STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF KALAMAZOO

SABRINA PRITCHETT-EVANS and
KIMBERLY HARRIS

Plaintiffs

v.

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

Defendants.

Case No. 2023-0169-CZ

HON. CURTIS J. BELL

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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, KALAMAZOO GRAND OLD PARTY EXECUTIVE COMMITTEE ("KGOPEC"), and (AKA) KALAMAZOO COUNTY REPUBLICAN COMMITTEE (KGOPEC), and KELLY SACKETT ("Sackett"), by and through their attorneys, DePERNO LAW OFFICE, PLLC,[1] 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. Defendants

Plaintiffs have sued two (2) parties as acknowledged by Plaintiffs' attorney [Exhibit 1]. The Defendants are described in Plaintiffs' Verified Amended Complaint ("Complaint"):

> "The KGOPEC 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.
>
> "Defendant, Republican Party of Kalamazoo County, State of Michigan (KOOP) AKA Kalamazoo County Republican Committee (KGOPEC) is an "executive committee" as defined in the Michigan election Law and is the leadership committee of the Kalamazoo Republican Party with its primary address 1911 W Centre Ave A, Portage, MI 49024. The conduct of its affairs is governed by Michigan Election Law, the Bylaws and rules of the Michigan Republican State Central Committee (MIGOP) and the Bylaws of KGOP." *Complaint*, ¶ 4.

Based on this description, Plaintiffs sued the "executive committee" that is created pursuant to the bylaws within the county party committee. [See Exhibit 2, *Bylaws*]. The county party committee is the Kalamazoo County Republican Committee (the "Kalamazoo Party") organized pursuant to a "Statement of Organization" on file with the Michigan Secretary of State [Exhibit

[1] Attorney Matthew DePerno remains on a limited appearance as to Defendants KGOP and KGOPEC based on their motion for summary disposition pursuant to (in part) MCR 2.116(C)(1), (2), (3), and (4).

3]. Plaintiffs admittedly did not sue the "county party committee," but only the "executive committee."

2. 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 chairs[2] voted and agreed on specific rules for the February 17 Caucus [Exhibits 4 and 5]. 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.* The county chairs agreed to these rules. Each county would break out into separate caucus and nominate their county representatives to serve on the MRSC. 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 6]. Allegan County sent a letter advising that it had selected its county nominees and the county convention on January 26, 2023. This demonstrates that each county would have the right to send its preferred delegate to MRSC without interference from other counties [Exhibit 7].

Plaintiff Harris wanted to be one of the people elected by Kalamazoo County delegates to MRSC, In fact, she campaigned with people from other counties as a slate and published and

[2] Allegan, Berrien, Calhoun, Kalamazoo, Ottawa, and Van Buren counties.

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distributed a campaign flyer [Exhibit 8]. However, Plaintiff Harris understood that the Kalamazoo Party delegates are deeply divided between two factions: (1) unity-minded delegates who support Defendant [Chairwoman] Sackett and want to focus on raising money and getting Republicans elected and (2) anarchist-minded delegates who support Plaintiffs 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.

Plaintiff Harris presents herself to the public and to the delegates as a "county captain." [Exhibit 9]. She has never been given that title by the Kalamazoo Party. Plaintiffs are new to politics. Yet they think they know everything. They attack people they disagree with. They promote the philosophy of "taking over a party" rather than working together toward a common goal. They lack institutional knowledge. They, along with William Bennett, believe "[n]o precinct delegate is beholden to a county political party organization." [Ex 9]. Through this aggressive and destructive approach centered only on a will to tear down institutions, they have acquired a small following of like-minded vocal supporters. 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. Regardless, their goal is to achieve "unity" through division, *i.e.* once they kick out the people who disagree with them they will have "unity" because only like-minded people will remain.

