

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF KALAMAZOO

SABRINA PRITCHETT-EVANS and
KIMBERLY HARRIS

Plaintiffs

Case No. 2023-0169-CZ

v.

HON. CURTIS J. BELL

REPUBLICAN PARTY OF KALAMAZOO
COUNTY, STATE OF MICHIGAN (KGOP);
KALAMAZOO GRAND OLD PARTY
EXECUTIVE COMMITTEE (KGOPEC); and
KELLY SACKETT

Defendants.

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**BRIEF IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY DISPOSITION
PURSUANT TO MCR 2.116(C)(1), (C)(2), (C)(3), (C)(4), (C)(5), (C)(7), (C)(8), and (C)(10)**

And

DEMAND FOR SANCTIONS PURSUANT TO MCR 1.109(E)

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Defendants REPUBLICAN PARTY OF KALAMAZOO COUNTY, STATE OF MICHIGAN ("KGOP"); KALAMAZOO GRAND OLD PARTY EXECUTIVE COMMITTEE ("KGOPEC"); and KELLY SACKETT ("Sackett") by and through their attorney, DePERNO LAW OFFICE, PLLC, submit the following for their brief in support of *Motion for Summary Disposition Pursuant to MCR 2.116(C)(1), (C)(2), (C)(3), (C)(4), (C)(5), (C)(7), (C)(8), and (C)(10)*.

A. FACTS

1. General

The 13 Republican districts in Michigan caucused on February 17, 2023 ("February 17 Caucus") in Lansing, Michigan in order to elect district chairs and vice chairs, district committee members, and county representatives to serve on the Michigan Republican State Committee ("MRSC"). Prior to that date, the 4th District county chairs¹ met to agree on specific rules for the February 17 Caucus [Exhibit 1]. One of those rules is "Rule 9" which essentially stated each county in the district would break into caucuses during the February 17 Caucus during which each county would nominate and elect state committee people to serve on MRSC. *Id.* Two people from Kalamazoo County would be nominated and elected. All people nominate by the individual counties would then be nominated as a slate and elected by the entire 4th District to serve on the MRSC. An agenda was also created for the February 17 Caucus and clearly stated that "13. Counties Caucus to Elect County State Committee & Executive Committee Seats (as apportioned by the rules)" [Exhibit 2].

Plaintiff Harris wanted to be one of the people elected by Kalamazoo County delegates to MRSC, However, the KGOP delegate are deeply divided between two factions: (1) unity-minded

¹ Allegan, Berrien, Calhoun, Kalamazoo, Ottawa, and Van Buren counties.

delegates who support Chairwoman Sackett and want to focus on raising money and getting Republicans elected and (2) anarchist-minded delegates who support Plaintiff Pritchett-Evans and want to focus on "burning down the party;" where raising money and getting Republicans elected is not important; but instead desire to push a radical agenda through a "Christian only" cult mentality that will "purify" the party; and only when the party is "purified" will the party be able to attract the "right kind" of donors needed to transform the party into their image. Some claim Plaintiff Pritchett-Evans was sent by "God" to the Republican party. Others claim she is a Democrat sent to create chaos, undermine the party overall, and make all Republicans look foolish.

Plaintiff Harris was aware that she did not have the votes within the KGOP to elect her as one of the Kalamazoo County representatives to MRSC. Instead, Tony Lorenz and Dr. Tamara Mitchell likely had the votes and would have been elected at the February 17 Caucus. Therefore, Plaintiffs Pritchett-Evans and Harris, along with Veronica Perro and William Bennett formulated a *coup d'etat* in conjunction with other like-minded delegates from other counties, primarily Ottawa County, whereby a motion would be brought at the February 17 Caucus to suspended Rule 9 as to Kalamazoo County only. Instead of Kalamazoo County delegates caucusing within the county (like all other counties in the 4th District), nominations would be brought to the floor and then voted on by the entire district. This plan is described in the messages attached as [Exhibit 23]. This shifted the majority within Kalamazoo County who favored Lorenz and Mitchell to a majority within the 4th District who favored Kim Harris. Essentially, this motion to suspend Rule 9 as to Kalamazoo County disenfranchised Kalamazoo County delegates making their vote meaningless and transferring power to the whole district. This violated the U.S.

Constitution and Michigan Constitution's basis principle of "one person, one vote" and equal protection.

Indeed, at the February 17 Caucus, a motion was made to suspend Rule 9 as to Kalamazoo County, it received a second, the motion was passed by the entire district, Kim Harris and Sandra VanderLugt were nominated to serve as the Kalamazoo County representatives at MRSC, the vote was passed by the entire district, and Kalamazoo County delegates were disenfranchised when their vote was essentially stolen by a minority of delegates within Kalamazoo County and given to delegates outside Kalamazoo. The KGOP has submitted a letter to MIGOP Chairwoman Kristina Karamo demanding action be taken following the February 17 Caucus [[Exhibit 3](#)]. This request has been sent twice. No response has yet been received and is now past due.

The KGOP is an independent organization subject to its own bylaws [[Exhibit 4](#)] and has the authority to control its membership and the integrity of the organization in order to conform to the Republican Party platform. As a result of the actions taken by Plaintiffs Pritchett-Evans and Harris, Veronica Parro, and William Bennett at the February 17 Caucus, and for other reasons the KGOP removed them as members of the KGOP on March 1, 2023 [[Exhibit 5](#)]. KGOP Chairwoman Sackett also read a statement at the meeting [[Exhibit 6](#)] and published a statement of events to Kalamazoo County delegates [[Exhibit 7](#)]. The KGOP Executive Committee also censured Plaintiffs Pritchett-Evans and Harris, Veronica Parro, and William Bennett [[Exhibit 8](#)].

