

STATE OF MICHIGAN
IN THE COURT OF APPEALS

JESSICA FLINTOFT, as Clerk of Scio
Township,

Case No.

Plaintiff-Appellant,

Washtenaw County Cir. Case No. 22-
000414-CZ (Hon. Timothy P. Connors)

vs.

SCIO TOWNSHIP BOARD OF TRUSTEES,

Defendant-Appellee,

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CLAIM OF APPEAL

ORDER APPEALED FROM

STATEMENT RE: TRANSCRIPT

LOWER COURT DOCKET ENTRIES

JURISDICTIONAL CHECKLIST

PROOF OF SERVICE

STATE OF MICHIGAN
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CLAIM OF APPEAL

Plaintiff-Appellant Jessica Flintoft, as Clerk of Scio Township (“Flintoft” or the “Clerk”), by her attorneys, Dykema Gossett PLLC, pursuant to MCR 7.203(A)(1) and MCR 7.204, claims an appeal from the Circuit Court’s September 27, 2022 Order denying summary disposition for the Clerk and granting summary disposition for Defendant-Appellee Scio Township Board of Trustees (“Defendant” or the “Board”). A copy of that order is attached as **Exhibit A**. The hearings on the parties’ cross motions for summary disposition were held on August 25, 2022 (via Zoom), and September 21, 2022 (in person). Of the two hearings, this appeal primarily, but not exclusively, involves the in-person hearing held on September 21, 2022. Copies of the transcripts of the August 25, 2022 and September 21, 2022 hearings are attached as **Exhibits B**

and C, respectively. A copy of the Circuit Court register of actions is attached as **Exhibit D**, and the Jurisdictional Checklist is attached as **Exhibit E**.

Respectfully submitted,

DYKEMA GOSSETT PLLC

By: /s/ Mark J. Magyar

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Date: October 17, 2022

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of October 2022, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to all ECF participants and I have served the paper to the following non-ECF participants:

Clerk of the Court
Washtenaw County Circuit Court
101 E Huron St
Ann Arbor, MI 48104

Via first class U.S. Mail.

By: /s/ Mark J. Magyar

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EXHIBIT A

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW

JESSICA FLINTOFT, as Clerk
of Scio Township,

Case No. 22-000414-CZ

Plaintiff,

Hon. Timothy P. Connors

v.

SCIO TOWNSHIP BOARD,

Defendant.

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**ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY DISPOSITION AND
GRANTING DEFENDANT'S MOTION FOR SUMMARY DISPOSITION**

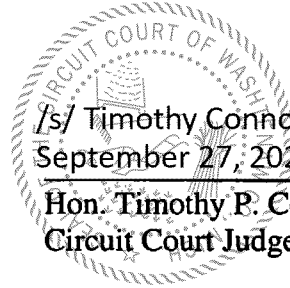
This matter, having come before the Court on Plaintiff's Motion for Summary Disposition under MCR 2.116(C)(10) and MCR 2.116(I)(1) and Defendant's Motion for Summary Disposition under MCR 2.116(C)(8) Re: Plaintiff's First Amended Complaint and pursuant to MCR 2.116(I)(2); this Court having received the parties' briefs; this Court having held a hearing on September 21, 2022 at which counsel for both parties appeared; and this Court being otherwise fully advised in the premises;

NOW, THEREFORE, IT IS ORDERED as follows for the reasons stated on the record:

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1. Plaintiff's Motion for Summary Disposition is DENIED.
2. Defendant's Motion for Summary Disposition is GRANTED.

This is a final order that closes the case.



/s/ Timothy Connors
September 27, 2022

Hon. Timothy P. Connors,
Circuit Court Judge

Approved as to form:

FOSTER SWIFT COLLINS & SMITH PC

Dated: September 23, 2022

By:

Handwritten signature of Michael D. Homier in black ink.

Michael D. Homier (P60318)
Laura J. Genovich (72278)
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DYKEMA GOSSETT, PLLC

Dated: September 23, 2022

By:

Handwritten signature of Mark J. Magyar in black ink, with the words "w/ permission for" written in cursive next to it.

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EXHIBIT B

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

JESSICA FLINTOFT, as Clerk of
Scio Township,

Plaintiff,

vs.

Case No. 22-000414-CZ

Hon. Timothy P. Connors

SCIO TOWNSHIP BOARD OF TRUSTEES,
Defendant.

Proceedings taken before the
Honorable Timothy P. Connors
Taken Via Zoom Videoconference
Commencing at 12:04 p.m.
Thursday, August 25th, 2022
Transcribed by Carolyn Grittini, CSR-3381

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1 STATE OF MICHIGAN

2 IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW

3
4 JESSICA FLINTOFT, as Clerk of
5 Scio Township,

6 Plaintiff,

7 vs.

Case No. 22-000414-CZ

8 Hon. Timothy P. Connors

9 SCIO TOWNSHIP BOARD OF TRUSTEES,

10 Defendant.
11 _____

12
13 Proceedings taken before the

14 Honorable Timothy P. Connors

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16 Commencing at 12:04 p.m.

17 Thursday, August 25th, 2022

18 Transcribed by Carolyn Grittini, CSR-3381
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25

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1 APPEARANCES:
2
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17 Appearing on behalf of the Defendant.
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21
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25

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1 conferring with the written arguments as well. With
2 that, if you would like to state your appearances,
3 attorneys on the record, and then we'll hear argument.
4 MR. MAGYAR: Thank you, Judge Connors.
5 Mark Magyar, here for the plaintiff and alongside me
6 is the plaintiff, Jessica Flintoft.
7 MR. HOMIER: Thank you, Your Honor. On
8 behalf of Scio Township Board, Mike Homier appearing.
9 THE COURT: Go right ahead, counsel.
10 MR. MAGYAR: Thank you, Your Honor. Mark
11 Magyar for the plaintiff. This is Plaintiff's motion
12 for Summary Disposition under MCR 2.116(B)(10) and
13 I-01.
14 Just briefly as an introduction, I want to
15 say that this is not a policy dispute. I know the
16 board has made that argument and said that it has no
17 place in this court, but what we're dealing with is
18 the taking of statutorily prescribed duties of a clerk
19 as an officer and removing them by a series of two
20 resolutions and redirecting them to the supervisor and
21 to the township administrator, who is not an officer
22 but who is an employee serving at the pleasure of the
23 board.
24 And under the McKim case that we, of
25 course, extensively rely upon and there's a ton more

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1 Thursday, August 25, 2022
2 12:04 p.m.
3
4
5 COURT CLERK: We are on the record in the
6 matter of Flintoft vs. Scio Township Board for
7 Plaintiff's Motion for Summary Disposition and for
8 Defendant's Motion for Summary Disposition.
9 THE COURT: Good morning. This is Judge
10 Connors. I'll ask for appearances in a minute. I
11 know that there are many observers to this motion and
12 some of them have actually been listening in on prior
13 cases, and I think they can attest that I appreciate
14 your patience. You are the last motion I have this
15 morning on the 10:30 docket. After yours, I'll start
16 the 11:30 docket. The reason you are last on the
17 10:30 docket is that there were more substantive
18 issues involved in yours, and so I wanted to make sure
19 it was given time. So that's neither -- it's not an
20 excuse, but it is an explanation and I thank you for
21 your patience.
22 In addition, I have the briefs in front of
23 me, which I have read and continue to look at, and so
24 when you see me looking down, it's not that I'm not
25 paying attention to what is being said, it's that I'm

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1 on these topics, that's for this court to come in and
2 vacate anything that interferes with the clerk's
3 duties. And so what we're asking for in Count I is
4 three things. We want the two resolutions vacated.
5 That's the August 17, '21 and February 22, '22.
6 We tried to be specific about what the
7 offending provisions of those were. We had some
8 criticism of how detailed we were. I think maybe I
9 agree with the board that it would be much more
10 streamlined to just vacate those resolutions and if
11 they want to go back to the drawing board of
12 (inaudible) that don't interfere with the clerk's
13 duties, they, of course, can do so at the next
14 meeting. We're also happy to go in, though, by detail
15 and have a thorough discussion of the provisions of
16 the resolutions. That's number one, vacate the
17 resolutions.
18 Number two, restore the clerk as what was
19 already the case before these resolutions and before
20 May of 2022 changes to having custody and enterprise
21 administrative authority under the township's journals
22 and records. And that software now, in this day and
23 age, it's all computer, this is the BS&A software
24 we're talking about. But really, as an analogy, you
25 can even think of it has hardbound books in a safe.

