STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OTTAWA

ADELINE HAMBLEY,

Plaintiff,

-vs-

OTTAWA COUNTY, a Michigan County; 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.
/

DEFENDANTS' ANSWER TO PLAINTIFF'S MOTION TO ENFORCE PRELIMINARY INJUNCTION AND FOR ORDER TO STAY DEFENDANTS' OCTOBER 24 TERMINATION HEARING

FILE NO: 23-7180-CZ

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DEFENDANTS' ANSWER TO PLAINTIFF'S MOTION TO ENFORCE PRELIMINARY INJUNCTION AND FOR ORDER TO STAY DEFENDANTS' OCTOBER 24 TERMINATION HEARING

NOW COME the Defendants listed above, by and through their attorneys, **KALLMAN LEGAL GROUP, PLLC**, in answer to Plaintiff's Motion to Enforce Preliminary Injunction and for Order to Stay Defendants' October 24 Termination Hearing, pursuant to MCR 2.119(C)(2), hereby state as follows:

I. THIS COURT IS BOUND BY THE COURT OF APPEALS.

This is Plaintiff's seventh wrongful attempt to prevent the Board of Commissioners (Board) from utilizing their proper statutory authority to hold a hearing pursuant to MCL 46.11(n):

- First, Plaintiff argued against Defendants' Application for Leave to Appeal and argued that the Preliminary Injunction (PI) should remain in place to prevent Defendants from utilizing MCL 46.11(n). On June 6, 2023, the Court of Appeals granted Leave to Appeal, denied Plaintiff's request, and immediately vacated this Court's PI to the extent that it prohibits Defendants from utilizing MCL 46.11(n).
- Second, on June 26, 2023, Plaintiff filed a Motion to Amend the June 6, 2023 Order to prevent Defendants from utilizing MCL 46.11(n). The Court of Appeals immediately denied Plaintiff's request on June 28, 2023.
- Third, on September 1, 2023, Plaintiff filed another Motion to Amend the June 6, 2023 Order and again requested that Defendants' be restrained from fully utilizing MCL 46.11(n). The Court of Appeals again denied Plaintiff's request on September 5, 2023.
- Fourth, on September 27, 2023, Plaintiff filed yet another Motion for Stay to prevent Defendants from holding the October 19, 2023[1] hearing regarding Plaintiff pursuant to MCL 46.11(n). The Court of Appeals again denied Plaintiff's request on October 4, 2023.
- Fifth, on October 9, 2023, Plaintiff filed another Motion requesting that Defendants be enjoined from holding the October MCL 46.11(n) hearing. The Court of Appeals again denied Plaintiff's request on October 11, 2023.
- Sixth, in Plaintiff's Brief on Appeal, she again requested that the Court of Appeals reinstate the Trial Court's original PI and prevent Defendants from ever utilizing MCL 46.11(n). The Court of Appeals denied Plaintiff's request in its October 12, 2023 Opinion.

Plaintiff is now trying, yet again, to improperly request that this Court enjoin Defendants from utilizing their proper statutory authority. The Court of Appeals clearly held on June 6, 2023:

> Pursuant to MCR 7.205(E)(2), the Court VACATES the April 19, 2023 order to the extent that it prohibits the Ottawa County Board of Commissioners from taking action allowed by MCL 46.11(n) to remove plaintiff-appellee as the health officer for Ottawa County.

This, in and of itself, requires that Plaintiff's Motion be denied. The Court of Appeals specifically ruled that not only can Defendants hold a hearing pursuant to MCL 46.11(n), but that Defendants must be permitted to hold a hearing regarding this specific Plaintiff.

[1] This hearing has since been moved to October 24, 2023.

The final Court of Appeals Opinion affirmed the June 6, 2023 Order (Exhibit A) and held:

> [W]e hold that the scope of the preliminary injunction, which does not permit the Commission to terminate Hambley under MCL 46.11(n), constitutes an abuse of discretion because it deprives the Commission of authority granted to it by Michigan law.

The Court of Appeals held that Defendants must be able to hold their removal hearing and consider the charges of incompetence, misconduct, and/or neglect of duty because preventing Defendants "'from taking any action to remove' her from the position of health officer strips the Board of removal powers expressly granted by Michigan law in MCL 46.11(n)." *Id*.

This Court has no authority to overrule the Court of Appeals' decision.

> When this Court disposes of an appeal by opinion or order, the opinion or order is the judgment of the Court. MCR 7.215(E)(1). And a lower court "may not take action on remand that is inconsistent with the judgment of the appellate court." Rather, the trial court is bound to strictly comply with the law of the case, as established by the appellate court, "according to its true intent and meaning."

Kasben v Hoffman, 278 Mich App 466, 470; 751 NW2d 520 (2008) (internal citations omitted).

Additionally, the Michigan Supreme Court held:

> "Decisions of the Court of Appeals are final except as reviewed by the Supreme Court on leave granted by the Supreme Court." The trial court in this case clearly disregarded the order of the Court of Appeals. Such action is not to be tolerated, and we agree with the above statement of the Court of Appeals as to the limited function that remains with a lower court when an appellate court speaks.

People v Whisenant, 384 Mich 693, 703; 187 NW2d 229 (1971) (citing GCR 1963, 800.4 which is now MCR 7.201(D)). As the Court of Appeals vacated this Court's PI regarding MCL 46.11(n), it is ludicrous for Plaintiff to demand, once again, that this Court "enforce" the PI to prevent the use of MCL 46.11(n) which direct contravenes the Court of Appeals' six prior rulings on this issue.

All of the same issues Plaintiff raises now were addressed and briefed in either the briefs on appeal or briefs regarding Plaintiff's numerous and frivolous motions on appeal. Yet, the Court of Appeals denied Plaintiff's request six consecutive times. It is outrageous that Plaintiff now

comes to this Court in an attempt to end-run the Court of Appeals' rejection of her arguments. This Court must reject Plaintiff's seventh improper request to prohibit Defendants from utilizing MCL 46.11(n) and instead comply with the clear order of the Court of Appeals.

II. DUE PROCESS.

A. THE ONLY DUE PROCESS REQUIRED IS SET FORTH IN MCL 46.11(n).

Plaintiff claims she is entitled to numerous "due process" requirements akin to a formal court proceeding. However, the October 24, 2023 hearing is not a court proceeding, rather, it is a legislative one. It is not being held under the Rules of Evidence or the Michigan Court Rules. Instead, it is a hearing of a legislative body acting pursuant to MCL 46.11(n) and nothing else. Plaintiff does not cite a single case that actually analyzes or addresses the use of MCL 46.11(n).

No person may be deprived of life, liberty, or property without due process of law. US Const, Am V; US Const, Am XIV; Const, 1963, art 1, § 17. But, since none of those deprivations are at stake, the Due Process Clauses does not apply. The Court of Appeals held:

> [P]laintiff cannot establish that a vested property right was affected and therefore he was not deprived, or at risk of being deprived, of a life, liberty, or property interest protected by due process. Due-process protections are only required when a life, liberty, or property interest is at stake.

Murphy-Dubay v Dep't of Licensing, 311 Mich App 539, 558; 876 NW2d 598 (2015).

In this case and at the October 24, 2023 hearing, Plaintiff's life or liberty are not at stake. The only possible issue is whether Plaintiff has a property interest in her public office and position as Health Officer. Plaintiff cites *Sherrod v City of Detroit*, 244 Mich App 516, 625 NW2d 437 (2001) for her claim that she has a property interest in her job. *Sherrod* is inapplicable to this case, because it only analyzed whether a regular "at-will" employee had a property interest under the Veterans Protection Act (VPA, MCL 35.401 et seq). Plaintiff admits she was not "at-will" and never has been. See Plaintiff's Brief, p 8. Additionally, the VPA explicitly does not apply to "heads

of departments," and Plaintiff is the head of the Health Department. MCL 35.402. This is because the Legislature properly understood that there is no property right for those who hold public office, such as heads of departments. Moreover, she is not a typical County "at-will" employee; thus the VPA has absolutely nothing to do with this case. Therefore, *Sherrod* offers no support for Plaintiff.

