STATE OF MICHIGAN
IN THE COURT OF APPEALS

LARRY CHARLES INMAN,

Appellant,

Court of Appeals No. 350173

-v-

STATE BOARD OF CANVASSERS,
SONDRA HARDY, and STACI HAAG.

Appellees.
_____/

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APPELLEES SONDRA HARDY AND STACI HAAG BRIEF ON APPEAL

ORAL ARGUMENT REQUESTED

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STATEMENT OF JURISDICTION

This Honorable Court has jurisdiction pursuant to MCL 168.915a(6).

STATEMENT OF QUESTION PRESENTED

Did Appellee, the Board of State Canvassers, err as a matter of law when it unanimously approved the language of the petition submitted by Appellees Sondra Hardy and Staci Haag (collectively "Sponsors") to recall Representative Larry Inman from office?

Appellant Inman answers: Yes.

Appellee Board of State Canvassers answers: No.

Appellees Sponsors Hardy and Haag answer: No.

STATEMENT OF FACTS

On November 6, 2018, Rep. Larry Inman was re-elected State Representative for Michigan's 104th District, encompassing all of Grand Traverse County. His term of office began January 1, 2019.

On May 14, 2019, Rep. Inman was charged by way of federal Indictment in the Western District of Michigan (Case Number 1:19-CR-00117-RJJ, *United States v. Larry Charles Inman*).[1] A copy of the Indictment was included as Exhibit A with Sponsors' submission to the Board. Rep. Inman was charged with Attempted Extortion Under Color of Official Right (a violation of 18 U.S.C. § 1951); Solicitation of a Bribe (a violation of 18 U.S.C. § 666(a)(1)(B)); and False Statement to the FBI (a violation of 18 U.S.C. § 1001(a)(2)). Chief Judge Robert Jonker is the presiding judge.

On June 18, 2019, Rep. Inman filed a *Notice of Intent to Present Evidence of Defendant's Diminished Cognitive Ability as a Result of the Use of Prescription Pain Medication* ("Notice").[2] A copy of the Notice was included as Exhibit B with Sponsors' submission to the Board. The filing states Defendant Inman comes, by and through his attorneys, and gives notice of "Defendant's intention to present expert testimony and related evidence of diminished cognitive ability bearing on the issue of whether or not defendant had the requisite mental state required for the charged offenses."

In response to the filing of this Notice, on June 24, 2019, Judge Jonker issued an order that stated the Notice had been docketed as a "Notice re: Diminished Capacity Defense."[3] A copy of the Order was included as Exhibit C with Sponsors' submission to

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[1] See Appellant's Appendix, Ext 1 (Indictment).

[2] See Appellant's Appendix, Ex 2 (Notice of Intent).

[3] Appellee Sponsors' Appendix, Ex 1 (Order), p. 1.

the Board. The Order noted that Defendant Inman's filing had been docketed as "Notice *re: Diminished Capacity*" (Order, p. 1) and referred to the filing as a "Notice of Diminished Capacity" and the "diminished capacity defense". (Order, p. 2).

Since the unsealing of the federal indictment, Rep. Inman missed over 80 votes in the House of Representatives. Sponsors provided as Exhibits D and E to the recall petition proof of these missed votes, including (a) a list compiled by Michigan Votes, as well as (b) the relevant Michigan House Journal voting records for the dates May 16, 2019 through June 20, 2019.[4]

On July 19, 2019, the Petition Sponsors timely submitted to the Board of State Canvassers a printed Recall Petition against Representative Rep. Inman, with the header stating the reasons:

> Since Larry Inman was indicted on three felony counts on May 14, 2019: Attempted Extortion Under Color of Official Right (Count 1); Solicitation of a Bribe (Count 2); and False Statement to the FBI (Count 3), Inman has filed notice asserting a diminished capacity defense and missed over 80 votes in the Michigan House of Representatives.[5]

The Petition was received by the Board of State Canvassers on July 22, 2019.

Each of the stated reasons in the recall petition occurred during Rep. Inman's current term of office, which began on January 1, 2019. The petition included a certificate of the circulator. The Sponsors attached five exhibits in support of the petition, as discussed above. Each exhibit was created and/or compiled by third parties independent of the Petition Sponsors. Each exhibit provided objective factual support for the language of the petition.

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[4] Appellees Sponsors' Appendix, Ex 2 (Michigan Votes List) and Ex 3 (MI House Journal).

[5] See Appellant's Appendix, Ex 3 (Recall Petition).

On July 25, 2019, the Michigan Bureau of Elections provided notice pursuant to MCL 168.951a(4) of a meeting by the Board of State Canvassers to consider the legal sufficiency of the reasons for the recall. The meeting was held August 1, 2019 at 10:00 am. In advance of the meeting, the Petition Sponsors submitted a brief supporting the petition and Rep. Inman submitted a brief opposing the recall petition.

The Board of State Canvassers heard arguments from counsel for both the Petition Sponsors and for Rep. Inman. Counsel for Rep. Inman characterized the word "indictment" in the petition as "salacious" and suggested that "[a]n indictment is no more than a federal ticket just like a police officer would give you for blowing a yield sign".[6] Counsel for Rep. Inman, when addressing the filing of the Notice of Diminished Capacity Defense, stated, "[m]aybe they don't want to assert that Representative Inman got caught in the clutches of an opioid prescription pain medication abuse and addiction issue for which he is now in inpatient treatment. Maybe they didn't want to put that out there on the petition. *But that is why we asserted this defense*."[7]

At the close of oral argument, Board Member Matuzak moved as follows:

> I move that the Board of State Canvassers determine that the recall petition filed by Staci Haag and Sondra Hardy on July 22, 2019, states factually and clearly each reason for the recall of State Representative Larry Inman because we have -- I never know what to say at this point -- because we have seen the documents including court filings and records of absences that indicates this is, in fact, a factual petition.[8]

All four members of the Board unanimously approved the motion.[9]

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[6] Appellees Sponsors' Appendix, Ex 4 (Transcript), p. 15.

[7] Appellees Sponsors' Appendix, Ex 4 (Transcript), pp. 16, 17.

[8] Appellees Sponsors' Appendix, Ex 4 (Transcript), pp. 24-25.

[9] *Id.*, p. 25.

Appellant Inman, through legal counsel, filed a Claim of Appeal August 12, 2019.

The Petition Sponsors began circulating the recall petition on September 23, 2019, following the 40-day statutory period provided in MCL 168.951a(6) (petition may not be circulated “until a determination if each reason is factual and of sufficient clarity is made by the court of appeals or until 40 days after the date of the appeal, whichever is sooner.”).

ARGUMENT

I. Introduction

The Michigan Constitution guarantees citizens the right to recall our elected offices. Const. 1963, Art. 2, Sec. 9. The Michigan Legislature enacted statutes providing the procedures by which citizens may exercise our constitutional right to recall elected officials. Although the Board of State Canvassers serves as a gatekeeper by whom the recall petition must be approved, its discretion to approve or not approve the recall is narrow. And the Michigan Courts have recognized the very limited scope of judicial review over a recall petition. Petition Sponsors submitted clear and factual reasons to support the recall of Rep. Inman. The Board of State Canvassers found the language factual and clear and unanimously approved the petition.

Appellant Inman now requests the Court reverse Board of State Canvassers decision. He argues that it is improper to recite language from the "unproven federal indictment" and the filed notice of diminished capacity in the recall petition because these are actions of others, not Rep. Inman. He further asserts that the recall petition would infringe on Defendant Inman's rights in a pending criminal case against him. Appellant Inman's arguments requesting this Court to overturn the Board's decision are contrived and misguided, and nevertheless ignore the deference due to both Petition Sponsors and voters. For the reasons discussed below, Appellees Hardy and Haag respectfully request that the Court affirm the Board of State Canvassers' decision that the petition is factual and clear.

II. Legal Framework for Regulatory and Judicial Review of Recall Petitions

A. The citizens' right to seek to recall our elected officials is a right protected by the Michigan Constitution.

The Michigan Constitution gives citizens the right to recall elected officers:

> Laws shall be enacted to provide for the recall of all elective officers except judges of courts of record upon petition of electors equal in number to 25 percent of the number of persons voting in the last preceding election for the office of governor in the electoral district of the officer sought to be recalled. The sufficiency of any statement of reasons or grounds procedurally required shall be a political rather than a judicial question. Const 1963, Art 2, Sec. 8.

A constitutional provision must be read in the "sense most obvious to the common understanding; the one that reasonable minds, the great mass of people themselves, would give it." *House Speaker v Governor,* 443 Mich 560, 577; 506 NW2d 190 (1993) (internal quotation and citation omitted). One may also consider the circumstances surrounding the adoption of the provision, which may include consideration of the constitutional convention record and reference to existing law and custom at the time of the Constitution's adoption. *Id.* at 580–581. The constitutional convention that revised this provision provided the following comment, which is instructive in this case:

> This is a revision of the recall provisions of Sec 8, Article III, of the present [1908] constitution strengthening it somewhat by stating that the reasons for a recall shall be a political question, so that the courts cannot set aside a recall on the grounds that the reasons for it are in some way inadequate. *Mastin v Oakland Co Election Comm,* 128 Mich App 789, 793; 341 NW2d 797(1983).

Michigan courts have long recognized that the right to recall an elected official is reserved to the voters of this state by our state Constitution. See, e.g., *Hooker v. Moore*, 326 Mich App 552, 555; 928 NW2d 287 (2018). The current statutory form of Michigan's

recall act "is a result of 16 amendments, including a major 2012 amendment." Selberg, Janice, *The Recall Process in Michigan*, Michigan Bar Journal, January 2014.

Our Supreme Court, in *Citizens Protecting Michigan's Constitution v. Sec'y of State*, proclaimed "[o]ur Constitution is clear that '[a]ll political power is inherent in the people.'" 503 Mich 24, 59; 921 NW2d 247 (2018). The Court further recognized:

> Indeed, Michigan is one of the leading states when it comes to direct democracy reforms. In addition to retaining the right to amend the Constitution by direct initiative, the people of Michigan have also reserved the power to propose and enact statutes by initiative; to reject statutes by referendum; and to recall elected officials. Michigan is one of only eight states whose people have retained each of these forms of direct democracy. *Id*. (internal citations omitted).

Petition Sponsors Hardy and Haag seek to exercise the power expressly reserved to them in our state constitution to recall Rep. Inman. The constitution declares that the sufficiency of the statement of reasons "shall be a political rather than a judicial question." It is against this powerful manifesto that Appellant Inman now asks this court to halt the recall petition.

B. <u>The Michigan Legislature has established the procedures for citizen efforts to recall our elected officials.</u>

The Michigan Legislature adopted the statutory procedures for the recall of elected officials pursuant to PA 116 of 1954, MCL 168.951 *et seq*. Because Rep. Inman is a representative in the state legislature, this recall is brought under MCL 168.959.

Specific to the petition, MCL 168.951a(1) provides:

> (1) A petition for the recall of an officer listed in section 959 shall meet all of the following requirements:
>
> (a) Comply with section 544(c)(1) and (2).
>
> (b) Be printed.
>
> (c) State factually and clearly each reason for the recall. Each reason for the recall shall be based upon the officer's conduct during his or her current term of office. The reason

> for the recall may be typewritten. If any reason for the recall is based on the officer's conduct in connection with specific legislation, the reason for the recall must not misrepresent the content of the specific legislation.
> (d) Contain a certificate of the circulator. The certificate of the circulator may be printed on the reverse side of the petition.
> (e) Be in a form prescribed by the secretary of state.

The petition for recall must be submitted to the Board of State Canvassers prior to circulating the recall petition. MCL 168.951a(2). Upon submission, the Board must meet and make a determination if "each reason for the recall stated in the petition is factual and of sufficient clarity to enable the officer whose recall is sought and the electors to identify the course of conduct that is the basis for the recall." MCL 168.951a(3). Should the Board determine that "any reasons for the recall is not factual or of sufficient clarity," then the entire petition must be rejected. MCL 168.951a(3).

Within 10 days, the Board's determination may be appealed by the officer or the petition sponsors. MCL 168.951a(6). In case of an appeal, the petition is not valid for circulation until the court determines whether each reason is factual and of sufficient clarity, or until 40 days after the appeal, whichever is sooner. *Id.*

C. <u>Michigan courts provide narrow discretion to the Board and Court to deny approval of the recall petition language but reserve the ultimate determination for recall to the electorate.</u>

The Michigan Supreme Court has long-standing precedent holding that the discretion to approve or disapprove petitions is narrow. *Wallace v Tripp*, 358 Mich 668; 101 NW2d 312 (1960). The Court in *Wallace* held that the sufficiency of reasons in a recall petition is a determination for the electorate rather than the courts:

> The general rule appears to be that absent specific constitutional or statutory requirements, the sufficiency of reasons in a recall petition is for the determination of the electorate rather than the courts.
> …

> Michigan's Constitution and statute require a clear statement of reasons for recall based upon an act or acts in the course of conduct in office of the officer whose recall is sought. ***Beyond this, the Constitution reserves the power of recall to the people***. The basic power is held by the people in both our nation and our State. Our State Constitution as presently drawn places much confidence in the proper functioning of an intelligent and informed electorate. *Id.* at 680 (internal citations omitted; emphasis added).

The Court of Appeals noted, in *Mastin*, that the framers of the Michigan Constitution embraced the philosophy favoring recalls predicated on any identifiable acts by an elected official, without respect to whether the act or acts in question constituted sufficient justification for having a recall election. 128 Mich App at 795. "A single transaction provides an adequate basis for a recall drive." *Id*.

Subsequently, in *In re Wayne County Election Committee*, the Court of Appeals found that the framers of Const 1963, Art 2, Sec. 8, in enacting that section, embraced the philosophy favoring recalls predicated on any identifiable acts by an elected official, without respect to whether the acts in question constituted sufficient justification for having a recall election. 150 Mich App 427, 437; 388 NW2d 707 (1986). It recognized that Article 2, Section 8 is intended to preclude judicial or administrative review of the substantive merits of the reasons alleged in the recall petition. *Id.* The court further held that judicial and administrative review of a recall petition "is clearly limited to a determination of whether a sufficiently clear statement is present" and that "doubt as to clarify should be resolved in favor of the proponents of the recall." *Id.* at 438.

Most recently, in 2018, the Court of Appeals solidified this line of precedent:

> Our state Constitution provides that "[t]he sufficiency of any statement of reasons or grounds procedurally required shall be a political rather than a judicial question." An assessment of the accuracy or truthfulness of a factual assertion is an inquiry into the

> sufficiency of the reason stated in support of recall; our Constitution plainly reserves that assessment to the electors, and the Legislature could not in any event remove that right from them. We therefore conclude that the terms "factually" and "factual," as used in MCL 168.951a, ***require the reason stated in the recall petition to be in the form of a factual assertion but does not confer upon the Board or upon this Court the task of determining the truthfulness of the statement***. *Hooker*, 326 Mich App at 559-60 (internal citations omitted; emphasis added).

The *Hooker* court also provided an analysis of the standard of review for clarity, giving recall sponsors broad leniency:

> The standard of review for clarity of recall petitions has been described as both "lenient," and "very lenient." "Thus, recall review by the courts should be very, very limited. A meticulous and detailed statement of the charges against an officeholder is not required. It is sufficient if an officeholder is apprised of the course of conduct in office that is the basis of the recall drive, so that a defense can be mounted regarding that conduct. "Where the clarity of the reasons stated in the petition is a close question, doubt should be resolved in favor of the individual formulating the petition." *Id.* at 557-58 (quoting *Dimas v. Macomb Co Election Comm*, 248 Mich App 624, 627-628; 639 NW2d 850 (2001) (citations omitted)).

In sum, our Constitution reserves to citizens the right to recall elected officers. The discretion provided to the administrative and judicial tribunals that oversee the recall process must be exercised in favor of preserving and promoting the political process rather than limiting or restricting that process. It is through this lens that this Honorable Court reviews the Board decision approving the recall petition submitted by the Sponsors seeking the recall of Rep. Inman.

III. The Board of State Canvassers Was Correct in Determining that the Language in the Inman Recall Petition is Factual and of Sufficient Clarity.

The language in Sponsors' petition is factual and provides sufficient clarity to the voters of the 104th District and Rep. Inman of the course of conduct that forms the basis of the recall. Sponsors complied with all the requirements of MCL 168.951(a)(1). In

terms of the pro forma requirements of subparagraphs (a), (b), (d), and (e), each of these was strictly adhered to by the Sponsors, and Appellant does not contest such elements. There does not appear to be a substantive argument as to the form of the recall petition. This section provides the appropriate context for review of the petition language, and responds to Appellants' misguided arguments.

A. Standard of Review

Appellate review in this case raises a question of statutory construction, which this Court reviews *de novo. Hooker,* 326 Mich App at 555 (citing *Hastings Mut Ins Co v Grange Ins Co of Mich*, 319 Mich App 579, 583; 903 NW2d 400 (2017)).

B. The listed reasons for the Recall are factual and clear.

In terms of the factuality of the petition language, in 2018, the *Hooker* court explained the ordinary usage of the word "factual" for purposes of reviewing whether a petition states "factually and clearly each reason for recall":

> In ordinary usage, the word "factual" can mean "restricted to or based on fact," while the word "fact" can be understood to mean "an actual occurrence" and "a piece of information presented as having objective reality." *Merriam Webster's Collegiate Dictionary* (11th ed). When read in the context of the statute as a whole, the plainest construction is that the Legislature included the terms "factual" and "factually" in MCL 168.951a to ensure that the grounds set forth in a recall petition are stated in terms of a factual occurrence. That is, the ground for recall must be stated in the form of a factual assertion about the official's conduct that the proponent believes warrants the recall. The language of MCL 168.951a does not specify, however, that the reason for the recall stated in the petition must be truthful. *Hooker*, 326 Mich App at 559.

In terms of clarity, Michigan courts have held that this means the language must be clearly stated and clear enough for the elected official to identify the transactions and the substance of the claimed wrongdoing. *Molitor v Miller*, 102 Mich App 344, 350; 301 NW2d 532 (1980). The court further elaborated as follows:

> Ultimately, the sufficiency is a political question for specific allegations of time, place, person or occasion are not required for a sufficiently clear petition. Nor is it necessary that the petitioner enumerate every single violation of the state law and township procedures. As long as plaintiff was apprised of the course of conduct in office which is the basis of the recall drive, he can defend against such charges.
> ...
>
> Where the clarity of the reasons stated in the petition is a close question, doubt should be resolved in favor of the individual formulating the petition. To require overly detailed statements of charges would serve to complicate the recall process and defeat the underlying purpose of the recall petition, *i.e*., "an effective and speedy remedy to remove an official who is not giving satisfaction" *Id*. at 350-351 (internal citations omitted).

the electorate; if the petition is sufficiently supported, the electorate decides whether the assertions warrant recall.

The petition submitted by the Sponsors states that, since he has been under indictment, Rep. Inman has filed notice asserting that a diminished capacity defense, and Rep. Inman has missed over 80 votes. The recall begins with, "***Since*** *Larry Inman was indicted...*" (Emphasis added). Then it outlines events that follow his indictment in May 2019, which are the basis for the recall. Contrary to Appellant's argument, the Indictment itself is not the reason for the recall; it is context and timing for the two events that follow and that provide the reasons for the recall. It is also factual and clear, reciting the Indictment without any interpretation or subjective content.[10]

The petition lists two events that followed the May 2019 Indictment: Defendant Inman's defense filing and his missed votes. To be clear, the Court of Appeals in *Hooker* makes exceedingly clear that it is not the responsibility of the Sponsors to

[10] Appellant's Appendix, Ex. 1.

litigate or prove the reasons for the recall. Rather, Sponsors must simply state each reason factually and clearly.

Appellant Inman is well-acquainted with the reasons stated in the recall petition. The first reason is that "Inman has filed notice asserting a diminished capacity defense." On June 18, 2019, the Notice was filed in the federal court.[11] Since then, on July 8, 2019, Defendant Inman again acknowledged that "Defendant [Inman] has also filed notice of his intention to assert a diminished capacity defense."[12] At the Board of Canvassers hearing, counsel for Appellant Inman again noted the assertion:

> I'm defending Representative Inman in a very serious federal matter for which we have a defense. We haven't even yet been able to present our defense because everything -- every -- all the walls are caving in on us. And so if you're going to say we're going to apply this statute to this petition, I think you have to do it also based on the Constitution. If I have asserted a defense in this case that the court requires me to notice -- by the way, it's just a notice. The court says you have to notice us within so many days or you can't do it. It's a notice and I filed it. Larry Inman didn't do it. I filed it as the attorney for -- as -- for strategic reasons and also because that's likely going to be something that we present.[13]

The second reason is that Rep. Inman has "missed over 80 votes in the Michigan House of Representatives." Rep. Inman is certainly aware that he has missed over 80 votes in the House of Representatives since his Indictment on May 14, 2019, and the House Journal and MichiganVotes materials confirm the Rep. Inman did not vote in over 80 matters since the Indictment.[14] Appellant Inman's counsel acknowledged this to be a proper reason for this recall petition.[15]

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[11] Appellees Sponsors' Appendix, Ex 1.

[12] Appellees Sponsors Appendix, Ex 5 (Supp. Briefing).

[13] Transcript, p. 19.

[14] Appellees Sponsors' Appendix, Ex. 2, 3.

[15] Appellees Sponsors' Appendix, Ex. 4 (Transcript), pp. 17, 20-21.

The petition language is clear; it relies upon objective public information provided in a federal criminal proceeding, the Michigan House of Representatives Journal, and filings by Rep. Inman. There is no subjective or non-factual language interpreting these objective facts in the recall petition.

C. Appellant's arguments that the indictment is an improper basis for recall is inaccurate and misguided.

Appellant Inman makes several arguments related to the reference in the petition to the May 2019 FBI indictment. First, he argues it is conduct by others, not by Rep. Inman, so it does not meet the requirement in MCL 168.951a(1)(c) (each reason for recall "must be based upon the officer's conduct"). Appellant's Brief, pp. 6-8. Second, he argues that reference to the indictment infringes and restricts Inman's constitutional rights. Appellant's Brief, pp. 9-12. Both arguments fail, as discussed below.

1. The petition may refer to conduct by others.

Appellant argues that the petition is improper because it incorporates the allegations contained within the federal criminal indictment, which is not conduct by Rep. Inman. Appellant Brief, p. 6. As a result, according to Appellant, the petition language does not meet the statute, which requires the "reasons for the recall must be based *on the officer's conduct* during his or her current term in office." MCL 168.951a(1)(c) (emphasis added). This argument fails for numerous reasons.

First, the argument fails because the indictment is not a reason for the recall. The reasons for the recall are things that Rep. Inman had done (or not done) after or "since" the indictment on May 14, 2019. The language in the indictment provides important and necessary timing context for those reasons (his defense, his missed votes), but the

indictment itself is not a "reason for the recall." As such, the reference to the indictment does not violate MCL 168.951a(1)(c).

Second, the argument fails because the indictment itself is based on Inman's conduct. Even if the indictment itself were a reason for recall (it is not), it is Rep. Inman who was indicted in May 2019, not another person. The statute provides that the recall reasons must be "based on" the officers conduct -- the indictment is based on Inman's conduct. Appellant acknowledges the indictment "may implicate the officer," but he claims it is not "conduct of the officer." Appellant Brief, p. 6. While the allegations of criminal activity underlying the indictment occurred prior to the last election, the May 2019 indictment was unknowable to the electorate until the current term of office. As such, the petition reference to the indictment is not prohibited by MCL 168.951a(1)(c).

