

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OTTAWA

ADELINE HAMBLEY,

Plaintiff,

v.

OTTAWA COUNTY,

a Michigan County;

OTTAWA COUNTY BOARD OF COMMISSIONERS; and

JOE MOSS, SYLVIA RHODEA,

LUCY EBEL, GRETCHEN COSBY,

REBEKAH CURRAN, ROGER BELKNAP,

and **ALLISON MIEDEMA,**

Ottawa County Commissioners in their
individual and official capacities,

Defendants.

Case No: 23-7180-CZ

Hon. Jenny McNeill

Sitting by SCAO Assignment

SECOND AMENDED COMPLAINT

Plaintiff Adeline Hambley, by and through her attorneys, Pinsky Smith, PC, states as follows for her Second Amended Complaint, filed by leave of Court pursuant to MCR 2.118(A)(2):

JURISDICTION, VENUE, AND PARTIES

1. This is an action seeking declaratory and injunctive relief, and seeking a remedy for the common law claim of termination in violation of public policy; violation of the Whistleblower Protection Act, MCL 15.362 et seq.; and violations of the Open Meetings Act, MCL 15.261 et seq.

2. Plaintiff Adeline Hambley is the Health Officer for Ottawa County, where she leads the County Health Department. Plaintiff has worked for the Public Health Department in Ottawa County for the past 18 and a half years.

3. Defendant Ottawa County (“the County”) is the seventh largest county within the State of Michigan.

4. Defendant Ottawa County Board of Commissioners (“the Commission”) is the governing county commission for Ottawa County, organized pursuant to state law.

5. Defendant Joe Moss is a resident of the County and is a member of the Commission.

6. Defendant Sylvia Rhodea is a resident of the County and is a member of the Commission.

7. Defendant Lucy Ebel is a resident of the County and is a member of the Commission.

8. Defendant Gretchen Cosby is a resident of the County and is a member of the Commission.

9. Defendant Rebekah Curran is a resident of the County and is a member of the Commission.

10. Defendant Roger Belknap is a resident of the County and is a member of the Commission.

11. Defendant Allison Miedema is a resident of the County and is a member of the Commission.

12. The acts that are the subject of this action occurred in Ottawa County, Michigan.

13. The amount in controversy exceeds \$25,000, exclusive of costs and attorney fees, and the matter is otherwise within the jurisdiction of this Court.

FACTUAL ALLEGATIONS

14. Michigan law requires the County to maintain a health department run by a health officer (hereinafter “Health Officer”). See MCL 333.1101 *et seq.* The Health Officer position is one whose duties and powers are enumerated by Michigan law under the Public Health Code. See MCL 333.2428.

15. As Health Officer for the Ottawa County Public Health Department, Plaintiff is the ultimate supervisor for more than 100 employees carrying out a wide variety of duties and programs.

16. The Health Officer’s duties under state law include the power to take certain actions, issue orders, and make determinations necessary “to protect the public health and prevent disease.” See MCL 333.2428.

17. Michigan law also requires the County’s Health Officer “to possess professional qualifications for administration of a local health department as prescribed by the [state] department [of health and human services].” MCL 333.2428(1).

18. Subsection (2) of MCL 333.2433 lists the specific duties of local health departments. MCL 333.2433(3) provides that “[t]his section does not limit the powers or duties of a local health officer otherwise vested by law.”

19. By virtue of the duties and powers assigned to the Health Officer position under state law, and the inability of the county board to override certain actions and orders of the Health Officer, the position is necessarily one which is subject to just cause employment. It violates state law for a county board to terminate the employment of a Health Officer without a hearing to demonstrate a sufficient cause for termination in which the Health Officer and her attorney may know the allegations against the Health Officer, if any, and present a defense. See, e.g., MCL 46.11n. It also violates state law for a county board to remove a Health Officer for the sole purpose of thwarting the Health Officer's ability to comply with state law governing her duties. Cf. *id.*

20. On January 3, 2023, the first meeting of the 2023-24 term for Defendant Ottawa County Commission, a majority of new commissioners assumed office as part of a voting bloc calling itself Ottawa Impact. Defendants Moss, Rhodea, Ebel, Cosby, Curran, Belknap, and Miedema (collectively, "the Individual Defendant Commissioners") were seven of the new commissioners.

21. After the commissioners were sworn into office for the 2023-24 term, Defendant Miedema made a motion to demote Plaintiff Hambley to "Interim" Health Officer, in favor of the hiring of Nathaniel Kelly as Health Officer. Upon information and belief, this motion was part of an overall political strategy the Individual Defendant Commissioners orchestrated prior to taking office. The motion to demote Plaintiff was not on the public agenda posted prior to the meeting. The Individual Defendant Commissioners voted to approve the motion, which was a

sufficient number of votes to cause Defendant Ottawa County Commission to pass the motion to demote Hambley to “Interim” Health Officer.

22. The demotion of Plaintiff to “Interim” Health Officer was a constructive termination of her employment as the Health Officer for the County.

23. By their public statements, Defendants made clear after Plaintiff’s demotion that Plaintiff’s actual termination as the Health Officer, and possible complete termination from her county employment, was pending.

24. Following her constructive termination, Plaintiff continued to act as the Health Officer. On or about January 30, 2023, Defendants began the internal County process within the County’s Human Resources department necessary to prepare to begin Mr. Kelly’s employment with the County. However, upon information and belief, Defendants did not submit Mr. Kelly’s alleged credentials for the position to the state department of health and human services, as required under state law, until late September 2023.

