

STATE OF MICHIGAN  
IN THE SUPREME COURT

UNLOCK MICHIGAN, GEORGE  
FISHER, and NANCY HYDE-DAVIS,

Supreme Court No. 162949

Plaintiffs,

v.

THE BOARD OF STATE  
CANVASSERS, JOCELYN BENSON,  
in her official capacity as Secretary of State, and  
JONATHAN BRATER, in his official capacity as  
Director of the Bureau of Elections,

Defendants,

KEEP MICHIGAN SAFE,

Proposed Intervening Defendant

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**PROPOSED INTERVENING DEFENDANT KEEP MICHIGAN SAFE'S  
UNOPPOSED MOTION TO INTERVENE AS DEFENDANT**

Pursuant to Michigan Court Rule 2.209, Keep Michigan Safe, through counsel CLARK HILL PLC and GOODMAN ACKER, P.C., respectfully requests permission to intervene as a Defendant in this matter as a matter of right or permissively.

In support of its motion, Keep Michigan Safe relies on the attached brief in support. Keep Michigan Safe's Answer to Plaintiffs' Complaint for Immediate Mandamus Relief is attached as **Exhibit 1** and Keep Michigan Safe is concurrently filing its merits brief.

On May 24, 2021, counsel for Keep Michigan Safe conferred with counsel for the Board of State Canvassers, Secretary Benson, and Director Brater (the "State Defendants"). The State Defendants do not oppose Keep Michigan Safe's motion to intervene. On May 24, 2021, counsel

for Keep Michigan Safe conferred with counsel for Plaintiffs. Plaintiffs do not oppose Keep Michigan Safe's motion to intervene, either.

WHEREFORE, Keep Michigan Safe respectfully requests that this Court grant its Motion to Intervene as Defendant, accept its proposed answer for filing, and grant any other such relief it deems just and equitable.

Respectfully submitted,

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*Attorneys for Proposed Intervening Defendant Keep Michigan Safe*

Date: May 24, 2021

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**BRIEF IN SUPPORT OF PROPOSED INTERVENING DEFENDANT  
KEEP MICHIGAN SAFE'S UNOPPOSED  
MOTION TO INTERVENE AS DEFENDANT**

**INTRODUCTION**

Keep Michigan Safe is a ballot question committee formed to oppose Unlock Michigan's efforts to repeal MCL 10.31, *et seq.* Keep Michigan Safe has opposed Unlock Michigan's efforts in the public sphere, in the Court of Claims, Court of Appeals, and this Court, and before the Board. Keep Michigan Safe has spent time, money, and resources opposing Unlock Michigan's efforts, and as the sole ballot question committee opposed to Unlock Michigan's petition, Keep Michigan Safe has a vested interest in ensuring that the State Defendants strictly follow the Michigan Election Law as this Court has held is required. *Stand Up for Democracy v Secretary of State*, 492 Mich 588, 603–04; 822 NW2d 159 (2012) (requiring strict compliance); *Deleeuw v*

*Bd of State Canvassers*, 263 Mich App 497, 505–506, 688 NW2d 847 (2004) (recognizing the special nature of election cases and the standing of electors to enforce the law in election cases); *Citizens Protecting Michigan’s Constitution v Secretary of State*, 280 Mich App 273, 282; 761 NW2d 210 (permitting a ballot question committee to challenge a petition).

Keep Michigan Safe’s interest is all the more substantial given that the Bureau of Elections staff, Defendant Brater, and two members of the Board wish to certify Unlock Michigan’s petition despite it being fatally flawed in numerous respects, including by submitting illegally gathered signatures and using a petition form and summary that do not strictly comply with the Michigan Election Law.<sup>1</sup> On top of this, the Assistant Attorney General representing the State Defendants in this case opposed Keep Michigan Safe’s Administrative Procedures Act challenges before the Court of Claims in April 2021 and spoke in opposition to them before the Board at the April 22, 2021 meeting. Thus, Keep Michigan Safe’s interests are not adequately protected and there is a real risk that the State Defendants will not put forth a full-throated defense against Plaintiffs’ Complaint.

The extraordinary and unprecedented relief Unlock Michigan seeks here will impair or impede Keep Michigan Safe’s interests if Unlock Michigan is successful. Keep Michigan Safe should be permitted to intervene by right or permissively in this matter to ensure that its interests are adequately protected. Accordingly, Keep Michigan Safe respectfully requests that the Court grant its Motion to Intervene because:

- (1) Keep Michigan Safe’s intervention is timely – Keep Michigan Safe filed this motion three weeks after Unlock Michigan filed this action on the afternoon of Friday, April 30, 2021, the Court has not yet issued a briefing schedule and is treating this matter as a standard complaint with a 28-day response period, and the Board does not need to canvass Unlock Michigan’s petition until July 2022 under the Michigan Election Law;

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<sup>1</sup> These deficiencies are more fully and appropriately addressed in Keep Michigan Safe’s merits brief.

- (2) Keep Michigan Safe has a substantial and vested interest in opposing Unlock Michigan's petition and in ensuring strict compliance with the Michigan Election Law; and
- (3) Keep Michigan Safe's ability to protect its interests will be impaired, and thus its interests will not be adequately represented, if it is not permitted to intervene, particularly given the credible prospect that the State Defendants may choose to not vigorously defend this matter on the merits.

### LAW AND ARGUMENT

Keep Michigan Safe seeks to intervene in this action under MCR 2.209(A) or, alternatively, under MCR 2.209(B). Those rules state, in relevant part:

(A) **Intervention of Right.** On timely application a person has a right to intervene in an action ... (3) when the applicant claims an interest relating to the property or transaction which is the subject of the action and is so situated that disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless applicant's interest is adequately represented by existing parties.

(B) **Permissive Intervention.** On timely application a person may intervene in an action ... (2) when an applicant's claim or defense and the main action have a question of law or fact in common.

"The rule for intervention should be liberally construed to allow intervention where the applicant's interests may be inadequately represented." *Neal v Neal*, 219 Mich App 490, 492; 557 NW2d 133 (1996); *State Treasurer v Bences*, 318 Mich App 146, 150; 896 NW2d 93 (2016). Because Keep Michigan Safe's participation is necessary for a full and fair adjudication and resolution of this case, the Court should allow Keep Michigan Safe to intervene as a Defendant.

**A. The Court Should Allow Keep Michigan Safe to Intervene as a Matter of Right.**

A party seeking to intervene by right under MCR 2.209(A)(3) must establish the following three elements: (1) timely application; (2) a showing that the representation of the applicant's interests by existing parties is or may be inadequate; and (3) a determination of whether disposition

of the action may, as a practical matter, impair or impede the applicant's ability to protect its interests. *Oliver v State Police Dep't*, 160 Mich App 107, 115; 408 NW2d 436 (1987).

***1. Keep Michigan Safe's Motion to Intervene is Timely.***

Michigan courts have not defined any particular factors to analyze the timeliness of an intervention motion. The Michigan Court of Appeals has held that a motion to intervene was timely when filed "before any proceedings or discovery had been taken." *Karrip v Cannon Twp*, 115 Mich App 726, 731; 321 NW2d 690 (1982). Here, these proceedings have just begun. Unlock Michigan filed this action on the afternoon of Friday, April 30, 2021. Keep Michigan Safe promptly moved to obtain courtesy copies of the pleadings from the Court and began to prepare its responsive pleading and brief in opposition. Three weeks later, Keep Michigan Safe moved to intervene. It did not delay or adopt a "wait-and-see" approach. Because Keep Michigan Safe is requesting permission to participate in these proceedings from the very beginning, there is no possible delay or prejudice to any party. As indicated, the Court is treating this as a "normal" complaint and is therefore providing for a 28-day response period. Keep Michigan Safe moved to intervene a week before that deadline. Keep Michigan Safe is therefore positioned to participate fully throughout these proceedings, and has attached its proposed answer and is concurrently filing its merits brief.

Moreover, Keep Michigan Safe is not seeking to intervene to cause any delay – Keep Michigan Safe is ready to proceed on whatever schedule the Court deems fit and issues – its proposed answer is attached and its merits brief is being concurrently filed. And the Board is not required to complete its canvass of Unlock Michigan's petition until July 2022 under the Michigan Election Law, so Keep Michigan Safe's intervention in this case will not prejudice any party either.

As discussed throughout this motion, Keep Michigan Safe has a vested and compelling interest in ensuring the vigorous litigation of the disputed issues – especially given that anything less than a full-throated defense will impair Keep Michigan Safe’s interest in opposing Unlock Michigan’s initiative petition, challenging the signatures collected by Unlock Michigan, and ensuring strict compliance with the Michigan Election Law. Accordingly, Keep Michigan Safe meets the requirement that its application be timely.