Plaintiffs are committed supporters of MIGOP Chairwoman Kristina Karamo. They support her actions, without question. For instance, on March 22, 2023, MIGOP sent a tweet comparing gun legislation to the Holocaust [Exhibit 10] (the systematic, state-sponsored

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persecution and murder of six million European Jews by the Nazi German regime and its allies and collaborators). This tweet offended many people in the state, including members of the Republican party. However, Chairwoman Karamo and her supporters doubled-down.[3]

On May 9, 2023, the MIGOP attorney, Dan Hartman, stated in an interview conducted by Macomb County chairman Mark Forton that it was "crazy" Christians allowed non-Christian voices "into the marketplace of ideas."[4] [Exhibit 11]. The Kalamazoo Party leadership stands opposed to this radical departure from the party platform to this new advancement of "Christian-only" membership and litmus test. Indeed, Article VI of the US Constitution specifically prohibits a religious test:

> "The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States."

Article VI, Constitution of the United States, 1787. "This prohibition, commonly known as the No Religious Test Clause, banned a longstanding form of religious discrimination practiced both in England and in the United States."[5] The Kalamazoo Party will not abandon these principles.

Other supporters of this new movement in the MIGOP are actively promoting new theories described as "The Doctrine of the Lesser Magistrates"[6] and "Tactical Civics." These

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[3] https://www.fox2detroit.com/news/state-gop-leader-karamo-doubles-down-on-gun-control-tweet-invoking-holocaust-imagery

https://www.wxyz.com/news/karamo-stands-by-holocaust-tweet-issuing-no-apology-despite-outage-over-its-comparison-to-gun-reform

https://www.washingtonpost.com/politics/2023/03/22/michigan-gop-gun-control-nazi/

[4] https://www.detroitnews.com/story/news/politics/michigan/2023/05/09/michigan-republican-party-gop-lawyer-speaks-against-any-voice-but-a-christian-voice/70198575007/

[5] https://constitutioncenter.org/the-constitution/articles/article-vi/clauses/32

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movements support anarchy. "The Doctrine of the Lesser Magistrates" is defined by its author Matthew J. Trewhella as the following:

> "The lesser magistrate doctrine declares that when the superior or higher civil authority makes unjust/immoral laws or decrees, the lesser or lower ranking civil authority has both the right and the duty to refuse obedience to that superior authority. If necessary, the lesser authorities even have the right and obligation to actively resist the superior authority."

The Doctrine of the Lesser Magistrates (2013) at 2. The teachings in this book are rooted in fundamentalist interpretation of scripture, which coincides with this new "Christian-only" push expressed by Dan Hartman.

> "Historically, the practice of the church has been that *when the State commands that which God forbids or forbids that which God commands, men have a duty to obey God rather than man*. The Bible clearly teaches this principle [FN10]. The lesser magistrate is to apply this principle to his office as magistrate. When an unjust decree is made by a higher authority, the lesser magistrate must choose to either join the higher magistrate in his rebellion against God, or stand with God in opposition to the unjust or immoral decree."

Id. at 3, citing Exodus 1:15-21; Daniel 6"; Matthew 2:1-11; Acts 5:29. This doctrine has been recently promoted recently through a brochure [Exhibit 12] handed out at a 4th District meeting chaired my Ken Beyer and Plaintiff Pritchett-Evans and attended by Plaintiff Harris. The brochure states "*THE IDEA* that lawless federal courts, including the U.S. Supreme Court, must be obeyed – even when they write opinions that uphold injustice and murder – *is a fiction*." Plaintiffs support this rhetoric. The Kalamazoo Party does not.