25. Plaintiff has never resigned her appointment as the Ottawa County Health Officer. Defendants never posted the position of Health Officer after they assumed office on the Commission, nor did they observe any standard and customary county hiring practices, like taking applications or holding interviews with candidates for the position that were open to the public.

26. Instead, the Individual Defendant Commissioners selected Mr. Kelly as their favored choice for the Health Officer in secret meetings not open to the public, and without any public process for vetting him as a candidate for the Health

Officer position.

27. The Health Officer position is not subject to at-will termination as a matter of Michigan law. Plaintiff, as the Health Officer, can only be terminated upon a finding of cause, after notice of the alleged cause and a hearing.

28. Defendants have never had just cause for terminating and/or demoting Plaintiff, nor did Defendants provide notice of alleged just cause or a hearing on any allegations related to Plaintiff's job performance prior to the meeting on January 3, 2023.

29. Instead, Defendants' reasons for demoting Plaintiff on January 3, 2023, were not based on any cause. Defendants' reasons for demoting Plaintiff and announcing the hiring of Mr. Kelly instead were philosophical and political, because Defendants oppose the exercise of many of the Health Officer's statutory powers under state law to initiate orders and other actions for protection of the public health.

30. Upon information and belief, Defendants initially intended to continue to employ Plaintiff in a demoted position – likely eventually demoting her further to Deputy Health Officer – for the purpose of carrying out various state law-required reporting and other similar ministerial and clerical statutory duties of the Health Officer position, without any of the oversight or decision-making authority which resides with the “Health Officer” under state law, which they intended to hand over to Mr. Kelly.

31. Upon information and belief, Defendants initially intended to continue

to employ Plaintiff in a demoted, mostly ministerial and clerical, position so that the Ottawa County Health Department falsely appeared to function with Mr. Kelly at the helm with some semblance of competence and statutory compliance, even though Mr. Kelly lacks relevant and necessary professional experience to perform the Health Officer role.

32. Defendants have also taken steps to interfere with and prevent Plaintiff from carrying out her statutory duties. Upon information and belief, this was undertaken part of a strategy either to manufacture alleged cause to criticize Plaintiff's performance of her duties and/or to manufacture political controversy.

33. For example, on February 9, 2023, Plaintiff responded to a press inquiry, with the assistance of the Health Department's communications officer, about a news media story about a Grand Valley State University student event planned to coincide with a Health Department monthly testing clinic at the GVSU campus for sexually-transmitted infections ("STIs"). A conservative internet blog and Defendant Moss made public statements inferring that the student event was an example of something unseemly that the Health Department was sponsoring. As is a common part of the Health Officer's duties, Plaintiff clarified when asked by local news media that the Health Department was not sponsoring the event. Plaintiff's public statement as the Health Officer clarified that the organizers of the GVSU student event chose to host their gathering seeking to, apparently, provide sexual health information to college students and marketed it as happening alongside the Health Department's monthly STI testing clinic. Plaintiff's statement

also provided information about the Health Department's initiative to prevent STIs in the County.

34. The day before her public statement, as was her common practice, Plaintiff provided a courtesy advisory about this issue to John Gibbs, the new County Administrator installed by the Individual Defendant Commissioners, again without posting the position or otherwise observing common Human Resources practices to take applications and interview candidates. Mr. Gibbs did not respond to Plaintiff's alert about the statement she made to answer media questions about the GVSU student event and the Health Department's STI testing clinic.

35. On February 10, 2023, Mr. Gibbs spoke to Plaintiff and was very upset, reprimanded her for not obtaining prior approval from him to release a statement, said the statement was not truthful, and that there "would be consequences."

36. Mr. Gibbs responded by accusing a Health Department employee of being involved with the GVSU student sexual health event and wanting an investigation conducted. When Plaintiff responded that she believed that the employee that Mr. Gibbs was accusing participated (if at all) on her own personal time, Mr. Gibbs' response was: "I don't give a fuck if it was done in a personal capacity or not." Plaintiff believes that Mr. Gibbs' insistence on an "investigation" could be an attempt to fire this employee for potentially volunteering for the event on his/her personal time.

37. This was not the first time that Mr. Gibbs and the Individual Defendant Commissioners have advised Plaintiff that she will be required to "name

names,” so to speak. On January 30, 2023, the Individual Defendant Commissioners advised Plaintiff during a public meeting that Plaintiff would be required to identify individual Health Department employees who have followed prior instructions on programs with which the Individual Defendant Commissioners disagree – with the apparent intent of requiring discipline and/or termination of those employees.

38. In effect, Defendants are attempting to micromanage Plaintiff in the performance of the Health Officer duties, even though state law provides the Health Officer with duties and powers specifically free of this type of interference for particular policy reasons.

Six of the Individual Defendants Attempt to Change History In Response to Plaintiff's Complaint

39. After Plaintiff filed her initial Complaint in this matter on February 13, 2023, the Defendant County Commission on Friday, February 24, posted the agenda for its Tuesday, February 28, 2023 public meeting. That agenda included an item which claimed to be a motion to “correct” the December 13, 2022 Board Resolution (“the Original Resolution”) in which the prior Board of Commissioners appointed Plaintiff as Health Officer, attempting to retroactively declare Plaintiff’s original appointment invalid.