In reality, Plaintiff is a public officer that holds a statutorily created public office. The Michigan Supreme Court held that "[t]o determine whether a position constituted public office, this Court has examined the following five indispensable elements:"

> (1) It must be created by the Constitution or by the legislature or created by a municipality or other body through authority conferred by the legislature;
> (2) it must possess a delegation of a portion of the sovereign power of government, to be exercised for the benefit of the public;
> (3) the powers conferred, and the duties to be discharged, must be defined, directly or impliedly, by the legislature or through legislative authority;
> (4) the duties must be performed independently and without control of a superior power other than the law, unless they be those of an inferior or subordinate office, created or authorized by the legislature, and by it placed under the general control of a superior officer or body;
> (5) it must have some permanency and continuity, and not be only temporary or occasional.

People v Coutu, 459 Mich 348, 354; 589 NW2d 458 (1999).

Plaintiff easily meets all five requirements. First, Plaintiff's position as health officer is created by the legislature (MCL 333.2428). Second, Plaintiff possesses a delegation of the sovereign power of government and exercises it for the benefit of the public through her duties under the Public Health Code (MCL 333.2401 et seq). Third, Plaintiff's powers and duties are legislatively defined (MCL 333.2401 et seq). Fourth, Plaintiff performs her duties independently, and she is only placed under the "general control of a superior office or body" (MCL 46.11(k), (n)). Fifth, the health officer position is permanent whether held by Plaintiff or someone else.

Moreover, the fact that Plaintiff was appointed to her position, not merely hired, supports the conclusion that she holds public office. "Nothing seems better settled than that an **appointment**

or election **to a public office** does not establish contract relations between the person appointed or elected and the public." *Attorney General v Jochim*, 99 Mich 358, 368; 58 NW 611 (1894) (emphasis added). Additionally, the Court of Appeals recently held that "**appointment to public office** does not create a contractual right to hold that office; any holder of public office necessarily accepts the position with the knowledge that he or **she may be removed as provided by law**. . ." *Aguirre v State*, 315 Mich App 706, 717; 891 NW2d 516 (2016) (emphasis added).

Plaintiff's own admissions reveal that she is a public officer. Plaintiff has admitted in virtually every filing that Plaintiff's removal is governed by MCL 46.11(n). Since MCL 46.11(n) governs the removal of public officers, Plaintiff cannot now claim that she is not a public officer and not governed by the voluminous case law on the property rights of public officers. In other words, Plaintiff cannot simultaneously argue that she is a public officer who is entitled to the procedures outlined in MCL 46.11(n), and also argue that all case law regarding public officers is inapplicable to her.

It is also well settled in Michigan that there is no property interest in holding public office. Since there is no property interest, Plaintiff has no constitutional due process interest in her position. The Supreme Court recently reaffirmed this issue as established law:

> Moreover, we believe that public offices should not be treated like private property. As Davies observed, "To treat political rights as economic commodities corrupts the political process." Such treatment fundamentally misunderstands the nature of public office: **the law has long been clear that there is no property interest in holding public office.** As we have stated, "**A public office cannot be called 'property,' within the meaning of" various constitutional provisions protecting property interests, including the Due Process Clause.** Instead, "[p]ublic offices are created for the purposes of government. They are delegations of portions of the sovereign power for the welfare of the public.

People v Smith, 502 Mich 624, 638-639; 918 NW2d 718 (2018) (emphasis added).

The Michigan Supreme Court also previously held that the Legislature "may lodge the power to remove from statutory offices in boards or other officers, subject to statutory regulations." *Jochim*, 99 Mich at 369.

> **The fact that some cases hold that removal from office cannot, in some instances, be made, except upon cause shown, upon notice, specific charges, and after a hearing in its nature judicial, does not militate against this doctrine.** These cases simply hold that removals are limited by the power of the people or Legislature, through the Constitution or statute; not that a vested property right is involved in the holding of office, or that removal is beyond the power which creates the office and the officer. Nor does it follow that removal from office is a deprivation of the officer of property, because it must be for cause, upon specific charges, and after an opportunity to be heard.

Id. (emphasis added). Thus, a "public office cannot be called 'property,' within the meaning of these constitutional provisions." *Id*. at 367. "If it could be, it would follow that every public officer, no matter how insignificant the office, would have a vested right" and could invoke that right to wrongfully thwart a Board's removal power under MCL 46.11(n). *Id*. Therefore, Plaintiff's theory must be rejected.

It is permissible under Michigan's doctrine for removal that the same entity that brings removal charges may also make a final decision for removal. *Jochim* analyzed the power of the Governor to remove public officials from office. *Id*. at 368. "[T]he governor, in this case, made his own charges and employed his own counsel, and is therefore to sit as judge in his own case." *Id*. at 374. However, "it does not follow that the investigation must be made by some other person or officer, who must make complaint to the governor; [or] that the complainant must procure counsel . . ." *Id*.

The Supreme Court further held that just because "the governor is necessarily interested" in the proceedings, he was not "disqualified from hearing and determining" the removal. *Id*. "It is no uncommon thing for judges to order arrests and prosecution for acts committed in their

presence, such as contempts, perjury, and perhaps other offenses, and they are not thereby disqualified." *Id*. This confirms the propriety of Defendants' actions and their ability to follow MCL 46.11(n) to the letter by issuing charges, supplying notice, and providing Plaintiff an opportunity to be heard. Plaintiff's objection to the Board hearing this matter is devoid of merit.

MCL 46.11(n) only permits one body to make the determination to remove a health officer: the County Board of Commissioners. The statute provides no mechanism to have an alternative body make a removal determination. Unlike many other situations where, for example, a visiting judge can be assigned, there is no such thing as a "visiting" Board of Commissioners to decide removal hearings. There is no appropriate or lawful substitute for the full Board's decision.

If Plaintiff is correct, it would nullify MCL 46.11(n), leading to absurd results. For example, according to Plaintiff, this current Board can never provide an impartial hearing. This current Board, however, will continue to hold office until a new Board is seated in 2025. According to Plaintiff's novel theory, this current Board is now powerless to ever remove her for any reason because of their alleged "partiality." If Plaintiff is correct, for the next year it would not matter if Plaintiff stopped working, moved to Florida, fired all the employees in the Health Department, or started embezzling funds. Plaintiff believes she could not be removed by this Board for any reason. Again, according to Plaintiff, this Board can never remove her, because she believes they are not "impartial" and could never conduct a proper removal hearing pursuant to MCL 46.11(n). Such an absurd theory must be rejected by this Court.

Further, according to Plaintiff, because the Board is involved in litigation with her, they can never provide an "impartial" hearing. If this were the true standard for MCL 46.11(n), then all that any appointed officer would have to do is file a lawsuit against the Board to immunize himself/herself from ever being removed. Again, this is absurd.

Finally, the Michigan Supreme Court once again confirmed that "it is not by reason of an inherent right of property in the officer, bringing him within the protection of the fourteenth amendment, but because of the limitations of the law." *Jochim,* 99 Mich at 373. The Board is bound to comply with MCL 46.11(n), no more, no less. This is exactly what they are doing.

In addition to the above, the Court of Appeals directly analyzed the application of MCL 46.11(n) in *Schneider v Shiawassee County Board of Commissioners*, unpublished *per curiam* opinion of the Court of Appeals, issued January 26, 2012, at 4 (Docket No. 299920) (Exhibit B). The Court held:

> A public office cannot be called "property," within the meaning of these constitutional provisions (United States Constitution, Fifth Amendment-due process, and Fourteenth Amendment-equal protection of law). If it could be, it would follow that every public officer, no matter how insignificant the office, would have a vested right to hold his office until the expiration of the term. Public offices are created for the purposes of government. They are delegations of portions of the sovereign power for the welfare of the public. They are not the subjects of contract, but **they are agencies for the state, revocable at pleasure by the authority creating them**, unless such authority be limited by the power which conferred it.

Id. at 4 (emphasis added) (citing *Detroit v Division 26 of Amalgamated Ass'n of Street, Electric R & Motor Coach Employees of America*, 332 Mich 237, 251; 51 NW2d 228 (1952)). The *Schneider* Court concluded under MCL 46.11(n) that an appointed county officer "did not have a property right" in his public office, and therefore the constitutional Due Process Clauses do not apply to proceedings under MCL 46.11(n). *Id*. "Those persons holding public office or occupying a place of public employment in Michigan do not have a property right in that position[.]" *Id*. at 4.

