

STATE OF MICHIGAN  
IN THE COURT OF APPEALS

LEE ESTES,

Plaintiff,

Case No.

-AW

v

JOCELYN BENSON, in her official  
capacity as Secretary of State, and  
BOARD OF STATE CANVASSERS,

URGENT ELECTION MATTER

Defendants.

\_\_\_\_\_/

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VERIFIED COMPLAINT FOR DECLARATORY  
JUDGMENT AND MANDAMUS

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

/s/ Mark Brewer  
MARK BREWER (P35661)

Plaintiff Lee Estes (hereinafter “Estes” or “Plaintiff”) for his Verified Complaint for Declaratory Judgment and Mandamus against Secretary of State Jocelyn Benson (“Benson”) and the Board of State Canvassers (“Board”) states as follows:

### **INTRODUCTION**

“No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.”

-US Const, Am XIV, § 3

1. This is an action to prevent Ryan Kelley (“Kelley” or the “Insurrectionist”) from appearing on the November 8, 2022 general election ballot as a candidate for Governor because he has “engaged in insurrection” in violation of § 3 of the Fourteenth Amendment and therefore is ineligible to serve as a candidate for Governor for the State of Michigan. He is a clear and present danger to democracy in Michigan.

### **JURISDICTION AND VENUE**

2. This Court has jurisdiction over Plaintiff’s claims in this declaratory judgment action under MCR 2.605 also seeking mandamus relief under MCR 7.203(C)(2) pursuant to MCL 600.4401, MCR 2.605, and MCR 7.203(C)(2).

### **PARTIES**

3. Plaintiff Estes is a resident and registered voter in Oakland County and intends to vote in the November 8, 2022 general election.

4. Defendant Jocelyn Benson is the duly elected Secretary of State whose duties

include certifying the names of qualified candidates in HD51 for the November 8, 2022 general election ballot.

5. Defendant Board of State Canvassers is charged with the responsibility to canvass the results of the August 2, 2022 primary elections and certify candidates for the general election ballot. MCL 168.167, 168.584, 168.842.

### **FACTUAL ALLEGATIONS**

#### *Kelley Took An Oath to Support the U.S. Constitution and is a Candidate for Governor on the August 2 Primary Ballot*

6. Kelley was appointed to the Allendale Township, Ottawa County Planning Commission in 2019. In order to perform those duties he was required to take an oath to “support the Constitution of the United States.” He did so on December 12, 2019. *See* Exhibit 1

7. On May 26, 2022 Kelley was certified as a Republican candidate for governor on the August 2, 2022 primary election ballot.

#### *Kelley’s Acts of Insurrection*

8. Factual revelations since May 26, 2022 demonstrate that Kelley has violated the Insurrection Clause.

9. On June 8, 2022 a criminal complaint was brought against Kelley for these illegal insurrectionist activities on January 6, 2021 at the U.S. Capitol:

#### **“COUNT ONE**

On or about January 6, 2021, in the District of Columbia, **RYAN KELLEY** did knowingly enter and remain in a restricted building and grounds, that is, any posted, cordoned-off, and otherwise restricted area within the United States Capitol and its grounds, where the Vice President was and would be temporarily visiting, without lawful authority to do so.

**(Entering and Remaining in a Restricted Building or Grounds, in violation of Title 18, United States Code, Section 1752(a)(1))**

## COUNT TWO

On or about January 6, 2021, in the District of Columbia, **RYAN KELLEY** did knowingly, and with intent to impede and disrupt the orderly conduct of Government business and official functions, engage in disorderly and disruptive conduct in and within such proximity to, a restricted building and grounds, that is, any posted, cordoned-off, and otherwise restricted area within the United States Capitol and its grounds, where the Vice President was and would be temporarily visiting, when and so that such conduct did in fact impede and disrupt the orderly conduct of Government business and official functions.