2. Sabrina Pritchett-Evans

Plaintiff Pritchett-Evans is a Democrat and a disruptor. As late as 2021 she made campaign contributions to Democrats [[Exhibit 9](#)]. On September 13, 2021, the Boys & Girls

Clubs of Greater Michigan posted an announcement on Facebook stating that it had just received a contribution from Tendaji Giving Circle for \$5,000 as a "grant for Diversity, Equity, Accessibility and Inclusion" [Exhibit 10]. Republicans are deeply opposed to the liberal agenda that promotes Diversity, Equity, Inclusion ("DEI"), Social Emotional Learning ("SEL"), and Critical Race Theory ("CRT"), especially when these programs are pushed on children. Indeed, these programs violate the Republican Party platform because they endanger children and their education.

Even left-leaning activist Internet content creators like Axios and others recognize this principle: See *Inside the GOP's "Save the kids" strategy*.² See also *"Diversity, Equity and Inclusion in the crosshairs in GOP-controlled states"*.³ The KGOP has actively been fighting against these programs in schools, including in Portage schools. See *"Former 'Gender Affirming Closet' to include all students in need of clothes, supplies"*.⁴ ("We had to do a FOIA to actually get all the information about what was going on," said Kelly Sackett whose kids go to Portage Central. "Why is that? Something that has to do that within the public school system, why do concerned citizens have to do a FOIA to get the information?"). Interestingly, this deceptive article by WWMT tried to transform the narrative by misleading the public that the Portage gender closet was a thing of the past. It is not. Even Newsweek has recognized that the GOP is leading the charge to protect children from the onslaught of the progressive anti-child agenda. See *"How the GOP Can Become the Pro-Child Party"*.⁵

² <https://www.axios.com/2023/02/02/republicans-racism-transgender-education-trump>

³ <https://publicintegrity.org/education/diversity-equity-and-inclusion-in-the-crosshairs-in-gop-controlled-states/>

⁴ <https://wwmt.com/news/local/portage-northern-high-school-lgbtq-closet-clothing-gender-sexuality-alliance-cub-student-district-public-schools>

⁵ <https://www.newsweek.com/how-gop-can-become-pro-child-party-opinion-1781875>

The KGOP is leading that same charge in Michigan to promote the party platform and fight against DEI, SEL, and CRT. But some Democrats and progressives have tried to stop these efforts. Plaintiff Pritchett-Evans is one of these so-called infiltrators who claims she has seen the light and now wants to be a Republican. But her record suggests otherwise. On February 18, 2023, she ran to be the Vice-Chair of the Republican 4th District [Exhibit 11]. She ran alongside Ken Beyer, another Democrat who has a history of donating to and supporting Democrat candidates in Kalamazoo County [Exhibit 12]. Plaintiff Pritchett-Evans and Ken Beyer (strong allies of the current MIGOP Chair Kristina Karamo) won their election and can now promote their progressive DEI, SEL, and CRT ideas as part of the 4th District committee.

However, the KGOP has the absolute right to promote the GOP agenda and platform and fight to keep progressive politics out of Kalamazoo. It has the right to control its membership. The KGOP bylaws [Ex 4] state in Article II (Purpose) that "the purpose of the Party shall be to • Promote the ideals and policies of the Republican Party." One of the roles and responsibilities of the Executive Committee members is to "participate fully in promoting the goals and purposes of the Party." *Id.* at 2.

Plaintiff Pritchett-Evans is an ex-officio member of the Executive Committee because she is the Chairwoman of a Republican Organization in Kalamazoo County per section III(C) of the KGOP bylaws. The KGOP has two policies regarding video or audio recording of meetings, both posted on the KGOP website. The first is a general meeting policy [Exhibit 13].⁶ The second is a specific policy regarding recording of meetings [Exhibit 14].⁷ Both of these policies were posted prior to March 1, 2023 on the KGOP door, inside the office, and at the sign-in area

⁶ https://kgop.org/?page_id=555

⁷ https://kgop.org/?page_id=558

[Exhibit 15]. The KGOP has the absolute right to hold private meetings and demand that people who attend respect the private nature of the organization. Plaintiff Pritchett-Evans thinks she can attend meetings as an ex-officio member and violate the rules. As a Democrat, she thinks it is perfectly acceptable to post on-line the private Executive Committee discussions and meetings, sometimes including strategy regarding candidates and elections. On March 1, 2023, Plaintiff Pritchett-Evans violated these policies by attending a meeting, recording the meeting, and then posting the video of the meeting online. She was issued a warning [Exhibit 16]. On March 13, 2023, Plaintiff Pritchett-Evans violated the policies again and was provided a second notice (even though it was not required) [Exhibit 17]. This decision falls firmly within the discretion of KGOP Chairwoman Sackett pursuant to Section IV(1)(A) of the KGOP bylaws. As a result of all of the aforementioned actions, Plaintiff Pritchett-Evans was removed as a member of the KGOP and censured for her conduct [Exs 5-8, 16-17].

3. Kim Harris

Plaintiff Harris is an elected member of the KGOP Executive Committee. She is also is an anarchist and disruptor. Plaintiff Harris was part of the effort to disenfranchise Kalamazoo County delegates at the February 17 Caucus (see *supra*). Plaintiff Harris has designated herself, without authority, as "Precinct Delegate Captain" within the KGOP even though no such position exists. In that capacity, Harris has created disruption and confusion. She continuously sends emails to delegates and organizes "Delegate Training" without authority [E.g. Exhibit 18]. Her training inappropriately and in violation of MCL 168.621 *et seq*, including but not limited to MCL 168.624, tells delegates that her goal is to "remove all RINOs and their useless pawns from party leadership at the county, district, and state committee levels," she calls members of the Republican Party "tyrants," and she sends out training materials telling delegates "We are in a

war" and to use "weapon of war" against other delegate and leadership in order to "Take[] over control of your county convention." None of this violent rhetoric is acceptable to the KGOP. It is misleading and it creates disunity. It causes some delegates to hate other delegates. It creates an atmosphere of potential violence and hostility. The KGOP has sent Plaintiff Harris a "cease and desist" letter [Exhibit 19] demanding she stop this conduct. She has ignored the KGOP.