The *Schneider* Court also held that the Board is "authorized to use their own times and methods subject only to the condition that no one shall be removed without charges and reasonable notice, nor without a full opportunity to be heard." *Id.* (citing *Gager v Chippewa Supervisors*, 47 Mich 167, 169; 10 NW 186 (1881)). Standard constitutional due process analysis and principles

do not apply to a proceeding to remove a public official from public office pursuant to MCL 46.11(n) because that official has no property interest in their position. Anything else would "corrupt the political process." *Smith,* 502 Mich at 638.

Instead, the only "due process" required for the October 24, 2023 hearing is to fully comply with the explicit terms of MCL 46.11(n). First, the charges must be "presented" to the entire Board or the Chairman of the Board. MCL 46.11(n). This occurred on September 27, 2023.

Next, a "notice of hearing, with a copy of the charges" must be delivered to the "officer." MCL 46.11(n). This was done on September 26, 2023 to Plaintiff's counsel and on September 27, 2023 to Plaintiff herself. Therefore, this requirement of MCL 46.11(n) has been satisfied.

Finally, at the hearing on October 24, 2023, it is required that "a full opportunity is given the officer or agent to be heard, either in person or by counsel." MCL 46.11(n). As stated in the Notice of Hearing, Plaintiff and her attorney will be given a full opportunity to be heard.

Plaintiff understands this, which is likely why she cannot point to a single requirement, procedure, or even a single word in MCL 46.11(n) that has been, or will be, violated. Instead, she resorts to demanding court-like procedures, discovery, evidentiary hearings, and numerous other requirements that are nowhere to be found in MCL 46.11(n). Even if Plaintiff disagrees with MCL 46.11(n) or personally believes that the Legislature should have made different public policy decisions, "this Court should not overrule [a statute] simply as a matter of our own preference." *People v Schmidt*, 183 Mich App 817, 832; 455 NW2d 430 (1990).

B. Even if Plaintiff's Theory is Correct, the Board is Still Providing Proper Due Process.

In the alternative, and even if Plaintiff is correct (she is not) that she had a property interest in her position that invokes constitutional due process rights, the Board is still satisfying those requirements. "Employment in public service frequently entails a necessary surrender of certain

civil rights to a limited extent because of dominant public interest in unimpeded and uninterrupted performance of functions of government." *City of Detroit v Division 26 of the Amalgamated Ass'n of Street,* 332 Mich 237, 252; 51 NW2d 228 (1952).

Plaintiff claims to be entitled to numerous procedural requirements, such as an evidentiary hearing. However, *Sherrod*, the main case cited by Plaintiff, belies her own request. "However, the pretermination hearing, though necessary, **need not be elaborate, and <u>something less than a full evidentiary hearing is sufficient.</u>**" *Sherrod*, 244 Mich App at 524 (emphasis added). Even the cases cited by Plaintiff do not support her contention that she is entitled to have a full evidentiary hearing. Moreover, Plaintiff is essentially making the absurd demand to hold two evidentiary hearings before Plaintiff can be removed. She is requesting an evidentiary hearing in this Court regarding whether the Board has the authority to hold the hearing in the first place and a second evidentiary hearing at the MCL 46.11(n) hearing itself. This is unfounded, not required by the statute, and not supported by Plaintiff's own cited cases.

In addition, all of Plaintiff's objections arise from her flawed interpretation of MCL 46.11(n). However, "the proper interpretation of a statute is a question of law," not facts. *McCaul v Modern Tile & Carpet, Inc*, 248 Mich App 610, 615; 640 NW2d 589 (2001). It is specious for Plaintiff to demand that she must have an evidentiary hearing in this Court in order to properly interpret the law and the procedures required under MCL 46.11(n). It is impossible for an evidentiary hearing to change the legal meaning of a statute. Further, Plaintiff fails to cite any case or statute giving this Court authority to pre-emptively stop a Board from using MCL 46.11(n). Plaintiff's allegations are nowhere to be found in the current lawsuit or in Plaintiff's Amended Complaint. The Board has not made a determination nor removed Plaintiff. Even if Plaintiff is removed, the Board has not yet made a determination as to what grounds to authorize the removal.

Plaintiff's request is akin to asking a court to enjoin the Legislature from holding an impeachment hearing. Such a baseless theory must be rejected by this Court.

"Procedural due process limits actions by the government and requires it to institute safeguards in proceedings that affect those rights protected by due process, such as life, liberty, or property." *Kampf v Kampf*, 237 Mich App 377, 382; 603 NW2d 295 (1999) (citing *Electro-Tech, Inc v HF Campbell Co*, 433 Mich 57, 66, n 9, 445 NW2d 61 (1989)). The Legislature already "institute[d] safeguards" in MCL 46.11(n) proceedings, such as the requirement for charges, notice, and an opportunity to be heard.

Plaintiff invokes the VPA as an analogy to support her due process claim. However, all that is required in order to satisfy due process under the VPA is strict compliance with the terms of the statute. It is only a "failure to comply with the procedural requirements of the VPA [that] may support a due-process claim." *Vayda v Cnty of Lake*, 321 Mich App 686, 909 NW2d 874, 879 (2017). Thus, even using Plaintiff's analogy, it is only the "failure to comply with the procedural requirements of" MCL 46.11(n) that "may support a due-process claim." *Id*.

Since Plaintiff claims the Board is allegedly violating her "due process" rights by complying with the explicit terms of MCL 46.11(n), then her quarrel is with MCL 46.11(n), not the Board. Plaintiff's real objection is how MCL 46.11(n) is drafted because she apparently believes the procedures contained in the statute are insufficient. However, a "statute is presumed [to be] constitutional," and the burden is on Plaintiff to file a claim and prove the contrary. *Vayda,* 909 NW2d at 879. Thus, in order for Plaintiff to succeed in all of her requests for additional procedures, she must file a claim that MCL 46.11(n) is unconstitutional for violating due process. Plaintiff has never made such a claim, nothing remotely close to such a claim is contained in her

Amended Complaint, and it is therefore wholly inappropriate for her to now request that this Honorable Court "fix" a problem that she has never pled in this case.

"[D]ue Process is flexible and calls for such procedural protections as the particular situation demands." *Schweiker v McClure*, 456 US 188, 200; 102 SCt 1665 (1982). The United States Supreme Court held there is a "strong presumption in favor of the validity of [legislative] action. *Id*. Just as in *Schweiker*, Plaintiff "simply [has] not shown that the procedures prescribed by [the legislature] are not fair or that different or additional procedures would reduce the risk of erroneous deprivation" of Plaintiff's alleged rights. *Id*. Therefore, even under a due process analysis, Plaintiff has failed to allege that MCL 46.11(n) violates her rights or that holding a hearing under the explicit terms of MCL 46.11(n) is unconstitutional.

III. THERE IS NO BASIS TO ENFORCE A VACATED INJUNCTION.

There is absolutely nothing in Plaintiff's Complaint or First Amended Complaint requesting injunctive relief to prohibit the use of MCL 46.11(n). The only injunctive relief requested in Plaintiff's First Amended Complaint is under Count II which makes no mention of MCL 46.11(n) whatsoever. The relief requested by Plaintiff in Count II states:

> Issuance of both immediate temporary, and ultimately permanent, injunctive relief prohibiting Defendants from their demotion of Plaintiff to "Interim" county Health Officer;[2]

Thus, the only injunctive relief at issue in the Amended Complaint is whether Plaintiff is the interim or permanent Health Officer. Such a distinction is wholly irrelevant to the hearing set to occur on October 24, 2023. Plaintiff's status as interim or permanent health officer has no effect on Defendants' ability to utilize MCL 46.11(n). The charges issued pursuant to MCL 46.11(n) are

[2] Plaintiff's First Amended Complaint, p 19.

not dependent upon Plaintiff's interim or permanent classification. Instead, the charges are based upon the alleged incompetence, misconduct, and/or neglect of duty by Plaintiff.

