . be informed of the nature of the accusation.”<sup>57</sup> This gets to not only the procedural aspect of due process protections (or *how* the case proceeds), but also the substantive aspect (*what kind* of case is proceeding). Here, the process of action *issued* was insufficient, meaning the *kind* of action commenced in this case has no basis in law. As discussed above, the process of action *issued* and *served* on Defendant was a civil infraction, which commenced the civil action against her, according to MCL 257.741(1). As seen in MCL 257.743, the notice by citation for civil infractions must include “the civil infraction alleged;” however, there is no civil infraction alleged on the ticket. Instead, the only allegation made against Defendant is that of trespass - a *criminal misdemeanor*, cited as MCL 750.552. Indeed, there exists no civil infraction in MCL 750.552 for trespass. Law enforcement cannot *enforce* a law that does not exist, and there exists no civil infraction trespass law with which Defendant may be charged.

## **III. The State has failed to state a claim on which relief can be granted**

Although the deputy marked on the ticket that Defendant was “in violation of State

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<sup>55</sup> MCR 2.116(C)(2).

<sup>56</sup> *Upper Peninsula Power Co*, slip op at 8 (internal citations omitted).

<sup>57</sup> Const 1963, art I, § 20. See also US Const, Am VI.

Law,” he charged her with criminal trespass upon public property while circulating a petition on election day - an act which is constitutionally protected and which was done with full compliance of relevant state laws. Therefore, the State has failed to state a claim upon which relief can be granted, thereby necessitating a dismissal of this case.<sup>58</sup>

**A. There is no “trespass” for a person on government property generally open to the public**

The US Supreme Court has explained that “[s]ometimes the grossest discrimination can lie in treating things that are different as though they were exactly alike.”<sup>59</sup> With the township hall being public property, the township clerk does not have exclusive possession of the property like a homeowner would have. For example, the Michigan Supreme Court explained that “[t]he right of an individual to the occupation and enjoyment of his premises is exclusive.”<sup>60</sup> The Michigan Supreme Court also explained that “[e]very unauthorized intrusion upon the private premises of another is a trespass, and to unlawfully invade lands in his possession is to . . . destroy his private and exclusive possession.”<sup>61</sup> However, “[o]wnership does not always mean absolute dominion. The more an owner, for his advantage, opens up his property for use by the public in general, the more do his rights become circumscribed by the statutory and constitutional rights of those who use it.”<sup>62</sup>

Indeed, a person “could not be a trespasser while in the pursuit of his lawful business,”<sup>63</sup> or, in other words, “cannot be treated as a trespasser for doing what he had a right to do.”<sup>64</sup> This is because the “United States Supreme Court has held that criminal statutes must be scrutinized with particular care, and those that prohibit a substantial

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<sup>58</sup> MCR 2.116(C)(8).

<sup>59</sup> *Anderson v Celebrezze*, 460 US 780, 801 (1983), quoting *Jenness v Fortson*, 403 US 431, 442 (1971).

<sup>60</sup> *Herro v Chippewa County Rd Comrs*, 368 Mich 263, 269 (1962).

<sup>61</sup> *Giddings v Rogalewski*, 192 Mich 319, 326 (1916).

<sup>62</sup> *Marsh v. Alabama*, 326 U.S. 501, 506 (1946).

<sup>63</sup> *Fehnrich v Michigan Cent. R. Co.*, 87 Mich 606, 610 (1891).

<sup>64</sup> *McCausey v Hoek*, 159 Mich 570, 571 (1910).

amount of constitutionally protected conduct may be facially overbroad even if they have a legitimate application.”<sup>65</sup> While the deputy and clerk in this case were incorrectly stretching the criminal trespass statute to Defendant’s conduct, this recent Michigan Supreme Court decision explains how a statute that does criminalize the right of individuals to circulate petitions simply based on a local official’s whim would be struck down as facially overbroad. Thus, “[i]f a defendant is given a command to stop engaging in speech that is constitutionally protected under the circumstances, the command is by definition unlawful.”

<sup>66</sup> Moreover,

The requisite criminal intent required for conviction under the failure-to-depart portion of [MCL 750.552] is established by an intention to remain upon the lands of another *without lawful authority* upon being requested to depart, [but] . . . if the act prohibited is committed in good faith under claim of right or color of title, although accused be mistaken as to his right, unless it is committed with force or violence of a breach of the peace, *no conviction will lie*. . . . [To demonstrate this, a correct jury instruction would be:] “You must determine this issue as to whether they had a lawful authority, or, in other words, they had some good faith color of right to remain on the property after having been asked to leave; and *if they claim or have some color of right, some lawful authority or some claim to remain there, then they cannot be held criminally responsible under this statute for their refusal to leave*. The mere fact that the defendants refused to obey the request of the police, as agents of the Detroit Housing Commission of the city of Detroit, a municipal corporation, to leave the premises when requested is not a violation of the law if they had a lawful authority to remain on the property . . . .”<sup>67</sup>

This is because our Michigan Supreme Court has long recognized that the “ownership [of public properties] is in the whole people of the state, and no individual has any property right in them,”<sup>68</sup> meaning the public has access to all public property unless a law limits that access for legitimate purposes. In other words, “[t]he United States Constitution does not forbid a State to control the use of its own property for its own lawful

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<sup>65</sup> *People v Rapp*, 492 Mich 67, 73 (2012) (internal citations omitted).  
<sup>66</sup> *Hamlin*, unpublished, issued December 10, 2015 (Docket No. 321352).  
<sup>67</sup> *People v Johnson*, 168 Mich App 745, 749-751 (1969) (emphasis added).  
<sup>68</sup> *People v Collison*, 85 Mich 105, 108 (1891).

nondiscriminatory purpose.”<sup>69</sup> In quoting that same US Supreme Court case, our Michigan Supreme Court stated “[t]he State, no less than a private owner of property, has power to preserve the property under its control for the use to which it is lawfully dedicated.”<sup>70</sup>

For example, the government may prosecute for trespass when defendants are “occupying space assigned to others,”<sup>71</sup> and in so doing, “they attempted to use their claimed First Amendment rights in a manner that interfered with the rights of others. Such actions are not within the ambit of the First Amendment guarantee.”<sup>72</sup> Similar trespassing charges may be brought against individuals occupying part of specific swamp or submerged state-owned land,<sup>73</sup> or for those who trespass upon a state correctional facility,<sup>74</sup> as that property is held for a legitimate purpose of nonpublic access, and such restrictions to public access those properties are clearly identified in statutes. However, these extremely limited circumstances are not similar to, nor do they provide an excuse for, clerks and deputies to label township property as “private property” that is “owned by the township officials” who can tell individuals to leave simply because they don’t want them there. Furthermore, these *public* property examples are entirely different from owning private property, like one’s home, and thus is a good example of how “the grossest discrimination can lie in treating things that are different as though they were exactly alike.”

### **B. On Election Day, additional interests apply**

We have the right to peacefully protest and to petition our government for a redress of grievances. But, “the right of peaceful protest does not mean that everyone with

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<sup>69</sup> *Adderly v. Florida*, 385 U.S. 39, 48 (1966).

<sup>70</sup> *People v Harrison*, 383 Mich 585, 592 (1970).

<sup>71</sup> *People v Harrison*, 383 Mich 585, 597 (1970) (Adams, J., concurring).

<sup>72</sup> *People v Harrison*, 383 Mich 585, 604 (1970) (T.M. Kavanagh, J., concurring)

<sup>73</sup> MCL 324.41512.

<sup>74</sup> MCL 764.23a (1).

opinions or beliefs to express may do so at any time and at any place.”<sup>75</sup> Indeed, our First Amendment rights often intersect with the rights of others, such as those noted in 2008: “[t]here is no question about the legitimacy or importance of the State’s interest in counting only those votes of eligible voters.”<sup>76</sup> On this point, the Michigan Constitution states

[T]he legislature shall enact laws to regulate the time, place and manner of all nominations and elections, to preserve the purity of elections, to preserve the secrecy of the ballot, to guard against abuses of the elective franchise, and to provide for a system of voter registration and absentee voting.<sup>77</sup>

Our State Supreme Court summarized this as the state’s interest in “maintain[ing] the integrity of Michigan’s election process.”<sup>78</sup> The United States Supreme Court explained that “the State . . . has an interest in protecting public confidence in the integrity and legitimacy of representative government . . . because it encourages citizen participation.”<sup>79</sup> The fact is, though, that “state laws place burdens on two different, although overlapping, kinds of rights - the right of individuals to associate for the advancement of political beliefs, and the right of qualified voters, regardless of their political persuasion, to cast their votes effectively. Both of these rights, of course, rank among our most precious freedoms.”<sup>80</sup> Government restrictions upon these rights are generally acceptable as long as they are “evenhanded restrictions that protect the integrity and reliability of the electoral process itself.”<sup>81</sup> “The inquiry is whether the challenged restriction unfairly or unnecessarily burdens the availability of political opportunity.”<sup>82</sup> Or to look at it another way, “the best means [of enhancing the ability of the citizenry to make wise decisions] is to open the

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<sup>75</sup> *Cox v Louisiana*, 379 US 559, 574 (1965).

