STATE OF MICHIGAN
17th CIRCUIT COURT FOR KENT COUNTY

Blake Mazurek,
Robin Smith, and
Timothy Smith,

Plaintiffs,

v.

Kathy Berden,
Mayra Rodriguez,
Meshawn Maddock,
John Haggard,
Kent Vanderwood,
Marian Sheridan,
James Renner,
Amy Facchinello,
Rose Rook,
Hank Choate,
Mari-Ann Henry,
Clifford Frost,
Stanley Grot,
Timothy King,
Michele Lundgren, and
Ken Thompson,

Defendants.

Case No. 23-00306-CZ
Hon. Christina Elmore

Answer to Complaint for Declaratory and Other Relief

B. Tyler Brooks, MI Atty No. P82567
Law Office of B. Tyler Brooks, PLLC
P.O. Box 10767
Greensboro, North Carolina 27404
Main: (336) 564-6255
Cell: (336) 707-8855
Fax: (336) 900-6535
btb@btylerbrookslawyer.com

Erick G. Kaardal, MN Atty No. 229647
Mohrman, Kaardal & Erickson, P.A.
Special Counsel for Thomas More Society

---

150 South Fifth Street, Suite 3100
Minneapolis, MN 55402
Telephone: (612) 341-1074
Email: kaardal@mklaw.com
*Pro Hac Vice pending

Attorneys for Defendants

Answer to Complaint for Declaratory and Other Relief

Defendants John Haggard, James Renner, Rose Rook, and Hank Choate answer the Plaintiffs' Complaint, alleging generally, election fraud in connection with the 2020 presidential election in Michigan as follows:

Parties

1. Plaintiff Blake Mazurek is a resident of Kent County.

ANSWER: The Defendants neither admits nor denies the allegations in this paragraph due to the lack of knowledge and information sufficient to form a belief to the truth of the matter asserted.

2. Plaintiff Robin Smith is a resident of Ingham County.

ANSWER: The Defendants neither admits nor denies the allegations in this paragraph due to the lack of knowledge and information sufficient to form a belief to the truth of the matter asserted.

3. Plaintiff Timothy Smith is a resident of Ottawa County.

ANSWER: The Defendants neither admits nor denies the allegations in this paragraph due to the lack of knowledge and information sufficient to form a belief to the truth of the matter asserted.

4. Defendant Kathy Berden is a resident of Sanilac County, based on information and belief.

ANSWER: The Defendants neither admits nor denies the allegations in this paragraph due to the lack of knowledge and information sufficient to form a belief to the truth of the matter asserted.

5. Defendant Mayra Rodriguez is a resident of Wayne County, based on information and belief.

ANSWER: The Defendants neither admits nor denies the allegations in this paragraph due to the lack of knowledge and information sufficient to form a belief to the truth of the matter asserted.

6. Defendant Meshawn Maddock is a resident of Oakland County, based on information and belief.

ANSWER: The Defendants neither admits nor denies the allegations in this paragraph due to the lack of knowledge and information sufficient to form a belief to the truth of the matter asserted.

7. Defendant John Haggard is a resident of Charlevoix County, based on information and belief.

ANSWER: Admit.

8. Defendant Kent Vanderwood is a resident of Kent County, based on information and belief.

ANSWER: The Defendants neither admits nor denies the allegations in this paragraph due to the lack of knowledge and information sufficient to form a belief to the truth of the matter asserted.

9. Defendant Marian Sheridan is a resident of Oakland County, based on information and belief.

ANSWER: The Defendants neither admits nor denies the allegations in this paragraph due to the lack of knowledge and information sufficient to form a belief to the truth of the matter asserted.

10. Defendant James Renner is a resident of Clinton County, based on information and belief.

ANSWER: Admit.

11. Defendant Amy Facchinello is a resident of Genesee County, based on information and belief.

ANSWER: The Defendants neither admits nor denies the allegations in this paragraph due to the lack of knowledge and information sufficient to form a belief to the truth of the matter asserted.

12. Defendant Rose Rook is a resident of VanBuren County, based on information and belief.

ANSWER: Admit.

13. Defendant Hank Choate is a resident of Jackson County, based on information and belief.

ANSWER: Admit.

14. Defendant Mari-Ann Henry is a resident of Oakland County, based on information and belief.

ANSWER: The Defendants neither admits nor denies the allegations in this paragraph due to the lack of knowledge and information sufficient to form a belief to the truth of the matter asserted.

15. Defendant Clifford Frost is a resident of Macomb County, based on information and belief.

ANSWER: The Defendants neither admits nor denies the allegations in this paragraph due to the lack of knowledge and information sufficient to form a belief to the truth of the matter asserted.

16. Defendant Stanley Grot is a resident of Macomb County, based on information and belief.

ANSWER: The Defendants neither admits nor denies the allegations in this paragraph due to the lack of knowledge and information sufficient to form a belief to the truth of the matter asserted.

17. Defendant Timothy King is a resident of Washtenaw County, based on information and belief.

ANSWER: The Defendants neither admits nor denies the allegations in this paragraph due to the lack of knowledge and information sufficient to form a belief to the truth of the matter asserted.

18. Defendant Michele Lundgren is a resident of Wayne County, based on information and belief.

ANSWER: The Defendants neither admits nor denies the allegations in this paragraph due to the lack of knowledge and information sufficient to form a belief to the truth of the matter asserted.

