

**STATE OF MICHIGAN
COURT OF CLAIMS**

JAMES P. BOLGER, an individual,

Plaintiff,

No. 26-_____ -MM

Hon. _____

v.

MICHIGAN EMPLOYMENT RELATIONS
COMMISSION (MERC), a state
government agency, TINAMARIE PAPPAS,
in her official capacity as MERC
Commissioner, WILLIAM YOUNG, in his
official capacity as MERC Commissioner,
ROBERT CHIARAVALLI, in his official
capacity as MERC Commissioner,
MICHIGAN DEPARTMENT OF HEALTH
AND HUMAN SERVICES (DHHS),
a government agency, and AMY EPKEY, in
her official capacity as DHHS Acting
Director.

Defendants.

VERIFIED COMPLAINT

MCR 1.109 (D) DECLARATION

There is no pending or resolved civil action
arising out of the transaction or occurrence
alleged in this complaint.

MACKINAC CENTER LEGAL FOUNDATION

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VERIFIED COMPLAINT

INTRODUCTION

1. In 2024, the Legislature passed two acts, 2024 PA 144 and 2024 PA 145. These two acts were signed by the Governor and filed with the Secretary of State on October 8, 2024. The purpose of these two acts was to create a novel and unconstitutional form of state public employee, a home help caregiver, who is a public employee solely for the purpose of collectively bargaining. The reason for this novel action was to benefit a favored labor union, SEIU Healthcare Michigan (SEIUHM), which is not a party here. However, this special form of state public employee the legislature tried to create violates Const 1963, art 11, § 5 which requires that the Michigan Civil Service Commission have plenary control over most state employees—control that is denied to it by these acts. Therefore, the unconstitutional portions of these acts are void *ab initio*. DHHS cannot collectively bargain with a bargaining unit representing these caregivers. Defendant MERC’s October 9, 2025, certification election of a bargaining unit for these home help caregivers was illegitimate as MERC does not have jurisdiction over these state employees. Michigan’s Public Employment Relations Act, (PERA), MCL §§423.201-217, does not govern these home help caregivers’ employment as state statutes cannot supersede Michigan’s Constitution. 1963 Const, art 11, § 5 provides that enforcement of this constitutional provision be “compelled by injunction or mandamus proceedings brought by any citizen of the state,” which is what is sought here.

PARTIES, JURISDICTION, AND VENUE

2. The Court of Claims has exclusive jurisdiction “To hear and determine any claim or demand, statutory or constitutional, liquidated or unliquidated, ex contractu or ex delicto, or any demand for monetary, equitable, or declaratory relief or any demand for an

extraordinary writ against the state or any of its departments or officers notwithstanding another law that confers jurisdiction of the case in the circuit court.” MCL 600.6419(1)(a).

3. The remedy sought here is against state departments and for an extraordinary writ or injunction.
4. The Michigan Constitution empowers any citizen of the state to enforce conformity with its civil service authorization: “Violation 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.
5. Defendant Michigan Department of Health and Human Services (DHHS) is a principal department in the executive branch of our state government and was created under Executive Reorganization Order 2015-1, MCL 400.227 and the authority of Const 1963, art 5, § 2. The Court of Claims has personal jurisdiction over DHHS and its officers pursuant to MCL 600.6419(1)(a).
6. Defendant Michigan Employment Relations Commission (MERC) was created under section 3 of 1939 PA 176, as amended, MCL 423.3, and control over MERC was transferred to the Michigan Department of Labor and Economic Opportunity (LEO) pursuant to Executive Order 2019-13, MCL 125.1998(1). The Court of Claims has personal jurisdiction over MERC and its officers pursuant to MCL 600.6419(1)(a).
7. Plaintiff JAMES P. BOLGER is an individual who resides in Norton Shores, in the County of Muskegon. JAMES P. BOLGER was a Commissioner of the Michigan Civil Service Commission from 2016 to 2024 and served as Chair in 2023 and 2024. He brings this suit in his capacity as citizen of this state pursuant to Const 1963, art 11, § 5.

8. Defendant MERC was created under section 3 of 1939 PA 176, as amended, MCL 423.3, and control over MERC was transferred to LEO pursuant to Executive Order 2019-13, MCL 125.1998(1).
9. Defendant TINAMARIE PAPPAS is a MERC Commissioner, Chair of MERC, and is made a party in her official capacity only.
10. Defendant WILLIAM YOUNG is a MERC Commissioner and is made a party in his official capacity only.
11. Defendant ROBERT CHIARAVALLI is a MERC Commissioner and is made a party in his official capacity only.
12. Defendant AMY EPKEY is Acting Director of DHHS and is made a party in her official capacity only.
13. The Michigan Constitution confers jurisdiction upon any citizen of the state to prevent violations of its civil service provision: “Violation 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.