**2. *Keep Michigan Safe Has a Sufficient Interest That May Be Impaired by the Disposition of This Case.***

“The second element required by the court rule is a showing that the representation of the applicant’s interests by existing parties is or may be inadequate.” *Oliver*, 160 Mich App 115. The requirement is not an onerous one. *See Purnell v Akron*, 925 F2d 941, 948 (CA 6, 1991) (holding that an applicant need not demonstrate “that impairment will inevitably ensue from an unfavorable disposition; the would-be intervenors need only show that the disposition may impair or impede their ability to protect their interest.”). “[C]lose cases should be resolved in favor of recognizing an interest.” *Grutter v Bollinger*, 188 F3d 394, 399 (CA 6, 1999) (interpreting analogous Federal Rule 24(a)).<sup>2</sup>

As the sole opposing committee, Keep Michigan Safe has a significant and vested interest in opposing Unlock Michigan’s efforts and ensuring strict compliance with the Michigan Election Law. Accordingly, under Michigan law, Keep Michigan Safe has a recognized and cognizable interest that may be impaired by the disposition of this matter and therefore meets this element.

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<sup>2</sup> Because MCR 2.209 is similar to Federal Rule of Civil Procedure 24, it is proper to look to the federal courts for guidance. *D’Agostini v City of Roseville*, 396 Mich 185, 188; 240 NW2d 252 (1976).

**3. No Current Party Adequately Represents Keep Michigan Safe's Interests.**

The final requirement for intervention under MCR 2.209(A)(3) is a “showing that the representation of the applicant’s interests by existing parties is or may be inadequate.” *Oliver*, 160 Mich App 115–16. The burden of demonstrating inadequate representation is “minimal.” *Karrip*, 115 Mich App at 731–32. The moving party need not “definitely establish[]” inadequate representation; mere concern suffices. *Vestevich v West Bloomfield Twp*, 245 Mich App 759, 761–62; 630 NW2d 646 (2001). And where such “concern exists, the rules of intervention should be construed liberally in favor of intervention.” *Id.* Put differently, MCR 2.209(A)(3) “is satisfied if the applicant shows that representation of his interest ‘may be’ inadequate; and the burden of making that showing should be treated as minimal.” *D’Agostini*, 396 Mich at 188–89.

Here, Keep Michigan Safe’s interests are not adequately represented because (1) the possibility exists that the State Defendants may resolve this matter on terms that impair Keep Michigan Safe’s interest in opposing Unlock Michigan’s petition and (2) given the position the State Defendants and their counsel have taken in related litigation and other proceedings, there is a very real possibility that that the State Defendants will not put forth a vigorous and full-throated defense thus further impairing Keep Michigan Safe’s interests. Accordingly, Keep Michigan Safe satisfies this element too.

**B. Alternatively, Keep Michigan Safe is Entitled to Permissive Intervention.**

Even if Keep Michigan Safe cannot intervene as a matter of right, it should be granted permissive intervention under MCR 2.209(B)(2). That rule provides for permissive intervention where a party timely files a motion and the party’s “claim or defense and the main action have a question of law or fact in common.” MCR 2.209(B)(2).



“[T]he [] court has a great deal of discretion in granting or denying [permissive] intervention.” *Mason v Scarpuzza*, 147 Mich App 180, 187; 383 NW2d 158 (1985). In exercising its broad discretion under this rule, the Court must consider whether intervention will unduly delay or prejudice the adjudication of the original parties’ rights. *See* MCR 2.209(B).

For all of the reasons explained above, Keep Michigan Safe also has a right to intervene in this matter permissively. Because this matter is in its infancy, and because Keep Michigan Safe is ready, willing, and able to proceed on whatever schedule the Court issues, Keep Michigan Safe’s request to intervene is timely and no party will be prejudiced by Keep Michigan Safe’s intervention.

On the other hand, not allowing Keep Michigan Safe to intervene will undeniably prejudice its interests and rights. Unlock Michigan is seeking to have a petition that is riddled with illegally gathered signatures, canvassed in violation of the APA, and whose form and summary do not strictly comply with the Michigan Election Law quickly approved so that it can have the Legislature enact a repeal without putting it to a vote of the people. Keep Michigan Safe has a sufficient interest in opposing this measure and ensuring strict compliance with the Michigan Election Law as this Court has held is required. *Stand Up for Democracy*, 492 Mich at 603–04 (requiring strict compliance).

To ensure a full and fair adversarial process, Keep Michigan Safe should be permitted to intervene this matter as a defendant.

**CONCLUSION**

Keep Michigan Safe's motion to intervene should be granted.

Respectfully submitted,

/s/ Christopher M. Trebilcock

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Date: May 24, 2021

**EXHIBIT 1**  
to  
**Intervening Defendant's Motion to Intervene**

**STATE OF MICHIGAN  
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**INTERVENING DEFENDANT KEEP MICHIGAN SAFE'S  
ANSWER AND AFFIRMATIVE DEFENSES TO  
PLAINTIFFS' COMPLAINT FOR IMMEDIATE MANDAMUS RELIEF**

Intervening-Defendant Keep Michigan Safe, through counsel CLARK HILL PLC and GOODMAN ACKER, P.C., states as follows for its Answer and Affirmative Defenses to Plaintiffs' Complaint for Immediate Mandamus Relief:

**INTRODUCTION**

Plaintiffs' "Introduction" section does not state factual allegations to which any response is required and violates MCR 2.113(B)(1), which requires that all allegations be made in numbered paragraphs. To the extent that a response is deemed required, Keep Michigan Safe denies as untrue all allegations in Plaintiffs' "Introduction" section. In further answer, Keep Michigan Safe states that there is a dispute over whether Unlock Michigan submitted "more than enough valid signatures[.]" The Board did not certify Unlock Michigan's petition because of legitimate

concerns raised by two members that Unlock Michigan illegally collected signatures in support of its petition (*e.g.*, leaving petition sheets unattended or having supporters or circulators signing on behalf of friends and family) and then submitted those same illegally collected signatures in support of their petition. These concerns over illegally collected signatures were substantiated by Attorney General Nessel's investigation and report, which found numerous instances of circulators allowing individuals to sign for others and unattended petition sheets, by Keep Michigan Safe's April 9, 2021 challenge to the certification of Unlock Michigan's petition, and by wide-spread media reporting. Those two members sought an investigation of Unlock Michigan's petition gathering practices as authorized by MCL 168.476.

Additionally, Unlock Michigan's petition form and the summary are plagued with numerous deficiencies that render both the form of the petition and the summary not in strict compliance with the Michigan Election Law as this Court has previously held is required. *See Stand Up for Democracy v Secretary of State*, 492 Mich 588, 603–04; 822 NW2d 159 (2012). Accordingly, because each petition sheet submitted by Unlock Michigan contains these same defects, *none* of Unlock Michigan's signatures are valid and none may be counted. The Court should uphold the Board's decision to *not certify* Unlock Michigan's petition for the reasons stated at the April 22, 2021 Board meeting or based on the many arguments made in the Keep Michigan Safe challenge which the Board did not reach or consider.

Unlock Michigan cannot rest upon the Staff report recommending certification. The Staff report did not even consider *any* of the arguments Keep Michigan Safe submitted in its challenge, except for those made with respect to certain, individual signatures. Additionally, the sampling methodology is not authorized by the Michigan Election Law and should have been promulgated as a rule under the Administrative Procedures Act, but was not. Accordingly, any actions taken

with respect to Unlock Michigan's petition are invalid because they fail to comply with the APA. The Secretary of State has also failed to promulgate rules under the APA setting standards for the verification of ballot question petition signatures as the Michigan Election Law requires. This is another reason why all actions taken with respect to the Unlock Michigan petition are invalid as pointed out by two Board members at the meeting.

Finally, and most importantly, this Court lacks jurisdiction to hear Plaintiffs' Complaint. The statute Unlock Michigan seeks to repeal has already been declared unconstitutional, void, and unenforceable by this Court. Accordingly, a repeal through the Unlock Michigan petition will have no practical legal effect whatsoever. In sum, Unlock Michigan cannot seek to repeal that which legally does not exist and does not carry the effect of law. Unlock Michigan's petition, for all intents and purposes, is moot, thus depriving the Court of jurisdiction over Plaintiffs' Complaint.