Harris is subjected to removal pursuant to Article III(7)(D) of the bylaws. Indeed, the KGOP has the authority to remove members of the Executive Committee:

E. A motion to consider the removal of an Elected Member from the Executive Committee requires a two-thirds vote of the Elected Members present at a regular meeting of the committee. If the motion to consider removing an Elected Member is approved, a letter must be sent to the delegate informing him of the action taken, and the right to appear at the next regular meeting of the organization to appeal the action taken. Final approval to remove an Elected Member requires a two-thirds vote of the members present at the meeting held subsequent to the one where the motion to consider removing an Elected Member was approved.

Id. at 3.

A motion was made on March 13, 2023 to remove Harris as a member of the Executive Committee. That vote passed. The minutes are attached [Exhibit 20]. Harris was then properly given notice that she was being removed [Exhibit 21]. That final vote shall take place on April 10, 2023.

B. LAW AND ARGUMENT as to MCR 2.116(C)(1), (C)(2), and (C)(3)

1. MCR 2.116(C)(1), (C)(2), and (C)(3) as to Defendant KGOPEC

The plaintiff bears the burden of establishing jurisdiction over the defendant, *Mozdy v Lopez*, 197 Mich App 356, 359; 494 NW2d 866 (1992). Jurisdiction over the person may be established by way of general personal jurisdiction or specific (limited) personal jurisdiction. See *Jeffrey v Rapid American Corp*, 448 Mich 178, 184; 529 NW2d 644, 648 (1995) and *Kircos v Goodyear Tire & Rubber Co*, 70 Mich App 612, 613-614; 247 NW2d 316 (1976). The exercise

of general jurisdiction is possible when a defendant's contacts with the forum state are of such nature and quality as to enable a court to adjudicate an action against the defendant, even when the claim at issue does not arise out of the contacts with the forum. *Helicopteros Nacionales de Colombia, SA v Hall*, 466 US 408, 414, n 9, 415-416; 104 S Ct 1868; 80 L Ed 2d 404 (1984). When a defendant's contacts with the forum state are insufficient to confer general jurisdiction, jurisdiction may be based on the defendant's specific acts or contacts with the forum. *Witbeck v Bill Cody's Ranch Inn*, 428 Mich 659, 665; 411NW2d439 (1987).

This Court lacks jurisdiction over Defendant KGOPEC because (1) as argued below, MCL 168.599 has been declared unconstitutional and (2) it is not an organization defined in MCR 2.105 that can be sued. In the Complaint, Plaintiffs makes no jurisdictional allegation as to KGOPEC but only declared that "The KGOP EC is made up of 36 individuals, eighteen of the 36 are persons delegate elected by a super-majority of the duly elected Kalamazoo County Precinct delegates by statutory authority of MCL 168.599." *Complaint*, ¶ 1. KGOPEC is simply a "committee" created by the KGOP Bylaws [Ex 4, Article III]. Therefore, the Court cannot exercise general personal jurisdiction or specific (limited) personal jurisdiction over KGOPEC. It must be dismissed as a defendant pursuant to MCR 2.116(C)(1). For these reasons, KGOPEC must also be dismissed as a defendant pursuant to MCR 2.116(C)(2) because the process issued by the Court against KGOPEC is insufficient. A summons cannot be issued against a non-entity or organization that does not exist as a matter of law.

Further, this Court lacks jurisdiction over Defendant KGOPEC because Plaintiffs have filed no proof of service with the Court indicating that KGOPEC has been served. For these reasons, the non-entity committee designated as KGOPEC must be dismissed from this litigation pursuant to MCR 2.116(C)(3).

2. MCR 2.116(C)(1) and (C)(3) as to KGOP

This Court lacks jurisdiction over Defendant KGOP because service of process was insufficient. In the Complaint, Plaintiffs declare that "Defendant, Republican Party of Kalamazoo County, State of Michigan (KGOP) is a political organization within Kalamazoo County, Michigan" *Complaint*, ¶ 4. Specifically, MCR 2.105(E) requires the following:

(E) Partnership Association; Unincorporated Voluntary Associations. Service of process on a partnership or an unincorporated voluntary association may be made by:

(1) serving a summons and a copy of the complaint on an officer, director, trustee, agent, or person in charge of an office or business establishment of the association, and

(2) sending a summons and a copy of the complaint by registered mail, addressed to an office of the association. If an office cannot be located, a summons and a copy of the complaint may be sent by registered mail to a member of the association other than the person on whom the summons and complaint was served."

The Proof of Service filed by Plaintiffs [Exhibit 24] states that the summons and complaint was served on Kathleen Olmsted on April 7, 2023. Kathleen Olmstead is the Secretary of KGOP. However, the summons and complaint has not been served by registered mail. Therefore, service on KGOP is insufficient and the Court does not have jurisdiction over KGOP.

C. LAW AND ARGUMENT as to MCR 2.116(C)(4) and (C)(5)

1. MCR 2.116(C)(4) and (C)(5) generally

Plaintiffs lack the capacity to sue, do not have standing, and their issues are moot. Therefore, this case must be dismissed pursuant to MCR 2.116(C)(4) and (C)(5).

A motion for summary disposition brought under MCR 2.116(C)(4) tests a trial court's subject matter jurisdiction. *Braun v Ann Arbor Charter Twp*, 262 Mich App 154, 157; 683 NW2d 755 (2004). Circuit courts are courts of general jurisdiction and have original jurisdiction

over all civil claims and remedies except where exclusive jurisdiction is vested in some other court or the circuit court is denied jurisdiction by constitution or statute. *Farmers Ins Exchange v South Lyon Community Schools*, 237 Mich App 235, 241; 602 NW2d 588 (1999). If it is apparent from the allegations that the matter alleged is within the class of cases over which the body has power to act, then subject matter jurisdiction exists. *Id.* The burden of proof is on the plaintiff to establish jurisdiction. *Citizens for Common Sense In Gov't v Attorney General*, 243 Mich App 43, 50; 620 NW2d 546 (2000), Additionally, when reviewing a motion under MCR 2.116(C)(4), the Court must determine whether the pleadings demonstrate that the respondent is entitled to judgment as a matter of law, or whether the affidavits and other proofs show that there is no genuine issue of material fact. *Walker v Johnson & Johnson Vision Products, Inc*, 217 Mich App 705, 708; 552 NW2d 679 (1996).

