STATE OF MICHIGAN
IN THE COURT OF CLAIMS

TAMERA MARTIN, an individual, and RICHARD SULLIVAN, an individual,

Plaintiffs,

v

MICHIGAN EMPLOYMENT RELATIONS COMMISSION (MERC), a state government agency, TINAMARIE PAPPAS, MERC Chairperson (in her official capacity), WILLIAM F. YOUNG, MERC Commissioner (in his official capacity), ROBERT L. CHIARAVALLI, MERC Commissioner (in his official capacity), MICHIGAN DEPARTMENT OF LABOR AND ECONOMIC OPPORTUNITY (LEO), a state government agency, and SUSAN CORBIN, LEO Director (in her official capacity),

Defendants.

Case No. 25-000124-MM

HON. BROCK A. SWARTZLE

08/22/2025 RESPONSE TO PLAINTIFFS' 07/30/2025 MOTION FOR PRELIMINARY INJUNCTION AND MANDAMUS

ORAL ARGUMENT REQUESTED

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DEFENDANTS' RESPONSE TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION AND MANDAMUS

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INTRODUCTION

The Michigan Civil Service Commission (MCSC) has broad jurisdiction over the state civil service, but only within its limited sphere of authority. Here, the home help caregivers subject to the challenged public acts 2024 PA 144 and 2024 PA 145 (collectively, the "Acts") do not fall within that authority. To the contrary, the Acts only grant collective bargaining rights and not any of the other indicia of state civil service. In the plainest of text, the Legislature has not created new state employees subject to the MCSC's authority. The Plaintiffs erroneously ask this Court to expand the MCSC's authority well beyond its constitutional mooring to cover those who are not civil servants.

Moreover, Plaintiffs claim violation of their right to freedom of association under the First Amendment. That too is wrong, as Plaintiffs likewise ask this Court to extend First Amendment doctrine deep into uncharted territory, well beyond the narrow limitations imposed by the two Supreme Court decisions barring compelled fees to public sector unions. This Court should not take the invitation to break novel constitutional ground, particularly in the context of preliminary injunctive relief, which is to be granted only in extraordinary circumstances.

Moreover, the irreparable harms to the Defendants and the public at large—by barring the effectuation of duly enacted laws—weigh heavily when compared with Plaintiffs' speculative harms. As explained further below, Plaintiffs fail to establish the requisite elements for issuance of a preliminary injunction and a writ of mandamus. Thus, this Court must deny Plaintiffs' motion.

COUNTER STATEMENT OF FACTS AND PROCEEDINGS

The existing legal backdrop prior to passage of the Acts.

Relevant to this proceeding, art 11, § 5 of the Michigan Constitution established the classified civil service:

> The classified state civil service shall consist of all positions in the state service except those filled by popular election, heads of principal departments, members of boards and commissions, the principal executive officer of boards and commissions heading principal departments, employees of courts of record, employees of the legislature, employees of the state institutions of higher education, all persons in the armed forces of the state, eight exempt positions in the office of the governor, and within each principal department, when requested by the department head, two other exempt positions, one of which shall be policy-making. The civil service commission may exempt three additional positions of a policymaking nature within each principal department.

Section 5 also states that "[v]iolation of any of the provisions hereof may be restrained or observance compelled by injunctive or mandamus proceedings brought by any citizen of the state." Const 1963, art 11, § 5. Relatedly, article 4, § 48 allows the Legislature to "enact laws providing for the resolution of disputes concerning public employees, except those in the state classified civil service," and § 49 provides that "[t]he legislature may enact laws relative to the hours and conditions of employment." Const 1963, art 4, §§ 48–49.

Michigan's Public Employment Relations Act (PERA), first enacted in 1947, protects the collective bargaining rights of certain public employees. Specifically, PERA provides that:

> [p]ublic employees may organize together or form, join, or assist in labor organizations; engage in lawful concerted activities for the purpose of collective negotiation or bargaining or other mutual aid and

> protection; or negotiate or bargain collectively with their public employers through representatives of their own free choice. [MCL 423.209.]

PERA also details election procedures and the Michigan Employment Relations Commission's (MERC) authority to direct elections and certify the results of such elections. See MCL 423.212.

The Acts grant collective bargaining rights to home help caregivers.