To the extent Appellant suggests MCL 168.951a(1)(c) means a recall petition may *only* refer to factual conduct by the elected official, that is not what the statute says. It says each reason for the recall must be "based on the officer's conduct during his or her current term of office." MCL 168.951a(1)(c). Nor should the court impose a restriction on the recall petition to prohibit mention of conduct by someone other than officer. See *Schmidt v Genesee County Clerk*, 127 Mich App 694, 699; 339 NW2d 526 (1983) (recall petitions are often drafted by lay people, and cautioning that complicating the recall process may defeat the purpose of the recall and interfere with the basis right to recall) (citations omitted); *McQueer v Perfect Fence Co*, 502 Mich. 276, 286; 917 NW2d 584 (2018) ("The primary rule of statutory construction is that, where the statutory language is clear and unambiguous, the statute must be applied as written. A necessary corollary of these principles is that a court may read nothing into an

unambiguous statute that is not within the manifest intent of the Legislature as derived from the words of the statute itself.") (Citations and internal quotations omitted).

To reinterpret the statute to state that *only* the officer's conduct may be mentioned in the petition would contravene the Michigan Constitution, which does not contemplate limitations on reference to conduct by other people. See *Dimas*, 248 Mich App at 628 (meticulous statement of charges not required) (citations omitted). Ultimately, whether reference in a recall petition to factual conduct by people other than the elected official should render the petition insufficient is a political question that is reserved to the electorate. Const 1963, Art. 2, Sec. 8 ("The sufficiency of any statement of reasons or grounds procedurally required shall be a political rather than a judicial question."); *Hooker*, 326 Mich App at 559 ("An assessment of the accuracy or truthfulness of a factual assertion is an inquiry into the sufficiency of the reason stated in support of recall; our Constitution plainly reserves that assessment to the electors, and the Legislature could not in any event remove that right from them.") (Citations omitted). The Constitution does not authorize the Legislature to restrict petition language to exclusively reference the officer's conduct during the current term, nor does the statute restrict petition language to exclusively refer to the officer's conduct during the current term. Appellant's attempt to insert such a limitation on the recall petition would violate Sponsors' right to seek a recall of Rep. Inman. To the extent Appellant Inman believes the reference in the petition to his indictment by the FBI is improper, he may present that defense to the electorate. See *Wallace*, 358 Mich at 680 (noting that our constitution "places much confidence in the proper functioning of an intelligent and informed electorate. The recall provision is illustrative of that confidence.").

2. The petition does not interfere with Inman's constitutional rights.

Appellant Inman argues for rejection of the petition on the basis that it interferes with this 5th, 6th, and 14th Amendment Due Process rights. Appellant's Brief, p. 9. According to Appellant, these rights are infringed and restricted if the allegations in the unproven indictment form the basis of fact in the recall petition. *Id.*, p. 10. This argument is legally unsound. Moreover, the argument that Defendant Inman's constitutional rights as a defendant in a pending criminal proceeding outweigh his constituents' constitutional right to seek to recall him from office misunderstands the fact that serving in public office in Michigan is a privilege not a right, and the electorate reserves the right to terminate the privilege for any reason through a proper recall.

The first reason Appellant's argument fails is that it misstates the recall petition language. The petition recites the indictment as timely and factual context for the two stated recall reasons -- the diminished capacity defense and the missed votes after the indictment. Stated otherwise, it will make no difference to the recall petition whether Inman is found guilty or innocent of the alleged crimes; the reasons stated in the petition to recall Inman remain unimpacted that, after the indictment, he filed a diminished capacity defense and missed over 80 votes.

The second reason Appellant's argument fails is that the unproven nature of the allegations underlying the indictment is immaterial to this case. There is no obligation for Petition Sponsors to prove the truth or accuracy of factual events recited in the petition. *Hooker,* 326 Mich App at 559-60; *Mastin,* 128 Mich App at 798 ("truth itself is not a consideration in determining the clarity of recall petition language."); *Meyers v Patchkowski*, 216 Mich App 513, 518; 549 NW2d 602 (1996) (court lacks authority to

review petition statements for truthfulness). It is undoubtedly factual and clear that the indictment was issued on May 14, 2019, and Appellant does not take issue with the petition's recitation of the charges in the indictment. To the extent Appellant Inman believes the electorate should be unswayed by the recitation of the indictment,[16] he may explain as much to his constituents.

The argument that the recall petition's reference to the FBI indictment would interfere with Appellant's constitutional rights as a criminal defendant reflects a fundamental misunderstanding of Michigan's political process. Appellant's approach would elevate the constitutional rights of the defendant over the constitutional rights of electorate. To the extent Appellant Inman perceives an irreconcilable conflict between a pending recall and an elected official's ability to defend himself in a pending criminal proceeding, the remedy is not to terminate the recall. If these rights cannot co-exist (Appellees perceive no such conflict), then the remedy is for Appellant to eliminate the conflict by resigning from office and focusing on his criminal defense. The dissatisfied electorate should not be made to hold a recall effort in abeyance while their elected official defends himself in a pending federal criminal proceeding. In this case, delaying recall while the case proceeds would effectively terminate the constitutional right to recall the elected official, due to the statutory recall timelines and the criminal proceeding delays.

Finally, Appellant's argument is unavailing because the references to the indictment -- the date it was issued and the recitation of the three felony criminal counts

[16] According to Appellant, "An indictment is no more than a federal ticket just like a police officer would give you for blowing a yield sign. It's an allegation. It's unproven." Transcript, p. 15.

-- are not inflammatory or subjective or otherwise prejudicial to the pending criminal case. These are objective facts to which any prospective juror will immediately be presented. A recall petition is being circulated in Rep. Inman's district containing the objective, factual criminal counts in the indictment is not a potentially prejudicial influence on prospective jurors, any more than a newspaper recitation of such charges would be. The argument that this recall petition should be rejected on the basis it may prejudice Rep. Inman's ability to defend himself in the pending federal criminal case against him is insulting to the electorate.

As such, reference to the indictment in the recall petition is not a lawful basis for the court to reject the recall petition.

D. Appellant's arguments that the defense notice is an improper basis for recall is also inaccurate and misguided.

Appellant argues that the petition is defective because it includes the notice of diminished cognitive ability defense filed in the pending federal criminal case. Appellant provides three arguments related to this notice: (a) the recall petition "corrupted" the notice language (Appellant's Brief, pp. 7-8); (b) Rep. Inman's legal counsel, and not Inman himself, filed the notice (*Id.*, p. 7); and (c) the petition's reliance on the diminished capacity defense notice has a chilling effect on Inman's right to freely and aggressively defend the criminal charges against him (*Id.*, p. 10). These arguments are unavailing.

1. *The petition has not corrupted the language of the notice.*

Appellant's argument that the recall petition should be rejected because it failed to include the "very specific" language in the filed notice contrary to well-established

Michigan jurisprudence.[17] Michigan courts have consistently rejected arguments that the petition language must provide complicated detail. *Dimas*, 248 Mich App at 627-628 ("A meticulous and detailed statement of the charges against an officeholder is not required. It is sufficient if an officeholder is apprised of the course of conduct in office that is the basis of the recall drive, so that a defense can be mounted regarding that conduct.") (citations omitted)); *Schmidt*, 127 Mich App at 699 (recall petitions are often drafted by lay people, and cautioning that complicating the recall process may defeat the purpose of the recall and interfere with the basis right to recall) (citations omitted); *Mastin*, 128 Mich App at 769 ("it is not necessary, as plaintiff contends, that the recall petition set forth all aspects of the challenged official's course of conduct in office relating to the reason for recall set forth in the petition.").

Moreover, the argument is misplaced because Appellant Inman has repeatedly referred to the notice asserting a diminished capacity defense. The Notice itself states Inman's "intention to present expert testimony and related evidence of diminished cognitive ability bearing on the issue of whether or not defendant had the requisite mental state required for the charged offenses."[18] In response to the Notice, Judge Jonker issued an order that stated the Notice had been docketed as a "Notice re: Diminished Capacity Defense."[19] That Order referred to the filing as a "notice of diminished capacity" and also as a "diminished capacity defense." *Id.*, p. 2. In the

[17] The notice was titled, "Notice of Intent to Present Evidence of Defendant's Diminished Cognitive Ability As a Result of the Use of Prescription Pain Medication." Brief, pp. 7-8; Appellant's Appendix, Ex 2.
[18] Appellant's Appendix, Ex 2.
[19] Appellees Sponsors' Appendix, Ex 1, p. 1.

federal proceeding, Defendant Inman stated, "Defendant has also filed notice of his intention to assert a diminished capacity defense."[20]

Contrary to Appellant's argument, the petition language is neither unclear nor non-factual by virtue of the language describing the filing as "notice asserting a diminished capacity defense," despite the filing's technical title. Absent some non-factual mischaracterization of the notice in the petition, Appellant's argument over the factual recitation of the filing of notice is unavailing.

2. *Whether Defendant Inman or his legal counsel performed the administrative filing of the notice is a meaningless and irrelevant distinction.*

Appellant argues that the action of filing the notice of diminished capacity was an action by counsel for Defendant Inman, not by Inman himself. Appellant's Brief p. 7. Because the action was by the officer's attorney, agent, representative, or counsel, and not the officer, the filing is therefore an improper basis for appeal, according to Appellant. This argument fails for several reasons.

First, the argument misconstrues MCL 168.951a(1)(c), which requires the reason for the recall to "be *based on* the officer's conduct." Whether Inman himself logged into the federal PACER filing system for the Western District of Michigan and filed the notice, or whether his counsel did so, or if another person at Neumann Law Group did the actual administrative filing is no real consequence to the voters. Moreover, it is unknowable to the voters who ultimately actually filed the notice. That Inman's attorney filed the notice (if true) is not a shield to Inman's recall.

Moreover, the filed Notice is undeniably Inman's conduct. The Notice states:

[20] Appellees Sponsors' Appendix, Ex 5, p. 2.

> Now comes the Defendant, Larry Charles Inman, by and through his attorneys of record, NEUMANN LAW GROUP, and, pursuant to the Court's Standing Order Regarding Discovery in Criminal Cases, hereby, gives notice of Defendant's intention to present expert testimony and related evidence of diminished cognitive ability bearing on the issue of whether or not defendant had the requisite mental state required for the charged offenses. Appellees Exhibit B (Notice).

By its own language, the notice was clearly filed by, for, on behalf of, with the approval of, and/or ratified by Defendant Inman. There is no allegation to the contrary.

If further evidence is needed to demonstrate that the line between conduct and actions of Defendant Inman and those of his counsel is indeterminate and meaningless, consider Appellant's brief, which consistently conflates the actions of Inman and those of his counsel:[21]

- "On June 18, 2819 [sic], as part of his defense to the allegation and consistent with [FRCP] 12.2(b), **Representative Inman filed** a "Notice of Intent to Present Evidence of Defendant's Diminished Cognitive Ability as a Result of the Use of Prescription Pain Medication." Appellant's Brief, p. 1 (emphasis added);
- "Appellant Inman objected to the language of the recall petition." (referring to the objection filed by his legal counsel to the Board of State Canvassers) Appellant's Brief, p. 2;
- "[I]f the Representative is forced to choose between noticing out a proper defense to the charges, i.e.: lack of specific intent, or having a political

[21] See also Appellees Sponsors' Appendix, Ex 5 ("Defendant has also filed notice of his intention to assert a diminished capacity defense.").

opponent seize upon the notice of the defense as a basis for recall… " Appellant's Brief, p. 2;

- "Representative Inman raised before the Board of Canvassers at the hearing…" (Rep. Inman did not appear in person, he was represented before the Board by counsel - see Transcript); Appellant's Brief, p. 3.
- "The Board of State Canvassers, after listening to the oral arguments of the petitions and Representative Inman, certified the petition for circulation." (neither Sponsors nor Inman appeared in person; all were represented before the Board by counsel); Appellant's Brief, p. 3; and
- "An elected official must choose between filing proper notices of defenses, asserting his right to remain silent, taking the stand in his own defense, or nearly every defense strategy and how that might be used by a political opponent to frame a recall petition." Appellant's Brief, p. 12.

Given these frequent, blurred lines between actions of Appellant/Defendant Inman and those of his attorney, there is no legal basis for this court to conclude that petition language stating that Inman has filed the notice was not "based on Inman's conduct."

The petition language states a reason "based on the officer's conduct," regardless of whether the administrative filing of the notice was by Inman or someone at Neumann Law Group. There is no argument or evidence that Defendant Inman disclaimed, withdrawn, repudiated, or otherwise absolved himself of the notice. As a result, Inman may not disclaim responsibility for the notice filed by his attorney. See *Kunglig Jarnvagsstylrelsen v Dexter & Carpenter*, 32 F2d 195, 198 (2nd Cir 1929) ("A

pleading prepared by an attorney is an admission by one presumptively authorized to speak for his principal.").

Appellant's argument is unavailing for the further reason that it goes to the truth of the recall reason. As discussed above, the truth or falsity of the recall reason is an invalid and unlawful consideration for the court. The petition states as one reason for recall that "Inman has filed a notice asserting a diminished capacity defense." It does not matter, for purposes of administrative or judicial review of the petition language, whether this reason is true or false -- whether Inman has or has not filed a notice asserting a diminished capacity defense. See *Mastin*, 128 Mich App at 798 (noting that legislative history of prior recall statute recognized that truth is not a consideration in determining clarity recall petition language, as statute "would not prevent people from circulating petitions bearing outright lies about the conduct of public officials; it would merely ensure that the lies were clearly stated.") (citations omitted). As a result, even if Inman's attorney, and not Inman himself, filed the notice; and even if Inman could lawfully shield himself from the apparently authorized actions of his agent (he cannot); even so, the reason is still clear and factual — even if it is false (it is not).

Furthermore, counsel for Defendant Inman unambiguously stated: "Representative Inman got caught in the clutches of an opioid prescription pain medication abuse and addiction issue for which he is now in inpatient treatment … But that is why ***we asserted*** this defense." Transcript at pp. 16, 17 (emphasis added). On rebuttal, counsel for the Sponsors pointed out that counsel provided an objective basis for this assertion and one member of the State Board of Canvassers panned "I wrote it down" and another added "So did I." *Id*. at p. 22.

The court should reject Appellant's overly narrow interpretation of the statute as well as Rep. Inman's frivolous attempt to cloak himself in immunity from recall by virtue of semantic gamesmanship.

3. *The inclusion of the defense notice as a reason for the recall does not intrude on Defendant Inman's constitutional rights.*

Appellant's third argument related to the filed defense notice is that citing the notice as a basis for recall has a chilling effect on the constitutional rights of Defendant Inman. Appellant's Brief, p. 10. He argues that he "is required to choose between fighting for his job and fully defending against pending criminal charges that threaten his freedom." *Id.* This argument lacks legal support and is otherwise misguided.

The argument lacks legal support because the question for this court is whether the petition language is factual and of sufficient clarity. MCL 168.951a(6). As discussed above, the filing of the defense notice meets the standard – it is clear and factual. That the clear, factual reason also implicates the elected official's constitutional rights as a defendant in a pending criminal proceeding has no legal relevance.

The argument is misguided because it suggests the Court should suppress the electorate's protected constitutional right to recall an elected official for any reason, in order to preserve the official's constitutional rights in a criminal proceeding. This is an improper interpretation of the relationship between the electorate and the elected official – the representative serves at the will of, and is accountable, to the electorate. To the extent the constitutional rights of one must give way to the other, as Appellant suggest, it should not be the electorates. Moreover, Appellant can resolve the situation by resignation; the electorate has no reciprocal remedy *except* recall.

Moreover, Appellees perceive no such conflict – Appellant is free to defend himself however he feels is appropriate. And the electorate is free to assert their right to recall for any factual and clear reason. Appellees perceive no chilling, prejudice or other harm to Defendant Inman resulting from the petition language. The language in the recall petition is factual, non-subjective, and already highly public information, irrespective of the circulating recall petition. If Appellant believe the reason for the recall puts him in an awkward position, he may defend himself accordingly to the voters, who may or may not agree. Alternatively, he may address the issue in the proper course of his pending criminal proceeding. The remedy is not for the Court to halt this recall.

For these reasons, Appellant's arguments related to Inman's defense notice should be rejected.

E. The Sponsors state an additional, unassailable reason supporting the recall of Rep. Inman, and the petition should be approved on that basis.

Another reason for the recall, as stated in the recall petition, is that Rep. Inman missed over 80 votes in the Michigan House of Representatives since his indictment in May 2019. In this appeal, Appellant does not challenge this reason nor assert that it is nonfactual or unclear. At the Board of State Canvassers, Appellant acknowledged this to be a proper basis for this recall:[22]

[22] Appellees Sponsors' Appendix, Ex 4 (Transcript), p. 17; see also pp. 20-21.

They do have a basis here. They have these 80 votes missed. I mean, there's a basis for filing a legitimate and factual and clear recall petition. Missing of these 80 votes, all of which occurred when he was seeking treatment for his problem, but that's something that the constituency can talk about. I mean, we're al -- we're all

Rep. Inman's missed votes is thus an unassailed and proper reason for recall. The court should approve the petition based on this reason alone. *Schmidt*, 127 Mich App at 699-700 ("insufficient clarity in spots will not doom the petition where, read as a whole, a sufficient clear statement is presented") (citation omitted); *Mastin*, 128 Mich App at 800 ("To the extent that certain phraseology in the petition might, standing alone, be deemed nebulous or ambiguous, it must be recognized that the petitions must be construed as a whole, and even if one portion is of insufficient clarity, if another portion or the entire petition, in context, is of sufficient clarity the petition meets the requisite standard.") (citation omitted).

Appellant argues that, if any reason in the recall petition is invalid, then the court "should order the cessation of the circulation of the petition." Appellant's Brief, p. 8. In support, Appellant cites MCL 168.951a(1)(3). That subsection provides for Board of State Canvassers review of a recall petition:

> The board of state canvassers, not less than 10 days or more than 20 days after submission to it of a petition for the recall of an officer under subsection (1), shall meet and shall determine by an affirmative vote of 3 of the members serving on the board of state canvassers whether each reason for the recall stated in the petition is factual and of sufficient clarity to enable the officer whose recall is sought and the electors to identify the course of conduct that is the basis for the recall. ***If any reason for the recall is not factual***

> ***or of sufficient clarity, the entire recall petition must be rejected.*** Failure of the board of state canvassers to meet as required by this subsection constitutes a determination that each reason for the recall stated in the petition is factual and of sufficient clarity to enable the officer whose recall is being sought and the electors to identify the course of conduct that is the basis for the recall.

Importantly, this subsection for Board of State Canvassers review is different than the subsection for appellate review of the petition. That is in subsection 6, which provides:

> The determination by the board of state canvassers may be appealed by the officer whose recall is sought or by the sponsors of the recall petition drive to the court of appeals. The appeal must be filed not more than 10 days after the determination of the board of state canvassers. If a determination of the board of state canvassers is appealed to the court of appeals, the recall petition is not valid for circulation and must not be circulated until a determination of whether each reason is factual and of sufficient clarity is made by the court of appeals or until 40 days after the date of the appeal, whichever is sooner.

Subsection (6) does not contain the rejection provision stating that, if any reason for the recall is not factual or of sufficient clarity, the entire recall petition must be rejected.

The absence of that provision in MCL 168.951a(6) should be considered intentional and interpreted according. The rejection provision applies to the Board of State Canvassers' review, it does not apply to the Court of Appeals' review of the petition language. *Bennett v Mackinac Bridge Auth,* 289 Mich App 616, 632; 808 NW2d 471 (2010) ("[W]e view the Legislature's omission of a . . . provision from [a statute] as very strong evidence of legislative intent".) (*Quoting McSloy v Ryan,* 27 Mich 110, 115 (1973) (internal quotations omitted) and citing *Polkton Charter Twp. v Pellegram*, 265 Mich App 88, 103; 693 NW2d 170 (2005) (noting that "[t]he omission of a provision in one part of a statute that is included in another should be construed as intentional, and

provisions not included by the Legislature should not be included by the courts". (Internal citations omitted))).

The absence of the rejection provision in the judicial review subsection of MCL 168.951a(6) is not anomalous, given the statutory scheme for Board review compared to appellate review. The Board of State Canvassers reviews and decides the factuality and clarity of the recall petition within 10 to 20 days of receipt of the petition. MCL 168.951a(3). If the Board finds one reason in the petition improper and rejects the entire petition, then the sponsors may restart the petition anew, having lost a total of at most 21 days.

This is very different than the appellate review process, where application of the rejection provision would deny the recall sponsors the opportunity to restart the petition due to the statutory schedule. The statute provides 10 days after the Board's decision to bring an appeal of the decision, then a 40-day stay on circulating the petition after the appeal is brought. MCL 168.951a(3), (6). The court rules permit over 100 days for briefing after the transcript is filed (MCR 7.212). Moreover, the Legislature has provided that a recall may not be filed against an officer with a 2-year term until the officer "has actually performed the duties of the office to which elected for a period of 6 months during the current term" nor in the last six months of the term. MCL 168.951(1). As a result, the earliest a recall petition may be filed against a state representative whose term begins January 1 is July 2. Even if a recall petition is filed right away, it may be six months or longer before the court rules on the petition language. *See Hooker*, 326 Mich App at 554 (petition submitted March 16, 2018; appellate decision issued December 11, 2018). Applying the rejection provision to appellate review of the petition would thus

effectively terminate the right of recall because sponsors could not restart and file a recall petition within the limited statutory window.

The conclusion to be drawn from this statutory scheme is that the Legislature did not intend for the rejection provision to apply to appellate review. That is consistent with the plain language in MCL 168.951a, where the rejection provision is excluded from subpart (6). That interpretation also aligns with the Michigan cases cited above. *Schmidt*, 127 Mich App at 699-700; *Mastin*, 128 Mich App at 800. If the rejection provision applied to appellate review of petition language, the practical effect would be that the electorate's constitutional right to recall an elected official would be terminated. This would accomplish through the back door (through procedural hurdles and traps for the unwary) what the Constitution has said it cannot do: turn the sufficiency of the petition into a judicial rather than a political question. There is no reason, given the plain statutory language, for the Court to interpret the legislation in that way.

As a result, even if the Court were to accept Appellant's contrived and misguided arguments related to the indictment and defense notice, the Court should nevertheless approve the recall petition because of the clearly proper missed votes reason.

CONCLUSION AND RELIEF REQUESTED

Appellees, Petition Sponsors Hardy and Haag respectfully request this Court to approve the recall petition. The petition states factual reasons for the recall. Additionally, the petition provides sufficient clarity to inform Rep. Inman and the electorate of the conduct that forms the basis for the recall. None of the novel arguments presented by Appellant provide a relevant or lawful basis for this Court to prevent the people of the State House 104th District from exercising the right, reserved to them in the Michigan Constitution, to seek to recall Rep. Inman based on his conduct since January 1, 2019.

RESPECTFULLY SUBMITTED,

_____/s/_____

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Dated: November 11, 2019

APPELLEE'S APPENDIX

Exhibit 1: Order entered by Judge Jonker on June 24, 2019.

Exhibit 2: List of votes missed by Rep. Inman as compiled by Michigan Votes.

Exhibit 3: Excerpt of Michigan House Journal voting records between May 16, 2019 and June 20, 2019.