Similarly, even if Defendants appeal the Court of Appeals' ruling on Plaintiff's status, that would have no effect as to the determination of whether Plaintiff engaged in incompetence, misconduct, and/or neglect of duty under MCL 46.11(n). Plaintiff has held the position of health officer this entire year, regardless of whether it was in an interim or permanent capacity. The charges allege incompetence, misconduct, and/or neglect of duty for actions Plaintiff took while acting as health officer in August and September of 2023. Whether Plaintiff was interim or permanent during that time, she was still subject to the explicit terms of MCL 46.11(n), and Defendants have full authority to consider her removal all the same. Even if the Supreme Court held that Plaintiff was an interim health officer, that would have no effect on Defendant's determination of whether she engaged in incompetence, misconduct, and/or neglect of duty.

Further demonstrating the frivolousness of Plaintiff's Motion, she admitted in her previous appellate filing that "termination under MCL 46.11(n) with due process [is] still available to Defendants, without a form of trial court supervision other than requiring Hambley to go to the trial court or this Court for help **after the fact**."[3] Thus, Plaintiff fully understands and acknowledges that the Board can conduct a hearing pursuant to MCL 46.11(n), and she can pursue her legal remedies "after the fact" if she disagrees with Board's determination. Nevertheless, Plaintiff still filed this baseless and frivolous Motion.

Plaintiff claims she is entitled to "judicial review."[4] However, there is nothing to "review" at this point. No hearing has been held; no determination has been made. Instead, Plaintiff demands

[3] Appellee's Brief on Appeal, July 7 2023, p 22 (emphasis added).
[4] Plaintiff's Brief, p 8 (citing *Toussaint v Blue Cross & Blue Shield*, 408 Mich 579, 621 (1980)).

a pre-"review" of what might occur at the MCL 46.11(n) hearing, a pre-"rewriting" of the MCL 46.11(n) to mandate procedures beyond those explicitly required, and a pre-"evidentiary" hearing in this Court prior to the Board's hearing. MCL 46.11(n) requires nothing of the sort, and none of Plaintiff's cited cases support such judicial overreach. Again, Plaintiff has never challenged the constitutionality of MCL 46.11(n), and this Court cannot pre-"review" and pre-"rewrite" the statute for her.

IV. PROCEDURAL REQUIREMENTS OF MCL 46.11(n).

Since this case began, Plaintiff has made a habit of improperly adding requirements to MCL 46.11(n) that do not exist. Instead, the statute clearly states that a County Board of Commissioners ("Board") may:

> (n) Subject to subdivision (o), remove an officer or agent appointed by the board if, in the board's opinion, the officer or agent is incompetent to execute properly the duties of the office or if, on charges and evidence, the board is satisfied that the officer or agent is guilty of official misconduct, or habitual or willful neglect of duty, and if the misconduct or neglect is a sufficient cause for removal. However, an officer or agent shall not be removed for that misconduct or neglect unless charges of misconduct or neglect are presented to the county board of commissioners or the chairperson of the county board of commissioners, notice of the hearing, with a copy of the charges, is delivered to the officer or agent, and a full opportunity is given the officer or agent to be heard, either in person or by counsel.

"Where a statute unqualifiedly declares that a designated public agency shall have power to remove a particular officer from office, as where it declares that such agency 'may appoint and remove' the officer, **it is usually concluded that no procedural condition attaches unless clearly implied in some other provision of the statute**." *Chamski v Cowan*, 288 Mich 238, 249; 284 NW 711 (1939) (emphasis added). "A like result follows where the statute places the removal within the unqualified individual discretion of a particular officer." *Id*. Rather than claim that

Defendants have violated the explicit language of MCL 46.11(n), Plaintiff attempts to add additional requirements that do not exist in the law.

MCL 46.11(n) is clear and unambiguous. If the Board determines that a health officer is incompetent or has engaged in misconduct or neglect of duty, then the Board can remove that health officer. It is solely the Board's determination whether there is sufficient evidence to remove a health officer, not this Court's. MCL 46.11(n). The Legislature specifically stated that a removal may be done if "in the board's opinion" a health officer is "incompetent," or if the "board is satisfied" after a hearing that the health officer engaged in "misconduct" or "neglect of duty." MCL 46.11(n).

Discovery

Plaintiff makes the novel request for discovery prior to the October 24, 2023 hearing. It is unclear how such a request would work since the Board does not possess any subpoena powers for documents and other materials. Nothing in MCL 46.11(n) requires discovery. What is required is that Plaintiff be provided with "notice of the hearing, with a copy of the charges" and a "full opportunity is given" the appointed officer "to be heard." MCL 46.11(n).

Since the Board cannot compel a third party to release or provide documents, Plaintiff's request for "discovery" is merely a tactic to try to delegitimize the proceeding. Because the rules of evidence do not apply at the hearing, Plaintiff can submit any documentary evidence she desires, including affidavits or statements from third parties, she may call witnesses, and she may make any statements herself or through counsel in order to "be heard."

Contrary to Plaintiff's novel theory, there is no requirement in MCL 46.11(n) that she be permitted through this Court to delay the utilization of this statute through improper discovery requests prior to the Board exercising its authority.

Judicial Oversight

Plaintiff has repeatedly requested this Court somehow order that all proceedings conducted by Defendants in accordance with MCL 46.11(n) be supervised and controlled by this Court. Plaintiff's latest Motion merely repackages her previously denied requests.

Plaintiff filed two Motions in the Court of Appeals on June 26, 2023, and September 1, 2023, seeking the exact same relief she is requesting here: this Court's oversight, supervision, and potential prohibition of the Board holding a MCL 46.11(n) hearing. The issue was briefed by all parties, and the Court of Appeals summarily denied both of Plaintiff's requests on June 28, 2023 and September 5, 2023, respectively. This Court must not grant what the Court of Appeals denied.

Neither MCL 46.11(n), nor any other authority, authorizes such supervision and control. Such an order would violate the Separation of Powers Doctrine and replace the Board's judgment with that of this Court.[5]

In an attempt to provide a fair hearing, the Board has arranged for retired Judge Thomas E. Brennan to assist the Board with the hearing on October 24, 2023. Judge Brennan will not "supervise" or "control" the Board (as Plaintiff has demanded) but will instead preside over the proceedings and assist the Board in conducting a fair process. Judge Brennan will have no authority

[5] Plaintiff's request would violate the Separation of Powers Doctrine of the Michigan Constitution. Const 1963, art III, § 2. The judiciary does not have the authority to order a party to not follow the law unless the law itself is invalid or unconstitutional. No one in this case has ever argued that MCL 46.11(n) is invalid or unconstitutional. Again, "this Court should not overrule [a statute] simply as a matter of our own preference." *People v Schmidt*, 183 Mich App 817, 832; 455 NW2d 430 (1990). Plaintiff's request not only usurps the power of Defendants and prevents them from exercising their statutorily prescribed oversight, it violates the Separation of Powers Doctrine. Const 1963, art III, § 2. "It is the function of the court to fairly interpret a statute as it then exists; it is not the function of the court to legislate." *McKiney*, 237 Mich App at 208. See also, *Charles Reinhart Co,* 444 Mich at 600 n. 38*; and Younkin*, 848 NW2d at 494.

to substitute his judgment for that of the Board, and the final determination will be in the opinion, and to the satisfaction, of the Board, just as MCL 46.11(n) requires.

Clearly, nothing in MCL 46.11(n) requires, explicitly or implicitly, that the Board must utilize a judge in its proceedings. Yet, the Board is taking this extra step to ensure a fair hearing occurs.

Procedural Considerations

Finally, Plaintiff complains that the process outlined by the Board for the October 24, 2023 hearing is unfair. In *Schneider, supra*, the Chairman of the Board of Commissioners solely issued the "Notice of Hearing" and included the charges against the officer. *Id*. at 2. Similarly in this case, the Chairman of the Board of Commissioners issued the Notice of Hearing and provided a copy of the charges to Plaintiff, her counsel, and all Commissioners. This fully complies with the requirement that the charges be "presented to the county board of commissioners or the chairperson of the county board of commissioners." MCL 46.11(n). It is important to note that the statute includes no requirement that the entire Board vote on the charges before the notice is issued. Instead, it only requires that the notice and charges be "presented" to the entire Board or the Chairman. This is exactly what occurred in *Schneider,* and it was upheld by the Court of Appeals.