For these reasons, and as more fully explained in Keep Michigan Safe's concurrently filed brief in opposition, Keep Michigan Safe requests that this Court dismiss Plaintiffs' Complaint for Immediate Mandamus Relief, deny Plaintiffs each and every item of relief they seek, uphold the Board's decision to *not certify* the petition, and issue any other relief this Court deems just and proper.

### **PARTIES, JURISDICTION, AND VENUE<sup>1</sup>**

1. Keep Michigan Safe admits the allegations in Paragraph 1.

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<sup>1</sup> Keep Michigan Safe restates the headings of Plaintiffs' Complaint solely for ease of reference. These headings do not constitute factual allegations to which a response is required and Keep Michigan's Safe's repetition of those headings should not be construed as an admission that those headings are true or accurate, or that Keep Michigan Safe is adopting those headings. To the extent that a response is deemed required to the headings of Plaintiffs' Complaint, Keep Michigan Safe denies as untrue all "allegations" in any headings.

2. Keep Michigan Safe is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 2 and accordingly leaves Plaintiffs to their proofs.

3. Keep Michigan Safe is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 3 and accordingly leaves Plaintiffs to their proofs.

4. Keep Michigan Safe admits the allegations in Paragraph 4.

5. Paragraph 5 states a legal conclusion to which no response is required. To the extent that a response is deemed required, Keep Michigan Safe denies as untrue any allegations that are inconsistent with MCL 168.476(1) – the Board has the power to investigate and strike illegally collected signatures under MCL 168.476. In further answer, Keep Michigan Safe denies as untrue that Unlock Michigan has submitted the requisite number of legally collected signatures.

6. Keep Michigan Safe admits only that Defendant Jonathan Brater is Michigan’s Director of Elections and that he is vested with the authority to administer Michigan’s election laws under the supervision of the Secretary of State. *See* MCL 168.32(1). Keep Michigan Safe denies as untrue the remaining allegations in Paragraph 6.

7. Keep Michigan Safe admits only that Defendant Jocelyn Benson is Michigan’s Secretary of State, that the Secretary of State is a publicly elected position created by the 1963 Michigan Constitution, and that the holder of the office Secretary of State is tasked with transmitting a certified petition regarding initiated legislation to the Michigan Legislature. Keep Michigan Safe denies as untrue the remaining allegations in Paragraph 7.

8. Paragraph 8 states a legal conclusion to which no response is required. To the extent that a response is deemed required, Keep Michigan Safe denies as untrue any allegations that are inconsistent with MCR 7.303(B)(6) or MCR 3.305(A)(1)–(2), or that this Court has

jurisdiction to hear Plaintiffs' Complaint for the reasons outlined above and in Keep Michigan Safe's concurrently filed brief in opposition.

9. Paragraph 9 states a legal conclusion to which no response is required. To the extent that a response is deemed required, Keep Michigan Safe denies as untrue any allegations that are inconsistent with MCL 600.217(3), or that this Court has jurisdiction to hear Plaintiffs' Complaint for the reasons outlined above and in Keep Michigan Safe's concurrently filed brief in opposition.

10. Paragraph 10 states a legal conclusion to which no response is required. To the extent that a response is deemed required, Keep Michigan Safe denies as untrue any allegations that are inconsistent with MCL 168.479, or that this Court has jurisdiction to hear Plaintiffs' Complaint for the reasons outlined above and in Keep Michigan Safe's concurrently filed brief in opposition.

11. Paragraph 11 states a legal conclusion to which no response is required. To the extent that a response is deemed required, Keep Michigan Safe denies as untrue any allegations that are inconsistent with MCL 168.479(1)–(2) and the case law cited therein, or that this Court has jurisdiction to hear Plaintiffs' Complaint for the reasons outlined above and in Keep Michigan Safe's concurrently filed brief in opposition.

12. Paragraph 12 states a legal conclusion to which no response is required. To the extent that a response is deemed required, Keep Michigan Safe denies as untrue any allegations that are inconsistent with the case law cited therein, or that this Court has jurisdiction to hear Plaintiffs' Complaint for the reasons outlined above and in Keep Michigan Safe's concurrently filed brief in opposition.



**GENERAL ALLEGATIONS**

**The Board's Duties Regarding Initiative Petitions**

13. Paragraph 13 states a legal conclusion to which no response is required. To the extent that a response is deemed required, Keep Michigan Safe denies as untrue any allegations that are inconsistent with the Michigan Election Law.

14. Paragraph 14 states a legal conclusion to which no response is required. To the extent that a response is deemed required, Keep Michigan Safe denies as untrue any allegations that are inconsistent with Article 11, Section 1 of the 1963 Michigan Constitution and MCL 168.22c.

15. Paragraph 15 states a legal conclusion to which no response is required. To the extent that a response is deemed required, Keep Michigan Safe denies as untrue any allegations that are inconsistent with the case law cited therein or applicable law.

16. Paragraph 16 states a legal conclusion to which no response is required. To the extent that a response is deemed required, Keep Michigan Safe denies as untrue any allegations that are inconsistent with the United States Constitution, the Michigan Constitution, or applicable law.

17. Paragraph 17 states a legal conclusion to which no response is required. To the extent that a response is deemed required, Keep Michigan Safe denies as untrue any allegations that are inconsistent with MCL 168.22(2), MCL 168.841, or the Michigan Constitution.

18. Paragraph 18 states a legal conclusion to which no response is required. To the extent that a response is deemed required, Keep Michigan Safe denies as untrue any allegations that are inconsistent with MCL 168.22(2), MCL 168.476, or the Michigan Constitution.

19. Paragraph 19 states a legal conclusion to which no response is required. To the extent that a response is deemed required, Keep Michigan Safe denies as untrue any allegations that are inconsistent with the case law cited therein or applicable law.

20. Paragraph 20 states a legal conclusion to which no response is required. To the extent that a response is deemed required, Keep Michigan Safe denies as untrue any allegations that are inconsistent with the case law cited therein or Michigan law. In further answer, Keep Michigan Safe states that the Board has, among other powers, the power to conduct an investigation under MCL 168.476 as confirmed by the Court of Appeals in *Michigan Civil Rights Initiative v Bd of State Canvassers*, 268 Mich App 506; 706 NW2d 139 (2005).

21. Paragraph 21 states a legal conclusion to which no response is required. To the extent that a response is deemed required, Keep Michigan Safe denies as untrue any allegations in Paragraph 21 that are inconsistent with the case law cited therein or applicable law. In further answer, Keep Michigan Safe states that the Board as the power to conduct an investigation under MCL 168.476 as confirmed by the Court of Appeals in *Michigan Civil Rights Initiative v Bd of State Canvassers*, 268 Mich App 506; 706 NW2d 139 (2005). The Court of Appeals in *MCRI* never held that the Board lacked authority to investigate. Had it done so, the Court of Appeals would have read that express grant of authority out of the statute. Rather, the Court of Appeals' holding in *MCRI* was limited to the narrow question of whether the Board had the authority to investigate whether petition circulators made false, misleading, or fraudulent statements to electors during the signature gathering process:

Because there is a disagreement among the board members with respect to whether their duties **include investigating the claims of fraudulent misrepresentations** presented by the challengers, the board requests this Court's guidance in order to fulfill its statutory duty. [*Id.* at 514 (emphasis added).]

\* \* \*

Because the Legislature failed to provide the board with authority to investigate and determine **whether fraudulent representations were made by the circulators of an initiative petition, we hold that the board has no statutory authority to conduct such an investigation.** [*Id.* at 520 (emphasis added).]

Contrary to Plaintiffs’ assertions, the Court of Appeals in *MCRI* actually confirmed the Board’s authority under the Michigan Election Law to conduct an investigation into the validity of the signatures submitted in support of an initiative petition (*i.e.*, whether the signatures were legally gathered), which is exactly what the Board deadlocked upon:

Yet, it is clear to us that the Legislature has only conferred upon the Board the authority to canvass the petition “to ascertain if the petitions have been signed by the requisite number of qualified and registered electors.” MCL 168.476(1). MCL 168.476(1) clearly indicates that this authority encompasses examining the validity of the signatures and the registration status of each elector whose signature appears on the petition and investigating any doubtful signatures. Moreover, it is also clear that the Legislature, through MCL 168.476(2), only conferred upon the board the right to hold hearings, should a complaint be filed or for any purpose considered necessary “to conduct investigations of the petitions.” We cannot construe § 476(2) as a delegation of additional authority or as an expansion beyond the authority prescribed under § 476(1). Here, the challengers and intervenors seek an investigation that goes beyond the four corners of the petition itself (*i.e.*, the validity of the signatures or registration status of the electors) into the circumstances by which the signatures were obtained. [*Id.* at 519–20.]