Exhibit 4: Transcript of August 1, 2019, Board of State Canvassers Meeting.

Exhibit 5: Inman's Supplemental Briefing Pursuant to the Court's Order of June 24, 2019

Exhibit 1

Order entered by Judge Jonker on June 24, 2019.

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

LARRY CHARLES INMAN,

Defendant.

_____/

CASE No. 1:19-CR-117

HON. ROBERT J. JONKER

ORDER

On May 14, 2019 a grand jury charged Defendant Inman with Attempted Extortion under Color of Official Right (Count 1); Solicitation of a Bribe (Count 2); and False Statement to the FBI (Count 3). (ECF No. 1). A jury trial is currently scheduled for August 6, 2019.

In advance of the upcoming final pretrial conference, Defendant Inman has moved to dismiss the Indictment against him, as well as for the production of a Bill of Particulars and a transcript of grand jury proceedings. (ECF No. 13). Separately, Defendant Inman has filed a "Notice of Intent to Present Evidence of Defendant's Diminished Cognitive Ability as a Result of the Use of Prescription Pain Medication," docketed as a "Notice *re: Diminished Capacity Defense*." (ECF No. 16). The Court will consider the motion to dismiss, and make a determination regarding whether to schedule any hearing on the matter, after receiving the government's response. In addition, the Court is ordering the parties to submit supplemental briefs on the matters described below.

1. Diminished Capacity

The defense does not indicate which rule of criminal procedure it is relying on in its Notice of Diminished Capacity; however the Court anticipates the defense is most likely not making an insanity defense under Rule 12.2(a) and instead intends to proceed under Rule 12.2(b). This "diminished capacity" defense, applies "where the defendant claims only that his mental condition is such that he or she cannot attain the culpable state of mind required by the definition of the crime." *United States v. Kimes*, 246 F.3d 800, 806 (6th Cir. 2001) (internal citation and quotation marks omitted). While courts "permit the introduction of evidence of diminished capacity for the purpose of negating the *mens rea* element of certain crimes . . . [the Sixth Circuit has] adhered to the view that 'diminished capacity may be used only to negate the mens rea of a *specific intent* crime.'" *Id.* (quoting *United States v. Gonyea*, 140 F.3d 649, 650 (6th Cir. 1998)) (emphasis in original). Accordingly, for any general intent crimes, Defendant's mental state is only relevant if the Defendant proposes an insanity defense. And under Rule 12.2(a), upon notice of such an offense, the Court must order an examination under 18 U.S.C. § 4242. *See* FED. R. CRIM. P. 12.2(c)(1)(B).

The Court directs the parties to brief whether the three charges in the indictment each constitute specific intent or general intent crimes. The defense should also indicate in its brief whether its notice is brought under FED. R. CRIM. P. 12.2(a) or (b), or some other rule. In addition to any other matters on this topic the parties may wish to discuss, the Court also directs the parties to indicate whether the Court should order a competency examination as well as to provide an overview of the anticipated proofs or objections on the defense, and to explain how they presently view the defense fitting into any trial, including the burden of proof required and the legal standards for admitting any expert testimony.

2. Federalism Issues

The United States Constitution establishes a system of dual sovereignty under which we all live. It is fundamental civics that the federal government is given limited powers by the states, with all other powers resting in the hands of the states. This case, one in which a federal court is called upon to examine the actions of an elected state representative, raises at least some questions about federalism and separations of powers. To be sure, in the context of campaign contributions, the Supreme Court has held that "the receipt of political contributions violates the Hobbs Act 'only if the payments are made in return for an explicit promise or undertaking by the official to perform or not to perform an official act.'" *United States v. Abbey*, 560 F.3d 513, 516 (6th Cir. 2009) (quoting *McCormick v. United States*, 500 U.S. 257, 273 (1991)). But courts must be careful in how they construe the statute so as to avoid concerns about federalism. *See McDonnell v. United States*, 136 S. Ct. 2355, 2373 (2016) (noting that a broad view of "official act" would raise "significant federalism concerns," and declining to "'construe the statute in a manner that leaves its outer boundaries ambiguous and involves the Federal Government in setting standards'" of "'good government for local and state officials'") (quoting *McNally v. United States*, 483 U.S. 350, 360 (1987)).

The Court asks the parties to detail how their respective theories of the case touch on the above issues relating to separation of powers and federalism.

CONCLUSION

ACCORDINGLY, IT IS ORDERED that in addition to any further briefs (as permitted by rule) on the pending motion to dismiss, the parties shall each submit supplemental briefs on the questions the Court has described above. Briefs are due no later than **fourteen (14) days** from the date of this Order.

Dated: June 24, 2019

/s/ Robert J. Jonker
ROBERT J. JONKER
CHIEF UNITED STATES DISTRICT JUDGE

Exhibit 2

List of votes missed by Rep. Inman as compiled by Michigan Votes

Michigan lawmakers all have a record – *MichiganVotes.org is its keeper.*

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Search

Bills Introduced, Amendments Offered, Roll Call Votes Taken from 1/1/2019 to 7/18/2019

Step 1. Search Missed Votes.

Legislator: Inman, Rep. Larry

Optional Keywords: Search

Step 2. You may Highlight Keywords On/Off or

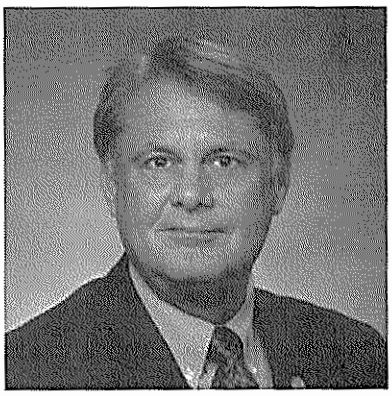
Limit results to category: All Categories Select

Limit results to passed or failed by (optional) vote(s) or less, and

Went against majority of own party Select

Results filtered by missed votes. Remove Filter

The Votes are followed by Bills Introduced and Amendments Offered.



Larry Inman (R)
State Representative, District 104
Hometown: Grand Traverse County
Contact Rep. Larry Inman (R)

Bill Introduction and Voting Record

Missed Votes

Missed Votes 1 to 50 of 87 by Rep. Larry Inman (R) Next 37

Did not vote on **Appropriations: General Government** in 2019 House Bill 4234.

Passed 99 to 6 in the House on June 20, 2019.

See Who Voted "Yes" and Who Voted "No". To

delete the previous contents of the bill and use it as a legislative "vehicle" to authorize $15 million in state-subsidized, below-market rate loans to Michigan farmers affected by rainy weather in the spring of 2019.

Did not vote on **Create state "Committee on Mining Future"** in 2019 House Bill 4227.

Passed 108 to 1 in the House on June 20, 2019.
See Who Voted "Yes" and Who Voted "No".

Did not vote on **Exempt hospice painkiller from "bona fide prescriber-patient relationship" requirement** in 2019 House Bill 4225.

Passed 109 to 0 in the House on June 20, 2019.
See Who Voted "Yes" and Who Voted "No".

Did not vote on **Extend sunset on certain property tax installment plans** in 2019 House Bill 4121.

Passed 109 to 0 in the House on June 20, 2019.
See Who Voted "Yes" and Who Voted "No".

Did not vote on **Additional MSU sex abuse scandal legislative response measures** in 2019 House Bill 4374.

Passed 108 to 1 in the House on June 19, 2019.
See Who Voted "Yes" and Who Voted "No". To make it a crime for a person to use a position of authority to prevent another person from reporting a crime involving sexual assault or child abuse.

Did not vote on **Appropriations: Higher Education** in 2019 House Bill 4236.

Failed 0 to 109 in the House on June 19, 2019.
See Who Voted "Yes" and Who Voted "No".

Did not vote on Appropriations: K-12 School Aid budget in 2019 House Bill 4242.

Failed 0 to 109 in the House on June 19, 2019.
See Who Voted "Yes" and Who Voted "No".

Did not vote on Appropriations: Department of Natural Resources in 2019 House Bill 4241.

Failed 0 to 109 in the House on June 19, 2019.
See Who Voted "Yes" and Who Voted "No".

Did not vote on Appropriations: Department of Licensing and Regulatory Affairs in 2019 House Bill 4239.

Failed 0 to 109 in the House on June 19, 2019.
See Who Voted "Yes" and Who Voted "No".

Did not vote on Appropriations: Judiciary budget in 2019 House Bill 4238.

Failed 0 to 109 in the House on June 19, 2019.
See Who Voted "Yes" and Who Voted "No".

Did not vote on Appropriations: Higher Education in 2019 House Bill 4236.

Failed 1 to 108 in the House on June 19, 2019.
See Who Voted "Yes" and Who Voted "No".

Did not vote on Appropriations: Department of Education in 2019 House Bill 4232.

Failed 0 to 109 in the House on June 19, 2019.
See Who Voted "Yes" and Who Voted "No".

Did not vote on Appropriations: Department of Corrections in 2019

House Bill 4231.

Failed 0 to 109 in the House on June 19, 2019.
See Who Voted "Yes" and Who Voted "No".

Did not vote on **Appropriations: Department of Agriculture and Rural Development** in 2019 House Bill 4229.

Failed 0 to 109 in the House on June 19, 2019.
See Who Voted "Yes" and Who Voted "No".

Did not vote on **Appropriations: "Omnibus" state budget** in 2019 House Bill 4729.

Passed 57 to 52 in the House on June 20, 2019.
See Who Voted "Yes" and Who Voted "No". To adopt a version of this budget that contains no appropriations but which can be used as a potential "vehicle" bill for revising state revenue sharing payments to local governments in the 2019-2020 fiscal year.

Did not vote on **Appropriations: "Omnibus" education budget** in 2019 House Bill 4728.

Passed 57 to 52 in the House on June 20, 2019.
See Who Voted "Yes" and Who Voted "No". To advance a "template" or "place holder" for a Fiscal Year 2019-2020 "Omnibus" school aid, higher education and community colleges budget. This bill contains no appropriations, but may be amended at a later date to include them. This is a procedural device used for launching negotiations over the differences between the House and Senate budgets, and eventually for negotiating a final budget between a Republican-controlled legislature and a Democratic governor.

Did not vote on **Let public libraries stock opioid overdose drugs** in 2019 House Bill 4367.

Passed 109 to 0 in the House on June 13, 2019.

See Who Voted "Yes" and Who Voted "No".

Did not vote on **Authorize more school retiree "double dipping"** in 2019 House Bill 4694.

Passed 102 to 7 in the House on June 20, 2019.

See Who Voted "Yes" and Who Voted "No". To revise a law that allows certain retired school employees to work in schools that need more staff in particular subjects while still collecting pension checks alongside their current pay. According to the House Fiscal Agency this would benefit some former staff brought back as instructors in a particular non-profit's reading program used by around 150 western Michigan schools, and like other "double dipping" exceptions in the law could potentially increase unfunded liabilities in the school pension system.

Did not vote on **Exempt winter sports view area buildings from building code heating mandates** in 2019 Senate Bill 294.

Passed 57 to 52 in the House on June 19, 2019.

See Who Voted "Yes" and Who Voted "No". To exempt buildings or press boxes used by K-12 schools as a viewing area for outdoor sporting events from heating requirements imposed by the state building code if they enclose less than 500 square feet. This would also apply to a "building, structure, or room that is incidental to an outdoor sporting activity or event, including a ticket booth, concession stand, participant meeting room, or restroom facility".

Did not vote on **Reform no-fault vehicle insurance system (originally, to repeal no-fault)** in 2019 House Bill 4397.

Passed 89 to 20 in the House on June 4, 2019.

See Who Voted "Yes" and Who Voted "No". To use this bill as a "cleanup" bill for the auto insurance reform bill signed into law in May (Senate Bill 1). The bill revises timing issues related to the implementation of the new law's changes to required minimum insurance coverage, and the

customer discounts that those changes are intended to allow. It corrects provisions in Senate Bill 1 that would have required insurers to give customer discounts before the cost saving reforms authorized by the bill go into effect.

Did not vote on **Revise graduated drivers license night driving detail** in 2019 Senate Bill 193.

Passed 106 to 3 in the House on June 13, 2019.

See Who Voted "Yes" and Who Voted "No". To revise required driver education curriculums to reflect the proposal in Senate Bill 192 to exempt new drivers who have impaired night-time vision from having to take the two hours of night-driving instruction required to advance to a "level two" license, allowing them to get a graduated license good for daylight driving only.

Did not vote on **Revise graduated drivers license night driving detail** in 2019 Senate Bill 192.

Passed 106 to 3 in the House on June 13, 2019.

See Who Voted "Yes" and Who Voted "No". To exempt new drivers who have impaired night-time vision from having to take the two hours of night-driving instruction required to advance to a "level two" license. These drivers would get a graduated license good for daylight driving only.

Did not vote on **Revise school opioid treatment protocols** in 2019 Senate Bill 283.

Passed 109 to 0 in the House on June 13, 2019.

See Who Voted "Yes" and Who Voted "No". To revise details of a 2016 law establishing the authority of school districts and school employees to administer opioid antagonists. The bill is part of a package that would repeal those provisions for particular institutions including schools, and replace them with broader language that applies to government and medical first responder agencies. See also Senate Bill 200 and House Bill 4367.

Did not vote on Revise ambulance opioid protocols in 2019 Senate Bill 282.

Passed 109 to 0 in the House on June 13, 2019.

See Who Voted "Yes" and Who Voted "No". To revise details of a 2015 law requiring protocols be developed to ensure that ambulances and similar vehicles be equipped with opioid antagonist drugs for treating overdoses, and that emergency medical services personnel are trained in their use. The bill would repeal those specific provisions for ambulances, and replace them with broader language that applies to government and medical first responder agencies. See also Senate Bill 200 and House Bill 4366.

Did not vote on Let public agencies stock opioid overdose drugs in 2019 Senate Bill 200.

Passed 109 to 0 in the House on June 13, 2019.

See Who Voted "Yes" and Who Voted "No". To permit doctors to prescribe and pharmacists to dispense an "opioid antagonist" drug to "an employee or agent of an agency authorized to purchase, possess, and distribute an opioid antagonist" for treatment of an individual suffering a heroin or other opioid overdose. See also House Bill 4367, which defines "agency" as a "governmental agency or life support agency".

Did not vote on in 2019 House Bill 4615.

Passed 57 to 50 in the House on June 11, 2019.

See Who Voted "Yes" and Who Voted "No". The House version of the fiscal year 2019-2020 State Police budget. This would appropriate $703.6 million in gross spending. Of this, $75.4 million is federal money, and the rest is from state and local taxes and fees.

Did not vote on in 2019 House Bill 4616.

Passed 58 to 49 in the House on June 11, 2019.

See Who Voted "Yes" and Who Voted "No". The House version of the fiscal year 2019-2020 Department of Military and Veterans Affairs budget.

This would appropriate $202.4 million in gross spending. Of this, $106.1 million is federal money, and the rest is from state and local taxes and fees.

Did not vote on **Appropriations: Department of Transportation** in 2019 Senate Bill 149.

Passed 57 to 52 in the House on June 19, 2019.

See Who Voted "Yes" and Who Voted "No". To send the bill back to the Senate as just a "shell" or "placeholder" budget with no actual appropriations. This is a procedural device used for launching negotiations over the differences between the House and Senate budgets, and eventually for negotiating a final budget between a Republican-controlled legislature and a Democratic governor.

Did not vote on **Appropriations: State Police** in 2019 Senate Bill 147.

Passed 58 to 51 in the House on June 19, 2019.

See Who Voted "Yes" and Who Voted "No". To send the bill back to the Senate as just a "shell" or "placeholder" budget with no actual appropriations. This is a procedural device used for launching negotiations over the differences between the House and Senate budgets, and eventually for negotiating a final budget between a Republican-controlled legislature and a Democratic governor.

Did not vote on **Appropriations: Department of Military and Veterans Affairs** in 2019 Senate Bill 144.

Passed 57 to 52 in the House on June 19, 2019.

See Who Voted "Yes" and Who Voted "No". To send the bill back to the Senate as just a "shell" or "placeholder" budget with no actual appropriations. This is a procedural device used for launching negotiations over the differences between the House and Senate budgets, and eventually for negotiating a final budget between a Republican-controlled legislature and a Democratic governor.

Did not vote on **Appropriations: Department of Health and Human Services** in 2019 Senate Bill 139.

Passed 57 to 52 in the House on June 19, 2019.

See Who Voted "Yes" and Who Voted "No". To send the bill back to the Senate as just a "shell" or "placeholder" budget with no actual appropriations. This is a procedural device used for launching negotiations over the differences between the House and Senate budgets, and eventually for negotiating a final budget between a Republican-controlled legislature and a Democratic governor.

Did not vote on **Appropriations: General Government** in 2019 Senate Bill 138.

Passed 57 to 52 in the House on June 19, 2019.

See Who Voted "Yes" and Who Voted "No". To send the bill back to the Senate as just a "shell" or "placeholder" budget with no actual appropriations. This is a procedural device used for launching negotiations over the differences between the House and Senate budgets, and eventually for negotiating a final budget between a Republican-controlled legislature and a Democratic governor.

Did not vote on **Appropriations: Department of Environment, Great Lakes and Energy** in 2019 Senate Bill 137.

Passed 57 to 52 in the House on June 19, 2019.

See Who Voted "Yes" and Who Voted "No". To send the bill back to the Senate as just a "shell" or "placeholder" budget with no actual appropriations. This is a procedural device used for launching negotiations over the differences between the House and Senate budgets, and eventually for negotiating a final budget between a Republican-controlled legislature and a Democratic governor.

Did not vote on **Appropriations: Community Colleges** in 2019 Senate Bill 134.

Passed 57 to 52 in the House on June 19, 2019.

See Who Voted "Yes" and Who Voted "No". To send the bill back to the Senate as just a "shell" or "placeholder" budget with no actual appropriations. This is a procedural device used for launching negotiations over the differences between the House and Senate budgets, and eventually for negotiating a final budget between a Republican-controlled legislature and a Democratic governor.

Did not vote on **Appropriations: Department of Insurance and Financial Services** in 2019 Senate Bill 141.

Passed 59 to 50 in the House on June 19, 2019.

See Who Voted "Yes" and Who Voted "No". To send the bill back to the Senate as just a "shell" or "placeholder" budget with no actual appropriations. This is a procedural device used for launching negotiations over the differences between the House and Senate budgets, and eventually for negotiating a final budget between a Republican-controlled legislature and a Democratic governor.

Did not vote on **Revise mortuary science (embalming) licensure detail** in 2019 Senate Bill 239.

Passed 109 to 0 in the House on June 4, 2019.

See Who Voted "Yes" and Who Voted "No". To permit students who don't have the license mandated by the state to engage in the practice of mortuary science (embalming), to do so under the supervision of a licensee in an accredited college program. Reportedly students in a Wayne State embalming program do some work on actual embalming cases under a licensed embalmer's supervision, and this is not accommodated in current law.

Did not vote on **Reform auto insurance** in 2019 Senate Bill 1.

Passed 94 to 15 in the House on May 24, 2019.

See Who Voted "Yes" and Who Voted "No". To no longer mandate that

auto insurance policies include unlimited personal injury protection (PIP) coverage. Customers could still choose unlimited PIP coverage, or choose policies with PIP limits of $250,000, $500,000, and for individuals covered by Medicaid, $50,000. Seniors on Medicare and individuals covered by other health insurance with less than a $6,000 deductible could choose not to purchase any PIP coverage at all.

The bill would mandate that insurers reduce charges for the PIP component of a customer's policy by an average of at least 45% for policies with a $50,000 PIP coverage limit, 35% for policies with a $250,000 PIP limit, and 20% percent for policies with a $500,000 PIP limit. Those who choose unlimited PIP coverage would get at least a 10% discount over current rates.

Medical service providers and hospitals could not charge more for medical care given to crash victims than twice the amount prescribed for federal Medicare reimbursements (subject to some adjustments). Limits would also be applied to reimbursements for long term care costs, including a cap of 56 hours a week on "attendant care" hours provided by friends and relatives, and payments to others capped at the amounts prescribed by the state's workers compensation insurance law.

The bill would also increase from $500 to $3,000 the limit on damages for which a person may sue under under a "mini-tort" exception to the no fault insurance law's general prohibition on vehicle crash lawsuits.

Trial lawyers would be prohibited from suing insurance companies for reimbursement claims that have not been authorized or are not late, or if the attorney improperly solicited a case ("ambulance chasing").

Insurers could not set rates on the basis of home ownership, educational level attained, occupation or credit score (but could use "credit information"). Zip codes would also be barred as a rate-setting factor, but insurers may still group ratings by 'territory.'

Under current law, Michigan insurance companies must file rate structure changes with the state but can start using them right away ("file and use"). The bill would require auto insurers to wait 90 days before using new rates they have filed, unless regulators approve them sooner.

Did not vote on **Require fingerprint checks to get state guardianship assistance** in 2019 House Bill 4550.

Passed 109 to 0 in the House on June 6, 2019.

See Who Voted "Yes" and Who Voted "No". To extend to "successor guardians" a criminal record and fingerprint check requirement that currently applies to a licensed foster parent getting state assistance for serving as a child's guardian.

Did not vote on **Expand who can view confidential child records** in 2019 House Bill 4549.

Passed 109 to 0 in the House on June 6, 2019.

See Who Voted "Yes" and Who Voted "No". To establish that otherwise confidential child records that licensed child care organizations are required to retain must be made available to the various Department of Health and Human Services bureaus that operate child welfare services, the social service organizations they contract with, and to national accreditation agencies.

Did not vote on **Revise landlord eviction process detail** in 2019 House Bill 4509.

Passed 62 to 47 in the House on June 19, 2019.

See Who Voted "Yes" and Who Voted "No". To revise details of a law restricting certain types of property owners (limited liability companies) from being represented by another person in an eviction proceeding. The bill appears to apply only to an individual owner or to owners who are a married couple.

Did not vote on **Appropriations: Supplemental spending** in 2019 Senate Bill 150.

Passed 107 to 2 in the House on June 6, 2019.

See Who Voted "Yes" and Who Voted "No". To authorize spending an

additional $28.7 million in the current fiscal year on various state departments and programs. Among other spending the bill authorizes $5 million each for marijuana regulation and for services related to the 2020 census. It also includes $10 million to compensate wrongfully convicted prisoners that was originally in House Bill 4286 and line-item vetoed by Gov. Whitmer because that was a "policy" bill, not an appropriation bill (which this one is).

Did not vote on **Let Mackinac Island ban drones** in 2019 Senate Bill 129.

Passed 95 to 12 in the House on June 12, 2019.

See Who Voted "Yes" and Who Voted "No". To amend a 2016 law that established a statewide regulatory regime on the commercial and recreational operation of aerial drones, which among other things preempted local governments from banning (but not regulating) drones. The bill would let Mackinac Island prohibit knowingly using a drone to interfere with the safe use of a horse used by a commercial service. Drones over the island could still be used by a "newsgatherer licensed by the Federal Communications Commission," by insurance claims adjustors, for utility or critical infrastructure maintenance, and enforcement. The island would have to apply for a certain "fixed site facility" designation issued by the Federal Aviation Administration.

Did not vote on **Restrict electronic nicotine delivery systems** in 2019 Senate Bill 155.

Passed 99 to 10 in the House on May 15, 2019.