40. In advance of the February 28 meeting, Plaintiff’s counsel advised defense counsel of her position that the motion, if passed, would constitute an unlawful act, would be illegal retaliation for Plaintiff’s Complaint, and would not alter the parties’ positions in this litigation. However, six of the individual Defendants voted to “correct” the Original Resolution appointing Plaintiff, narrowly

passing the new Resolution by a 6-5 vote at the February 28 meeting (“the Revisionist Resolution”).

41. Defendants claimed that the Original Resolution never effectively appointed Plaintiff as Health Officer because former Commissioner Philip Kuyers made a statement while making the motion to vote to approve the Original Resolution that Defendants allege required that the Board of Commissioners would vote a second time to appoint Plaintiff after she passed the background check and the state Department of Health and Human Services (“DHHS”) approval.

42. The written Original Resolution does not contain a requirement that the Commission vote a second time to approve Plaintiff as Health Officer. The Original Resolution that all then-Commissioners voted to unanimously pass in December 2022 read:

NOW THEREFORE, BE IT RESOLVED that Adeline Hambley is appointed by the Board as Ottawa County Health Officer upon the Michigan Department of Health and Human Services confirming she has the required educational certifications and work background and contingent upon successfully passing a background check; and

BE IT FURTHER RESOLVED that this Resolution replaces, modifies, amends and/or supersedes all inconsistent or prior resolutions or motions regarding the subjects addressed herein.

43. The Revisionist Resolution that the Commission passed with the votes of six of the Individual Defendant Commissioners now states that Plaintiff’s appointment as Health Officer does not become effective until the Commission takes another, second vote to install her as the Health Officer – pretending that the prior Commission did not effectively appoint Plaintiff as Health Officer in December

2022.

44. Plaintiff passed the background check and received approval from DHHS on December 20, 2022, in a corrected letter from DHHS Interim Senior Deputy Director Sarah Lyon-Callo confirming that Plaintiff “meets the requirements for a fully appointed Health Officer, and therefore I approve this request.” Originally, DHHS submitted a letter dated December 21, 2022, stating an effective date of April 1, 2023, but then DHHS sent a corrected letter with the correct date of December 20, 2022, confirming Plaintiff’s appointment as of December 21, 2022.

45. Between December 21, 2022 until Friday, February 24, 2023, the Defendant Commission, the Commissioners, and the Commission’s agents took repeated actions indicating that they all believed Plaintiff to be the appointed Health Officer.

46. On March 1, 2023, the day following the February 28 County Commission meeting in which the Commission voted 6-5 to “correct,” i.e., change the language of the Original Resolution into a Revisionist Resolution which added a requirement of a second Commission vote, defense counsel emailed a four-page letter with six pages of attachments to Plaintiff’s counsel claiming that the Board’s Revisionist Resolution had the legal effect of rendering Plaintiff’s appointment as Health Officer invalid and threatening a motion for sanctions if Plaintiff did not dismiss her original Complaint by March 7.

47. Defendants have continued to unlawfully and significantly interfere

with Plaintiff's ability to carry out the duties and statutory powers of the Health Officer. Defendants have actively worked against Plaintiff to hold up what should be routine contracts and without regard for damage with County relationships with community partners and, in some cases, the County's contractual and other legal obligations.

Community Health Needs Assessment (CHNA)

48. On January 10, 2023, the Board of Commissioners ratified the contract (B/C 23-048) to secure the vendor for the 2023 Ottawa County Community Health Needs Assessment (CHNA), a partnership of the County Health Department and Holland Hospital, Corewell Health Zeeland Hospital, Trinity Health Grand Haven, Ottawa Area Intermediate School District, and key non-profit agencies. The CHNA is a massive data collection effort to help officials know what citizens report as their future health needs. The local hospitals need to, and will, conduct this survey with or without the County.

49. On February 7, 2023, the Finance Committee approved and forwarded to the Board of Commissioners the 2023 Memorandum of Understanding (MOU) for the Community Health Needs Assessment contract and funding (FC 23-017).

50. However, on February 16, 2023, Defendants removed the MOU from the consent agenda at the Board of Commissioners meeting (B/C 23-058). Administrator Gibbs requested copies of survey questions for the CHNA on February 15, 2023. The Healthy Ottawa Coalition approved sharing the Underserved Resident Survey with Administrator Gibbs. The other two surveys, the

Key Informants Survey and the BRFS Questionnaire, were still in development and not available to be shared. The Board of Commissioners have still not addressed, and appear to be refusing, the approval of the MOU for the CHNA since Administrator Gibbs and Commissioners have not been able to review all of the survey questions.

51. At the February 21, 2023, Health and Human Services Committee meeting, Plaintiff addressed the Board of Commissioners and explained the Healthy Ottawa Coalition determines survey questions based on acceptable methods and prescribed standards for a large-scale public survey, and that it is not within the purview of the Board of Commissioners to review and approve the survey questions. Two questions on the shared survey included sexual orientation and gender identity for demographic identification purposes. Upon information and belief, it is because of these questions that the County Commission is not addressing approval of the MOU for the CHNA.

52. On March 9, 2023, Deputy Health Officer Marcia Mansaray sent a letter to Administrator Gibbs and the Board of Commissioners requesting the MOU be added to the March 14, 2023 Board of Commissioners agenda.

53. Upon information and belief, executives from Trinity Health and Corewell, two of the major hospital systems operating within the County, have attempted contact with Administrator Gibbs multiple times to talk about the MOU. Administrator Gibbs has ignored these hospital executives and not returned their messages, and Defendants have refused to add the MOU back on the agenda.