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1 And what the board has done with these resolutions,
 2 has been to take the key to the safe of the township's
 3 journals and records, journals and ledgers, to take
 4 that key and to give it to someone else contrary to
 5 law, contrary to statute. And what I mean by that,
 6 and we'll get into it a little more, this is just a
 7 summary of what we want, but the clerk no longer has
 8 the power under the status quo under these resolutions
 9 to even know who's being granted access to the
 10 journals and ledgers of the township and who can
 11 change them. That authority rests with James Merte,
 12 the interim township administrator.

13 THE COURT: If I may, Mr. Magyar, at the
 14 beginning -- I just wanted to ask the clerk to confer,
 15 this is no jury demand in this case, am I correct?

16 MR. MAGYAR: I believe that's correct, Your
 17 Honor.

18 THE COURT: So the first question I have,
 19 and I would really like to direct this to both sides,
 20 my general observation in looking at the briefs and
 21 being familiar with this dispute for the various
 22 motions that continue to seem to come my way, my
 23 observation is the parties don't like each other very
 24 much, and they happen to have beliefs on what their
 25 authority should be in their common obligation to the

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1 public. As a result, they have disputes about what
 2 they believe their obligations are or what the others
 3 are doing and that there is a level of distrust that
 4 is, in my opinion, fairly obvious. And as a result of
 5 that, it's difficult to get anybody to agree on
 6 anything about anything.

7 And the reason I bring that up is that that
 8 oftentimes goes to credibility, and when we don't have
 9 agreement on basic facts, even if they're not legally
 10 significant, I'm always cautious to try a case by
 11 pleadings. So I say that at the front end because
 12 your motion, for example, is under a C(10) saying
 13 there are no material factual disputes, and then of
 14 course I-1 using the equitable ability that I have to
 15 sort of come in.

16 So can we focus on, rather than arguing the
 17 case as if this is the trial today, tell me why I can
 18 legally grant a C(10) motion, and then I'll hear from
 19 the other side as to whether they agree. So you tell
 20 me whether there's not any material factual disputes,
 21 I guess that's your assertion, and let me check with
 22 the other side to see if there are, and if they
 23 believe there are, I would like to have them identify
 24 what those are and then you tell me whether they're
 25 material or not. Okay?

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1 MR. MAGYAR: Thank you, Your Honor, yes.
 2 And as Your Honor pinpointed and what's going to be
 3 the key here is material facts. Because the board has
 4 certainly, through the Affidavit of Mr. Merte, tried
 5 to make it appear that there's all kinds of disputes,
 6 when really, there are no disputes of material fact
 7 and we contend that C(10) Summary Disposition is
 8 proper.

9 And the reason we're confident in that
 10 result is, when we look at what the clerk's statutory
 11 duties are, which for purposes of this discussion,
 12 I'll try to stay brief, but it's custody and
 13 administration of the township's journals and ledgers.
 14 And when you look at then what these resolutions did
 15 and what the status quo is now, there's an
 16 undisputable, clear interference with the clerk's
 17 duties over the journals and ledgers. And what that
 18 interference is, is the authority that was expressly
 19 provided under, particularly the second resolution,
 20 where they say that the board is going to have this,
 21 quote, ultimate authority through the administrator or
 22 the BS&A software and the IT, that is saying, we are
 23 giving the administrator the ultimate authority over
 24 the journals and ledgers because that's where they're
 25 located in the software.

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1 And after we filed our complaint, the board
 2 changed their conduct because they were allowing a
 3 deputy to actually enter at her leisure and manipulate
 4 and change the general ledger and other modules of the
 5 township's journals and ledgers. And when we filed
 6 this suit and said absolutely not, and the township
 7 attorney agreed with us, the only thing they did was
 8 stop letting this employee manipulate the ledgers, but
 9 what they didn't do was return to the status quo from
 10 before, which was that only the clerk has the ultimate
 11 authority over accessing the township's journals and
 12 ledgers and giving authority to others to manipulate
 13 those records.

14 As it stands right now, if Mr. Merte, an
 15 employee of the township, wants to grant access to
 16 Sandra Egeler or me or anyone else to enter the
 17 software and the journals and ledgers of the township,
 18 to edit them or do whatever under his enterprise
 19 administrator access, he can do that, the clerk will
 20 not know of that, and that is the fundamental problem
 21 and --

22 THE COURT: I need to interrupt you again,
 23 sir. I'm not sure you heard what I was saying. For
 24 example, the term manipulating records is a fairly --

25 MR. MAGYAR: I don't mean it derogatorily.

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1 THE COURT: I'm not done speaking now, if
2 you don't mind. Manipulation of records is a fairly
3 explosive term. I suspect they don't agree with you
4 that they're giving carte blanche manipulation of
5 records. That to me would be a material factual
6 dispute. Let me ask you this question: Assuming I
7 denied motions for Summary Disposition like I would
8 temporary ex parte motions or emergency motions, are
9 you ready to go to trial or do you need any discovery?
10 MR. MAGYAR: I think we would have some
11 discovery we would want in case there were
12 communications that were kept private amongst the
13 board on these topics.
14 THE COURT: Let me then shift the
15 conversation to opposition asking if they think there
16 are material factual disputes and let them identify
17 rather than you arguing the case, and then you can
18 respond on that and then I'll take the next motion.
19 Counsel, do you believe there are material
20 factual disputes such that whether or not discovery is
21 necessary, there needs to be a hearing to determine
22 for the relief requested and for the finder of fact,
23 which apparently in this case is me, to listen to that
24 and determine credibility and apply facts to all?
25 MR. HOMIER: Thank you, Your Honor. Mike

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1 Homier. I don't believe there are any material facts
2 as it pertains to the township's request for judgment
3 under I-2 as a matter of law in its favor, because the
4 law simply does not provide what Plaintiff thinks it
5 should provide. So in other words, the various
6 statutes that they've relied upon are in direct
7 conflict with, one, the allegations that they've made
8 in the complaint, and two, the pleading in their
9 motion.
10 THE COURT: Again, counsel, so in your
11 case, you're saying that this case, you don't need
12 discovery, this case is ripe on the facts that there
13 are -- the courts can and should make a determination
14 one way or the other for the relief requested from the
15 various parties?
16 MR. HOMIER: Based on the statutes at
17 issue, that's correct.
18 THE COURT: All right. Well, that saves
19 you there, sir, Mr. Magyar. Now you can go ahead and
20 argue your case.
21 MR. MAGYAR: Thank you, Your Honor. And
22 just to move on from the introduction to Count I, the
23 court seeking the vacating of the resolutions. In
24 Count II, it is a separate -- it's related but it's a
25 separate issue than Count I. We are not contending