See Who Voted "Yes" and Who Voted "No". To require electronic nicotine delivery systems to be sold in child-proof containers, and require that "vapor products or alternative nicotine products" must be kept behind the counter in retail stores.

Did not vote on **Ban selling "e-cigarettes" to minors** in 2019 Senate Bill 106.

Passed 100 to 9 in the House on May 15, 2019.

See Who Voted "Yes" and Who Voted "No". To ban selling or giving minors electronic "vapor products" ("vapes") or any device that delivers nicotine. The bill would also authorize imposing 16 hours of community service and a "health promotion and risk reduction assessment program" on a minor who possesses or tries to buy a nicotine vapor product, along with a $50 fine. The community service penalty would double and triple for second and subsequent offenses, but the fine would still be $50. A person who sells tobacco or vapes to a minor would be subject to fines of $100 to $2,500 for a third offense. See also Senate Bill 155.

Did not vote on **Revise detail of painkiller prescription restrictions** in 2019 Senate Bill 128.

Passed 109 to 0 in the House on June 19, 2019.

See Who Voted "Yes" and Who Voted "No". To revise details of the definition of "bona fide prescriber-patient relationship requirement" in laws that restrict medical prescribers in writing prescriptions for controlled substance painkillers. See also Senate Bill 127.

Did not vote on **Give tax breaks for "alternative energy" installations** in 2019 House Bill 4465.

Passed 107 to 2 in the House on June 20, 2019.

See Who Voted "Yes" and Who Voted "No". To exclude from property tax the value of "alternative energy systems" worth up to $80,000 that "offset all or a portion of the commercial or industrial energy" used on the property, and which produce less than 150 kilowatts of electricity.

Did not vote on **Impose prescription eye drop renewal insurance mandate** in 2019 House Bill 4451.

Passed 105 to 4 in the House on June 19, 2019.

See Who Voted "Yes" and Who Voted "No". To impose a new coverage mandate that would require health insurance policies that include

prescription eye drop coverage to include renewals that meet conditions specified in the bill.

Did not vote on **Revise campaign finance regulation detail** in 2019 House Bill 4446.

Passed 85 to 24 in the House on June 20, 2019.

See Who Voted "Yes" and Who Voted "No". To revise details of Michigan's extensive, complex and very detailed rules campaign on campaign finance, including rules on various kinds of contributions that were authorized by the holding of the U.S. Supreme Court in the Citizens United case, and by **Michigan Public Act 119 of 2017**. The bill would change details of rules on financial accounts used to hold the money, and would also change details of rules governing some kinds of contributions.

Did not vote on **Expand use of online material related to administrative rules and law** in 2019 House Bill 4445.

Passed 109 to 0 in the House on May 24, 2019.

See Who Voted "Yes" and Who Voted "No".

Did not vote on **Expand use of online material related to administrative rules and law** in 2019 House Bill 4444.

Passed 109 to 0 in the House on May 24, 2019.

See Who Voted "Yes" and Who Voted "No". To revise the Freedom of Information Act to clarify that the fee charged by state agencies to provide documents in electronic form. State agencies are required to publish and make available forms and documents, contested administrative law records, promulgated rules, other written statements that implement or interpret laws, rules or policy, including guidelines, manuals, and forms with instructions, adopted or used by the agency. The bill would allow these the publications to be provided in electronic format in response to an open records request.

Missed Votes 1 to 50 of 87 by Rep. Larry Inman (R) Next 37

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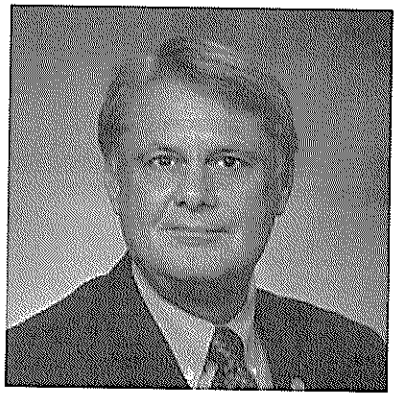

Larry Inman (R)
State Representative, District 104
Hometown: Grand Traverse County
Contact Rep. Larry Inman (R)

Bill Introduction and Voting Record

Missed Votes

Missed Votes 51 to 87 of 87 by Rep. Larry Inman (R) Previous 50

Did not vote on **Authorize officials to determine a tenant has moved out** in 2019 Senate Bill 112.

Passed 107 to 0 in the House on June 11, 2019.

See Who Voted "Yes" and Who Voted "No". To

revise the law that established the conditions under which a rental property owner may enter the property to evict a tenant. Under current law an owner can enter if after "diligent inquiry" he or she believes in good faith the renter has departed and does not intend to return. Under the bill this determination could also be issued by a court officer or sheriff deputy.

Did not vote on **Revise concealed pistol license violation sanctions** in 2019 House Bill 4434.

Passed 90 to 19 in the House on May 24, 2019.

See Who Voted "Yes" and Who Voted "No". To repeal criminal sanctions for carrying a concealed pistol after a individual's concealed pistol license has expired (currently up to five years in prison and a $2,500 fine), with a civil fine of $330 for carrying a pistol after failing to renew a license that is less than one year past its expiration. Bill supporters contend that the current penalty is excessive for that they call a "paperwork" crime.

Did not vote on **Revise credit services organizations regulation detail** in 2019 House Bill 4411.

Passed 108 to 1 in the House on June 20, 2019.

See Who Voted "Yes" and Who Voted "No". To revise exceptions to a requirement in a law that regulates credit services organizations that requires them to perform the agreed services within 90 days.

Did not vote on **Ban sale of dextromethorphan to minor** in 2019 House Bill 4412.

Passed 104 to 5 in the House on May 24, 2019.

See Who Voted "Yes" and Who Voted "No". To ban the sale or purchase of dextromethorphan (DXM) cough suppressants to or by individuals under age 18.

Did not vote on **Require annual audit for recreational authority that taxes** in 2019 House Bill 4408.

Passed 109 to 0 in the House on June 19, 2019.

See Who Voted "Yes" and Who Voted "No". To revise the requirement that a municipal recreational authority get audited every year, instead requiring an audit every other year for authorities that do not levy property tax. The authorities have the power to levy up to one-mill of property tax for swimming pools, recreation centers, public auditoriums, public conference centers, and parks, with the approval of voters. A 2016 law allowed school districts to be part of an authority, and potentially let two school districts start one.

Did not vote on **Expand district court magistrate's authority in marijuana licensure regime** in 2019 House Bill 4407.

Passed 108 to 1 in the House on May 24, 2019.

See Who Voted "Yes" and Who Voted "No". To expand the authority of district court magistrates to matters related to the state's legal marijuana regulatory and licensure law. District court magistrates (who can only preside over civil law matters, not criminal) could conduct informal hearings and impose civil sanctions under that law.

Did not vote on **Additional MSU sex abuse scandal legislative response measures** in 2019 House Bill 4383.

Passed 108 to 1 in the House on June 19, 2019.

See Who Voted "Yes" and Who Voted "No". To make it a crime for a person to use a position of authority to prevent another person from reporting a crime involving sexual abuse of a minor to the individual designated as a college or university's "Title IX" coordinator, a reference to a federal law that prohibits sex discrimination in education.

Did not vote on **Expand scope of child abuse reporting mandate** in 2019 House Bill 4377.

Passed 109 to 0 in the House on June 19, 2019.

See Who Voted "Yes" and Who Voted "No". To revise a law that makes it a crime for certain health care professionals, social workers, school employees and a growing list of other professionals to fail to report suspected child abuse. The bill would require the state Department of Health and Human Services to develop and distribute a "thorough and comprehensive training package," and require their employers to give it to those required by law to report these things.

Did not vote on **Expand scope of child abuse reporting mandate** in 2019 House Bill 4376.

Passed 106 to 3 in the House on June 19, 2019.

See Who Voted "Yes" and Who Voted "No". To expand the law that requires certain health care professionals and social workers to report suspected child abuse, so that it also requires reporting by athletic trainers.

Did not vote on **Additional MSU sex abuse scandal legislative response measures** in 2019 House Bill 4374.

Passed 107 to 2 in the House on June 19, 2019.

See Who Voted "Yes" and Who Voted "No". To make it a crime for a person to use a position of authority to prevent another person from reporting a crime involving sexual assault or child abuse.

Did not vote on **Permit ORV firearm carry on private property** in 2019 House Bill 4331.

Passed 67 to 42 in the House on May 24, 2019.

See Who Voted "Yes" and Who Voted "No". To allow an landowner or a guest to carry or transport a firearm in a vehicle or an Off Road Vehicle on private land.

Did not vote on **Appropriations: Higher Education** in 2019 House Bill 4236.

Passed 56 to 53 in the House on June 13, 2019.

See Who Voted "Yes" and Who Voted "No". The House version of the fiscal year 2019-2020 Higher Education budget. This would appropriate $1.68 billion in gross spending, of which $123 million is federal money, with the rest is from state taxes and fees. The budget would provide a funding increase of just 1 percent to individual universities.

Did not vote on **Appropriations: K-12 School Aid budget** in 2019 House Bill 4242.

Passed 56 to 53 in the House on June 13, 2019.

See Who Voted "Yes" and Who Voted "No". The House version of the fiscal year 2019-2020 K-12 school aid budget. This would appropriate $15.047 billion in gross spending, of which $1.749 billion is federal money, and the rest is from state and local taxes and fees. School districts in the lower funding tier would get a $180 per pupil increase, and districts that have higher funding would get $120 more per student.

Did not vote on **Appropriations: Department of Transportation** in 2019 House Bill 4246.

Passed 57 to 52 in the House on June 13, 2019.

See Who Voted "Yes" and Who Voted "No". The House version of the Fiscal Year 2019-2020 Department of Transportation budget. This would appropriate $5.40 billion in gross spending. Of this, $1.34 billion is federal money, and the rest is from state and local taxes and fees. The budget does not recognize or include any revenue from a $2.5 billion, 45 cents per gallon gas tax increase proposed by Gov. Gretchen Whitmer, but does include a $542.5 million "fund shift" from a Republican proposal to no longer charge sales tax on fuel, replacing that levy with an equivalent increase in motor fuel taxes. Note: Most sales tax revenue goes to schools; the proposal assumes these school dollars will be replaced by extending sales tax to **out-of-state catalog and internet sales** after the U.S. Supreme Court's 2018 Wayfair decision lifted a ban on this.

Did not vote on **Appropriations: Department of Natural Resources** in 2019 House Bill 4241.

Passed 58 to 51 in the House on June 13, 2019.

See Who Voted "Yes" and Who Voted "No". The House version of the Fiscal Year 2019-2020 Department of Natural Resources budget. This would appropriate $447.3 million in gross spending. Of this, $86.0 million is federal money, and the rest is from state and local taxes and fees.

Did not vote on **Appropriations: Department of Environmental Quality** in 2019 House Bill 4233.

Passed 57 to 52 in the House on June 13, 2019.

See Who Voted "Yes" and Who Voted "No". The House version of the Fiscal Year 2019-2020 Department of Environmental Quality budget. This would appropriate $469.4 million in gross spending. Of this, $160.4 million is federal money, and the rest is from state and local taxes and fees.

Did not vote on **Appropriations: Department of Education** in 2019 House Bill 4232.

Passed 58 to 51 in the House on June 13, 2019.

See Who Voted "Yes" and Who Voted "No". The House version of the Fiscal Year 2019-2020 Department of Education budget. This would appropriate $404.2 million in gross spending. Of this, $300.7 million is federal money, and the rest is from state and local taxes and fees.

Did not vote on **Appropriations: Department of Health and Human Services** in 2019 House Bill 4235.

Passed 58 to 49 in the House on June 12, 2019.

See Who Voted "Yes" and Who Voted "No". The House version of the Fiscal Year 2019-2020 Department of Health and Human Services budget. This would appropriate $25.882 billion in gross spending. Of this, $16.914 million is federal money, and the rest is from state and local taxes and fees.

Did not vote on **Appropriations: General Government** in 2019 House Bill 4234.

Passed 59 to 48 in the House on June 12, 2019.

See Who Voted "Yes" and Who Voted "No". The House version of the Fiscal Year 2019-2020 General Government budget. This would appropriate $5.513 billion in gross spending. Of this, $806.5 million is federal money, and the rest is from state and local taxes and fees. Among its many provisions this would authorize funding to accommodate no longer imposing sales tax on motor fuels, increasing the motor fuels tax by an equivalent amount, and restoring the foregone sales tax revenue that would have gone to schools with new money from taxing purchases from out of state catalogs and web sites, which a 2018 U.S. Supreme Court ruling permitted.

Did not vote on **Appropriations: Community Colleges** in 2019 House Bill 4230.

Passed 57 to 50 in the House on June 12, 2019.

See Who Voted "Yes" and Who Voted "No". The House version of the fiscal year 2019-2020 community colleges budget. This would appropriate $414.7 million in gross spending, which is all from state taxes and fees (no federal dollars). This would increase operations grants to community colleges by 1 percent over the previous year.

Did not vote on **Appropriations: Department of Licensing and Regulatory Affairs** in 2019 House Bill 4239.

Passed 58 to 49 in the House on June 12, 2019.

See Who Voted "Yes" and Who Voted "No". The House version of the Fiscal Year 2019-2020 Department of Licensing and Regulatory Affairs budget. This would appropriate $562.4 million in gross spending. Of this, $95.2 million is federal money, and the rest is from state and local taxes and fees.

Did not vote on **Appropriations: Department of Insurance and Financial**

Services in 2019 House Bill 4237.

Passed 59 to 48 in the House on June 12, 2019.

See Who Voted "Yes" and Who Voted "No". The House version of the Fiscal Year 2019-2020 Department of Insurance and Financial Services budget. This would appropriate $68.6 million in gross spending. Of this, $1.0 million is federal money, and the rest is from state and local taxes and fees.

Did not vote on **Appropriations: Department of Corrections** in 2019 House Bill 4231.

Passed 56 to 51 in the House on June 11, 2019.

See Who Voted "Yes" and Who Voted "No". The House version of the Fiscal Year 2019-2020 Department of Corrections budget. This would appropriate $2.00 billion in gross spending. Of this, $5.3 million is federal money, and the rest is from state and local taxes and fees.

Did not vote on **Appropriations: Judiciary budget** in 2019 House Bill 4238.

Passed 58 to 49 in the House on June 11, 2019.

See Who Voted "Yes" and Who Voted "No". The House version of the fiscal year 2019-2020 Judiciary budget. This would appropriate $308.1 million in gross spending. Of this, $5.7 million is federal money, and the rest is from state and local taxes and fees.

Did not vote on **Appropriations: Department of Agriculture and Rural Development** in 2019 House Bill 4229.

Passed 58 to 49 in the House on June 11, 2019.

See Who Voted "Yes" and Who Voted "No". The House version of the Fiscal Year 2019-2020 Department of Agriculture and Rural Development budget. This would appropriate $109.2 million in gross spending. Of this, $11.8 million is federal money, and the rest is from state and local taxes and fees.

Did not vote on **Revise multiline phone service 9-1-1 mandate** in 2019 House Bill 4249.

Passed 106 to 3 in the House on May 24, 2019.

See Who Voted "Yes" and Who Voted "No". To repeal the authority of the Michigan Public Service Commission to impose rules on businesses and organizations with multiline telephone systems, and instead spell out the relevant rules in state statute (law). Specifically, the bill would require businesses or other organizations that have a multiline telephone system to install additional equipment that reveals where in the building a 911 call comes from, subject to various facility size thresholds. Among other details, the mandate would extend only to locations with more than 7,000 square feet of "work space," but "single-floor locations that have less than 20,000 square feet of work space and fewer than 20 communications devices" would be exempt. The bill was introduced in response to rules that have been promulgated under a 2016 law that critics say far exceed the scope envisioned by the authors of that law.

Did not vote on **Mandate dental testing and screening for children** in 2019 House Bill 4223.

Passed 93 to 16 in the House on June 20, 2019.

See Who Voted "Yes" and Who Voted "No". To mandate that children entering kindergarten or first grade for the first time bring a form signed by a dentist or dental hygienist certifying that the child's teeth were examined and assessed within the past six months. Also, to require the state welfare department to create a dental oral assessment program for children who did not get the exam before registering for school enrollment.

Did not vote on **Create state "Committee on Mining Future"** in 2019 House Bill 4227.

Passed 107 to 1 in the House on May 16, 2019.

See Who Voted "Yes" and Who Voted "No". To create a state "Committee on Mining Future" comprised of interests specified in the bill to

evaluate current policies that affect the mining and minerals industry and recommend actions to strengthen. This would be ended after it issued a report.

Did not vote on Limit corporate subsidy deal modifications in 2019 House Bill 4191.

Passed 106 to 3 in the House on May 22, 2019.

See Who Voted "Yes" and Who Voted "No". To change the rules on annual state taxpayer subsidies granted to the former Federal Mogul company in the 2000s under the since-suspended "Michigan Economic Growth Authority" program (MEGA), so that the company that bought the firm in 2018 (Tenneco) can collect subsidies said to be worth around $4 to $5 million. The bill is part of a package that prohibits these ongoing subsidies from being modified by state officials in a manner that would increase state taxpayer liabilities.

Did not vote on Limit corporate subsidy deal modifications in 2019 House Bill 4190.

Passed 106 to 3 in the House on May 22, 2019.

See Who Voted "Yes" and Who Voted "No". To prohibit state economic development officials from modifying one of the agreements entered with a relative handful of large companies mostly in the late 2000s that granted them up to $9 billion worth of state taxpayer subsidies (styled as “refundable business tax credits”) over a 20 year period. Specifically, the subsidy deals granted under the since-suspended "Michigan Economic Growth Authority" program (MEGA), could not be changed in a way that increases the payouts or extends them. The bill would also change the rules on MEGA subsidies granted to the former Federal Mogul company in the 2000s, so as to allow the company that bought the firm in 2018 (Tenneco) to collect subsidies said to be worth around $4 to $5 million..

Did not vote on Limit corporate subsidy deal modifications in 2019

House Bill 4189.

Passed 105 to 3 in the House on May 22, 2019.

See Who Voted "Yes" and Who Voted "No". To change the rules on annual state taxpayer subsidies granted to the former Federal Mogul company in the 2000s, so that the company that bought the firm in 2018 (Tenneco) can collect subsidies said to be worth around $4 to $5 million. The bill is part of a package that prohibits these ongoing subsidy deals granted under the since-suspended "Michigan Economic Growth Authority" program (MEGA), from being changed in a way that increases the payouts or extends them.

Did not vote on **Revise statewide student test details** in 2019 House Bill 4162.

Passed 85 to 24 in the House on June 20, 2019.

See Who Voted "Yes" and Who Voted "No". To repeal a requirement that state tests administered to public and private school 11th grade students must assess a pupil's ability to apply at least reading and mathematics skills in a manner that is intended to allow employers to use the results in making employment decisions. This refers to an "ACT WorkKeys" assessment test the state had contracted-for but which was seldom used by employers.

Did not vote on **Expand scope of child abuse reporting mandate** in 2019 House Bill 4108.

Passed 107 to 2 in the House on June 19, 2019.

See Who Voted "Yes" and Who Voted "No". To expand the law that requires certain health care professionals and social workers to report suspected child abuse, so that it also requires reporting by physical therapists and physical therapist assistants.

Did not vote on **Revise foster care home zoning restriction** in 2019 House Bill 4095.

Passed 73 to 36 in the House on May 21, 2019.

See Who Voted "Yes" and Who Voted "No". To revise a law that prohibits local zoning codes from excluding a child foster care facility with six or fewer residents from being located in a residential neighborhood. The bill would extend this preemption to include foster care homes with up to 10 residents if they are located on 20 acres or more.

Did not vote on **Give tax breaks for household "alternative energy" installations** in 2019 House Bill 4069.

Passed 106 to 3 in the House on June 20, 2019.

See Who Voted "Yes" and Who Voted "No". To exclude from property tax assessments the value of solar panels, wind turbines and other "alternative energy systems" that are installed, replaced or repaired in a residence, and which produce less than 150 kilowatts of electricity for a household whose use does not exceed this level.

Did not vote on **Expand opioid antagonist authorization to jail and prison guards** in 2019 House Bill 4056.

Passed 109 to 0 in the House on May 21, 2019.

See Who Voted "Yes" and Who Voted "No". To include corrections officers in a 2014 law that permits peace officers with training to administer an opioid antagonist to a person suffering an overdose to do so. Under current law guards must call a nurse to administer the drug, and the bill would allow them to carry it in the prison.

Did not vote on **Authorize insurance salesperson criminal record exception** in 2019 House Bill 4044.

Passed 109 to 0 in the House on June 20, 2019.

See Who Voted "Yes" and Who Voted "No". To allow the director of the state licensure department to authorize giving an "insurance producer" (salesperson) license to an individual who has been denied by a licensure board solely on the basis of the person having been convicted of a felony

more than 10 years earlier, except for violent crimes, sex crimes or crimes of a fiduciary or financial nature. Under current law, any felony at any time bars an individual from getting an insurance agent license.

Missed Votes 51 to 87 of 87 by Rep. Larry Inman (R) Previous 50

Exhibit 3

Excerpt of Michigan House Journal voting records between May 16, 2019 and June 20, 2019.

No. 48
STATE OF MICHIGAN

JOURNAL
OF THE
House of Representatives

100th Legislature
REGULAR SESSION OF 2019

House Chamber, Lansing, Thursday, May 16, 2019.

12:00 Noon.

The House was called to order by the Speaker Pro Tempore.

The roll was called by the Clerk of the House of Representatives, who announced that a quorum was present.

Afendoulis—present
Albert—present
Alexander—present
Allor—present
Anthony—present
Bellino—present
Berman—present
Bolden—present
Bollin—present
Brann—present
Brixie—present
Byrd—present
Calley—present
Cambensy—present
Camilleri—present
Carter, B.—present
Carter, T.—present
Chatfield—present
Cherry—present
Chirkun—present
Clemente—present
Cole—present
Coleman—present
Crawford—present
Eisen—present
Elder—present
Ellison—present
Farrington—present
Filler—present
Frederick—present
Garrett—present
Garza—present
Gay-Dagnogo—present
Glenn—present
Green—present
Greig—present
Griffin—present
Guerra—present
Haadsma—present
Hall—present
Hammoud—present
Hauck—present
Hernandez—present
Hertel—present
Hoadley—present
Hoitenga—present
Hood—present
Hope—present
Hornberger—present
Howell—present
Huizenga—present
Iden—present
Inman—excused
Johnson, C.—present
Johnson, S.—present
Jones—present
Kahle—present
Kennedy—present
Koleszar—present
Kuppa—present
LaFave—present
LaGrand—present
Lasinski—present
Leutheuser—present
Liberati—present
Lightner—present
Lilly—present
Love—present
Lower—present
Maddock—present
Manoogian—present
Marino—present
Markkanen—present
Meerman—present
Miller—present
Mueller—present
Neeley—present
O'Malley—present
Pagan—present
Paquette—present
Peterson—present
Pohutsky—present
Rabhi—present
Reilly—present
Rendon—present
Robinson—present
Sabo—present
Schroeder—present
Shannon—present
Sheppard—present
Slagh—present
Sneller—present
Sowerby—present
Stone—present
Tate—present
VanSingel—present
VanWoerkom—present
Vaupel—present
Wakeman—present
Warren—present
Webber—present
Wendzel—present
Wentworth—present
Whiteford—present
Whitsett—present
Wittenberg—present
Witwer—present
Wozniak—present
Yancey—excused
Yaroch—present

e/d/s = entered during session

Pastor Dallas Lenear, Director of Project GREEN in Grand Rapids, offered the following invocation:

"Our God and Father – creator of heaven and earth. I come to You today on behalf of these representatives of the citizens of the state of Michigan – 'great water.' Your word declares that 'there is no authority except that which God has established.' Thank You for establishing these men and women in positions of service. God, any power that they have, I pray that they surrender back to You.