<sup>76</sup> *Crawford v Marion County Election Bd.*, 553 US 181, 196 (2008).

<sup>77</sup> Const 1963, art II, § 4.

<sup>78</sup> *Socialist Workers Party v Sec’y of State*, 412 Mich 571, 594 (1982).

<sup>79</sup> *Crawford v Marion County Election Bd.*, 553 US 181, 197 (2008) (internal citations omitted).

<sup>80</sup> *Anderson v Celebrezze*, 460 US 780, 787 (1983).

<sup>81</sup> *Crawford v Marion County Election Bd.*, 553 US 181, 189-190 (2008), citing *Anderson*, 460 US 780 (1983).

<sup>82</sup> *Anderson*, 460 US 780, 793 (1983) (internal citations omitted).

channels of communication rather than to close them.”<sup>83</sup>

This is precisely why we have constitutional protections for the various forms of political expression. “Political expression must be afforded the *broadest protection* in order to ensure the unfettered interchange of ideas for bringing about of political and social change; debate on public issues should be uninhibited, robust, and wide open.”<sup>84</sup> This last year undoubtedly saw much debate on public issues, and brought much discord over the role of government in various aspects of our lives. In response to government handling of COVID19, Defendant drafted the RFI Petition, needing 425,059 signatures in a relatively short time period (180 days) in order to secure a place on the 2022 general election ballot. With an entirely grassroots effort, in a time period in which our Governor shut most of our state down, the RFI team knew we needed petition circulators at as many polling precincts as possible on election day to increase our likelihood of obtaining the required signatures.

Throughout this entire incident, Deputy Langlois and the township clerk kept saying that the clerk’s “ability” to decide whether she wanted us there had nothing to do with, nor any impact on, Defendant’s constitutionally-protected rights. However, “[a]ssociating for the purpose of getting a [constitutional amendment] or a legislative proposal on the ballot is protected activity under the First Amendment.”<sup>85</sup> Also,

[T]he circulation of a petition involves the type of interactive communication concerning political change that is appropriately described as ‘core political speech.’ The refusal to permit [Defendant and her circulators to circulate the petition on the township property on election day] restricts political expression

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<sup>83</sup> *Anderson*, at 798 (1983), citing *VA Pharm Bd v VA Citizens Consumer Council*, 425 US 748, 770 (1976).

<sup>84</sup> *Eyde Construction v Charter Twp of Meridian*, 119 Mich App 792, 794-795 (1982) (emphasis added). See also *Roth v United States*, 354 US 476, 484 (1957). See also *Anderson v Celebrezze*, 460 US 780, 794 (1983) (internal citations omitted). The United States Supreme Court also pointed out that “the primary values protected by the First Amendment [are embodied in our] profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open.”

<sup>85</sup> *Deleeuw v State Bd of Canvassers*, 263 Mich App 497, 504 (2004). See also *Martin v Sec’y of State*, 280 Mich App 417, 434 (2008), (O’CONNELL, P.J., dissenting) (specifically adopted by the Michigan Supreme Court in *Martin v Sec’y of State*, 755 NW2d 153,154 (2008) “[W]e reverse the judgments of the Court of Appeals and the Ingham Circuit Court for the reasons stated in the Court of Appeals dissenting opinion.”).

in two ways: First, it limits the number of voices who will convey [Defendant's] message and the hours they can speak [by taking away one of the traditional times and locations petitions are circulated] and, therefore, limits the size of the audience they can reach. Second, it makes it less likely that [Defendant and her volunteers] will garner the number of signatures necessary to place the matter on the ballot, thus limiting their ability to make the matter the focus of statewide discussion.<sup>86</sup>

The securing of sufficient signatures to place an initiative measure on the ballot is no small undertaking. . . . [T]he solicitation of signatures on petitions is work. It is time-consuming and it is tiresome - so much so that it seems that few but the young have the strength, the ardor and the stamina to engage in it.<sup>87</sup>

[A local government prohibiting petition circulating in the outer edges of the parking lot of the polling location on election day on the whim of the local official] restricts access to the most effective, fundamental, and perhaps economical avenue of political discourse, direct one-on-one communication. That [the local officials left] open more burdensome avenues of communication, does not relieve [their] burden on First Amendment expression. The First Amendment protects [Defendant's] right not only to advocate [her] cause, but also to select what [she] believe[s] to be the most effective means for so doing.<sup>88</sup>

Even our US Supreme Court “recogni[z]ed that the solicitation of signatures for a petition involves protected speech . . . [covered by] the First Amendment, and that *any* attempt to regulate solicitation would necessarily infringe that speech.”<sup>89</sup> For “our constitutional command of free speech and assembly is basic and fundamental, and encompasses peaceful social protest [and petitioning], so important to the preservation of the freedoms treasured in a democratic society.”<sup>90</sup> Yet, when the actions of local officials, as in this case, “burden[] the signature-gathering efforts” of Defendant and her volunteer circulators, “voters are less interested in the campaign” and will be less likely to sign the petition.<sup>91</sup> Indeed, this kind of government “action, in conjunction with the deadlines involved in this

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<sup>86</sup> *Meyer v Grant*, 486 US 414, 421-422 (1988).

<sup>87</sup> *Id.* at 423-424.

<sup>88</sup> *Id.* at 424 (internal citations omitted).

<sup>89</sup> *Meyer v Grant*, 486 US 414, n 5 (1988) (emphasis added).

<sup>90</sup> *Cox v Louisiana*, 379 US 559, 574 (1965).

<sup>91</sup> *Anderson v Celebrezze*, 460 US 780, 792 (1983).

case, poses the imminent threat of effectively extinguishing the petitions' power."<sup>92</sup> Impeding Defendant's ability to collect signatures, thus, not only infringes upon her own rights, but also those of other like-minded voters. "The exclusion of [initiative petitions] also burdens voters' freedom of association, because an [initiative petition] campaign is an effective platform for the expression of views on issues of the day, and a [grassroots initiative petition organization] serves as a rallying point for likeminded [sic] citizens." <sup>93</sup>

Ballot access implicates two distinct fundamental rights, the right of individuals to associate for the advancement of political beliefs, and the right of qualified voters, regardless of their political persuasion, to cast their votes effectively. Although neither of these rights are expressly named in the Constitution, both are basic to effective political expression and merit strong constitutional protection. Restrictions on access burden these fundamental rights directly.<sup>94</sup>

That is why "the Legislature specifically protects the interest of petition signers and circulators in initiative and referendum situations."<sup>95</sup> What's more is that

The myriad laws passed to protect the sanctity of petitions and the public measures that incorporate the petition into the decision-making process provide ample support for the proposition that petition signers possess a legally protected interest in having their signatures validated, invalidated, empowered, or disregarded according to established law - not the political whimsy of a rogue signature counter, clerk, or delivery man. Petitions are a vital means of gathering the collective assent of the people, and if the law will not protect a petition signer's interest in the proper use of the signature, then those opposed to the petition may quickly find themselves without an adversary.<sup>96</sup>

### **C. The "ordinance" used by the clerk and deputy was not actually an ordinance, but simply a resolution**

Repeatedly on election day, the clerk and Deputy Langlois told Defendant and the other circulators they couldn't be on township property because there was an "ordinance"

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<sup>92</sup> *Deleeuw v State Bd of Canvassers*, 263 Mich App 497, 506 (2004).

<sup>93</sup> *Anderson v Celebrezze*, 460 US 780, 788 (1983).

<sup>94</sup> *Socialist Workers Party v Sec'y of State*, 412 Mich 571, 588 (1982), (internal citations omitted).

<sup>95</sup> *Deleeuw v State Bd of Canvassers*, 263 Mich App 497, n 2 (2004).

<sup>96</sup> *Deleeuw v State Bd of Canvassers*, 263 Mich App 497, 505 (2004).

that said they “couldn’t be there.” While several of the attached affidavits include observations and recollections of conversations that included these statements from these officials, this statement from Rebecca Pfauth’s affidavit summarizes that exchange:

Doreen Dill and I set up to start circulating the Restore Freedom Initiative Constitutional Amendment petitions at 11:00 am on election day in Leighton Township. At around 11:20 am MaryLou, Leighton Township Clerk, came out and told us we couldn’t petition there because the township has an ordinance against it and asked us to leave. Doreen showed MaryLou the 2nd page of the pdf sheet she downloaded from the Restore Freedom Initiative site regarding the constitutional rights we have to be there.