**(Disorderly and Disruptive Conduct in a Restricted Building or Grounds**, in violation of Title 18, United States Code, Section 1752(a)(2))

## COUNT THREE

On or about January 6, 2021, in the District of Columbia, **RYAN KELLEY** willfully and knowingly engaged in any act of physical violence against person or property, in any restricted building or grounds, where the Vice President was and would be temporarily visiting, with the intent to impede, disrupt, and disturb the orderly conduct of a session of Congress and either House of Congress, and the orderly conduct of that building of a hearing before or any deliberation of, a committee of Congress or either House of Congress.

**(Knowingly Engage in any Act of Physical Violence Against Person or Property in any Restricted Building or Grounds** in violation of Title 18, United States Code, Section 1752(a)(4))

## COUNT FOUR

On or about January 6, 2021, in the District of Columbia, **RYAN KELLEY** did willfully injure and commit depredation, and did attempt to do the same, against property of the United States, and any of department agency thereof, and any property which has been and is being manufactured and constructed for the United States, and any department or agency thereof, that is the tarp covering the northwest scaffolding of the United States Capitol Building, causing damage in an amount less than \$1,000.

**(Destruction of Government Property**, in violation of Title 18, United States Code, Sections 1361 and 2)”

Exhibit 2 at 2-4. He has pled not guilty to these charges.

10. The complaint detailed Kelley’s insurrectionist activities at the U.S. Capitol on January 6, 2021. The following paragraphs 11-31 are taken from the FBI investigative affidavit included as part of Exhibit 2.

11. Based on a review of publicly available images, videos, news article, and other online resources, the following record of the activities of the individual alleged to be KELLEY on January 6, 2021 at the U.S. Capitol was assembled:

At approximately 1:30 p.m. on January 6, 2021, a video of the event that was posted online displays an individual wearing the aviator sunglasses and backwards black baseball cap at about the 7 minute, 9 second mark. This indicates that KELLEY gathered near the entrance to the North Western scaffolding on the Western side of the U.S. Capitol. The individual with the sunglasses and baseball cap is pictured below. A screenshot from the video posted online in a publicly available location, is below.



Source: <https://www.youtube.com/watch?v=xmF7qQdferQ&feature=youtu.be>  
 (“4K Footage from Capitol Grounds during January 6 Insurrection.mp4”)

12. While near the entrance to the North Western scaffolding on the Western side of the U.S. Capitol, which provided access to the stairs leading towards the entrance to the U.S. Capitol building, KELLEY, the individual with a black coat, aviator sunglasses, and a red watch band, uses their phone to film the crowd assaulting and pushing past U.S. Capitol Police Officers.



<https://www.youtube.com/watch?v=9mt8YGpJ5vs&feature=youtu.be>  
 “Capitol Protest in WashingtonD.C. on January 6- 2021.mp4” at 5:38”

13. On January 19, 2021, FBI personnel identified that the below image likely shows KELLEY. The media or a video which shows KELLEY, wearing a black hat and a black coat, is in a crowd of people who are assaulting and pushing past law enforcement officers. The individual noted is pictured below near the center of the photo. The area of the U.S. Capitol shown in this image is marked with a red circle on the map. Another screenshot from the same video, posted online in a publicly available location, is below.



<https://www.youtube.com/watch?v=9mt8YGpJ5vs&feature=youtu.be>  
 “Capitol Protest in WashingtonD.C. on January 6- 2021.mp4” at 5:38

14. Publicly available news media reporters and photographers captured images of the North Western scaffolding on the Western side of the U.S. Capitol. This is one such image, which shows another vantage point on the Crowd engaged with the U.S. Capitol Police on North West stairs, which KELLEY recorded with his cell phone. KELLEY off camera to the left. The area of the U.S. Capitol shown in this image is marked with a red circle on the map. A photo of the area that KELLEY, wearing a black hat and a black coat, recorded with his cellular telephone, is shown below.



Source: <http://www.brentstirton.com/capitol-riots-washington-dc>

15. After causing the U.S. Capitol Police officers to retreat, the crowd climbed the stairs toward the entrance to the interior of the U.S. Capitol. At approximately 1:51 p.m., KELLEY moved towards the side of the nearby stairs and began to climb onto an architectural feature next to those stairs. In this publicly available news media image, KELLEY can be seen through the scaffolding on the stairs. Other members of the crowd are also identifiable. Another image, from a news media reporter, shows KELLEY climbing near the scaffolding.