As they open this session, God, I pray that You would open their hearts to be sensitive to Your spirit. For every wrong, release within them a spirit of redemption. For every decision, give divine direction. For every high matter, God, help them to consider 'the least of these.' God, as they deliberate statewide policies, bring to their minds the names of the individuals they represent. Protect them from impure motivations and self-centered schemes.

Rather, God, motivate them with joy. Give them a spirit of unity. Show them what is good and what You require of them – to act justly and to love mercy and to walk humbly with You, God.

I pray this in the name of Jesus Your son and my savior.

Amen."

The Speaker assumed the Chair.

Rep. Rabhi moved that Rep. Yancey be excused from today's session.

The motion prevailed.

Rep. Cole moved that Rep. Inman be excused from today's session.

The motion prevailed.

Announcement by the Clerk of Printing and Enrollment

The Clerk announced that the following bills and joint resolution had been reproduced and made available electronically on Wednesday, May 15:

House Bill Nos. 4587 4588 4589 4590 4591 4592 4593 4594 4595 4596 4597 4598 4599 4600 4601

House Joint Resolution H

The Clerk announced that the following bills had been reproduced and made available electronically on Thursday, May 16:

Senate Bill Nos. 322 323 324 325 326 327

Reports of Select Committees

The Select Committee on Reducing Car Insurance Rates, by Rep. Wentworth, Chair, reported

Senate Bill No. 1, entitled

A bill to amend 1956 PA 218, entitled "The insurance code of 1956," by amending sections 150, 2105, 2108, 2118, 2120, 3101, 3101a, 3104, 3107, 3111, 3112, 3113, 3114, 3115, 3135, 3142, 3148, 3157, 3163, 3172, 3173a, 3174, 3175, and 3177 (MCL 500.150, 500.2105, 500.2108, 500.2118, 500.2120, 500.3101, 500.3101a, 500.3104, 500.3107, 500.3111, 500.3112, 500.3113, 500.3114, 500.3115, 500.3135, 500.3142, 500.3148, 500.3157, 500.3163, 500.3172, 500.3173a, 500.3174, 500.3175, and 500.3177), section 150 as amended by 1992 PA 182, section 2108 as amended by 2015 PA 141, sections 2118 and 2120 as amended by 2007 PA 35, section 3101 as amended by 2017 PA 140, section 3101a as amended by 2018 PA 510, section 3104 as amended by 2002 PA 662, section 3107 as amended by 2012 PA 542, section 3113 as amended by 2016 PA 346, section 3114 as amended by 2016 PA 347, section 3135 as amended by 2012 PA 158, section 3163 as amended by

2002 PA 697, sections 3172, 3173a, 3174, and 3175 as amended by 2012 PA 204, and section 3177 as amended by 1984 PA 426, and by adding sections 261, 1245, 2116b, 3107c, 3107d, 3107e, 3157a, and 3157b and chapter 63.

With the recommendation that the substitute (H-1) be adopted and that the bill then pass.

The bill and substitute were referred to the order of Second Reading of Bills.

Favorable Roll Call

To Report Out:

Yeas: Reps. Wentworth, Rendon, Frederick, LaFave, Afendoulis and Whitsett

Nays: Reps. Lasinski, Sabo and Bolden

COMMITTEE ATTENDANCE REPORT

The following report, submitted by Rep. Wentworth, Chair, of on Select Committee on Reducing Car Insurance Rates, was received and read:

Meeting held on: Wednesday, May 15, 2019

Present: Reps. Wentworth, Rendon, Frederick, LaFave, Afendoulis, Lasinski, Sabo, Bolden and Whitsett

Reports of Standing Committees

The Committee on Appropriations, by Rep. Hernandez, Chair, reported

House Bill No. 4230, entitled

A bill to amend 1979 PA 94, entitled "The state school aid act of 1979," by amending sections 201 and 201a (MCL 388.1801 and 388.1801a), sections 201 and 201a as amended by 2018 PA 265.

With the recommendation that the substitute (H-1) be adopted and that the bill then pass.

The bill and substitute were referred to the order of Second Reading of Bills.

Favorable Roll Call

To Report Out:

Yeas: Reps. Hernandez, Miller, Inman, Albert, Allor, Brann, VanSingel, Whiteford, Yaroch, Bollin, Glenn, Green, Huizenga, Lightner, Maddock, Slagh and VanWoerkom

Nays: Reps. Hoadley, Love, Pagan, Hammoud, Peterson, Sabo, Brixie, Cherry, Hood, Kennedy and Tate

The Committee on Appropriations, by Rep. Hernandez, Chair, reported

House Bill No. 4233, entitled

A bill to make appropriations for the department of environmental quality for the fiscal year ending September 30, 2020; and to provide for the expenditure of the appropriations.

With the recommendation that the substitute (H-2) be adopted and that the bill then pass.

The bill and substitute were referred to the order of Second Reading of Bills.

Favorable Roll Call

To Report Out:

Yeas: Reps. Hernandez, Miller, Inman, Albert, Allor, Brann, VanSingel, Whiteford, Yaroch, Bollin, Glenn, Green, Huizenga, Lightner, Maddock, Slagh and VanWoerkom

Nays: Reps. Hoadley, Love, Pagan, Hammoud, Peterson, Sabo, Anthony, Brixie, Cherry, Hood, Kennedy and Tate

The Committee on Appropriations, by Rep. Hernandez, Chair, reported

House Bill No. 4238, entitled

A bill to make appropriations for the judiciary for the fiscal year ending September 30, 2020; and to provide for the expenditure of the appropriations.

With the recommendation that the substitute (H-3) be adopted and that the bill then pass.

The bill and substitute were referred to the order of Second Reading of Bills.

Favorable Roll Call

To Report Out:

Yeas: Reps. Hernandez, Miller, Inman, Albert, Allor, Brann, VanSingel, Whiteford, Yaroch, Bollin, Glenn, Green, Huizenga, Lightner, Maddock, Slagh, VanWoerkom and Brixie

Nays: Reps. Love, Pagan, Hammoud, Sabo, Anthony, Cherry, Hood, Kennedy and Tate

The Committee on Appropriations, by Rep. Hernandez, Chair, reported

House Bill No. 4241, entitled

A bill to make appropriations for the department of natural resources for the fiscal year ending September 30, 2020; and to provide for the expenditure of the appropriations.

With the recommendation that the substitute (H-3) be adopted and that the bill then pass.

The bill and substitute were referred to the order of Second Reading of Bills.

Favorable Roll Call

To Report Out:

Yeas: Reps. Hernandez, Miller, Inman, Albert, Allor, Brann, VanSingel, Whiteford, Yaroch, Bollin, Glenn, Green, Huizenga, Lightner, Maddock, Slagh, VanWoerkom and Cherry

Nays: Reps. Hoadley, Love, Pagan, Hammoud, Peterson, Sabo, Anthony, Brixie, Hood, Kennedy and Tate

COMMITTEE ATTENDANCE REPORT

The following report, submitted by Rep. Hernandez, Chair, of the Committee on Appropriations, was received and read:

Meeting held on: Wednesday, May 15, 2019

Present: Reps. Hernandez, Miller, Inman, Albert, Allor, Brann, VanSingel, Whiteford, Yaroch, Bollin, Glenn, Green, Huizenga, Lightner, Maddock, Slagh, VanWoerkom, Hoadley, Love, Pagan, Hammoud, Peterson, Sabo, Anthony, Brixie, Cherry, Hood, Kennedy and Tate

The Committee on Insurance, by Rep. Rendon, Chair, referred

House Bill No. 4044, entitled

A bill to amend 1956 PA 218, entitled "The insurance code of 1956," by amending sections 1205 and 1239 (MCL 500.1205 and 500.1239), section 1205 as amended by 2008 PA 422 and section 1239 as amended by 2008 PA 423.

to the Committee on Ways and Means with the recommendation that the substitute (H-2) be adopted.

Favorable Roll Call

To Refer:

Yeas: Reps. Rendon, Markkanen, Webber, Vaupel, Bellino, Frederick, Hoitenga, LaFave, Berman, Paquette, Wittenberg, Gay-Dagnogo, Lasinski, Sneller, Bolden, Brenda Carter and Coleman

Nays: None

The bill and substitute were referred to the Committee on Ways and Means.

COMMITTEE ATTENDANCE REPORT

The following report, submitted by Rep. Rendon, Chair, of the Committee on Insurance, was received and read:

Meeting held on: Thursday, May 16, 2019

Present: Reps. Rendon, Markkanen, Webber, Vaupel, Bellino, Frederick, Hoitenga, LaFave, Berman, Paquette, Wittenberg, Gay-Dagnogo, Lasinski, Sneller, Bolden, Brenda Carter and Coleman

The Committee on Health Policy, by Rep. Vaupel, Chair, referred
House Bill No. 4412, entitled
A bill to amend 1978 PA 368, entitled "Public health code," (MCL 333.1101 to 333.25211) by adding section 17766g.
to the Committee on Ways and Means with the recommendation that the substitute (H-1) be adopted.

Favorable Roll Call

To Refer:
Yeas: Reps. Vaupel, Frederick, Alexander, Calley, Hornberger, Lower, Whiteford, Afendoulis, Filler, Mueller, Wozniak, Liberati, Garrett, Clemente, Koleszar, Pohutsky, Stone and Witwer
Nays: None
The bill and substitute were referred to the Committee on Ways and Means.

The Committee on Health Policy, by Rep. Vaupel, Chair, referred
House Bill No. 4451, entitled
A bill to amend 1956 PA 218, entitled "The insurance code of 1956," (MCL 500.100 to 500.8302) by adding section 3406u.
to the Committee on Ways and Means with the recommendation that the substitute (H-1) be adopted.

Favorable Roll Call

To Refer:
Yeas: Reps. Vaupel, Frederick, Alexander, Calley, Hornberger, Lower, Whiteford, Afendoulis, Filler, Mueller, Wozniak, Liberati, Garrett, Clemente, Ellison, Koleszar, Pohutsky, Stone and Witwer
Nays: None
The bill and substitute were referred to the Committee on Ways and Means.

COMMITTEE ATTENDANCE REPORT

The following report, submitted by Rep. Vaupel, Chair, of the Committee on Health Policy, was received and read:
Meeting held on: Thursday, May 16, 2019
Present: Reps. Vaupel, Frederick, Alexander, Calley, Hornberger, Lower, Whiteford, Afendoulis, Filler, Mueller, Wozniak, Liberati, Garrett, Clemente, Ellison, Koleszar, Pohutsky, Stone and Witwer

COMMITTEE ATTENDANCE REPORT

The following report, submitted by Rep. O'Malley, Chair, of the Committee on Transportation, was received and read:
Meeting held on: Wednesday, May 15, 2019
Present: Reps. O'Malley, Eisen, Cole, Sheppard, Alexander, Bellino, Howell, Sneller, Clemente, Haadsma and Shannon
Absent: Reps. Afendoulis and Yancey
Excused: Reps. Afendoulis and Yancey

COMMITTEE ATTENDANCE REPORT

The following report, submitted by Rep. Marino, Chair, of the Committee on Commerce and Tourism, was received and read:
Meeting held on: Thursday, May 16, 2019
Present: Reps. Marino, Wendzel, Reilly, Meerman, Schroeder, Wakeman, Camilleri, Hope, Manoogian and Robinson
Absent: Rep. Cambensy
Excused: Rep. Cambensy

COMMITTEE ATTENDANCE REPORT

The following report, submitted by Rep. Iden, Chair, of the Committee on Ways and Means, was received and read:
Meeting held on: Thursday, May 16, 2019
Present: Reps. Iden, Lilly, Leutheuser, Griffin, Hauck, Kahle, Wentworth, Warren, Byrd, Neeley and Hertel

Introduction of Bills

Rep. LaGrand introduced

House Bill No. 4602, entitled

A bill to amend 1949 PA 300, entitled "Michigan vehicle code," by amending section 801 (MCL 257.801), as amended by 2018 PA 656.

The bill was read a first time by its title and referred to the Committee on Transportation.

Reps. Eisen, Kennedy, Lower, Frederick, Rendon, Wozniak, Markkanen, Whitsett and Garza introduced

House Bill No. 4603, entitled

A bill to amend 1978 PA 368, entitled "Public health code," by amending section 5111 (MCL 333.5111), as amended by 2016 PA 64.

The bill was read a first time by its title and referred to the Committee on Health Policy.

Reps. Whitsett, Eisen, Peterson, Elder, Yancey, Rendon, Hoitenga, Garza, Tate, Cambensy, Haadsma, Kennedy, Brenda Carter, Wozniak, Neeley, Coleman, Jones and Robinson introduced

House Bill No. 4604, entitled

A bill to amend 1956 PA 218, entitled "The insurance code of 1956," (MCL 500.100 to 500.8302) by adding section 3406u.

The bill was read a first time by its title and referred to the Committee on Health Policy.

Reps. Neeley, Whitsett, Eisen, Peterson, Elder, Yancey, Rendon, Hoitenga, Garza, Tate, Chirkun, Cambensy, Kennedy, Brenda Carter, Wozniak, Coleman, Slagh, Jones and Robinson introduced

House Bill No. 4605, entitled

A bill to amend 1978 PA 368, entitled "Public health code," (MCL 333.1101 to 333.25211) by adding section 16221c.

The bill was read a first time by its title and referred to the Committee on Health Policy.

Reps. Hoitenga, Whitsett, Eisen, Peterson, Elder, Yancey, Rendon, Garza, Chirkun, Tate, Cambensy, Kennedy, Brenda Carter, Wozniak, Neeley, Coleman, Jones and Robinson introduced

House Bill No. 4606, entitled

A bill to amend 1978 PA 368, entitled "Public health code," by amending section 9123 (MCL 333.9123), as added by 1988 PA 487.

The bill was read a first time by its title and referred to the Committee on Health Policy.

Reps. Whitsett, Peterson, Elder, Yancey, Rendon, Hoitenga, Garza, Tate, Chirkun, Cambensy, Haadsma, Kennedy, Brenda Carter, Wozniak, Neeley, Coleman, Jones and Robinson introduced

House Bill No. 4607, entitled

A bill to amend 1978 PA 368, entitled "Public health code," (MCL 333.1101 to 333.25211) by adding section 16279.

The bill was read a first time by its title and referred to the Committee on Health Policy.

Reps. Whitsett, Eisen, Peterson, Elder, Yancey, Rendon, Hoitenga, Garza, Chirkun, Tate, Cambensy, Haadsma, Kennedy, Brenda Carter, Wozniak, Neeley, Coleman, Jones and Robinson introduced

House Bill No. 4608, entitled

A bill to amend 1978 PA 368, entitled "Public health code," (MCL 333.1101 to 333.25211) by adding section 5147.

The bill was read a first time by its title and referred to the Committee on Health Policy.

Reps. Whitsett, Eisen, Peterson, Elder, Yancey, Rendon, Hoitenga, Garza, Chirkun, Tate, Cambensy, Haadsma, Kennedy, Brenda Carter, Wozniak, Neeley, Coleman, Jones and Robinson introduced

House Bill No. 4609, entitled

A bill to amend 1939 PA 280, entitled "The social welfare act," by amending section 109 (MCL 400.109), as amended by 2018 PA 315.

The bill was read a first time by its title and referred to the Committee on Health Policy.

Reps. Elder, Ellison, Kuppa, Hope, Tyrone Carter, Kennedy, Cynthia Johnson, Hertel, Sowerby, Brenda Carter and Cambensy introduced

House Bill No. 4610, entitled

A bill to amend 1976 PA 451, entitled "The revised school code," (MCL 380.1 to 380.1852) by adding section 1177b.

The bill was read a first time by its title and referred to the Committee on Health Policy.

Reps. Rendon, Eisen, Frederick, Markkanen, Paquette and Bellino introduced

House Bill No. 4611, entitled

A bill to amend 2001 PA 142, entitled "Michigan memorial highway act," (MCL 250.1001 to 250.2081) by adding section 1089.

The bill was read a first time by its title and referred to the Committee on Transportation.

By unanimous consent the House returned to the order of

Motions and Resolutions

By unanimous consent the House considered **House Resolution No. 103** out of numerical order.

Reps. Chatfield, Gay-Dagnogo, Hoadley, Wittenberg, Yancey, Ellison, Byrd, Garrett, Cynthia Johnson, Sneller, Neeley, Tyrone Carter, Kuppa, Love, LaGrand, Brenda Carter, Sowerby, Cherry, Rabhi, Stone, Hertel, Hope, Koleszar, Pohutsky, Camilleri, Guerra, Hammoud, Manoogian, Cambensy, Pagan, Whitsett, Tate, Garza, Hood, Greig, Witwer, Jones, Robinson, Bollin, Chirkun, Clemente, Crawford, Haadsma, Lasinski, Sabo, Shannon and Warren offered the following resolution:

House Resolution No. 103.

A resolution to honor the life of Judge Damon J. Keith.

Whereas, Damon J. Keith dedicated his illustrious life and career to public service and justice. Born in the city of Detroit on July 4, 1922, the grandson of slaves, Judge Keith graduated from West Virginia State College in 1943 and was drafted into the United States Army. His experiences in his segregated unit served as the impetus for what would become a life dedicated to the pursuit of justice and civil rights in America. After his military duty, he sought and earned his law degree from Howard University in 1949 where he studied under future United States Supreme Court Justice Thurgood Marshall. He later earned a Master of Laws degree from Wayne State University in 1956; and

Whereas, Judge Keith began his career in private practice, opening one of Detroit's first African-American law firms in 1964. He quickly became drawn to public service and civic activism, displaying a strong commitment toward helping address racial discrimination, especially in the housing arena, in his beloved community. He served as president of the Detroit Housing Commission and was later appointed by Governor George Romney to serve as the Chair of the Michigan Civil Rights Commission; and

Whereas, On September 25, 1967, Judge Keith was nominated by President Lyndon B. Johnson and two weeks later was confirmed by the U.S. Senate to the U.S. District Court for the Eastern Division, later becoming the court's chief judge. On September 28, 1977, Judge Keith was nominated by President Jimmy Carter and confirmed to the U.S. Court of Appeals for the Sixth Circuit. For more than fifty years, he served on the federal bench as a dedicated and persistent champion for equality for everyone in the American jurisprudence system; and

Whereas, During Judge Keith's distinguished tenure on the bench, he decided some of this country's most divisive issues, courageously standing up against school segregation, governmental surveillance of citizens, discriminatory and hostile work environments fueled by sexual harassment; housing discrimination; efforts to limit African-American voting; bad corporate actors that engaged in racial discrimination; and secret hearings to deport hundreds of immigrants deemed suspicious; and

Whereas, We will eternally be guided by the oft-quoted words he penned in one of those cases, "Democracies die behind closed doors. . . . When government begins closing doors, it selectively controls information rightfully belonging to the people. Selective information is misinformation"; and

Whereas, Beyond the bench, Judge Keith received countless awards and accolades throughout his life, among them 40 honorary doctorate degrees and the prestigious federal judiciary's Edward J. Devitt Award. He was committed to numerous community activities, including the YMCA, Boy Scouts, UNCF, the Detroit Symphony Orchestra, the Detroit Arts Commission, Interlochen Arts Academy, Sigma Phi Pi (Boule) and Alpha Phi Alpha Fraternity, Incorporated; and

Whereas, Judge Keith was loved by his friends and family, respected by his colleagues, and admired by the many law clerks whom he mentored and whose legal minds he helped to shape. He is survived by his daughters, Debbie, Cecile and Gilda, two granddaughters, and other relatives; now, therefore, be it

Resolved by the House of Representatives, That the members of this legislative body honor the life of Judge Damon Keith. He was brilliant man, a legal titan, and a tremendous crusader for civil rights. His admirable legacy of courage, boldness, and determination will long continue to enrich our state and nation; and be it further

Resolved, That a copy of this resolution be transmitted to the family of Damon Keith as a token of our esteem and an expression of our highest tribute.

The question being on the adoption of the resolution,

The resolution was adopted by unanimous standing vote.

_____

The Speaker called the Speaker Pro Tempore to the Chair.

Third Reading of Bills

House Bill No. 4227, entitled

A bill to create a committee on Michigan's mining future; to provide for the powers and duties of certain governmental officers and agencies; and to repeal acts and parts of acts.

Was read a third time and passed, a majority of the members serving voting therefor, by yeas and nays, as follows:

Roll Call No. 92 **Yeas—107**

Afendoulis
Albert
Alexander
Allor
Anthony
Bellino
Berman
Bolden
Bollin
Brann
Brixie
Byrd
Calley
Cambensy
Camilleri
Carter, B.
Carter, T.
Chatfield
Cherry
Chirkun
Clemente
Cole
Coleman
Crawford
Eisen
Elder
Ellison
Farrington
Filler
Frederick
Garrett
Garza
Gay-Dagnogo
Glenn
Green
Greig
Griffin
Guerra
Haadsma
Hall
Hammoud
Hauck
Hernandez
Hertel
Hoadley
Hoitenga
Hood
Hope
Hornberger
Howell
Huizenga
Iden
Johnson, C.
Jones
Kahle
Kennedy
Koleszar
Kuppa
LaFave
LaGrand
Lasinski
Leutheuser
Liberati
Lightner
Lilly
Love
Lower
Maddock
Manoogian
Marino
Markkanen
Meerman
Miller
Mueller
Neeley
O'Malley
Pagan
Paquette
Peterson
Pohutsky
Rabhi
Reilly
Rendon
Robinson
Sabo
Schroeder
Shannon
Sheppard
Slagh
Sneller
Sowerby
Stone
Tate
VanSingel
VanWoerkom
Vaupel
Wakeman
Warren
Webber
Wendzel
Wentworth
Whiteford
Whitsett
Wittenberg
Witwer
Wozniak
Yaroch

Nays—1

Johnson, S.

In The Chair: Wentworth

The House agreed to the title of the bill.

Rep. Webber moved that the bill be given immediate effect.

The motion prevailed, 2/3 of the members serving voting therefor.

By unanimous consent the House returned to the order of

Motions and Resolutions

Rep. Markkanen offered the following resolution:

House Resolution No. 102.

A resolution to oppose the Keweenaw Bay Indian Community's application to regulate water quality and air quality under federal law on the L'Anse Reservation.