Similarly, "Tactical Civics" is a theory constructed by David M. Zuniga. Mr. Zuniga is a "tax-dodger" who previously promoted the idea that people are not required to pay taxes so long as they sign an affidavit declaring oneself free of government oppression.[7] The United States subsequently sued Mr. Zuniga in the Western District of California and received a judgment of

[6] https://defytyrants.com/the-doctrine-of-the-lesser-magistrate/
[7] https://www.taxhonestyprimer.com/

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$3,621,563.95. *United States of America v David Zuniga et al*, No. 2:17-cv-03858, United States District Court, Central District of California, Western Division. Mr. Zuniga is currently promoting his books in Michigan and other states titled "*Tactical Civics: A New Way of Life for Responsible Americans*,"[8] "*Tactical Civics for Church Leaders, a Handbook to Teach, Guide, and Support the Repentant Remnant to Restore Our Land*,"[9] and *"The Great We-Set*."[10] Mr. Zuniga declares the following about "Tactical Civics" (which he has apparently trademarked):

> "TACTICAL CIVICS™ is a new way of life: ratify the original first right in our Bill of Rights, remove Congress from Washington DC, then take back all we lost to organized crime over generations. After over 40,000 hours' R&D by 39 volunteers, AmericaAgain! Trust offers the only full-spectrum solution. Like no other plan or organization, this is not politics but law enforcement for the U.S. Constitution at last. Working from our homes and mobile devices, America's future is truly in our hands. Here is the plan of action. Now it's up to you."

What does that mean? We can look to postings from people associated with Plaintiffs and their MIGOP leadership [Exhibit 13]. Essentially, the citizens create a "militia" and then hold "grand juries" to "indict" their elected leaders if they do not follow the Constitution, as interpreted by Mr. Zuniga. This is dangerous and not supported by the Kalamazoo Party. Plaintiffs, on the other hand, support these agendas.

Plaintiff Harris was aware that she did not have the votes within the Kalamazoo Party delegation to elect her as one of the 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

[8] https://www.amazon.com/Tactical-Civics-Life-Responsible-Americans/dp/1726298817

[9] https://www.amazon.com/Tactical-CivicsTM-Church-Leaders-Repentant/dp/B09RM4PYJP

[10] https://www.amazon.com/Great-We-Set-Americans-enforcing-Constitution/dp/B09Z8ZLCYY/ref=sr_1_1?crid=11O54000KUZAC&keywords=great+we-set&qid=1686286070&s=books&sprefix=great+we-set%2Cstripbooks%2C123&sr=1-1

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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 entire district floor and then voted on by the entire district. This plan is described in the messages attached as [Exhibit 14]. 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.

Plaintiffs implemented this plan. 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 Kalamazoo Party has submitted a letter to MIGOP Chairwoman Kristina Karamo demanding action be taken following the February 17 Caucus [Exhibit 15]. This request has been sent twice. No response has yet been received and is now past due.

The Kalamazoo Party is an independent organization subject to its own bylaws [Ex 2] 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

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reasons including their support for radical ideas stated above, the Kalamazoo Party removed them as members of the party on March 1, 2023 [Exhibit 16]. Kalamazoo Party Chairwoman Sackett also read a statement at the meeting [Exhibit 17] and published a statement of events to the delegates [Exhibit 18]. The Kalamazoo Party executive committee also censured Plaintiffs Pritchett-Evans and Harris, Veronica Parro, and William Bennett [Exhibit 19].

3. Sabrina Pritchett-Evans

Plaintiff Pritchett-Evans is a Democrat and a disruptor. As late as 2021 she made campaign contributions to Democrats [Exhibit 20]. 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 21]. Conservative 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*."[11] See also *"Diversity, Equity and Inclusion in the crosshairs in GOP-controlled states*."[12] The Kalamazoo Party has actively been fighting against these programs in schools, including in Portage schools. See *"Former 'Gender*

[11] https://www.axios.com/2023/02/02/republicans-racism-transgender-education-trump

[12] https://publicintegrity.org/education/diversity-equity-and-inclusion-in-the-crosshairs-in-gop-controlled-states/

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Affirming Closet' to include all students in need of clothes, supplies."[13] ("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 Republican party 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*."[14]

The Kalamazoo Party 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 [Ex 8]. She ran alongside Ken Beyer, another Democrat who has a history of donating to and supporting Democrat candidates [Exhibit 22]. 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. They now promote *Lesser Magistrates* and *Tactical Civics*.