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1 that there is, contrary to black letter statute, that
2 there's a minimum staffing right or obligation in any
3 way. But what the township has done, has created a
4 currently sitting pot of 255,000 dollars that they
5 approved that at a March 29th meeting under the
6 board's special powers, which we're not disputing, and
7 appropriations power, and have done absolutely nothing
8 with it in an arbitrary and capricious manner. While
9 the finance director position remains vacant since
10 November of '21, we have documented that the finance
11 manager has had some very serious family medical leave
12 issues with family members.
13 We've provided evidence from experts such
14 as the Woodfield Group, (inaudible), Plante Moran,
15 former administrator Rowley, who has tons of
16 background and experience in this, all to say what is
17 your typical staffing in the finance department, which
18 the finance department is another way of saying the
19 accounting department, and all of it is inextricably
20 intertwined with the duties of the clerk with respect
21 to the accounts of the township.
22 THE COURT: So let me interrupt you again,
23 because I'm reading -- since you've gone to Count II,
24 Count I, you want me to vacate resolutions. Count II,
25 when I looked at your brief, it says insufficient and

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1 under-trained finance staff, attempts to replace
2 Sandra Egeler with a qualified finance director, the
3 under-trained finance team, what is it you want me to
4 do in Count II?
5 MR. MAGYAR: Thank you, Your Honor. And
6 this is -- what we want in Count II is we want the
7 clerk's position, as is normal in every township and
8 was the case here until recently, to be able to
9 oversee and make the hiring recommendations to the
10 board for the board's approval, rather than what these
11 resolutions did was expressly shift that over to the
12 supervisor.
13 These positions, when we look at the
14 statute and the bolded highlighted portions of MCR
15 41.65, these positions are what directly support
16 things like the clerk shall also open and keep a
17 separate account with each fund belonging to this
18 township and shall credit each fund with the amounts
19 that properly belong to it, et cetera, et cetera.
20 What we're talking about --
21 THE COURT: Back to my question, sir. When
22 you say what you want me to do in Count II is direct
23 that the clerk should oversee, when you say oversee,
24 does that mean coordinate, account for, make sure it's
25 done, or does that mean that that's the ultimate

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1 decision maker and so whatever your client decides is
 2 the way it is? What do you mean by that?
 3 MR. MAGYAR: No, not whatever my client
 4 decides. In fact, we can look right to the resolution
 5 that we want vacated, where it was the supervisor who
 6 wrote into his own job description that he will have
 7 the budget and finance director report to him. The
 8 finance director --
 9 THE COURT: Now you're going back to Count
 10 I. I understand you want me to vacate those
 11 resolutions. Count II, I'm asking you what you want
 12 me to do and you want me to issue something, and you
 13 use the term oversee, and I'm trying to understand
 14 what do you mean by oversee?
 15 MR. MAGYAR: Your Honor, the resolutions do
 16 have overlap into both counts. The supervisor has
 17 given himself the new power that didn't exist before
 18 under the August resolution, that the finance
 19 director, who does all things that impact the clerk's
 20 role and duties, that now the finance director will
 21 report to the supervisor. So what we're asking for,
 22 Your Honor, is when the board creates a budget, as is
 23 their role and they have done, and when they
 24 appropriate money to the accounting group to hire
 25 accounting staff, which is sitting in a pot right now

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1 of 255,000 dollars, that it then shifts to the clerk
 2 to recommend to the board how those hiring decisions
 3 for her group get made and that when those hirings get
 4 made, that those people report to the clerk. That's
 5 what we're asking for.
 6 The board still has to approve the hiring,
 7 but those employees who are doing the finance tasks
 8 and with the money that the board budgets in its
 9 appropriations role, should have the say so of who is
 10 recommended to the board to be hired --
 11 THE COURT: You need to distill this down.
 12 You're using words like should, recommend; these are
 13 vague terms. Give me specifically what you're asking
 14 in Count II. Because if I adopted what you just asked
 15 me, I couldn't explain it to anybody.
 16 MR. MAGYAR: Okay. That the clerk
 17 recommend to the board who should be hired for finance
 18 staff, and that once hired, any finance staff reports
 19 to the clerk. That's what we're asking.
 20 THE COURT: Let's stay with the first
 21 thing. You're saying the clerk should recommend to
 22 the board, so she makes a recommendation. If they
 23 decide thank you very much, we're not following the
 24 recommendation, then what do you say?
 25 MR. MAGYAR: That she comes up with a next

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1 candidate.
 2 THE COURT: I'm sorry, that what?
 3 MR. MAGYAR: Then the clerk presents a next
 4 or new candidate. Underlying all of this is the board
 5 cannot be under the Wayne County case that we cited
 6 acting in an arbitrary and capricious manner --
 7 THE COURT: Hey, I don't need the
 8 invective. So what you're saying is, she makes a
 9 recommendation, if the board says no thank you, she
 10 makes another recommendation. And if the board says
 11 no thank you, she makes another recommendation. And
 12 if the board says no thank you, she makes another.
 13 What happens if all her recommendations the board says
 14 no thank you. Then what do we do?
 15 MR. MAGYAR: Well, I think there would be
 16 necessarily underlying those decisions with some
 17 rationale, and I'm not trying -- I'm trying to use the
 18 legal terminology in terms of art when I say arbitrary
 19 and capricious. If those decisions are based on -- I
 20 mean, it seems like under our hypothetical, it would
 21 be hard to get through that many candidates and
 22 there's not one qualified one. When you look to the
 23 history of who has been put in those roles who have no
 24 qualifications, then to say that the board would
 25 reject all of these, I think then you're entering into

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1 a realm where it is arbitrary and capricious.
 2 THE COURT: Tell me where you think the
 3 breakdown is. You're saying that the board is not
 4 taking any recommendations? Is that where you're
 5 saying the breakdown is?
 6 MR. MAGYAR: Yeah, the breakdown is they've
 7 had a fund for months to provide necessary support
 8 to --
 9 THE COURT: Sir, it would really help me if
 10 I could just get an answer to my questions. So what
 11 you're saying --
 12 MR. MAGYAR: I'm trying, Your Honor.
 13 THE COURT: No, you're not. You're arguing
 14 all kinds of stuff with it. Listen. So you're saying
 15 the board is not listening to her recommendations,
 16 yes?
 17 MR. MAGYAR: Yes, and not even supplying
 18 any staff. It's an empty position.
 19 THE COURT: Okay. So then what you're
 20 saying is that I should shift it from her recommending
 21 and giving her the ability to hire and pick the person
 22 since she feels they aren't listening to her, is that
 23 what you're asking me to do?
 24 MR. MAGYAR: I think if you conceptualize
 25 it, like if you had a recruiting committee --

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1 THE COURT: I don't need -- counsel, I
2 don't need to conceptualize things. I'm asking you a
3 direct question. What is it you want me to do? To
4 say your client has the authority to pick and decide
5 who it is, because of the feeling that the
6 recommendations aren't being listened to? What are
7 you asking me to do specifically?
8 MR. MAGYAR: We are asking for the
9 authority to use the already allocated and budget
10 funds to recruit, to use those funds to fill that
11 role, be in the first and only instance with the
12 clerk. So that's why I brought up recruiting
13 committee. She's the recruiting committee, not as it
14 currently stands, the supervisor or the board.
15 THE COURT: You want me to order the board
16 to fill a position that your client picks?
17 MR. MAGYAR: No.
18 THE COURT: Then what is it you want me to
19 do?
20 MR. MAGYAR: We want the clerk, not the
21 supervisor, not the board, to be charged with the task
22 of going out and finding talented, educated in the
23 ways that are qualified for the finance roles that are
24 needed. It's the clerk's office charge with finding
25 those candidates and presenting them for hire, and