My Community Dental Centers (MCDC) Contract for Public Dental Services

54. The Ottawa County Health Department contracts with a private entity, My Community Dental Centers (MCDC), to provide dental care for children and adults that do not have dental insurance or access to adequate oral health care. Dental and oral care has a major impact on other aspects of health and the ability to be a productive citizen.

55. The Health Department recently sent a routine contract extension agreement with MCDC through to County Administration to be approved before being offered to MCDC, in order to continue providing these critical dental services for County residents who cannot afford them.

56. However, on March 14, 2023, new legal counsel for Ottawa County, Lanae Monera, refused to approve the contract extension agreement to go out to MCDC. This was because the anti-discrimination provision of the extension agreement included sexual orientation and gender identity as bases upon which discrimination against program recipients was prohibited. Ms. Monera stated that she would not permit this to be included because, in her words, prohibiting discrimination on the basis of sexual orientation or identity is not “currently required by Michigan Law.”

57. This legal position is incorrect. Plaintiff is aware, and confirmed with legal counsel at her private expense, that discrimination on the basis of sexual orientation and gender identity is illegal pursuant to binding state case law. Moreover, it had been widely reported at that time that the Governor was expected

to sign a legislative amendment to the Elliott-Larsen Civil Rights Act (“ELCRA”) specifically including those forms of discrimination as covered under ELCRA.

58. On March 15, 2023, MCDC’s Director of Compliance/In-House Counsel agreed that the anti-discrimination provision should include sexual orientation and gender identity, and advised Ms. Monera of same.

59. When the Governor signed the ELCRA amendment as expected a few days later, the Health Department personnel sent a follow-up email to Ms. Monera asking her to send through the contract extension for approval.

60. On March 21, 2023, Ms. Monera asked what time period that the contract extension covered, and the Health Department personnel replied that the extension is for 5 years and would be effective as of October 1, 2023. Ms. Monera continued to refuse to approve the contract extension since the revision to “the Elliott Larsen Act does not go into effect until April 2024.” She said that once the change to ELCRA becomes effective in April 2024, the Health Department personnel could resubmit the contract extension agreement for review at that time. At that point, MCDC would be under no obligation to re-negotiate or amend the contract extension agreement, although since MCDC seems concerned with complying with the law, presumably MCDC would willing to go to that extra work at that time.

61. Plaintiff reasonably believes that this is poor legal advice, risks potential future discrimination claims against County, and constitutes a waste of employee time to address an issue in the future which would be addressed now one

time.

62. Similar to the fiasco with the delay in ratifying a routine contract extension for the MCDC dental services, Administrator Gibbs and Defendants have indicated to various staff people who report to Plaintiff and/or in the County's finance department that they should not bother to apply for grant money which addresses in any way health equity, or studies racial disparities in delivery of services, because any program which involves these issues will not be approved. Upon information and belief, this will result in the County Health Department losing significant grant opportunities, even those which do not focus on equitable delivery of health services. Moreover, Plaintiff believes that studying, addressing, and fixing where applicable any race disparities in delivery of health services to the County is an integral part of her mission as the Health Officer, so this unnecessarily political prohibition is a significant barrier to her effectively doing her job.

63. Administrator Gibbs has stated on various occasions that he wants to remake Ottawa County to operate more like the federal government. One such change to emulate the federal government for which Administrator Gibbs has advocated is a desire to have individual County departments run by political appointees installed at the pleasure of the then-governing Commission, or by individual Commissioners, instead of by non-political employee-officers with professional expertise, like Plaintiff.

Budget for Fiscal Year 2023/2024

64. One of Plaintiff's duties as Health Officer is to prepare a budget for the Health Department. Departments typically spend months preparing a proposed budget and submit it to the County Administrator in June. In accordance with the typical process, in June 2023, Plaintiff submitted a proposed budget for the fiscal year beginning on October 1, 2023. However, meetings about preparation of the regularly-submitted budget had been ongoing between Plaintiff and other members of County Administration for months prior to June 2023.

65. At an August 21, 2023 meeting of the Board, Defendant Moss announced a plan to cut the budget for the Health Department. The next day, Defendant Moss issued a press release detailing his proposed cuts, which included cutting the County's general fund contribution to the Health Department to \$2.5 million.

66. On August 22, 2023, Mr. Gibbs demanded that Plaintiff produce a budget that cut the general fund contribution to the Health Department to \$2.5 million, a significant reduction from the general fund contribution that Plaintiff originally proposed. After working on Mr. Gibbs's request, Plaintiff concluded that it was not possible to provide sufficient funding to meet the Health Department's "maintenance of effort" obligations to the State, to provide the minimum mandatory services required by the State, and to pay the Health Department's share of the County's administrative costs with a general fund contribution of \$2.5 million. Plaintiff advised Mr. Gibbs that the failure to meet State requirements would result in significant loss of State funding to the Ottawa County Public Health

Department, and potentially to other state funding to the County as well.

67. Plaintiff informed Mr. Gibbs that the proposed cuts would also result in various other negative consequences, including the possible issuance of a compliance order by the State of Michigan for failure to meet state mandates. Thereafter, Mr. Gibbs cut Plaintiff out of any meaningful participation in meetings and discussions for the budget of the Health Department. Instead, Mr. Gibbs relied mostly on Fiscal Services staff to make cuts or amendments to the budget that he directed, with little direct communication to Plaintiff or solely through Fiscal Services personnel.

68. On August 24, 2023, Plaintiff posted a memorandum to the Health Department's website that outlined the potential negative consequences of proposed budget cuts.

