STATE OF MICHIGAN
IN THE COURT OF CLAIMS

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

Plaintiffs

Case No. 25-000124-MM

v.

HON. BROCK A. SWARTZLE

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

SEIU HEALTHCARE MICHIGAN,

Intervenor Defendant

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INTERVENOR SEIU HEALTHCARE MICHIGAN'S 9/5/25 OPPOSITION TO PLAINTIFFS' 7/30/25 MOTION FOR PRELIMINARY INJUNCTION AND MANDAMUS

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I. INTRODUCTION

Intervenor SEIU Health Care Michigan ("SEIU HCMI") generally joins Defendants' arguments and further seeks to highlight certain issues that underscore why Plaintiffs' motion for preliminary injunction and mandamus should be denied.

Nearly every state has adopted a home personal caregiving program through Medicaid like Michigan's Home Help program. In these programs the recipients of care have almost full discretion in selecting and hiring their caregivers. The recipients also control the scheduling, supervision, direction, and termination of their caregivers. The states' roles with respect to the caregivers are correspondingly limited. Here, Michigan pays home help caregivers, handles financial processing, and sets minimum qualifications for caregivers. The Supreme Court has expressly recognized that states may provide for collective bargaining by these quasi-public employees, as to the employment terms that the state controls. *See Harris v Quinn*, 573 US 616; 134 S Ct 2618; 189 L Ed2d 620 (2014). And many states have done so.

Michigan's restoration of collective bargaining rights to home help caregivers does not violate the state constitution. The challenged legislation did not change the employment structure of home help caregivers. Home help recipients retain the same control over hiring, supervision, direction, and supervision of caregivers as they previously did. Merely providing caregivers collective bargaining rights does not transform them into full-fledged state employees subject to the civil service when they were never considered to be civil service employees before—not even by the Civil Service Commission.

Courts have long recognized that Article 11, Section 5 of the Michigan Constitution does not require that everyone who provides services for the state must be part of the civil service. Indeed, the purpose of the provision—to avoid a political "spoils system" for public employees—is entirely foreign to the context of home help caregivers. Const 1963, art 11, § 5. Those caregivers

are chosen and hired by the individuals they provide care for, not the state. Moreover, the foundational principles of the civil service system would undermine the purposes of home help caregiving. Caregivers assist the individuals they provide care for with tasks of daily living such as bathing, dressing, feeding, personal hygiene, and toileting, in those individuals' own homes. Given the intimate services provided, individuals who need care need the ability to choose their personal caregivers based on their own unique needs and preferences, without the interference of civil service restrictions on hiring and terminations. Because the home help caregivers are not part of the state civil service, the Legislature properly placed them within the jurisdiction of the Michigan Employment Relations Commission.

Michigan's restoration of collective bargaining rights to home help caregivers also does not violate the federal constitution. Plaintiffs' First Amendment arguments are foreclosed by the Supreme Court's decision in *Minnesota State Board for Comm Colleges v Knight*, 465 US 271; 104 S Ct 1058; 79 L Ed2d 299 (1984). Since *Knight*, every court to consider the issue has rejected the arguments Plaintiffs raise here and concluded that laws conferring exclusive representation rights on a duly elected union do not violate the First Amendment. This case is no different.

Almost 10,000 Michigan home help caregivers have requested an election to determine whether HCMI should be certified as their bargaining representative. As in the 2000s, when the caregivers last enjoyed bargaining rights, collective bargaining is likely to improve their working conditions and, therefore, their ability to provide quality care to the individuals they provide care for. Enjoining certification of an election for years while this case is litigated would cause severe and irreparable harm to HCMI, the workers who wish to be represented by HCMI, and the public interest, while Plaintiffs have shown no cognizable irreparable harm. For these reasons, and as further discussed below, the Court should deny Plaintiffs' motion for a preliminary injunction and mandamus relief.

II. BACKGROUND

A. Home Help Caregivers

"Millions of Americans, due to age, illness, or injury, are unable to live in their own homes without assistance and are unable to afford the expense of in-home care." *Harris v Quinn*, 573 US 616, 620–21 (2014). "In order to prevent these individuals from having to enter a nursing home or other facility, the federal Medicaid program funds state-run programs that provide in-home services to individuals whose conditions would otherwise require institutionalization." *Id.* (citing 42 USC 1396n(c)(1)). "A State that adopts such a program receives federal funds to compensate persons who attend to the daily needs of individuals needing in-home care." *Id.* Almost every State—including Michigan—has established such a program. *Id.*

The Home Help Program is Michigan's Medicaid long-term home personal care program for low-income individuals and families.[1] Under that program, the State pays home help caregivers to assist elderly and disabled individuals with the activities of daily living so that they can remain in their own homes with dignity and independence. In many cases the alternative to home-based care may be institutionalization, which would be more expensive for Michigan's Medicaid program.[2] Medicaid recipients in the program select their own home help caregiver. The State, subsidized by the federal Medicaid program, pays those home help caregivers an hourly wage to provide eligible recipients with the necessary services. There are about 32,000 home help caregivers in Michigan. Declaration of Gabriella Jones-Casey, ¶5, Exhibit B.