Whereas, The Keweenaw Bay Indian Community is seeking federal approval to set water quality standards within the L'Anse Reservation and regulate activities impacting water quality through the water quality certification process under the federal Clean Water Act. The community is also seeking to be treated the same as a state for the purposes of receiving federal funding for air regulation and submitting recommendations on air operating permits issued by the state of Michigan and other states; and

Whereas, Approving these requests would inevitably lead to unreasonable consequences, a patchwork of regulations, and be inappropriate for non-tribal property owners within and outside of the reservation borders. This is a significant concern given that the reservation boundaries encompass approximately 59,071 acres of land, of which only 35 percent (20,427 acres) are tribal lands; and

Whereas, The state of Michigan already has in place strong water quality standards to protect state waters. The state has designated that all state waters should be safe for fishing, swimming, and other uses and support native aquatic life and wildlife. The state has established—and the United States Environmental Protection Agency (EPA) has approved—scientifically based water quality criteria that ensure these uses are preserved; and

Whereas, The state of Michigan has administered for decades permit programs that protect the air and water for all Michigan residents. Michigan has been addressing air pollution since at least 1965 and issuing operating permits to protect air quality since the mid-1990s. Since 1972, Michigan has administered a permit program under state law that prevents discharges that would impair the designated uses of state waters. The EPA delegated authority to administer permit programs under the federal Clean Water Act to the state in 1973 based on these laws and has recently re-approved that delegated authority. This request by the Keweenaw Bay Indian Community raises questions and concerns on how future permits issued by the state could be impacted, including wetland permits, permits for discharges into state waters, and hydropower licenses; and

Whereas, Approving the Keweenaw Bay Indian Community request would not improve air or water quality but would create an unnecessary layer of government bureaucracy and increase the regulatory burden on businesses, property owners, and the state. Regardless of whether the request is approved, the state of Michigan will continue to regulate activities impacting state air and waters within the reservation under state law. Michigan's programs are sufficient to protect residents and wildlife from pollution; and

Whereas, Approving the Keweenaw Bay Indian Community request would lead to jurisdictional conflicts between the community and the state related to control of activities on state-owned land within the reservation boundaries. These conflicts would involve complicated and not easily resolved legal questions regarding state versus tribal sovereignty. It would also raise questions regarding potential impacts to state-owned mineral rights within the reservation; and

Whereas, Approving the Keweenaw Bay Indian Community request would subject non-tribal property owners within reservation boundaries to the decision-making of a tribal government in which they have no representation. Only around one-third of the people living within the reservation boundaries are tribal members. Our nation was founded on the democratic concept that people should have a say and be represented in the government that impacts their lives; now, therefore, be it

Resolved by the House of Representatives, That we oppose the Keweenaw Bay Indian Community Lake Superior Band of Chippewa request for treatment as a state under the federal Clean Water Act and the federal Clean Air Act; and be it further

Resolved, That copies of this resolution be transmitted to the Administrator of the United States Environmental Protection Agency and the members of the Michigan congressional delegation.

The resolution was referred to the Committee on Natural Resources and Outdoor Recreation.

Reps. Gay-Dagnogo, Hoadley, Yancey, Ellison, Byrd, Cynthia Johnson, Sneller, Neeley, Tyrone Carter, Love, LaGrand, Brenda Carter, Hood, Rabhi, Stone, Chirkun, Garza, Haadsma, Hope, Lasinski, Liberati, Shannon, Sowerby and Wittenberg offered the following resolution:

House Resolution No. 104.

A resolution to memorialize the United States Department of Agriculture to recognize industrial hemp as a valuable agricultural commodity and to take certain steps to remove barriers to encourage the commercial production of this crop.

Whereas, Industrial hemp refers to the non-drug oilseed and fiber varieties of Cannabis which are cultivated exclusively for fiber, stalk, and seed. Industrial hemp is genetically distinct from the drug varieties of Cannabis, also known as marihuana. Industrial hemp has less than three tenths of one percent of the psychoactive ingredient, tetrahydrocannabinol (THC). The flowering tops of industrial hemp cannot produce any drug effect when smoked or ingested; and

Whereas, Congress never intended to prohibit the production of industrial hemp when restricting the production, possession, and use of marihuana. The legislative history of the federal Marihuana Tax Act, where the current definition of marihuana first appeared, shows that farmers and manufacturers of industrial hemp products were assuaged by Federal Bureau of Narcotic Commissioner Harry J. Anslinger, who promised that the proposed legislation bore no threat to them, saying "They are not only amply protected under this act, but they can go ahead and raise hemp just as they have always done it"; and

Whereas, Michigan began a pilot program to study the cultivation of industrial hemp, as authorized under the Farm Bill of 2014. The United States Department of Agriculture standards are necessary to expand the license and authorization of industrial hemp cultivation to farmers not directly connected to institutions of higher learning or the Michigan Department of Agriculture and Rural Development; and

Whereas, The Farm Bill of 2018 established procedures to create and furnish standards for the cultivation of industrial hemp. Michigan approved cultivation of hemp within days of the passage of the Farm Bill; and

Whereas, Hemp products abound in the United States. Nutritious hemp foods can be found in grocery stores nationwide and strong durable hemp fibers can be found in the interior parts of millions of American cars. Buildings are being constructed using a hemp and lime mixture, thereby sequestering carbon. Retail sales of hemp products in this country are estimated to be $600 million in 2015; and

Whereas, American farmers are missing out on an important economic opportunity. American companies are forced to import millions of dollars worth of hemp seed and fiber products annually from other countries, thereby effectively denying American farmers an opportunity to compete and share in the profits. Industrial hemp is a high-value, low-input crop that is not genetically modified, requires little or no pesticides, can be dry land farmed, and uses less fertilizer than wheat and corn. China is the largest supplier of raw and processed hemp fiber and Canada is the largest supplier of hemp seed and oil cake imported to the U.S. Farmers in other countries, including Canada, China, Great Britain, France, Germany, Romania, and Australia, can produce industrial hemp without undue restriction or complications; and

Whereas, Industrial and commercial grade hemp could help stimulate an economic resurgence in the city of Detroit and the state of Michigan as part of the Green Economy. Detroit has an abundance of vacant land that could be used for industrial hemp farming, as well as the processing and production of over 25,000 potential products and finished goods. This could create an economic resurgence by creating thousands of jobs for Detroit and Michigan; now, therefore, be it

Resolved by the House of Representatives, That we memorialize the United States Department of Agriculture to speedily create and disseminate standards allowing each state and its farmers to capitalize on this untapped economic driver; and be it further

Resolved, That copies of this resolution be transmitted to the United States Secretary of Agriculture and the members of the Michigan congressional delegation.

The resolution was referred to the Committee on Agriculture.

Reps. Cherry, Chirkun, Frederick, Gay-Dagnogo, Haadsma, Hope, Lasinski, Liberati, Shannon, Sneller, Sowerby, Warren and Wittenberg offered the following resolution:

House Resolution No. 105.

A resolution to declare May 17, 2019, as Diffuse Intrinsic Pontine Glioma Day in the state of Michigan.

Whereas, Diffuse Intrinsic Pontine Glioma (DIPG) affects between 200 and 400 children in the U.S. each year. DIPG is the second most common malignant brain tumor found in children. DIPG is a tumor located in the middle of the brainstem where the cerebrum connects to the spinal cord. It grows among and around healthy nerves in the area, making surgical removal impossible at this time. DIPG interferes with all bodily functions, depriving a child of the ability to move, to communicate, and even to eat and drink; and

Whereas, Brain tumors are the leading cause of cancer-related deaths in children. DIPG is the leading cause of childhood death due to brain tumors. The median survival rate is only 9 months and the five-year survival rate is less than 1%; and

Whereas, Given the age at diagnosis and the average life expectancy, the number of life years lost annually because of DIPG is approximately 25,000 life years; and

Whereas, Research is still seeking to fully understand the disease. Prognosis has not improved for children with DIPG in over 35 years; and

Whereas, Research and awareness are both growing in recent years thanks to the advocacy of groups like Team Buddy Boy, Team Julian, and ChadTough, whose efforts have led to linking some parts of DIPG to other forms of cancer possibly broadening treatment options; now, therefore, be it

Resolved by the House of Representatives, That the members of this legislative body declare May 17, 2019, as Diffuse Intrinsic Pontine Glioma Day in the state of Michigan.

The question being on the adoption of the resolution,

The resolution was adopted.

Reps. Anthony, Cherry, Chirkun, Crawford, Garza, Gay-Dagnogo, Haadsma, Hope, Lasinski, Liberati, Pagan, Sabo, Shannon, Sneller, Sowerby, Warren, Wittenberg and Witwer offered the following resolution:

House Resolution No. 106.

A resolution to commemorate the 160th anniversary of the founding of the city of Lansing.

Whereas, The city of Lansing was incorporated in 1859 and has served as a beacon of democracy in the state of Michigan and as a representation of the hardworking spirit of people of the Midwest. Lansing has housed the historic State Capitol building since 1879, at which time Governor Croswell dedicated the building to the people of Michigan and their "lasting taste, spirit and enterprise." Since that time, it has brought together legislators, staffers, advocates, and hundreds of thousands of visitors from all across the state to work together and make Michigan a stronger state. In 1992, the National Park Service designated the Michigan State Capitol a National Historic Landmark, one of only 13 capitol buildings with this designation in the country; and

Whereas, It is this spirit of collaboration that has made Lansing a vibrant and diverse community. The city is home to over 30 neighborhood associations and more than 60 faith based communities, each with its own distinct flavor and personality. The population of Lansing is currently 116,986 residents, making it the fifth largest city in the state. A simple tour of the streets of Lansing will show neighbors from a wide variety of backgrounds, racial identities, and cultural ethnicities, a fact which brings the community great pride. Residents from all across the Mid-Michigan region are attracted to events and celebrations highlighting our differences as well as our shared values; and

Whereas, Lansing's commitment to the arts, music, food, and culture can be seen through the many festivals and fairs occurring each year, including but not limited to Old Town Blues Fest, Common Ground Music Festival, Three Stacks Festival, Capital City Film Festival, and Lansing Jazz Fest. Several historical landmarks and museums remind residents and visitors alike of the value the city adds to this great state; a few of the highlights include the Turner-Dodge House, R.E. Olds Transportation Museum, the Strand Theater, the Michigan Women's Hall of Fame, and the Capital Bank Tower; and

Whereas, This resolution serves as an opportunity for the Capitol Region, home of the 517 area code, and residents across the state, to recognize all that Lansing has to offer; now, therefore, be it

Resolved by the House of Representatives, That the members of the legislative body commemorate the 160th anniversary of the founding of the city of Lansing.

The question being on the adoption of the resolution,

The resolution was adopted.

Reps. Whitsett, Jones, Eisen, Cherry, Chirkun, Garza, Gay-Dagnogo, Haadsma, Lasinski, Liberati, Shannon and Wittenberg offered the following concurrent resolution:

House Concurrent Resolution No. 7.

A concurrent resolution to urge the Centers for Disease Control and Prevention and the Michigan Department of Health and Human Services to protect the people of Michigan from Lyme disease by improving efforts to prevent, monitor, diagnose, and treat the disease.

Whereas, Lyme disease is a serious, tick-borne illness caused by the bacterium *Borrelia burgdorferi*, resulting in symptoms including headache, fatigue, fever, and the characteristic bullseye rash. If left untreated, the disease can spread throughout the body to joints, the heart, and the nervous system causing arthritis, pain, heart palpitations, and even facial paralysis; and

Whereas, Previously rare in Michigan, Lyme disease is now a growing concern for Michigan residents. The prevalence of Lyme disease in Michigan has expanded rapidly in the past two decades with more than ten times as many cases reported in 2017 than in the early 2000s; and

Whereas, The Centers for Disease Control and Prevention's (CDC) definitions of Lyme disease symptoms and recommendations for diagnosing and treating the disease are outdated and need to be updated to improve the ability of health professionals to detect and treat the disease. The misdiagnosis and delayed treatment of Lyme disease have serious consequences for those affected; and

Whereas, A lack of federal funding for Lyme disease research and monitoring hampers Michigan's ability to prevent and cure the disease. Nearly 80 percent of the conditions and diseases that receive annual funding from the National Institutes of Health receive more than Lyme disease. Additional funding to improve the accuracy and precision of laboratory testing methods would significantly enhance the early detection of Lyme disease in humans; and

Whereas, Additional education and outreach efforts by the Michigan Department of Health and Human Services are necessary to better protect the public from the consequences of this disease. It is imperative that health professionals and the public recognize the symptoms of Lyme disease to ensure timely and proper treatment; and

Whereas, A lack of reporting makes it challenging to effectively monitor and address Lyme disease. Since 1991, state and local health departments have been required to report disease cases to the CDC, but of an estimated 300,000 people annually diagnosed, only 30,000 cases are reported; now, therefore, be it

Resolved by the House of Representatives (the Senate concurring), That we urge the Centers for Disease Control and Prevention to update its definition of Lyme disease symptoms, reconsider standards and best practices for diagnosing and treating the disease, increase funding to prevent and cure the disease, and provide the means for improved laboratory testing to detect Lyme disease; and be it further

Resolved, That we urge the Michigan Department of Health and Human Services to improve the techniques that state and local health departments use to report Lyme disease and to provide more resources to educate health professionals and the general public about Lyme disease to support prevention, diagnosis, and treatment; and be it further

Resolved, That copies of this resolution be transmitted to the Director of the Centers for Disease Control and Prevention and the Director of the Michigan Department of Health and Human Services.

The concurrent resolution was referred to the Committee on Health Policy.

Second Reading of Bills

House Bill No. 4056, entitled

A bill to amend 2014 PA 462, entitled "An act to allow peace officers to carry and administer opioid antagonists in certain circumstances; to provide access to opioid antagonists by law enforcement agencies and peace officers; and to limit the civil and criminal liability of law enforcement agencies and peace officers for the possession, distribution, and use of opioid antagonists under certain circumstances," by amending section 1 (MCL 28.541).

The bill was read a second time.

Rep. Anthony moved that the bill be placed on the order of Third Reading of Bills.

The motion prevailed.

House Bill No. 4095, entitled

A bill to amend 2006 PA 110, entitled "Michigan zoning enabling act," by amending section 102 (MCL 125.3102), as amended by 2008 PA 12.

Was read a second time, and the question being on the adoption of the proposed substitute (H-2) previously recommended by the Committee on Ways and Means,

The substitute (H-2) was adopted, a majority of the members serving voting therefor.

Rep. Reilly moved that the bill be placed on the order of Third Reading of Bills.

The motion prevailed.

———

Rep. Webber moved that House Committees be given leave to meet during the balance of today's session.

The motion prevailed.

By unanimous consent the House returned to the order of

Reports of Standing Committees

COMMITTEE ATTENDANCE REPORT

The following report, submitted by Rep. Hall, Chair, of the Committee on Oversight, was received and read:

Meeting held on: Thursday, May 16, 2019

Present: Reps. Hall, Reilly, Webber, Steven Johnson, LaFave, Schroeder, Cynthia Johnson, Camilleri and LaGrand

———

Rep. Lasinski moved that the House adjourn.

The motion prevailed, the time being 2:00 p.m.

The Speaker Pro Tempore declared the House adjourned until Tuesday, May 21, at 1:30 p.m.

GARY L. RANDALL
Clerk of the House of Representatives

Exhibit 4

Transcript of August 1, 2019, Board of State Canvassers Meeting

BOARD OF STATE CANVASSERS MEETING

August 1, 2019

Prepared by

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STATE OF MICHIGAN

DEPARTMENT OF STATE

RUTH JOHNSON, SECRETARY OF STATE

BOARD OF STATE CANVASSERS MEETING

7710 West Saginaw Highway, Lansing, Michigan

Thursday, August 1, 2019, 10:00 a.m.

BOARD: MS. JEANNETTE BRADSHAW - Chair
MR. AARON VAN LANGEVELDE - Vice Chair
MR. NORMAN SHINKLE - Board Member
MS. JULIE MATUZAK - Board Member
MS. SALLY WILLIAMS - Elections Staff
MS. MELISSA MALERMAN - Elections Staff

APPEARANCES:

For the State: MS. HEATHER S. MEINGAST (P55439)
MR. ERIC A. GRILL (P64713)
Assistant Attorneys General
525 West Ottawa Street
Lansing, Michigan 48909
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Lansing, Michigan

Thursday, August 1, 2019 - 10:01 a.m.

MS. BRADSHAW: Good morning. I'd like to call this meeting of the Michigan Board of State Canvassers to order. And with that, I'd like to make sure that our notice was posted for the Open Meetings Act correctly?

MS. WILLIAMS: It was.

MS. BRADSHAW: Thank you. Next I'd like to entertain a motion to approval of our minutes from July 26, 2019.

MS. MATUZAK: So moved.

MR. VAN LANGEVELDE: I'll support.

MS. BRADSHAW: It's been moved and supported. Is there any further discussion? Hearing none, all those in favor say "aye."

ALL: Aye.

MS. BRADSHAW: Those opposed, hear none, unanimous.

(Whereupon motion passes at 10:01 a.m.)

MS. BRADSHAW: Next is a consideration of whether the recall petition submitted by Staci Haag and Sondra Hardy on July 22nd, 2019, states factually and clearly each reason for the recall of Representative Larry Inman for the reasons of recall printed by Ms. Haag and Ms. Hardy and the heading of the petition as follows.

"Since Larry Inman was indicted on three felony counts on May 14, 2019: Attempted Extortion Under Color of Official Right (Count 1); Solicitation of a Bribe (Count 2), and False Statement to the FBI (Count 3), Inman has filed notice asserting a diminished capacity defense and missed over 80 votes in the Michigan House of Representatives."

Sally?

MS. WILLIAMS: Okay. So in your packet you have the petition that was filed as well as the documentation that was submitted by both the sponsor and Representative Inman.

MS. BRADSHAW: Okay. I have --

MS. MATUZAK: Do we have speakers?

MS. BRADSHAW: -- I have no blue cards for any speakers.

MS. WILLIAMS: For those that are here, if there are people who would wish to address the Board we ask that they --

MR. SHINKLE: Let me, if I can, Madam Chair --

MS. BRADSHAW: Yeah.

MS. WILLIAMS: Yeah.

MR. SHINKLE: -- state my observations here.

MS. BRADSHAW: Yeah, absolutely.

MR. SHINKLE: We, three of us on this Board have

went through dozens -- dozens and dozens of recall petitions since the law was passed in 2012 giving us that responsibility and we attempted to and I think we've made a pretty good standard of what factual is. Factual is factual. And my favorite line -- and I forgot which attorney that always comes here for decades said, "A proper recall petition says 'I want to recall Mr. X because on July 25th he wore a red tie' and they have a picture of him and it is substantiated that he wore a red tie on July 25th." That is proper reason to recall somebody. It's factual.

So what we have here, and I have -- after I got the response from Inman's attorney, I'm focused on one line. It's the few words in the end of petition. It's basically, "Inman has filed notice asserting a diminished capacity defense," those words. And in the letter we have from the attorney, they point out that this is not factual and the sentence that I underlined,

> "The factual occurrence is not notice asserting a diminished capacity defense. It is a notice of intent to present evidence of defendant's diminished cognitive ability as a result of abuse of prescription pain medication."

So the only question I have to myself is are the words on the petition actually what was filed and you can make an argument they are. And so that's why I -- that's --

that's my only question. Until I read the -- this letter last night I was going to be a yes vote, but now I think a point is made that it's not the exact same thing, but is it really the same thing in fact? That's the question I have

MS. MATUZAK: And the point we are in agreement with this clause in the reason for recall because it also conflicts with the -- the use of definition and undefined terms according to their ordinary and generally acceptable meaning. So does "filed a notice asserting a diminished capacity equal the same thing as filing a Notice of Intent to present evidence of defendant's cognitive ability, et cetera. Meaning it's -- that's -- this is a very fine line. This is probably the finest line we have looked at in terms of recall language so I would love to hear from counsel if that invites --

MR. SHINKLE: Yeah. And, Julie, just the point we made earlier, if those words were not on the petition, "Inman filed notice asserting diminished capacity of defense," just take them off, the petition is fine.

MS. MATUZAK: Yeah.

MR. SHINKLE: But the fact they're on there, they have to be factual and the question is are they? So if somebody wants to chat about this to us?

MR. MICHAEL NAUGHTON: Indeed I do. May I approach?

MR. SHINKLE: Yeah.

MR. MICHAEL NAUGHTON: I didn't drive down from Traverse City for nothing.

MS. BRADSHAW: Because I don't have a card in front of me, are you licensed to practice law in the state of Michigan?

MR. MICHAEL NAUGHTON: Yes, I am. P70856 is my P number.

MS. BRADSHAW: Okay. First may I have you state and spell your first and last name?

MR. MICHAEL NAUGHTON: Absolutely. Michael, M-i-c-h-a-e-l, Naughton, N-a-u-g-h-t-o-n. And what is a proper to address? Should I say Commissioner Shinkle? Board Member? What would the Board prefer, Madam Chairperson?

MR. SHINKLE: That's a good question.

MS. MATUZAK: We usually just say bad things about us.

MR. MICHAEL NAUGHTON: I come in peace.

MS. BRADSHAW: You could say Members of the Board of State Canvassers, I'm okay with that, too.

MR. SHINKLE: Well, one's a chair, the rest are members.

MS. BRADSHAW: Yes.

MR. MICHAEL NAUGHTON: Well, Member Shinkle, it's an important point you raise and something I want to underscore about this is look at the case law on this as well as the statute.

MS. BRADSHAW: And I do need you on the microphone, though, so you can just --

MR. MICHAEL NAUGHTON: Oh. Sorry. I'm a trial attorney.

MR. SHINKLE: You're being recorded.

MS. BRADSHAW: You're fine. We can all hear you, it's --

MR. MICHAEL NAUGHTON: All right. God, podiums are tough. But, anyways.

MS. BRADSHAW: Okay.

MR. MICHAEL NAUGHTON: The court basis of this and of this Board is the people of the state of Michigan. The final arbiter are the people of the state of Michigan. Holding public office is a privilege. Period. It is a privilege conferred to someone from the voters of a district. The 104th district conferred this privilege on Representative Inman. The Michigan Constitution and the Michigan Supreme Court precedent all state -- Michigan is one of eight states that says the people of the state of Michigan maintain that privilege to say, "We have to come in; something's not right." Something that was presented to

both counsel was the Hooker case from 2018, and it talks about this issue of factuality and it's something that I -- I briefed in the 355 pages -- you're welcome -- but 255 of which was the journal. Something that we've been very cognizant of in structuring this is this idea of factual. And if we want to parse words, I invite this Board to parse the word "assert." If I'm not mistaken, Commissioner -- and by the way, too, I do encourage an open dialogue. I want to answer questions that the people have. But I want to point you to the word "assert." Merriam-Webster's dictionary says,

> "To assert is to state or declare positively and often forcefully or aggressively; to compel or demand acceptance or recognition of something such as one's authority; to demonstrate the existence of, to posit posturally."

Now as we're parsing words this is an important thing because it seems to me the argument is "Well, this isn't what the notice says." In order to have a proper recall petition, it doesn't have to be verbatim what the notice says. I have precedent in my brief that states that. What it does have to have is a factual occurrence.

There is a distinction between whether or not Mr. Inman has a cognitive mental disability and whether or not he filed notice asserting he had a cognitive mental

disability. Whether or not he has a cognitive mental disability is not for this Board to decide, and frankly it's not for me to either. What is something taken into consideration is something for the people of the 104th district because at the end of the day this document is like a jury instruction. It's something you put in front of people and the jury truly are the 104th district. Each and every person who is presented this can read it and then make that snap decision and say "yes, I agree, I'm signing up," or "no, I don't" and it will be noted. The case precedence is clear, though, that that remains with the people.

And so I want to address this issue of assertion. I'm glad you raised it, Commissioner. It's an important point. Is there -- are there questions on there, anything you'd like me to describe about that?

MR. SHINKLE: Well, bottom line, if I could, Madam Chair --

MS. BRADSHAW: Yeah; absolutely.

MR. SHINKLE: -- is that you're saying that this Notice of Intent that was filed by your client is not an assertion?