Plaintiff complains about multiple alleged issues with the hearing, such as not having enough time to prepare, disagreement about discovery, disagreement about what witnesses can be called, and disagreement about the Judge presiding over the hearing. In *Schneider*, the notice of hearing and charges were issued on January 14, 2010, and the hearing was held on January 28, 2010. *Id*. at 2. The Court of Appeals held that the removal was proper and never ruled that two weeks' notice was insufficient. The Court of Appeals then cited the Michigan Supreme Court:

> [s]o far as time and notice of hearing are concerned the board of [commissioners] do not act in strictness as a court, but as a public board authorized to use their own

> times and methods subject only to the condition that no one shall be removed without charges and reasonable notice, nor without a full opportunity to be heard.

Schneider, at 4 (citing *Gager v Chippewa Supervisors*, 47 Mich 167, 169; 10 NW 186 (1881)).

The Court of Appeals concluded by holding:

> Revocation of plaintiff's position was allowable **based <u>solely</u> on defendant's opinion and satisfaction that plaintiff was guilty of misconduct or neglect** following notice of the charges, notice of the hearing, and an opportunity to be heard at that hearing. See MCL 46.11(n).

Schneider, at 5. Defendants are fully complying with MCL 46.11(n).

V. <u>A REQUEST FOR ENFORCEMENT OF A VACATED PRELIMINARY INJUNCTION AND FOR STAY IS COMPLETELY WITHOUT MERIT.</u>

Plaintiff fails to cite any proper authority to support her request for a stay. A stay is utilized <u>*within*</u> the judicial branch to stay a lower court order or proceedings (MCR 7.209), or to stay the execution of a judgment (MCR 2.614). Plaintiff's novel and improper request is for this Court to "stay" another branch of government, a Board of Commissioners, from exercising its legislative and statutory authority. **Defendants are at a loss as to how a trial court could "stay" a legislative hearing, let alone one that is completely unrelated to any allegations in Plaintiff's Amended Complaint**. To issue the requested stay is an obvious Separation of Powers violation.[6]

Plaintiff fails to cite a single court rule, binding case, or statute that this Court has any authority or jurisdiction to interfere with another branch of government's ability to hold a hearing. The only case cited by Plaintiff for her novel use of a stay was a non-binding concurring opinion in *O'Halloran v Sec'y of State & Dir of the Bureau of Elections*, 510 Mich 970, 970 (2022) (Bernstein, J., concurring). The issue in that case was only whether it was proper to stay proceedings in the Court of Claims pursuant to MCR 7.209, not to issue a stay to prevent a legislative hearing. This is completely irrelevant and provides no support for Plaintiff's novel

[6] See footnote 8 above.

request. MCR 7.209 governs appellate stays within the judicial branch, not a "stay" of another branch of government. This Court has no more authority to "stay" the Board's legislative proceedings as it would to "stay" any legislative proceeding in the Michigan Legislature, such as impeachment or investigation hearings. This Court can do neither under MCR 7.209. Plaintiff offers no proper authority for such a meritless request. Plaintiff's request for enforcement of a vacated PI and for stay must be denied.

Finally, it is important to note that Plaintiff is not requesting a new PI. How could she? Nothing she now alleges is in her Amended Complaint, and she has never alleged that MCL 46.11(n) is unconstitutional. Instead, she is only requesting that this Court "enforce" the previously vacated portion of the PI in clear violation of the Court of Appeals Opinion and Orders. Because she is not requesting a new PI, the four PI factors are not the primary issue. However, to the extent that this Court believes those factors to be relevant, Defendants hereby fully incorporate their arguments against the issuance of a PI as outlined in their previous briefs.[7] This Court cannot resurrect a PI that was vacated by the Court of Appeals, especially because the Court of Appeals has already denied Plaintiff's request six consecutive times.

WHEREFORE, Defendants respectfully request that this Honorable Court deny Plaintiff's Motion to Enforce the Preliminary Injunction (vacated by the Court of Appeals) and for Order to Stay Defendants' October 24 Termination Hearing, grant Defendants their reasonable costs and attorney fees for having to respond to such a frivolous motion, and grant such other relief as is just and appropriate.

Respectfully submitted,

Dated: October 20, 2023.

/s/ David A. Kallman
David A. Kallman (P34200)
Stephen P. Kallman (P75622)

[7] See Defendants' Response to Plaintiff's Motion for PI, 03/27/2023;

EXHIBIT A

STATE OF MICHIGAN

COURT OF APPEALS

ADELINE HAMBLEY,

Plaintiff-Appellee,

v

OTTAWA COUNTY, OTTAWA COUNTY BOARD OF COMMISSIONERS, JOE MOSS, Individually and as an Ottawa County Commissioner, SYLVIA RHODEA, Individually and as an Ottawa County Commissioner, LUCY EBEL, Individually and as an Ottawa County Commissioner, GRETCHEN COSBY, Individually and as an Ottawa County Commissioner, REBEKAH CURRAN, Individually and as an Ottawa County Commissioner, ROGER BELKNAP, Individually and as an Ottawa County Commissioner, and ALLISON MIEDEMA Individually and as an Ottawa County Commissioner,

Defendants-Appellants.

FOR PUBLICATION
October 12, 2023
9:15 a.m.

No. 365918
Ottawa Circuit Court
LC No. 23-007180-CZ

Before: RICK, P.J., and SHAPIRO and YATES, JJ.

YATES, J.

Plaintiff, Adeline Hambley, claims she is the duly appointed administrative health officer of Ottawa County by dint of actions taken by defendant, Ottawa County Board of Commissioners (the Commission), in late 2022 and memorialized by the board chair and the Ottawa County clerk in a resolution. But defendants—including the Commission that was newly constituted in January 2023 as a result of the general election in November 2022—insist that Hambley was not properly appointed, so she has no right to claim the title of health officer. The trial court not only ruled that Hambley was properly appointed, but also issued a preliminary injunction barring the Commission "from taking any action to remove [her] from the position of Health Officer of Ottawa County" until this case is resolved. We granted Ottawa County's application for leave to appeal those two rulings, *Hambley v Ottawa Co*, unpublished order of the Court of Appeals, entered June 6, 2023 (Docket No. 365918), and we now resolve those issues by applying settled principles of Michigan

law. Specifically, we affirm the trial court's ruling that Hambley was properly appointed as health officer of Ottawa County, but we conclude that the Commission nonetheless retains the authority to terminate Hambley if the Commission complies with the procedures and standards prescribed in MCL 46.11(n).

I. FACTUAL BACKGROUND

Plaintiff Hambley is a longtime employee of Ottawa County, where she has worked in the health department for nearly two decades. After the November 2022 general election in which the voters of Ottawa County elected a new majority to the Commission, the health officer for Ottawa County announced that she would retire from that position by the end of March 2023. In response, in the waning days of 2022, the outgoing Commission posted the position of Ottawa County health officer, interviewed candidates for the job, and selected Hambley to serve as Ottawa County's new health officer. The outgoing Commission unanimously voted to appoint Hambley and approved a resolution doing so at their final public meeting on December 13, 2022.

After the new Ottawa County board members were sworn in on January 3, 2023, the status of plaintiff Hambley as the county's health officer became a matter of contention. The new board voted to assign Hambley to the position of interim health officer and stated its intention to appoint someone else to serve as Ottawa County's health officer. Hambley responded by filing this action on February 13, 2023, seeking declaratory and injunctive relief as well as damages for termination in violation of public policy.[1] On March 2, 2023, at the behest of plaintiff, the trial court issued a temporary restraining order precluding defendants "from taking any action to remove . . . Hambley from the position of Health Officer of Ottawa County until such time as the parties are heard further on this matter[.]"

On March 10, 2023, defendants moved for summary disposition under MCR 2.116(C)(7), (8), and (10). The trial court heard oral arguments on March 31, 2023, addressing the motion for summary disposition filed by defendants as well as plaintiff's request for a preliminary injunction. The trial court then issued a written opinion denying defendants' motion for summary disposition, awarding partial summary disposition to plaintiff Hambley under MCR 2.116(I)(2), and granting a preliminary injunction prohibiting defendants from "taking any action to remove" Hambley from the position of health officer for Ottawa County.

Defendants filed an application for leave to appeal, which we granted in an order issued on June 6, 2023. That order vacated the injunction insofar as "it prohibits the Ottawa County Board of Commissioners from taking action allowed by MCL 46.11(n)," which empowers a county board of commissioners to remove a health officer in limited circumstances and when certain processes are afforded. We also agreed to hear "the issues whether the trial court erred in awarding judgment to plaintiff-appellee on her claim for declaratory relief that she was appointed the health officer of

[1] Plaintiff Hambley filed a first amended complaint on March 24, 2023, expanding the number of her claims from three to five, but the issues before us on this appeal were litigated and resolved on the allegations and claims presented in the original complaint.