19. Defendant Ken Thompson is a resident of Ionia County, based on information and belief.

ANSWER: The Defendants neither admits nor denies the allegations in this paragraph due to the lack of knowledge and information sufficient to form a belief to the truth of the matter asserted.

Jurisdiction and Venue

20. This Court has jurisdiction. See, e.g., MCL 600.601, 600.605.

ANSWER: Deny. First, the examples referencing Michigan law are legal conclusions that requires no response. Second, as to this Court's jurisdiction, the Defendants seek to remove this case to federal court on the grounds, in part, that while the complaint is couched under state law allegations and claims, the resolution of a federal question is necessary to resolve any state-law claim and also subject to the removal doctrine of "complete preemption.") *E.g., Long v. Bando,* 201 F.3d 754, 759 (6th Cir. 2000) (noting that federal question jurisdiction may exist for a case based on a state law cause of action "if a substantial federal question of great federal interest is raised by a complaint framed in terms of state law, and if resolution of that federal question is necessary to the resolution of the state-law claim").

21. Venue is proper. MCL 600.1629.

ANSWER: Deny. First, the examples referencing Michigan law are legal conclusions that requires no response. Second, as to this Court's venue, the Defendants seek to remove this case to federal court on the grounds, in part, that while the complaint is couched under state law allegations and claims, the resolution of a federal question is necessary to resolve any state-law claim and also subject to the removal doctrine of "complete preemption."). *E.g., Long v. Bando,* 201 F.3d 754, 759 (6th Cir. 2000) (noting that federal question jurisdiction may exist for a case based on a state law cause of action "if a substantial federal question of great federal interest is raised by a complaint framed in terms of state law, and if resolution of that federal question is necessary to the resolution of the state-law claim").

Facts Relevant to All Counts

22. Leading up to the 2020 presidential election in Michigan, plaintiffs Blake Mazurek, Robin Smith, and Timothy Smith were nominated by the Michigan Democratic Party to serve as three of the sixteen electors on the Democratic slate of presidential electors (i.e., the Biden/Harris electors), to vote in the Electoral College for President and Vice President of the United States, in the event that the Democratic presidential candidate, Joe Biden, were to win the election in Michigan.

ANSWER: The Defendants neither admits nor denies the allegations in this paragraph due to the lack of knowledge and information sufficient to form a belief to the truth of the matter asserted.

23. Leading up to the 2020 presidential election in Michigan, each of the defendants, except for Mr. Thompson and Mr. Renner, were nominated by the Michigan

Republican Party to serve as electors on the Republican slate of presidential electors (i.e., the Trump/Pence electors), to vote in the Electoral College for President and Vice President of the United States in the event that the Republican presidential candidate, Donald Trump, were to win the election in Michigan. Terri Lynn Land and Gerald Wall, neither of whom are parties to this suit, also had been nominated by the Michigan Republican Party to serve as electors on the Republican slate of presidential electors, but they were later replaced by Mr. Thompson and Mr. Renner, respectively.

ANSWER: Paragraph 23 violates MI Rules MCR 2.11 (A)(1) ("Each allegation of a pleading must be clear, concise, and direct."). The Defendants neither admits nor denies the allegations in this paragraph due to the lack of knowledge and information sufficient to form a belief to the truth of the matter asserted.

24. As summarized in the December 22, 2022 *Final Report of the Select Committee to Investigate the January 6th Attack on the United States Capitol* by the 117th Congress, Second Session (House Report 117-663) (hereafter referred to as the "Select Committee Report")[1], Article II of the United States Constitution, as modified by the Twelfth Amendment, governs election of the President. Article II created the electoral college, providing that the States would select electors in the manner provided by State legislatures, and those electors would in turn vote for the President. Today, every State, including Michigan, selects Presidential electors by popular vote, and each State's laws provide for procedures to resolve election disputes, including through lawsuits if necessary. After any election issues are

[1] Available at https://www.govinfo.gov/content/pkg/GPO-J6-REPORT/Ddf/GPO-J6-REPORT.pdf (last viewed January 10, 2023).

resolved in State or Federal court, each State's government transmits a certificate of ascertainment of the appointed electors to Congress and the National Archives. *Select Committee Report*, Executive Summary, p. 29.

ANSWER: Paragraph 24 violates MI Rules MCR 2.11 (A)(1) ("Each allegation of a pleading must be clear, concise, and direct."). As to the allegations asserted, deny. They are legal conclusions that requires no response. Moreover, when the Defendant sought to retrieve the *Final Report of the Select Committee to Investigate the January 6th Attack on the United States Capitol* cited in footnote 1 as https://www.govinfo.gov/content/pkg/GPO-J6-REPORT/Ddf/GPO-J6-REPORT.pdf, they encountered this response: "Page Not Found, Error occurred. The page you requested cannot be found. . ." Emphasis omitted at https://www.govinfo.gov/error.

25. Following the November election at which the office of President of the United States is on the ballot, the electoral college meets in mid-December to cast their votes, and all of the electoral votes are then ultimately counted by Congress on January 6th. The Vice President of the United States, as President of the United States Senate, presides over the joint session of Congress to count these votes. The Twelfth Amendment provides the following straight-forward instruction: "The president of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall be counted; The person having the greatest number of votes for President shall be the President...." The Vice President has only a ministerial role, opening the envelopes and ensuring that the votes are counted. *Select Committee Report*, Executive Summary, p. 30.