22. Paragraph 22 states a legal conclusion to which no response is required. To the extent that a response is deemed required, Keep Michigan Safe denies as untrue any allegations that are inconsistent Article 2, Section 9 of the 1963 Michigan Constitution.

### **Plaintiffs' Activities are Core Political Speech**

23. Paragraph 23 states a legal conclusion to which no response is required. To the extent that a response is deemed required, Keep Michigan Safe denies as untrue any allegations that are inconsistent with the case law cited therein or applicable law.

24. Paragraph 24 states a legal conclusion to which no response is required. To the extent that a response is deemed required, Keep Michigan Safe denies as untrue any allegations that are inconsistent with the case law cited therein or applicable law.

25. Paragraph 25 states a legal conclusion to which no response is required. To the extent that a response is deemed required, Keep Michigan Safe denies as untrue any allegations that are inconsistent with the case law cited therein or applicable law.

26. Paragraph 26 states a legal conclusion to which no response is required. To the extent that a response is deemed required, Keep Michigan Safe denies as untrue any allegations that are inconsistent with the case law cited therein or applicable law.

27. Keep Michigan Safe denies as untrue the allegations in Paragraph 27, including the allegation that Governor Whitmer “claimed” any powers; certain powers were proscribed by law. In further answer, Keep Michigan Safe states that there is no such law as the “Emergency Powers of Governor Act” in the Michigan Compiled Laws.

28. Keep Michigan Safe admits only that litigation ensued over Governor Whitmer’s use of emergency powers that were proscribed by Michigan law and that this Court declared the law unconstitutional, void, and unenforceable. The remainder of Paragraph 28 states a legal conclusion to which no response is required. To the extent that a response is deemed required, Keep Michigan Safe denies as untrue any allegations that are inconsistent with the case law cited therein.

29. Keep Michigan Safe denies the allegations in Paragraph 29 in the manner and form alleged.

30. Keep Michigan Safe admits only that *part of the petition* reads as set forth in Paragraph 30.

31. Keep Michigan Safe admits only that Unlock Michigan utilized the provisions of MCL 168.482b(1). In further answer, Keep Michigan Safe states that numerous problems plagued Unlock Michigan's use of MCL 168.482b(1). The Board's approval of the form of Unlock Michigan's petition was and remains invalid for failing to adhere to the procedural due process requirements required under Michigan law. The 2018 amendments to the Michigan Election Law and the practice of the Board allow proponents to obtain approval prior to circulation of two items: (1) the petition summary; and (2) the form of the petition. In this case, the Board's notice for the July 6, 2020 meeting failed to provide notice to the public that the Board would consider whether to approve or deny *the form* of Unlock Michigan's petition. (See Exhibit 1, July 6 Notice.) The notice of the July 6, 2020 Board meeting only included the following on the agenda as to Unlock Michigan's proposed petition summary:

Consideration of the 100-word summary of the purpose of the initiative petition sponsored by Unlock Michigan, 2145 Commons Parkway, Okemos, MI, 48864:

An initiation of legislation to repeal the Emergency Powers of Governor Act, 1945 PA 302, MCL 10.31 to 10.33, entitled "An act authorizing the governor to proclaim a state of emergency, and to prescribe the powers and duties of the governor with respect thereto; and to prescribe penalties." [*Id.*]

Nowhere in the agenda does the Board give any type of notice that it was planning on approving *the form* of Unlock Michigan's proposed petition. See *id.* In the past, when the Board has approved the form of a petition, that has been a separate agenda item. (Exhibit 2, Minutes of

January 28, 2020 Meeting (under two separate agenda items, the Board approves summary and form of a petition).)

Further compounding issues for Unlock Michigan's is that the Board failed to give any notice whatsoever that Unlock Michigan had submitted an amended petition form at the end of the day on July 2. Indeed, no one was aware of this amended petition form until the July 6 hearing other than Unlock Michigan. The form of the proposed petition summary that was included on the Board's July 2 notice and agenda read as follows:

Consideration of the 100-word summary of the purpose of the initiative petition sponsored by Unlock Michigan, 2145 Commons Parkway, Okemos, MI, 48864:

An initiation of legislation to repeal the Emergency Powers of Governor Act, 1945 PA 302, MCL 10.31 to 10.33, entitled "An act authorizing the governor to proclaim a state of emergency, and to prescribe the powers and duties of the governor with respect thereto; and to prescribe penalties." [See Exhibit 1, July 6 Notice.]

The form of the full petition that the Board approved at the July 6 meeting fundamentally differed from the form Unlock Michigan initially submitted because it contained the following language:

**If not enacted by the Michigan State Legislature in accordance with the Michigan Constitution of 1963, the proposed legislation is to be voted on at the General Election, November 8, 2022.** [Exhibit 3, Petition (emphasis added).]

32. Keep Michigan Safe admits only that the Board unanimously approved the petition's form and the petition summary, which Director Brater authored. In further answer, Keep Michigan Safe restates its response to Paragraph 31 herein in its entirety, which outlines how the Board failed to provide adequate notice that it was going to consider the form of the petition and how the summary on the agenda differed from the summary that was ultimately approved. Additionally, Keep Michigan Safe disputes that the summary prepared by Director Brater strictly complies with MCL 168.482b.

33. Keep Michigan Safe admits only that following the Board's approval of the summary and form of Unlock Michigan's petition, Keep Michigan Safe sued the Board and Director Brater. Keep Michigan Safe denies as untrue that it sued Secretary Benson – she was not a party to the proceedings before the Court of Appeals or the Application for Leave to Appeal to the Michigan Supreme Court. Keep Michigan Safe denies as untrue the remaining allegations in Paragraph 33 to the extent that they inconsistent with the allegations and arguments Keep Michigan Safe made in those proceedings.

34. Keep Michigan Safe admits the allegations in Paragraph 34.

35. Keep Michigan Safe admits the allegations in Paragraph 35.

36. Keep Michigan Safe denies as untrue the allegations in Paragraph 36 in the manner and form alleged. In further answer Keep Michigan Safe states that the activities of Unlock Michigan violated the Michigan Campaign Finance Act and that Unlock Michigan's petition circulation practices violated Michigan law as found by the Attorney General and as set forth in Keep Michigan Safe's challenge before the Board.

#### **The Petition Satisfies the Constitutional Signature Threshold**

37. Paragraph 37 states a legal conclusion to which no response is required. To the extent that a response is deemed required, Keep Michigan Safe denies as untrue any allegations that are inconsistent with Article 2, Section 9 of the Michigan Constitution.

38. Keep Michigan Safe lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 38 and leaves Plaintiffs to their proofs.

39. Keep Michigan Safe denies as untrue the allegations in Paragraph 39.

40. Paragraph 40 states a legal conclusion to which no response is required. To the extent that a response is deemed required, Keep Michigan Safe denies as untrue any allegations that are inconsistent with MCL 168.476(1).

41. Keep Michigan Safe admits only that Unlock Michigan submitted petition sheets and signatures on or about October 2, 2020. Keep Michigan Safe denies as untrue that Unlock Michigan submitted a sufficient number of valid, legally collected signatures.

42. Paragraph 42 attempts to summarize the Staff report. Keep Michigan Safe denies as untrue any allegations that are inconsistent with the Staff report, which is the best evidence of its contents.

43. Paragraph 43 attempts to summarize the Staff report. Keep Michigan Safe denies as untrue any allegations that are inconsistent with the Staff report, which is the best evidence of its contents. In further answer, Keep Michigan Safe states that the sampling procedure used by the Staff should have been promulgated as a rule and was not, and therefore any actions taken with respect to Unlock Michigan's petition are invalid.

44. Paragraph 44 attempts to summarize the Staff report. Keep Michigan Safe denies as untrue any allegations that are inconsistent with the Staff report, which is the best evidence of its contents.

45. Paragraph 45 attempts to summarize the Staff report. Keep Michigan Safe denies as untrue any allegations that are inconsistent with the Staff report, which is the best evidence of its contents.

46. Paragraph 46 attempts to summarize the Staff report. Keep Michigan Safe denies as untrue any allegations that are inconsistent with the Staff report, which is the best evidence of its contents.



47. Keep Michigan Safe admits only that it filed a challenge on or about April 9, 2021. Keep Michigan Safe denies as untrue any allegations that are inconsistent with its April 9 challenge, which is the best evidence of its contents.

48. Paragraph 48 attempts to summarize the Staff report. Keep Michigan Safe denies as untrue any allegations that are inconsistent with the Staff report, which is the best evidence of its contents.

49. Paragraph 49 attempts to summarize the Staff report. Keep Michigan Safe denies as untrue any allegations that are inconsistent with the Staff report, which is the best evidence of its contents.