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[1] *See* Michigan Medicaid Provider Manual, Home Help Chapter, §1, available at https://www.mdch.state.mi.us/dch-medicaid/manuals/MedicaidProviderManual.pdf [hereinafter, "Medicaid Manual Home Help Chapter," Exhibit A].

[2] Michigan's Medicaid program "is a health care program that provides comprehensive health care services to low income adults and children," including home help. *See* https://www.michigan.gov/mdhhs/assistance-programs/medicaid/portalhome/beneficiaries/programs/medicaid. Like in all states, Michigan's Medicaid program operates by having the federal government supplement state spending.

As is typical in Medicaid homecare programs, Michigan home help recipients have almost complete discretion in selecting and hiring their caregivers. *See* Medicaid Manual Home Help Chapter §8, Exhibit A. Home help caregivers can provide a wide range of approved services, including assistance with eating, toileting, bathing, grooming, dressing, mobility, and transferring, as well as other tasks like laundry, light housework, shopping, and meal preparation or clean up. *Id.* §§2.1, 2.2. Recipients control the scheduling, supervision, direction, and termination of their home help caregivers. *Id.* §8; *see also* Jones-Casey Dec. ¶7, Exhibit B.

As in other homecare programs, Michigan's role with respect to home help caregivers is limited. The State primarily handles the program's financial aspects, including processing payments and paying caregivers' wages. *Id.* §8.9. The State sets minimum qualifications for home help caregivers, *id.* §§8.1, 8.2, and state case management workers interview and identify the approved services for each recipient, *id.* §5.3; *see also* Jones-Casey Dec. ¶¶6, 8, Exhibit B.

B. The 2024 Home Help Caregiver Laws

The legislation in 2024 PA 144 and 2024 PA 145 (collectively, the "home help caregiver laws") did not make any substantive changes to the Home Help program. After the passage of these laws, individuals receiving care through the program remain the primary "employer of individual home help caregivers and retain the rights to select, hire, direct, schedule, supervise, or terminate the services of any individual home help caregiver who provides individual home help services for the participant." 2024 PA 144 §4(2). The State remains responsible for paying home help caregivers and for other financial and program administration.

What the home help caregiver laws changed was to restore collective bargaining rights to home help caregivers that had been stripped away a decade ago. 2024 PA 144 recognizes home help caregivers as public employees for limited purposes, identifies the state employer with whom they may collectively bargain (the director of the Department of Health and Human Services,

which oversees the Home Help Program), and establishes the process for collecting bargaining (which is largely the process set forth under the Public Employees Relations Act ("PERA"), 1947 PA 336, MCL 423.201 to 423.217, with some adjustments for the specific circumstances of home help caregivers). *See* 2024 PA 144 §4(1), (3), (6)-(14). 2024 PA 144 expressly recognizes home help recipients' rights to control certain terms and conditions of their caregivers' employment and accordingly provides that collective bargaining with the state concerns only "the terms and conditions of employment that are within the state's control." 2024 PA 144 §4(2), (3). Due to caregivers' limited or quasi-public employment status, 2024 PA 144 confirms that caregivers are not part of the state civil service for full-fledged state employees. 2024 PA 144 §4(1).[3]

The companion bill, 2024 PA 145, amended PERA to remove the prior prohibition on home help caregivers being considered public employees for purposes of that Act. *See* 2024 PA 145 §1(e) (providing that "public employee includes … an individual designated by the legislature as a public employee … for the purpose of collective bargaining"), (f) (deleting exclusion of home help caregivers).

C. Home Help Caregivers Seek an Election

Pursuant to the new home help caregiver laws, SEIU HCMI began informing home help caregivers of their rights to choose a bargaining representative and engage in collective bargaining. Almost 10,000 caregivers signed authorization cards expressing their interest in being represented by HCMI for the purpose of collective bargaining. Jones-Casey Dec. ¶14, Exhibit B. Home help caregiving is demanding and time intensive work, and many caregivers struggle to support themselves and their families. Declaration of Phyllis Pride ¶¶3-4, Exhibit D. Workers wish to be

[3] 2024 PA 144 §3(10) also established a council to oversee trainings and orientations for home help caregivers. The council consists of appointees from the public and agency officials. *Id.* §3(2). Plaintiffs' requested relief for an injunction and mandamus to "enjoin[] [MERC] from certifying an election for a union bargaining unit covering Plaintiffs and similarly-situated home help caregivers" does not request relief with respect to the council. Plf. Mot. at 1-2.

represented by SEIU HCMI because they hope the union will be able to improve their working conditions, such as by negotiating for higher wages or increased benefits. *Id.* ¶¶6-7.