ANSWER: Paragraph 25 violates MI Rules MCR 2.11 (A)(1) ("Each allegation of a pleading must be clear, concise, and direct."). As to the allegations asserted, because it appears in part that sentences either refer to or quote the *Select Committee Report,* the Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations asserted. When the Defendant sought to retrieve the *Final Report of the Select Committee to Investigate the January 6th Attack on the United States Capitol* cited in footnote 1 as https://www.govinfo.gov/content/pkg/GPO-J6-REPORT/Ddf/GPO-J6-REPORT.pdf, they encountered this response: "Page Not Found, Error occurred. The page you requested cannot be found…." Emphasis omitted at https://www.govinfo.gov/error. Moreover, the allegations are also legal conclusions that require no response.

26. The Presidential race in the State of Michigan was called on Wednesday November 4, 2020, after the general election held on Tuesday, November 3, 2020. Joe Biden won the election in Michigan by more than 154,000 votes.

ANSWER: With regard to when the allegation that the presidential race was "called" (not mentioning as to whom), the Defendants lacks knowledge and information sufficient to form a belief to the truth of the matter asserted. As to who won and the margin of the vote count, the Defendants deny because at that time, they believed that the result could be subject to challenge.

27. Michigan Election Law is clear that the one and only slate of electors from Michigan for President and Vice President of the United States is the slate of electors

nominated by the political party of the candidate receiving the greatest number of votes at the November Presidential election. MCL 168.42.

ANSWER: The allegations in this paragraph are legal conclusions that requires no response.

28. Following the procedure mandated by Michigan Election Law, MCL 168.46, after the State Board of Canvassers ascertained the result of the election as to the electors of President and Vice President of the United States, the Governor of the State of Michigan certified the results of the election in Michigan and the names of the electors in this State chosen as electors of President and Vice President of the United States. This is evidenced by the Amended Certificate of Ascertainment of the Electors of the President and Vice President of the United States of America signed and certified by Governor Gretchen Whitmer, under the Great Seal of the State of Michigan. A copy is attached as Exhibit A.

ANSWER: The allegations in this paragraph are legal conclusions that requires no response. The Defendants admit that Exhibit A was attached to the complaint and is entitled, "Amended Certificate of Ascertainment of the Electors of the President and Vice President of the United States of America," and that Governor Gretchen Whitmer's signature is one of two signatures on the last page of a three-page document with the seal of the State of Michigan.

29. The Amended Certificate of Ascertainment certified that the slate of electors nominated by the Democratic Party were duly elected as Electors of the President and Vice President of the United States, having received 2,804,040 votes for the winning candidate (Joe Biden) compared to the slate of electors nominated by the Republican Party, which

received 2,649,852 votes for the losing Republican candidate (Donald Trump). The Amended Certificate of Ascertainment ultimately was sent according to law to Congress and the National Archives.

ANSWER: The Defendants lack knowledge and information sufficient to form a belief to the truth of the matter asserted.

30. Following the procedure mandated by Michigan Election Law, MCL 168.47, the slate of electors nominated by the Democratic Party and elected in the general election held in the State of Michigan (i.e., the Biden/Harris Electors, including plaintiffs) duly convened in the State Capitol in Lansing on December 14, 2020, at 2 p.m., and formally cast their 16 electoral votes for Joe Biden for President of the United States. This is reflected in the State of Michigan Certificate of Votes for President and Vice President attached here as Exhibit B.

ANSWER: Paragraph 30 violates MI Rules MCR 2.11 (A)(1) ("Each allegation of a pleading must be clear, concise, and direct."). The Defendants lack knowledge and information sufficient to form a belief to the truth of the matter asserted. But the Defendants admit they received as Exhibit B, four different documents, (1) a "Certificate of Votes for President and Vice President;" (2) a Department of State document signed by Jacelyn Benson, Secretary of State, dated December 10, 2020 (3) a resignation letter from Walter C. Heraig III, dated December 10, 2020; and (4) a State of Michigan "Certificate of Filling Vacancy," dated December 14, 2020.

31. Despite the results of a free and fair election in Michigan, canvassed and certified according to Michigan Election Law, the defendants participated in a fraudulent scheme to steal the election and install the losing candidate (Donald Trump) as President.

ANSWER: Deny. The allegations are denied because they are not true.

32. Specifically, the defendants conspired and agreed to submit fraudulent election certificates (1) falsely claiming their candidate had won the election in Michigan, when in fact he had lost by over 153,000 votes; (2) falsely claiming they were "the duly elected and qualified Electors for President and Vice President of the United States of America from the State of Michigan," when in fact the appropriate government officials in Michigan had already certified Michigan's official election results for Joe Biden; and (3) falsely purporting to "certify" that they had "convened and organized in the State Capitol" on December 14, 2020 to cast Michigan's 16 electoral votes for Donald Trump, when in fact none of this was true. A copy of their fake election "certificate" signed by the defendants and styled "Certificate of the Votes of the 2020 Electors from Michigan," which they offered as an official public record, is attached here as Exhibit C.