Source: Washington DC A Reporter's Footage from Inside the Capitol Siege The New Yorker.mp4 at 2:01

16. At approximately 2:00 p.m., KELLEY climbed onto and stood on an architectural feature next to the North West stair and indicated by waving his hand that the crowd behind him should move towards the stairs leading into the U.S. Capitol building. This activity can be seen in a video that was posted online on the internet site YouTube.



Source: <https://www.youtube.com/watch?v=3oqQ13b4tCQ&feature=youtu.be>  
At 2:11, (“Youtube Remember45 Channel – Heads on pikes – Compilation of footage from around Capitol grounds.mp4”).

This activity was also captured on CCV, showing KELLEY using his hands to support another rioter who is pulling the metal barricade on the scaffolding.



17. KELLEY remained standing on the architectural feature next to the North West stairs and, at approximately 2:05 p.m., used his hands to pull a covering off of a temporary structure

that U.S. Capitol personnel has erected in support of a future planned event.



Source: [periscope] Al Jazeera News – BREAKING – US Capitol on lockdown – 1MYxNmNwwPnJw.mp4

18. At approximately 2:20 p.m., KELLEY continued to gesture to the crowd, consistently indicating that they should move towards the stairs that led to the entrance of the U.S. Capitol interior spaces. In these images from Reuters new agency (left) and from a video posted to the website Twitter (right), KELLEY continues to gesture to the crowd.



Sources:

Reuters and BBC Turkey at (<https://www.sondakika.com/haber/haber-abd-kongresi-200-yil-sonra-ilk-kiz-saldiriya-13850440/>) and Twitter at (<https://twitter.com/ChuckModi1/status/1346934689005666305?s=20>)

19. At approximately 2:25 p.m., the individual in the black hat uses his cell phone to take a picture of blood on an architectural feature at the U.S. Capitol Grounds, while standing on same, in a video posted to YouTube (left). The same individual is identifiable in a crowd as a police barricade is removed, in an image poster to the image sharing site Flickr (right).



Source: YouTube (left) [https://www.youtube.com/watch?v=xmF7qQdfcrQ\\*feature=youtu.be](https://www.youtube.com/watch?v=xmF7qQdfcrQ*feature=youtu.be) (“4K Footage from Capitol Grounds during January 9 Insurrection.mp4”) at 10:28. Flickr (right) <https://flickr.com/photos/49283984@N05/50836136873/in/photostream/>

20. At approximately 2:28 p.m., the same individual runs on top of the stair railing towards the U.S. Capitol’s North West Courtyard. These images from a video posted to YouTube show the individual running towards the North West Courtyard. The area of the U.S. Capitol shown in this image is marked with a red circle on the map.



Source: [Youtube] 4K Footage of Trump Supporters Storm Capitol Building during January 6 Insurrection – SCNR – Fully Reviewed Howland.mp4 at 7:47-8:08

21. Soon afterwards at about 2:29 p.m. the individual arrives at the top of the stairs and enters the U.S. Capitol’s North West Courtyard and uses their thumb to motion towards the doors to the interior of the U.S. Capitol Building. These actions were recorded in videos for banthis TV and the New York Times (left) and for the Propublica non-profit journalism organization (middle). The area of the U.S. Capitol shown in this image is marked with a red circle on the map.



Source: (left) <https://banthis.tv/watch?id=5ff6857e00bac0328da8e888>  
 (“Washington DC Capitol Resistance Video banthis.tv banned-video CLIP.mp4”)  
 (middle) <https://projects.propublica.org/parker-capitol-videos/?id=fo1Bh9ciOrwi>

22. At approximately 3:26 pm., the individual in the black hat is seen in the U.S. Capitol’s North West Courtyard. By this time, U.S. Capitol police have regained control of many parts of the interior of the U.S. Capitol building, and were instructing unauthorized persons to leave the area. This is the last time at which this individual is noted.