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1 then once hired, reporting to, within that group, to
2 the clerk's office. That's what we're asking for.
3 And yes, there will be circumstances where
4 her first or second candidate, as the recruiting
5 committee, as she and her deputy are the recruiting
6 committee, there will be instances where the board
7 may, in an articulated fashion, have a reasonable
8 reason why they don't agree with that hiring that
9 staff member or maybe they can't come to terms on
10 salary if they are overqualified.
11 THE COURT: I'm back to sort of my initial
12 comments to you. It's like you're asking me to come
13 in and run the township.
14 MR. MAGYAR: I'm not, Your Honor. I'm
15 asking for the clerk to be able to perform her
16 statutory duties and not be prevented from doing so by
17 the board.
18 THE COURT: You need to nail this down in
19 very specifically --
20 MR. MAGYAR: I wish I could today, Your
21 Honor, I wish I should head off all future disputes,
22 and whatever comes out of today, that we'll never be
23 back here again. But just like any decision that goes
24 before the board, hiring decisions are going to be
25 going before the board. And what we are asking for is

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1 that it's the clerk's sole province to recruit and
2 present qualified candidates to the board. I cannot
3 promise you that we won't be back here when the board,
4 let's say, hypothetically, arbitrarily without reason
5 or without proper reasons denies, denies, denies and
6 doesn't fill, then yeah, we'll probably be back here.
7 But a good start, and what we think is required under
8 the law, is that the province for who's making these
9 recommendations, because the clerk knows what is
10 needed to support her duties, is that it's the clerk
11 presenting those.
12 THE COURT: So because you feel I'm down
13 the street, every time we have a dispute, I'm the one
14 you're running to. When you say -- you want me to
15 issue an order saying the clerk has the sole province
16 to provide the board with qualified candidates. When
17 I look at that language, it's saying the clerk is
18 deciding who's a qualified candidate, the clerk
19 decides who the list is the board can consider, the
20 board can't consider anybody else even if they happen
21 to think we ought to take a look at this person, and
22 if they reject any of the sole province of the
23 qualified candidates, then how are they supposed to
24 function? How is the board supposed to function?
25 In de facto, you're saying the clerk is

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1 picking from the group, defines the group and you must
2 pick one, is that not what you're saying to me?
3 You're saying --
4 MR. MAGYAR: First of all --
5 THE COURT: It would help me if I can
6 finish before you interrupt me.
7 MR. MAGYAR: I'm sorry. I thought you
8 asked me.
9 THE COURT: Usually I'm not done talking
10 when I'm in the middle of words and you're
11 interrupting, that's just a general observation I have
12 about discourse. Now, when you say the sole province
13 to provide qualified candidates to the board, what
14 happens if the board disagrees?
15 MR. MAGYAR: I thought that was the
16 question, so I'm sorry Your Honor, I did not mean to
17 interrupt you. The topic isn't function. Okay.
18 That's the first thing, it isn't functioning. So we
19 don't have to worry about it won't be able to
20 function, it isn't functioning. Right now there isn't
21 a finance staff, and part of the reason is that the
22 board won't fill it.
23 And no, it's not the case. In any
24 situation where you have someone in charge of
25 recruiting, someone could come up and say hey, have

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1 you heard about this candidate? They have a Master's
 2 in accounting and they've told the supervisor that
 3 they're interested; why don't you consider this
 4 person? Of course, they could get into the mix of
 5 candidates to be reviewed. And certainly, the board
 6 can vote on approving any candidate no matter where
 7 they came from. But what we've seen so far leading us
 8 here today is tax work. We want people that were
 9 part-time, no accounting experience, we'll throw those
 10 to you, and what it has the effect of doing and why
 11 we're here trying to creatively come up with a
 12 solution that complies with the law is it has the
 13 effect of preventing the clerk from performing her
 14 duties. And that's the problem. That's the legal
 15 problem.
 16 THE COURT: If I may ask you, so my
 17 understanding is, first thing you're asking me to do
 18 is rule as a matter of law that the clerk has the sole
 19 province to provide qualified candidates to the board,
 20 and there may be subsequent problems after that, but
 21 that's what you're asking me to do today?
 22 MR. MAGYAR: Yes, and whoever is hired,
 23 that if --
 24 THE COURT: We'll go to number two. Can we
 25 agree that's the first thing you're asking me to do?

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1 MR. MAGYAR: In Count II, yes.
 2 THE COURT: Geez, I just really need to
 3 know what you're asking me to do today. So Count I is
 4 to say, your resolutions are void, I'm the judge, they
 5 don't mean anything. Now Count II, you want me to say
 6 that the clerk has the sole province to provide
 7 qualified candidates to the board. Now you have a
 8 second thing you want me to do under Count II?
 9 MR. MAGYAR: It's just whoever is hired,
 10 once we can ever get to actually employ people in the
 11 finance group, is that they should be reporting to the
 12 clerk, because the support they're providing is to
 13 comply with the statutory duties of the clerk.
 14 THE COURT: Let's distill that down. So
 15 you're saying whoever it is reports directly to the
 16 clerk?
 17 MR. MAGYAR: That's right.
 18 THE COURT: And not to the board? They
 19 don't report to the board? That's the sole --
 20 MR. MAGYAR: I'm sorry, Your Honor. The
 21 resolution that was adopted that we're seeking to
 22 vacated has the finance director contrary to past
 23 practice report to the supervisor.
 24 THE COURT: Anything else under Count II
 25 you want me to do?

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1 MR. MAGYAR: No, Your Honor.
 2 THE COURT: So we vacate the resolutions,
 3 you want me to issue an order today that says the
 4 clerk has the sole province to provide qualified
 5 candidates to the board. The board must pick from
 6 whoever the clerk submits; whoever they pick, then
 7 that person reports directly to the clerk?
 8 MR. MAGYAR: Yes, except I think we also
 9 acknowledge there could be room to add by agreement of
 10 the clerk, add other candidates.
 11 THE COURT: I'm just trying -- I'm here
 12 today, I just want to know. Is there a third thing
 13 you want me to order today?
 14 MR. MAGYAR: No, there isn't, Your Honor.
 15 And I don't think what we're asking for is very novel.
 16 THE COURT: Sir, I'm not asking if you're
 17 telling me why you're so entitled to it. I'm trying
 18 to understand what it is you're asking me to do and
 19 then when I ask you why, you can go into that.
 20 MR. MAGYAR: Okay, okay.
 21 THE COURT: Lord, you know what, maybe we
 22 need to have these hearings in person, because you
 23 keep interrupting me. Now I have to interrupt you to
 24 get you on track, and I acknowledge I'm doing that.
 25 But when I'm trying to put on the record my ruling and

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1 why and you're interrupting, I can't do it. Should we
 2 do this in person? I'm happy to do that, because you
 3 can see I'm speaking when you're interrupting me when
 4 you're in person. You want to do it that way? I'm
 5 happy to do that.
 6 MR. MAGYAR: First of all, let me again
 7 apologize, Your Honor. I'm not trying to interrupt
 8 you. There has been times when I thought a question
 9 was asked or I thought I was responding. If I'm too
 10 quick on it, I do apologize. I'm fine to do it in
 11 person, or maybe (inaudible) a little bit of feed
 12 issues. However Your Honor directs, but I think that
 13 is where the issue is coming up.
 14 THE COURT: In this case -- the Supreme
 15 Court just came down with a decision of when courts
 16 can require people to be in person and when they can
 17 allow by Zoom. This continues to be an issue. So I
 18 am going to require the attorneys and the parties
 19 appear in person so that I don't have to keep going
 20 through this. And in that regard, why don't I put the
 21 attorneys into a breakout room, we're very busy down
 22 here, we're digging out from under, but we'll pick a
 23 time and date and you can come on in, and that way you
 24 can see that when my mouth is open and I'm speaking,
 25 that's not the time for you interrupt me, and also