Ottawa County by the 2022 Ottawa County Board of Commissioners and whether the trial court erred in granting [her] a preliminary injunction." Thus, we must now take up those two issues.

II. LEGAL ANALYSIS

The trial court's preliminary injunction flowed from its decision to award partial summary disposition to plaintiff Hambley pursuant to MCR 2.116(I)(2) on her claim that she was appointed as health officer of Ottawa County in 2022 by defendant Commission. Although defendants had moved for summary disposition, the trial court chose instead to award partial summary disposition to Hambley. "We review de novo a trial court's decision on a motion for summary disposition." *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 159; 934 NW2d 665 (2019). A trial court may award "summary disposition to the opposing party under MCR 2.116(I)(2) if it determines that the opposing party, rather than the moving party, is entitled to judgment." *Jaguar Trading Ltd Partnership v Presler*, 289 Mich App 319, 322; 808 NW2d 495 (2010). In contrast to our de novo review of the summary disposition ruling, "[t]he grant or denial of a preliminary injunction is within the sound discretion of the trial court, and this Court will not reverse that decision absent an abuse of discretion." *Davis v Detroit Fin Review Team*, 296 Mich App 568, 612; 821 NW2d 896 (2012). "An abuse of discretion exists when the decision is outside the range of principled outcomes." *Id.* With these standards in mind, we shall first take up the award of partial summary disposition to Hambley, and then we shall consider the propriety of the preliminary injunction.

A. PARTIAL SUMMARY DISPOSITION

Defendants called the question of plaintiff Hambley's status as the health officer for Ottawa County by moving for summary disposition, but plaintiff emerged the winner when the trial court granted her declaratory relief on that question under MCR 2.116(I)(2). The Commission took up the appointment of Hambley as health officer at its scheduled meeting on December 13, 2022. The Commission unquestionably considered and approved a motion to appoint Hambley to the position of health officer at the meeting. Later on the date of the meeting, board chair Matthew Fenske and Ottawa County clerk Justin Roebuck signed a resolution (the 2022 Resolution) memorializing the action of the Commission appointing Hambley. The 2022 Resolution stated:

> At a regular meeting of the Ottawa County Board of Commissioners ("Board") held in West Olive, Michigan on December 13, 2022 at 1:30 p.m.
>
> * * *
>
> The following resolution was offered by Commissioner Philip Kuyers and supported by Commissioner Roger Bergman:
>
> **WHEREAS**, pursuant to MCL § 52.143 and MCL § 333.2428 as amended, the Board is authorized to enter into a written employment contract with a person to act as Ottawa County's health officer and internal administrative officer of its health department, provided the Michigan Department of Health and Human Services ("DHHS") preliminarily and finally approves the appointment;
>
> **WHEREAS**, the Board determines that Adeline Hambley, currently the Ottawa County Environmental Health Officer, has the requisite qualifications that

would qualify her as Administrative Health Officer, to replace Lisa Stefanovski upon exit from the Department;

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.

The 2022 Resolution noted the "yeas" listed in the December 13, 2022 meeting minutes and stated that there were no "nays."

At the next meeting of the Commission on January 3, 2023, however, a newly elected board member moved to appoint plaintiff Hambley as interim health officer. The motion that passed that day not only appointed Hambley "interim administrative health officer until a new administrative health officer is hired[,]" but also authorized "the board chairperson and clerk/register to sign a resolution to appoint Nathaniel Kelly as administrative health officer of Ottawa County contingent upon" (1) approval of the Commission and (2) confirmation by the Michigan Department of Health and Human Services. To justify that action effectively demoting Hambley and naming somebody else as the new health officer, the newly constituted Commission took the position that the minutes of the December 13, 2022 meeting did not reflect Hambley's appointment as health officer for the county. The relevant minutes of the December 13, 2022 meeting of the Commission state:

Philip Kuyers moved to approve and authorize the Board Chairperson and Clerk/Register to sign a resolution to appoint Adeline Hambley as Ottawa County Administrative Health Officer contingent upon 1) approval by the Board of Commissioners; 2) confirmation by the Michigan Department of Health and Human Services that she has the required educational certifications and work background; and 3) successfully passing the County's background check process.

The motion passed as shown by the following votes: Yeas: Kyle Terpstra, James Holtvluwer, Douglas Zylstra, Philip Kuyers, Gregory DeJong, Randall Meppelink, Joseph Baumann, Roger Bergman, Allen Dannenberg, Francisco Garcia, Matthew Fenski.

As the newly constituted Commission saw it, on December 13, 2022, the Commission authorized and approved the signing of a resolution appointing Hambley as health officer on three conditions, whereas the 2022 Resolution identified only two of those conditions, omitting the condition that Hambley had to be approved by the board. Thus, the 2022 Resolution was inoperative.

The trial court rejected that position, ruling that the Commission approved the appointment of plaintiff Hambley as health officer at the December 13, 2022 meeting by a unanimous vote. In the trial court's view, "[t]he only remaining contingencies at that point in time were confirmation

of [plaintiff] by the MDHHS and passing the County's background check process." Because both of those contingencies undoubtedly were met, "as a matter of law, Plaintiff was duly appointed as the Ottawa County Health Director." Neither side appears to contest the trial court's conclusions that Hambley was confirmed by the Michigan Department of Health and Human Services and she passed the Ottawa County background check. Therefore, our analysis of the trial court's decision on summary disposition turns on whether Hambley's appointment required additional Commission approval. As a matter of law, fact, and logic, we conclude that it did not require approval from the Commission after its meeting on December 13, 2022.

"A resolution is the form in which a legislative body expresses a determination or directs a particular action." *Duggan v Clare Co Bd of Comm'rs*, 203 Mich App 573, 576; 513 NW2d 192 (1994). When a county commission adopts a resolution, if "the language of the resolution is certain and unambiguous, courts must apply the resolution as written." *Hardaway v Wayne Co*, 494 Mich 423, 427; 835 NW2d 340 (2013). Here, the 2022 Resolution pellucidly prescribes two conditions for plaintiff Hambley's appointment as health officer: (1) "the Michigan Department of Health and Human Services confirming she has the required educational certifications and work background"; and (2) "successfully passing a background check[.]" Defendants insist that those two conditions omit a third condition reflected in the minutes of the Commission meeting on December 13, 2022, i.e., subsequent approval by the Commission, but that argument does not create any ambiguity in the language of the 2022 Resolution. The chair of the Commission and the Ottawa County clerk both signed the 2022 Resolution on December 13, 2022, so the contention that the 2022 Resolution did not reflect the vote of the Commission rings hollow. In sum, Michigan law supports Hambley's position that she satisfied all of the Commission's requirements for appointment as health officer.

As a matter of fact, the Commission placed its imprimatur upon the appointment of plaintiff Hambley at its meeting on December 13, 2022, so the 2022 Resolution accurately reflects the vote of the commissioners. Our review of the video recording of that meeting leads us to the conclusion that the Commission appointed Hambley at that meeting subject to two contingencies. The motion the Commission passed "authorize[d] the board chairperson and clerk/register to sign a resolution to appoint Adeline Hambley as the county administrative health officer contingent upon approval by the board of commissioners, confirmation by the Michigan Department of Health and Human Services that she has [the] required educational certificates and work background and successfully passing the county's background-check process." Strongly suggesting that the sequence of those three contingencies was intentional, rather than arbitrary, the Commission chair then asked, before he called for a vote on the motion, whether Hambley had "accepted the position." After he heard an assurance that she had accepted the position, he called for a vote on the motion, which passed unanimously. The Commission chair, Matthew Fenske, thereafter signed the 2022 Resolution. To assert, under the circumstances, that Hambley had not yet received the "approval of the board of commissioners" when the meeting ended on December 13, 2022, strains credulity.