69. Thereafter, Defendants began to assert that Plaintiff was being "insubordinate" and that she could only release information with their express approval. In fact, Plaintiff had independent duties and responsibilities to protect the public health under state law. MCL 333.2433. Plaintiff's statutory duties included communicating with the public.

70. Defendants also asserted that Plaintiff's budget information was incorrect or politically motivated. In fact, Plaintiff pointed out truthful information about the consequences of proposed budget cuts that was not being shared with the entire Board or the public.

71. On September 5, 2023, the Board's Finance Committee held a meeting

in which they discussed updates to the Health Department budget for fiscal year 2023-2024. The Finance Committee did not invite Plaintiff to present on the budget for the Department. Therefore, Plaintiff elected to speak at public comment about the negative ramifications of the proposed budget cuts.

72. On September 26, 2023, Defendants approved the budget for fiscal year 2023-2024 at a public hearing. The Board again refused to allow Plaintiff to present any information. Along with dozens of other Ottawa County residents, Plaintiff spoke at public comment and expressed her concerns about the final budget proposal.

Charges for Termination

73. While the public meeting over the budget was ongoing, Defendants' counsel sent Plaintiff's counsel an email with a Notice of Hearing on charges for termination of Plaintiff.

74. The following day, Defendant Moss filed charges for termination with the County Clerk. The "charges" for termination were issued by Defendant Moss alone without a meeting of the Board. Upon information and belief, the entire Board was not even made aware Defendant Moss intended to issue charges and a notice of hearing.

75. On September 28, 2023, the day after Defendant Moss filed the Notice, he participated in an interview with Justin Barclay, a radio show host. In that interview, Barclay described how a majority of the Board intended to install their own candidate as health officer when they first took office. Defendant Moss stated

that although it had taken longer to terminate Hambley than people would expect, Defendants were attempting to “cross [their] T’s and dot [their] I’s,” and “do things the right way.” Defendant Moss indicated that their candidate Nate Kelly was waiting in the wings; Moss explained that Defendants voted to appoint Kelly in January, but that Defendants had to “work through [some] details” because Hambley had sued.

76. Upon information and belief, Defendants submitted an application seeking state approval for Nate Kelly the following day.

77. At a Board meeting on October 10, 2023, Commissioner Doug Zylstra requested a separate vote on scheduling a termination hearing for Plaintiff. Zylstra noted that Defendant Moss’s unilateral termination hearing notice failed to comply with MCL 46.10, which requires at least one-third of the members of a county board of commissioners to request a special meeting.

78. County corporate counsel said that he was not familiar with the statute, and Moss called for a “short recess” without specifying the reason. The “short recess” lasted more than 90 minutes, during which it appeared that commissioners in the majority bloc of Ottawa Impact met together in a quorum out of public view.

79. When the meeting resumed after the 90-minute “recess,” county corporate counsel indicated that “we” have decided to re-notice the charges and the hearing to a different date, even though the Board had yet to discuss it in the open meeting.

Termination Hearing

80. On October 24, 2023, Defendants held a termination hearing for Plaintiff that lasted two days, as part of a special meeting which has been indefinitely adjourned without a date to resume.

81. Plaintiff was not given the opportunity for discovery prior to the hearing and had no opportunity to request documents from Defendants.

82. Plaintiff was not permitted to call members of the Board to testify at the hearing.

83. Mr. Gibbs appeared to testify pursuant to a subpoena that Plaintiff requested and that Defendant Moss granted. However, Mr. Gibbs refused to answer all of Plaintiff's counsel's questions. Although the Board is the direct employer of Mr. Gibbs, the Board did not require him to answer all of Plaintiff's questions.

84. At the conclusions of the second day of the hearing, the Board did not have sufficient just cause to terminate Plaintiff as the Health Officer. The evidence instead demonstrated that Plaintiff was correct and truthful about serious negative consequences inherent in several iterations of Health Department budget proposals. The evidence also demonstrated that when Mr. Gibbs and/or the Board majority conceded several of her points, they were forced to restore some of the budget items that her originally-presented June budget included.

85. At the conclusions of the second day of the hearing, the Board did not decide whether to terminate Plaintiff, but instead voted to adjourn the hearing until

October 30, 2023. When it reconvened, the Board again decided to delay the vote on Plaintiff's termination, this time until November 6, 2023.

COUNT I – DECLARATORY RELIEF
AGAINST ALL DEFENDANTS

86. Plaintiff relies on the allegations of all prior paragraphs, as if they were restated herein.

87. Plaintiff seeks a declaration from the Court that, under Michigan law, she remains the Health Officer for Ottawa County without any “Interim” designation or demotion.

88. Plaintiff seeks a declaration from the Court that, under Michigan law, Defendants may remove her from the position of Health Officer **only** upon: (1) the existence of sufficient just cause to terminate her employment as Health Officer; (2) the provision of notice of all fact allegations constituting alleged sufficient just cause to remove her from the position; and (3) the opportunity for a public hearing to adjudicate same, which comports with the standards of due process and gives Plaintiff a full and fair opportunity to obtain necessary evidence, present that evidence, and be heard.

89. Plaintiff seeks a declaration from the Court that, under Michigan law, Nathaniel Kelly is not the Health Officer for Ottawa County and that Defendants may not appoint him to a position which will render him the de facto “Health Officer” for Ottawa County as a replacement for Plaintiff even if Defendants continue to employ Plaintiff to perform some of the functions of the Health Officer position at the same time.