When reviewing a ruling on a motion under MCR 2.116(C)(5), the Court must consider the pleadings, depositions, admissions, affidavits, and other documentary evidence submitted by the parties. MCR 2.116(G)(5).

2. **MCR 2.116(C)(4) as to all Defendants; claims are not justiciable; bylaws have not been violated; MCL 168.599 is unconstitutional**

This Court does not have subject matter jurisdiction over the Defendants because this is a dispute of internal party politics and the issue are not justiciable by this court. Justiciability is a part of the "political question doctrine" where courts typically refuse to interfere in politics. The Supreme Court has strongly cautioned against judicial intervention in internal political party disputes.

Judicial intervention in this area traditionally has been approached with great caution and restraint. It has been understood since our national political parties first came into being as voluntary associations of individuals that the convention itself is the proper forum for determining intra-party disputes as to which delegates shall be seated. Thus, these cases involve claims of the power of the

federal judiciary to review actions heretofore thought to lie in the control of political parties.

O'Brien v Brown, 409 U.S. 1, 4 (1972).

Second, Plaintiffs argue that Defendants have somehow violated the bylaws of the Michigan Republican State Committee ("MRSC"). The argument is factually wrong and frivolous. Defendants are not required to follow the MRSC bylaws. In fact, Article II of the bylaws titled "Purpose" states clearly that part of the purpose of the Michigan Republican State Committee ("Committee") is to "work in close cooperation with *other* Republican state, district and county organizations." Emphasis on "other" county organization, recognizing that KGOP is a separate and distinct organization with its own separate committee identification number. Plaintiff know and understand that their arguments have no merit. Attached as Exhibit 22 is a message Plaintiff Harris posted on Telegram stating "MIGOP does not have the power to hold our chair accountable." This is an admission against interest. MRE 804.

Plaintiffs argue that Defendants are not permitted to replace "statutory members" of the Executive Committee. Plaintiffs rely heavily, if not exclusively, on MCL 168.599. This statute was ruled unconstitutional in 1990 in *Heitmanis v Austin*, 899 F.2d 521 (6th Cir. 1990):

We hold that these portions of the Election Law significantly burden the right to freedom of association of the State Party and its members. By compelling the State Party to automatically place incumbent legislators and nominees to county offices as delegates, the Election Law infringes upon the right of political parties to choose a method for selection of their party nominees. By requiring the county executive committees to be made up of an equal number of elected delegates and legislators, the Election Law directly controls the internal structure of the political parties. Since Michigan has not demonstrated any compelling state interest for such a significant restriction of the freedom of association, we conclude that the relevant parts of the Election Law are facially unconstitutional.

Id. at 529. The KGOP bylaws (which control) state specifically that the number of "statutory" members on the Executive Committee *shall equal* the number of "elected" members. When three

"statutory" members resigned or moved out of district, the Executive Committee was required to add three members to make the numbers equal. There is nothing in the bylaws that prohibit the actions taken by the Executive Committee. Plaintiffs have no chance to prevail on this claim.

3. Plaintiffs' claims are moot where no practical relief can be granted

The Michigan Supreme Court summarized the mootness doctrine succinctly in *People v Richmond*, 486 Mich 29, 34-35; 782 N.W.2d 187 (2010):

It is well established that a court will not decide moot issues. This is because it is the "principal duty of this Court . . . to decide actual cases and controversies." That is, "[t]he judicial power . . . is the right to determine actual controversies arising between adverse litigants, duly instituted in courts of proper jurisdiction." As a result, "this Court does not reach moot questions or declare principles or rules of law that have no practical legal effect in the case before" it. Although an issue is moot, however, it is nevertheless justiciable if "the issue is one of public significance that is likely to recur, yet evade judicial review." It is "universally understood . . . that a moot case is one which seeks to get a judgment on a pretended controversy, when in reality there is none, . . . or a judgment upon some matter which, when rendered, for any reason, cannot have any practical legal effect upon a then existing controversy." Accordingly, a case is moot when it presents "nothing but abstract questions of law which do not rest upon existing facts or rights." [Internal citations omitted.]

As described earlier, the relief Plaintiffs sought in his complaint consists of requests for (1) declaratory relief under MCL 168.599, (2) declaratory relief under Michigan Constitution Article 1 §2, (3) declaratory relief under Michigan Constitution Article 1 §3, and (4) mandamus, (5) breach of fiduciary duty, (6) tortious interference, (7) slander, and (8) discrimination. There is no relief the Court can give Plaintiffs because the KGOP did not act outside the authority of the KGOP Bylaws. Plaintiffs' claims present only abstract questions of law that cannot lead to any practical effect. Plaintiffs' complaint must be dismissed as moot.

4. Plaintiffs' lack standing to bring the claims raised in the complaint

In Michigan, standing is a limited, prudential doctrine:

Under this approach, a litigant has standing whenever there is a legal cause of action. Further, whenever a litigant meets the requirements of MCR 2.605, it is sufficient to establish standing to seek a declaratory judgment. Where a cause of action is not provided at law, then a court should, in its discretion, determine whether a litigant has standing. A litigant may have standing in this context if the litigant has a special injury or right, or substantial interest, that will be detrimentally affected in a manner different from the citizenry at large or if the statutory scheme implies that the Legislature intended to confer standing on the litigant. [*Lansing Sch Educ Ass'n v Lansing Bd of Educ*, 487 Mich 349, 372; 792 N.W.2d 686 (2010).]