Defendant Michigan Employment Relations Commission ("MERC") found that SEIU HCMI has met the 30% showing of interest required to schedule an election. Jones-Casey Dec. ¶16, Exhibit B; *see* MCL 423.212(2). As of the filing of this brief, MERC is in the process of scheduling a mail ballot election. Jones-Casey Dec. ¶17, Exhibit B. Once scheduled, the mail election will take place over three weeks, and the results could not be certified before mid-October. *Id.*

III. ARGUMENT

Plaintiffs' preliminary injunction and mandamus motion should be denied. Plaintiffs have not shown a likelihood of success on the merits, and the balance of equities weighs against interfering with the ongoing MERC proceedings. Mandamus is also inappropriate, as Plaintiffs have not shown a clear legal right to the performance of any clear legal duty by Defendants.

A. Plaintiffs Have Not Shown a Likelihood of Prevailing on the Merits of their Claims.

Plaintiffs fall far short of showing that the home help caregiver laws violate the Michigan or federal constitutions. "Statutes are presumed to be constitutional, and courts have a duty to construe a statute as constitutional unless its unconstitutionality is clearly apparent." *Taylor v Smithkline Beecham Corp*, 468 Mich 1, 6, 658 NW2d 127, 130 (2003). Courts "exercise the power to declare a law unconstitutional with extreme caution, and … never exercise it where serious doubt exists with regard to the conflict." *Phillips v Mirac, Inc*, 470 Mich 415, 422, 685 NW2d 174, 179 (2004). "Every reasonable presumption or intendment must be indulged in favor of the validity of an act, and it is only when invalidity appears so clearly as to leave no room for reasonable doubt that it violates some provision of the Constitution that a court will refuse to sustain its validity." *Id.* at 423. "[W]hen considering a claim that a statute is unconstitutional, the Court does not inquire

into the wisdom of the legislation." *Taylor*, 468 Mich at 6, 658 NW2d 127.

B. <u>The Home Help Caregiver Laws Do Not Violate the Michigan Constitution.</u>

1. Article 11, Section 5 of the Michigan Constitution gives the Civil Service Commission jurisdiction over the state civil service. But there is "no requirement that all who provide services for the state must be in a civil service position." *Michigan State Emps Ass'n v Civ Serv Comm'n,* 141 Mich App 288, 293, 367 NW2d 850, 852 (1985). Nothing in the state constitution or legal precedent requires that *this* unique type of worker—home help caregivers who are fundamentally and primarily under the control of their individual home care recipient—falls within the civil service. Indeed, even Plaintiffs concede that home help caregivers are not "full-fledged public employees." Plf. Br. at 14. Rather, home help caregivers are public employees only in the limited sense that the state sets and pays their wages and establishes basic minimum qualifications, whereas each individual receiving care through Home Help is the primary employer with the right to select, hire, fire, supervise, direct, and schedule their caregiver.

The Court of Appeals, MERC, and Civil Service Commission have long recognized that such partial or quasi-state employees do not fall within the civil service. For instance, the Court of Appeals upheld the Civil Service Commission's determination that mental health workers who were jointly employed by the State Department of Mental Health ("DMH") and a nonprofit residential healthcare provider were *not* part of the state civil service. *See Am Fed'n of State, Cnty & Mun Emps (AFSCME), AFL CIO v Civ Serv Comm'n*, No. 170606, 1996 WL 33324117, at *2 (Mich Ct App July 5, 1996) (unpublished).[4] Although the State set and paid the workers' compensation and established minimum qualifications and training requirements, the nonprofit

[4] Under MCR 7.215(C) SEIU HCMI attaches a copy of this opinion to this brief as Exhibit C. The opinion is closely analogous to the situation at bar and there is no published authority that directly addresses the extent to which quasi-public employees are subject to the state civil service.

supervised, disciplined, hired, and dismissed the workers. *Id.* The Court held that such "joint employment does not necessarily require classification in civil service." *Id.* at *2.

Similarly, the Court of Appeals also upheld MERC's finding that MERC had jurisdiction, for collective bargaining purposes, over healthcare workers who were jointly employed by the State DMH (which, among other things, funded the workers' salaries) and three residential healthcare facilities (which hired and supervised the workers). *See AFSCME v Louisiana Homes, Inc*, 192 Mich App 187, 189-190, 480 NW2d 280, 281-82 (1991), *vacated* 441 Mich 883, 503 NW2d 442 (1992), *reinstated on remand* 203 Mich App 213; 511 NW2d 696 (1993). These cases confirm that limited or partial state employment does not qualify workers in the state civil service.