In 2024, Governor Whitmer signed the Acts into law to ensure individual home help caregivers were afforded collective bargaining rights over certain terms and conditions of their employment. Specifically, 2024 PA 144 classifies caregivers as public employees of the director of the Michigan Department of Health and Human Services (DHHS) for the sole purpose of collective bargaining. MCL 400.804(1).

Further, 2024 PA 144 "does not require or provide for the treatment or classification of individual home help caregivers as public employees for any other purpose, and the department's role as employer solely for the purposes of collective bargaining does not serve as a basis to establish an employer-employee relationship." *Id.* In addition, individual home help caregivers are not considered employees of the state or political subdivisions of the state for any purpose other than collective bargaining. *Id.* Notably, 2024 PA 144 further states that caregivers are not subject to the provisions of art 11, § 5 of the Michigan Constitution. *Id.*

Next, 2024 PA 145 removed PERA's language prohibiting caregiver rights to collective bargaining but amended PERA's definition of "public employee" to bring

into its purview "an individual designated by the legislature as a public employee." MCL 423.201(1)(e)(ii), as amended by 2024 PA 145. This definition is strictly for the purposes of collective bargaining, however. *Id*.

MERC receives SEIU's petition for an election and Plaintiffs file suit.

On April 16 and June 27, 2025, MERC received Certification of Representation petitions from the Service Employees International Union Healthcare of Michigan (SEIU) for an election authorized by the Acts. The petitions include "all individual home help caregivers selected by a participant or the participant's representative, who provides individual home help services to a participant." The petitioners are assigned MERC case numbers 25-D-0699-RC and 25-F-1170RC. Case 25-D-0699-RC was withdrawn with the petition filed on June 27, 2025, so 25-F-1170-RC is the only active election case.

Following MERC's receipt of the petitions, Plaintiffs initiated this lawsuit alleging violations of the Michigan and US Constitutions. Plaintiffs named Defendants MERC, MERC Chairperson Tina Marie Pappas (in her official capacity), MERC Commissioner William F. Young (in his official capacity), MERC Commissioner Robert Chiaravalli (in his official capacity), Michigan Department of Labor and Economic Opportunity (LEO), and LEO Director Susan Corbin (in her official capacity) (collectively, "Defendants"). Plaintiffs move for a preliminary injunction and a writ of mandamus to enjoin Defendants from certifying the election identifying the SEIU as the exclusive representative of the caregivers.

PRELIMINARY INJUNCTION STANDARD

Injunctive relief is an extraordinary remedy that should only be granted when (1) justice requires, (2) there is no adequate legal remedy which exists, and (3) there is a real and imminent danger of irreparable injury. *Pontiac Fire Fighters Union Local 376 v Pontiac*, 482 Mich 1, 8 (2008). The Court of Appeals has explained that:

> [t]he object of a preliminary injunction is to preserve the status quo, so that upon the final hearing the rights of the parties may be determined without injury to either. The status quo which will be preserved by a preliminary injunction is the last actual, peaceable, noncontested status which preceded the pending controversy. *Bratton v Detroit Auto Inter-Insurance Exchange*, 120 Mich App 73, 79 (1982) (internal citations omitted).

The party seeking a preliminary injunction "bears the burden of proving that the traditional four elements favor the issuance of a preliminary injunction." *Detroit Fire Fighters Ass'n, IAFF Local 344 v Detroit*, 482 Mich 18, 34 (2008).

Specifically, the court weighs four factors: (1) the strength of the applicant's demonstration that the applicant is likely to prevail on the merits; (2) demonstration that the applicant will suffer irreparable injury if a preliminary injunction is not granted; (3) whether harm to the applicant in the absence of a stay outweighs the harm to the opposing party if a stay is granted; and (4) harm to the public interest if an injunction issues. *State Emps Ass'n v Dep't of Mental Health*, 421 Mich 152, 157–158 (1984); *Detroit Fire Fighters Ass'n, IAFF Loc 344 v City of Detroit*, 482 Mich at 34–35.

ARGUMENT

I. Plaintiffs fail to satisfy the applicable elements justifying the extraordinary remedy of a preliminary injunction.

This Court should swiftly deny Plaintiffs' motion because Plaintiffs cannot demonstrate that they are likely to prevail on the merits of their action, nor will they suffer irreparable harm absent an injunction. Further, the potential harm to Plaintiffs in the absence of a stay does not outweigh the harm to Defendants if a stay is granted, and Plaintiffs cannot demonstrate the public interest would be furthered by the granting of an injunction.