50. Paragraph 50 attempts to summarize the Staff report. Keep Michigan Safe denies as untrue any allegations that are inconsistent with the Staff report, which is the best evidence of its contents. In further answer the Staff report failed to address any of the challenges based on the APA, the defective form of the petition, and all of the other challenges set forth by Keep Michigan Safe.

#### **KMS's Fraud Challenge and Related Attorney General Investigation**

51. Paragraph 51 attempts to summarize Keep Michigan Safe's April 9 challenge. Keep Michigan Safe denies as untrue any allegations that are inconsistent with its April 9 challenge, which is the best evidence of its contents.

52. Keep Michigan Safe admits only that the Attorney General opened an investigation into Unlock Michigan. Keep Michigan Safe lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 52 and leaves Plaintiffs to their proofs.

53. Keep Michigan Safe admits the allegations in Paragraph 53.

54. Paragraph 54 attempts to summarize Attorney General Nessel's report. Keep Michigan Safe denies as untrue any allegations that are inconsistent with Attorney General Nessel's report, which is the best evidence of its contents.

55. Paragraph 55 attempts to summarize Attorney General Nessel's report. Keep Michigan Safe denies as untrue any allegations that are inconsistent with Attorney General Nessel's report, which is the best evidence of its contents. In further answer, Keep Michigan Safe denies any allegations that it or its agents acted wrongly in any respect.

56. Paragraph 56 attempts to summarize Attorney General Nessel's report. Keep Michigan Safe denies as untrue any allegations that are inconsistent with Attorney General Nessel's report, which is the best evidence of its contents.

57. Keep Michigan Safe denies the allegations in Paragraph 57 in the manner and form alleged.

58. Paragraph 58 attempts to summarize Attorney General Nessel's report. Keep Michigan Safe denies as untrue any allegations that are inconsistent with Attorney General Nessel's report, which is the best evidence of its contents. In further answer, Keep Michigan Safe states that Plaintiffs appear to ignore the numerous instances of illegal signature gathering the Attorney General's report actually uncovered:

Notwithstanding his denials, the evidence establishes that this paid petition circulator left petitions for voters to sign unattended at a store and signed petitions making certifications as a circulator before the voters signed the petition. [Compl. at its Exhibit 2, p. 18.]

\* \* \*

The owner of Howell Western Wear probably aided and abetted the improper circulation of petitions by allowing Scott to leave the petitions at her store for people to sign. [*Id.*]

\* \* \*

The video taken at the Brighton Farmers Market clearly shows that Ms. Reyes told a person that it was all right to sign her husband's name. While not correct, such advice is not per se a violation of law. But the total facts and circumstances indicate that Reyes intended to have the person sign so that she could collect payment for an additional signature. [*Id.*]

\* \* \*

It would actually be charitable to say Mr. Tisinger exemplifies the worst of the worst in the occupation of professional petition circulators. The evidence indicates that he is fully aware of the requirements of law and takes relish in finding ways around rules that would come between him and the money that can be made from circulating petitions. [*Id.* at 19–20.]

\* \* \*

**The investigation did, however, find incidents where the conduct went beyond being simply misconduct and questionable practices, and were actually violative of criminal statutes.** However, in each of those identified instances there was simply insufficient admissible evidence to support criminal charges. [*Id.* at 21 (underlined emphasis in original; bold emphasis added).]

Far from absolving Unlock Michigan, the Attorney General actually uncovered and implicated its circulators in illegal signature gathering, but could not bring charges due to “insufficient admissible evidence.” Additionally, Unlock Michigan did not tell the truth to the Attorney General when it stated that it did not file signatures collected by Catherine Tomassoni because its filing contained at least 48 sheets she circulated with at least 228 signatures. Similarly, Unlock Michigan did not tell the truth to the Attorney General when it claimed that it did not file signatures collected by Eva Reyes because there are at least 35 sheets she circulated containing at least 219 signatures Unlock Michigan's filing.

59. Paragraph 59 attempts to summarize Attorney General Nessel's report. Keep Michigan Safe denies as untrue any allegations that are inconsistent with Attorney General Nessel's report, which is the best evidence of its contents. In further answer, Keep Michigan Safe incorporates its response to Paragraph 58 herein.

60. Paragraph 60, including subparagraphs (a) through (c), attempts to summarize Attorney General Nessel's report. Keep Michigan Safe denies as untrue any allegations, including subparagraphs (a) through (c), that are inconsistent with Attorney General Nessel's report, which is the best evidence of its contents. In further answer, Keep Michigan Safe incorporates its response to Paragraph 58 herein.

#### **KMS's Administrative Procedures Act Challenge and Related Lawsuit**

61. Paragraph 61 attempts to summarize Keep Michigan Safe's April 9 challenge. Keep Michigan Safe denies as untrue any allegations that are inconsistent with the its April 9 challenge, which is the best evidence of its contents.

62. Paragraph 62 attempts to summarize Keep Michigan Safe's April 14 lawsuit. Keep Michigan Safe denies as untrue any allegations that are inconsistent with the its April 14 lawsuit, which is the best evidence of its contents.

63. Paragraph 63 attempts to summarize the State Defendants' brief in opposition to Keep Michigan Safe's April 14 lawsuit. Keep Michigan Safe denies as untrue any allegations that are inconsistent with the State Defendants' brief in opposition to Keep Michigan Safe's April 14 lawsuit, which is the best evidence of its contents.

64. Keep Michigan Safe denies as untrue the allegations in Paragraph 64 in the manner and form alleged.

65. Keep Michigan Safe denies as untrue the allegations in Paragraph 65 in the manner and form alleged.

66. Keep Michigan Safe denies as untrue the allegations in Paragraph 66 in the manner and form alleged.

67. Keep Michigan Safe denies as untrue the allegations in Paragraph 67 in the manner and form alleged. In further answer, Keep Michigan Safe states that the case law *Unlock Michigan* relies upon, *Jim's Body Shop, Inc v. Dep't of Treasury*, 328 Mich App 187, 200-01; 937 NW2d 123 (2019), holds that a "manual," like the one *Unlock Michigan* claims it conformed its conduct to, "is not binding law, but merely guidance."

68. Keep Michigan Safe denies as untrue the allegations in Paragraph 68 in the manner and form alleged. In further answer, Keep Michigan Safe incorporates its response to Paragraph 67 herein.

#### **April 22, 2021 Board Meeting**

69. Keep Michigan Safe admits the allegations in Paragraph 69.

70. Paragraph 70 attempts to summarize Director Brater's comments. Keep Michigan Safe denies as untrue any allegations that are inconsistent with the hearing transcript, which is the best evidence of what Director Brater said at the April 22, 2021 meeting.

71. Paragraph 71 attempts to summarize Director Brater's comments. Keep Michigan Safe denies as untrue any allegations that are inconsistent with the hearing transcript, which is the best evidence of what Director Brater said at the April 22, 2021 meeting.

72. Paragraph 72 attempts to summarize Director Brater's comments. Keep Michigan Safe denies as untrue any allegations that are inconsistent with the hearing transcript, which is the best evidence of what Director Brater said at the April 22, 2021 meeting.

73. Paragraph 73 attempts to summarize Assistant Attorney General Meingast's comments. Keep Michigan Safe denies as untrue any allegations that are inconsistent with the hearing transcript, which is the best evidence of what Assistant Attorney General Meingast said at the April 22, 2021 meeting.

74. Paragraph 74 attempts to summarize Director Brater's comments. Keep Michigan Safe denies as untrue any allegations that are inconsistent with the hearing transcript, which is the best evidence of what Director Brater said at the April 22, 2021 meeting.

75. Paragraph 75 attempts to summarize Member Matuzak's comments. Keep Michigan Safe denies as untrue any allegations that are inconsistent with the hearing transcript, which is the best evidence of what Member Matuzak said at the April 22, 2021 meeting.

76. Paragraph 76 attempts to summarize Member Matuzak's comments. Keep Michigan Safe denies as untrue any allegations that are inconsistent with the hearing transcript, which is the best evidence of what Member Matuzak said at the April 22, 2021 meeting.

77. Paragraph 77 attempts to summarize Member Matuzak's comments. Keep Michigan Safe denies as untrue any allegations that are inconsistent with the hearing transcript, which is the best evidence of what Member Matuzak said at the April 22, 2021 meeting.

78. Paragraph 78 attempts to summarize Member Matuzak's and Member Bradshaw's comments. Keep Michigan Safe denies as untrue any allegations that are inconsistent with the hearing transcript, which is the best evidence of what Member Matuzak and Member Bradshaw said at the April 22, 2021 meeting.