GENERAL ALLEGATIONS

14. In October 2024, the Legislature passed two related acts, 2024 PA 144 and 2024 PA 155. See the Appendix, Exhibit A and B.
15. On October 8, 2024, the Governor approved these two acts and filed them with the Secretary of State. *Id.*

16. These acts became effective 91 days after the final adjournment of the 2024 regular session, which adjourned on January 1, 2025, and the sine die effective date was April 2, 2025.¹

17. The result of the two acts was an attempt to create a special class of Michigan state public employees who are not subject to the Michigan Civil Service Commission.

18. The stated purpose of 2024 PA 144 was:

A bill to create the home help caregiver council and to prescribe its powers and duties; to designate certain individuals as public employees for certain purposes; to require collective bargaining of certain terms and conditions of employment for certain public employees; to provide for the mediation and arbitration of grievances; to provide for the deduction of wages; and to provide for the powers and duties of certain state and local governmental officers and entities.

2024 PA 144 Preamble, Exhibit A, *supra*.

19. House Fiscal Agency analysis of then-Senate Bill 790 which became 2024 PA 144 reported that the purpose of the act was to:

Under the bill, solely for the purposes of collective bargaining and as expressly limited as described below, individual home help caregivers would be considered public employees of the director of DHHS or the director's representative. The bill states that it would not require or provide for individual home help caregivers to be treated or classified as public employees for any other purpose, and DHHS's employer role for collective bargaining would not be a basis for establishing an employer-employee relationship. Individual home help caregivers would not be employees of the state or a political subdivision of the state for any other purpose and would not be subject to section 5 of Article XI of the state constitution (which establishes the classified state civil service).

Legislative Analysis, page 2, Exhibit C in the appendix.

20. The stated purpose of 2024 PA 145 was the Legislature's attempt to change the definition of certain public employees:

¹<https://www.legislature.mi.gov/documents/publications/PublicActEffectiveDates/Sine%20Die%20Effective%20Dates.pdf>

An individual designated by the legislature as a public employee. The legislature may designate an individual as a public employee only for the purpose of collective bargaining. The 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.

2024 PA 145, Sec. 1(e)(ii), codified as MCL 423.201(1)(e)(ii), Exhibit B, *supra*.

21. House Fiscal Agency analysis of then-Senate Bill 791 which became 2024 PA 145 reported that the purpose of the act was to:

amend 1947 PA 336, the public employment relations act (PERA), to provide that the term *public employee*, whenever used in the act, includes an individual designated by the legislature as a *public employee*. The definition of public employee also would allow the legislature to designate an individual as a public employee only for the purpose of collective bargaining and provide that this designation does not make the individual an employee of the state or a political subdivision of the state for any purpose other than the limited purpose authorized by the legislature.

Legislative Analysis, page 1, Exhibit C, *supra* (emphasis in original).

22. The two subject acts together purported to create a new class of state public employees that is composed of home help caregivers.

23. 2024 PA 145 allows the Legislature to designate home help caregiver employees as “public employees.” MCL 423.201(e)(ii).

24. 2024 PA 144 and 2024 PA 145 allow the Legislature to designate caregiver employees as “public employees” solely for the purpose of collective bargaining. MCL 400.804(4)(1) and MCL 423.201(e)(ii).

25. The two acts allow for this “public employee” designation to be made yet these caregiver employees are not employees of the state or political subdivisions of the state for any other purpose than the limited purpose authorized by the legislature. *Id.*

26. 2024 PA 144 provided the authority to create a home help caregiver council (“the Council”) within the Department of Health and Human Services (DHHS). MCL 400.802(e) and (f), and MCL 400.803(1).
27. Upon information and belief, the Council has not yet been created. The DHHS Fiscal Year 2027 budget allocates “\$4 million to establish and support the Home Help Caregiver Council.”²
28. The Council will be governed by a seven-member board of directors who are chosen by DHHS, LEO, and the Department of Treasury. All members of the board are appointed by those government agencies. MCL 400.803(2).
29. The home help care caregivers are considered public employees of the state only for collective bargaining purposes. MCL 400.804(1).
30. The home help care caregivers are employees of the director of DHHS solely for the purpose of collective bargaining. *Id.*
31. Except for the purposes of collective bargaining, the home help caregivers remain employees of the home help participants. “Except for the limited purposes described in subsection (1), participants or participants’ representatives are the sole 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.” MCL 400.804(2).
32. According to 2024 PA 144, the home help caregivers are not supposed to be considered government actors and the government and its offices are not liable for their actions.

² See DHHS press release dated July 27, 2026: <https://www.michigan.gov/mdhhs/inside-mdhhs/newsroom/2026/07/27/fy27-budget> (Last accessed September 25, 2026.)