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1 when I'm trying to get an answer to a specific
 2 question, maybe this will assist us in doing that. So
 3 if you could, let's put the attorneys into a breakout
 4 room and then we'll go to the 11:30 docket and they'll
 5 pick a time they can be here in person.
 6 MR. HOMIER: Your Honor, this is Mike
 7 Homier. Can I ask one question?
 8 THE COURT: Sure.
 9 MR. HOMIER: You indicated that you wanted
 10 the attorneys and the parties, and because I represent
 11 the board, I assume that you are not suggesting that I
 12 bring the rest of the board members?
 13 THE COURT: You know what, I'm fine with
 14 that. I just need the attorneys. I just need the
 15 attorneys in person so that I can get direction. It
 16 would seem to me you may want your parties there in
 17 case you want to consult with them. That's up to you.
 18 In addition, I know there's multiple observers. Those
 19 observers are free to come on in and they're free to
 20 do it by Zoom. That does not matter to me. But I
 21 just can't get anywhere like this. This is very --
 22 and I don't quite understand why, you talk about this
 23 counsel, literally, I've been doing this by Zoom for
 24 two and-a-half years. I've not had this repeated
 25 problem with other attorneys. So let's get in here

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1 and we'll clear it up. If it's something about the
 2 way this is connecting in for you, we'll clear that up
 3 and you come on into the courtroom. So we'll put them
 4 in a breakout room and they'll go to the 11:30 docket.
 5 (Proceedings concluded at 12:36 p.m.)
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1 CERTIFICATE OF NOTARY
 2 STATE OF MICHIGAN)
 3) SS
 4 COUNTY OF MACOMB)
 5
 6
 7 I, CAROLYN GRITTINI, certify that this
 8 proceeding was transcribed by me on the date
 9 hereinbefore set forth; that the foregoing proceeding
 10 was recorded by me stenographically and reduced to
 11 computer transcription; that this is a true, full and
 12 correct transcript of my stenographic notes so taken;
 13 and that I am not related to, nor of counsel to,
 14 either party nor interested in the event of this
 15 cause.
 16
 17
 18
 19 *Carolyn Grittini*
 20
 21
 22 CAROLYN GRITTINI, CSR-3381
 23 Notary Public,
 24 Macomb County, Michigan.
 25 My Commission expires: July 15, 2024

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EXHIBIT C

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

JESSICA FLINTOFT, as Clerk of
Scio Township,

Plaintiff,

vs.

Case No. 22-000414-CZ
Hon. Timothy P. Connors

SCIO TOWNSHIP BOARD OF TRUSTEES,
Defendant.

Proceedings taken before the
Honorable Timothy P. Connors
Taken at 101 E. Huron Street
Ann Arbor, Michigan
Commencing at 1:30 p.m.
Wednesday, September 21, 2022
Transcribed by Carolyn Grittini, CSR-3381

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1 STATE OF MICHIGAN

2 IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW

3
4 JESSICA FLINTOFT, as Clerk of
5 Scio Township,

6 Plaintiff,

7 vs.

Case No. 22-000414-CZ

8 Hon. Timothy P. Connors

9 SCIO TOWNSHIP BOARD OF TRUSTEES,

10 Defendant.

11
12
13 Proceedings taken before the

14 Honorable Timothy P. Connors

15 Taken at 101 E. Huron Street

16 Ann Arbor, Michigan

17 Commencing at 1:30 p.m.

18 Wednesday, September 21, 2022

19 Transcribed by Carolyn Grittini, CSR-3381

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<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES: 2 3 MARK J. MAGYAR 4 Dykema Gossett 5 201 Townsend Street 6 Suite 900 7 Lansing, Michigan 48933 8 66.776.7523 9 Appearing on behalf of the Plaintiff. 10 11 MICHAEL HOMIER 12 Foster Swift Collins & Smith 13 1700 East Beltline, N.E. 14 Suite 200 15 Grand Rapids, Michigan 49525 16 616.726.2238 17 Appearing on behalf of the Defendant. 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 4</p> <p>1 And the first is, what is it specifically you want me 2 to do, I don't need the history of the case, but what 3 you want me to do today, how I can do it legally, and 4 obviously, I'm very familiar with the court rules on 5 MSDs, but there is some case law that you cited and I 6 think it's helpful if you are very specific about the 7 case and the language and why you think it's supported 8 and tell me why. With that, counsel go right ahead. 9 MR. MAGYAR: Thank you, Your Honor. And in 10 an effort to try to construct a presentation in 11 exactly the manner that you've described, I have, and 12 if Your Honor will let me approach, I have both a 13 proposed order and the eight documents that if we have 14 time, I hope to go through it chronological order. 15 THE COURT: I'm going to give you all the 16 time you want, sir. 17 MR. MAGYAR: Every document I have 18 provided, Your Honor has, been submitted as an exhibit 19 to the briefing today, and I can reference when 20 necessary what exhibit it is, and I have highlighted 21 the copies jut to streamline it, as well as the copy I 22 brought for counsel so that we're all looking at the 23 same thing here. 24 THE COURT: Okay. 25 MR. MAGYAR: Those are the eight documents</p>
<p style="text-align: right;">Page 3</p> <p>1 Ann Arbor, Michigan 2 Wednesday, September 21, 2022 3 4 COURT CLERK: We are on the record in the 5 matter of Flintoft versus Scio Township Board for a 6 Motion for Summary Disposition. 7 THE COURT: Again, good afternoon. Could 8 we have appearances on the record, please? 9 MR. MAGYAR: Good afternoon, Your Honor. 10 Mark Magyar for the plaintiff. 11 MR. HOMIER: Good afternoon, Your Honor. 12 Mike Homier on behalf of Scio Township Board. 13 THE COURT: We were having difficulty with 14 Zoom, and go ahead, that's why I asked that you come 15 in live, and thank you for being patient and flexible 16 on the scheduling. As you probably both know, we're 17 pretty backed up with the courts opening up and 18 getting backed up on jury trials and Judge Brown left 19 early and we don't have a replacement until January 20 1st. So in addition to this docket, I'm also carrying 21 the entire business docket. So we just have to fit 22 people in where we can. So I appreciate your 23 flexibility. 24 With that, I have read the briefs, I always 25 appreciate if you focus on three rhetorical questions.</p>	<p style="text-align: right;">Page 5</p> <p>1 and this is the proposed order. 2 THE COURT: All right. 3 MR. MAGYAR: So Your Honor, as mentioned I 4 think the chronological order of going through these 5 things will be helpful, but first I want to in summary 6 fashion go through the proposed order, because I do 7 think -- I agree, it's important to get right to what 8 we're asking for. 9 Of course, in paragraphs 1 and 2 of our 10 order, we would like our motion granted and 11 Defendant's motion denied. Paragraphs 3 and 4, we are 12 asking for two specific resolutions that the board 13 passed to be vacated. And we're asking for that 14 because the contents include provisions that directly 15 violate by usurping duties that belong by statute 16 exclusively to the clerk. 17 Besides those two resolutions being 18 vacated, and what those resolutions were specifically 19 used for, that was an extreme violation, was that the 20 clerk needs to be the exclusive enterprise 21 administrator for the BS&A modules of the township, 22 minus two that go outside of her duties that we'll get 23 to. 24 And the reason I say that is, the BS&A 25 modules are the books and records of the township.</p>