ANSWER: Paragraph 32 violates MI Rules MCR 2.11 (A)(1) ("Each allegation of a pleading must be clear, concise, and direct."). The allegations are legal conclusions that requires no response. As for Exhibit C, the Defendants admit that the complaint had attached to it an Exhibit C. Exhibit C contained (1) a document titled "Memorandum," dated December 14, 2020; (2) a document titled "Certificate of the Votes of the 2020 Electors From Michigan;" (3) a document titled "Certificate of Filling Vacancy of the 2020 Electors From Michigan" (for Ken Thomson); (4) a

document titled "Certificate of Filling Vacancy of the 2020 Electors From Michigan" (for James Renner); (5) a copy of a Priority Mail sheet (to the Archivist of the United States); and (6) a label titled, "Electoral Votes of the State of Michigan for President and Vice President of the United States."

33. The fraudulent election certificates were sent by the defendants to the President of the Senate of the United States and the Archivist of the United States with an accompanying "Memorandum" from defendant Kathy Berden. Defendant Berden falsely identified herself in the Memorandum as "Chairperson, Electoral College of Michigan" and she falsely claimed to enclose "duplicate originals of Michigan's electoral votes for President and Vice President. . . ." See Exhibit C.

ANSWER: The allegations are legal conclusions that requires no response. As for Exhibit C, the Defendants admit that the complaint had attached to it an Exhibit C. Exhibit C contained (1) a document titled "Memorandum," dated December 14, 2020; (2) a document titled "Certificate of the Votes of the 2020 Electors From Michigan;" (3) a document titled "Certificate of Filling Vacancy of the 2020 Electors From Michigan" (for Ken Thomson); (4) a document titled "Certificate of Filling Vacancy of the 2020 Electors From Michigan" (for James Renner); (5) a copy of a Priority Mail sheet (to the Archivist of the United States); and (6) a label titled, "Electoral Votes of the State of Michigan for President and Vice President of the United States."

34. Defendant Berden has represented the Michigan Republican Party in the Republican National Committee since 2015.

ANSWER: The Defendants lack knowledge and information sufficient to form a belief to the truth of the matter asserted.

35. The defendants' fake elector scheme was closely coordinated with the Trump campaign and with others, including Republican National Committee Chair Ronna McDaniel, such that similar fraudulent election certificates from similar fake Trump slates of electors in other states that Biden won and Trump lost, were submitted to Executive Branch officials at the National Archives, and to the Legislative Branch, including to the Office of the President of the Senate, Vice President Mike Pence. *Select Committee Report*, Executive Summary, pp. 41-43, including fn. 231.

ANSWER: Deny. The allegations are denied because they are not true. As to any allegation that appears to rely upon or refer the *Select Committee Report,* the Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations asserted. When the Defendants sought to retrieve the *Final Report of the Select Committee to Investigate the January 6th Attack on the United States Capitol* cited in footnote 1 as https://www.govinfo.gov/content/pkg/GPO-J6-REPORT/Ddf/GPO-J6-REPORT.pdf, they encountered this response: "Page Not Found, Error occurred. The page you requested cannot be found…." Emphasis omitted at https://www.govinfo.gov/error. Moreover, the allegations are also legal conclusions that require no response.

36. The purpose of the fake elector scheme was to give the President of the United States Senate (which, under the Constitution, is the Vice President) a purported justification to refuse to count the real electoral votes on January 6, stealing the election and

installing the loser as President. However, the fake elector scheme failed when Vice President Pence and the Senate parliamentarian ultimately refused to recognize or count the unofficial fake electoral votes. *Select Committee Report*, Executive Summary, p. 43.

ANSWER: Deny. The allegations are denied because they are not true. The allegations also assert legal conclusions that require no response. As to any allegation that appears to rely upon or refer the *Select Committee Report,* the Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations asserted. When the Defendants sought to retrieve the *Final Report of the Select Committee to Investigate the January 6th Attack on the United States Capitol* cited in footnote 1 as https://www.govinfo.gov/content/pkg/GPO-J6-REPORT/Ddf/GPO-J6-REPORT.pdf, they encountered this response: "Page Not Found, Error occurred. The page you requested cannot be found…" Emphasis omitted at https://www.govinfo.gov/error. Moreover, the allegations are also legal conclusions that require no response.

37. Defendant Meshawn Maddock, a co-chair of the Michigan Republican Party, later told an audience in January 2022 regarding the false Trump, electors: "We fought to seat the electors. The Trump campaign asked us to do that." *Select Committee Report*, p. 351.

ANSWER: The Defendants lack knowledge and information sufficient to form a belief to the truth of the matter asserted. As to any allegation that appears to rely upon or refer the *Select Committee Report,* the Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations asserted. When the Defendants sought to retrieve the *Final Report of the Select Committee to*

Investigate the January 6th Attack on the United States Capitol cited in footnote 1 as https://www.govinfo.gov/content/pkg/GPO-J6-REPORT/Ddf/GPO-J6-REPORT.pdf, they encountered this response: "Page Not Found, Error occurred. The page you requested cannot be found…." Emphasis omitted at https://www.govinfo.gov/error.

38. Defendants' scheme attempted to subvert the sacred right of qualified voters in Michigan, enshrined in the State Constitution, to have their votes counted. Michigan Constitution of 1963, Art. II, Sec. 4.

ANSWER: Deny. The allegations are denied because they are not true. The allegation also references the Michigan Constitution is a legal conclusion that requires no response.