MR. MICHAEL NAUGHTON: It is -- the Notice of Intent --

MR. CHRIS COOKE: It was filed by my client.

MR. MICHAEL NAUGHTON: -- I'm sorry. It was filed

by Mr. Inman, not by us. And, yeah, Mr. Cooke is here.

MR. CHRIS COOKE: I'm the attorney for Mr. Inman.

MR. SHINKLE: Oh, sorry.

MR. CHRIS COOKE: That's fine.

MR. SHINKLE: But you're saying that -- so you're saying that the Notice of Intent that was filed was an assertion of diminished capacity?

MR. MICHAEL NAUGHTON: It is an assertion that he was going to argue that. It is an assertion. So to use, again, the definition, "to demonstrate the existence of." It's not the existence of, but the notice is an attempt to demonstrate the existence of or to assert that. And Mr. Cooke's right. You know, they may -- they may drop that. And that goes to the issue that you're raising. Is this -- are they going to drop this assertion? Whether they drop the assertion or not, though, has not -- has no bearing on whether or not factually that assertion or document was indeed filed, and objectively speaking it was filed.

MR. SHINKLE: And you're saying it was an assertion that was filed?

MR. MICHAEL NAUGHTON: A Notice of Intent under the Merriam-Webster -- if we want to do a parsing of the language, it is "the demonstration of the existence of." And in federal court when you're filing a notice, you're giving -- and Mr. Cooke's right on this, too. You have to

tell the court these are things we're going to raise before trial and this is an assertion that they chose to raise before trial in a criminal matter. And it's something that I can't -- I can't underscore enough on this. Facts in the criminal case don't matter to me. We start at the indictment because that's the starting point of what happened during his tenure in office. That started the clock. But all the -- go ahead. I'm sorry, Commissioner.

MR. SHINKLE: I'm just saying that this is the issue --

MR. MICHAEL NAUGHTON: Yeah.

MR. SHINKLE: -- whether what was filed by Inman is a notice asserting diminished capacity defense.

MR. MICHAEL NAUGHTON: And my position, if you do a -- if you look at the definition of the term "assertion," it is indeed assertion.

MR. SHINKLE: Okay.

MR. MICHAEL NAUGHTON: Are there any other questions I could answer? I mean, it was a lovely drive and I'd love to burn off some of those sitting in the car for three hours --

MR. SHINKLE: Well, we're not done yet.

MR. MICHAEL NAUGHTON: All right.

MR. SHINKLE: We got to hear from the other side.

MR. MICHAEL NAUGHTON: Okay.

MS. BRADSHAW: Well, thank you very much.

MR. MICHAEL NAUGHTON: All right.

MS. BRADSHAW: Is there anyone else that wishes to speak on -- come on up. And you are a licensed attorney, so I'll just have you state and spell your name for the record, please.

MR. CHRIS COOKE: All right. Good morning.

MS. BRADSHAW: Good morning.

MR. CHRIS COOKE: My name is Chris Cooke. I'm an attorney from Traverse City, P35034. I represent Representative Inman in the federal proceedings as well as --

MS. BRADSHAW: Before you go on, I just want to make sure we have your last name spelled correctly --

MR. CHRIS COOKE: Cooke.

MS. BRADSHAW: -- for the --

MR. CHRIS COOKE: C-o-o-k-e.

MS. BRADSHAW: Thank you.

MR. CHRIS COOKE: Irish spelling.

CHRIS COOKE

MR. CHRIS COOKE: And with the Board's indulgence, I do want to put a few things on the record that -- and then direct my attention towards the specific factual issue and I won't try to belabor it, but I think it's some points that I -- I need to make for purposes of the record.

And that is when you talk about an analysis of whether or not this petition is factual just looking at the statute itself, we believe that the petition is not factual because when you look at the language of the statute which, we have to interpret according to its ordinary and generally accepted meaning, meaning these words, MCL 168.95a(1) requires -- mandatory, "requires that the petition for the recall of an officer shall," mandatory, "shall meet all the following requirements and it shall be based on the officer's conduct," the officer's conduct. Those -- those are specific words that are easily interpreted according to the generally accepted meaning. They have to factually and clearly state each reason for recall and be based on the officer's conduct during his term. There's no room for ambiguous interpretation. That's plain -- plain meaning and so we have to interpret that literally.

What does the term "factual" mean in the analysis of looking at this petition? And for the moment we're going to just put the clarity issue to the side because I think clarity, according to Hooker versus Moore, pretty much means is it intelligible. Factual, very lenient determination according to Hooker versus Moore as well, but that is stating -- stated in terms of a factual occurrence. A factual occurrence. So reading those both together, in the statute and Hooker versus Moore, you have set forth in this

petition a factual occurrence that pertains to the officer's conduct during the term.

So looking at the beginning of this document, it starts out with this salacious language about being indicted on three felony counts May 14th of 2019. May 14th of 2019, which is during his term, it's an indictment but that is not the conduct of the officer. That's the conduct of another charging body, somebody outside of the officer, the U.S. attorney, the grand jury. And when you hear the word "indictment," that's a salacious word, particularly if you're not in the legal world because we see on TV you're going to be indicted, indictments. An indictment is no more than a federal ticket just like a police officer would give you for blowing a yield sign. It's an allegation. It's unproven. It's an allegation that is issued not by the officer's conduct, but by the U.S. attorney who went to a grand jury on this issue and mind you, that's a one-sided proceeding. We weren't there. We weren't invited. Representative Inman didn't get to tell his side. So it's pretty easy to get an indictment if you want to hear one side of the story. That's really not for purposes of our discussion today, but just to emphasize the fact that that action has nothing to do with the officer's conduct. There's a second argument to that that I'll move to briefly in a minute, but I want to get to this, this factual issue

and, of course, it sets forth all of the allegations against Representative Inman which we contest and we're going to contest in the federal court.

The second one is, "Inman has filed a notice asserting a diminished capacity of defense." Well, that's not factually correct. You have to look at what's factually correct and it's easy in this case because I've attached the notice. You see what we filed in the federal court. It's a, "Notice of intent to present evidence of defendant's diminished cognitive ability as a result of the use of prescription pain medication." That's what we filed. If you're going to hang Representative Inman out to dry in this recall petition because his attorney asserted a defense in a federal proceeding where Representative Inman is in jeopardy of losing his liberty for up to 20 years, ladies and gentlemen, for one text message; text message. That's what the evidence is going to be. Now there's, you know, the U.S. attorney will contest that, I know, there's other things involved, too, but, I mean, that's not for this proceeding. But if you're going to put that in a recall petition to say that -- that is going to be a valid recall petition, I assert that the statute requires the petitioner to put down the words of what the notice is. And I don't know if it's intentional or not, or shorthand notation. Maybe they don't want to assert that Representative Inman

got caught in the clutches of an opioid prescription pain medication abuse and addiction issue for which he is now in inpatient treatment. Maybe they didn't want to put that out there on the petition. But that is why we asserted this defense. And if you're going to put that on the front of the petition, you should not be allowed to truncate it, change it, modify it, or butcher it so it looks like something else. That's what we asserted.

They do have a basis here. They have these 80 votes missed. I mean, there's a basis for filing a legitimate and factual and clear recall petition. Missing of these 80 votes, all of which occurred when he was seeking treatment for his problem, but that's something that the constituency can talk about. I mean, we're al -- we're all willing and ready and able to try to help people that get caught in this opioid addiction cycle. But God forbid an elected official gets caught in it because we're going to stomp him into the ground. So, but anyway, that's for the electorate to make a decision on.

So when you look at whether or not this is factual, I submit to this panel. And when you talk about factual, it has to be related to a factual occurrence and it has to be the officer's conduct during the term. It can't be somebody else making an allegation. What if there was an allegation that Larry Inman was beating his wife, somebody

next door, his ex-wife -- he doesn't have an ex-wife. Well, if you say that, would that be -- that's an allegation, unproven allegation from somebody on the outside. That's not a fact. It's just like saying, you know, he wore a red tie yesterday but in fact he's wearing a purple tie. Well, it's a tie. We don't know the color, whatever, it's a colored tie. I think you have to be -- relate to a factual occurrence of what's happened here.

MS. MATUZAK: Was your client indicted?

MR. CHRIS COOKE: He was indicted.

MS. MATUZAK: That seems --

MR. CHRIS COOKE: But that was somebody else's conduct. That wasn't -- it has to be the officer's conduct. He's innocent until proven guilty. That's the other part of my position here is I think that we're looking at a state statute and the state statute has to be interpreted in accordance with the Constitution. If it's unconstitutional, even as applied to my client, then this Board has to look at whether or not you're going to apply it in this situation or look at whether or not this is factual. We have Fifth and Sixth Amendment Constitutional rights. Every U.S. citizen has those rights. You have the right to be presumed innocent until proven guilty. You have the right to confront witnesses. You have the right to have an attorney defend you and not be hamstrung defending you, and in this

case that's exactly what's happening.

I'm defending Representative Inman in a very serious federal matter for which we have a defense. We haven't even yet been able to present our defense because everything -- every -- all the walls are caving in on us. And so if you're going to say we're going to apply this statute to this petition, I think you have to do it also based on the Constitution. If I have asserted a defense in this case that the court requires me to notice -- by the way, it's just a notice. The court says you have to notice us within so many days or you can't do it. It's a notice and I filed it. Larry Inman didn't do it. I filed it as the attorney for -- as -- for strategic reasons and also because that likely going to be something that we present. We haven't even called our witnesses yet. We haven't confronted witnesses yet.

So that Sixth Amendment right to counsel, if -- and Larry Inman is entitled to all of these constitutional protections. And if we're going to say that me, as his attorney, defending against three very serious felony offenses does anything that a political opponent doesn't like or a political opponent thinks they can make hay with, then they can recall him. So what am I supposed to do, you know, confronted with this? I have to defend the man against his potential loss of liberty and I should be able

to do it unrestricted.

So as long as these -- and this indictment is an allegation. We're presumed to be innocent, Representative Inman is, so it means nothing. It means nothing. It's a piece of paper that somebody else said he did this. You know, this is all going to come to fruition very quickly. Next week, August 9th, I go in front of Judge Jonker and argue to dismiss these, this indictment, on jurisdictional grounds. Am I going to prevail? I don't know if I'm going to prevail or not. But what if I do? And the Board said, well, if you just truncate the notice and call it whatever you want to call it and then we say that if this indictment, always presumed innocent, somebody else issue, we want that to be the basis for recall and then this whole thing is dismissed next Thursday. Now, what's going to happen to Representative Inman? He's going to have to defend all of these allegations in front of a constituency? How is he going to be able to do that at this point in time?

I think you have to really look at whether or not this is factual, whether or not it sets forth what the officer did during his term, and whether or not it's going to be constitutional as applied to Representative Inman. You know, they do have a basis for filing a legitimate recall petition. Whether or not I'm going to agree with it, you know, remains to be seen, but they could just come in

here and say "he missed 80 votes."

I mean, I looked at this summation which was hundreds of pages long that I received yesterday and tried to pour through these documents that talk about how many votes he missed and so far I've seen nothing that had any impact on the 104th district. You know, a lot of these are pro-form votes, 107 to zero. But anyway, that's something for the constituency to make a decision on, on a valid filed recall petition.

I mean, here's the other thing. My client is entitled to an impartial and fair trial in the federal district court where he's facing these serious allegations. If this recall petition is allowed to survive based on this, how do I get a fair trial in the state of Michigan? Already this has been broadcast pretty much substantially around the state. People in Detroit know it, people in Manistee. I've got to try his case in front of a jury and if he's facing a recall where it says on the front that he's been indicted and it says that he filed a notice of diminished capacity, how do I find a fair jury? That's the Sixth Amendment right.

So what I'm asking the Board to do is to interpret this statute strictly and do so so it doesn't infringe on my client's constitutional rights to a fair trial. I think I'm all set unless there's other questions.

MS. BRADSHAW: Is there any questions from the Board members? Thank you very much.

MR. CHRIS COOKE: All right. Thank you so much.

MR. MICHAEL NAUGHTON: May I reply? I'll be very brief. I promise.

MR. SHINKLE: Oh, no. Yeah, we need a counter.

MS. BRADSHAW: Yeah; yeah.

MICHAEL NAUGHTON

MR. MICHAEL NAUGHTON: Jeez. How many times can I agree with Mr. Cooke today? I'm glad there's a court reporter here. When he was discussing his argument regarding the factual basis, he said, and I quote -- and I encourage the court reporter to confirm this -- "that's what we asserted." So --

MR. SHINKLE: I wrote it down.

MS. MATUZAK: So did I.

MR. SHINKLE: "That is why we asserted the defense."

MR. MICHAEL NAUGHTON: So I guess you have the answer to your question. It's been asserted. Is it -- I'm going to address the constitutional issues regarding a fair trial. Ms. Malerman and I knew each other in a prior life. I don't know if you remember or not Mr. Kilpatrick? He was facing a lot of jeopardy.

MS. MALERMAN: We did, yes; yes.

MR. MICHAEL NAUGHTON: He was also facing electoral issues because of this. I want to go back to this idea that this is a privilege, a sacred privilege where our Constitutional system to be a public office holder is not a right. Just because someone has accusations that they've done something wrong does not preclude them from being called to question by people of that district. And as a member of the 104th, having someone miss 40 votes and then hear tell that there's nothing that's impacted our district, that's pretty galling. So we're asking for this petition to go forward. We believe it is sufficient to hear points that you raised and I'm happy to answer any questions that you have.

MS. BRADSHAW: Is there any other questions from the Board? Thank you very much.

MR. MICHAEL NAUGHTON: Thank you.

MS. BRADSHAW: Any questions for counsel, our counsel, to Sally?

MR. SHINKLE: What's our counsel recommend?

MS. BRADSHAW: Heather?

MS. MEINGAST: You have to come up with your own.

MS. BRADSHAW: Okay.

MS. MEINGAST: I think --

MS. MATUZAK: They're punting it.

MS. BRADSHAW: Yes.

MS. MATUZAK: I -- I have to --
MS. MEINGAST: Unless you had a specific legal question for us about --
MS. BRADSHAW: Right.
MS. MATUZAK: I have to say that -- that I floated back and forth on this particular clause a bit. I am now of the opinion that asserting a diminished capacity defense is in fact factual, and so I'm -- that's now my interpretation of this. Even though the specific document heading is not listed, it's the act of asserting something that is the fact in my mind.
MS. BRADSHAW: Are you --
MS. MATUZAK: I will make a motion.
MS. BRADSHAW: -- that's what I'm asking.
MS. MATUZAK: Wait. I got to find the motion. Here it is. I move that the state -- that the -- I'm starting over again.
MS. BRADSHAW: It's okay.
MS. MATUZAK: I move that the Board of State Canvassers determine that the recall petition filed by Staci Haag and Sondra Hardy on July 22nd, 2019, states factually and clearly each reason for the recall of State Representative Larry Inman because we have -- I never know what to say at this point -- because we have seen the documents including court filings and records of absences

that indicates this is, in fact, a factual petition.

MS. BRADSHAW: Do I hear support?

MR. SHINKLE: Support.

MS. BRADSHAW: It's been moved and supported. Is there any discussion?

MR. SHINKLE: Julie talked about factual, but also, I mean, you want to put probably "and clear" --

MS. MATUZAK: And clear.

MR. SHINKLE: -- in the motion.

MS. MATUZAK: Well, it does say "factually and clearly each reason for the recall."

MR. SHINKLE: Oh. Yeah; yeah. Okay. That's -- you already read that.

MS. MATUZAK: It's the supplemental reasoning that the court now requires us to put in that always throws me off.

MS. BRADSHAW: Yes. Okay. Any other discussion? Hearing none, all those in favor say "aye."

ALL: Aye.

MS. BRADSHAW: There are no "noes." It is so moved.

(Whereupon motion passes at 10:29 a.m.)

MS. BRADSHAW: Moving to our next item. Is there any other further business that need be properly presented to the Board?

MS. WILLIAMS: All set.

MS. BRADSHAW: Then we are adjourned. Thank you.

(Proceedings concluded at 10:29 a.m.)

-0-0-0-

Exhibit 5

Inman's Supplemental Briefing Pursuant to the Court's Order of June 24, 2019

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs

Case No. 1:19-cr-117
Hon. Robert J. Jonker
Hon. Phillip J. Green

LARRY CHARLES INMAN,

Defendant.
_____/

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DEFENDANT LARRY CHARLES INMAN'S SUPPLEMENTAL BRIEFING PURSUANT TO THE COURT'S ORDER OF JUNE 24, 2019 (ECF 17)

NOW COMES THE DEFENDANT LARRY CHARLES INMAN, by and through his attorneys of record, NEUMANN LAW GROUP and pursuant to the Court's Order (ECF 17) submits the following supplemental briefing.

EXECUTIVE SUMMARY

Defendant Inman is charged in a three count indictment with Attempted Extortion Under Color of Official Right (Count 1) in violation of 18 U.S.C. sec 1951 (the Hobbs Act),

Solicitation of a Bribe (Count 2) in violation of 18 U.S.C. sec 666(a)(1)(B) and False Statement to the FBI (Count 3) in violation of 18 U.S.C. sec 1001(a)(2) regarding a vote by the Michigan House of Representatives on an initiative petition intended to repeal Michigan's "Prevailing Wage Law." To support this charge the indictment sets forth four text messages obtained from Mr. Inman's cellular phone which were sent to unidentified Union representatives from the Michigan Regional Council of Carpenters and Millwrights ("MRCCM") on June 3 and 4, 2018, several days before the June 6, 2018 vote which approved the repeal (Indictment at paragraphs 6 through 9). The indictment concedes that no money was ever paid to or received by Mr. Inman in exchange for a specific vote on the Prevailing Wage initiative ***after*** it was certified by the State Board of Canvassers to be presented to the Michigan House of Representatives on June 1, 2018.

Defendant Inman has filed a motion to dismiss alleging that the Federal government lacks jurisdiction to prosecute Defendant under the facts alleged in the indictment and that the indictment is constitutionally defective due to the use of impermissible evidence and argument before the grand jury (ECF 13). Defendant has also filed notice of his intention to assert a diminished capacity defense (ECF 16). **The Defendant intends this notice to fall under FRCP 12.2(b).** The Court has requested supplemental briefing on specific aspects of these defenses.

I. SPECIFIC INTENT

A. Count I, a charged violation of an attempt to violate the Hobbs Act is a specific intent crime.

As to Count I of the indictment, the government has charged Defendant Inman with an *attempted* violation of 18 USC sec 1951 which requires the government to prove that the Defendant attempted to:

> (a) … in any way or degree obstructs, delays, or *affects commerce* or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined under this title or imprisoned not more than twenty years or both.

"Extortion" is defined in the act as:

> (2) The term "extortion" means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence or fear, or under color of official right.

"[A] specific intent crime is one that requires a defendant to do more than knowingly act in violation of the law. The defendant must also act with the purpose of violating the law. The violation of a general intent statute, by contrast, requires only that a defendant 'intend to do the act that the law proscribes.'" *United States v. Gonyea, 140 F.3d 649, 653 (6th Cir. 1998)* (Citations omitted.) In other words, "a general intent crime requires the knowing commission of an act that the law makes a crime. A specific intent crime requires additional 'bad purpose.'" *United States v. Kleinbart, 307 U.S. App. D.C. 136, 27 F.3d 586, 592 n.4 (D.C. Cir.1994).*

The Sixth Circuit has held that a violation of the Hobbs Act is a specific intent crime. *United States v. Dabish, 708 F.2d. 240 (1983).* The *Dabish* holding was criticized as "dicta" by the Federal District Court of Massachusetts in *United States v. Sturm, 671 F.Supp. 79 (1987).*

On appeal, the Fifth Circuit reaffirmed that an allegation of a violation of the Hobbs Act required the government to prove that the defendant specifically intended to commit the crime. The Fifth Circuit held that the government must prove that the Defenant had a "special mental state above and beyond the element the mental state required with respect to the actus reus of extortion, we agree that extortion under the Hobbs Act requires the "special mental element" version of specific intent..." *United States v. Sturm, 870 F.2d 769 (1989)*

Further, Defendant Inman is charged with an attempt to violate this section. An attempt crime requires specific intent to commit a crime and some overt act which tends towards but falls short of the commission of the crime." *Martin v. Taylor, 857 F. 2d. 958 (4th Cir. 1998).* This is also the law in the Sixth Circuit. "The general rule, however, is that attempt crimes require proof of specific intent to complete the acts constituting the substantive offense." *United States v. Calloway, 116 F. 3d 1129 (1997).*

B. Count II, Solicitation of a Bribe is a specific intent crime.

The Sixth Circuit has also held that a prosecution for bribery under 18 USC 201(b)(2)(C) requires proof of specific intent, *United States v. Crum, 195 U.S. App Lexis 15351(1995), attached.* Although Defendant Inman is charged under 18 U.S.C. sec 666(a)(1)(B), the operative language as it pertains to an allegation of bribery is substantially similar to sec 666. Sec 666 requires the government to prove:

a. the defendant was an agent of an organization, government or agency;

b. in a one-year period that organization, government or agency received federal benefits in excess of $10,000;

c. defendant *corruptly solicited or demanded* for the benefit of any person, or accepted or agreed to accept, anything of value from a person;

d. *intending to be influenced or rewarded*;

e. in connection with any business, transaction, or series of transactions of such organization, government, or agency;

f. the value of that property was at least $5,000. *United States v. Abbey, 452 F. Supp 2d 766 (2006).*

Sec 201(b)(2)(C) requires the government to prove:

(2) being a public official or person selected to be a public official, directly or indirectly, *corruptly demands, seeks, receives, accepts, or agrees to receive or accept* anything of value personally or for any other person or entity, in return for:

(A) *being influenced in his the performance of any official act*;

(B) being influenced to commit or aid in committing, or to collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States; or

(C) being induced to do or omit to do any act in violation of the official duty of such official or person;

Both 201 and 666 require that the solicitor "corruptly" solicit or demand anything of value *intending to be influenced.*

The Sixth Circuit has held that a conviction under sec. 666 requires proof of a quid pro quo "which is a specific intent to give or receive something of value in exchange for an official act". *United States v. Abbey, 452 F. Supp. 2d 766 (2006).* Various circuits have held that a conviction under 18 U.S.C. 666 requires proof of specific intent, *United States v. Weaver, 220 Fed Appx 88 (Third Circuit, 2007);United States v. Kott, 2007 U.S. District Lexis 64413 (Alaska,*

2007); United States v. Fleming, 223 Fed. Appx. (3rd Circuit, 2007); United States v. Montoya, Waste Management LLC v. River Birch, Inc. 920 F.3d. 958 (5th Cir, 2019), United States v. Vitilio, 2004 U.S. Dist. LEXIS 22419 (Penn. 2004).

C. Count III, False Statement to the FBI is a specific intent crime.

The plain language of the statute makes this charge a specific intent crime.

18 U.S.C. sec. 1001(a)(2) states:

> **a)** Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, *knowingly and willfully*--…
>
> **(2)** makes any materially false, fictitious, or fraudulent statement or representation…

The term "knowingly and willfully" requires a specific mens reus. A defendant cannot inadvertently make a false statement to the FBI and be criminally responsible. The Sixth Circuit favorably referenced the analysis in *United States v. Shah, 44 F. 3d. 285 (5th Cir. 1995)* in holding that a violation of sec 1001 required proof of specific intent:

> "…the Fifth Circuit devoted some attention to the 'requisite specific intent" of section 1001… The Court observed that "[a] false representation is one… made with an intent to deceive or mislead."