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1 Everything is electronic now. It's not hard copies.
 2 And so when we talk about being the exclusive
 3 enterprise administrator, we are talking about the
 4 statutory requirement that the clerk be the one who
 5 shall have, shall have custody of all the records,
 6 books and papers of the township. That's the first
 7 sentence of MCL 41.65.
 8 And now we are through the first five
 9 paragraphs of my proposed order, and I would
 10 respectfully submit, Your Honor, that those five
 11 paragraphs, other than paragraphs 1 and 2 just dealing
 12 with the grant and denial of motions, are what refer
 13 to Count I of the Complaint.
 14 Count II of the Complaint begins at
 15 paragraph 6. In the resolution that we're asking be
 16 vacated, the township board changed what was the
 17 existing process and gave to the supervisor the,
 18 quote, ability to oversee the hiring of the finance
 19 director and to recommend such hiring for approval by
 20 the Scio Township Board. That's not my language,
 21 that's the language that the board passed on August
 22 17th. It moved that responsibility historically given
 23 to the clerk and it moved it by resolution, because to
 24 accomplish what the board was trying to accomplish,
 25 they had to change what was the existing process and

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1 they shifted that to the supervisor.
 2 And Your Honor, under the Wayne County case
 3 that we're going to talk about, as well as some
 4 secondary, the secondary source that we've relied
 5 upon, which of course is not binding on the court but
 6 we think is very persuasive written by Mr. Verburg;
 7 when a board makes decisions that traditionally I'll
 8 be the first to admit are policy decisions that
 9 wouldn't require them to do anything one way or the
 10 other, but when you start to make decisions in such a
 11 way that you prevent an elected official from being
 12 able to perform statutory duties, that's where under
 13 the Wayne County case and the Verburg interpretation
 14 of it, that the court can order the township to at
 15 least put back in the right sphere of authority who
 16 gets to make decisions regarding the hiring of finance
 17 staff.
 18 So again, instead of it being the
 19 supervisor, who the board changed it to being the one
 20 to oversee the hiring of the finance director, we want
 21 it to be the clerk to oversee that. And instead of it
 22 being the supervisor who recommends the hire of the
 23 finance director and other finance staff to the extent
 24 that it's approved to be larger than just a finance
 25 director, that that recommendation for hire go from

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1 the clerk to the board, not from the supervisor to the
 2 board.
 3 Paragraph 7 in our proposed order is a
 4 remedy that comes directly from the McKim versus Green
 5 Oak Township Board case, which is that this court may,
 6 if it grants relief in our favor, retain continuing
 7 jurisdiction to see to it that the things that it
 8 orders are complied with, that the clerk is not
 9 prevented from doing her statutory duties and that we
 10 don't have continual finance staffing problems going
 11 forward.
 12 You can question is continuing jurisdiction
 13 necessary versus filing another suit if something
 14 happens. We are asking for it as a streamlined way to
 15 keep the parties in order here but, of course, there
 16 are avenues if that were not awarded.
 17 And then finally, paragraph 8 also comes
 18 directly from McKim versus Green Oak Township Board,
 19 and what the court noted, it wasn't a new holding, but
 20 what it noted in that case is that an exception to the
 21 American Rule for attorney's fees, when it's not
 22 authorized by contract or statute, is that if a public
 23 official files a suit to enforce and defend its
 24 statutory duties, recognizing that that's an onerous
 25 burden for an individual, which is very much the case

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1 here, the court may in its discretion grant fees for
 2 the prevailing official who brought that. So that is
 3 what we're seeking under the complaint and on our
 4 motion.
 5 THE COURT: And since they also, the other
 6 side represent and is seeking attorney fees,
 7 presumably then it's actually the taxpayers that would
 8 be paying the attorney fees.
 9 MR. MAGYAR: Unfortunately, Your Honor, I
 10 think that is the case, and I think one of the
 11 considerations that really weighed heavily on the
 12 clerk in this case was taxpayer money versus the
 13 eroding of the checks and balances that she's
 14 concerned that's happening here and the eroding of the
 15 clerk's office and what is really for the ultimate
 16 greater good of the citizens of the township, and if
 17 it's to spend money now to safeguard those things,
 18 that was a calculated decision.
 19 THE COURT: I take it that you're all --
 20 I'm cognizant of it because the opinion came down last
 21 week, but I know the individuals in Scio Township,
 22 both elected officials and people in Scio Township are
 23 very interested in the Gelman litigation, which has
 24 been going on for decades. And the Court of Appeals
 25 pretty clearly indicated, and we'll see what the

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1 Supreme Court if they take it, but pretty clearly
 2 indicated that I've overstepped my bounds, including
 3 Scio Township as an intervenor. I make these comments
 4 because you're asking me to take over jurisdiction and
 5 start micromanaging in my opinion difficulties between
 6 elected officials within Scio Township. So are you
 7 familiar with that? I mean, it's pretty well clear
 8 from the Court of Appeals what authority at all, and
 9 really, they're saying you don't have any unless
 10 asked. So I'm cognizant of that. Anything you wanted
 11 to say in that regard as to why this case is even more
 12 important that the Gelman pollution case that's been
 13 taking decades?
 14 MR. MAGYAR: Yes, Your Honor, and thank you
 15 for giving me that opportunity. I am aware of that
 16 litigation, I've spoken with my client about it, and I
 17 think everything involving public officials and
 18 politics, there is that fine line, and I'm not making
 19 comment on the Court of Appeals' order or the
 20 relative --
 21 THE COURT: Except I have to follow it. So
 22 you're asking me to do something that they pretty well
 23 clearly told me, keep your nose out of it. Go ahead.
 24 MR. MAGYAR: And I think, although that's a
 25 fair sort of general takeaway from the opinion, that

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1 it doesn't apply here, and that's because here, we're
 2 trying to narrowly focus on what the clerk's duties
 3 are under the statute and if, in fact, those duties
 4 were interfered with or usurped or otherwise taken
 5 from her and given to someone else on the board, then
 6 that is a clear and direct jurisdiction and authority
 7 of this court to vacate any such action. And that is
 8 the main relief I would say of all the relief we're
 9 seeking in Count I when we're asking to vacate two
 10 resolutions for specific reasons that the board is
 11 interfering and displacing the clerk's statutory
 12 duties in favor of giving them to the supervisor or in
 13 some cases the township administrator who is an
 14 employee overseen by the board.
 15 So respectfully, Your Honor, I don't think
 16 that recent decision in any way impedes the court's
 17 authority to vacate when it finds that a statutory
 18 duty of the clerk has been taken to vacate any such
 19 action. And that's the McKim case.
 20 THE COURT: I do admit, you can take as
 21 much time as you want, they have a response, but
 22 they're also asking under I(2) that I grant a motion
 23 for Summary Disposition in the township's favor. How
 24 would you like to proceed? Do you want to wait and
 25 have them argue and then you rebut?