90. An actual controversy exists as to the forgoing questions of Michigan law, and Plaintiff will suffer actual harm and damages without resolution of these legal questions through issuance of declaratory relief.

RELIEF SOUGHT

WHEREFORE, Plaintiff requests that the Court grant the following relief:

A. Reinstate Plaintiff to her position as Ottawa County's Health Officer, without the "Interim" designation;

B. Declare that: (1) Plaintiff remains the Health Officer for Ottawa County without any "Interim" designation or demotion;

C. Declare that: Defendants may remove her from the position of Health Officer only upon: (a) the existence of sufficient just cause to terminate her employment as Health Officer; (b) the provision of notice of all fact allegations constituting alleged sufficient just cause to remove her from the position; and (c) the opportunity for a public hearing to adjudicate same, which comports with the standards of due process and gives Plaintiff a full and fair opportunity to obtain necessary evidence, present that evidence, and be heard.

D. Declare that: Despite the vote on January 3, 2023 by Defendants, Nathaniel Kelley is not the Health Officer for Ottawa County and that Defendants may not appoint him to a position which will render him the de facto "Health Officer" for Ottawa County as a replacement for Plaintiff;

E. Award Plaintiff punitive damages;

F. Award Plaintiff costs and reasonable attorney fees; and

G. Award Plaintiff such other relief as may be just and equitable.

COUNT II – INJUNCTIVE RELIEF UNDER MCL 333.2465
AGAINST ALL DEFENDANTS

91. Plaintiff relies on the allegations of all prior paragraphs, as if they were restated herein.

92. Under MCL 333.2465(1), Plaintiff, as the Health Officer for Ottawa County, may seek an injunction to “restrain, prevent, or correct a violation of a law, rule, or order which the officer has the duty to enforce, or to restrain, prevent, or correct an activity or condition which the officer believes adversely affects the public health.”

93. Defendants have violated state law by demoting Plaintiff as aforesaid to “Interim” Health Officer with a stated plan to replace her with Nathaniel Kelly.

94. Plaintiff reasonably fears that she will be unable to carry out the duties required of the Health Officer under state law, even in an “Interim” designation, and that this state of affairs is a danger to the public health. In the event of a public health crisis requiring swift action, it is unlikely that Plaintiff would be able to obtain a legal remedy from this Court in time to respond and exercise her duties under Michigan law.

RELIEF SOUGHT

WHEREFORE, Plaintiff requests that the Court grant the following relief:

A. Issuance of both immediate temporary, and ultimately permanent, injunctive relief prohibiting Defendants from their demotion of Plaintiff to “Interim” county Health Officer;

- B. Award Plaintiff punitive damages;
- C. Award Plaintiff costs and reasonable attorney fees; and
- D. Award Plaintiff such other relief as may be just and equitable.

**COUNT III – TERMINATION IN VIOLATION OF PUBLIC POLICY AGAINST
ALL DEFENDANTS**

95. Plaintiff relies on the allegations of all prior paragraphs, as if they were restated herein.

96. Defendants' constructive termination of Plaintiff by demoting her to "Interim" Health Officer violated Michigan public policy because it unlawfully removed her as the Health Officer for all practical purposes, and also because it purported to subject Plaintiff's continued employment to the favor and pleasure of the county commissioners. This is violative of Michigan law which gives the Health Officer multiple independent powers and authority to take actions, make determinations, issue orders, and seek injunctions without the permission of or consultation with the local county board.

97. Michigan's public policy as reflected in its public health code necessarily requires that the Health Officer have the autonomy necessary to carry out the statutory duties and authority granted by state law. Permitting Defendants' constructive termination and/or demotion of Plaintiff to "Interim" Health Officer as aforesaid, and without sufficient cause and appropriate due process, violates Michigan public policy.

98. By demoting and/or constructively terminating Plaintiff under the conditions as stated aforesaid, Defendants violated Michigan public policy, a

common law tort under Michigan law.

99. As a result of the foregoing, Plaintiff has lost earned paid time off benefits that she has needed to use for litigation of this matter; has lost necessary authority to perform her job duties in compliance with state law without fear of retribution and retaliation; and has incurred mental anguish, emotional distress, unfair reputational damage, and legal costs for which Defendants are liable.

RELIEF SOUGHT

WHEREFORE, Plaintiff requests that the Court grant the following relief:

A. Reinstatement Plaintiff to her position as Ottawa County's Health Officer, without the "Interim" designation, with a preliminary and permanent injunction restraining Defendants from demoting and/or terminating Plaintiff as they have;

B. Award Plaintiff economic and compensatory damages in an amount that would fully compensate Plaintiff for the injuries alleged herein resulting from the violation of common law;

C. Award Plaintiff costs and reasonable attorney fees;

D. Award Plaintiff such other relief as may be just and equitable.

COUNT IV – DECLARATORY RELIEF AGAINST ALL DEFENDANTS EXCEPT DEFENDANT CURRAN

100. Plaintiff relies on the allegations of all prior paragraphs, as if they were restated herein.

101. Plaintiff seeks a declaration from the Court that she has been, and remains, the duly-appointed Health Officer for Ottawa County without any "Interim" designation since December 21, 2022.

102. Plaintiff seeks a declaration from the Court that the Commission's Revisionist Resolution that it passed on February 28, 2023 is invalid, and that the Original Resolution is the operative act of the Commission which stands as originally written.

103. An actual controversy exists as to the forgoing questions of Michigan law, and Plaintiff will suffer actual harm and damages without resolution of these legal questions through issuance of declaratory relief.