2. It would be both unreasonable and counter to the purposes of the civil service provision and Home Help Program to require that home help caregivers fall within the civil service. "Interpretation of a constitutional provision … takes account of the circumstances leading to the adoption of the provision and the purpose sought to be accomplished." *See UAW v Green*, 498 Mich 282, 287, 870 NW2d 867, 870 (2015) (quotation omitted). The civil service system was created "to eliminate the spoils system and prohibit participation in political activities during the hours of employment." *AFSCME Council 25 v State Employees' Retirement Sys*, 294 Mich App 1, 10, 818 NW2d 337, 344 (2011). According to a contemporaneous report, the problems with the "spoils system" were that "government jobs [were] filled with loyal party workers who can be counted on not to do the state job better than it can be done by others, but rather to do the party work or the candidate work when elections roll around. The state office buildings are nearly empty during political conventions, and state money has always been used … to enable state employees to move about the state and keep political fences in repair." *Council No 11, AFSCME v Civ Serv Comm,* 408 Mich 385, 397 n.10, 292 NW2d 442, 447 (1980), quoting Report of the Civil Service Study Commission, July 20, 1936.

Merely articulating these animating principles of the state civil service system shows that Article 11, Section 5 has no plausible application here. There is no "spoils system" for home help caregivers, nor would the challenged statutes create one, as Plaintiffs suggest. The state has no role in selecting caregivers; individuals receiving care select, hire, supervise, and terminate their own caregivers based on their unique personal needs. Those caregivers provide the most intimate of services, from feeding and dressing the individuals they care for to helping with bathing, personal hygiene, and toileting. Thus, it is unsurprising that the person receiving care is free to terminate their caregivers for any reason or no reason at all. Individuals receiving care are entitled to the person of their choice to perform these intimate services, caring for those individuals' health and bodies within their own homes. Those caregivers—who are sometimes family members of the individuals they provide care for, Jones-Casey Dec. ¶11, Exhibit B—are in no way dependent for their positions on which political party holds power in Lansing. *See* Pride Dec. ¶1, Exhibit D ("these individuals and their families know they can trust and rely on me to provide compassionate and professional care"). Nor are there plausibly concerns that these caregivers will abandon the individuals they provide care for, who rely on them for basic needs and services, during working hours to engage in political activities. The foundational premises of the civil service system—that there should be free and open competition for government jobs, to be filled based on "merit" rather than personal preferences and shielded from removal by for-cause protections—are entirely foreign to the goals and purposes of the Home Help Program.

3. The 2024 home help caregiver laws did not alter the employment structure of home help caregivers in any material way. *See, e.g.*, Jones-Casey Dec. ¶13, Exhibit B. Even though the State has been paying caregivers, setting their financial compensation, and establishing minimum qualifications for many years, no one—not even the Civil Service Commission—previously contended that home help caregivers were properly part of the state civil service. Merely restoring

collective bargaining rights to home help caregivers, as 2024 PA 144 and 145 did, does not transform them into full-fledged state civil service employees when they were never considered to be civil service employees before.

Indeed, this type of limited or fragmented state employment for Medicaid home healthcare workers is commonplace throughout the nation. Many states provide home healthcare workers with collective bargaining rights with respect to the state-controlled aspects of their employment even though, due to the control maintained by individual participants, those homecare workers are not part of the state civil service. *See, e.g.*, Minn Stat 179A.54(3) (Minnesota: "For the purposes of the Public Employment Labor Relations Act … individual providers shall be considered … executive branch state employees …. This section does not require the treatment of individual providers as public employees for any other purpose."); R I Gen Laws §40-8.15-9(c) (Rhode Island: "Notwithstanding the state's obligations to meet and negotiate under chapter 7 of title 28, nothing in this chapter shall be construed to make individual providers employees of the state for any purpose[.]"); 20 Ill Comp Stat Ann 2405/3 (Illinois: "Solely for the purposes of coverage under the Illinois Public Labor Relations Act, personal assistants providing services under the Department's Home Services Program shall be considered to be public employees[.]").[5]

4. Given the stark differences between home help caregivers and traditional state employees, the "common understanding" of Article 11, Section 5 does not require home help caregivers to be part of the state civil service. *See UAW v Green*, 498 Mich 282, 286–87, 870 NW2d 867, 870–71 (2015) ("[Courts'] primary goal in construing a constitutional provision is to give effect to the intent of the people of the state of Michigan who ratified the Constitution, by

[5] In California, the counties or county-established authorities are deemed the employer for purposes of collective bargaining pursuant to the state's public sector bargaining law, while recipients of care retain the exclusive authority to "hire, fire, and supervise" their caregivers. Cal Welf & Inst Code § 12301.6(a), (c); Cal Gov't Code §§ 3500 *et seq.* Counties and public authorities are immune from liability for acts of caregivers. Cal Welf & Inst Code § 12301.6(f).

applying the rule of 'common understanding.'"); *UAW v Green*, 302 Mich App 246, 250–51, 839 NW2d 1, 3 (2013) ("The interpretation that should be given it is that which reasonable minds, the great mass of the people themselves, would give it.") (quoting Cooley's Const Lim 81). Plaintiffs elevate form over function, relying on the phrase "public employees … of the department of health and human services" in the challenged legislation, 2024 PA 144 §4(1), but ignore the practical reality that the individuals receiving care remain the primary employers of their caregivers, with control over most aspects of their caregivers' employment. Home help caregivers are not "in the state service" in the "sense most obvious to the common understanding." *UAW v. Green*, 302 Mich App at 250–51, 839 NW2d at 3.[6]

Because Article 11, Section 5 does not mandate that home help caregivers fall within the state civil service, it is not unconstitutional for the home help caregiver laws to locate caregivers' collective bargaining rights with MERC under the Public Employment Relations Act.