MaryLou showed no interest in hearing anything Doreen was saying but kept interrupting her to tell us she didn’t care what that said since she had an ordinance. She did ask if we wanted to see it . . . to which Doreen said yes and walked back into the building with her to get it. . . . Deputy Langlois showed up shortly after and he told us to leave. We tried to explain the same thing to him as we tried with MaryLou and he didn’t show any interest in why we were there either. He said it didn’t matter why we were there, the township has an ordinance that said we can’t be there.<sup>97</sup>

The initial problem with their claims, however, is that the document involved is a resolution, not an ordinance.<sup>98</sup> Although the entire resolution is included as an exhibit, this portion from the top of the document clearly shows it is a resolution.

LEIGHTON TOWNSHIP  
ALLEGAN COUNTY, MICHIGAN  
RESOLUTION #2016-10-01

TOWNSHIP PROPERTY PUBLIC ACCESS RESOLUTION

Additionally, it states key phrases like “BE IT HEREBY RESOLVED,” “Nothing in this resolution,” and “the foregoing resolution.” This distinction is important in the context of it being the “responsibility on the part of all citizens to obey all valid laws and regulations.”<sup>99</sup>

MCL 42.20 clearly states that a “resolution shall be limited to matters required or permitted to be done by resolution . . . and to matters pertaining to the internal affairs or

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<sup>97</sup> Exhibit 1, Affidavits of Witnesses, p.1.

<sup>98</sup> Exhibit 7, Township Property Public Access Resolution.

<sup>99</sup> *Cox v Louisiana*, 379 US 559, 574 (1965).

concerns of the township government. Any other act of the township board, and *any act imposing a sanction for the violation of the act, shall be by ordinance* (emphasis added).” Additionally, MCL 41.183 provides that “the township board may provide in a township ordinance a sanction for violation of the ordinance.” In fact, in our Code of Criminal Procedure, a complaint may be written for violations of law constituting felonies, misdemeanors or ordinance violations.<sup>100</sup> Although Deputy Langlois and the clerk were insinuating that a resolution and an ordinance are one in the same, MCL 761.1(o)(i) clearly defines an “ordinance violation” as “[a] violation of an ordinance or charter of a city, village, township, or county that is punishable by imprisonment or a fine that is not a civil fine.”

Indeed, our Michigan Supreme Court “presumes that *ordinances* are constitutional, and that the party challenging the validity of the *ordinance* has the burden of proving a constitutional violation.”<sup>101</sup> Our Court of Appeals explained that it “interprets *ordinances* in the same manner it interprets statutes.”<sup>102</sup> And our United States Supreme Court stated “properly drawn statutes and *ordinances* [may include those] designed to promote law and order, protect the community against disorder, regulate traffic, safeguard legitimate interests in private and public property, or protect the administration of justice and other essential governmental functions.”<sup>103</sup> In other words, citizens can’t be charged for violating *resolutions*, and no courts treat resolutions the same as ordinances. So, the entire reason why the clerk could decide she didn’t want Defendant there has no legal basis whatsoever.

#### **D. The subject matter of the resolution is preempted by state election laws**

As shown, the resolution has no authority for criminal sanctions for those who

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<sup>100</sup> MCL 761.1 (c).

<sup>101</sup> *People v Rapp*, 492 Mich 67, 72 (2012) (emphasis added).

<sup>102</sup> *People v Maggit*, 319 Mich App 675, 683 (2017) (emphasis added).

<sup>103</sup> *Cox v Louisiana*, 379 US 559, 574 (1965).

“violate” it. So too, the entire subject matter of the resolution is preempted by state laws.

**1. The resolution recognizes it is preempted by Election Law**

Although the township clerk and Deputy Langlois said that it didn't matter what the law or the constitution said because the resolution said Defendant couldn't be on township property to circulate her petition, the resolution itself recognizes that state law controls with regard to the circulation of petitions on election day. The township clerk and Deputy Langlois claimed paragraph 3 of the resolution created the authority for them to remove Defendant from the property. That paragraph says:

On election day, when more members of the public require access to Township property, it shall be unlawful to erect a temporary or permanent structure on Township property, or park or leave any motor vehicle on Township property beyond the time necessary to transact Township business or beyond the time the Township is Open for business, without the express consent of the Township Clerk or other Township official.

However, paragraph 4 says:

Nothing in this resolution shall be construed to interfere with MCL 168.931(k) which allows a person to disseminate campaign literature on election day when a person is beyond 100 ft. from an entrance to a building in which a polling place is located.

Of course MCL 168.931(k) does not actually mention “campaign literature” and has a different focus, but it has the same general idea. MCL 168.931(k) actually states “[a] person shall not, while the polls are open on an election day, solicit votes in a polling place or within 100 feet from an entrance to the building in which a polling place is located.” Given the wording of paragraph 4 (referencing campaign literature distributed beyond the 100 ft.) it appears they were trying to encompass the various political activities that must happen outside of the 100 ft. of the entrance on election day. In addition to the solicitation of votes in MCL 168.931(k), the other political activities prohibited by state election law within 100 feet of a polling precinct entrance are, according to MCL 168.744: persuading a person to

vote for or against a candidate, party ticket, or ballot question on that ballot; soliciting donations, gifts, contributions, purchase of tickets; requesting or obtaining signatures on petitions; or distributing campaign literature for candidates or ballot questions. The result is clear - that the resolution shall not be construed to interfere with the First Amendment rights we have, so long as we are abiding by state election law in the exercise of those rights.

## **2. Express preemption negates local regulation**

“[T]he state [can] preempt[] a local regulation . . . expressly, . . . because the local regulation directly conflicts with the state law or because the state has occupied the entire field of regulation in a certain area.”<sup>104</sup> So, a local regulation may be expressly preempted, “conflict-preempted,” or “field-preempted.”<sup>105</sup> To the extent the resolution (paragraph 3) attempts to control who may be at the precinct on election day, or for how long, the Michigan Constitution expressly preempts it. Article II, § 4 states “the legislature shall enact laws to regulate the time, place and manner of all nominations and elections, to preserve the purity of elections, to preserve the secrecy of the ballot, to guard against abuses of the elective franchise.” So, by the very language of our state constitution, the legislature, and not a township, has the authority to regulate elections, and all that entails.

## **3. Conflict preemption negates local regulation**

Regarding conflict preemption, a township “is precluded from enacting an ordinance . . . if the ordinance is in direct conflict with the state statutory scheme.”<sup>106</sup> The township’s resolution directly conflicts with state election law on several points. Act 116 of 1954 clearly states that it is “an act to . . . provide for election officials and prescribe their powers and duties [and] to prescribe the powers and duties of certain state departments, state

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<sup>104</sup> *Michigan Gun Owners v Ann Arbor Public Schools*, 502 Mich 695, 702 (2018).

<sup>105</sup> *Id.* at 701-702.

<sup>106</sup> *John Ter Beek v Wyoming*, 495 Mich 1, 19 (2014) (internal citations omitted).

agencies, and state and local officials and employees.” Throughout the entire comprehensive statutory scheme, the act provides exacting detail on the powers of a township clerk in election matters, and that does *not* include the unilateral authority to determine which people may be outside the polling precinct on election day.

Furthermore, a “direct conflict exists when . . . the ordinance prohibits what the statute permits.”<sup>107</sup> In “Presence of Public in Election Polling Places” it states that not only may “persons who have no formal role in the election process . . . be present in the polling places during the hours the polls are open for voting” but that “Michigan Election Law has *expressly recognized* that persons other than election officials may be present in the polling place during the actual voting process.”<sup>108</sup> It describes that MCL 168.663 “clearly anticipates that individuals other than election officials, challengers and those actually engaged in the process of voting may be present in the polling place.” “That other may be present in the voting place was also recognized by the Michigan Supreme Court,” it continues. In analyzing the all of Michigan Election Law, it summarizes that “the rights of the public to be present [even] during the actual casting of a ballot” inside the polling room, or to be present anywhere else at the polling precinct is subject only to “reasonable restrictions [that] the election officials may impose to permit orderly ingress and egress to the polling place for those individuals actually in the process of casting a ballot.”

Defendant’s vehicle had been on the property less than 30 minutes by the time she had been asked to leave (and the same is true for the petition circulators originally there that day). Moreover, her vehicle was parked at the far edge of the township parking lot<sup>109</sup> and was in no way impeding the ingress or egress for voters into or out of the precinct, nor

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<sup>107</sup> *John Ter Beek v Wyoming*, 495 Mich 1, 20 (2014) (internal citations omitted).

<sup>108</sup> Attorney General Opinion, No. 6488 (January 15, 1988) (emphasis added).