Notwithstanding an individual home help caregiver's status as a public employee under subsection (1), the individual home help caregiver is not a government actor and the state, the department, the council, and the board bear no liability for any actions undertaken by the individual home help caregiver in the performance of the individual home help caregiver's duties. The state, the department, or contractors of the state or department are not vicariously or jointly liable for the action or inaction of any individual home help caregiver...

MCL 400.804(5).

33. 2024 PA 144 provides for methods of dispute resolution regarding caregivers' disputes with the bargaining representative. MCL 400.804(12).
34. 2024 PA 144 provides DHHS the authority to deduct union dues from the wages of individual home help caregivers. MCL 400.805.
35. 2024 PA 144 provides that the PERA, 1947 PA 336, MCL §§ 423.201-17, "applies to the governance of the collective bargaining relationship between the [DHHS] and the bargaining representative of a bargaining unit composed of individual home help caregivers as provided in this section." MCL 400.804(1).
36. The sole reason for the creation of this new form of public employment is so there exists a government agency to collectively bargain with a labor union representing the caregivers.
37. MERC received Certification of Representation petitions from a union, SEIU Healthcare Michigan (SEIUHM), for such an election. This was MERC case No. 25-F-1170RC, Case Search ID C-14099. The petition stated that SEIUHM would represent a bargaining unit containing 31,616 employees. See Exhibit D in the Appendix.
38. On October 9, 2025, the bargaining unit election sought in MERC Case No. 25-F-1170-RC was completed and the election was certified by MERC. The Certification was posted on or about October 13, 2025. Of the 31,616 members of the proposed bargaining unit, 4,025 ballots were cast in favor of SEIUHM representing the unit (12.7% of the people in the

unit), and 1,502 (4.7% of the people in the unit) voted for no union. Other ballots were spoiled and uncounted. Of the counted ballots, the vote was 72.8% for SEIUHM and 27.2% for “no union.” Only 17.5% of the proposed bargaining unit submitted counted ballots. See Exhibit E in the Appendix.

39. This purported election certified by MERC created a bargaining representative that could bargain with DHHS.
40. Prior to this October 9, 2025, purported election certification, there was no employee unit that DHHS was required to collectively bargain with.
41. Prior to this October 9, 2025, purported election certification, it was merely hypothetical that the DHHS would have a bargaining unit with which to collectively bargain.
42. Now that the October 9, 2025, election certification has taken place, DHHS is required to collectively bargain with SEIUHM. “[T]he department shall engage in collective bargaining with the exclusive bargaining representative...” MCL 400.804(3).

COUNT I

THE SUBJECT ACTS VIOLATE THE CONSTITUTION WHERE THESE DENY THE CIVIL SERVICE CONTROL OVER THE CAREGIVERS’ EMPLOYMENT

43. The Plaintiff incorporates the preceding paragraphs by reference.
44. Const 1963, art 11, § 5, grants to the Michigan Civil Service Commission authority over employees of the state.
45. The Constitution places all employees of the State under the control of the Michigan Civil Service Commission with a few explicit exemptions. Therefore, any state employee who is not exempted falls under the Civil Service’s authority:

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 policy-making nature within each principal department.

Const 1963, art 11, § 5.

46. The Michigan Civil Service Commission has the constitutional duty to classify all positions according to duties and responsibilities. *Id.*
47. The Michigan Civil Service Commission has the constitutional duty to fix the rates of compensation for all classes of employees. *Id.*
48. The Michigan Civil Service Commission has the constitutional duty to approve or disapprove disbursements for all personal services. *Id.*
49. The Michigan Civil Service Commission has the constitutional duty to set the standards for employment based exclusively on merit. *Id.*
50. The Michigan Civil Service Commission has the constitutional duty to classify all positions according to duties and responsibilities. *Id.*
51. The Michigan Civil Service Commission has the constitutional duty to make rules and regulations covering all personnel transactions. *Id.*
52. The Michigan Civil Service Commission has the constitutional duty to regulate all conditions of employment in the classified service. *Id.*
53. The Michigan Civil Service Commission (through the state personnel director), not MERC, has the proper authority to “establish the most appropriate units of eligible employees

organized along broad occupational lines with a community of interest” for state employees. Michigan Civil Service Commission Rules, Rule 6-6.1, attached as Exhibit F.

54. The Michigan Civil Service Commission (through the state personnel director), not MERC, has the proper authority to order an election for a bargaining unit of state employees. Michigan Civil Service Commission Rules, Rule 6-6.2(a), attached as Exhibit G, supra.

55. The Michigan Civil Service Commission (through the state personnel director), not MERC, has the proper authority to certify an election for a bargaining unit of state employees. Michigan Civil Service Commission Rules, Rule 6-6.2(d), attached as Exhibit H, supra.