C. The Home Help Caregiver Laws Do Not Violate the First Amendment.

Nor can Plaintiffs establish a likelihood of success on their First Amendment challenge to the home help caregiver statutes. Those statutes incorporate the labor relations provisions of the PERA, which has long provided for collective bargaining through a duly-selected exclusive representative. However, employees also retain the right to present their own grievances to their employer independently:

> Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of

[6] Plaintiffs take issue with the politics of SEIU HCMI and legislators, Plf. Br. at 7-9, but such considerations are irrelevant to the questions before the Court. *See UAW v Green*, 302 Mich App at 251; 839 NW2d at 3 ("[W]hile we recognize the political, economic, and social controversies underlying the enactment of PA 349, they are unrelated to our duty to apply the[] principles of constitutional interpretation. Indeed, 'when a court confronts a constitutional challenge it must determine the controversy stripped of all digressive and impertinently heated veneer lest the Court enter—unnecessarily this time—another thorny and trackless bramblebush of politics.'") (quoting *Straus v Governor*, 459 Mich 526, 531; 592 NW2d 53, 55 (1999)).

> collective bargaining in respect to rates of pay, wages, hours of employment or other conditions of employment, and shall be so recognized by the employer: Provided, That any individual employee at any time may present grievances to his employer and have the grievances adjusted, without intervention of the bargaining representative, if the adjustment is not inconsistent with the terms of a collective bargaining contract or agreement then in effect, if the bargaining representative has been given opportunity to be present at such adjustment.

MCL 423.211. Despite PERA's express protections for the rights of individual workers, Plaintiffs nevertheless contend that applying PERA's exclusive representation bargaining system to home help caregivers would violate their First Amendment associational rights.

Plaintiffs' argument is foreclosed by US Supreme Court authority. *See Minnesota State Bd of Comm Colleges v Knight*, 465 US 271 (1984). Moreover, every court to consider the issue since *Knight* has concluded that laws conferring exclusive representation rights on a duly elected union do not violate the First Amendment.

Nothing in *Harris v Quinn*, 573 US 616 (2014), or *Janus v Am Fed'n of State, County, & Municipal Employees, Council 31*, 585 US 878; 138 S Ct 2448; 201 L Ed2d 924 (2018) , alters that analysis with respect to partial public employees like the home help caregivers here (or any other public employees), as courts have unanimously concluded. Indeed, Plaintiffs argue only that *Harris* and *Janus* prohibit requiring public employees to "fund a union," and appropriately concede that those decisions did not address exclusive representation at all. Plf. Br. at 14.[7] This Court should decline Plaintiffs' invitation to extend *Harris* and *Janus* in conflict with every other court to consider the issue.

1. Controlling US Supreme Court authority forecloses Plaintiffs' First Amendment challenge to exclusive representation collective bargaining. In *Knight*, college instructors who had opted not to join the majority-elected union argued that Minnesota's exclusive-representative

[7] Under *Harris* and *Janus*, Plaintiffs could not be required to provide financial support to the union even if it is certified as the caregivers' representative. *See also* Jones-Casey Dec. ¶20, Exhibit B.

collective bargaining system violated their First Amendment speech and association rights. 465 US at 273, 278-79. The Minnesota law granted a bargaining unit's elected representative the exclusive rights both to "meet and negotiate" with the public employer over employment terms and to "meet and confer" with campus administrators about employment-related policy matters outside the scope of mandatory negotiations. *Id.* at 274-75. The representative's views were treated as the "official collective position" of faculty within the bargaining unit. *Id.* at 273, 276.

The US Supreme Court rejected the *Knight* plaintiffs' First Amendment challenge to the union's status as exclusive representative in both of these processes.[8] The Supreme Court began its analysis by recognizing that government officials have no obligation to negotiate or confer with faculty members, and that the meet-and-confer process, like the meet-and-negotiate process, is not a "forum" to which the plaintiffs had any First Amendment right of access. *Id.* at 280-83. The Court explained that the instructors also had no constitutional right "as members of the public, as government employees, or as instructors in an institution of higher education" to "force the government to listen to their views." *Id.* at 283. The government was therefore "free to consult or not to consult whomever it pleases." *Id.* at 285.