In short, there are three avenues to establish standing: by court rule for declaratory judgment (MCR 2.605), by statute (conferred expressly or impliedly based on a statutory scheme), or by establishing that the litigant has a special injury or right or substantial interest that would be detrimentally affected in a manner different from the citizenry at large. *Lansing Sch Ed*, 487 Mich at 358-359.

Here, Plaintiff brings claims under the Michigan Constitution (art 1, § 2 and art 2, § 4) as well as statutory claims under MCL 600.4545, MCL 168.681, and MCL 168.765. Plaintiff must have standing to assert each claim. *Id.* at 373 ("we must decide whether plaintiffs have standing to pursue the rest of their claims"). And for the reasons stated below, Plaintiff lacks standing for all but one claim.

5. Count I – the Court cannot grant declaratory relief under MCL 168.599

As described above, MCL 168.599 has been declared unconstitutional. To further emphasize this point, we need only look at the Bylaws of the Michigan Democratic Party [Exhibit 25] and the Kalamazoo County Republican Party [Exhibit 26]. Prior to the 1988 Presidential election, George Heitmanis was a delegate and member of the Republican Party state central committee. Plaintiff supported Jack Kemp for President. However, the more established wing of the Republican Party supported George H. W. Bush. The Republican Party rules at the time followed MCL 168.599 and required that each county party include on its

executive committee an equal number of "statutory members"⁸ and "elected members."⁹ Mr. Heitmanis believed that requiring this equal split aided the "established" wing of the party by installing establishment elected officials automatically on county executive committees. This helped Bush and hurt Kemp. Mr. Heitmanis filed a lawsuit styled *Heitmanis v Austin* and argued that MCL 168.599 "violated their constitutional rights because: the apportionment of delegates violates the one person, one vote principle; the automatic delegates provision debases the voting rights of the elected delegates; and the automatic delegates provision interferes with the First Amendment freedom of association of the State." The Sixth Circuit court of appeals agreed and ruled that MCL 168.599 was unconstitutional. See *Heitmanis, supra*.

In response, the Democratic Party changed its party structure. No longer would it require an equal number of "statutory members" and "elected members" members on county executive committees. Instead, the Democratic Party required county executive committees install "twice the number of candidates for County, State legislative and U.S. House of Representatives offices for which candidates were nominated at the most recent fall primary election." This diminished the power and stranglehold the established wing of the party held and granted more power to the grassroots delegates. [Ex 26, ¶ 4.1]. Likewise, the Kalamazoo County Democratic Party requires the following:

Composition of County Committee

6.2 One-third of the County Committee automatically consists of the most recent nominees for countywide offices, the County Commission, and the most recent nominees for State House, State Senate and U.S. House whose districts include all or part of the County. The delegates at the County Convention (5.11) shall elect

⁸ The "statutory members" were people who ran for county offices and state legislative offices for which those candidates were nominated at the last 2 preceding fall primary elections.

⁹ The "elected members" were elected by after the August primary of even-numbered years.

the balance of the County Committee which shall consist of twice the number of automatic members. [Ex 27, ¶ 6.2].

However, the Republican Party did not change; but in violation of *Heitmans* continued to demand each county party install an equal number statutory and elected members. This allowed the MIGOP to continue to support establishment candidates in a way that debased the voting rights of the elected delegates and interfered with the First Amendment freedom of association. But why? The MIGOP has historically maintained low numbers of delegates and forced statutory members on county parties. This allowed the establishment to control executive board composition and delegate selection for state conventions; which in turn allowed the establishment to control the selection of candidates nominated at state conventions (Attorney General, Secretary of State, etc.). This also allowed MIGOP to control state policy.

This changed in April 2022 when certain candidates for office helped recruit grassroots delegates. Some of those people and delegates are now on the Kalamazoo County Executive Committee. Defendant Sackett is one of them and is now the chairwoman of the KGOP. Sackett and those who support her also support the Constitution. However, she has detractors, including Plaintiffs who (as Democrat infiltrators and anarchists) do not want the system to change (as it should have when the *Heitmanis* decision came out). Instead, they want to continue to handicap the Republican Party. For this reason, Plaintiffs and some other Kalamazoo establishment delegates joined with other likeminded delegates in District 4 who do not want to see needed change brought to KGOP and MIGOP. They are beholden to, and will continue to salute, the establishment wing of the MIGOP. See *e.g.* Exs 6-12, 16-17, 21-22. Defendant Sackett, however, is on the forefront leading a movement to implement meaningful change and finally shift the power to the grassroots elected delegates. Plaintiffs will stop at nothing to roadblock these

efforts. These establishment Plaintiffs and their supporters, including MIGOP, make the old guard look transparent.

Indeed, at the last hearing in this case, Plaintiffs' attorney stated that MIGOP was going to file an *amicus* brief in support of Plaintiffs. We are waiting for MIGOP to support the old guard and suppress the power of delegates. For some reason they hope this court will rule in their favor and enter an order that the Democratic Party has been operating for 33 years in violation of MCL 168.599. For these reasons, Plaintiffs make continued reference to the MIGOP Bylaws. However, they are irrelevant and have no bearing on KGOP or this case. Indeed, there is no provision in the KGOP Bylaws that require KGOP to adopt or follow the MIGOP Bylaws.

Next, Plaintiffs argue that the "KGOP Bylaws govern the operation of the executive committee but does not give the EC the authority to replace empty statutory seats with elected delegates." *Complaint*, ¶ 12. This is not true. Rather, the KGOP Bylaws define membership on the Executive Committee to include (A) the statutory members and (B) the elected members being "[a] number of persons, **equal** to" the statutory members [Ex 4, Article III(3)]. When three statutory members resigned, the Executive Committee was required to fill those seats so that the statutory seats were **equal** to the elected seats. Otherwise, the KGOP Bylaws are silent as to how to fill a vacancy of a statutory member. For that reason, the Executive Committee held a vote to fill those vacancies and that vote passed.

Finally, MCL 168.599 (even if it was constitutional) does not confer standing because the statute does not create a cause of action, express or implied. Instead, it states only a procedure for creating executive committees. Because the statute neither creates a cause of action nor grants standing, Plaintiff has no standing to raise a claim under this statute.