39. In participating in this fake elector scheme, defendants violated multiple state and federal criminal laws, including the following: MCL 168.932(d) (making it a felony to "in any manner obstruct or attempt to obstruct any elector in the exercise of his or her duties as an elector under this act"); MCL 168.933a(a) (making a person guilty of election forgery if he or she "Knowingly makes, files, or otherwise publishes a false document with intent to defraud"); MCL 750.248(1) ("A person who falsely makes, alters, forges, or counterfeits a public record ... with intent to injure or defraud another person is guilty of a felony punishable by imprisonment for not more than 14 years"); 18 U.S.C. Section 371 ("If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under

this title or imprisoned not more than five years, or both"); and 18 U.S.C. Section 1001 (which applies, in relevant part, to "whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully—(1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact; (2) makes any materially false, fictitious, or fraudulent statement or representation; or (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry.").

ANSWER: Paragraph 39 violates MI Rules MCR 2.11 (A)(1) ("Each allegation of a pleading must be clear, concise, and direct."). The allegations in this paragraph are legal conclusions that requires no response.

40. Defendant Kathy Berden (described on the fake election certificates and accompanying memorandum as the "Chairperson" of the purported "Electoral College of Michigan") and Defendant Mayra Rodriguez (described on the fake election certificates as the "Secretary" of the fake Trump electors) were subpoenaed for depositions by the Congressional Select Committee to Investigate the January 6th Attack on the United States Capitol. Each was asked simple questions about their signatures on the fake election certificates and why they signed the certificates purporting to cast electoral college votes for Donald Trump despite the fact that he had lost the State of Michigan. Instead of answering these questions, each repeatedly invoked their privilege under the Fifth Amendment against self-incrimination, on the basis that their truthful answers might tend to incriminate them in a later criminal proceeding. A copy of defendant Berden's deposition transcript is attached

here as Exhibit D. A copy of defendant Rodriguez's deposition transcript is attached here as Exhibit E.

ANSWER: Paragraph 40 violates MI Rules MCR 2.11 (A)(1) ("Each allegation of a pleading must be clear, concise, and direct."). The Defendants lack knowledge or information sufficient to form a belief to the truth of the allegations asserted. As for Exhibit D, the Defendants admit an Exhibit D was attached to the complaint. Exhibit D appears to be a redacted 28 page, unexecuted deposition transcript of Kathy Berden, dated March 11, 2022. As for Exhibit E, the Defendants admit that an Exhibit E was attached to the complaint. Exhibit E appears to be a redacted 31 page, unexecuted deposition of Mayra Rodriguez, dated February 22, 2022.

41. Defendants' invocation of their Fifth Amendment privilege against incrimination, while protective in a criminal case, allows an adverse inference in a civil case like this one that their truthful answers would support the plaintiffs' claims. *Phillips v. Deihm*, 213 Mich. App. 389, 399-400 (1995) ("The privilege against self-incrimination not only permits a person to refuse to testify against himself at a criminal trial in which he is a defendant, but also permits him not to answer official questions put to him in any other proceeding, civil or criminal, formal or informal, where the answers might incriminate him in future criminal proceedings. *Allen v. Illinois*, 478 U.S. 364, 368, 106 S.Ct. 2988, 2991, 92 L.Ed.2d 296 (1986); *In re Stricklin*, 148 Mich. App. 659, 663, 384 N.W.2d 833 (1986). However, the Fifth Amendment does not forbid adverse inferences against parties to civil actions when they refuse to testify in response to probative evidence offered against them: the amendment does not preclude the inference where the privilege is claimed by a party to a

civil cause.") (citing *Baxter v. Palmigiano*, 425 U.S. 308, 318 (1976) ("the. Fifth Amendment does not forbid adverse inferences against parties to civil actions when they refuse to testify, in response to probative evidence offered against them.") (citation omitted). *See also* M Civ JI 6.01 (Michigan's relevant civil jury instruction explicitly instructs the jury regarding the allowable adverse inference against a party for the failure to produce a witness or evidence under the party's control).

ANSWER: Paragraph 41 violates MI Rules MCR 2.11 (A)(1) ("Each allegation of a pleading must be clear, concise, and direct"). The allegations of this paragraph are legal conclusions that requires no response.

42. Defendants' fraudulent election certificates falsely portrayed themselves as the real electors, conversely implying that the Biden electors, including plaintiffs, were invalid and illegitimate, at best, or fraudulent and criminal, at worst.

ANSWER: The allegations of this paragraph are legal conclusions that requires no response.

43. Defendants' fake elector scheme fueled widespread disinformation and confusion about the outcome of the election and falsely cast doubt on the legitimacy of the Biden Electors performing their civic and legal duty as the only true Electors of the State of Michigan for President and Vice President of the United States in the 2020 election. This is despite the fact that calling into question the legitimacy of the Biden Electors, including plaintiffs, was utterly lacking any good faith basis.

ANSWER: Deny. The allegations are denied because they are not true.

44. The defendants' conduct is highly offensive to any reasonable citizen. Indeed, defendants' fake elector scheme is contrary to and undermines the basic democratic principles upon which our country is founded. Almost everyone in our society recognizes that lying, cheating, and stealing is wrong, and to do so in connection with a presidential election is traitorous, anti-democratic, and utterly outrageous.

ANSWER: Deny. The allegations are denied because they are not true. They are also in part, such as the statement "traitorous," legal conclusions that requires no response.