79. Paragraph 79 attempts to summarize Member Matuzak's comments. Keep Michigan Safe denies as untrue any allegations that are inconsistent with the hearing transcript, which is the best evidence of what Member Matuzak said at the February 25, 2021 meeting. In

further answer, Keep Michigan Safe states that the Michigan Election Law explicitly provides the Board with the power to conduct an investigation into the validity of ballot questions signatures, *see* MCL 168.476, and the Court of Appeals has confirmed this power. *Michigan Civil Rights Initiative v Bd of State Canvassers*, 268 Mich App 506; 706 NW2d 139 (2005).

80. Paragraph 80 attempts to summarize Member Daunt's comments. Keep Michigan Safe denies as untrue any allegations that are inconsistent with the hearing transcript, which is the best evidence of what Member Daunt said at the April 22, 2021 meeting.

81. Paragraph 81 attempts to summarize Member Shinkle's comments. Keep Michigan Safe denies as untrue any allegations that are inconsistent with the hearing transcript, which is the best evidence of what Member Shinkle said at the April 22, 2021 meeting.

82. Keep Michigan Safe denies as untrue the allegations in Paragraph 82 in the manner and form alleged.

83. Keep Michigan Safe denies as untrue the allegations in Paragraph 83 in the manner and form alleged.

84. Paragraph 84 attempts to summarize Member Matuzak's comments. Keep Michigan Safe denies as untrue any allegations that are inconsistent with the hearing transcript, which is the best evidence of what Member Matuzak said at the April 22, 2021 meeting.

85. Paragraph 85 attempts to summarize Member Matuzak's comments. Keep Michigan Safe denies as untrue any allegations that are inconsistent with the hearing transcript, which is the best evidence of what Member Matuzak said at the April 22, 2021 meeting.

86. Paragraph 86 attempts to summarize Member Daunt's and Member Shinkle's comments. Keep Michigan Safe denies as untrue any allegations that are inconsistent with the

hearing transcript, which is the best evidence of what Member Daunt and Member Shinkle said at the April 22, 2021 meeting.

87. Keep Michigan Safe admits the allegations in Paragraph 87.

88. Keep Michigan Safe denies as untrue the allegations in Paragraph 88 in the manner and form alleged.

89. Keep Michigan Safe admits the allegations in Paragraph 89.

90. Paragraph 90 attempts to summarize Member Matuzak's comments. Keep Michigan Safe denies as untrue any allegations that are inconsistent with the hearing transcript, which is the best evidence of what Member Matuzak said at the April 22, 2021 meeting. In further answer, Keep Michigan Safe admits Member Matuzak voted against certifying Unlock Michigan's petition.

91. Paragraph 91 attempts to summarize Member Daunt's and Member Shinkle's comments. Keep Michigan Safe denies as untrue any allegations that are inconsistent with the hearing transcript, which is the best evidence of what Member Daunt and Member Shinkle said at the April 22, 2021 meeting. In further answer, Keep Michigan Safe admits Member Daunt and Member Shinkle voted in favor of certifying Unlock Michigan's petition.

92. Keep Michigan Safe admits the allegations in Paragraph 92.

93. Paragraph 93 attempts to summarize Member Matuzak's comments. Keep Michigan Safe denies as untrue any allegations that are inconsistent with the hearing transcript, which is the best evidence of what Member Matuzak said at the April 22, 2021 meeting.

94. Paragraph 94 attempts to summarize an exchange between Member Matuzak and Member Shinkle. Keep Michigan Safe denies as untrue any allegations that are inconsistent with



the hearing transcript, which is the best evidence of what Member Matuzak and Member Shinkle said at the April 22, 2021 meeting.

95. Keep Michigan Safe admits only that it dismissed its complaint in the Court of Claims. Keep Michigan Safe denies as untrue the remaining allegations in Paragraph 95.

**COUNT I – MANDAMUS**

96. Keep Michigan Safe incorporates by reference its answers and denials to Paragraphs 1 through 95 as if fully set forth in this Paragraph.

97. Paragraph 97 states a legal conclusion to which no response is required. To the extent that a response is deemed required, Keep Michigan Safe denies as untrue any allegations that are inconsistent with the case law cited therein. In further answer, Keep Michigan Safe denies as untrue that Unlock Michigan's petition had sufficient signatures given the questions and concerns raised about Unlock Michigan's illegal signature collection tactics.

98. Paragraph 98 states a legal conclusion to which no response is required. To the extent that a response is deemed required, Keep Michigan Safe denies as untrue any allegations that are inconsistent with the case law cited therein.

99. Keep Michigan Safe denies as untrue the allegations in Paragraph 99. As Keep Michigan Safe pointed out in its April 9 challenge, and as its counsel argued at the April 22 hearing, Unlock Michigan collected and submitted signatures that were illegally gathered, which would nullify many signatures. And given that the form of Unlock Michigan's petition fails to strictly comply with the Michigan Election Law's requirements as outlined in Keep Michigan Safe's contemporaneously filed brief in opposition, these deficiencies would nullify *all* signatures Unlock Michigan submitted. The remaining allegations in Paragraph 99 constitute legal conclusions to

which no response is required. To the extent that a response is deemed required, Keep Michigan Safe denies as untrue any allegations that are inconsistent with the case law cited therein.

100. Paragraph 100 states a legal conclusion to which no response is required. To the extent that a response is deemed required, Keep Michigan Safe denies as untrue any allegations that are inconsistent with MCL 168.476 or applicable law. In further answer, as noted throughout, the Board *does* disagree that Unlock Michigan submitted sufficient valid, legally collected signatures. Accordingly, the Board did not have a clear duty to certify the petition.

101. Paragraph 101 states a legal conclusion to which no response is required. To the extent that a response is deemed required, Keep Michigan Safe denies as untrue any allegations that are inconsistent with the case law cited therein. In further answer, Keep Michigan Safe denies that the Board failed to perform a ministerial act because the Board did not have a ministerial act to perform.

102. Paragraph 102 states a legal conclusion to which no response is required. To the extent that a response is deemed required, Keep Michigan Safe denies as untrue any allegations that are inconsistent with applicable law. In further answer, Keep Michigan Safe denies as untrue that the Board's denial was improper or that Plaintiffs are entitled to a writ of mandamus.

103. Paragraph 103 states a legal conclusion to which no response is required. To the extent that a response is deemed required, Keep Michigan Safe denies as untrue any allegations that are inconsistent with applicable law. In further answer, Keep Michigan Safe denies as untrue that Plaintiffs will suffer any injury without immediate action by this Court, much less irreparable injury.

**A. The Board's failure to fulfill its clear legal duty also violates Plaintiffs' due process rights.**

104. Keep Michigan Safe incorporates by reference its answers and denials to Paragraphs 1 through 103 as if fully set forth in this Paragraph.

105. Paragraph 105 states a legal conclusion to which no response is required. To the extent that a response is deemed required, Keep Michigan Safe denies as untrue any allegations that are inconsistent with the Due Process and Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

106. Paragraph 106 states a legal conclusion to which no response is required. To the extent that a response is deemed required, Keep Michigan Safe denies as untrue any allegations that are inconsistent with the Due Process Clause of the Michigan Constitution.

107. Paragraph 107 states a legal conclusion to which no response is required. To the extent that a response is deemed required, Keep Michigan Safe denies as untrue any allegations that are inconsistent with the United States Constitution or the Michigan Constitution.

108. Paragraph 108 states a legal conclusion to which no response is required. To the extent that a response is deemed required, Keep Michigan Safe denies as untrue any allegations that are inconsistent with the case law cited therein.

109. Paragraph 109 states a legal conclusion to which no response is required. To the extent that a response is deemed required, Keep Michigan Safe denies as untrue any allegations that are inconsistent with the case law cited therein.

110. Paragraph 110 states a legal conclusion to which no response is required. To the extent that a response is deemed required, Keep Michigan Safe denies as untrue any allegations that are inconsistent with the case law cited therein.

111. Paragraph 111 states a legal conclusion to which no response is required. To the extent that a response is deemed required, Keep Michigan Safe denies as untrue any allegations that are inconsistent with the United States Constitution or the Michigan Constitution.

112. Paragraph 111 states a legal conclusion to which no response is required. To the extent that a response is deemed required, Keep Michigan Safe denies as untrue any allegations that are inconsistent with the United States Constitution or the Michigan Constitution. In further answer, Keep Michigan Safe denies that the Board ignored petition signatures in an arbitrary and disparate manner.