6. Count II – the Court cannot grant declaratory relief under Michigan Constitution: Article 1 §2 Equal Protection of the Laws and Due Process

Article 1, § 2 of the Michigan Constitution provides that "[n]o person shall be denied the equal protection of the laws; nor shall any person be denied the enjoyment of his civil or political rights or be discriminated against in the exercise thereof because of religion, race, color or national origin." The Equal Protection Clause in the Michigan Constitution is coextensive with the Equal Protection Clause of the United States Constitution. *Shepherd Montessori Ctr Milan v Ann Arbor Charter Twp*, 486 Mich 311, 318; 783 N.W.2d 695 (2010). Equal protection applies when a state either classifies voters in disparate ways or places undue restrictions on the right to vote. *Obama for America v Husted*, 697 F3d 423, 428 (6th Cir, 2012).

Plaintiffs appear to argue that filling statutory seats violates equal protection and the right of Executive Committee members to vote. This is a far-cry short of actually alleging an equal protection claim. Here, the complaint absolutely fails to make any allegation that Plaintiffs have been subjected to disparate treatment on any basis cognizable under equal protection. Plaintiffs do not identify any laws or procedures that were applied inequitably against themselves, and they do not allege that his race, religion, color, or national origin were factors in any decision. Simply put, the complaint fails to allege how Plaintiffs were treated differently than any other member.

Rather, the Plaintiffs' attempt to make a generalized grievance based on their discontent with the administration – or the results – of an executive committee decision. But that cannot support standing.

Second, another fundamental problem with Plaintiffs' equal protection claim is that there is no governmental action in this case that would be subject to equal protection analysis. The complaint fails to allege that that Defendants are state actors. Defendants are private citizens and/or private associations. With the notable exception of the Thirteenth Amendment's ban on

slavery, the individual liberties guaranteed by the United States Constitution and the Michigan Constitution protect against actions by government officials but not against actions by private persons or entities. Because of this, civil-rights lawsuits seeking to vindicate constitutional rights are limited to those situations where there is "state action;" the term used to describe the action of government officials exercising their governmental power.

Further, Plaintiffs do not identify any laws or procedures that are applied to some people, but not applied to others. Instead, the complaint makes general allegations in a haphazard way that is hard to follow. Plaintiffs, therefore, have failed to establish that any state actor has done anything to violate the Equal Protection Clause of the Michigan Constitution, and so Count II fails as a matter of law, and should be dismissed.

7. **Count III – the Court cannot grant declaratory relief under Michigan Constitution: Article 1 §3 Assembly, Consultation, Instruction, Petition**

An equally obscure and incomprehensible claim is Count III of the complaint, claiming that Plaintiffs have been denied the right to assemble. Plaintiffs argued that Defendants violated Article 1 §3 of the Michigan constitution by having Plaintiffs "removed from their general meetings, stricken of membership, membership fees returned and warned that they would be arrested for trespassing if they came back on the KGOPEC property." *Complaint*, ¶51. For the same reasons as stated above regarding Count II, this Count II must also be dismissed.

8. **Count IV – the Court cannot grant mandamus**

A (*writ of*) *mandamus* is an order from a court to an inferior government official ordering the government official to properly fulfill their official duties or correct an abuse of discretion. (See, e.g. *Cheney v. United States Dist. Court For D.C.* 542 U.S. 367 (2004) According to the U.S. Attorney Office, "Mandamus is an extraordinary remedy, which should only be used in

exceptional circumstances of peculiar emergency or public importance."¹⁰ Plaintiffs do not even cite to the standard for issuing mandamus in Michigan. They do not cite to MCL 600.4401 or MCR 3.305. Clearly, in Michigan, mandamus is only permitted "against a state officer." Nowhere in the complaint do Plaintiffs even allege that Defendants are state actors. For the same reasons as stated above regarding Counts II and III, this Count IV must also be dismissed.

D. LAW AND ARGUMENT as to MCR 2.116(C)(7)

1. If Defendants are state actors, then sovereign immunity applies

Under MCR 2.116(C)(7), a party may bring a motion for summary disposition on the ground that a claim is barred by some disposition of the claim before commencement of the action, including immunity granted by law. *Fuller v Integrated Metal*, 154 Mich App 601, 606-607; 397 NW2d 846 (1986), *lv den* 427 Mich 851 (1986). Plaintiffs bring claims that their constitutional rights were violated; yet Plaintiffs never allege that Defendants are state actors. Even if they were "state actors" the doctrine of sovereign immunity prevents lawsuits such as this against the government, except when the government has authorized a lawsuit. Congress has enacted statutes that allow private persons to file suit for violations of constitutional rights, such as 42 U.S.C. § 1983. In order to prevail in those types of cases against the government, a plaintiff must show that the defendant acted "under color of" law to deprive them of their constitutional rights. But in this case, there is no "state action" because Defendants are not "state actors."

E. LAW AND ARGUMENT as to MCR 2.116(C)(8) and (C)(10)

1. MCR 2.116(C)(8)

A motion under MCR 2.116(C)(8) tests the legal sufficiency of a claim by the pleadings alone. *Formall, Inc v Community Nat'l Bank of Pontiac*, 166 Mich App 772, 777; 421 NW2d 289

¹⁰ <https://www.justice.gov/jm/civil-resource-manual-215-mandamus>

(1988). All factual allegations in support of the claim are accepted as true, as well as any reasonable inferences or conclusions that can be drawn from the facts. *Kauffman v Shefman*, 169 Mich App 829, 833; 426 NW2d 819 (1988). The motion should be granted where the claim is so clearly unenforceable as a matter of law that no factual development could possibly justify a right of recovery. *Wade v Dep't of Corrections*, 439 Mich 158, 163; 483 NW2d 26 (1992).

