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June 1, 2022

To: Attorney General of Michigan
Re: Ryan D. Kelley Gubernatorial Candidate
and Christopher D. Schormak

Ms. Nessel,

This letter is at the bequest of my clients, Mr. Kelley, and Mr. Schormak regarding a mandatory mask requirement to attend pollworker training. Mr. Schormak received an email confirmation that I have attached with this letter notifying him that face masks are required, and attendance is mandatory to participate if he wants to be a ballot box inspector. Mr. Schormak's training is scheduled for June 13, 2022 from 9 a.m. to 11:30 a.m. Mr. Kelley has also applied for Pollworker Training, not to be an actual pollworker, but to educate himself on the training techniques and voter integrity issues that are always pertinent in any free election in this country. As a gubernatorial candidate and being on the ballot for the primary, Mr. Kelley feels that he needs the training to be better informed. This training will afford him to be better prepared for debates and general questions that he may need to address in the future with the media, other primary candidates and possibly the governor herself should he win his primary. Mr. Kelley's email response, that is attached herein, also has mandatory language that he be masked while attending the training put on by the City of Detroit. Both Mr. Schormak and Mr. Kelley have further concerns that a Covid-19 vaccination may ultimately be put in place to further limit eligibility to participate in the training. Mr. Kelley has advised that a Covid-19 vaccination proof has already occurred in some of the events that he has been asked to attend, or to show a negative Covid test.

As you are probably already aware, the host of the pollworker training is the City of Detroit who will be enforcing a mask mandate to attend training in their building for all applicants.

The purpose of this letter is to instruct the Attorney General's office to uphold and enforce the constitutionally protected rights unequivocally confirmed in the Court of Claims by Judge Gleicher in *Planned Parenthood v. Governor Whitmer*, and the Attorney General's Office in Michigan in 22-000044-MM. Judge Gleicher issued a temporary restraining order against both Governor Whitmer and the Attorney General's Office based on due process, liberty interests and bodily integrity. Under Article I Section 3 of the Michigan constitution, the people have the right peaceably to assemble, to consult for the common good, **to instruct their representatives** and to petition the government for redress and grievances. Ms. Nessel, as the elected attorney general of the State of Michigan and a representative of the people, this latest ruling of the Court of Claims cannot be interpreted differently amongst medical procedures. A court cannot distinguish that one medical procedure carries due process while a different medical procedure is not weighed the same.

The Court of Claims stated that it wanted to dispel any uncertainty in interpreting Michigan's Constitution differently from the interpretations of the federal constitution by the U.S. Supreme Court. The U.S. Supreme Court had repeatedly endorsed the proposition that state courts are absolutely free to interpret state constitutional provisions to accord greater protection to individual rights than do similar provisions of the United States Constitution citing *Florida v. Powell*, 559 US 50, 59; 130 S Ct 1195; 175 L Ed 2d 1009 (2010) and *Sitz v Dept of State Police*, 443 Mich 744, 761-762; 506 NW2d 209 (1993).

In *Sitz*, the Michigan Supreme Court specifically and emphatically addressed its power to interpret Michigan's Constitution more expansively, and in a manner more protective of civil liberties, than the U.S. Supreme Court had interpreted an analogous provision of the federal constitution. The Court of Claims continued that regarding due process rather than the 4th Amendment, that the Michigan Supreme Court made it clear that Michigan's Constitution's due process clause need not be interpreted in lockstep with the Fourteenth Amendment's due process clause.

Judge Gleicher made it abundantly clear that the court is not constrained to adopt the U.S. Supreme Court's analysis of the constitutionality of abortion under the U.S. Constitution but must instead focus its inquiry on the rights and guarantees conferred by the Michigan Constitution. The Court of Claims acknowledged that *Mahaffey*, 222 Mich App at 334 provides a generalized right to privacy but does not embrace a right to abortion and is bound by that precedent. However, the Court wrote that the *Mahaffey* court did not consider "bodily integrity" in its holding or decision. The Court then cited *Mays v. Snyder*, 323 Mich App 1; 916 NW2d 227 (2018) in justification to the carved out due process right to bodily integrity. Judge Gleicher backed its support of bodily integrity by citing *Mays* and *Mays v. Governor of Michigan*, 506 Mich 157, 195; 954 NW 2d 139 (2020) and cites Judge Bernstein's opinion in the order. The Justice's opinion included a U.S. Supreme Court ruling cited as *Union Pacific R Co v. Botsford*, 141 U.S. 250, 251; 11 S Ct 1000; 35 L Ed 734 (1891) and began its discussion citing Justice Thomas M. Cooley's writing "The right to one's person may be said to be a right of complete immunity; to be let alone. Cooley, Torts, 29" *Id.* at 251. Judge Gleicher further elaborates in the right to bodily integrity segment that Justice Cooley's succinct acknowledgment of the right "to be let alone" is now viewed as the foundation for the common law's recognition of the right to bodily integrity. The Court further explains that personal autonomy and bodily integrity have been characterized as essential rights in a multitude of cases predating the adoption of Michigan's 1963 Constitution and cites several other states findings on the same issue. The Court also stated that given its historical provenance and widespread judicial acceptance, there can be no doubt that the right to be let alone-the right to bodily integrity-was understood by the ratifiers of the 1963 Michigan Constitution as a fundamental component of due process. Further, *Mays* did not address whether the due process right to bodily integrity qualifies as fundamental, nor did it need to. "Many fundamental due process rights are not mentioned in our constitutional text but are nonetheless central to our freedoms as Americans and Michiganders." *Id.* at 20