However, the Kalamazoo Party has the absolute right to promote the Republican party agenda and platform and fight to keep progressive politics out of Kalamazoo. It has the right to control its membership. The Kalamazoo Party bylaws [Ex 2] state in Article II (Purpose) that

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

[14] https://www.newsweek.com/how-gop-can-become-pro-child-party-opinion-1781875

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"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 was an ex-officio member of the KGOPEC because she is the Chairwoman of a Republican Organization in Kalamazoo County per section III(C) of the Kalamazoo Party bylaws. The president of the Republican Organization in Kalamazoo County is Robyn Peake who has publicly expressed her anti-Muslim views, including the idea that Muslims should not hold leadership positions in the MIGOP [Exhibit 23]. The Kalamazoo Party opposes these rascist comments. Plaintiffs have refused to condemn these comments.

The Kalamazoo Party has two policies regarding video or audio recording of meetings, both posted on its website. The first is a general meeting policy [Exhibit 24].[15] The second is a specific policy regarding recording of meetings [Exhibit 25].[16] Both of these policies were posted prior to March 1, 2023 on the Kalamazoo Party door, inside the office, and at the sign-in area [Exhibit 26]. 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 thought she could attend meetings as an ex-officio member, violate the rules, secretly record the meeting, and post the video on social media. As a Democrat, she apparently believed it was perfectly acceptable to post the private executive committee discussions and meetings, sometimes including strategy regarding candidates and elections, on social media. 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 27]. On

[15] https://kgop.org/?page_id=555

[16] https://kgop.org/?page_id=558

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March 13, 2023, Plaintiff Pritchett-Evans violated the policies again and was provided a second notice (even though it was not required) [Exhibit 28]. This decision falls firmly within the discretion of Kalamazoo Party Chairwoman Sackett pursuant to Section IV(1)(A) of the bylaws [Ex 2]. As a result of the aforementioned actions, Plaintiff Pritchett-Evans was removed as the *ex officio* member of the Kalamazoo Party and censured for her conduct [Exs 16-20, 27-28].

4. Kim Harris

Plaintiff Harris was an elected member of the KGOPEC. 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 Captain" [see p. 3, *supra*] within the Kalamazoo Party 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 29]. 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 Kalamazoo Party. 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 Kalamazoo Party has sent Plaintiff Harris a "cease and desist" letter [Exhibit 30] demanding she stop this conduct. She has ignored the Kalamazoo Party. Harris is subject to removal pursuant to Article III(7)(D) of the bylaws. Indeed, the Kalamazoo Party has the authority to remove members of the executive committee:

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> **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 31]. Harris was then properly given notice that she was being removed [Exhibit 32]. 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).

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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. As stated above, in the Complaint, Plaintiffs makes two jurisdictional allegations as to KGOPEC:

> "The KGOPEC 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.
>
> "Defendant, Republican Party of Kalamazoo County, State of Michigan (KOOP) AKA Kalamazoo County Republican Committee (KOOPEC) is an "executive committee" as defined in the Michigan election Law and is the leadership committee of the Kalamazoo Republican Party with its primary address 1911 W Centre Ave A, Portage, MI 49024. The conduct of its affairs is governed by Michigan Election Law, the Bylaws and rules of the Michigan Republican State Central Committee (MIOOP) and the Bylaws of KOOP." *Complaint*, ¶ 4.

KGOPEC is simply a "committee" created by the Kalamazoo Party bylaws [Ex 2, 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.

By the very definition created by Plaintiffs in their Verified Amended Complaint, Plaintiffs have only sued the "executive committee" which they define as "the leadership committee of the Kalamazoo Republican Party." *Id.* They have not sued the Kalamazoo Party as listed in the "Statement of Organization" [Ex 3].