113. Keep Michigan Safe denies as untrue the allegations in Paragraph 113.

114. Paragraph 114 states a legal conclusion to which no response is required. To the extent that a response is deemed required, Keep Michigan Safe denies as untrue the allegations in Paragraph 114.

115. Keep Michigan Safe denies as untrue the allegations in Paragraph 115. In further answer, Keep Michigan Safe states that the case law Unlock Michigan relies upon, *Jim's Body Shop, Inc v. Dep't of Treasury*, 328 Mich App 187, 200-01; 937 NW2d 123 (2019), holds that a "manual," like the one Unlock Michigan claims it conformed its conduct to, "is not binding law, but merely guidance." In further answer Unlock Michigan knew or should have known that it was taking a significant legal risk proceeding without APA rules in place and cannot now rely on its own lack of diligence or a decision to proceed despite knowledge of the legal risk to escape the consequences of its actions.

116. Paragraph 116 states a legal conclusion to which no response is required. To the extent that a response is deemed required, Keep Michigan Safe denies as untrue any allegations

that are inconsistent with the United States Constitution or the Michigan Constitution, or that Plaintiffs' due-process rights were violated.

117. Keep Michigan Safe denies as untrue the allegations in Paragraph 117 in the manner and form alleged.

**B. The Board's failure to fulfill its clear legal duty also violates Plaintiffs' Equal Protection Rights.**

118. Keep Michigan Safe incorporates by reference its answers and denials to Paragraphs 1 through 117 as if fully set forth in this Paragraph.

119. Paragraph 119 states a legal conclusion to which no response is required. To the extent that a response is deemed required, Keep Michigan Safe denies as untrue any allegations that are inconsistent with the Due Process and Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

120. Paragraph 120 states a legal conclusion to which no response is required. To the extent that a response is deemed required, Keep Michigan Safe denies as untrue any allegations that are inconsistent with the Equal Protection Clause of the Michigan Constitution.

121. Paragraph 121 states a legal conclusion to which no response is required. To the extent that a response is deemed required, Keep Michigan Safe denies as untrue any allegations that are inconsistent with the United States Constitution or the Michigan Constitution.

122. Keep Michigan Safe denies as untrue the allegations in Paragraph 122 in the manner and form alleged.

123. Keep Michigan Safe denies as untrue the allegations in Paragraph 123 in the manner and form alleged. In further answer the Fair and Equal petition was not before the Board for certification and no action on that petition took place

124. Keep Michigan Safe lacks knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 124 and leaves Plaintiffs to their proofs.

125. Keep Michigan Safe denies as untrue the allegations in Paragraph in the manner and form alleged.

126. Keep Michigan Safe denies as untrue the allegations in Paragraph 126. In further answer the Fair and Equal petition was not before the Board for certification and no action on that petition took place.

127. Keep Michigan Safe denies as untrue the allegations in Paragraph 127.

128. Keep Michigan Safe denies as untrue the allegations in Paragraph 128 in the manner and form alleged.

129. Keep Michigan Safe denies as untrue the allegations in Paragraph 129.

130. Keep Michigan Safe denies as untrue the allegations in Paragraph 130.

131. Keep Michigan Safe denies as untrue the allegations in Paragraph 131, including that Unlock Michigan's petition and Fair and Equal Michigan's petition are being treated differently.

132. Keep Michigan Safe denies as untrue the allegations in Paragraph 132, including that Unlock Michigan's petition and Fair and Equal Michigan's petition are being treated differently.

133. Keep Michigan Safe denies as untrue the allegations in Paragraph 133, including that Unlock Michigan's petition and Fair and Equal Michigan's petition are being treated differently.

134. Keep Michigan Safe denies as untrue the allegations in Paragraph 134 in the manner and form alleged. In further answer, Keep Michigan Safe states that there has, as the Attorney

General's report shows, not a "suggestion of fraud." The Attorney General's report specifically states that Unlock Michigan's circulators violated the Michigan Election Law while gathering signatures.

**C. The Board's failure to fulfill its clear legal duty also violates Plaintiffs' First Amendment Rights.**

135. Keep Michigan Safe incorporates by reference its answers and denials to Paragraphs 1 through 134 as if fully set forth in this Paragraph.

136. Paragraph 136 states a legal conclusion to which no response is required. To the extent that a response is deemed required, Keep Michigan Safe denies as untrue any allegations that are inconsistent with the First Amendment to the United States Constitution.

137. Paragraph 137 states a legal conclusion to which no response is required. To the extent that a response is deemed required, Keep Michigan Safe denies as untrue any allegations that are inconsistent with the Michigan Constitution.

138. Paragraph 138 states a legal conclusion to which no response is required. To the extent that a response is deemed required, Keep Michigan Safe denies as untrue any allegations that are inconsistent with applicable law.

139. Paragraph 139 states a legal conclusion to which no response is required. To the extent that a response is deemed required, Keep Michigan Safe denies as untrue any allegations that are inconsistent with applicable law.

140. Paragraph 140 states a legal conclusion to which no response is required. To the extent that a response is deemed required, Keep Michigan Safe denies as untrue any allegations that are inconsistent with applicable law.

141. Paragraph 141 states a legal conclusion to which no response is required. To the extent that a response is deemed required, Keep Michigan Safe denies as untrue any allegations that are inconsistent with applicable law.

142. Paragraph 142 states a legal conclusion to which no response is required. To the extent that a response is deemed required, Keep Michigan Safe denies as untrue any allegations that are inconsistent with applicable law.

143. Paragraph 143 states a legal conclusion to which no response is required. To the extent that a response is deemed required, Keep Michigan Safe denies as untrue any allegations that are inconsistent with applicable law.

**MOTION FOR ORDER TO SHOW CAUSE**  
**AND FOR IMMEDIATE CONSIDERATION**

144. Paragraph 144 states a legal conclusion to which no response is required. To the extent that a response is deemed required, Keep Michigan Safe denies as untrue any allegations that are inconsistent with applicable law.

145. Paragraph 145 states a legal conclusion to which no response is required. To the extent that a response is deemed required, Keep Michigan Safe denies as untrue any allegations that are inconsistent with applicable law.

146. Keep Michigan Safe denies as untrue the allegations in Paragraph 146 including that Plaintiffs are entitled to expedited relief. In further answer, under the Michigan Election Law, the Board does not need to act on certification of Unlock Michigan's petition until July 2022, so there is no need for expedited consideration by this Court.

147. Keep Michigan Safe denies as untrue any allegations in Paragraph 147 because, *inter alia*, the Legislature can consider the petition during 2022. In further answer, Keep Michigan Safe states the Michigan Election Law only requires Defendants to complete a canvass 100 days



before the next general election, which in this case is not until November 2022 given the timing of Unlock Michigan's submission. Stated differently, by law, Defendants have until July 2022 to complete the canvass of Unlock Michigan's petition. *See* MCL 168.474a, .480. Simply put, there is more than enough time for the Legislature to timely consider Unlock Michigan's petition if it meets the requirements for certification (which it does not).

148. Keep Michigan Safe denies as untrue any allegations in Paragraph 148.

149. Paragraph 149 states a legal conclusion to which no response is required. To the extent that a response is deemed required, Keep Michigan Safe denies as untrue any allegations that are inconsistent with the case law cited therein.

150. Paragraph 150 states a legal conclusion to which no response is required. To the extent that a response is deemed required, Keep Michigan Safe denies as untrue any allegations that are inconsistent with MCL 168.479(2). In further answer, Attorney General Nessel has determined that the provision Plaintiffs cite in Paragraph 150 was unconstitutional. *See* OAG 7310 ("Under these circumstances, MCL 168.479(2)'s second requirement, which purports to establish a procedural rule that is within the exclusive control of the Supreme Court, is unconstitutional.").

151. Keep Michigan Safe denies as untrue the allegations in Paragraph 151.

WHEREFORE, Intervening-Defendant Keep Michigan Safe respectfully requests that this Court:

- a. Dismiss with prejudice Plaintiffs' Complaint for Immediate Mandamus Relief with respect to each count;
- b. Deny Plaintiffs each item of relief specified and requested in their Complaint for Immediate Mandamus Relief;
- c. Uphold the Board's decision to *not certify* Unlock Michigan's petition; and
- d. Grant such other relief to Keep Michigan Safe as this Court deems proper and just.

**AFFIRMATIVE DEFENSES**

Keep Michigan Safe, through counsel CLARK HILL PLC and GOODMAN ACKER, P.C., for its Affirmative Defenses to Plaintiffs' Complaint states as follows:

1. To the extent any of the above answers constitutes an affirmative defense, they are incorporated by reference.
2. The Court lacks jurisdiction.
3. Plaintiffs' Complaint fails to state a claim for which relief can be granted.