Source: <https://youtu.be/UvDxqV6CHpg>  
 (“Cop Vs The American People”)

*Further FBI Investigation Confirming Identification of Ryan D. Kelley*

23. In May of 2020, KELLEY attended the American Patriot Council “Judgement Day” rally in Lansing, Michigan. During that event, KELLEY wore a backwards black hat, a blue shirt, and a black coat. Parts of this attire were also worn by KELLEY in photos and videos from the U.S. Capitol grounds on January 6, 2021. During that event, KELLEY also stated that: : “...the American Patriot Rally was organized with one thing in mind: to encourage the senate to vote no on extending [Governor] Whitmer’s emergency declaration, which they did. It was a victory....we got exactly what we came for.” (Source: <https://griid.org/2020/05/12/more-anti-lockdown->

[protests-planned-for-may-14-in-landing-and-grand-rapids/](#)). KELLEY appears at the May 2020 event in the image below.



Image source: <https://www.americanpatriotcouncil.org/militia-members-stand-for-order-and-patriotism>

24. In October of 2020, KELLEY attended the “American Patriot Council Nationwide Freedom March” in Allendale, Michigan. During that event, KELLEY wore a blue shirt, a black coat, a watch with a red watch band, and aviator sunglasses. Parts of this attire were also worn by KELLEY in photos and videos from the U.S. Capitol grounds on January 6, 2021. KELLEY appears in this event in the image below.



Source: The Holland Sentinel online article.

25. In November of 2020, KELLEY was a featured speaker and introduced by name at a “Stop the Steal” rally at the Michigan Capitol in Lansing. During that event, KELLEY indicated that those attending the rally should stand and fight, with the goal of preventing Democrats from stealing the election. He gave a speech while wearing a name tag and stated “Covid-19 was made so that they can use the propaganda to control your minds so that you think, if you watch the media, that Joe Biden won this election. We’re not going to buy it. We’re going to stand and fight for

America, for Donald Trump. We're not going to let the Democrats steal this election.”

<https://www.facebook.com/watch/live/?v=368926927753596>

“Ryan Kelley 11-14-2020 Stop the Steal Rally Facebook WXYZ-TV-Channel-7-fbdown.net.mp4”



Protest in Lansing Saturday in support of President Trump



Protest in Lansing Saturday in support of President Trump

26. Also in November 2020, KELLEY maintained an online presence on social media and on Twitter, and used these online services to post publicly available messages. This post has a name of Ryan D. Kelley and a photo of him. It states “Expose the corrupt Democrats and try them for treason! #justisiscoming.” This photo shown below is a screenshot of a social media post.



CHS1 pointed out that KELLEY had made this publicly available tweet from the account @RyanKelley on November 21, 2020.

**Allendale Township board member seen at US Capitol riot**



By Robert Jantz  
Posted: Jan 25, 2021 11:12 PM EST / Updated: Jan 26, 2021 09:19 AM EST  
ALLENTOWN, Mich. (WOOD) — The Allendale Township Commission was grilled by community members Monday night after video surfaced of Planning Commissioner Ryan Kelley taking part in the insurrection at the U.S. Capitol on Jan. 6.

Source: <https://www.woodtv.com/news/national/allendale-board-member-seen-at-us-capitol-riot/amp/>

27. Also, in a February 2, 2021 video interview with a local television news channel, KELLEY speaks about being at the U.S. Capitol on January 6, 2021, and denies having gone inside the building. KELLEY refuses to identify whether he is the individual wearing a dark coat and black baseball cap in photos shown to him by the reporter.



Source: <https://www.facebook.com/watch/?v=432516104605814>

28. In a continued effort to conclusively identify the individual alleged to be KELLEY, the FBI interviewed three people familiar with KELLEY to confirm his identity. On March 31, 2021, FBI agents interviewed a person who knows KELLEY personally, Witness 1. Witness 1 sees KELLEY in person once or twice per week. When presented with a collection of pictures of KELLEY from January 6, 2021, Witness 1 positively identified them as KELLEY. Witness 1 was confident in the identification of KELLEY.