<sup>109</sup> See Exhibit 4, Satellite View of Parking Lot.

did the clerk nor law enforcement even allege that her vehicle was interfering with ingress or egress. At no point when Defendant was on township property were the parking spaces all filled. In fact, the *only* time ingress and egress was thwarted was when Deputy Langlois parked *his vehicle at a diagonal angle in one of the main corners of the parking lot, which completely prohibited traffic from using that entire portion of the parking lot.* A voter even approached Deputy Langlois, asking him to move his vehicle, as the voter needed to leave so he could go pick up his daughter from school. Deputy Langlois left his vehicle there until Deputy Bussell approached Deputy Langlois' front passenger side window and told him he needed to move his vehicle since there were several cars having trouble accessing the precinct with him being parked in the middle of that portion of the parking lot.

With “the solicitation of signatures for a petition involv[ing] protected speech,”<sup>110</sup> the legislature crafted Michigan Election Law to strike an important balance between ensuring integrity of elections and protecting First Amendment freedoms. One such way was to prohibit individuals from engaging in political activities within 100 feet from the door of the precinct. But *so long as the activity is not done within 100 feet* of the door to the precinct, MCL 168.931(k) and 168.744 *allow* persuading a person to vote for or against a candidate, party ticket, or ballot question; soliciting donations or contributions; requesting or *obtaining signatures on petitions*; or distributing campaign stickers and literature for campaigns. While Defendant argues paragraph 4 of the resolution makes it clear that it also allows these activities beyond the 100 feet, to the extent that the clerk and deputies considered the resolution a prohibition of Defendant collecting signatures well beyond the 100-foot line, a “direct conflict exists [between the resolution and state law because] the *ordinance*

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<sup>110</sup> *Meyer v Grant*, 486 US 414, n 5 (1988).

*prohibits what the statute permits.*<sup>111</sup> This is especially so because MCL 168.31 directs the *secretary of state* to “furnish for the use in each election precinct . . . a manual of instructions that includes . . . procedures on prohibiting campaigning in the polling places.”

#### **4. Field preemption overrides local regulation**

Again, if “the state has occupied the entire field of regulation in a certain area,” the state has effectively preempted local regulation of the same.<sup>112</sup> “Field preemption applies if the state statutory scheme pre-empts the ordinance by occupying the field of regulation which the municipality seeks to enter, to the exclusion of the ordinance, even where there is no direct conflict between the two schemes of regulation.”<sup>113</sup> Further, when “the comprehensiveness of the statutory scheme established by the state shows a preemptive intent,” the state regulation preempts local regulation on that general topic.<sup>114</sup> It is undeniable that the state has occupied the field of election activity regulation. MCL 168.21 states that “the secretary of state shall be the chief election officer of the state and shall have supervisory control over local election officials in the performance of their duties under the provisions of this act.” Additionally, the Michigan Election Law’s stated purpose clearly identifies its comprehensiveness. Inasmuch, it states:

AN ACT to reorganize, consolidate, and add to the election laws; to provide for election officials and prescribe their powers and duties; to prescribe the powers and duties of certain state departments, state agencies, and state and local officials and employees; to provide for the nomination and election . . . for public office; to provide for the resignation, removal, and recall of certain public officers; to provide for the filling of vacancies in public office; to provide for and regulate primaries and elections; to provide for the purity of elections; to guard against the abuse of the elective franchise; to define violations of this act; to provide appropriations; to prescribe penalties and provide remedies; and to repeal certain acts and all other acts inconsistent with this act.

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<sup>111</sup> *John Ter Beek v Wyoming*, 495 Mich 1, 20 (2014) (internal citations omitted)(emphasis added).

<sup>112</sup> *Michigan Gun Owners v Ann Arbor Public Schools*, 502 Mich 695, 702 (2018).

<sup>113</sup> *Michigan Gun Owners v Ann Arbor Public Schools*, 502 Mich 695, 703 (2018) (internal citations omitted).

<sup>114</sup> *People v Llewellyn*, 401 Mich 314, 326 (1977).

Likewise, MCL 168.31 directs the secretary of state to “issue instructions and promulgate rules . . . for the conduct of elections,” “advise and direct local election officials as to the proper methods of conducting elections,” “publish and furnish . . . a manual of instructions that includes . . . procedures on prohibiting campaigning in the polling places,” “require reports from the local election officials the secretary of state considers necessary,” “investigate . . . administration of election laws,” “establish a curriculum for comprehensive training . . . of all . . . township, and village officials who are responsible for conducting elections,” “establish a continuing election education program” for all local clerks, train all new local election officials within 6 months, “establish a comprehensive training curriculum for all precinct inspectors,” “create an election day dispute resolution team that has regional representatives . . . which shall appear on site, if necessary,” and create “rules establishing uniform standards for state and local . . . ballot question petition signatures.”

Also, MCL 168.641(5) requires the secretary of state, not local clerks, to “supervise the consolidation of all elections,” while MCL 168.662 requires elections to be held in “publicly owned or controlled buildings.” And MCL 168.932 prohibits individuals from “organiz[ing] a meeting at which absent voter ballots are to be voted.” Michigan Election Law also regulates the circulating of constitutional amendment petitions (also known as initiative or ballot question) in a myriad of ways. For example, MCL 168.482e prohibits individuals from signing one with another name, making a false statement on a petition certificate, falsely signing as a petition circulator, signing for other circulators, etc., while MCL 168.483a prohibits a “petition sponsor of a petition proposing an amendment to the constitution or to initiate legislation” from circulating “a petition or an amended petition for signatures until the petition or amended petition is filed with the secretary of state.” Indeed,

MCL 168.931 through 168.947 detail all offenses and penalties for election violations. Thus, by regulating which petitions may collect signatures on precinct property (charging “violators” with trespass under MCL 750.552), the clerk and deputies turned election related violations from 90 day, \$500 misdemeanors<sup>115</sup> into 30 day, \$250 misdemeanors.<sup>116</sup>

Clearly, then, “[t]he breadth and detail of this statutory scheme provides an indication that the Legislature has preempted [this topic of election regulation], at least to the exclusion of a supplementary ordinance such as the one before us.”<sup>117</sup> In other words, this local regulation is field-preempted by Michigan Election Law.

#### **5. The subject matter of the resolution requires uniform treatment statewide, thus necessitating preemption**

Additionally, if “the nature of the regulated subject matter demands uniform, statewide treatment”<sup>118</sup> state regulation has preempted local regulation. Since “the improper *implementation* of election laws affects the process by which citizens normally exercise their collective voice to uphold the status quo or effectuate change,”<sup>119</sup> this “is clearly an area of the law which demands uniform, statewide treatment.”<sup>120</sup>

It is the legislature’s job to “maintain the integrity of Michigan’s election process.”<sup>121</sup> Indeed, “the constitutional authority to enact laws to preserve the purity of elections resides in the Legislature.”<sup>122</sup> However, the *township* attempted to regulate election activity. And, leaving the clerk unfettered discretion to give the necessary “consent” for people to be on township property on election day defies the “purity of elections’ concept [which]

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<sup>115</sup> MCL 168.934. See also MCL 168.744(2) and (4).

<sup>116</sup> MCL 750.552(3).

<sup>117</sup> *People v Llewellyn*, 401 Mich 314, 327 (1977).

<sup>118</sup> *People v Llewellyn*, 401 Mich 314, 326 (1977).

<sup>119</sup> *Martin*, at 432 (2008) (O’CONNELL, P.J., dissenting - but adopted by the Michigan Supreme Court).

<sup>120</sup> *People v Llewellyn*, 401 Mich 314, 327 (1977).

<sup>121</sup> *Socialist Workers Party v Sec’y of State*, 412 Mich 571, 594 (1982).

<sup>122</sup> *Socialist Workers Party v Sec’y of State*, 412 Mich 571, 596 (1982).

unmistakably requires . . . fairness and evenhandedness in the election laws of this state.”

<sup>123</sup> Indeed, there are significant similarities with the *Socialist Workers Party* case.