United States v. Brown, 151 F. 3d 476 (1998)

All there crimes charged require proof of specific intent making Defendant Inman's evidence of diminished capacity relevant and admissible before the jury.

II. FEDERALISM

In *Gregory v. Ashcroft, 501 U.S. 452 (1991),* Justice Sandra Day O'Connor, writing for the majority discussed the long-standing principle of federalism:

"As every schoolchild learns, our Constitution establishes a system of dual sovereignty between the States and the Federal Government. This Court also has recognized this fundamental principle. In *Tafflin v. Levitt, 493 U. S. 455, 458, 107 L. d. 2d 887, 110 S. Ct. 792 (1990),* "we beg[a]n with the axiom that, under our federal system, the States possess sovereignty concurrent with that of the Federal Government, subject only to limitations imposed by the Supremacy Clause." Over 120 years ago, the Court described the constitutional scheme of dual sovereigns:

> "The people of each State compose a State, having its own government, and endowed with all the functions essential to separate and independent autonomy to the States through their union under the Constitution, but it may be not unreasonably said that the preservation of the States, and the maintenance of their governments, are as much within the design and care of the Constitution as the preservation of the Union and the maintenance of the National government. The Constitution, in all its provisions, looks to an indestructible Union, composed of indestructible States" *Texas v. White, 74 U.S. 700 (1869). quoting Lane County v. Oregon, 74 U.S. 71 (1869)*

The Court went on to affirm that the Constitution created a Federal government of limited powers noting that the powers not delegated to the Federal Government, nor prohibited by it to the states, are reserved to the States. Quoting James Madison, the Court wrote:

> "The powers delegated by the proposed Constitution to the federal government *are few and defined.* Those which are to remain in the State governments are numerous and indefinite…The powers reserved to the several States, will extend to all the objects which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people, and the internal order, improvement and prosperity of the State." The Federalist No. 45, pp 292-293 (C. Rossiter ed. 1961).

Justice O'Connor noted that the federalist structure of joint sovereigns has numerous advantages including more citizen involvement in the democratic process, more government sensitivity to the needs of the people in a heterogenous society, increased competition between the States for a mobile citizenry and for greater experimentation in government. The principle benefit of a federalist system in a check on abuses of governmental power.

> "The Constitutionally mandated balance of power between the States and the Federal Government was adopted by the Framers to ensure the protection of "our fundamental liberties", *Ashcroft, supra at p. 459 (cites omitted).* Just as the separation and independence of the coordinate branches of the Federal Government serve to prevent the accumulation of excessive power in any one branch, a healthy balance of power between the States and the Federal Government will reduce the risk of tyranny and abuse from either front…These twin powers will act as mutual restraints only if both are credible. In the tension between federal and state governments lies the promise of liberty."

The Court further noted that the Supremacy Clause. U.S. Const. Art. VI, cl.2. gives the Federal Government a decided advantage. Congress may impose its will on the States as

long as it is acting within the powers granted it under the Constitution. However, the Court further noted:

> "This is an extraordinary power in a federalist system. It is a power that we must assume Congress does not exercise lightly.", *Ashcroft p. 460*

In *Gregory v. Ashcroft,* the Court affirmed a ruling by the Eighth Circuit Court of Appeals affirming a District Court order which dismissed a lawsuit brought by Missouri state court judges under the federal Age Discrimination in Employment Act ("ADEA"). The judges argued that a Missouri statute that established a mandatory retirement age of 70 for all state judges was per se discriminatory under the ADEA. The judges also argued that the statute violated the Fourteenth Amendment and their Equal Protection Rights. The ADEA had been extended to state and local governments under a valid exercise of Congress' power under the Commerce Clause. In addition to reviewing exceptions in the Act for state elected or appointed policy makers, the Court addressed, extensively, issues of Federalism in the case. The Court ruled that the State had the constitutional authority to establish qualifications for those who sit as their judges that could not be imposed upon by the Federal government. The Court stated:

> "It is obviously essential to the independence of the States, and to their peace and tranquility, that the power to prescribe the qualifications of their own officers…should be exclusive, and free from external interference, except so far as plainly provided by the Constitution of the United States. " *Ashcroft at p. 460 (cites omitted)*

Thus, even though the Missouri judges argued that many other state employees and those in the private sector had the protections of the ADEA and could not be forced out of their jobs

based solely on age, the Court refused to intervene in what it held was an important state interest in the qualifications of their elected officials . The Court discussed at length the statutory prohibitions of unequal treatment of protected classes rooted in the Fourteenth Amendment but stated "scrutiny under the Equal Protection Clause will not be so demanding where we deal with matters resting firmly within a State's constitutional prerogatives…These cases demonstrate that the Fourteenth Amendment does not override all principles of federalism." *Ashcroft at p. 469*

Thus, the question rooted in federalism is, although the Court may find federal jurisdiction should it be exercised or restrained? An illustration of the Supreme Court's intent to restrain intrusions by the Federal government into State affairs is the matter of *McDonnell v. U.S., 136 S. Ct.2355, (2016).* In *McDonnell* the former governor of Virginia, Robert McDonnell and his wife Maureen had been convicted under allegations of honest services fraud and the Hobbs Act for accepting in excess of $175,000 in gifts, loans and other benefits from a Virginia businessman, Johnnie Williams, who was promoting a nutritional supplement for his company Star Scientific. Williams was attempting to have public universities run studies on the product using a government grant. McDonnell arranged for Williams to meet Virginia's Secretary of Health and Human Services to facilitate the grant, although the meeting proved unfruitful. Williams also took Mrs. McDonnell shopping and bought her $20,000 in designer clothes. She arranged for Williams to sit next to the governor at a political rally. Mrs. McDonnell also took a $50,000 loan from Williams to help out with rental properties and a $15,000 cash gift to help with her daughter's wedding. The evidence also showed that the McDonnell's spent time at Williams vacation home, borrowed his

Ferrari, received a Rolex watch from Williams, received an additional $70,000 in loans and took all expenses paid golf trips, among other benefits.

In return, McDonnell forwarded research articles on the supplement to his Secretary of Health and Human Services and arranged for a lunch for Williams with him. McDonnell hosted a lunch at the Governor's mansion for Star Scientific and invited a number of public university researchers to attend. Free samples of the nutritional supplement were handed out at the luncheon together with eight $25,000 checks that the researchers could use to fund a grant writing effort for research on the product. When the Universities were not responding to inquiries from Williams, McDonnell had his counsel make contact with them to learn the status and took other actions to assist Williams.

Mr. and Mrs. McDonnell were convicted in Federal District Court on both the honest services charges and the Hobbs Act violations. The convictions were upheld in the Fourth Circuit Court of Appeals but vacated in and 8-0 decision by the United States Supreme Court. Although the specific issue was definition of "official act" found in the honest services and Hobbs Act charges, the Court illustrated the deference it gives to state court jurisdiction and the narrow construction it gives to federal criminal statutes such as the Hobbs Act. While the government argued for a broad definition of "official act" , the Court rejected this argument in favor of a much more narrow definition and found that Governor McDonnell's actions did not fall into that definition despite the distasteful nature of his actions. The Court stated:

"The basic compact underlying representative government assumes that public officials will hear from their constituents and act appropriately on their concerns-whether it is the

> union official worried about a plant closing or the homeowners who wonder why it took five days to return power to their neighborhood after a storm. The Government's position could cast a pall of potential prosecutions over these relationships if the union had given a campaign contribution in the past or the homeowner's invited the official to join them on their annual outing to the ballgame. Officials might wonder if they could respond to the most commonplace requests for assistance…" *McDonnell at p. 42,43*

The Court noted that "none of this…suggests that the facts of this case typify normal political action between public officials and their constituents. Far from it. But the government's legal interpretation is not confined to cases involving extravagant gifts or large sums of money, and we cannot construe a criminal statute on the assumption the Government "will use it responsibly." (*cites omitted)*… a statute in this field that can linguistically be interpreted to be *either a meat axe or a scalpel should reasonably be taken to be the later." (citing U.S. v. Sun -Diamond Growers, 526 U.S. 398 (1999) at p. 408).*

The Court then looked at federalism concerns with the prosecution. The Court stated:

> "A State defines itself as a sovereign through "the structure of its government, and the character of those who exercise government authority (*citing Gregory v. Ashcroft, supra).* that includes the power to regulate the permissible scope of interactions between state officials and their constituents. Here, where a more limited interpretation of "official act" is supported by both text and precedent, we "decline to construe the statute in a manner that leaves its outer boundaries ambiguous and involves the Federal government in setting standards of "good government for local and state officials." *McNally v. United States, 483 U.S. 350 (1987); see also United States v. Enmons, 410 U.S. 396 (1973)(*rejecting a " broad

concept of extortion " that would lead to an "unprecedented excursion into the criminal jurisdiction of the States ").

In *U.S. v. Emmons, supra,* the Court upheld the dismissal of the government's indictment that charged Louisiana union workers with violations of the Hobbs Act when a union strike devolved into physical violence and destruction of company property. The Court held the Hobbs Act was never intended to criminalize acts of violence during a union strike when the purpose is an effort to obtain legitimate collective bargaining demands. The Court used the rule of lenity to interpret the definitions of "wrongful" and "property of another" to exclude efforts to obtain wages for services the employer needs. The Court also held that a demand for higher wages would benefit the striking workers and would not be "property of another." The Court held:

> "Congress has traditionally been reluctant to define as a federal crime conduct readily denounced as criminal by the states… We will not be quick to assume that Congress has meant to effect a significant change in the sensitive relation between federal and state criminal jurisdiction." *United States v. Bass, 404 U.S. 336, 349*

Justice Blackmun in his concurrence expressed the Court's unwillingness to police matters of State concern:

> "I readily concede that my visceral reaction to immaturely conceived acts of violence of the kind charged in this indictment is that such acts deserve to be dignified as federal crimes."

In *McNally v. United States, 483 U.S, 350 (1987),* the Supreme Court reversed the Sixth Circuit Court of Appeals affirmance of a guilty verdict for the chairman of the Democratic Party in Kentucky who had been given de facto control by the governor of selecting those insurance companies from which the state would obtain workmen's compensation coverage. Defendant McNally selected certain companies provided they would share commissions with

several other companies, one of which McNally owned with others . The indictment and subsequent conviction were under the federal mail fraud statute (18 U.S.C. 1341) where the government argued that the property fraudulently obtained was the right of the people of Kentucky to have the Commonwealth's affairs conducted honestly.

In reversing, the Court construed the statute strictly and held that it clearly protects property rights but not the intangible right of the citizenry to good government. The Court deferred to the legislative history of the Act was to protect people from schemes to defraud them of *their* money and property. The Court stated:

> "Hunt and Gray received part of the commissions but those commissions were not the Commonwealth's money… Indeed, the premium for insurance would have been paid to some agency, and what Hunt and Gray did was to assert control that the Commonwealth might not otherwise have made over the commissions paid by the insurance company to its agent."

Defendant Inman is charged with three federal felonies for sending out 4 text messages. Only two of these messages, as alleged in the indictment, support an argument that Defendant Inman was willing to tie his vote to the receipt of campaign contributions. In fact, the direct language of the text messages do not reflect that Defendant Inman was requesting campaign support for himself but for 12 other unnamed legislators. Per the indictment:

> We only have 12, people to block it. You said all 12 will get $30,000 each to help there campaigns. That did not happen, we will get a ton of pressure on this vote. [Person B and Person C] will go to the longest neck hold on this one. I have heard most got $5,000, not $30,000. Its not worth losing assignments and staff for $5,000, in the end. They will give you the check back. I am not sure you can hold 12 people for the only help of $5,000. My suggestion is you need to get people maxed out , on Tuesday, I will do my best to hold.

Indictment, paragraph 6

Michigan has its own bribery statute as it pertains to public officials, *MCL 750.118.* A conviction under the state statute also requires the defendant to forfeit his office. The federal courts have shown a propensity to refrain under federalism principles from becoming involved in Hobbs Act or bribery cases where substantial dollars changed hands between politicians and constituents or where union strikes turned violent. Instead, the Supreme Court has expressly read federal statutes narrowly when they attempt to punish actions that also are illegal under state statutes. Should the Court find jurisdiction in this matter, principles of federalism would support this Court deferring to exercise jurisdiction over this case.

July 18, 2019

Respectfully,

Christopher K. Cooke (P35034)
Neumann Law Group

Neutral
As of: July 8, 2019 3:53 PM Z

United States v. Crum

United States Court of Appeals for the Sixth Circuit

June 16, 1995, FILED

No. 94-6400

Reporter
1995 U.S. App. LEXIS 15351 *

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. CLIFFORD CRUM, Defendant-Appellant.

Notice: [*1] NOT RECOMMENDED FOR FULL-TEXT PUBLICATION. SIXTH CIRCUIT RULE 24 LIMITS CITATION TO SPECIFIC SITUATIONS. PLEASE SEE RULE 24 BEFORE CITING IN A PROCEEDING IN A COURT IN THE SIXTH CIRCUIT. IF CITED, A COPY MUST BE SERVED ON OTHER PARTIES AND THE COURT. THIS NOTICE IS TO BE PROMINENTLY DISPLAYED IF THIS DECISION IS REPRODUCED.

Subsequent History: Reported in Table Case Format at: *57 F.3d 1071, 1995 U.S. App. LEXIS 20994.*

Certiorari Denied October 16, 1995, Reported at: *1995 U.S. LEXIS 7097*.

Prior History: United States District Court for the Eastern District of Kentucky. District No. 94-00015. Hood, District Judge.

Disposition: Affirmed.

Core Terms

district court, inspection, prior act, tape

Case Summary

Procedural Posture
Defendant sought review of a decision of the United States District Court for the Eastern District of Kentucky, which entered a judgment convicting defendant of accepting a bribe.

Overview

Defendant was a federal coal mine inspector. Defendant was charged with accepting a bribe from a coal mine to not properly inspect and report violations at the coal mine in violation of *18 U.S.C.S. § 201(b)(2)(C)*. The trial court allowed evidence of prior crimes by defendant to be introduced over defendant's objection. The trial court entered a judgment convicting defendant of the charge. On appeal, the court affirmed the trial court's decision. The court explained that in specific intent crimes, the prosecution was allowed to utilize *Fed. R. Evid. 404(b)* evidence to prove defendant acted with the specific intent notwithstanding any defense defendant might raise. The court found that *Rule 404(b)* evidence was analyzed to determine if the probative value outweighed the prejudice to defendant. The court determined that the trial court properly allowed the prosecution to utilize the evidence of prior crimes by defendant to prove that defendant had the requisite intent for the crime. The court concluded that it was the purpose for which defendant knew a bribe was offered or given when he solicited, received, or agreed to receive it which was determinative of criminality.

Outcome
The court affirmed the decision of the trial court.

LexisNexis® Headnotes

Evidence > ... > Credibility of Witnesses > Impeachment > Bias, Motive & Prejudice

Evidence > Admissibility > Conduct
Evidence > Prior Acts, Crimes & Wrongs

HN1[] **Bias, Motive & Prejudice**

An appellate court reviews the admission of *Fed. R. Evid. 404(b)* prior acts evidence under a three-step analysis: (1) review for clear error a district court's

factual determination that a prior act occurred, (2) review de novo whether the district court made the correct legal determination that the evidence was admissible for a legitimate purpose, and (3) review for abuse of discretion the district court's determination that the other acts evidence is more probative than prejudicial.

Evidence > ... > Credibility of Witnesses > Impeachment > Bias, Motive & Prejudice

Criminal Law & Procedure > ... > Acts & Mental States > Mens Rea > Specific Intent

Evidence > Admissibility > Conduct Evidence > Prior Acts, Crimes & Wrongs

Criminal Law & Procedure > Defenses > General Overview

HN2[] Bias, Motive & Prejudice

In prosecuting specific intent crimes, prior acts evidence may often be the only method of proving intent. Thus, where the crime charged is one requiring specific intent, the prosecution may *Fed. R. Evid. 404(b)* evidence to prove that a defendant acted with the specific intent notwithstanding any defense the defendant might raise.

Evidence > Weight & Sufficiency

HN3[] Weight & Sufficiency

Sufficient evidence exists to support a criminal conviction if, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could accept the evidence as establishing each essential element of the crime.

Criminal Law & Procedure > Juries & Jurors > Province of Court & Jury > General Overview

HN4[] A reviewing court does not reweigh the evidence or determine the credibility of witnesses, which is exclusively the province of a jury.

Criminal Law & Procedure > ... > Crimes Against Persons > Bribery > General Overview

Criminal Law & Procedure > Trials > Burdens of Proof > Prosecution

HN5[] In order to convict a party for a violation of *18 U.S.C.S. § 201(b)(2)(C)*, the government must prove: (1) a defendant was a public official of the United States, (2) the defendant directly or indirectly demanded, sought, received, accepted, or agreed to receive or accept something of value, and (3) the defendant did so corruptly in return for being induced to do or omit to do any act in violation of his official duty.

Criminal Law & Procedure > ... > Bribery > Commercial Bribery > Elements

Criminal Law & Procedure > ... > Bribery > Public Officials > General Overview

Criminal Law & Procedure > ... > Crimes Against Persons > Bribery > General Overview

HN6[] Elements

It is the purpose for which a recipient knows a bribe is offered or given when he solicits, receives, or agrees to receive it which is determinative of criminality.

Judges: BEFORE: MERRITT, Chief Judge; BROWN and MARTIN, Circuit Judges.

Opinion

ORDER

Clifford Crum, a federal prisoner, appeals his conviction on one count of receiving a bribe in violation of *18 U.S.C. § 201(b)(2)(C)*. The parties have waived oral argument and this panel unanimously agrees that oral argument is not needed in this case. *Fed. R. App. P. 34(a)*.

Crum, who was a federal Coal Mine Safety and Health Inspector at the time of the offense, was charged with accepting $ 200 in return for his agreement not to properly inspect and report violations at Ace Colliery, Inc., a coal mine operating in Pike County, Kentucky.

Following a three-day jury trial, Crum was found guilty and was sentenced on October 17, 1994, to 13 months in prison **[*2]** and two years of supervised release. In addition, the district court ordered Crum to pay $ 200 in restitution to the coal company.

On appeal, Crum argues that: (1) the trial court improperly admitted evidence of other crimes, and (2) the government offered no proof to establish the third element of the offense of bribery.

Upon review, we affirm the district court's judgment because the audio cassette tape containing evidence of other crimes was properly admitted and the government presented evidence sufficient to establish that Crum received the money as an inducement to do or omit to do an act in violation of his official duties.

HN1[] This court reviews the admission of Rule 404(b) prior acts evidence under a three-step analysis: (1) review for clear error the district court's factual determination that a prior act occurred, (2) review de novo whether the district court made the correct legal determination that the evidence was admissible for a legitimate purpose, and (3) review for abuse of discretion the district court's determination that the other acts evidence is more probative than prejudicial. United States v. Johnson, 27 F.3d 1186, 1190 (6th Cir. 1994) (citing United States **[*3]** v. Gessa, 971 F.2d 1257, 1261-62 (6th Cir. 1992) (en banc)), *cert. denied, 115 S. Ct. 910 (1995)*. When the three-part analysis described above is applied to the challenged portions of the tape recorded conversation between Crum and the informant Kendrick, it is clear that the district court did not err in admitting the tape for the purpose of proving intent.

First, the district court did not clearly err when it found that the prior acts occurred. To support that finding, the court could reasonably rely upon Crum's own statements as recorded in the tape-recorded conversation.

Second, the district court did not err in its legal conclusion that the challenged portions of the tape were admissible for the legitimate purpose of proving intent. Before prior acts evidence may be admitted for this purpose, intent must be a material issue in the case. Johnson, 27 F.3d at 1191. This circuit recognizes that, HN2[] "in prosecuting specific intent crimes, prior acts evidence may often be the only method of proving intent. [citation omitted] Thus, where the crime charged is one requiring specific intent, the prosecutor may use 404(b) evidence to prove that the defendant acted with the specific **[*4]** intent notwithstanding any defense the defendant might raise." Id. at 1192. The defense conceded that bribery is a specific intent crime.

The recorded conversations between Crum and Kendrick clearly involve the payment of $ 500 by mine operator Clinton Bartley to Kendrick, $ 200 of which would be passed on to Crum. However, since Crum had not yet been assigned to perform the regular inspections on Bartley's mine, the discussion relating to previous "help" from mine operators for whom he did perform regular inspections was probative of the purpose for this $ 200 payment. For this reason, the challenged portions of the tape were relevant and probative of Crum's specific intent to accept a bribe to "go light" on Bartley in future inspections.

Finally, the district court did not abuse its discretion in determining that the probative value of this evidence outweighed its prejudicial value. As already stated, the probative value of Crum's prior acts to prove his specific intent was substantial. The district court expressly weighed this factor against the prejudicial effect the evidence might have and concluded that the probative value did indeed outweigh any prejudice to Crum, noting **[*5]** that Crum was free to call witnesses to rebut the statements.

Crum next argues that the government did not prove the third element of bribery because it did not present evidence that Crum performed or omitted to perform an official act. HN3[] "Sufficient evidence exists to support a criminal conviction if, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could accept the evidence as establishing each essential element of the crime." United States v. Spears, 49 F.3d 1136, 1140 (6th Cir. 1995) (citing Jackson v. Virginia, 443 U.S. 307, 324-26, 61 L. Ed. 2d 560, 99 S. Ct. 2781 (1979)). HN4[] The reviewing court does not reweigh the evidence or determine the credibility of witnesses, which is exclusively the province of the jury. Spears, 49 F.3d at 1140.

The parties agree that, HN5[] in order to convict a party for a violation of *18 U.S.C. § 201(b)(2)(C)*, the government must prove: (1) the defendant was a public official of the United States, (2) the defendant directly or indirectly demanded, sought, received, accepted, or agreed to receive or accept something of value, and (3) the defendant did so "corruptly" in return for being induced **[*6]** to do or omit to do any act in violation of his official duty. Crum does not claim that there was no evidence to establish the first two elements set forth

above; he only challenges the sufficiency of the evidence as to the third.

Crum maintains that, even if he did receive $ 200 from Bartley, the money was for the inspection quarter already passed, during which Crum made only a follow-up inspection during which he performed his duties properly. Thus, it could not serve as an inducement "to do or omit to do any act" in the future and represented, at most, an illegal gratuity. The government, on the other hand, contends that evidence was presented by which the jury could find that the money was indeed an inducement designed to influence future actions. The district court agreed with the government, citing *United States v. Myers, 692 F.2d 823 (2d Cir. 1982), cert. denied, 461 U.S. 961 (1983)*. After examining the legislative history of the bribery statute, the Second Circuit concluded that HN6[↑] "it is the purpose for which the recipient knows the bribe is offered or given when he solicits, receives, or agrees to receive it which is determinative of criminality." *Id. at 841*. **[*7]**

The testimony of both Kendrick and Bartley, as well as the transcript of the tape recorded conversations, provides sufficient evidence that Crum knew that the $ 200 offered and accepted was not just for the inspection quarter already past, but was intended by Bartley to "make a better working relationship" with Crum in the future. As credited by the jury, this evidence was sufficient to establish the third element of the offense with which Crum was charged.

Accordingly, the district court's judgment, entered on October 20, 1994, is affirmed.

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