29. On April 3, 2021 FBI interviewed a law enforcement officer from Ottawa County Sheriff's Office (OSCO), Witness 2. OSCO Deputies work in and around the Allendale, Michigan area, including Allendale Township and the Allendale Township Town Hall. As part of these official duties, Witness 2 sees or interacts with KELLEY approximately every few months. At the time of the interview, Witness 2 estimated that it had been approximately three months since the last in-person encounter with KELLEY. When presented with a collection of pictures from January 6, 2021, Witness 2 positively identified them as KELLEY. Witness 2 was confident in the identification of KELLEY.



30. On March 3, 2021, FBI interviewed a public official of Allendale Township who

knows KELLEY personally, Witness 3. When presented with pictures of the individual at the U.S. Capitol believed to be KELLEY, Witness 3 positively identified the pictures as KELLEY. Witness 3 stated that he was not sure enough to testify to this fact in legal proceedings however because Witness 3 had never seen KELLEY in a hat.



31. In a further attempt to identify whether images identified by investigators were of Ryan KELLEY, the following information was presented to an FBI Assistant Special Agent in Charge who interviewed Ryan KELLEY in person in FBI office space on July 30, 2020. The ASAC was able to identify KELLEY in the following two photos:



32. Kelley refers to himself as a “J6er,” referencing his admitted presence at the U.S. Capitol as part of the violent insurrectionist mob. *See* Exhibit 3.

33. Kelley has participated in other insurrectionist activities, including calling for election audits and decertifying the Michigan election. *See* Exhibit 5.

*The Insurrection Clause and Its Meaning*

34. Section 3 of the Fourteenth Amendment states in pertinent part:

No person shall . . . hold any office, civil or military . . . under any State, who, having previously taken an oath . . . as an executive or judicial

officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same.

35. Under the Supremacy Clause, the Insurrection Clause applies to any state or local official such as Kelley who has taken an oath to support the U.S. Constitution. It applies to insurrectionist state and local officials regardless of whether they've been charged with a crime or whether Congress has taken action against them. *See Worthy v Barrett*, 63 NC 199 (1869) (county sheriff who held office before and during the Civil War disqualified from office by § 3); *In re Tate*, 63 NC 308 (1869) (state solicitor who was a county attorney before the Civil War and served in the Confederate Army disqualified by § 3).

36. A person violates the Insurrection Clause by “voluntary[ily] . . . assist[ing] the Insurrection or Rebellion,” *United States v Powell*, 65 NC 709, 27 F Cas 605, 607 (DCNC 1871), or by “[v]oluntarily aiding the rebellion, by personal service, or by contributions, other than charitable, of any thing that was useful or necessary in the Confederate service.” *Worthy, supra*, 63 NC at 202. A criminal conviction is therefore not necessary to prove a violation of the Insurrection Clause.

37. An insurrection does not have to result in an organized rebellion. *See The Amy Warwick (The Prize Cases)*, 67 US 635, 666-68 (1862). Nor does a lack of success – here, failure to stop the counting of electoral votes and overturn the presidential election – mean that an insurrection didn't occur. *See Home Ins Co of NY v Davila*, 212 F2d 731, 736 (CA1 1954) (“An insurrection aimed to accomplish the overthrow of the constitutional government is no less an insurrection because the changes of success are forlorn.”).

*The Events Leading Up To and Occurring On  
January 6, 2021 Were An Insurrection.*

38. On January 6<sup>th</sup>, speakers at the pre-riot rally repeatedly advocated violence.

Trump’s lawyer, Rudy Giuliani, called for “trial by combat.” Representative Mo Brooks urged the crowd to be prepared to sacrifice their “blood” and “lives,” and to “do what it takes to fight for America” by “carry[ing] the message to Capitol Hill,” since “the fight begins today.” Trump told the mob to march on the Capitol, saying “if you don’t fight like hell, you’re not going to have a country anymore.” See Wash Post, *Trump, Republicans incite crowd before mob storms Capitol*, YouTube (Jan 6, 2021) <https://youtu.be/mh3cbd7niTQ>; The Hill, *Mo Brooks give FIERY speech against anti-Trump Republicans, socialists*, YouTube (Jan 6, 2021), <https://www.youtube.com/watch?v=ZKHwV6sdrMk>; *During: Bloodshed*, Wash Post (Oct 31, 2021), <https://www.washingtonpost.com/politics/interactive/2021/what-happened-trump-jan-6-insurrection/>.