The instant case does not involve a litigant who alleges unfair treatment on the ballot by the legislature but rather unfair treatment which has prevented access to the ballot. We take cognizance of this argument as an art. 2, Sec. 4, issue for two reasons. First, the phrase, “The legislature shall enact laws to preserve the purity of elections,” does not limit the term “elections” to any specific times or actions. Nor would it be expected when the sentence immediately proceeding this clause mandates the Legislature to enact laws to regulate the time, place and manner of nominations and elections. Clearly, *the Legislature* was meant to be given constitutional authority to enact laws governing the entire election process. Just as clearly, *the election process* includes access or failure to gain access to the ballot.<sup>124</sup>

As explained above, stopping Defendant and the other circulators from obtaining signatures in that manner significantly impacted their progress in gaining access to the ballot. This kind of government “action, in conjunction with the deadlines involved in this case, poses the imminent threat of effectively extinguishing the petitions’ power.”<sup>125</sup> In fact our US Supreme Court “recogni[z]ed that the solicitation of signatures for a petition involves protected speech . . . [that is covered by] the First Amendment, and that *any* attempt to regulate solicitation would necessarily infringe that speech.”<sup>126</sup> Where the “subject matter of the ordinance . . . involve[s] the potential restriction of important civil liberties of the people, . . . [the court] concluded that the protection of these important civil liberties demanded that the state retain sole control” of the subject matter regulation.<sup>127</sup>

Since 1977, it has been “clear that if each locality in the state of Michigan were allowed to establish its own [rules regarding election activity], a great deal of uncertainty

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<sup>123</sup> *Socialist Workers Party v Sec’y of State*, 412 Mich 571, 598 (1982).

<sup>124</sup> *Socialist Workers Party v Sec’y of State*, 412 Mich 571, 598 (1982).

<sup>125</sup> *Deleeuw v State Bd of Canvassers*, 263 Mich App 497, 506 (2004).

<sup>126</sup> *Meyer v Grant*, 486 US 414, n 5 (1988) (emphasis added).

<sup>127</sup> *People v Llewellyn*, 401 Mich 314, 325 (1977).

and confusion would be created.”<sup>128</sup> Given she was collecting 425,059 signatures from all over the state, the Court’s analysis on this topic is most appropriate. The Court continued:

To allow each of the multitude of Michigan localities to establish its own [election activity restrictions] would be to invite the cultivation of a legal thicket which would make both the scope of the individual right to free expression and the permissible prohibition of [election activity] well-nigh impossible to determine. . . . [T]he resultant confusion and provocation of endless appeals, both threaten important individual rights and undermine efficiency in the control of [election integrity]. On the one hand, the uncertainty created by local [regulations of election activity] would effectively chill the right to free expression, and raise serious due process problems in that . . . there [is] little opportunity to discover the nature of the prohibited conduct.<sup>129</sup>

Thus, as part of its field preemption analysis, the Court concluded “the nature of the regulated subject matter may demand exclusive state regulation to achieve the uniformity necessary to serve the state’s purpose or interest.”<sup>130</sup> So, here, in regulating election activity, “the nature of the subject matter regulated call[s] for a uniform state regulatory scheme, [where] supplementary local regulation has been . . . preempted.”<sup>131</sup>

**E. To the extent election laws do not apply, local regulation is preempted by state traffic/vehicle laws**

To the extent a part of the township’s resolution is not preempted by state election law, it is preempted by state traffic/vehicle laws. The Uniform Traffic Code,<sup>132</sup> the Control of Traffic in Parking Areas act,<sup>133</sup> and the Michigan Vehicle Code<sup>134</sup> work together to regulate the movement and parking of vehicles.<sup>135</sup> Moreover, the expansive sections of the

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<sup>128</sup> *People v Llewellyn*, 401 Mich 314, 327 (1977).

<sup>129</sup> *People v Llewellyn*, 401 Mich 314, 328 (1977).

<sup>130</sup> *People v Llewellyn*, 401 Mich 314, 324 (1977).

<sup>131</sup> *People v Llewellyn*, 401 Mich 314, 325 (1977).

<sup>132</sup> Act 62 of 1956.

<sup>133</sup> Act 235 of 1969.

<sup>134</sup> Act 300 of 1949.

<sup>135</sup> The purpose of the Uniform Traffic Code is “to authorize the director of the department of state police to promulgate a uniform traffic code; to authorize a city, township, or village to adopt the uniform traffic code by reference without publication in full; and to prescribe criminal penalties and civil sanctions for violation of the code.” The purpose of the Control of Traffic in Parking Areas act is to “authoriz[e] local units of government to regulate and control traffic in parking areas; and to provide a penalty for a violation of this act.” Likewise, the purpose of the Michigan Vehicle Code is “to provide for the regulation and use of streets and highways; .

Michigan Vehicle Code include regulation of moving violations in work and school zones,<sup>136</sup> moving violations causing injury or death,<sup>137</sup> use of cell phones,<sup>138</sup> traffic control devices and the posting of signs giving notice of local traffic regulations,<sup>139</sup> traffic signals and markings,<sup>140</sup> accidents,<sup>141</sup> driving while intoxicated and reckless driving,<sup>142</sup> speed restrictions,<sup>143</sup> manner of driving and passing,<sup>144</sup> turning and starting,<sup>145</sup> right-of-ways,<sup>146</sup> stopping and parking,<sup>147</sup> equipment<sup>148</sup> and inspection of vehicles,<sup>149</sup> etc. Therefore, “the comprehensiveness of the statutory scheme established by the state shows a preemptive intent,”<sup>150</sup> for regulating the movement and parking of vehicles, but for the few areas in which they grant municipalities permission to pass additional regulations. Thus, the ways in which the township’s resolution attempts to prohibit a person from being able to “park or leave an automobile . . . on Township property,” or “park or leave any motor vehicle on Township property beyond the time necessary to transact Township business” are field-preempted by the state laws regulating the movement and parking of vehicles.

Regarding conflict preemption, a township “is precluded from enacting an ordinance . . . if the ordinance is in direct conflict with the state statutory scheme.”<sup>151</sup> Again, it is the

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. . . to provide penalties and sanctions for a violation of this act; to provide for the enforcement of this act; to provide for the creation of and to prescribe the powers and duties of certain state and local agencies; . . . to repeal all other acts or parts of acts inconsistent with this act or contrary to this act.”

<sup>136</sup> MCL 257.601b.

<sup>137</sup> MCL 257.601c.

<sup>138</sup> MCL 257.602b and MCL 257.602c.

<sup>139</sup> MCL 257.606.

<sup>140</sup> MCL 257.608 through MCL 257.616a.

<sup>141</sup> MCL 257.617 through MCL 257.624b.

<sup>142</sup> MCL 257.625 through MCL 257.626c.

<sup>143</sup> MCL 257.627 through MCL 257.633.

<sup>144</sup> MCL 257.634 through MCL 257.646.

<sup>145</sup> MCL 257.647 through MCL 257.648.

<sup>146</sup> MCL 257.649 through MCL 257.655.

<sup>147</sup> MCL 257.672 through MCL 257.675d.

<sup>148</sup> MCL 257.683 through MCL 257.714b.

<sup>149</sup> MCL 257.715 through MCL 257.715a.

<sup>150</sup> *People v Llewellyn*, 401 Mich 314, 326 (1977).

<sup>151</sup> *John Ter Beek v City of Wyoming*, 495 Mich 1, 19 (2014) (internal citations omitted).

Uniform Traffic Code,<sup>152</sup> the Control of Traffic in Parking Areas act,<sup>153</sup> and the Michigan Vehicle Code<sup>154</sup> that work together to comprehensively regulate the movement and parking of vehicles. The Uniform Traffic Code provides that a “uniform traffic code [will be] promulgated by the director of the department of the state police” that may be adopted by a township in an *ordinance*,<sup>155</sup> which “shall clearly identify the code adopted by reference” and “shall be supplemented by a notice of the purpose of the code and the fact that a complete copy of the code is available for inspection by the public at the office of the . . . township . . . clerk.”<sup>156</sup> This includes the “enforce[ment] [of] provisions of the uniform traffic code or ordinance adopted under this section in [a] parking lot.”<sup>157</sup> The township’s resolution does not comply with these requirements of the Uniform Traffic Code.

Also, MCL 257.942 allows a “township . . . by local *ordinance* . . . [to] prohibit, regulate, restrict, or limit the stopping, standing, or parking of vehicles *in specified areas* of the parking area,” which means the regulation by *resolution* of more than just *specified areas* of the parking lot puts it in conflict with the Control of Traffic in Parking Areas act.

Also, MCL 257.943 of the Control of Traffic in Parking Areas act states that “a person who violates an ordinance promulgated pursuant to this act is responsible for a civil infraction.” Whereas, MCL 257.951(3) requires the director of the department of state police to specify whether a particular violation of the uniform traffic code is a misdemeanor or civil infraction, where the “code shall not impose a criminal penalty for an act or omission that is a civil infraction under the vehicle code.” The township’s resolution prohibits parking

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<sup>152</sup> Act 62 of 1956.

<sup>153</sup> Act 235 of 1969.

<sup>154</sup> Act 300 of 1949.

<sup>155</sup> MCL 257.951(1).

<sup>156</sup> MCL 257.952.