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, or that it can

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be sued as a non-entity internal executive committee. For these reasons, the non-entity executive committee designated as KGOPEC must be dismissed from this litigation pursuant to MCR 2.116(C)(3).

2. MCR 2.116(C)(1), (C)(2), and (C)(3) as to the Kalamazoo Party

Plaintiffs may claim that they sued the Committee as defined in the "Statement of Organization" but they did not. Their initial Verified Complaint included a difference jurisdictional allegation in paragraph 4:

> "Defendant, Republican Party of Kalamazoo County, State of Michigan (KGOP) is a political organization within Kalamazoo County, Michigan with its primary address 1911 W Centre Ave A, Portage, MI 49024."

Plaintiffs removed this language in the Verified Amended Complaint. They are no longer suing the "political organization." Now they are only suing the "executive committee" within the political organization. Any presumed The Kalamazoo Party is not a named party to this lawsuit. If the Court thinks it is, then the same arguments apply as above.

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

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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).

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Second, Plaintiffs argue that Defendants have somehow violated the bylaws of the MRSC. First, the argument is factually wrong and frivolous. Defendants are not required to follow the MRSC bylaws. In fact, Article II of the bylaws attached to Plaintiffs' complaint is titled "Purpose" states clearly that part of the purpose of the MRSC is to "work in close cooperation with ***other*** Republican state, district and county organizations." Emphasis on "other" county organization, recognizing that Kalamazoo Party 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 33] 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.

Second, Plaintiffs are citing to, and have attached, the incorrect bylaws. The bylaws attached to their Verified Amended Complaint are dated February 8, 2020. The bylaws in effect at the time of the incidents complaint of were amended and dated December 3, 2022. Having cited to, and having attached, the incorrect bylaws, Plaintiffs claims related to the bylaws cannot be considered. See MRE 106 ("When a writing or recorded statement or part thereof is introduced by a party, an adverse party may require the introduction at that time of any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it.")

Plaintiffs next 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

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> 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 Kalamazoo Party 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 cannot prevail on this claim.

3. <u>Plaintiffs' claims are moot where no practical relief can be granted</u>

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 their complaint consists of requests for (1) declaratory relief under MCL 168.599, (2) declaratory relief under Michigan Constitution Article 1 §2, (3) breach of fiduciary duty, and (4) defamation. There is no relief the Court can give Plaintiffs because the Kalamazoo Party did not act outside the authority of its bylaws. Plaintiffs'

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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). 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. The Court has already denied declaratory relief.

Plaintiffs initially filed an 8-count, 78-paragraph lawsuit on March 29, 2023 seeking declaratory relief. The same day as the Complaint was filed, Plaintiffs filed an *ex parte* emergency motion or declaratory relief which demanded the same relief requested in the original Complaint for Counts I-IV. No relief was requested for Counts V-VIII in the *Ex Parte Motion*.

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On April 10, 2023, the Court held a hearing and denied the *ex parte* motion "**in its entirety** for the reasons stated on the record." [Exhibit 34].

Plaintiffs subsequently filed a 4-count, 63-paragraph Verified Amended Complaint on May 19, 2023 seeking the same declaratory relief for the remaining 4-counts that was already denied. The notion that a court speaks through its orders, not its oral statements is a pillar of English Common Law. It is recognized in Michigan in several Court of Appeals cases, including *In re Baham*, 331 Mich App 737, 747; 954 NW2d 529 (2020) and *Cassidy v Cassidy*, 318 Mich App 463, 509; 899 NW2d 65 (2017). The *Cassidy* court stated:

> As an initial matter, "a court speaks through its written orders and judgments, not through its oral pronouncements." .. . . Thus, to the extent that the trial court's oral pronouncement varied from the actual order, the order controls.