45. Plaintiffs were highly offended by being cast in the false light created by defendants. Plaintiffs viewed themselves as performing a civil and lawful duty as presidential electors in support of a country they love, only to have their legitimacy questioned and their integrity falsely and publicly denigrated by defendants' lies in their, fake election certificates that defendants were the real Electors of the State of Michigan for President and Vice President of the United States.

ANSWER: The Defendants lack knowledge or information sufficient to form a belief to the truth of the allegations asserted

46. Plaintiffs suffered humiliation, mental anguish, and stress as a result of being cast in the false light created by defendants' election fraud and lies.

ANSWER: The Defendants lack knowledge or information sufficient to form a belief to the truth of the allegations asserted.

47. Defendants' election fraud and the resulting humiliation, mental anguish, and stress has made plaintiffs apprehensive about again seeking to be nominated as presidential electors in 2024.

ANSWER: The Defendants lack knowledge or information sufficient to form a belief to the truth of the allegations asserted.

48. Defendants' election fraud cynically perpetuated the "Big Lie" that the election was stolen, while in truth it was the defendants and their co-conspirators who were attempting to steal the election. Defendants' conduct has weakened our democracy by eroding public trust in our elections, including future elections in which plaintiffs might serve as electors.

ANSWER: Deny. The allegations are denied because they are not true.

Count I: Declaratory Judgment

49. Plaintiffs incorporate by reference the preceding paragraphs as if restated here.

ANSWER: The Defendants incorporate by reference all preceding answers to the allegations contained in each preceding paragraph as if restated here.

50. Plaintiffs are entitled to a declaratory judgment, under MCR 2.605, declaring that they were legitimate Electors of the State of Michigan for President and Vice President of the United States in the 2020 presidential election and that defendants' conduct violated Michigan law.

ANSWER: The allegations of this paragraph are legal conclusions that requires no response.

Count II: Invasion of Privacy - False Light

51. Plaintiffs incorporate by reference the preceding paragraphs as if restated here.

ANSWER: The Defendants incorporate by reference all preceding answers to the allegations contained in each preceding paragraph as if restated here.

52. Defendants' fake elector certificates were purportedly public documents and indeed were publicized to many people, including by submission to the United States National Archives and the President of the United States Senate.

ANSWER: The Defendants lack knowledge or information sufficient to form a belief as to the truth of this allegation.

53. Defendants' fake elector certificates placed plaintiffs in a false light, falsely portraying defendants as the only real electors and necessarily implying that plaintiffs were not legitimate or valid electors.

ANSWER: Deny. The allegations are denied because they are not true.

54. Defendants' fake elector certificates, falsely implying that defendants, not plaintiffs, were the real electors, were highly offensive to a reasonable person and also to plaintiffs.

ANSWER: Deny. The allegations are denied because they are not true. As to how the "plaintiffs" might find something "highly offensive," the Defendants lack knowledge or information sufficient to form a belief to the truth of the allegations asserted.

55. Defendants acted with actual malice. They knew when they submitted their election certificates that the certificates were fraudulent, that they were fake electors, and that the real Biden electors would be placed in a false light as a result of defendants' scheme.

ANSWER: Deny. The allegations are denied because they are not true.

56. Defendants' conduct has harmed plaintiffs in multiple ways, including by causing reputational harm, humiliation, mental anguish, and stress, and defendants' conduct has made plaintiffs apprehensive about again seeking to be nominated to serve as presidential electors in 2024. In addition, defendants' conduct has undermined public trust and confidence in elections and the willingness to accept future election results, including future elections in which plaintiffs may serve as Electors of the State of Michigan for President and Vice President of the United States.

ANSWER: Paragraph 56 violates MI Rules MCR 2.11 (A)(1) ("Each allegation of a pleading must be clear, concise, and direct."). The allegations in this paragraph are denied because they are not true.

Count III: Statutory Conversion in Violation of MCL 600.2919a

57. Plaintiffs incorporate by reference the preceding paragraphs as if restated here.

ANSWER: The Defendants incorporate by reference all preceding answers to the allegations contained in each preceding paragraph as if restated here.

58. Plaintiffs had an intangible personal property interest in their lawful office as true Electors of the State of Michigan for President and Vice President of the United States, having been duly and lawfully elected in the General Election held in the State of Michigan on November 3, 2020.

ANSWER: The allegations in this paragraph are legal conclusions that require no response.

59. Plaintiffs' property interest and status as true Electors is officially memorialized in the State of Michigan Amended Certificate of Ascertainment of the Electors of the President and Vice President of the United States of America (Exhibit A), and in the State of Michigan Certificate of Votes for President and Vice President (Exhibit B).

ANSWER: The allegations in this paragraph are legal conclusions that require no response.

60. Plaintiffs were vested with possession of their property interests as recognized and memorialized in. (1) the State of Michigan Amended Certificate of Ascertainment of the Electors of the President and Vice President of the United States of America and (2) the State of Michigan Certificate of Votes for President and Vice President.

ANSWER: The allegations in this paragraph are legal conclusions that require no response.