A. The Acts do not violate either the Michigan or US Constitutions.

Plaintiffs argue that they are likely to prevail as the Acts run afoul Michigan's Constitution as it pertains to the MCSC and the US Constitution relating to the First Amendment and associational freedoms. (Br in Support, pp 9–15, 18.) Plaintiffs' arguments are without merit.

1. MCSC's jurisdiction does not extend to every worker who provides services to the state.

The MCSC is an administrative agency derived from the Michigan Constitution. *Womack Scott v Dep't of Corrections*, 246 Mich App 70 (2001). Within its sphere of authority, the MCSC has broad and exclusive authority to regulate the terms and conditions of employment in the state classified service. *Id.*; see also *York v Civil Serv Comm*, 263 Mich App 694 (2004). However, the MCSC's power to promulgate rules and regulations must be consistent with the expressed powers and

limitations set forth in the constitutional amendment itself. *Reed v Civil Serv Comm*, 301 Mich 137 (1942).

Save some exceptions,[1] all positions in the state service make up the classified state civil service. Const 1963, art 11, § 5. But simply providing services for the state in some capacity does not necessarily mean the individual is in a civil service position. *Mich State Employees Ass'n v Civil Serv Comm*, 141 Mich App 288, 293 (1985). As such, possession of civil service status is not automatic. *Mich State Employees Ass'n*, 141 Mich App at 293; see also *AFSCME, AFL CIO v Civil Serv Comm*, unpublished opinion per curiam of the Court of Appeals, issued July 5, 1996 (Docket Nos. 170606, 170893), p 2. Only those working in the state civil service, then, are subject to the MCSC's classification based on merit, efficiency, and fitness, *Reed*, 301 Mich at 160.[2] Stated differently, employees like Plaintiffs who have been deemed "public employees" for the limited purpose of collective bargaining have no right to be "blanketed in" to the state civil service. See *Id*.

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[1] Some positions are expressly excluded by the constitution, such as elected officials, employees of the Legislature, and heads of principal departments. See Const 1963, art 11, § 5.

[2] For those who are within the civil service, the MCSC must classify all positions

> according to their respective duties and responsibilities, fix rates of compensation for all classes of positions, approve or disapprove disbursements for all personal services, determine by competitive examination and performance exclusively on the basis of merit, efficiency, and fitness the qualifications of all candidates for positions in the classified service, make rules and regulations covering all personnel transactions, and regulate all conditions of employment in the classified service. Const 1963, art 11, § 5.

The Plaintiffs' argument puts the cart before the horse, assuming that the MCSC's sphere of authority covers these individuals. It does not. The Legislature designated a class as "public employees" "*solely for the purposes of collective bargaining*" and explicitly disavowed their employment with the "for any other purpose." MCL 400.804(1). Moreover, the applicable PERA amendment makes clear that a person designated as a public employee for a single, narrow purpose "does not render the individual an employee of this state . . . for any purpose other than the limited purpose authorized by the legislature." MCL 423.201(e)(ii). This finely tuned language reveals not just what the Legislature intended, but what it actually did: designate home care helpers as public employees *solely* for purposes of collective bargaining, not as members of the civil service.

In *Civil Service Commission v Department of Labor*, the Supreme Court considered the constitutionality of certain legislation which removed "'workers' compensation hearing officers from the state civil service by organizing them in a board." 424 Mich 571, 576 (1986). There, the Court found that the constitutional provisions which authorize the Civil Service Commission to "classify all positions" and empowers appointing authorities to "create or abolish positions for reasons of administrative efficiency" do not prevent the Legislature from "creating new positions or eliminating old positions and changing the respective duties and responsibilities by law." *Civil Service Commission v Department of Labor*, 424 Mich at 625; see also Const 1963, art 11, § 5. The Court recognized limits on this power of the Legislature, however, requiring it to "act in good faith, and not merely

transfer a civil service position to non-civil service status." *Civil Service Commission v Department of Labor*, 424 Mich at 625. With this in mind, the Court held that the statutory section at issue that abolished the position of hearing referee and a separate statutory section that created a board of magistrates did not violate art 11, § 5 of the Michigan Constitution. *Id.*