Id. at 509 (quoting *In re Contempt of Henry*, 282 Mich App 656, 678; 765 NW2d 44 (2009)). This Court's Order clearly states "**IT IS ORDERED** that Plaintiffs' motion is DENIED in its entirety for the reasons stated on the record." The claims are moot as to Counts 1 and 2. There is nothing left to decide.

6. 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 35] and the Kalamazoo County Republican Party [Exhibit 36]. 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

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executive committee an equal number of "statutory members"[17] and "elected members."[18] 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 36, ¶ 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

[17] 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.

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

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> the balance of the County Committee which shall consist of twice the number of automatic members. [Ex 36, ¶ 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 executive committee. Defendant Sackett is one of them and is now the chairwoman of the Kalamazoo Party. 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 and limit voting power of grassroots delegates. For this reason, Plaintiffs and some other Kalamazoo establishment delegates joined with other delegates in District 4 who do not want to see needed change brought to MIGOP. They are beholden to, and will continue to salute, the establishment wing of the MIGOP. See *e.g.* Exs 17-22, 27-28, 32-33. 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

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

Indeed, at the initial hearing in this case, Plaintiffs' attorney stated that MIGOP, through their attorney Dan Hartman, 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 essentially 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 the Kalamazoo Party or this case. Indeed, there is no provision in the Kalamazoo Party bylaws that require the Kalamazoo Party to adopt the MIGOP bylaws.

Next, Plaintiffs argue that the "KGOP [sic] 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 Kalamazoo Party 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 2, 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 Kalamazoo Party 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.

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7. 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 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 properly or logically allege that that Defendants are state actors. Defendants are private citizens and/or private associations. With the notable exception of the Thirteenth

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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.

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. Plaintiffs only allege Defendants Sackett is a "state actor" 2 time:

> "Defendant Sackett has portrayed herself as a state actor by singling out delegates that she deems too Christian to be part of the Republican Party and her precise conduct to remove people by use of her title as chairperson for the County Republican Party and the stroke of a pen on the letterhead she represents, a clear breach of her duty owed to those delegates as the head of the Republican Party in Kalamazoo County." *Complaint*, ¶ 55.

As to this allegation, Defendant Sackett never singled out delegates as being "too Christian." Rather, Plaintiffs take issue with words written by Defendants' attorney in legal briefs, which is

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not actionable, and they attribute that to Sackett. Second, even if she did make the statement, that does not make her a state actor. As alleged, she only penned a letter. That does not make her a state actor. She is not employed by the state or paid by the state. She is not a publicly elected official. She is the chairwoman of a private organization.

> "Defendant Sackett's unilateral attack on 17 duly elected delegates to be removed from the Republican Party was an act that rose to the level of a state actor." *Complaint*, ¶ 4.

As to this allegation, Defendant Sackett did not act "unilaterally." She acted with the advice and consent of the executive committee (and her advisors) which took a vote on a properly made motion. Second, the actions of the chairwoman of a private organization does not make Defendants Sackett a state actor. Indeed, the Democratic elected Kalamazoo County Clerk, Meredith Place, through her attorneys has stated "The Clerk's Office also made clear it is their position that the removal of a precinct delegate and questions related to such action are matters of party governance and at this time, the Clerk's Office strongly reaffirms that position." [Exhibit 37, p. 2]. In other words, the Clerk's office simply facilitates delegate elections for the political parties. The Clerks' office plays zero role in whether delegates remain within delegate position. Those are party decisions.

Michigan has a long history of recalling elected officers, but not precinct delegates. The Michigan Constitution of 1963 gave the sovereign right to the citizens of this state to hold their elected officers accountable through a mechanism of removal, known as a "recall."

> Article II § 8 Recalls. Sec. 8. Laws shall be enacted to provide for the recall of all elective officers except judges of courts of record upon petition of electors equal in number to 25 percent of the number of persons voting in the last preceding election for the office of governor in the electoral district of the officer sought to be recalled. The sufficiency of any statement of reasons or grounds procedurally required shall be a political rather than a judicial question.