Respectfully submitted,

/s/ Christopher M. Trebilcock  
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*Attorneys for Intervening Defendant Keep Michigan Safe*

Date: May 24, 2021

**EXHIBIT 1**  
to  
**Intervening Defendant's Answer**

RECEIVED by MSC 5/24/2021 4:15:34 PM



STATE OF MICHIGAN  
JOCELYN BENSON, SECRETARY OF STATE  
DEPARTMENT OF STATE  
LANSING

-- NOTICE --

**YOU ARE HEREBY NOTIFIED THAT THE BOARD OF STATE CANVASSERS  
WILL CONDUCT A REMOTE MEETING ON JULY 6, 2020 AT 10:00 A.M.**

The Board of State Canvassers will conduct a meeting on July 6, 2020 at 10:00 a.m., which will be held remotely due to [Executive Order 2020-129](#) and the COVID-19 pandemic.

**Please use this link to observe the meeting:** [JULY 6 MEETING OF THE BOARD OF STATE CANVASSERS](#)

Included on the Agenda will be:

- Consideration of meeting minutes for approval (June 18, 2020 meeting).
- Consideration of a proposed *de minimis* change to the Hart InterCivic, Inc. Voting System (upgraded workstation and monitor display).
- Consideration of the recall petition submitted on June 19, 2020 against Governor Gretchen Whitmer by Michael Garabelli. The reasons for recall printed in the heading of the petition are as follows:

- 1) For signing in April of 2020, Executive Order 2020-50
- 2) For saying the following regarding a question about the April 15, 2020 rally, ‘Operation Gridlock’, during an April 13, 2020 News Conference on COVID-19: “I hope that as people are looking at social media they are dispelling and taking on the dissemination of demonstrably inaccurate information. I also would just say, I think it is this group is funded in a large part by the DeVos family and I think it’s really inappropriate for a sitting member of the United States President’s cabinet to be waging political attacks on any governor, but obviously on me here at home.” MLIVE later reported: “Nick Wasmiller, a spokesperson for the DeVos family, said the family hasn’t funded the protest [Operation Gridlock] . . .”
- 3) For signing in March of 2020, Executive Order 2020-17, Temporary restrictions on non-essential medical and dental procedures, which included the following language: “A plan for a covered facility that performs medical procedures should exclude from postponement surgeries related to advanced cardiovascular disease (including coronary artery disease, heart failure, and arrhythmias) that would prolong life; oncological testing, treatment, and related procedures; pregnancy-related visits and procedures; labor and delivery; organ transplantations; and procedures related to dialysis.”

- Consideration of the 100-word summary of the purpose of the initiative petition sponsored by Unlock Michigan, 2145 Commons Parkway, Okemos, MI, 48864:

An initiation of legislation to repeal the Emergency Powers of Governor Act, 1945 PA 302, MCL 10.31 to 10.33, entitled “An act authorizing the governor to proclaim a state of emergency, and to prescribe the powers and duties of the governor with respect thereto; and to prescribe penalties.”

- Such other and further business as may be properly presented to the Board.

*/S/ Jonathan Brater*

Jonathan Brater, Secretary  
Board of State Canvassers

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A person may address the Board on any agenda item at the end of the meeting. A person who wishes to address the Board on an agenda item at the time the item is being discussed must submit a written request to the Chairperson of the Board prior to the opening of the meeting. **Persons addressing the Board are allotted three minutes.** Members of the general public may submit written comments using the “Chat” feature at the meeting link above, or via email at [elections@michigan.gov](mailto:elections@michigan.gov).

People with disabilities needing accommodations for effective participation in this meeting should email [elections@michigan.gov](mailto:elections@michigan.gov) or contact Lydia Valles at (517) 241-4662.

**EXHIBIT 2**  
to  
**Intervening Defendant's Answer**

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STATE OF MICHIGAN  
JOCELYN BENSON, SECRETARY OF STATE  
DEPARTMENT OF STATE  
LANSING

**Meeting  
of the  
Board of State Canvassers**

**January 28, 2020  
Delta Charter Township Hall  
Lansing, Michigan**

**Called to order:** 1:58 p.m.

**Members present:** Jeannette Bradshaw – Chairperson  
Aaron Van Langevelde – Vice Chairperson  
Julie Matuzak  
Norm Shinkle

**Members absent:** None.

**Agenda item:** Consideration of meeting minutes for approval (December 27, 2019).

**Board action on agenda item:** The Board approved the minutes of the December 27, 2019 meeting as submitted. Moved by Matuzak; supported by Shinkle. Ayes: Bradshaw, Van Langevelde, Matuzak, Shinkle. Nays: None. Motion carried.

**Agenda item:** Consideration of the 100-word summary of the purpose of the initiative petition sponsored by Fair and Equal Michigan, PO Box 10030, Lansing, Michigan 48901. The proposed petition summary prepared by the Director of Elections on January 2020 read:

An initiation of legislation to amend Section 103 of the Elliott-Larsen Civil Rights Act, Public Act 453 of 1976, MCL 37.2103. The Elliott-Larsen Civil Rights Act prohibits discriminatory practices, policies, and customs in the exercise of civil rights. It prohibits discrimination in employment, housing, public accommodations, public service, and education because of sex, religion, or eight other reasons. Section 103 of the Act does not define "sex" or "religion." If enacted, the proposed initiated law would define "sex" as including gender, sexual orientation, and gender identity or

expression; and would define "religion" as including the religious beliefs of an individual. WORD COUNT: 95

**Board action on agenda item:** The Board approved the **proposed revised** petition summary of the purpose of the initiative petition sponsored by Fair and Equal Michigan. Moved by Shinkle; supported by Matuzak. Ayes: Bradshaw, Van Langevelde, Matuzak, Shinkle. Nays: None. Motion carried.

An initiation of legislation to amend Section 103 of the Elliott-Larsen Civil Rights Act, Public Act 453 of 1976, MCL 37.2103. The Act prohibits discrimination in employment, housing, public accommodations, public service and educational institutions because of religion, race, color, national origin, age, sex, height, weight, familial status, or marital status. Section 103 of the Act does not define "sex" or "religion." If enacted, the proposed initiated law would for purposes of the Act define 'sex' as including gender, sexual orientation, and gender identity or expression; and would define "religion" as including the religious beliefs of an individual. WORD COUNT: 94 words

**Agenda item:** Consideration of the form of the initiative petition submitted by Fair and Equal Michigan.

**Board action on agenda item:** The Board approved the form of the initiative petition submitted by Fair and Equal Michigan with the understanding that the sponsor will file an amended petition reflecting the summary as approved at the January 28, 2020 meeting and that the Board's approval does not extend to, number one, the substance of the proposal which appears on the petition or, two, the manner in which the proposed language is affixed to the petition. Moved by Matuzak; supported by Van Langevelde. Ayes: Bradshaw, Van Langevelde, Matuzak, Shinkle. Nays: None. Motion carried.

**Agenda item:** Consideration of proposed de minimis changes to the ES&S Voting System. (The proposed changes would update firewall firmware to address a potential vulnerability, add a second source to the system firewall for e-transmission of unofficial results, and upgrade the cradle point router firmware to add an additional layer of security for wireless e-transmission of unofficial results.)

**Board action on agenda item:** The Board approved the proposed de minimis changes to the ES&S Voting System. Moved by Matuzak; supported by Shinkle. Ayes: Bradshaw, Van Langevelde, Matuzak, Shinkle. Nays: None. Motion carried.



**Agenda item:** Recording the results of the special primary election held January 7, 2020 to determine the Democratic and Republican Party nominees for the office of State Representative, 34th District.

**Board action on agenda item:** The Board approved the record of the results of the January 7, 2020 special primary for the office of state representative 34<sup>th</sup> District as certified by the Genesee County Board of Canvassers. Moved by Shinkle; supported by Matuzak. Ayes: Bradshaw, Van Langevelde, Matuzak, Shinkle. Nays: None. Motion carried.

**Agenda item:** Such other and further business as may be properly presented to the Board.

**Board action on agenda item:** Jonathan Brater announced Melissa Malerman was Director of the newly created Finance, Disclosure and Compliance Division of the Bureau of Elections. Evelyn Quiroga retired.

**Adjourned:** 2:58 p.m.

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Chair Bradshaw

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Vice-Chair Van Langevelde

\_\_\_\_\_  
Member Matuzak

\_\_\_\_\_  
Member Shinkle

\_\_\_\_\_  
Date

FEB. 19, 2020