39. Events at the Capitol that day are infamous and well-known: barriers were taken down by the mob and used as weapons; armed protestors attacked Capitol police and broke into the Capitol which was ransacked; the House and Senate were forced to adjourn and evacuate; the insurrectionists took control of offices and both legislative chambers; 5 people died and over 150 police officers were injured; and Congress’ tallying of the electoral votes was delayed by 6 hours. *Id.*, *What Happened on Jan 6*, Wash Post (Oct 31, 2021).

40. Those events were an insurrection. As then-Senator Majority Leader McConnell stated in the evening January 6, 2021, it was a “failed insurrection.” Fandos, *Resuming electoral counting, McConnell condemns the mob assault on the Capitol as a ‘failed insurrection,’* NY Times (Jan 6, 2021). He reiterated that conclusion a year later:

We saw it happen. It was a violent insurrection for the purpose of trying to prevent the peaceful transfer of power after a legitimately certified election, from one administration to the next. That’s what it was.

Weisman & Karni, *McConnell Denounces RNC Censure of Jan 6 Panel Members*, NY Times (Feb

8, 2022).

41. Representative Peter Meijer of Michigan described the January 6 attack as “a violent attempt to interfere with the proceedings of Congress, and specifically the certification of the Electoral College results.” *Death threats, primary challenge follow Rep. Meijer’s vote to impeach Trump after Jan 6*, PBS (Jan 4, 2022).

42. Those events were an insurrection. *See, e g*, Articles of Impeachment, 167 Cong Rec No 28 (Feb 13, 2021) (describing the assault on the Capitol as an “insurrection” in articles of impeachment adopted on a bipartisan basis).

43. The Department of Justice has charged more than ten individuals with seditious conspiracy for their role in the January 6 attack, in which two or more persons “conspire to overthrow, put down, or to destroy by force the Government of the United States, or to levy war against them, or to oppose by force the authority thereof, or by force to prevent, hinder, or delay the execution of any law of the United States, or by force to seize, take, or possess any property of the United States contrary to the authority thereof.” 18 U.S.C. § 2384. *See* Department of Justice Press Release, *Leader of Oath Keepers and 10 Other Individuals Indicted in Federal Court for Seditious Conspiracy and Other Offenses Related to U.S. Capitol Breach* (Jan 13, 2022), <https://bit.ly/3twSYYp>. One of the co-conspirators has pleaded guilty to seditious conspiracy.

Department of Justice Press Release, *Leader of Alabama Chapter of Oath Keepers Pleads Guilty to Seditious Conspiracy and Obstruction of Congress* (Mar. 2, 2022), <https://bit.ly/3iru3zo>.

44. Hundreds of people like Kelley have been charged criminally based on their illegal activities on January 6, 2021. *See* Exhibit 4.

**COUNT I – DECLARATORY JUDGMENT: KELLEY IS AN INSURRECTIONIST UNDER § 3 OF THE FOURTEENTH AMENDMENT AND IS DISQUALIFIED FROM SEEKING OFFICE**

45. Plaintiff incorporates the prior paragraphs as if set forth word for word.

46. MCR 2.605(A)(1) states: “In a case of actual controversy within its jurisdiction, a Michigan court of record may declare the rights and other legal relations of an interested party seeking a declaratory judgment, whether or not other relief is or could be sought or granted.” The Michigan Supreme Court has held that “[a]n actual controversy exists when a declaratory judgment is needed to guide a party’s future conduct in order to preserve that party’s legal rights.” *League of Women Voters of Mich v Sec’y of State*, 506 Mich 561, 586; 957 NW2d 731 (2020).

47. There is an actual controversy because Plaintiff has a legal right to have only eligible candidates on the general election ballot. *See Barrow v City of Detroit Election Comm’n*, 301 Mich App 404, 412; 836 NW2d 498 (2013), *lv den*, 494 Mich 866; 831 NW2d 461 (2013).