<sup>157</sup> MCL 257.951(2).

that “block[s], obstructs, impedes, or otherwise interferes with employee, public, and/or commercial access to the Township Hall or Township property thereon,” for which the clerk and deputies involved claim that a violation is a misdemeanor (cited under MCL 750.552). However, MCL 257.676b of the Michigan Vehicle Code considers it a civil infraction for “a person, without authority, [to] block, obstruct, impede, or otherwise interfere with the normal flow of vehicular or pedestrian traffic.” Indeed, the various violations identified in the Division of Stopping, Standing and Parking of the Michigan Vehicle Code are all classified as civil infractions.<sup>158</sup> Thus, the application of MCL 750.552 for a “violation” of the township’s resolution is in direct conflict with every conceivable option under state law.

Other parts of the Michigan Vehicle Code conflict-preempt here. MCL 257.606’s title includes “posting signs giving notice of local traffic regulations; providing by ordinance for impounding of motor vehicle parked contrary to local ordinance.” This statute

[D]oes not prevent a local authority with respect to streets or highways under the jurisdiction of the local authority and within the reasonable exercise of police power from . . . (a) Regulating the standing or parking of vehicles. (b) Regulating the impoundment or immobilization of vehicles whose owner has failed to answer 6 or more parking violation notices or citations regarding illegal parking.<sup>159</sup> . . . (d) Regulating or prohibiting processions or assemblages on the highways or streets.

However, the statute requires that “[a]n ordinance or regulation enacted under section (1)(a) [or] (d) . . . [is] not enforceable until signs giving notice of the local traffic regulations are posted upon or at the entrance to the highway or street or part of the highway or street affected, as may be most appropriate, and are sufficiently legible as to be seen by an ordinarily observant person.” As the only “notice” of the township’s resolution came from

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<sup>158</sup> MCL 257.672 through MCL 257.675d.

<sup>159</sup> A “local authority, [may provide] *by ordinance* for the impounding of any motor vehicle parked contrary to a local *ordinance*.” MCL 257.606(5). The deputy often said he was impounding Defendant’s car for “violating the ordinance,” but it is a resolution not ordinance, there *is no* ordinance allowing the impounding of a car, and Defendant had not “failed to answer 6 or more parking violations or citations regarding illegal parking.”

the clerk verbally telling the petition circulators that there was a resolution, and the clerk providing a paper copy from her office upon it being so requested by circulator Doreen Dill, the resolution is certainly conflict-preempted by the Michigan Vehicle Code, as well.

In addition to the field-preemption and conflict-preemption, state law also expressly preempts the township's resolution. MCL 257.605 says that

[The Michigan Vehicle Code applies] uniformly throughout this state and in all political subdivisions and municipalities in the state. A local authority shall not adopt, enact, or enforce a local law that . . . is otherwise in conflict with this chapter [which includes MCL 257.606 discussed above] or chapter VIII. A local law or portion of a local law that imposes a criminal penalty for an act or omission that is a civil infraction under this act, or that imposes a criminal penalty or civil sanction in excess of that prescribed in this act, is in conflict with this act and is void to the extent of the conflict.

#### **F. The resolution is an impermissibly overbroad regulation**

There is a “plain requirement for laws and regulations to be drawn so as to give citizens fair warning as to what is illegal; for regulation of conduct that involves freedom of speech and assembly not to be so broad in scope as to stifle First Amendment freedoms, which need breathing space to survive.”<sup>160</sup> In other words, “those that prohibit a substantial amount of constitutionally protected conduct may be facially overbroad even if they have a legitimate application.”<sup>161</sup> Consequently, “[f]acial overbreadth challenges to [a regulation] have been entertained where a [it] . . . attempts to regulate the time, place, and manner of expressive conduct.”<sup>162</sup> The township's resolution certainly attempts to regulate the time, place, and manner of expressive conduct. As the resolution states, the township desires to restrict anything that might impede public access to township property on election day, thus making it “unlawful to . . . park . . . on Township property beyond the time necessary to

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<sup>160</sup> *Cox v Louisiana*, 379 US 559, 574 (1965) (internal citations omitted).

<sup>161</sup> *People v Rapp*, 492 Mich 67, 73 (2012) (internal citations omitted).

<sup>162</sup> *People v Rogers*, 249 Mich App 77, 95-96 (2001).

transact Township business,” which meant Defendant was prohibited from circulating her petition on the far side of township property, even though her vehicle impeded no access.

Because this “case involves a limitation on political expression [it is] subject to exacting scrutiny.”<sup>163</sup> This is because “[t]he First Amendment protects [Defendant’s] right not only to advocate [her] cause, but also to select what [she] believe[s] to be the most effective means for so doing.”<sup>164</sup> Additionally, the resolution “impedes the sponsor’s opportunity to disseminate their views to the public. It curtails the discussion of issues that normally accompanies the circulation of initiative petitions. And it shrinks the size of the audience that can be reached . . . [and] necessarily reduces the quantity of expression.”<sup>165</sup> Therefore, with it clear that Defendant’s constitutionally-protected political expression was trampled, the exacting scrutiny standard means that the township’s reasons for implementing and enforcing the resolution must “qualify as a compelling state interest.”<sup>166</sup> The three “Whereas” clauses of the resolution identifying concerns including “persons erecting temporary structures on Township properties in other municipalities,” “the desire . . . to regulate the convenient access to Township property,” and being “able to access and utilize Township property” are a far cry from a compelling state interest.

But the second standard is equally as unforgiving of the resolution. The restrictions created by the resolution must be “necessary to serve the claimed interests,”<sup>167</sup> and the township certainly cannot prove that completely denying Defendant the right to circulate her

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<sup>163</sup> *Meyer v Grant*, 486 US 414, 420 (1988). See also *Socialist Workers Party v Sec’y of State*, 412 Mich 571, 589 (1982). It is a “strict scrutiny standard of review in ballot access cases.” Also, *Id.* at 594, “When [a regulation] finds expression in restrictions on access to the general election ballot, the restrictions must be reasonable and not exceed what the compelling state interest actually requires.”

<sup>164</sup> *Id.* at 424 (internal citations omitted).

<sup>165</sup> *Meyer v Grant*, 486 US 414, 419 (1988) (internal citations omitted).

<sup>166</sup> *Socialist Workers Party v Sec’y of State*, 412 Mich 571, 591 (1982).

<sup>167</sup> *Socialist Workers Party v Sec’y of State*, 412 Mich 571, 591 (1982).

petition and causing her to be forcibly removed from township property even did *anything* to serve their stated interests, let alone that it was necessary to serve those interests. Likewise, the township is required to show that they “adopted the least drastic means to achieve its objective, thereby avoiding unreasonable burdens on” Defendant.<sup>168</sup> Since Defendant and her vehicle were in *no way* impeding ingress or egress for the polling precinct, *any* other way would have been a less drastic means of serving their claimed interests than the one they chose. Consequently, because the restrictions in the resolution are “not necessary to serve the claimed interests and [the township] did not choose the least drastic means, [the resolution] violates the First and Fourteenth Amendments.”<sup>169</sup>

Following the analysis of *People v Rapp*, “[t]he plain language of this ordinance allows it to be enforced against *anyone*” participating in *any* constitutionally protected political activity whose vehicle is parked *anywhere* on township property.<sup>170</sup> Thus, “this ordinance . . . criminalizes a substantial amount of constitutionally protected speech.”<sup>171</sup> With this in mind, it “would certainly be dangerous if the legislature could set a net large enough to catch all possible offenders, and leave it to the courts to step inside and say who could be rightfully detained, and who should be set at large.”<sup>172</sup> Conversely, the court must “not [be] prepared to rewrite [this resolution] or to construe it in an overly narrow or strained manner to avoid rendering it unconstitutional.”<sup>173</sup> Because “the ordinance is susceptible of regular application to protected expression . . . the ordinance is substantially overbroad, and . . . facially invalid.”<sup>174</sup> So, regulation that makes it “unlawful” for Defendant to circulate

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<sup>168</sup> *Socialist Workers Party v Sec’y of State*, 412 Mich 571, 591 (1982).

<sup>169</sup> *Socialist Workers Party v Sec’y of State*, 412 Mich 571, 591 (1982).

<sup>170</sup> *People v Rapp*, 492 Mich 67, 76 (2012).

<sup>171</sup> *People v Rapp*, 492 Mich 67, 77 (2012).

<sup>172</sup> *Houston v Hill*, 482 US 451, 466 (1987).

<sup>173</sup> *In re Certified Questions*, \_\_\_ Mich \_\_\_, \_\_\_ (2020) (Docket No. 161492); slip op at 20.

<sup>174</sup> *Houston v Hill*, 482 US 451, 467 (1987).

petitions simply because the clerk withholds her consent is impermissibly overbroad.