Moreover, we view defendants' invitation to parse and favor the meeting minutes and video recording in the face of unambiguous language in the 2022 Resolution is a recipe for chaos. Under Michigan law, unambiguous resolutions constitute the gold standard for defining the decisions of a county commission. See *Hardaway*, 494 Mich at 427. To encourage challenges to unambiguous resolutions based on meeting minutes and recordings fosters uncertainty in local government. In this case, the motion made on December 13, 2022, authorized the Commission chair and the clerk to sign a resolution to appoint plaintiff Hambley as health officer contingent upon approval by the

board of commissioners, confirmation by the Michigan Department of Health and Human Services that she had the required educational certificates and work background, and successfully passing the county's background-check process. Approval by the Commission came first at the meeting on December 13, 2022, and then—as defendants state in their appellate brief—"[i]t is undisputed that Plaintiff obtained MDHHS approval for her credentials on December 20, 2022 and passed her background check[.]" Because the 2022 Resolution reflected the Commission's decision and the two remaining contingencies, the resolution constituted "the form in which the [Commission] . . . direct[ed] a particular action[,]" i.e., the appointment of Hambley as health officer. See *Duggan*, 203 Mich App at 576.

We reject defendants' claim that strict reliance on an unambiguous resolution runs afoul of the Open Meetings Act (OMA), MCL 15.261 *et seq*., which obligates "public bodies [to] conduct their meetings, make all of their decisions, and conduct their deliberations (when a quorum is present) at meetings open to the public." *Speicher v Columbia Twp Bd of Trustees*, 497 Mich 125, 134-135; 860 NW2d 51 (2014). According to MCL 15.270(1), "[d]ecisions of a public body shall be presumed to have been adopted in compliance with the requirements of" the OMA. To be sure, MCL 15.263(2) mandates that "decisions of a public body must be made at a meeting open to the public." The Commission in this case decided to appoint plaintiff Hambley as health officer at a meeting open to the public on December 13, 2022. The 2022 Resolution simply memorialized the decision the Commission made at that open meeting.

To support their OMA argument, defendants rely on *Lockwood v Ellington Twp*, 323 Mich App 392; 917 NW2d 413 (2018), where we explained that "if an action taken at a meeting held in violation of OMA is not reenacted, it is not valid, and it has no force or effect." *Id*. at 405. Here, in contrast, defendants have not demonstrated that any meeting was held in violation of the OMA. To the contrary, the Commission meeting held on December 13, 2022, did not violate the OMA, and the subsequent signing of the 2022 Resolution accurately memorializing the motion passed at that meeting likewise did not violate the OMA. Thus, neither the OMA nor any Michigan statute requires us to dispense with the presumption in the OMA that the decision of the Commission on December 13, 2022, "was adopted in compliance with the requirements of the" OMA. See MCL 15.270(1). Consequently, we must affirm the trial court's decision on summary disposition under MCR 2.116(I)(2) that plaintiff Hambley is the duly appointed health officer of Ottawa County.

B. INJUNCTIVE RELIEF

The trial court issued an injunctive order on April 19, 2023, stating: "[d]efendants and their agents ARE ENJOINED AND PREVENTED from taking any action to remove [p]laintiff Adeline Hambley from the position of Health Officer of Ottawa County until such time as the parties are heard further on this matter[.]" Defendants insist that the trial court erred in issuing that sweeping preliminary injunction. Although we conclude that the trial court did not abuse its discretion when it decided to afford Hambley injunctive relief, we hold that the scope of the preliminary injunction, which does not permit the Commission to terminate Hambley under MCL 46.11(n), constitutes an abuse of discretion because it deprives the Commission of authority granted to it by Michigan law.

In analyzing plaintiff Hambley's request for injunctive relief, the trial court identified four factors that should be considered: (1) plaintiff's likelihood of success on the merits; (2) the danger that plaintiff will suffer irreparable harm if an injunction is not issued; (3) the balance of harms to

the competing party in the presence or absence of injunctive relief; and (4) the harm to the public interest if an injunction is issued. *Davis*, 296 Mich App at 613. Based on MCL 46.11(n), the trial court noted that a duly appointed county health officer may only be terminated by the Commission if the health officer is "either incompetent or engaging in misconduct or neglect of duty." Although that observation captures the essence of the statute, the language of MCL 46.11(n) prescribes those limits in a grant of authority to the Commission that states as follows:

> A county board of commissioners, at a lawfully held meeting, may . . . remove an officer or agent appointed by the board if, in the board's opinion, the officer or agent is incompetent to execute properly the duties of the office or if, on charges and evidence, the board is satisfied that the officer or agent is guilty of official misconduct, or habitual or willful neglect of duty, and if the misconduct or neglect is a sufficient cause for removal.

Because the trial court ruled (and we have affirmed) that Hambley was appointed as health officer for Ottawa County by the Commission, she has clearly prevailed on her claim for declaratory relief, so her likelihood of success on the merits is absolute. But we must consider the other three factors that bear upon the propriety of the trial court's injunctive order.

The likelihood of harm to plaintiff Hambley absent injunctive relief cannot be gainsaid on the record before us. As the trial court observed, the newly constituted "Board's actions in its first meeting, by calling [p]laintiff 'interim' and by appearing to hire another individual, indicate they are likely taking adverse action against her." Losing her job manifestly would be financially and professionally catastrophic for Hambley. In contrast, the likely harm to defendants if an injunction remains in place is minimal if Hambley is a qualified, competent health officer. Thus, the second and third factors both militate in favor of some injunctive relief to protect Hambley as this litigation unfolds. Likewise, the public interest is well-served by a preliminary injunction that keeps in place a qualified, competent health officer such as Hambley during the pendency of this case.

But if plaintiff Hambley proves to be "incompetent[,]" or "guilty of official misconduct, or habitual or willful neglect of duty," as contemplated by MCL 46.11(n), then the second, third, and fourth factors in the analysis of injunctive relief all weigh against a sweeping injunction that leaves her in place as the health officer for Ottawa County. Moreover, the preliminary injunction put in place by the trial court, which flatly prohibits defendants from "taking any action to remove" her from the position of health officer, strips the Commission of removal powers expressly granted by Michigan law in MCL 46.11(n). Thus, the trial court's preliminary injunction constitutes an abuse of discretion insofar as it prevents the Commission from exercising its statutory authority under MCL 46.11(n). Therefore, we reaffirm the ruling in our order issued on June 6, 2023, that "vacates the April 19, 2023 order to the extent that it prohibits the Ottawa County Board of Commissioners from taking action allowed by MCL 46.11(n) to remove plaintiff-appellee as the health officer for Ottawa County." We affirm the trial court's injunctive order in all other respects because nothing other than the prohibition against exercising the authority granted under MCL 46.11(n) constitutes an abuse of discretion by the trial court.

Affirmed in part, reversed in part, and remanded for further proceedings.[2] We do not retain jurisdiction.

/s/ Christopher P. Yates
/s/ Michelle M. Rick
/s/ Douglas B. Shapiro

[2] In our order issued on June 6, 2023, we stayed the "trial court proceedings . . . pending resolution of this appeal or further order of this Court." Having resolved all issues on which we granted leave to appeal, we hereby lift that stay and authorize the trial court to resume proceedings in this case.

EXHIBIT B

LES L. SCHNEIDER, Plaintiff-Appellant, and MICHAEL SAVAGE and LAURENCE RIDDLE, Plaintiffs,
v.
SHIAWASSEE COUNTY BOARD OF COMMISSIONERS, Defendant-Appellee.

No. 299920

STATE OF MICHIGAN COURT OF APPEALS

January 26, 2012

UNPUBLISHED

Shiawassee Circuit Court
LC No. 10-000160-CZ

Before: BECKERING, P.J., and OWENS and SHAPIRO, JJ.

PER CURIAM.

Plaintiff Les L. Schneider[1] appeals as of right from the trial court's order granting summary disposition to defendant Shiawassee County Board of Commissioners. We affirm.

I

In 2009, there were four members of the Shiawassee County Veterans' Affairs Committee ("VA Committee"), as appointed by defendant: Michael Savage, Laurence Riddle, Ronald Anderson, and plaintiff. Anderson resigned on July 9, 2009, and Savage's term was to expire on December 31, 2009; thus, defendant would need to fill the vacancies. On December 17, 2009, defendant expanded the VA Committee from four to five members and appointed three individuals to fill the open positions; the county clerk swore in the new VA Committee members

Page 2

on January 6, 2010. Questioning the validity of the appointments, Savage, Riddle, and plaintiff did not recognize the three appointees or allow them to participate in the January committee meetings, and they continued to treat Savage as a member of the VA Committee despite the expiration of his term.