48. Kelley has violated the Insurrection Clause, is ineligible to appear on the general election ballot, has no legal right to appear on that ballot, and Plaintiff is entitled to declaratory judgment to preserve his right to have only eligible candidates on the general election ballot.

**COUNT II – MANDAMUS: DEFENDANTS SHOULD BE ORDERED NOT TO COUNT VOTES CAST FOR KELLEY ON AUGUST 2d, AND NOT TO PLACE KELLEY ON THE GENERAL ELECTION BALLOT**

49. Plaintiff incorporates the prior paragraphs as if set forth word for word.

50. A writ of mandamus is issued by a court to compel a public officer to perform a clear legal duty. *Jones v Dep’t of Corrections*, 468 Mich 646, 658; 664 NW2d 717 (2003). “Mandamus is the appropriate remedy for a party seeking to compel action by election officials.” *Attorney General v Bd of State Canvassers*, 318 Mich App 242, 248; 896 NW2d 485 (2016) (citation omitted).

51. To be entitled to a writ of mandamus, a plaintiff must show that: “(1) the plaintiff has a clear, legal right to performance of the specific duty sought, (2) the defendant has a clear

legal duty to perform, (3) the act is ministerial, and (4) no other adequate legal or equitable remedy exists that might achieve the same result.” *Rental Props Owners Ass’n of Kent Co v Kent Co Treasurer*, 308 Mich App 498, 518; 866 NW2d 817 (2014) (citation omitted).

52. A clear legal right is “one clearly founded in, or granted by, law; a right which is inferable as a matter of law from uncontroverted facts regardless of the difficulty of the legal question to be decided.” *Rental Props Owners Ass’n*, 308 Mich App at 518-19 (citation omitted).

53. Plaintiff has a clear legal right to have only qualified candidates on the general election ballot. *See Barrow*, 301 Mich App at 412.

54. Defendants have a clear legal duty, grounded in statute, to place only eligible candidates on the general election ballot. *See id.*

55. “The inclusion or exclusion of a name on a ballot is ministerial.” *Id.*

56. Plaintiff has no other adequate legal or equitable remedy that might achieve the same results and mandamus is the proper remedy to prevent ineligible candidates such as the Insurrectionist Kelley from being placed on the general election ballot. *See id.*

57. Kelley is not qualified to be on the general election ballot, Plaintiff has a clear legal right that Kelley not appear on that ballot, Defendants have a clear legal duty not to count votes cast for Kelley on August 2d and not to place Kelley on that ballot, and Plaintiff has no other remedy except mandamus.

**THIS IS AN URGENT ELECTION MATTER REQUIRING IMMEDIATE ACTION**

58. Plaintiff incorporates the previous paragraphs fully set forth word for word.

59. The primary election in which Kelley is a candidate is August 2, 2022. Voters are already voting unaware of Kelley’s ineligibility.

60. Declaratory judgment actions may be expedited, MCR 2.605(D), and election

matters should be expedited, *see* MCR 7.213(C)(4); *Scott v Mich Dir of Elections*, 490 Mich 888; 804 NW2d 119 (2011).

61. This matter should be expedited so voters are aware of Kelley’s ineligibility.

**PRAYER FOR RELIEF SOUGHT**

For the reasons stated Plaintiff asks that the Court:

1. Declare that Ryan Kelley has violated the Insurrection Clause and is ineligible to be a candidate for Governor;
2. Order Benson to advise voters that Kelley is ineligible to be governor and that votes for him in the August 2<sup>nd</sup> primary will not be counted;
3. Order Benson to advise voters that have already voted for Kelley how to spoil their ballots and vote for another candidate;
4. Order Benson and the local clerks she supervises not to count votes cast for Kelley in the August 2<sup>nd</sup> primary;
5. Order the Defendants not to place or to certify Kelley on the general election ballot;
6. Expedite the hearing and disposition of this matter; and
7. Grant such other relief as necessary or appropriate.

Respectfully submitted,

/s/ Mark Brewer

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Dated: July 14, 2022