RELIEF SOUGHT

WHEREFORE, Plaintiff requests that the Court grant the following relief:

A. Declare Plaintiff is Ottawa County's duly-appointed Health Officer, without the "Interim" designation, and has been since December 21, 2022;

B. Declare that the Commission's Revisionist Resolution that it passed on February 28, 2023 is invalid, and that the Original Resolution is the operative act of the Commission which stands as originally written.

C. Declare that Defendants may remove Plaintiff from the position of Health Officer only upon: (a) the existence of sufficient just cause to terminate her employment as Health Officer; (b) the provision of notice of all fact allegations constituting alleged sufficient just cause to remove her from the position; and (3) the opportunity for a public hearing to adjudicate same, which comports with the standards of due process and gives Plaintiff a full and fair opportunity to obtain necessary evidence, present that evidence, and be heard.

D. Declare that: Despite the vote on January 3, 2023 by Defendants, Nathaniel Kelley is not the Health Officer for Ottawa County and that Defendants may not appoint him to a position which will render him the de facto “Health Officer” for Ottawa County as a replacement for Plaintiff;

E. Award Plaintiff punitive damages;

F. Award Plaintiff costs and reasonable attorney fees; and

G. Award Plaintiff such other relief as may be just and equitable.

**COUNT V – WHISTLEBLOWERS’ PROTECTION ACT, MCL 15.362,
AGAINST ALL DEFENDANTS EXCEPT DEFENDANT CURRAN**

104. Plaintiff relies on the allegations of all prior paragraphs, as if they were restated herein.

105. Plaintiff reported a violation of law(s) and/or suspected of violation of law(s) when she filed her original Complaint in this case on February 13, 2023.

106. Defendants, except for Individual Defendant Curran, passed the Revisionist Resolution in retaliation for Plaintiff filing the original Complaint in this case.

107. By passing the Revisionist Resolution on February 28, 2023 in retaliation for Plaintiff filing her Complaint, Defendants constructively terminated Plaintiff by orchestrating a new, false claim that Plaintiff has never been the statutory Health Officer, and that she serves only at the Commission’s pleasure as the “Interim” Health Officer as a result.

108. On September 28, 2023, Defendant Moss brought unlawful charges for termination unilaterally against Plaintiff, in retaliation for her filing the original complaint and pursuing litigation against Defendants.

109. On October 10, 2023, Defendants voted to re-issue Defendant Moss's original charges for termination against Plaintiff, in retaliation for her filing the original complaint and pursuing litigation against Defendants.

110. These acts of retaliation by Defendants violate the Whistleblower Protection Act in MCL 15.362 et seq.

111. Defendants' actions have damaged Plaintiff, by requiring Plaintiff's further engagement of legal assistance, and interfering with her ability to perform the duties of the job to which she was duly appointed effective December 21, 2022.

RELIEF SOUGHT

WHEREFORE, Plaintiff requests that the Court grant the following relief:

A. Declare Plaintiff is Ottawa County's duly-appointed Health Officer, without the "Interim" designation, and has been since December 21, 2022;

B. Declare that the Commission's Revisionist Resolution that it passed on February 28, 2023 is invalid, and that the Original Resolution is the operative act of the Commission which stands as originally written.

C. Declare that Defendants may remove Plaintiff from the position of Health Officer only upon: (a) the existence of sufficient just cause to terminate her employment as Health Officer; (b) the provision of notice of all fact allegations constituting alleged sufficient just cause to remove her from the position; and (3) the

opportunity for a public hearing to adjudicate same, which comports with the standards of due process and gives Plaintiff a full and fair opportunity to obtain necessary evidence, present that evidence, and be heard.

D. Declare that: Despite the vote on January 3, 2023 by Defendants, Nathaniel Kelley is not the Health Officer for Ottawa County and that Defendants may not appoint him to a position which will render him the de facto “Health Officer” for Ottawa County as a replacement for Plaintiff;

E. Award Plaintiff punitive damages;

F. Award Plaintiff costs and reasonable attorney fees; and

G. Award Plaintiff such other relief as may be just and equitable.

COUNT VI – VIOLATION OF THE OPEN MEETINGS ACT, MCL 15.261 *et seq.*
AGAINST ALL DEFENDANTS

112. Plaintiff relies on the allegations of all prior paragraphs, as if they were restated herein.

113. The Open Meetings Act applies to county boards of commissioners. MCL 46.1(2).

114. The Open Meetings Act requires that all deliberations and decisions of a public body must take place at a public meeting in an accessible place open to the general public at which a person can address the meeting. MCL 15.263(1).

115. The Open Meetings Act requires that all deliberations of a public body constituting a quorum of its members must generally take place at a meeting open to the public. MCL 15.263(3).

116. At the Board meeting on October 10, 2023, Defendants met in a so-called “recess” outside of the public view to deliberate and decide on whether to postpone Plaintiff’s termination hearing, and whether to re-issue the charges as required under MCL 46.10 by a vote of the required number of Commissioners. Defendants did not vote to enter a closed session as permitted by the Open Meetings Act, and Defendants had no grounds to do so.

117. Upon information and belief, during their “recess” meeting outside of public view, Defendants either had a quorum of the Board in their “recess” meeting to deliberate on postponing the termination hearing and re-issuing the charges by the statutorily-required number of Commissioners, or deliberated in a de facto quorum by using a round-robin style of communication between subquorum groups to attempt to evade the requirements of the Open Meetings Act.