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1 MR. MAGYAR: Your Honor, respectfully, if
 2 it pleases the court, because they've brought a
 3 pleadings-based motion, I would just as soon go
 4 through in a little bit more detail through my nine
 5 documents of exactly how we have established the
 6 violation because ours is a C(10).
 7 THE COURT: Go right ahead.
 8 MR. MAGYAR: Thank you, Your Honor. And
 9 the first thing I would point Your Honor to in the
 10 packet, I think we can pretty quickly go through
 11 these, it's not as thick as it looks because I'm
 12 really only concerned I think with the highlighted
 13 portions but I wanted to give complete documents.
 14 The first page is just a copy of the
 15 statute that we're dealing with that says in the first
 16 sentence, that the clerk shall have custody of all the
 17 records, books and papers of the township when no
 18 other provision for custody is made by law. And I
 19 certainly don't mean to imply that the rest of her
 20 duties are not important, but if we jump to the very
 21 last sentence, it's the township clerk who shall
 22 prepare and maintain the journals and ledgers
 23 necessary to reflect the assets, liabilities fund --
 24 and Your Honor, I don't have to read every word --
 25 that's really what we're talking about here, is

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1 custody of the papers as stated in sentence one, and
 2 preparing and maintaining the journals and ledgers as
 3 stated in the last sentence. And notably, and I know
 4 we've briefed this, but it bears reminding that there
 5 are very few offices, there's the treasurer and the
 6 clerk, maybe others I'm not as familiar with, that
 7 have to put up personal bonds for the safekeeping of
 8 these records. It is their duty and their duty alone,
 9 and the statutory law is clear that unless they
 10 affirmatively consent to change that, then it's a
 11 violation to take that duty away.
 12 Moving to the second document, unless
 13 there's any questions about how those duties relate to
 14 our case, it's an August 12, 2021 e-mail from -- and
 15 this is five days before the first resolution that
 16 we're talking about was passed, from Attorney James
 17 Fink, who is the township attorney, directly to my
 18 client, the clerk, answering questions of the clerk
 19 and finding that from his legal opinion, that it is
 20 the clerk, as we just saw in the statute, that is the
 21 person to maintain the ledgers and other financial
 22 records, and that it's the clerk who must have the
 23 authority to grant or deny access to manipulate -- and
 24 now we're talking about electronic records, so when we
 25 talk about using a read/write function, that means you

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1 have certain limitations of your authority in the
2 document; you can either just read it or you can be
3 someone who can actually go in and change the numbers
4 or you can edit the document.

5 THE COURT: If I may, he also says on that
6 specific question, does the clerk have the authority
7 to grant, deny access to manipulate, use, read/write
8 functions, the records. He does say, I find no
9 specific case law. And it's an attorney's opinion
10 that it's yes. So have you found the specific case
11 law that he could not find?

12 MR. MAGYAR: Well, I think the reason
13 perhaps, and I'm speculating because I haven't had
14 this exact conversation with him, is because from the
15 most literal sense, he may be saying that there's
16 never been a case to say read/write functions in an
17 electronic database. But the authority that we're
18 relying on in McKim dealt with incoming mail. And my
19 adversaries have argued that that case should be
20 limited to its facts. And respectfully, Your Honor, I
21 think there's more than clear language in the McKim
22 portion, it starts at page 204 where McKim recited the
23 language having custody of the papers, and then after
24 the McKim court cited the language of the statute,
25 they went on to define custody as immediate charge and

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1 control and that paper is defined as any writing or
2 printed document.

3 And then after going through the statute
4 and after going through the definition of paper, McKim
5 said, so it is clear that this law bestows upon the
6 clerk, quote, "the responsibility to exercise control
7 overall township papers including mail and bills."
8 And so the court didn't limit its analysis to mail and
9 bills. It did a very fulsome analysis of the law and
10 said, the clerk has responsibility and exclusive
11 control over all papers, which in that case included
12 mail, and here we would say the clerk has exclusive
13 control over all township papers, including these
14 read/write functions over the journals and ledgers.

15 So I respectfully disagree on that portion
16 of Mr. Fink's opinion, in that I do think this is
17 specific and controlling case law that was not related
18 to mail in McKim.

19 THE COURT: Thank you. Go ahead, sir.

20 MR. MAGYAR: Thank you, Your Honor. So
21 that was the opinion Mr. Fink gave, and my
22 understanding is there was a similar conversation held
23 between the clerk and the supervisor and Mr. Fink, but
24 then we go to the day of the meeting, five days later,
25 and it was a special meeting that the supervisor

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1 called, it wasn't a regular meeting. And that's the
2 next document we have, and this is one of the
3 resolutions that we're asking be vacated. It's August
4 17th 2021, it's resolution 2021-31.

5 And what it did is it passed a new job
6 description for the township supervisor as well as the
7 township administrator. So there's two job
8 descriptions that are attached and that were approved
9 by this resolution. And it's really those, other than
10 the resolution resolving that those things are being
11 adopted, it's really the job descriptions that we're
12 interested in.

13 So on the first one, on the supervisor, we
14 see right on the top bullet point in the highlighted,
15 that one of the supervision items that the supervisor
16 gave to himself and the board gave to him is that he
17 would be overseeing the finance director. So that is
18 the first really big alarm bell change that we're
19 seeing with this, is that it's no longer the clerk
20 supervising the finance director, even though all of
21 the finance directors's duties are to support what the
22 clerk's statutory duties are under the statute that we
23 just looked at, the journals and ledgers and the
24 papers and the accounts of the township.
25 On the same page in the highlight again, we

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1 see this is a marked change from existing process,
2 that the supervisor now has the oversight of the
3 finance director and oversees the hiring of the
4 finance director and makes that recommendation.

5 And how we've seen that play out briefly,
6 and I don't want to get in the weeds, because I think
7 just the change is important enough, but how we've
8 seen that play out is that neither the clerk nor the
9 former township administrator, David Rowley, have been
10 able to have any of their recommendations for
11 supremely qualified candidates be hired; and instead,
12 it's been a patchwork of part-time, no relevant
13 finance degree employees, that the clerk believes is
14 not supportive of her role and not frankly competent
15 to support her in the various or complex financial
16 needs of the township.

17 And on the next page of that same job
18 description for the supervisor, we see now it's going
19 to be the supervisor who is the lead of the finance
20 committee. Turning to the same resolution but now
21 instead of the supervisor, we're on the township
22 administrator's job description, and there's only one
23 point I want to draw to the attention right now to the
24 court on the second page, and it was put in bold even
25 to show the change, is that now it's going to be the

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1 township administrator, who is an employee, not an
 2 officer of the board, who is going to have control
 3 over related financial reports. That's that bold
 4 language highlighted. And it's not just me making a
 5 big deal of this, because there was a lot of debate at
 6 that meeting, and that's the next document we're going
 7 to look at, about what this phrase really means, what
 8 having control over related financial reports, what
 9 does that really mean.
 10 And so in the next document that I
 11 highlighted, it's just a couple of pages of the
 12 transcript of the meeting that day, that night. And
 13 again, it's Attorney Fink who's helping opine for the
 14 board, and he says, who's responsible for finance in a
 15 township? He says, I will repeat what I said before,
 16 it's clearly and soundly to me the responsibility of
 17 the clerk who is responsible for the general ledger
 18 and the books and records in conjunction with the work
 19 that the treasurer does, so that there's checks and
 20 balances. He says, that does not mean that the
 21 supervisor can't prepare a budget or have the
 22 administrator assist the supervisor in preparing these
 23 things, but then he says, the question comes up, what
 24 do we mean by related financial reports? That was the
 25 question.