It is evident then that constitutional provisions empowering the MCSC and appointing authorities are not usurped by legislation that may accomplish similar ends. By logical extension, it is also within the purview of the Legislature to prescribe that caregivers serve as employees of the director of DHHS for the *sole* purposes of collective bargaining but who are not in the state civil service and, therefore, fall outside the purview of the MCSC. There is no legal requirement that all who provide services on behalf of the state must be in a civil service position. *Mich State Employees Ass'n*, 141 Mich App at 293 (authorizing the state to obtain services from independent contractors who do not share coemployment status with the state); *Reed,* 301 Mich at 158; see also Civ Serv R 4-1.3 (authorizing the appointing authority to establish positions). Moreover, the caregivers identified in the Acts do not meet the criteria for falling into state service as they are hired and directed by the individuals they service, whereas civil servants are hired and directed by department appointing authorities. See Civ Serv R 3-3.4; 4-1.3. The upshot is that the Legislature may provide collective bargaining rights to certain groups of workers, and this may coexist with the MCSC's sphere of authority.

2. There is no violation of federal First Amendment rights in an employee's association with a labor organization.

Plaintiffs contend that, while the US Supreme Court rendered its decision in *Janus v AFSCME*, 585 US 878 (2018) and *Harris v Quinn*, 573 US 616 (2014) pertaining to mandatory fees violating the First Amendment, a question remains regarding whether there is a violation of the First Amendment's freedom of association. In both cases, however, the Court's ruling was narrowly limited to the issue of mandatory payment of fees to a labor organization as a condition of continuing employment. In neither case did the Court suggest that the mere certification of an exclusive bargaining representative infringed on an employee's First Amendment right to freedom of association. In short, no such violation exists, and the conclusions to be drawn from *Harris* for this case are limited in nature.

At the outset, the First Amendment protects the right of individuals to associate for expressive purposes, and this includes "a right to associate for purposes of petitioning the government and influencing public policy." *Bierman v Dayton*, 227 F Supp 3d 1022, 1028 (Minn Dist Ct, 2017). The "[f]reedom of association . . . plainly presupposes a freedom not to associate." *Id*. at 1029, citing *Knox v Serv Employees Int'l Union*, 567 US 298 (2012) (citation omitted).

In *Bierman*, the US District Court for Minnesota addressed a similar matter. Specifically, the court was confronted with individual home care providers suing officials of the State of Minnesota and a labor union, claiming a violation of the First Amendment right to freedom of association through the state's certification of a union as exclusive representative for those home care providers under

Minnesota's Public Employment Labor Relations Act (PELRA). *Bierman*, 227 F Supp 3d at 1028. Notably, such home care providers were considered executive branch state employees under Minnesota's Individual Providers of Direct Support Services Act. *Id*. The *Bierman* court noted that in *Harris*, the plaintiffs were not "challeng[ing] the authority of the SEIU–HII to serve as the exclusive representative of all the personal assistants in bargaining with the State. All they s[ought] [was] the right not to be forced to contribute to the union, with which they broadly disagree." *Id*. at 1031, citing *Harris*, 573 US at 649.

Beyond this, however, *Bierman* noted the narrow scope of *Harris*' holding, observing that "the Supreme Court solely decided that it was a violation of the First Amendment for a state to require homecare providers to pay fair share or agency fees to a union. The *Harris* Court further made clear that a "union's status as exclusive bargaining agent and the right to collect an agency fee from non-members are not inextricably linked." *Id*., quoting *Harris*, 573 US at 649.

The *Bierman* Court properly recognized the limited scope of *Harris*, and the same applies here. Collective bargaining with a union on terms and conditions of Plaintiffs' employment does not equate to forced association with a union. See *Bierman*, 227 F Supp 3d at 1029. Rather, the State "has simply restricted the class of persons to whom it will listen in its making of policy." *Minn State Bd for Community Colleges v Knight*, 465 US 271, 282 (1984). The Plaintiffs "have no constitutional right to force the government to listen to their views." *Id*. at 283. "A person's right to speak is not infringed when government simply ignores that person

while listening to others." *Thompson v Marietta Ed Ass'n*, 972 F3d 809, 814 (2020). Here, Plaintiffs are not required to become members of a union, but merely reap the benefits of the terms and conditions of their employment negotiated by the union. Thus, the mere existence of an exclusive bargaining representative is not enough to impair their associational freedoms.