The *Knight* Court then considered whether Minnesota's exclusive bargaining law violated those First Amendment rights that nonunion instructors *could* properly assert—namely, the right to speak and the right to "associate or not to associate." 465 US at 288. The Court concluded that Minnesota's law "in no way restrained [instructors'] freedom to speak on any education-related issue or their freedom to associate or not to associate with whom they please, *including the*

[8] The Supreme Court summarily affirmed the district court's rejection of the *Knight* plaintiffs' First Amendment challenge to the union's status as exclusive representative in the "meet and negotiate" process, *Knight v Minn Cmty Coll Fac Ass'n*, 571 F Supp 1, 5-7 (D. Minn. 1982), *aff'd mem.*, 460 US 1048 (1983), and reversed the district court's ruling that Minnesota's use of exclusive representation for purposes of the "meet and confer" process violated the First Amendment. *Knight*, 465 US at 291-92. The *Knight* summary affirmance remains binding precedent. *See Hicks v Miranda*, 422 US 332, 344-45; 95 S Ct 2281; 45 L Ed2d 223 (1975).

exclusive representative." *Id.* (emphasis added); *see also id.* at 290 n.12 (finding that nonmembers' "speech and associational freedom have been *wholly unimpaired*") (emphasis added); *id.* at 291 (stating that instructors were "[u]nable to demonstrate an infringement of *any First Amendment right*") (emphasis added).

The Michigan PERA is materially indistinguishable from the Minnesota system upheld in *Knight*. It provides that collective bargaining shall be conducted through an exclusive representative, while preserving the right of individual employees to pursue grievances independently. *See* MCL 423.211. And, as in Minnesota, individual employees covered by PERA enjoy all First Amendment rights to speak to the government on any work or non-work issue, and to associate or not associate with anyone they please. Accordingly, *Knight*'s holding that such a system in no way restrains non-union members' right to speak or "to associate or not to associate," 465 US at 288, necessarily forecloses Plaintiffs' First Amendment claim.

2. Nothing in *Harris v. Quinn* alters this analysis. *Harris* concerned in-home personal caregivers funded through the Illinois Medicaid program under a statutory employment scheme that is indistinguishable from that created by the challenged home help caregiver statutes here. While *Harris* held that the caregivers could no longer be required to pay fair-share fees to provide financial support to the union that represented them, it did not change settled precedent about exclusive representative collective bargaining.[9]

Plaintiffs rely for their argument on the difference between "full" and "partial" public employees, but *Harris* drew that distinction solely for purposes of evaluating the state interest justifying fair-share fees, which the Court concluded were an impingement on First Amendment rights. 573 US at 645-47. The distinction is not relevant here because there is no First Amendment

[9] The question of exclusive representation was not even presented in *Harris. See Harris*, 573 US at 649 ("Petitioners [did] not … challenge the authority of [the union] to serve as the exclusive representative …. All they [sought was] the right not to be forced to contribute to the union[.]").

impingement to justify. As the First Circuit has explained, "*Harris* did not speak to … the premise assumed and extended in *Knight*: that exclusive bargaining representation by a democratically selected union does not, without more, violate the right of free association on the part of dissenting non-union members of the bargaining unit. *Harris* did not hold or say that this rule was inapplicable to 'partial' employees covered by a collective bargaining agreement." *D'Agostino v Baker*, 812 F3d 240, 244 (1st Cir 2016), *cert den*, 579 US 909 (2016).

Each of the federal circuit courts of appeal to address the issue has rejected the precise claim that plaintiffs advance here, i.e., that less-than-full-fledged public employee status renders exclusive representation collective bargaining an unconstitutional infringement on associational rights. *See Bierman v Dayton*, 900 F3d 570, 574 (8th Cir 2018), *cert den sub nom. Bierman v. Walz*, 587 US 985 (2019) (home-based personal caregivers); *Hill v SEIU*, 850 F3d 861, 864-66 (7th Cir 2017), *cert den*, 583 US 972 (2017) (home-based personal caregivers and childcare workers); *D'Agostino*, 812 F3d 240 (childcare workers); *Mentele v Inslee*, 916 F3d 783, 787-88 (9th Cir 2019), *cert den*, 140 S Ct 114 (2019) (childcare workers); *Jarvis v Cuomo*, 660 F App'x 72, 74-75 (2d Cir 2016), *cert den*, 580 US 1159 (2017) (childcare workers). So should this Court.

3. Nor does *Janus* alter the analysis. Like *Harris*, *Janus* held only that public employers may no longer require nonmembers to pay fair-share fees to an exclusive representative. 585 US at 929-30. *Janus* distinguished exclusive representation from the requirement of providing financial support and stated that exclusive representation remains constitutionally permissible: "It is ... not disputed that the State may require that a union serve as exclusive bargaining agent for its employees…. We simply draw the line at allowing the government to ... require all employees to support the union [financially]." *Id.* at 916; *see id.* at 928 n.27 ("States can keep their labor-relation systems exactly as they are—only they cannot force nonmembers to subsidize public-sector unions."). The Supreme Court emphasized that it was "not in any way questioning the foundations

of modern labor law" (*id.* at 904 n.7)—and no principle is more foundational to modern labor law than exclusive representation. *See Peltz-Steele v UMass Fac Fed'n*, 60 F4th 1, 8 (1st Cir 2023), *cert den*, 143 S Ct 2614 (2023) (noting the "'long and consistent adherence' to 'exclusive representation' under the federal National Labor Relations Act, which the Supreme Court has recognized is 'tempered' by the recognition and protection of 'minority interests.'") (quoting *Emporium Capwell Co v W Addition Cmty Org*, 420 US 50, 62-65; 95 S Ct 977; 43 L Ed2d 12 (1975).