### **G. The resolution is an impermissibly vague regulation**

Courts must undertake virtually identical analysis when determining if a resolution is impermissibly vague in regulating a Defendant's conduct. Here, where criminal charges were issued because the clerk and the deputy said Defendant was violating the resolution, it is important to note that "township business" is not defined (and presumably would include political expression activities that abide by state statutes, like circulating a petition more than 100 feet from the polling precinct door), and the clerk is given *no parameters* within which her decision to provide or withhold "consent" must be given regarding allowing Defendant to be on township property. Even where no free speech right is implicated,

Unquestionably, due process requires [notice of which] conduct [the regulation] prohibits. . . . The constitutional requirement of definiteness is violated by a [regulation] that fails to give a person of ordinary intelligence fair notice that his . . . conduct is forbidden . . . . [So, he shall not] be held criminally responsible for [that] conduct.<sup>175</sup>

In other words, the township "may not issue commands to . . . citizens, under criminal sanctions, in language so vague and undefined as to afford no fair warning of what conduct might transgress them."<sup>176</sup> Not only is this resolution void "for vagueness when it fails to provide notice of the proscribed conduct [but also because] it confers unfettered discretion to those charged with its enforcement to determine if [it] has been violated."<sup>177</sup> It is necessary for government regulations to have "appropriate limitations on the discretion of public officials where speech and assembly are intertwined with regulated conduct, and for all such laws and regulations to be applied with an equal hand."<sup>178</sup> "Since we are

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<sup>175</sup> *People v Turmon*, 417 Mich 638, 655-656 (1983).

<sup>176</sup> *People v Woods*, 241 Mich App 545, 557 (2000).

<sup>177</sup> *People v Rogers*, 249 Mich App 77, 105 (2001).

<sup>178</sup> *Cox v Louisiana*, 379 US 559, 576 (1965).

committed to a government of laws, and not of men, it is of the utmost importance that the administration of justice be absolutely fair and orderly,”<sup>179</sup> where no regulation is enforced that “requires official approval of local functionaries with standardless, discretionary power.”

<sup>180</sup> The uncontroverted words of the United States Supreme Court from 1969 say it best:

The petitioner stands convicted for violating an ordinance of Birmingham, Alabama, making it an offense to participate in any “parade or processes or other public demonstration” without first obtaining a permit from the City Commission. . . . The marchers stayed on the sidewalks . . . they did not interfere with other pedestrians. No automobiles were obstructed, nor were traffic signals disobeyed. . . . [The] ordinance [gave the officials] virtually unbridled and absolute power to prohibit any “parade,” “processession,” or “demonstration” on the city’s streets or public ways. For in deciding whether or not to withhold a permit, the [officials] were to be guided by only their own ideas . . . . This ordinance . . . subjecting the exercise of First Amendment freedoms to the prior restraint of a license, without narrow, objective, and definite standards to guide the licensing authority, is unconstitutional.

[A]n ordinance which, like this one, makes the peaceful enjoyment of freedoms which the Constitution guarantees contingent upon the uncontrolled will of an official - as by requiring a permit or license which may be granted or withheld in the discretion of such official - is an unconstitutional censorship or prior restraint upon the enjoyment of those freedoms. . . . [A] person faced with such an unconstitutional [prior “express consent” regulation] may ignore it and engage with impunity in the exercise of the right of free expression for which the law purports to require [the permission]. [Internal citations omitted].

. . . [This] was not “pure speech,” but the use of public streets and sidewalks, over which a municipality must rightfully exercise a great deal of control in the interest of traffic regulation and public safety. . . . Governmental authorities have the duty and responsibility to keep their streets open and available for movement, [b]ut . . . picketing and parading may nonetheless constitute methods of expression, entitled to First Amendment protection. . . . [Streets and parks] have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions. Such use of streets and public places has, from ancient times, been a part of the privileges, immunities, rights and liberties of citizens. . . .

Even when the use of its public streets and sidewalks is involved, therefore, a municipality may not empower its licensing officials to roam essentially at will, dispensing or withholding permission to speak, assemble, picket, or parade,

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<sup>179</sup> *Cox v Louisiana*, 379 US 559, 562 (1965).

<sup>180</sup> *People v Rogers*, 249 Mich App 77, 96 (2001).

according to their own opinions . . . . The petitioner was [told] under no circumstances would he and his group be permitted to demonstrate in Birmingham, not that a demonstration would be approved if a time and place were selected that would minimize traffic problems. . . .<sup>181</sup>

**IV. There is no genuine issue of any material fact, and Defendant is entitled to judgment as a matter of law**

The process of action in this case is insufficient; the service of process is insufficient; the State has failed to state a claim on which relief can be granted; but as there is also no genuine issue of any material fact, Defendant is entitled to judgment as a matter of law,<sup>182</sup> and this court must render judgment in Defendant's favor without delay.<sup>183</sup>

The summary of the undisputed facts of this case are as follows:

Doreen and Rebecca were circulating the RFI constitutional amendment petition at Leighton Township Hall parking lot on election day. This building houses two polling precincts. They set up 229 feet away from the front door of the building. Their SUV (and later, Defendant's car) was parked beyond the parking lot pavement, entirely on grass. They had four small yard signs and a few small American flags in the ground right next to the SUV, and an 18" wide by 3 feet long folding table right at the tailgate of the SUV. They weren't impeding traffic or access to the township building or parking. Deputy Langlois told them they couldn't move to the neighboring property, even with the neighbor's permission. When voters approached to sign the petition, Deputy Langlois said the circulators couldn't tell the voters about the petition and the voters were not allowed to sign the petition. The township *resolution* states it limits who can be on township property, but paragraph 4 accepts people may participate in political activities outside 100 feet from the door. The deputies and clerk said it didn't matter what the law said because "the township has an ordinance that says [Defendant and her circulators] can't be there without the clerk's permission, and the clerk wanted them to leave." The clerk and the deputies said they did not care to speak with Doreen or Defendant about the law, the constitution, or the wording of the resolution. The deputies stated if Defendant wanted to raise those points, she could do that at "her day in court." Three deputies physically forced Defendant into handcuffs and across the parking lot into Deputy Langlois' SUV. Defendant was not allowed to call her husband to get her 6 year old daughter, or make arrangements to move her car off township property. She was arrested, put in handcuffs, questioned, never read her rights, yet told she was going to jail, CPS was taking her daughter, and her car was being impounded.

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<sup>181</sup> *Shuttlesworth v City of Birmingham*, 394 US 147, 148-158 (1969).

<sup>182</sup> MCR 2.116(C)(10).

<sup>183</sup> See MCR 2.116(I).

In other words, Defendant was on township property circulating a petition on election day; she did not get the express consent of the clerk to be there; she was told several times by the clerk and the deputies that she had to leave, for violating no other law than “the property owner didn’t want her there;” and she was arrested for trespassing on the township property as a result. The only thing we dispute here is the law.

The United States Supreme Court clearly explained that

The freedom of speech and of the press guaranteed by the Constitution embraces at the least the liberty to discuss publicly and truthfully all matters of public concern without previous restraint or fear of subsequent punishment. The First Amendment was fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people. . . . [T]he circulation of a petition involves the type of interactive communication concerning political change that is appropriately described as core political speech. . . . [Thus,] the solicitation of signatures for a petition involves protected speech. . . . [Consequently, here] the speech at issue is at the core of our electoral process and of the First Amendment freedoms - an area of public policy where protection of robust discussion is at its zenith.<sup>184</sup>

“Although the purity of elections concept has been applied in different factual settings, it unmistakably requires . . . fairness and evenhandedness in the election laws of this state,”<sup>185</sup> including township resolutions and ordinances. However, the deputy and clerk used a local resolution with a state criminal statute to thwart Defendant’s political expression, disregarding all constitutional and statutory safeguards against this very kind of government action. Simply because a clerk and deputy say constitutional protections and state election laws don’t apply to the situation doesn’t make it so. Considering a trespass ordinance and MCL 750.552, the Court of Appeals recently explained that:

U.S. Const., Am. IV, and Const. 1963, art. 1, § 11, guarantee the right of the people to be free from unreasonable searches and seizures. At the heart of any issues concerning the constitutional guarantee is reasonableness. A search and seizure conducted without a warrant is unreasonable per se, subject to certain exceptions. One well-recognized exception is that [a]

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<sup>184</sup> *Meyer v Grant*, 486 US 414, 421-425 and n 5 (1988) (internal citations omitted).