61. Defendants wrongfully exerted dominion over plaintiffs property interest as true Electors in a manner inconsistent with the plaintiffs rights. Specifically, by signing their fake election certificates described above (i.e., the "Certificate of the Votes of the 2020 Electors from Michigan" attached as Exhibit C); by falsely claiming therein that they were "the duly elected and qualified Electors for President and Vice President of the United States of America from the State of Michigan"; by falsely purporting to "certify" that they had cast Michigan's 16 electoral votes for Donald Trump; and by mailing the fake election certificates

to the President of the Senate of the United States and the Archivist of the United States to serve as an official public record purportedly from the true Electors of the State of Michigan, defendants purported to perform a function that only the true Electors had the right and duty to perform. Defendants purported to vote for the losing candidate, entirely contradicting the right and the duty of the true Electors to vote for the winning candidate.

ANSWER: Paragraph 61 violates MI Rules MCR 2.11 (A)(1) ("Each allegation of a pleading must be clear, concise, and direct."). The allegations in this paragraph are legal conclusions that require no response. The Defendants admit that the complaint had attached to it an Exhibit C. Exhibit C contained (1) a document titled "Memorandum," dated December 14, 2020; (2) a document titled "Certificate of the Votes of the 2020 Electors From Michigan;" (3) a document titled "Certificate of Filling Vacancy of the 2020 Electors From Michigan" (for Ken Thomson); (4) a document titled "Certificate of Filling Vacancy of the 2020 Electors From Michigan" (for James Renner); (5) a copy of a Priority Mail sheet (to the Archivist of the United States); and (6) a label titled, "Electoral Votes of the State of Michigan for President and Vice President of the United States."

62. Defendants put plaintiffs' converted property to their own use as described above by fraudulently holding themselves out as the true Electors and purporting to cast their fake electoral votes for the losing candidate, basing their action on the fake election certificates that contradicted the true certificates in which plaintiffs had an interest - (1) the State of Michigan Amended Certificate of Ascertainment of the Electors of the President

and Vice President of the United States of America and (2) the State of Michigan Certificate of Votes for President and Vice President.

ANSWER: Paragraph 62 violates MI Rules MCR 2.11 (A)(1) ("Each allegation of a pleading must be clear, concise, and direct."). Deny. The allegations are denied because they are not true.

63. As a result, defendants engaged in conversion in violation of MCL 600.2919a, entitling plaintiffs to treble damages and attorney fees as provided by statute.

ANSWER: The allegations in this paragraph are legal conclusions that require no response.

64. Defendants' conduct has caused plaintiffs to suffer actual damages as described above, including reputational harm, humiliation, mental anguish, and stress. In addition, defendants' conduct has made plaintiffs apprehensive about again seeking to be nominated to serve as presidential electors in 2024. In addition, defendants' conduct has undermined public trust and confidence in elections and the willingness to accept future election results, including future elections in which plaintiffs may serve as Electors of the State of Michigan for President and Vice President of the United States.

ANSWER: Paragraph 64 violates MI Rules MCR 2.11 (A)(1) ("Each allegation of a pleading must be clear, concise, and direct."). The allegations in this paragraph are legal conclusions that require no response. As for allegations referring to the defendants conduct, the Defendants deny because they are not true.

Count IV: Civil Conspiracy

65. Plaintiffs incorporate by reference the preceding paragraphs as if restated here.

ANSWER: The Defendants incorporate by reference all preceding answers to the allegations contained in each preceding paragraph as if restated here.

66. Defendants combined together with each other to engage in concerted action to accomplish the criminal violations alleged in paragraph 39 above by submitting their fake elector certificates.

ANSWER: Deny. The allegations are denied because they are not true.

67. Defendants also, combined together with each other to engage in concerted action to accomplish an unlawful purpose in portraying the Biden electors, including plaintiffs, in a false light, by falsely portraying defendants as the real electors and necessarily implying that plaintiffs were invalid and illegitimate electors.

ANSWER: Deny. The allegations are denied because they are not true.

68. Defendants also combined together with each other to engage in concerted action to accomplish an unlawful purpose in falsely portraying themselves as the real electors from the State of Michigan, thereby converting plaintiff's intangible property interest in their lawfully acquired position as true electors.

ANSWER: Deny. The allegations are denied because they are not true. As for the allegation referencing conversion of intangible property, it is a legal conclusion that requires no response.

69. Defendants' conduct has caused plaintiffs to suffer actual damages as described above, including reputational harm, humiliation, mental anguish, and stress. In addition, defendants' conduct has made plaintiffs apprehensive about again seeking to be nominated to serve as presidential electors in 2024. In addition, defendants' conduct has

undermined public trust and confidence in elections and the willingness to accept future election results, including future elections in which plaintiffs may serve as Electors of the State of Michigan for President and Vice President of the United States.

ANSWER: Deny. The allegations are denied because they are not true. Any allegation referencing what the Plaintiffs "feel" about future actions in 2024, the Defendants lack knowledge or information sufficient to form a belief as to the truth of those allegations.

Relief Requested

As for any relief the Plaintiffs seek, the Defendants deny the Plaintiffs are entitled to any relief requested.

Defendants Affirmative Defenses

As required under Michigan Civil Rules 2.111(F)(3)(a), (b), (c), the Defendants assert the following affirmative defenses that they may rely upon:

1. The Defendants assert that the Plaintiffs failed to state a claim for which relief can be granted.
2. The Defendants assert that the Plaintiffs have no adequate remedy at law.
3. The Defendants assert that the Plaintiffs have failed to adequately plead each element necessary to support the claim-count asserted.
4. The Defendants assert that the Plaintiffs have no private right of action for any allegation or claim in which the Defendants allege criminal wrong-doing.
5. The Defendants assert the Plaintiffs failed to allege fraud with particularity. For example, throughout the Plaintiffs' complaint, they assert the Defendants engaged

in fraudulent conduct, yet, failed to fully plead the necessary elements to support those allegations and claims.

