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,

and

SEIU HEALTHCASE MICHIGAN,

Intervenor Defendant.

Case No. 25-000124-MM

HON. BROCK A. SWARTZLE

**DEFENDANTS' 9/30/25 REPLY TO PLAINTIFFS' 9/26/25 RESPONSE TO DEFENDANTS' 9/12/25 MOTION FOR SUMMARY DISPOSITION UNDER 2.116(C)(8) AND (C)(10)**

**ORAL ARGUMENT REQUESTED**

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Dated: September 30, 2025

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## INTRODUCTION

The MCSC possesses broad jurisdiction over the state civil service; however, such jurisdiction exists only within its limited sphere of authority. The caregivers subject to the challenged public acts 2024 PA 144 and 2024 PA 145 (collectively, the "Acts") do not fall within that sphere of authority. Here, the Acts are limited in that they *only grant collective bargaining rights* to caregivers. The Legislature has not created new state employees subject to the MCSC's authority.

Additionally, there is no violation of the First Amendment's freedom of association through the representation of a bargaining unit by an elected exclusive bargaining representative. Plaintiffs' arguments would have this Court issue a ruling that is contrary to established precedent, and this Court should decline the invitation to do so.

## ARGUMENT

### I. The Michigan Constitution does not mandate placement of all who render services for the State within the MCSC's jurisdiction.

The Michigan Constitution plainly gives the Commission the authority over the state civil service. But here, the Legislature was not required to create exceptions to the state classified civil service because caregivers were never included within the state classified civil service under the Acts. This conclusion is where Defendants and Plaintiffs principally diverge.

Not all employees fall within the jurisdiction of the MCSC. Despite Plaintiffs arguments to the contrary, Defendants have cited to substantial authority which

supports this proposition. For example, the Court of Appeals has found that mental health workers jointly employed by the Michigan Department of Mental Health and a nonprofit residential healthcare were not part of the state civil service. *Am Fed of State, Co & Muni Employees (AFSCME), AFL-CIO v Civ Serv Comm*, unpublished opinion per curiam of the Court of Appeals, issued July 5, 1996 (Docket Nos. 170606, 170893), p 2. There, the Court noted that joint employment does not necessitate civil service classification. *Id*. While "the Civil Service Commission has plenary authority over all aspects of civil service employment," "not everyone who provides service for the state must be classified." *Id*. The parallels between that case and the issue before this Court are apparent and should guide this Court in dismissing Plaintiff's claims.

Again, the Legislature intended that caregivers be "public employees" "solely for the purposes of collective bargaining." MCL 400.804(1). This intent is underscored by the amendment to PERA, which specifies that an individual may be designated by the legislature as a public employee, but such designation may be limited to the purposes of collective bargaining. MCL 423.201(1)(e)(ii). And "[t]he designation does not render the individual an employee of this state or political subdivision of this state for any purpose other than the limited purpose authorized by the legislature." *Id*.

Plaintiffs rely upon *Welfare Employees Union* to support their argument that MERC cannot possess jurisdiction over the caregivers at issue. (Pl's Resp, p 11, citing *Welfare Emp Union v Mich Civil Serv Comm*, 28 Mich App 343 (1970).) Plaintiffs' argument, however, assumes that *all* individuals are automatically

included within the state classified civil service. But this is incorrect. Here, *Welfare Employees Union* is limited to situations wherein individuals are "state employees in the state classified civil service." 28 Mich App at 351. There, MERC would lack jurisdiction. But here, the Legislature expressly excluded such caregivers from the jurisdiction of the MCSC, and MERC's jurisdiction over the caregivers at issue is proper.

## II. There is no basis for this Court to overturn the established precedent of *Knight*.

Plaintiffs acknowledge that the US Supreme Court has not explicitly arrived at the conclusions which Plaintiffs seek from this Court. (Pl's Resp, p 12.) Nonetheless, Plaintiffs ask this Court to find that "exacting scrutiny" must be applied and a violation of the First Amendment should be found in the face of established precedent. (Pl's Resp, p 12–15, citing *Minn State Bd for Comm Colleges v Knight*, 465 US 271 (1984); *Bierman v Dayton*, 227 F Supp 3d 1022, 1028 (D Minn, 2017); *Thompson v Marietta Ed Ass'n*, 972 F3d 809, 814 (CA 6, 2020).) This conclusion should be rejected.

In *Janus*, the Supreme Court held that "[d]esignating a union as the employees' exclusive representative substantially restricts the rights of individual employees." This statement, however, was made in response to arguments surrounding fair representation, requiring the union to fairly represent both union and non-union members. *Janus v AFSCME*, 585 US 878, 887 (2018); see also *Ocol v Chicago Teachers Union*, 2020 WL 1467404 (ND Ill, March 26, 2020), *2. Here, collective bargaining by a union does not equate to forced association. See *Bierman*,

227 F Supp 3d at 1029. Plaintiffs are not required to become members of a union and only gain from the benefits of the terms and conditions of their employment which are negotiated by the union. Further, Plaintiffs may raise grievances directly with their employers without the involvement of the exclusive representative. MCL 423.211. They may also speak freely, associate with others, and are not compelled to make financial contributions. As such, the mere existence of an exclusive bargaining representative is not enough to impair their associational freedoms. Here, the Acts serve a compelling state interest, and restrictions upon associational freedoms are lacking.

## III. Defendants Commissioners, LEO, and Corbin do not individually enforce the Acts and must be dismissed.

This Court should dismiss Commissioners Pappas, Young, and Chiaravalli, LEO, and Corbin because none of these Defendants individually enforce the Acts. And Defendants may not be compelled to act in a manner exceeding their statutory authority. MERC, however, is responsible for investigating petitions for representation, and MERC is the entity that directs an election to take place. MCL 423.27(b). This concept was reiterated in *Mays v Governor of Michigan*:

> A single decision by a policymaker or governing body unquestionably constitutes an act of official government policy, regardless of whether that body had taken similar action in the past or intended to do so in the future[.] The [United States Supreme] Court clarified that not all decisions subject governmental officers to liability. Rather, it is where—and only where—a deliberate choice to follow a course of action is made from among various alternatives by the official or officials responsible for establishing final policy with respect to the subject matter in question. [506 Mich 157, 194–195 (2020) (internal citations omitted).]

There is no authority cited by Plaintiffs granting the individual Commissioners power to independently conduct or certify an election. Official orders require a majority, i.e. two, of the commissioners. MCL 423.3; MCL 423.4. Indeed, Plaintiffs have failed to articulate how this Court can direct the Commissioners, LEO, or Corbin to take action relative to this case, so they must be dismissed.

## CONCLUSION AND RELIEF REQUESTED

For these reasons and those in Defendants' Motion for Summary Disposition and brief in support, Defendants have established that there is no genuine issue of material fact and that they are entitled to relief as a matter of law. Defendants respectfully request that this Court enter an order granting Defendants' motion, dismiss the case, and grant any other relief this Court deems appropriate.

Respectfully submitted,

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