2. MCR 2.116(C)(10)

When considering a ruling on a motion for summary disposition under MCR 2.116(C)(10) the Court reviews whether there is a genuine issue for trial. A motion under MCR 2.116(C)(10) should be granted when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. This motion tests whether there is factual support for the claim. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999); *Rettig v Hastings Mutual Ins. Co.*, 196 Mich App 329; 492 NW2d 526 (1992). The Court considers the affidavits, pleadings, depositions, admissions, or any other documentary evidence submitted in a light most favorable to the nonmoving party to decide whether a genuine issue of material fact exists. *Maiden*, supra at 120. See also *Ritchie-Gamester v City of Berkley*, 461 Mich 73, 76; 587 NW2d 517 (1999). All reasonable inferences are resolved in the nonmoving party's favor. *Hampton v Waste Mgt of Michigan, Inc*, 236 Mich App 598, 602; 601 NW2d 172 (1999).

3. Counts I-IV fail under both MCR 2.116(C)(8) and (C)(10)

As described above, Plaintiffs lack standing, their claims are moot, and Defendants are not state actors. For these reasons alone, Plaintiffs' claims must be dismissed pursuant to MCR 2.116(C)(8) and (C)(10).

4. Count V Breach of Fiduciary Duty fails under both MCR 2.116(C)(8) and (C)(10)

Count V appears to only apply to Defendant Sackett. If it is intended to apply to apply Defendants then the arguments herein apply to all Defendants. Again, Plaintiffs cite to MCL

168.599 which has been declared unconstitutional. Second, Plaintiffs base their case on "[a]n Article presented by Vincent R. Johnson (hereafter VJ) cited as Vincent R. Johnson, The Fiduciary Obligations of Public Officials, 9 ST. MARY'S J. ON LEGAL MALPRACTICE & ETHICS 298 (2019)" which Plaintiffs use to argue that Defendants Sackett, as a "public officials . . . is [] regulated by ethical standards laid down by legislative enactments, such as federal or state statutes or municipal ordinances." However, Defendant Sackett owed no fiduciary duty to Plaintiffs. She is not a public official. Rather, she is the Chairwoman of the KGOP. The KGOP Bylaws [Ex 4] define her duties as (1) presiding over meetings, (2) directing the day-to-day affairs of the KGOP, (3) submitting reports to the Executive Committee, keeping the Executive Committee informed on programs and activities, and assigning duties to officers and committees, and (4) acting as the spokesperson for the KGOP, Sackett has no duty to Plaintiffs or to protect their seats on the Executive Committee. To the contrary, the Executive Committee has the duty to "establish the general policy and to conduct the affairs of the Party in accordance with these bylaws." [Ex 4, Article III(2)]. The Executive Committee determined that Plaintiffs violated their oaths of office and principles of the Republican Party platform when they initiated a *coup* on other Kalamazoo delegates and disenfranchised their votes. Proper notices were given, meetings were held, and votes were taken to removed Plaintiffs. The Court has no jurisdiction to second guess those decisions. But certainly, Defendant Sackett does not have a fiduciary duty as a state actor. Count V must be dismissed.

5. Count VI Breach of Fiduciary Duty fails under both MCR 2.116(C)(8) and (C)(10)

Count VI is equally perplexing. Plaintiffs allege that Defendants engaged in "tortious interference" of Plaintiffs by stripping them of membership on the Executive Committee. There

are two types of tortious interference in Michigan: (1) interference with business relationship and (2) interference with contract.

In order to prove tortious interference with a business relationship, Plaintiff must prove (a) that plaintiff had a business relationship or expectancy with a third party at the time of the claimed interference; (b) that the business relationship or expectancy had a reasonable likelihood of future economic benefit for plaintiff; (c) that defendant knew of the business relationship or expectancy at the time of the claimed interference; (d) that defendant intentionally or improperly interfered with the business relationship or expectancy; (e) that defendant's conduct caused the third party to disrupt or terminate the business relationship or expectancy; and (f) that plaintiff was damaged as a result of defendant's conduct. *Jim-Bob, Inc v Mehling*, 178 Mich App 71, 95–96; 443 NW2d 451 (1989). Plaintiffs' complaint does not state any of these elements. Indeed, there is no business relationship.

In order to prove tortious interference with a contract, Plaintiff must prove (a) that plaintiff had a contract with a third party at the time of the claimed interference; (b) that defendant knew of the contract at the time of the claimed interference; (c) that defendant intentionally or improperly interfered with the contract; (d) that defendant's conduct caused the third party to breach the contract; and (e) that plaintiff was damaged as a result of defendant's conduct. *Jim-Bob, Inc* at 95–96. Plaintiffs' complaint does not state any of these elements. Indeed, there is no contract. For these reasons, Plaintiffs Count V must be dismissed pursuant to MCR 2.116(C)(8) and (C)(10).

6. Count VII Violations of MCL 600.2911 action for libel or slander fails under both MCR 2.116(C)(8) and (C)(10)

To adequately allege defamation under Michigan law, Defendants must set forth facts detailing (1) a false and defamatory statement concerning them, (2) an unprivileged publication

to a third party, (3) fault amounting to at least negligence on the part of State Farm; and (3) either actionability per se or the existence of special harm. *Burden v Elias Brothers*, 220 Mich App 723, 726; 613 NW2d 378 (2000).

Plaintiffs do not identify the defamation statements. They state that Defendants "defamed [Plaintiffs] with false propaganda via a mass text message and also in a press release published February 21, 2023 and republished the same on their website, naming them individually as members of the KGOPEC and not private citizens on March 1, 2023." *Complaint*, ¶70. Although Plaintiffs attached the press releases to their complaint as Exhibit D, Plaintiffs do not set forth what statements are defamatory or why. Therefore, Plaintiffs have failed to meet their pleading burden for defamation and their claim must be dismissed.