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Since 1972 over 1,000 recalls have been filed through the state, in attempt to remove elected officers from their duties. Though a small percentage of recalls succeed in removal, it still allows a mechanism for the individual citizen to hold their elected representatives accountable. Michigan Election Law Act 116 of 1954 outlines the legal process for a recall of an "Elected Officer" which in its statutory text does not include Precinct Delegates.

> MCL 168.959 - Recall of senators, representatives, elective state officers, county officials, or secretary of state; filing petitions. Sec. 959. Petitions demanding the recall of United States senators, members of congress, state senators and representatives in the state legislature, elective state officers except the secretary of state, and county officials except county commissioners, shall be filed with the secretary of state. Petitions for the recall of the secretary of state shall be filed with the governor.
>
> MCL 168.960 Recall of elective county commissioner or township, city, village, or school official; recall of elective district library board member; filing petition; recall of elective metropolitan district officer. Sec. 960. (1) A petition demanding the recall of an elective county commissioner or township, city, village, or school official shall be filed with the county clerk of the county in which the largest portion of the registered voters in the electoral district reside. (2) A petition demanding the recall of an elective district library board member shall be filed with the clerk of the largest county. For the purposes of this subsection, the term "largest" has the meaning ascribed to it in section 2 of the district library establishment act, 1989 PA 24, MCL 397.172. (3) A petition demanding the recall of an elective metropolitan district officer shall be filed with the county clerk of the county in which the largest portion of the registered voters in the electoral district reside.

The Election Official's Manual published by the Michigan Bureau of Elections; Chapter 18 outlines the recall procedure process for County Clerks to follow as prescribed by law [Exhibit 38]. "Precinct Delegate" is not listed or mentioned. This is the reason why, through the letter from its general counsel [Ex 37], the Kalamazoo County Clerk's office stated that "that removal of precinct delegates and questions related to such action are matters of party governance and at this time the Clerk's office strongly reaffirms that position." Therefore, precinct delegates cannot

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be recalled. However, nothing prevents their removal by the county chair of the respective political party.

Precinct delegates are also the only "elected" official whose election is not certified by the Board of Canvassers. The Plaintiffs argue that they cannot be removed as a delegate by the Chair of the Kalamazoo Party because they are an elected representative, who either won their election or were elevated at a county convention. For this argument to pass muster this Court must conclude that Precinct Delegates are the only elected position in Michigan that is untouchable, has complete immunity, and no accountability mechanism for removal; and again, the only "elected" position that is not certified by the Board of Canvassers. Hypothetically under the Plaintiffs' claim a Precinct Delegate could be actively working against their party, be a member of the opposing party, convicted of rape or child abuse, and there would be no mechanism for removal. That conclusion is illogical. Precinct Delegates fall solely under the governance of the respective county party. The accountability and removal process for Republican delegates is currently under the general authority of the Kalamazoo Party Chairwomen, Kelly Sackett. If the executive committee wishes to, they can pass new bylaws limiting that authority or changing the process of removal. Further, the Democratic party operates under the same principle, as does every other third party. A ruling that declares the county party has no control over its membership and must abide by anarchist infiltrators would change politics in Michigan, including in the Democratic party.

Even if Sackett was a "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

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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 (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

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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-II 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 III Breach of Fiduciary Duty fails under both MCR 2.116(C)(8) and (C)(10)

Count III appears to only apply to Defendant Sackett. If it is intended to apply to all 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 Kalamazoo Party. The bylaws [Ex 2] define her duties as (1) presiding over meetings, (2) directing the day-to-day affairs of the Kalamazoo Party, (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 Kalamazoo Party, 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 2, Article III(2)]. The executive committee determined that

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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 III must be dismissed.

6. Count IV 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).

As an initial matter, Plaintiffs do not specifically identify the defamation statements. They state that Defendants made false statements about "a hostile faction of Kalamazoo County delegates." *Complaint*, ¶60. But these statements do not mention Plaintiffs are therefore cannot be considered defamatory. Second, Plaintiffs include a press release, but 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,

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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.