Thus, "every Court of Appeals to have addressed the issue post-*Janus*" has concluded that exclusive-representative bargaining is consistent with the First Amendment. *Peltz-Steele*, 60 F4th at 8. As the most recent case to so hold succinctly explained, "*Janus* invalidated … mandatory agency fees because the First Amendment prohibits '[c]ompelling a person to subsidize the speech of other private speakers.' [585 US] at 893[]. But that holding does not undermine the constitutionality of exclusive representation by public-sector unions that do not assess mandatory agency fees." *Goldstein v. Prof Staff Congress/CUNY*, 96 F4th 345, 350 (2d Cir 2024), *cert den*, 145 S Ct 1044 (2025).[10]

This Court should follow this uniform body of precedent to conclude that Plaintiffs cannot demonstrate a likelihood of success on the merits of their First Amendment claim.

D. <u>The Equities Weigh Overwhelmingly Against a Preliminary Injunction.</u>

In addition to failing to show that they are likely to succeed on the merits, Plaintiffs also

[10] *See also Peltz-Steele*, 60 F4th at 4-8; *Adams v Teamsters Union Loc 429*, No. 20-1824, 2022 WL 186045, at *2-3 (3d Cir Jan. 20, 2022) (unpublished), *cert den*, 143 S Ct 88 (2022); *Uradnik v. Inter Fac Org*, 2 F4th 722, 725-27 (8th Cir 2021); *Hendrickson v. AFSCME Council 18*, 992 F3d 950, 968-70 (10th Cir 2021), *cert den*, 142 S Ct 423 (2021); *Bennett v. Council 31 of the AFSCME*, 991 F3d 724, 727, 733-35 (7th Cir 2021), *cert den*, 142 S Ct 424 (2021); *Akers v. Md State Educ Ass'n*, 990 F3d 375, 382-83 n.3 (4th Cir 2021); *Ocol v. Chicago Tchrs Union*, 982 F3d 529, 532-33 (7th Cir 2020), *cert den*, 142 S Ct 423 (2021); *Thompson v. Marietta Educ Ass'n*, 972 F3d 809, 813-14 (6th Cir 2020), *cert den*, 141 S Ct 2721 (2021); *Mentele*, 916 F3d at 786-91.

fail to meet the remaining standards for a preliminary injunction: that they would suffer irreparable harm without an injunction, that they would suffer harm that outweighs the harm to the opposing party of granting the injunction, and that the public interest favors an injunction. *Detroit Fire Fighters Ass'n v City of Detroit, IAFF Loc 344*, 482 Mich 18, 34; 753 NW2d 579, 587 (2008).

1. Enjoining the election will cause severe, irreparable harm to SEIU HCMI, the thousands of home help caregivers who have voiced their desire to vote for SEIU HCMI as their collective bargaining representative, and the public interest. Home help caregivers are overworked and underpaid; they struggle to support their families on current wages; they receive no employment benefits and often face long delays in receiving paychecks. Pride Dec. ¶¶4, 7, Exhibit D. Many caregivers have been fighting for years to obtain representation, in the hopes that having a union to advocate for them will improve their working conditions and their lives. *Id.* ¶¶6-9. Enjoining the October union election would be devastating to these workers, who will be forced to wait even longer for union representation and for the basic improvements they seek to obtain through that representation. *Id.* ¶9; *see also id.* ¶6 (when SEIU previously represented caregivers, it negotiated wage substantial increases and other improvements); Jones-Casey Dec. ¶¶10-11, Exhibit B (same).

HCMI has an existential interest in organizing and representing Michigan's home help caregivers. HCMI's purpose is to maintain and improve wages, benefits and working conditions for the workers it represents. Jones-Casey Dec. ¶4, Exhibit B. HCMI has invested time and resources educating and organizing home help caregivers, and as a result secured a vote of confidence from almost 10,000 workers who signed cards attesting that they want the union to represent them. *Id.* ¶12. But it is well known that delays in elections undermine the strength of a union, cause workers to lose faith in the union, and can preclude the union from ever prevailing in an election or reaching a contract that could improve working conditions. *See Boire v Greyhound*

Corp, 376 US 473, 478; 84 S Ct 894; 11 L Ed2d (1964) ("unless an election can promptly be held to determine the choice of representation, [the union] runs the risk of impairment of strength by attrition and delay while the case is dragging on through the courts"); Jones-Casey Dec. ¶18, Exhibit B. Enjoining the election would harm the union's ability to effectively represent workers in a way that cannot be restored.