Under Michigan law, "a plaintiff must be specific when alleging defamation" and the "pleading cannot rely on general and conclusory statements, but must instead specifically identify the statements alleged to be defamatory." *Royal Palace Homes, Inc. v. Channel 7 of Detroit, Inc.*, 197 Mich App 48, 54; 495 NW2d 392 (1992). In *Royal Palace*, the plaintiffs attached to their complaint transcripts from a broadcast and referenced those transcripts generally in the complaint. The plaintiffs argued that "defendants must determine, from the transcripts, what statements are false and defamatory." *Id.* at 56. The court acknowledged that "the transcripts of the defendants' first broadcast alone contain at least twenty-eight different propositions, any one of which might, if untrue, possibly have damaged plaintiffs' business reputation." *Id.* The court then concluded that it is the plaintiffs who bear the burden of specificity. "Defendants do not bear the burden of discerning their potential liability from these transcripts. Plaintiffs must plead precisely the statements about which they complain." *Id.* at 57.

The court then dismissed the plaintiffs' complaint because they failed to plead their defamation claims with specificity. The exact same applies here. Plaintiffs' Count VII must be dismissed.

7. **Count VIII Violation of Elliot-Larsen Civil Rights Act fails under both MCR 2.116(C)(8) and (C)(10)**

Plaintiff Pritchett-Evans alleges racial discrimination because her campaign video for District 4 Vice Chair was not posted on the KGOP website. *Complaint*, ¶76. She then draws the conclusion that this was based on racial discrimination. However, a review of the KGOP website shows that no campaign videos are posted. The only videos posted are from the KGOP Friday coffee hour. This was explained to Plaintiff Pritchett-Evans by Defendant Sackett in a series of text messages [Exhibit 29]. These text messages demonstrate that no discrimination occurred. Plaintiff Pritchett-Evans is simply trying to escalate the situation because she was properly identified as an infiltrator who disenfranchised Kalamazoo based delegates and was subsequently lawfully and properly removed from the KGOP and Executive Committee.

Michigan's Elliott-Larsen Civil Rights Act makes it illegal for an employer to discriminate based on religion, race, color, national origin, age, sex, height, weight, familial status, or marital status. MCL 37.2101 *et seq.* First, as set forth above, nobody's campaign videos for any election were added to the KGOP website. Therefore, there is no discrimination. Second, Plaintiff is not an employee of KGOP. She was a candidate for District 4 Vice-Chair. She has no standing to sue. She has no damages. She has failed entirely to plead the proper elements of an Elliott-Larsen violation with specificity. Count VIII must be dismissed.

F. DEMAND FOR SANCTIONS

MCR 1.109(E) (formerly MCR 2.114) anticipates that some cases will exist where sanctions – including significant sanctions – are warranted. This is one of those cases. Here, Plaintiffs and their lawyer have filed an 8-count, 78-paragraph complaint that does not contain a

single viable cause of action against Defendants. Even the most superficial pre-filing investigation would have revealed as much. It is clear that Plaintiffs and their attorney lack any understanding of the Constitution, Constitutional Law, or the Elliot-Larsen Act. These are not difficult issues. Any first-year law student understands that the Constitution only protects individuals from state action. Under no interpretation is a county chair of a political party a "state actor." Further, a simply reading of the Elliot-Larsen Act provides a clear understanding that employment is required. Nevertheless, they charged forward. Indeed, filing a claim for racial discrimination in this fashion is egregious. Plaintiffs and their attorney made no effort to understand the law. Their complaint is simply the process of "seeing what will stick" in order to embarrass Defendants. Plaintiffs and their attorneys must be sanctioned for filing this lawsuit.

In *Williams v New World Communications of Detroit*, unpublished opinion per curiam of the Court of Appeals, decided February 21, 2012 (Docket No. 301154) [Exhibit 28] the Court of Appeals had occasion to discuss the conditions and circumstances that would justify an award of sanctions under MCR 2.114, 2.625 and MCL 600.2591. Although finding them lacking in that case, the Court's analysis in *Williams* certainly justifies such an award here. The Court held that:

MCR 2.625(A)(1) allows the court to award costs to the prevailing party unless otherwise prohibited by statute or court rule. MCR 2.625(A)(2) . . . MCL 600.2591(3) defines "frivolous" as meeting *one* of the following conditions:

- (i) The party's primary purpose in initiating the action or asserting the defense was to harass, embarrass, or injure the prevailing party.
- (ii) The party had no reasonable basis to believe that the facts underlying that party's legal position were in fact true.
- (iii) The party's legal position was devoid of arguable legal merit

MCR 2.114(e) provides for the imposition of sanctions as a means of deterring parties and attorneys from filing pleadings or asserting claims that have not been

sufficiently investigated or which are intended to serve an improper purpose. *FMB-First Michigan Bank v Bailey*, 232 Mich App 711, 719; 591 NW2d 676 (1998). Whether the inquiry was reasonable is determined by an objective review of the effort taken to investigate the claim before filing suit. *Attorney Gen v Harkins*, 257 Mich App 564, 576; 669 NW2d 296 (2003) (emphasis supplied).

See also *Evergreen Home Health Care v. Wilson*, unpublished opinion per curiam of the Court of Appeals, decided October 20, 2009 (Docket No. 286893) [Exhibit 29] (court did not abuse its discretion by awarding costs and fees where suit was frivolous).

Sanctions are appropriate where "one" of the delineated circumstances exists. Here, we can check all the boxes. Plaintiffs' legal position is "devoid of arguable legal merit." They have "no reasonable basis" to believe that the factual allegations are true or that the claims are viable as a matter of law. The complaint (verified under oath by Plaintiffs) is not well grounded in fact and is not warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law. Instead, it is clearly interposed for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. It is vexatious and frivolous. Defendants respectfully ask this Court sanction Plaintiffs and their attorney for filing this frivolous complaint.

G. CONCLUSION and RELIEF REQUESTED

For the reasons stated above, Defendants respectfully request this Honorable Court enter an order granting summary disposition in their favor, with prejudice, and assessing attorney fees, costs, and sanctions against Plaintiffs and their attorneys, as this Court deems just, for filing this frivolous case.

Dated: April 28, 2023

Respectfully submitted
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