On January 14, 2010, three days after the first committee meeting where the new appointees were not recognized, defendant's chairperson sent out a "Notice of Hearing for Removal of Officer" to plaintiff and Riddle. The notice provided in pertinent part:

The charges of official misconduct and neglect of duty result from the following facts and circumstances:

> On January 11, 2010, at a regularly scheduled meeting of the County Veterans Affairs Committee, Les L. Schneider[2] , who acted as Chairperson of the Veterans Affairs Committee (a) refused to recognize the Board of Commissioners' appointments of John Pajtas, Sara Edwards, and Ronald Elder as members of the County Veterans Affairs Committee, (b) refused to allow a vote on a duly made and seconded motion to elect a Chairperson, (c) continued the meeting of the County Veterans Affairs Committee without a quorum present, and purported to take official action, and (d) continued to recognize Michael Savage as a member of the County Veterans Affairs Committee, even though his term of office expired on December 31, 2009, and he was replaced by a new appointee. Les L. Schneider engaged in this official misconduct and neglect of duty notwithstanding written legal direction given by the County Attorney.
> You will be given a full opportunity to be heard on this matter. You may be represented by an attorney at your own expense.

The notice set the hearing for January 28, 2010, at 4:00 p.m.

At the January 28, 2010, hearing, plaintiff and Riddle were present and represented by counsel.[3] Following the hearing, defendant's members approved a motion to remove plaintiff and Riddle from their appointments to the VA Committee. Plaintiff and Riddle were notified of the decision via letters.

Plaintiff, Savage, and Riddle sued defendant, claiming wrongful termination and seeking a temporary restraining order and equitable relief preventing defendant from removing them from the VA Committee. The trial court granted defendant's motion for summary disposition under MCR 2.116(C)(5) (lack of legal capacity to sue due to lack of standing), MCR 2.116(C)(8)

(failure to state a claim upon which relief can be granted), and MCR 2.116(C)(10) (no genuine issue of material fact) and issued sanctions against Savage. The court later denied plaintiff, Savage, and Riddle's motion for reconsideration.

II

We review de novo a trial court's decision on a motion for summary disposition under MCR 2.116(C)(5), as well as whether a party has standing, which is a question of law. *Franklin Historic Dist Study Comm v Village of Franklin,* 241 Mich App 184, 187; 614 NW2d 703 (2000). "In reviewing a grant of a motion for summary disposition pursuant to MCR 2.116(C)(5), we must consider the pleadings, depositions, admissions, affidavits, and other documentary evidence submitted by the parties." *Rhode v Ann Arbor Pub Sch,* 265 Mich App 702, 705; 698 NW2d 402 (2005).

A motion brought pursuant to MCR 2.116(C)(8) examines the pleadings alone and tests the legal sufficiency of the claim. *Dalley v Dykema Gossett,* 287 Mich App 296, 304; 788 NW2d 679 (2010). This motion tests whether the complaint states a claim as a matter of law, and the motion should be granted if "no factual development could possibly justify a right of recovery." *Kuhn v Secretary of State,* 228 Mich App 319, 324; 579 NW2d 101 (1998). "'All factual allegations supporting the claim, and any reasonable inference or conclusions that can be drawn from the facts, are accepted as true.'" *Averill v Dauterman,* 284 Mich App 18, 21; 772 NW2d 797 (2009), quoting *Smith v Stolberg,* 231 Mich App 256, 258; 586 NW2d 103 (1998).

A motion brought under MCR 2.116(C)(10) tests the factual sufficiency of the claim. *Maiden v Rozwood,* 461 Mich 109, 120; 597 NW2d 817 (1999). "A trial court may grant a motion for summary disposition under MCR 2.116(C)(10) if the affidavits or other documentary evidence show that there is no genuine issue in respect to any material fact, and the moving party is entitled to judgment as a matter of law." *Quinto v Cross & Peters Co,* 451 Mich 358, 362; 547 NW2d 314 (1996).

III

On appeal, plaintiff contests the trial court's grant of summary disposition under MCR 2.116(C)(5), (C)(8) and (C)(10). Initially, we note that under the limited, prudential doctrine concerning standing recently announced in *Lansing Sch Ed Ass'n v Lansing Bd of Ed,* 487 Mich 349, 372; 792 NW2d 686 (2010), which was issued just days after the trial court ruled in this case, plaintiff does have standing to file a claim against defendant. However, the trial court's dismissal on the basis of standing does not warrant relief because, as discussed below, the trial court properly granted summary disposition under MCR 2.116(C)(8) and (10).

MCL 35.621 authorizes a county board of commissioners to create a county department of veterans' affairs under the administration of a committee comprised of three to five members who are appointed to staggered four-year terms by the county board of commissioners. The statute contains no provisions either allowing or prohibiting removal of the appointees.

Those persons holding public office or occupying a place of public employment in Michigan do not have a property right in that position:

> The question of property right in public office has been definitely settled in this State.

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> A public office cannot be called 'property,' within the meaning of these constitutional provisions (United States Constitution, Fifth Amendment-due process, and Fourteenth Amendment-equal protection of law). If it could be, it would follow that every public officer, no matter how insignificant the office, would have a vested right to hold his office until the expiration of the term. Public offices are created for the purposes of government. They are delegations of portions of the sovereign power for the welfare of the public. They are not the subjects of contract, but they are agencies for the state, revocable at pleasure by the authority creating them, unless such authority be limited by the power which conferred it. *[Detroit v Division 26 of Amalgamated Ass'n of Street, Electric R & Motor Coach Employees of America,* 332 Mich 237, 251; 51 NW2d 228 (1952), quoting *Attorney General, ex rel. Rich v Jochim,* 99 Mich 358, 367; 58 NW 611 (1894).]

Plaintiff did not have a property right in his VA Committee position. See *id.* Plaintiff's position was a delegation of authority from the county board of commissioners and was revocable by the authority that created it. See *id.*

MCL 46.11 sets out additional powers granted to county boards of commissioners. That statute provides in pertinent part:

> A county board of commissioners, at a lawfully held meeting, may do 1 or more of the following: . . .
>
> * * *
>
> (n) Subject to subdivision (o), remove an officer or agent appointed by the board if, in the board's opinion, the officer or agent is incompetent to execute properly the duties of the office or if, on charges and evidence, the board is satisfied that the officer or agent is guilty of official misconduct, or habitual or willful neglect of duty, and if the misconduct or neglect is a sufficient cause for removal. However, an officer or agent shall not be removed for that misconduct or neglect unless charges of misconduct or neglect are preferred to the county board of commissioners or the chairperson of the county board of commissioners, notice of the hearing, with a copy of the charges, is delivered to the officer or agent, and a full opportunity is given the officer or agent to be heard, either in person or by counsel.

Consistent with today's statutory language, our Supreme Court noted the following:

> [s]o far as time and notice of hearing are concerned the board of supervisors do not act in strictness as a court, but as a public board authorized to use their own times and methods subject only to the condition that no one shall be removed without charges and reasonable notice, nor without a full opportunity to be heard. *[Gager v*

Chippewa Supervisors, 47 Mich 167, 169; 10 NW 186 (1881).]

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Revocation of plaintiff's position was allowable based solely on defendant's opinion and satisfaction that plaintiff was guilty of misconduct or neglect following notice of the charges, notice of the hearing, and an opportunity to be heard at that hearing. See MCL 46.11(n).

Plaintiff failed to state a claim on which relief could be granted, and no genuine issue of material fact existed as to whether defendant followed proper procedure in removing plaintiff from the VA Committee. As such, the trial court properly granted summary disposition for defendant.

Affirmed.

Jane M. Beckering
Donald S. Owens
Douglas B. Shapiro

Notes:

[1.] The term "plaintiff" in this opinion refers to Les L. Schneider, only. Plaintiffs Michael Savage and Laurence Riddle are not involved in this appeal.

[2.] The Notice of Hearing sent to Riddle identifies him as the actor responsible for the same conduct.

[3.] According to the parties, there is no record of the hearing, although plaintiff acknowledges his and his attorney's presence at the hearing in his complaint.