B. Plaintiffs will not be irreparably harmed absent a preliminary injunction.

"[A] particularized showing of irreparable harm is an indispensable requirement to obtain a preliminary injunction." *Pontiac Fire Fighters Union Local 376*, 482 Mich at 9. It is "well settled that an injunction will not lie upon the mere apprehension of future injury or where the threatened injury is speculative or conjectural." *Hammel v Speaker of House of Representatives*, 297 Mich App 641, 651–652 (2012), citing *Mich AFSCME Council 25 v Woodhaven-Brownstown Sch Dist,* 293 Mich App 143, 149 (2011) (quotation marks and citation omitted). A party must demonstrate "a particularized showing of irreparable harm" and "[t]he injury is evaluated in light of the totality of the circumstances affecting, and the alternatives available to, the party seeking injunctive relief." *Id.*

Plaintiffs argue that absent an injunction, "MERC may certify an illegitimate election for which it lacks jurisdiction" and "Plaintiffs' First Amendment rights of association will be harmed as they will be forced to associate with a union which will represent them whether or not they are members and will speak on their behalf regardless if Plaintiffs agree with them or not." (Br in Support, pp 18–19.)

As discussed, the Acts do not violate the Michigan or US Constitutions, neither usurping the MCSC's jurisdiction nor violating First Amendment associational freedoms. Thus, Plaintiffs cannot demonstrate an irreparable harm. Moreover, an election has not yet occurred and there has been no certification of a union to represent home help caregivers. Plaintiffs' argument is speculative in that it supposes MERC may certify an illegitimate election. Even if the election is certified, Plaintiffs are not required to render any financial support to any union that may represent home help caregivers, thus falling outside the scope of *Janus* and *Harris*. Moreover, economic injuries will generally not be found sufficient to demonstrate an irreparable injury as such injuries can often be remedied by damages at law. *Alliance for Mentally Ill of Mich v Dep't of Community Health*, 231 Mich App 647, 664 (1998). Thus, Plaintiffs fail to establish an irreparable harm.

C. Plaintiffs alleged harm in the absence of a stay does not outweigh the harm to Defendants if a stay is granted.

Courts must evaluate whether the harm suffered by the nonmoving parties caused by granting the proposed injunctive relief will outweigh the harm suffered by the moving parties if the injunctive relief is denied. Plaintiffs argue that "MERC will suffer no harm if it is required to delay the certification of an election for which it lacks jurisdiction under the Michigan Constitution." (Br in Support, p 19.)

Defendants, however, have a significant interest in and duty to apply the Acts to afford the many thousands of workers who stand to benefit from exclusive representation. An injunction preventing Defendants from implementing their statutory obligations clearly outweighs the alleged (and unfounded) harms raised by

Plaintiffs. Again, injunctive relief is intended "to place the parties in the status quo and let the judicial process resolve the dispute without one party suffering harm that cannot later be remedied." *Johnson v Mich Minority Purchasing Council*, 341 Mich App 1, 23 (2022). Plaintiffs have demonstrated no harm whatsoever and their disagreement does not outweigh the harm to Defendants.

D. The public interest would not be furthered by granting injunctive relief.

Finally, this Court must address whether the public policy of Michigan is furthered or undermined by the granting of the injunctive relief. As the Sixth Circuit has held, "[T]he determination of where the public interest lies [ ] is dependent on a determination of the likelihood of success on the merits of the First Amendment challenge because it is always in the public interest to prevent the violation of a party's constitutional rights." *Liberty Coins, LLC v Goodman*, 748 F3d 682, 690 (CA 6, 2014), citing *Connection Distrib Co v Reno*, 154 F3d 281, 288 (CA 6, 1998) (internal quotation marks omitted). In sum, if there is likely a constitutional violation, then then public interest weighs in favor of an injunction. *Id*. at 690.