The Court of Claims ties bodily integrity and abortion by citing several cases including *Rochin v. California*, 342 US 165; 72 S Ct 205; 96 L Ed 183 (1952) and *Cruzan v. Director, Mo Dep't of Health*, 497 US 261; 110 S Ct 2841; 111 L Ed 224 (1990). Specifically in *Cruzan*, the Court extensively traced the roots of the informed consent doctrine, drawing on the common law and specifically on cases recognizing the right to bodily integrity: "This

notion of bodily integrity has been embodied in the requirement that informed consent is generally required for medical treatment,” *Id.* at 269, and “generally encompasses the right of a competent individual to refuse medical treatment.” *Id.* at 277. The dicta further states that because every medical procedure implicates a person’s liberty interests in personal privacy and bodily integrity, the Supreme Court reasoned, there is a general liberty interest in refusing medical treatment. *Id.* at 278.

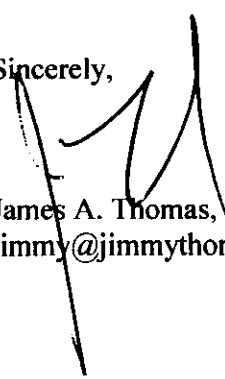
My clients submit that masking is a medical procedure which is ratified in the MDHHS frequently asked questions on how to wear a mask, specifically on page 2 “How do I knot and tuck a medical mask to improve the fit?” It starts off by stating, “A knotted and tucked **medical procedure mask is created** by bringing together the corners and ear loops on each side...”

The Court of Claims specifically stated in the TRO that the rights to reject what my clients submit to be a medical procedure infringes on their bodily integrity to be left alone and as such, the City of Detroit is violating their due process rights, liberty interests and bodily integrity. We are now seeking the interjection of the Attorney General’s Office to intervene to stop the City of Detroit from violating my client’s rights. Being a pollworker is an important role in the voting process to uphold integrity and fairness. Mr. Kelley and Mr. Schormak are instructing the Attorney General’s Office take immediate action to stop the City of Detroit from infringing on their constitutional rights as stated in this letter.

It is the intention of my clients, that failure to act in protecting their rights to bodily integrity will result in a lawsuit being filed in the Court of Claims seeking a restraining order against the City of Detroit and to enforce the Attorney General’s Office to protect these Michigander’s due process, liberty interests, and bodily integrity. This is not to say that my clients would not consider filing a separate action for monetary damages with a jury demand in the jurisdiction where they live for monetary damages under the Elliot-Larsen Civil Rights Act and other causes of action for the failure of the Attorney General’s Office to uphold their constitutional rights.

We are seeking an immediate response prior to filing a lawsuit and would request that the Office of the Attorney General contact counsel by no later than close of day on Thursday June 2, 2022. This is an attempt to mitigate damages and avoid legal action. Thank you for your time, immediate consideration, and response in this matter.

Sincerely,



James A. Thomas, Esquire
jimmy@jimmythomaslaw.com

City of Detroit
DEPARTMENT OF ELECTIONS
JANICE M. WINFREY, City Clerk
Chairperson, Election Commission

City of Detroit
Department of Elections
2978 W. Grand Blvd.
Detroit, MI 48202-3069
876-0227 Fax 876-0053

SCHORNAK, CHRISTOPHER
35602 HERMITAGE COURT
NEW BALTIMORE, MI 48047

Work ID: 273716456
Election Name:
August 2, 2022 Primary
Classification:
BALLOT BOX INSPECTOR

POLLWORKER TRAINING SCHEDULE

BALLOT BOX INSPECTOR

POLLWORKER CLASS SCHEDULE
CLASS ATTENDANCE VERIFICATION FORM

FACE MASK REQUIRED
EAST-WCCCD

5901 CONNER

306 CLASSROOM

06/13/2022 9:00 AM - 11:30 AM
TO WORK ON ELECTION DAY, ATTENDANCE IS MANDATORY

ALL ATTENDEES MORE THAN 15 MINUTES LATE WILL BE REQUIRED TO RESCHEDULE FOR ANOTHER CLASS.

Please present this class attendance verification form to
the instructor to receive credit for attending the
training class.

POLLWORKER PAYMENTS ARE DISTRIBUTED 3 TO 6 WEEKS AFTER EACH ELECTION

NAME (PRINT)

ADDRESS

E MAIL ADDRESS

PHONE