The public also has an interest in home help caregivers—who provide vital care and services that enable tens of thousands of Michigan citizens to reside in their homes rather than being institutionalized—receiving sufficient wages and benefits and working conditions. Pride Dec. ¶2, 5, Exhibit D. A delay in the election that prevents caregivers from selecting a representative to negotiate on their behalf harms the public's interest in a successful Home Help Program.[11] *Id.* ¶9.

2. Plaintiffs claim irreparable harm solely based on their claimed associational injuries, Plf. Br. at 18-19, but the law is crystal clear that the mere certification of a bargaining representative will not infringe Plaintiffs' First Amendment rights. *See supra* at 11-16. Therefore, their claim of irreparable harm must fail. *See, e.g.*, *Thompson v. Marietta Educ Ass'n*, 371 F Supp 3d 431, 442 (SD Ohio 2019). Plaintiffs do not claim any other irreparable injury from the certification of an election, nor could they. If an election proceeds, the majority of workers may vote *against* selecting SEIU HCMI as their representative. Even if SEIU HCMI is certified as the representative, workers will have no obligation to pay dues, agency fees, or otherwise support the

[11] Poor compensation and working conditions for homecare providers leads to very high turnover among caregivers, to the detriment of their clients. *See, e.g.*, Peggie R. Smith, *The Conservative Challenge to Caring for Compensated Caregivers*, 62 Wash. UJL & Pol'y 131, 134 (2020) ("For clients, the costs associated with [turnover] can be devastating. When workers quit, often unexpectedly, clients must adjust to new workers and may experience disruptions to their care that can lead to hospitalization. For other clients, turnover can culminate in their relocation to an institutional setting such as a nursing home."); Kezia Scales, *Meeting the Integration Mandate: The Implications of Olmstead for the Home Care Workforce*, 27 Geo J on Poverty L & Pol'y 261, 276-77 (2020) (similar).

union. Jones-Casey Dec. ¶20, Exhibit B. Thus, Plaintiffs face no risk of being required to support the union. Contrary to Plaintiffs' contention, Plf. Br. at 19, it would not be difficult to undo the election certification if the home help caregiver laws are later invalidated. Elections are frequently set aside under federal and state labor law. *See, e.g.*, *NLRB v Mr. Porto, Inc*, 590 F2d 637, 640 (6th Cir 1978) (setting aside union's election); *Provincial House, Inc v NLRB*, 568 F2d 8 (6th Cir 1977) (vacating union's election).

In short, the harms to HCMI, home help caregivers, and the public interest from enjoining the election far outweigh any alleged harm to Plaintiffs. *See Hammel v Speaker of the House of Representatives*, 297 Mich App 641, 648, 825 NW2d 616, 620–21 (2012) (balancing the harms).

3. To HCMI's counsel's knowledge, no Michigan state court has ever enjoined the administration of a MERC representation election that is already underway. To the extent any injunction is issued—which HCMI strongly disputes should occur—that injunction should *at most* enjoin only MERC's certification of the results of the election. Indeed, even Plaintiffs ask only that this Court enjoin Defendants from "*certifying* an election" (emphasis added), not from *conducting* the election. *See* Plf. Mot. at 2; Plf. Br. at 2, 19, 20.[12]

Accordingly, even if the Court were to grant any injunction here, the Court should not interfere with MERC's operations to conduct a timely election that captures workers' preferences within a reasonable time of their showing of interest. Rather, the election should be held and the votes tallied. Enjoining the certification would prevent any alleged harm to Plaintiffs, because under the statute, SEIU HCMI does not represent caregivers until the results are certified. MCL 423.201(1)(a). But if there is a different ruling on appeal or on the merits, the certification can be promptly issued, without the delay attendant to conducting an election from scratch. Conducting

[12] Plaintiffs' requested mandamus remedy is likewise limited to preventing MERC from *certifying* an election result. *See* Plf. Mot. at 2.

an election from scratch at the resolution of this case, after a year or more of litigation, would unduly prejudice SEIU HCMI and the workers it seeks to represent. *See supra* at 17-18.

E. Mandamus Is Not Appropriate.

Plaintiffs fail to establish any of the four required mandamus elements. Because the home help caregiver laws are constitutional, *see supra* at 7-16, Plaintiffs have no "clear, legal right" to prevent Defendants from holding a representative election for home help caregivers and Defendants have no "clear legal duty" to refuse to hold an election for caregivers. *See Taxpayers for Mich Constitutional Gov't v Dep't of Tech, Mgmt & Budget*, 508 Mich 48, 82, 972 NW2d 738, 754 (2021) (quotation marks and citation omitted). Defendants have properly exercised their discretion to find the showing of interest for an election met, and Plaintiffs have other adequate legal remedies, including as evidenced by their motion for an injunction. *See* Defs. Br. at 15-20.

IV. CONCLUSION

For the above reasons, SEIU HCMI respectfully requests that this Court deny the motion for preliminary injunction and mandamus.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above instrument was served on all counsel of record via the ECF system on the 5th day of September, 2025.

/s/ Darcie R. Brault
Darcie R. Brault