Further, Plaintiffs theatrically argue that if "a union is certified, undoing the whole unconstitutional scheme will be a calamitous mess that harms the public interest—dues will be paid to an improper bargaining representative, and the state will spend money on an unconstitutional council and enforce an unconstitutional scheme." (Br in Support, p 19.) But Plaintiffs' assertion is flawed. First, the Acts do not encroach upon MCSC's constitutional authority, and this is the foundation of

Plaintiffs' claims. Second, neither Plaintiffs nor any home help caregiver who may be represented by a union will be required to pay such fees. See *Janus,* 585 US at 929–930. In contrast, Defendants have a significant interest in *and duty* to implement and uphold them as enacted by the Legislature. For these reasons, the public interest favors *not* enjoining Defendants from implementing and enforcing the Acts, and this Court should deny Plaintiffs' motion.

II. Plaintiffs likewise fail to meet their burden for mandamus relief.

A writ of mandamus directs a public official to perform their legal duty. *Jones v Dep't of Corrections*, 468 Mich 646, 658 (2003). In seeking the extraordinary remedy of a writ of mandamus, courts evaluate whether: "(1) the plaintiff has a clear, legal right to performance of the specific duty sought (2) the defendant has a clear legal duty to perform, (3) the act is ministerial, and (4) no other adequate legal or equitable remedy exists that might achieve the same result." *Taxpayers for Mich Constitutional Gov't v Michigan*, 508 Mich 48, 82 (2021) (quotation marks and citation omitted). The party seeking mandamus has the burden of proving all four requirements. *Rental Props Owners Ass'n of Kent Co v Kent Co Treasurer*, 308 Mich App 498, 518 (2014).

Because Plaintiffs fail to meaningfully support any of the required elements, this Court should deny Plaintiffs' request for mandamus.

A. Plaintiffs lack a clear legal right to the relief sought.

"[A] clear, legal right is one clearly founded in, or granted by, law; a right which is inferable as a matter of law from uncontroverted facts regardless of the

difficulty of the legal question to be decided." *Johnson v Bd of Canvassers,* 341 Mich App 671, 685 (2022), quoting *Rental Props Owners Ass'n of Kent Co,* 308 Mich App at 519. "Even where such a right can be shown, it has long been the policy of the courts to deny the writ of mandamus to compel the performance of public duties by public officials unless the specific right involved is not possessed by citizens generally." *Univ Med Affiliates, PC v Wayne Co Executive*, 142 Mich App 135, 143 (1985). Where a plaintiff cannot point to any source of law that prescribes or defines the duty to act in a way as alleged by the complaint, an order of mandamus may not be issued. *Kennedy v Sec'y of State*, __ Mich __; 10 NW3d 632 (2024).

Plaintiffs argue they "have a clear legal right to not be included in a union when the certification of that union is unconstitutionally conducted by MERC under PERA when state employees are properly subject to the jurisdiction of the Civil Service Commission." (Br in Support, p 20.) Plaintiffs' speculative harms and misguided constitutional arguments do not give rise to a clear, legal right to prevent Defendants' performance of their duties under the Act. In contrast, Defendants have a clear legal duty to comply with the Acts, which require conducting an election and certifying the results. But more pointedly, Plaintiffs fail to successfully show that the Acts are unconstitutional, and so they fail to establish a legal duty to which they are owed. Indeed, no election has been held in this matter, no union has been certified to represent the home help caregivers, and there is no indication that fees have been or will be levied against Plaintiffs. In short, absent Plaintiffs' demonstration that the Acts are unconstitutional, Plaintiffs have no clear, legal

right to prevent Defendants' performance in conducting an election and certifying any union that the home help caregivers may elect.

B. Defendants have no clear legal duty to perform the requested action.

"A clear legal duty, like a clear legal right, is one that is inferable as a matter of law from uncontroverted facts regardless of the difficulty of the legal question to be decided." *Hayes v Parole Bd*, 312 Mich App 774, 782 (2015) (quotation marks and citation omitted); see also *Neilson v Bd of State Canvassers*, __ Mich App __, 2024 WL 3032750 (2024) (although the Board had a statutory "duty to investigate signatures or to check signatures against the qualified voter file," it "did not have a clear legal duty to accept and review the last-second submissions by plaintiff" or "conduct a review of plaintiff's choosing or one that adheres to the parameters she sets").