118. Defendants’ actions violated the Open Meetings Act’s requirement that all deliberations constituting a quorum take place at an open meeting.

119. Defendants’ violation of the Open Meetings Act was intentional. MCL 15.273.

RELIEF SOUGHT

WHEREFORE, Plaintiff requests that the Court grant the following relief:

- A. Declare that Defendants’ October 10, 2023 non-public discussions that resulted in a decision to schedule a special meeting and to authorize charges for termination hearing against Plaintiff violated the Open Meetings Act;
- B. Compel Defendants to comply with the Open Meetings Act;

- C. Enjoin further non-compliance with the Open Meetings Act;
- D. Award Plaintiff actual and exemplary damages;
- E. Award Plaintiff costs and reasonable attorney fees; and
- F. Award Plaintiff such other relief as may be just and equitable.

COUNT VII – VIOLATION OF THE OPEN MEETINGS ACT, MCL 15.261 *et seq.*
AGAINST ALL DEFENDANTS – PURSUANT TO SECTION 11, MCL 15.271, AND
SECTION 13, MCL 15.273

120. Plaintiff relies on the allegations of all prior paragraphs, as if they were restated herein.

121. On November 6, 2023, Defendant Board of Commission voted unanimously to approve a motion by Defendant Moss go into closed session to “consult with corporate counsel regarding litigation in connection with Hambley v. Ottawa County because an open meeting would have a detrimental financial effect on the litigation or settlement position of the County.”

122. Defendants met in closed session with their legal counsel for approximately eight hours. During this time, their legal counsel exchanged offers and counteroffers for settlement of this litigation and of the termination hearing with Plaintiff’s counsel. To do so, defense counsel and Plaintiff’s counsel met throughout the day in a separate conference room apart from the members of the Board of Commissioners, and exchanged terms of settlement offers as follows:

- (a) Defense counsel initially reported to Plaintiff’s counsel that Defendants would not accept Plaintiff’s prior settlement offer where Plaintiff remained Health Officer. Defense counsel wanted an offer to settle from Plaintiff which included her resignation. Defense

counsel suggested that the Board majority would agree to a payment of \$1.8 million for Plaintiff's loss in pension value, and paying Plaintiff's attorney fees, in exchange for Plaintiff's resignation and release of the litigation, among other terms, like Deputy Health Officer Marcia Mansaray's resignation.

- (b) Plaintiff's counsel countered with \$8 million for Hambley to resign for compensation of her various damages, plus other terms.
- (c) Defense counsel countered with an offer to pay Hambley \$3 million, plus \$200,000 for attorney fees, and other terms.
- (d) Plaintiff's counsel countered with the County paying Hambley \$4.455 million, plus a year of salary and benefits, and other terms.
- (e) Defense counsel countered with the County paying Hambley \$4 million, and other terms.
- (f) Plaintiff's counsel countered with acceptance of the County paying Hambley \$4 million and all other terms that defense counsel proposed, so long as the County indemnity policy would continue to cover Hambley and Mansaray as former employees. Defense counsel accepted this addition regarding indemnity.

123. Defense counsel and Plaintiff's counsel then memorialized the terms of the \$4 million settlement in an exchange of emails subscribed by both sides' attorneys. Defendants' counsel led Plaintiff's counsel to believe that the Defendant Board of Commission would return to open session to vote to approve the terms of the \$4 million settlement.

124. When Defendants returned from closed session and returned to the open session on the public record, Defendant Moss made a motion "to accept Counsel's recommendation regarding litigation and settlement activities in the case of *Hambley v. Ottawa County* as addressed during closed session." Defendant Moss then called for a Roll Call Vote, and the motion passed 7-3, with all Individual Defendants voting in favor; Commissioners Bergman, Bonnema, and Zylstra voting against; and Commissioner Terpstra absent for the vote.

125. Defendants – through counsel – have denied that their vote 7-3 upon leaving their closed session was to approve the terms of the settlement reached with Plaintiff on November 6, 2023.

126. Defendants’ counsel has also denied that he made any offers or counteroffers to settle this litigation and the termination hearing on behalf of Defendants to Plaintiff’s counsel, and has denied that he advised Defendants about accepting any settlement offer.

127. By failing to advise the public about the particulars of the decision they were making after they left closed session on November 6, 2023, instead reflecting only acceptance of recommendation of unidentified legal advice, Defendants violated the Section 3(2) of the Open Meetings Act, MCL 15.263(2). Accordingly, Plaintiff is entitled to relief under Section 11 and 13 of Open Meetings Act, MCL 15.271.

RELIEF SOUGHT

WHEREFORE, Plaintiff requests that the Court grant the following relief under Section 11 and 13 of Open Meetings Act:

- A. Compel Defendants to produce the minutes of the closed session on November 6, 2023 for the Court’s *in camera* inspection, necessary to show that Defendants did not comply with Open Meetings Act when their return to open session on November 6, 2023 did not advise the public of the substance of their decision and what they were voting to approve;

- B. Order the disclosure of the minutes of the closed session on November 6, 2023 to the parties and the public;
- C. Compel Defendants to comply with the Open Meetings Act;
- D. Enjoin further non-compliance with the Open Meetings Act;
- E. Award Plaintiff actual and exemplary damages;
- F. Award Plaintiff costs and reasonable attorney fees; and
- G. Award Plaintiff such other relief as may be just and equitable.

PINSKY SMITH, PC
Attorneys for Plaintiff

Dated: November 29, 2023

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