<sup>185</sup> *Socialist Workers Party v Sec’y of State*, 412 Mich 571, 598 (1982).

custodial *arrest based on probable cause* is not an unreasonable intrusion under the Fourth Amendment.<sup>186</sup>

Here, the question is “whether it was reasonable for an officer to suspect that the defendant’s conduct was illegal.”<sup>187</sup> The court “interprets ordinances in the same manner it interprets statutes.”<sup>188</sup> So, given that “legislative bod[ies] cannot legitimately enact a statute that is repugnant to the Constitution,”<sup>189</sup> and that “the expression of political preference is the bedrock of self-governance,”<sup>190</sup> it is not reasonable to conclude that the township’s regulation allows an arrest for the expression of political preference done in compliance with state laws. Furthermore, we all have heard that “ignorance of the law is no excuse.”<sup>191</sup> Indeed, the United States Supreme Court proclaimed that “[e]very citizen is presumed to know the law.”<sup>192</sup> Certainly, this includes law enforcement officers who are not only subject to all the requirements of regular citizens, but also specifically tasked with enforcing that very law.<sup>193</sup> Indeed, the deputy “declare[d] under penalties of perjury that the statements [in the ticket] are true to *the best of* [his] information, knowledge, and belief” because the “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.”<sup>194</sup> Consequently, “the conclusion that defendant violated the ordinance was not objectively reasonable.”<sup>195</sup> Therefore, the deputy violated Defendant’s right against

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<sup>186</sup> *People v Maggit*, 319 Mich App 675, 682 (2017) (internal citations omitted) (emphasis added).

<sup>187</sup> *People v Maggit*, 319 Mich App 675, 689 (2017).

<sup>188</sup> *People v Maggit*, 319 Mich App 675, 683 (2017) (internal citations omitted).

<sup>189</sup> *Michigan Alliance for Retired Americans v Sec’y of State*, unpublished opinion of the Court of Appeals, issued October 16, 2020 (Docket No. 354993), at 4.

<sup>190</sup> *Deleeuw*, 263 Mich App 497, 504 (2004) (cleaned up) (internal citations omitted).

<sup>191</sup> *People v Turmon*, 417 Mich 638, 657 (1983).

<sup>192</sup> *Georgia v Public.Resource.org*, \_\_\_US\_\_\_, 140 S.Ct. 1498, 1507 (2020).

<sup>193</sup> These officers also must specifically swear an oath to uphold the US and Michigan Constitutions under US Const, art VI; Const 1963, art XI, § 1; and MCL 15.151, etc.

<sup>194</sup> *Cox v Louisiana*, 379 US 559, 562 (1965) (emphasis added).

<sup>195</sup> *People v Maggit*, 319 Mich App 675, 691 (2017).

unreasonable search and seizure,<sup>196</sup> to be guaranteed equal protection of the laws,<sup>197</sup> to peaceably assemble and petition the government for a redress of grievances,<sup>198</sup> to free speech,<sup>199</sup> and against deprivation of life, liberty or property without due process of law.<sup>200</sup>

“It is beyond reasonable dispute that a trial court has the authority, and, in appropriate cases, the duty, to enter *permanent* injunctive relief against a constitutional violation.”<sup>201</sup> With the egregious disregard of Defendant’s rights shown by the clerk and the deputies, it is not only appropriate, but the duty of the court, to enter *permanent* injunctive relief, which, under this MCR 2.116(C)(10) motion, necessitates a dismissal *with* prejudice for any and all charges against Defendant.

### **CONCLUSION & PRAYER FOR RELIEF**

Our very US constitution was created to "secure the Blessings of Liberty to ourselves and our Posterity . . . ." <sup>202</sup> Our state constitution was established "to secure [the blessings of freedom from Almighty God] *undiminished* to ourselves and our posterity . . . ." <sup>203</sup> Moreover, "[a]ll political power is inherent in the people." <sup>204</sup> Indeed, Const 1963, art I, § 23 (along with US Const, Am IX) exclaims that “the enumeration in this constitution of certain rights shall not be construed to deny or disparage others retained by the people.” These are not mere words on old documents, and the conclusion is irrefutable: we the people received all of our blessings, including liberty, from Almighty God. As citizens, we are not limited to the liberties specifically “carved out for us” in the state and federal

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<sup>196</sup> Const 1963, art I, § 11 and US Const, Am IV.

<sup>197</sup> Given he was enforcing the standardless whim of the township clerk, Defendant’s Const 1963, art I, § 2 and US Const, Am XIV rights were violated.

<sup>198</sup> Const 1963, art I, § 3 and US Const, Am I.

<sup>199</sup> Const 1963, art I, § 5 and US Const, Am I.

<sup>200</sup> Const 1963, art I, § 17; US Const, Am V and Am XIV.

<sup>201</sup> *MI Coalition of State Empl Unions v Civil Serv Com'n*, 465 Mich 212, 219 (2001).

<sup>202</sup> US Const, Preamble.

<sup>203</sup> Const 1963, Preamble.

<sup>204</sup> Const 1963, art I, § 1.

constitutions, but instead enjoy *all* of our rights from God - enumerated and unenumerated. We created our state and federal governments to secure those blessings of liberty.

Thus, the government is only authorized to act in a way that protects our God-given blessings. So, no government body or official may act without the express permission to do so<sup>205</sup> - permission that must be found in the constitution, possibly being further limited by statute. For, “there is no law for the [regulation] of the citizens . . . which is not contained in or derived from the Constitution.”<sup>206</sup> Likewise, article II § 8 recalls, article IV § 20 open meetings, article V § 10 removal of officers, article V § 30 executive term limits, article IV § 54 legislative term limits, article VI §§ 2, 12, 16 judicial term limits, article VI § 25 removal of judges, and article XI § 7 impeachment of officers all get to one main point - constitutional restraints are not placed upon the *people* in their exercise of liberty, but instead upon the *government* in any attempt to stop us from enjoying that liberty.

Even more so, the US Supreme Court declared “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, consecrated by the sacrifices of the Revolution.”<sup>207</sup> So, “it is the duty of courts to see that the constitutional rights of the defendant in a criminal case shall not be violated.”<sup>208</sup> For in showing “his constitutional right has been violated, the law conclusively presumes that he suffered an actual injury. [Indeed,] the whole body politic suffers an actual injury when a

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<sup>205</sup> “That to secure these rights, governments are instituted among Men, deriving their just powers from the consent of the governed.” Declaration of Indep. “Our Constitution is clear that all political power is inherent in the people. . . . A constitution is made for the people and by the people. . . . [and] does not derive its force from the convention which framed, but from the people who ratified it.” *Citizens* at 59-60 (cleaned up)(internal citations omitted). “It’s most basic functions are to create the form and structure of government, define and limit the powers of government, and provide for the protection of rights and liberties.” *Id.* at 80. Further, our “Constitution is the bulwark and foundation of our laws.” *Id.* at n 74 (internal citations omitted).

<sup>206</sup> *Ex Parte Milligan*, 71 US 2, 141 (1866).

<sup>207</sup> *Ex Parte Milligan*, 71 US 2, 124 (1866).

<sup>208</sup> *People v Murray*, 89 Mich 276, 285 (1891).

constitutional safeguard erected to protect the rights of citizens has been violated in the person of the humblest or meanest citizen of the state.”<sup>209</sup> So, “[t]he freedom of individuals verbally to oppose or challenge police action without thereby risking arrest is one of the principal characteristics by which we distinguish a free nation from a police state.”<sup>210</sup>

Deputy Langlois failed to remember this when his ego would not let him back down from his grossly inadequate reading of the township resolution and state law, as shown in his replies to Defendant’s requests to discuss the law.<sup>211</sup> He also failed to recognize that Defendant, licensed as an attorney and working in various roles in government for over 16 years, has taken the constitutional oath of office herself - several times. Moreover, “it is a lawyer’s duty, when necessary, to challenge the rectitude of official action [and] uphold legal process.”<sup>212</sup> Likewise, “[t]he lawyer is a part of a judicial system charged with upholding the law.”<sup>213</sup> Even more so, “[a] lawyer may refuse to comply with an obligation imposed by law upon a good-faith belief that no valid obligation exists.”<sup>214</sup>

Defendant has *not* forgotten, and she defends the constitution everyday. She asks for a dismissal of all charges and infractions from Ticket 166684 *with prejudice*. Defendant asks this court to order that “the arrest record shall be removed from the internet criminal history access tool (ICHAT),” pursuant to MCL 764.26a(1)(a). Further, Defendant asks this court to 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).

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<sup>209</sup> *People v Murray*, 89 Mich 276, 285, 290 (1891).

<sup>210</sup> *Houston v Hill*, 482 US 451, 462-463 (1987).

<sup>211</sup> See, e.g., Exhibit 8, Video of Incident at 0:23, where Defendant tries to explain the law to Deputy Langlois, and he repeatedly refuses, replying at one point “that’s not how this works; you’re very full of yourself.”

<sup>212</sup> MRPC 1.0, Preamble: A Lawyer’s Responsibilities.

<sup>213</sup> MRPC 1.6, official comment.

<sup>214</sup> MRPC 8.4, official comment.