56. The Michigan Civil Service Commission, not DHHS, has the authority to collectively bargain with state employees:

6-1.2 Constitutional Authority. The civil service commission recognizes that there are fundamental economic, political, and legal differences between employer-employee relations in the state service and those in the private sector and other public sector employment. It is the view of the commission that constitutional provisions do not prohibit the commission from establishing a form of collective bargaining analogous to that in other public sector employment, so long as the collective bargaining agreements are subject to review, modification, and approval by the commission.

Michigan Civil Service Commission Rules, Rule 6-1.2, attached as Exhibit I, supra.

57. The Michigan Civil Service Commission “cannot delegate its constitutional responsibilities to the collective bargaining parties and the privilege to engage in collective bargaining remains subject to the commissioner’s sovereign authority and the rules of the commission.” Michigan Civil Service Commission Rules, Rule 6-3.1, attached as Exhibit J.

58. Despite the fact that the subject caregivers are ostensibly employees of DHHS, a principal state department, their employment control is taken out of the control of the Michigan Civil

Service Commission, and all of the forgoing duties in the paragraphs above are reallocated elsewhere by the subject acts.

59. The subject acts are void where they seek to create a new class of employees of a principal agency which are exempted from the Michigan Civil Service Commission's control, as is mandated by the Constitution.
60. Since the Legislature cannot create a class of state employees that violates the constitution, the acts are invalid to the extent that this is what the acts seek to do.
61. The creation of the new class of unconstitutional employees exempt from the Michigan Civil Service Commission's authority is the sole purpose of 2024 PA 145. As such, this act is unconstitutional.
62. The creation of a new class of unconstitutional employees exempt from the Michigan Civil Service Commission's authority is a core purpose of 2024 PA 144 and to that extent is unconstitutional.
63. Plaintiff does not challenge the creation of the Council by 2024 PA 144—but does challenge that it can collectively bargain with SEIUHM.
64. The primary reason for the creation of a constitutional civil service commission was to prevent the legislature from creating certain employees and positions that were used to fund or support partisan activities. See, *Reed v Civ Serv Comm'n*, 301 Mich 137, 154-5 (1942). The attempted creation of this new class of unconstitutional employees exempt from the Civil Service Commission's authority is intended to work around that prohibition by funding a union that is almost uniformly affiliated with one political party.
65. The subject acts are void *ab initio* where they violate the Constitution.

66. Because the subject acts are void *ab initio* where they violate the Constitution, MERC had no jurisdiction to certify the election for representation of a bargaining unit because such unit is entirely the result of these acts' invalid provisions.

67. MERC has no jurisdiction to resolve disputes concerning these home help caregivers. That power constitutionally lies with the Michigan Civil Service Commission. "The legislature may enact laws providing for the resolution of disputes concerning public employees, except those in the state classified civil service." Const 1963, art IV, § 48.

68. Because these provisions of the subject acts are void *ab initio*, DHHS has no valid authority to collectively bargain with an employee bargaining unit created outside of the Michigan Civil Service Commission.

REQUESTED REMEDY

For the reasons cited above, Plaintiff requests that this court rule that 2024 PA 144 and 2024 PA 145 are null and void where they purport to create a new class of state employees outside of the civil service solely for the purpose of collective bargaining.

Const 1963, art 11, § 5 states that "Violations of any of the provisions hereof may be restricted or observance compelled by injunctive or mandamus proceedings brought by any citizen of the state." Plaintiff therefore requests declaratory relief, injunctive relief, or a writ of mandamus preventing DHHS from collective bargaining or otherwise acting as the employer of these home help caregivers. Plaintiff requests that this Court void the MERC-certified election, rule that PERA does not apply to these employees, and that MERC lacks jurisdiction over these home help caregivers.

Dated: October 8, 2026

Respectfully submitted,

By: /s/ Derk A. Wilcox

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VERIFICATION

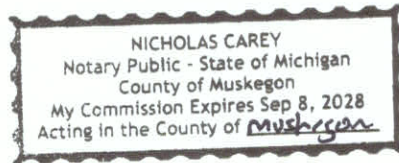
I declare that the allegations pleaded in this complaint are true to the best of my information, knowledge, and belief.

Executed this 5th day of October 2026

[Signature]
James P. Bolger, Plaintiff

State of Michigan)
County of Muskegon)

Subscribed to and sworn to (affirmed) before me this 5th day of October 2026, by James P. Bolger who is personally known to me or proved to me on the basis of satisfactory evidence to be the person who appeared before me.



Notary Public [Signature]
State of Michigan, County of Muskegon
My commission expires Sept 8 2028
Acting in County of Muskegon