Also, Michigan courts have identified only two circumstances in which a clear legal duty to act exists such that mandamus may compel performance of the duty: (1) when the act sought to be compelled is clearly ministerial, leaving no exercise of discretion or judgment, *Lickfeldt v Dep't of Corrections,* 247 Mich App 299, 302 (2001); and (2) when the officer is charged with the duty to perform an act which requires the exercise of discretion, *Teasel v Dep't of Mental Health*, 419 Mich 409, 410 (1984).

The Michigan Supreme Court in *Teasel*, however, held that while mandamus can require an officer to take action requiring discretion, it will not require the exercise of discretion in a particular manner:

> Mandamus is an extraordinary remedy and will not lie to control the exercise or direction of the discretion to be exercised. Moreover, it will not lie for the purpose of reviewing, revising, or controlling the exercise of discretion reposed in administrative bodies. However, the writ will lie to require a body or an officer charged with a duty to take action in the matter, notwithstanding the fact that the execution of that duty may involve some measure of discretion. Stated otherwise, mandamus will lie to compel the exercise of discretion, but not to compel its exercise in a particular manner. [*Teasel*, 419 Mich at 410.]

Plaintiffs argue that MERC has a clear legal duty to not certify an unconstitutional election. (Br in Support, p 20.) Again, Plaintiffs fail to demonstrate that the Acts are unconstitutional, and they have alleged only speculative harms. Absent such a showing, Defendants have no clear legal duty to perform the action requested by Plaintiffs.

C. Defendants' duty under the Acts are discretionary, not ministerial.

Mandamus compels only performance of ministerial duties—those "in which the law prescribes and defines the duty to be performed with such precision and certainty as to leave nothing to the exercise of discretion or judgment." *Hillsdale Co Senior Servs, Inc v Hillsdale CO*, 494 Mich 46, 58 n 11 (2013). In contrast, a discretionary duty involves "the exercise of discretion, judgment, or choice." *Johnson v Bd of State Canvassers*, 341 Mich App 671, 689 (2022). Mandamus cannot compel the performance of discretionary acts. *Id.*

Plaintiffs argue "[t]he act of certifying an election is a ministerial duty that requires no discretion or judgment on the part of MERC." (Br in Support, p 20.) Defendants MERC and the Commissioners carry out discretionary functions with respect to the processing and certifying of elections. Namely, PERA provides that,

"[i]f the commission finds upon the record of the hearing that such a question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof." MCL 423.212(b). Here, the MERC and the Commissioners exercise their discretion in determining whether a question of representation exists, and only then moves forward to direct an election and certification of the results. PERA further provides that "[t]he commission shall determine who is eligible to vote in the election and shall promulgate rules governing the election." MCL 423.214. And, "[t]he time, place, and manner of the election shall be determined by the commission or its designee after consultation with the parties." Mich Admin Code, R 423.144. Again, discretion is vested within MERC and the Commissioners to determine various aspects of the election itself, well before certifying the election results.

D. Plaintiffs have adequate alternative legal remedies.

Finally, mandamus is unavailable when other adequate legal remedies exist. *Keaton v Village of Beverly Hills*, 202 Mich App 681, 683 (1993) (where the plaintiff can appeal the error a writ of mandamus should not be granted). Plaintiffs argue they "have no other adequate legal or equitable remedy—if they are forced to associate with a union there is no remedy for their loss of First Amendment rights." (Br in Support, p 20.) But they are incorrect.

To be sure, Plaintiffs do not need *any* legal remedies because they have not and will not suffer a violation of their First Amendment rights. The mere existence of an exclusive bargaining representative is insufficient to give rise to an

infringement upon Plaintiffs' associational rights. Nor is there a basis for Plaintiffs to believe that they will suffer an economic harm in the form of mandatory fees, which the parties acknowledge is prohibited under *Janus* and *Harris*. Plaintiffs' assertion that they lack an adequate alternative remedy is mere conjecture and does not satisfy the requirements for mandamus relief. For these reasons, this Court should deny Plaintiffs' request for mandamus as well.

CONCLUSION AND RELIEF REQUESTED

Plaintiffs move for a preliminary injunction and a writ of mandamus, but have failed to demonstrate that they are entitled to either. Plaintiffs' requests are premised on unfounded constitutional violations, and they do not establish any of the other requirements for such extraordinary relief. For these reasons, Defendants respectfully request that this Court enter an order denying Plaintiffs motion for preliminary injunction and mandamus.

Respectfully submitted,

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