Next, Plaintiffs describe censures against Plaintiffs. None of these statements are false or defamatory. Even if they were, they are opinion. Under Michigan law, a statement must assert facts that are "provable as false" to be considered defamatory. *Ireland v Edwards*, 230 Mich App 607, 616; 584 NW2d 632 (1998). This is, in part, nothing more than a different way of saying that truth is an absolute defense against libel – you cannot be defamed if what is being said about you is true. It is more than that, however, as a statement must allege something "provable" – the person publishing the allegedly defamatory statements must be alleging something is a fact, not simply their opinion. The First Amendment protects statements that cannot be interpreted as stating facts about an individual against serving as the basis for a defamation action. Protected statements include rhetorical hyperbole and imaginative expression often found in satires, politics, parodies, and cartoons, even when the statements are intended to be highly offensive to the person criticized, and even if, when read literally, the statements can be interpreted as accusations of criminal activity. In addition, context matters. The context of the statements also affects whether a reasonable reader would interpret the statements as asserting provable facts, or simply an opinion, hyperbole, or of something similar.

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This is especially true in the context of "political" speech. "The constitutional privilege of free expression secured by the First and Fourteenth Amendments, the courts . . . have recognized the need for affording summary relief to defendants in order to avoid the 'chilling effect' on freedom of speech and press." *Ireland*, 230 Mich App at 613 n 4. Summary disposition is especially appropriate in the early stages of a case where defamation claims involve matters of public interest and concern. *Ireland*, 230 Mich App at 613. Accordingly, summary disposition is an essential tool in the protection of First Amendment rights. An action challenging the constitutionality of public discourse must be carefully examined regarding falsity to ensure that precious liberties established and ordained by the Constitution are followed. *Rouch v Enquirer & News of Battle Creek (After Remand)*, 440 Mich 238, 253; 487 NW2d 205 (1992).

Finally, Plaintiffs allege that statements made by Defendant's attorney in legal briefs are both (1) attributable to Defendant Sackett and (2) actionable. This is false. Under the judicial-proceedings privilege, "[s]tatements made by judges, attorneys, and witnesses during the course of judicial proceedings are absolutely privileged if they are relevant, material, or pertinent to the issue being tried." *Oesterle v Wallace*, 272 Mich App 260, 264; NW2d 725 NW2d 470 (2006). "What a litigant considers to be pertinent or relevant is given much freedom, and the privilege is liberally construed as a matter of public policy 'so that participants in judicial proceedings may have relative freedom to express themselves without fear of retaliation.'" *Lawrence v Burdi*, 314 Mich App 203, 217; 886 NW2d 748 (2016). Under the fair-reporting privilege, "[d]amages shall not be awarded in a libel action for the publication or broadcast of a fair and true report of matters of public record . . . ." MCL 600.2911(3). The fair-reporting privilege applies "not only [to] the publication of public and official proceedings but also [to] the broadcast of matters of public record, of a governmental notice, announcement, written or recorded report or record

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generally available to the public, or act of a public body." *Northland Wheels Roller Skating Ctr, Inc v Detroit Free Press, Inc*, 213 Mich App 317, 326; 539 NW2d 774 (1995). "[T]he statute makes it clear that [a] defendant's motivation is irrelevant if a fair and true report is made of the proceeding." For these reasons, Plaintiffs' Count IV 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 amended 4-count, 63-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 or Constitutional Law. 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." Nevertheless, they charged forward. 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 39] 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:

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> MCR 2.625(A)(l) 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 40] (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.

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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.

Respectfully submitted

DePERNO LAW OFFICE, PLLC

Dated: June 9, 2023

/s/ Matthew S. DePerno
Matthew S. DePerno (P52622)
Attorney for Defendant Kelly Sackett
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