6. The Defendants assert that there was no intent to defraud any Plaintiff.
7. The Defendants assert that the Plaintiffs claims are moot. For example, the Plaintiffs seek declaratory relief that they were true Electors. The Plaintiffs did cast ballots as Electors for President and Vice President of the United States.
8. The Defendants assert the Plaintiffs lack standing. Allegations supporting the Plaintiffs claims are based on violations of criminal laws. Plaintiffs are not criminal prosecutors and cannot stand in the shoes of city, county, state, or federal criminal prosecutors.
9. The Defendants assert that this Court has no subject matter jurisdiction. While the complaint is couched under state law allegations and claims, the resolution of a federal question is necessary to resolve any state-law claim and also subject to the removal doctrine or "complete preemption." *E.g., Long v. Bando,* 201 F.3d 754, 759 (6th Cir. 2000) (noting that federal question jurisdiction may exist for a case based on a state law cause of action "if a substantial federal question of great federal interest is raised by a complaint framed in terms of state law, and if resolution of that federal question is necessary to the resolution of the state-law claim").
10. The Defendants assert that the Plaintiffs failed to properly plead all elements necessary for a false-light invasion of privacy claim. Plaintiffs must show that the defendant broadcast to the public in general, or to a large number of people,

information that was unreasonable and highly objectionable by attributing to the plaintiff characteristics, conduct, or beliefs that were false and placed the plaintiff in a false position. The Plaintiffs failed to do so.

11. The Defendants assert that the Plaintiffs have improperly asserted a claim for declaratory judgment as "Count I." Declaratory relief is a remedy, equitable in nature, because it is not a damages remedy and thus, not a claim.

12. The Defendants assert that the Plaintiffs cannot recover any asserted claims to monetary damages, such as damages for the claim of conversion, because the Plaintiffs cannot show or otherwise prove actual damages. Likewise, because the Plaintiffs cannot obtain the monetary damages sought, they cannot seek treble damages.

13. The Defendants assert that the Plaintiffs cannot recovery for any exemplary damages because they are inadequately pled. They are speculative as to future conduct, here 2024, that the injury to feelings and mental suffering were natural and proximate in view of the nature of the defendant's conduct. Nor did the Plaintiffs plead that the Defendants conduct was done in wanton and reckless disregard of the Plaintiff's rights, necessary elements to support the claims asserted.

14. The Defendants assert that the Plaintiffs cannot claim statutory conversion under MCL § 600.2919a, because the Plaintiffs did not "own" an intangible personal property "in their lawful office" as an Elector.

15. The Defendants assert that the Plaintiffs cannot assert a claim for civil conspiracy because they failed to establish the necessary underlying tort because they failed to establish any unlawful purpose or unlawful means in defendants' actions. In fact, in support of Count IV, the Plaintiffs specifically cite to paragraph 39, which in turn, simply cites to numerous state and federal criminal laws asserting, without proof, that the Defendants had violated those *criminal* laws. Criminal laws are not torts.
16. The Defendants assert that the Plaintiffs claims are preempted by federal or other laws.
17. The Defendants assert that the Plaintiffs actions are activities protected under the First Amendment as political speech.
18. The Defendants assert that the Plaintiffs actions are activities protected under the First Amendment as a petition for the redress of grievances.
19. The Defendants assert that the Plaintiffs actions are activities protected under the First Amendment as expressive association.
20. The Defendants assert that the Plaintiffs actions reflect controversies that could have been subject to dispute under Article II of the U.S. Constitution or the Twelfth Amendment of the U.S. Constitution whether in the judicial process or before Congress.
21. The Defendants assert that the Plaintiffs actions reflect controversies that could have been subject to dispute under the federal Electoral Count Act in the judicial process.

22. The Defendants assert that they did not take the position as being a challenge to the State of Michigan Governor's amended certificate of ascertainment of electors.

23. The Plaintiffs' complaint violates MI Rules MCR 2.11(A)(1) ("Each allegation of a pleading must be clear, concise, and direct."). Therefore, the complaint, having failed to meet the minimal requirements of MCR 2.11(A)(1) should be stricken or dismissed.

Discovery in this matter has not commenced. The current affirmative defenses are based upon the factual allegations Plaintiffs have asserted and were relied upon accordingly for *this* answer. Should discovered facts and circumstances later warrant, the Defendants will amend their answer to assert other affirmative defenses, if necessary.

Dated: February 13, 2023

B. Tyler Brooks, MI Atty. No. P82567
Law Office of B. Tyler Brooks, PLLC
P.O. Box 10767
Greensboro, North Carolina 27404
Main: (336) 564-6255
Cell: (336) 707-8855
Fax: (336) 900-6535
btb@btylerbrookslawyer.com

Erick G. Kaardal, MN Atty No. 229647
Mohrman, Kaardal & Erickson, P.A.
Special Counsel for Thomas More Society
150 South Fifth Street, Suite 3100
Minneapolis, MN 55402
Telephone: (612) 341-1074
Email: kaardal@mklaw.com
**Pro Hac Vice pending*

Attorneys for Defendants