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1 THE COURT: Before you jump to that, you
 2 have highlighted for my review the statement from Mr.
 3 Fink at that meeting that says -- I know Mr. Davis is
 4 listening, and he will correct me on anything later.
 5 And there he is. So I'm sure he'll correct me as well
 6 if he thinks there's something different. I just find
 7 it humorous that you highlighted that and he's staring
 8 at me in the front row. Go ahead now to your legal
 9 point.
 10 MR. MAGYAR: Okay, thank you. You're
 11 right, that is the very next thing I highlighted. It
 12 says, there is a way to interpret this language as not
 13 being a problem. But there's -- and why we're here
 14 is, there's apparently multiple ways to interpret this
 15 language. And I want to go through this, but when the
 16 board starts interpreting it in the way it said it
 17 wasn't going to, that's where we get the problem. And
 18 if you have a resolution that gives more than one
 19 interpretation and one can violate the law, I think it
 20 needs to be vacated and go back to the drawing board
 21 to it can't be interpreted that way.
 22 So Mr. Fink said if someone interprets and
 23 related financial reports to mean that the board is
 24 saying the clerk is not responsible for the general
 25 ledger and would have authority over it, then that

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1 interpretation would be incorrect, he said. But if
 2 you interpret it as I do, said Mr. Fink, is that the
 3 supervisor will be preparing the budget with the
 4 administrator and the related financial reports that
 5 go with the budget, not just any financial report, but
 6 related financial reports to the budget. We're not
 7 quibbling with that. Such as, he says, getting
 8 information from the clerk and treasurer. Then Mr.
 9 Fink says, I don't see how it is a conflict between
 10 the two roles or that it would be illegal.
 11 So he's saying, if we look back at that
 12 language of the actual job description, is budget and
 13 related financial report -- or those financial reports
 14 have to be related to the budget, and if they need
 15 financial information for purposes of that, they go
 16 and get it from the clerk or the treasurer; they don't
 17 assume authority over it themselves.
 18 And then so on the next page of the same
 19 document, Mr. Hathaway, the supervisor, gets involved,
 20 and he says, okay, I think -- I'm paraphrasing, but he
 21 says, all right, we've had the question answered. And
 22 what it comes down to is, people can disagree on their
 23 interpretations of a document, they can read it
 24 different ways. And then we can tell everyone what we
 25 mean is the intent of the language. That's the top of

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1 page 59. And he says, that could happen, that's
 2 possible, and if that happens, if that interpretation
 3 is, you know, there's a conflict with, you know,
 4 statute, then we can clarify that, oh no, that's not
 5 what it meant. That's what the supervisor convinced
 6 everyone. Don't worry about this sort of gray
 7 language, we'll make sure that we're clear that we
 8 didn't intend to violate the law.
 9 And then Mr. Fink responds, he says, well,
 10 my answer to that is you can have your administrator
 11 prepare and administer any report you want, as long as
 12 it doesn't infringe upon the statutory authority of
 13 the treasurer or the clerk. And the supervisor I
 14 assume would be delegating some responsibility and
 15 authority there.
 16 So, I mean, you can probably guess where
 17 I'm going with that, is that what we saw in practice,
 18 and we're going to give exact examples, that it was
 19 not later interpreted to be compliant with the law; it
 20 was an exact 180 of what the supervisor said right
 21 here. It was interpreted so that it could be used as
 22 a sword to take away financial authorities that are
 23 the clerk's statutory authorities.
 24 And a few months go by and there's another
 25 resolution and now this is the resolution that we're

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1 asking be the second out of two resolutions that be
2 vacated. It's the February 22, 2022 resolution, and
3 it's resolution 2022-05. And apparently the board
4 didn't think that it went as far as it needed to go
5 with the earlier resolution because it adopted yet
6 another definition of the -- or a new job description
7 for the township administrator just some five months
8 after the last one they did. And they did say in the
9 resolution that this new one updates, that's the words
10 on page 2 of the resolution, updates the township
11 administrator's job description and authority from
12 that earlier one that we looked at.

13 And boy, did it ever. Because in addition,
14 under the heading finance, in addition to now using
15 that related financial reports language that we just
16 went over, they added that now it's going to be the
17 administrator, and this is bold, this is again bold to
18 show the changes on page 2 of the job description,
19 that now it's going to be the administrator that
20 oversees and prioritizes the allocation of finance
21 staff work to accomplish tasks.

22 So the clerk, who has the statutory
23 obligation to put up a personal bond to oversee the
24 finances of the township is not the one having to
25 prioritize the allocation of the finance staff's work

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1 and to accomplish their tasks. And in addition, and
2 also in bold, the township administrator is newly
3 given the power to hold, quote, "ultimate authority
4 over BS&A administration and accessibility." That's
5 the journals and ledgers, that's the papers of the
6 township, the BS&A administration and accessibility,
7 the ultimate authority -- I'm sorry.

8 THE COURT: You're all right.

9 MR. MAGYAR: The ultimate authority now
10 over what the statute gives the clerk unequivocally is
11 under this resolution given to the township
12 administrator, an employee who reports to the board.
13 That's a violation of the law.

14 And if that wasn't clear enough to this
15 board, we go further down on the next page under
16 Information Technology and Data Management, they
17 repeat, using the same phrase, that it's the
18 administrator who, quote, "holds ultimate authority
19 over administration of all software, including
20 assignment of access." That is saying administrator,
21 you get to control who has access to the papers of the
22 township. Not you, clerk. That's a change or else we
23 wouldn't have to do -- they wouldn't have had to do
24 this resolution.

25 And as you might expect, the next document

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1 we're going to look at, there was a lot of debate
2 about these very provisions, and the minutes of that
3 meeting, they're lengthy, they're 19 pages, I only
4 want to look at pages 12 and 13, and there are
5 highlights there.

6 The clerk asked the township's attorney,
7 Mr. Homier, who is here today on behalf of the board,
8 could you please comment on the words "ultimate
9 authority", that's twice in the job description, whose
10 words were those. And Mr. Homier said he didn't write
11 it and he didn't think it would be an issue unless
12 somebody deprives anybody access what they need to
13 carry out their statutory duties. We're going to see
14 that that's exactly what happened.

15 And where I guess I depart from Mr.
16 Homier's opinion and that we're going to see here and
17 later, is that there really wasn't a problem giving
18 the administrator enterprise authority and access as
19 long as the clerk could still do her functions within
20 the software. And the reason that's a problem is
21 because the clerk then no longer has the control over
22 who is going into the program. And once the
23 administrator has that right as the enterprise
24 administrator, he can give that authority to anyone
25 and that's exactly what happened. And they've tried

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1 since we filed the amended complaint to reverse some
2 of those actions, but it doesn't change the problem of
3 the structure that's currently in place that allows
4 that to happen.

5 On the next page of those minutes, there
6 were questions including by one of the trustees,
7 trustee Knoll, saying that she had read the McKim
8 decision and she interpreted that the clerk must have
9 custody or control over township papers and that it
10 seemed to trustee Knoll, who is legally trained, that
11 the clerk cannot fulfill her duty of safekeeping of
12 these records unless she has that control.

13 And I'll spare going through all of the
14 highlighted language, but Mr. Homier candidly told
15 them, I was not asked to opine on that question and I
16 haven't.

17 So there were issues here and there. The
18 clerk tried to not run to court every time she was
19 having an issue. Real quickly, I won't spend a lot of
20 time on, there were issues of trying to get a finance
21 director appointed once that position went vacant.
22 It's still vacant since November. They've been
23 operating without a finance director. And we resisted
24 coming to court every single time we believed there
25 were violations of her duties, but everything came to

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1 a head on May 10th, and we amended our complaint days
2 later.

3 When on May 10th, the clerk was out with
4 COVID, and while the clerk was out with COVID, the
5 board appointed James Merte, who I understand is in
6 the court today at counsel table as the interim
7 township administrator, and they appointed Sandra
8 Egeler as the deputy supervisor, who is already
9 serving as the deputy treasurer. And I'm not
10 contending this wouldn't have passed if the clerk had
11 been present, maybe she was in a minority of the vote,
12 but she wasn't there.

13 And the first thing that happens with her
14 not being present is that the supervisor and Mr. Merte
15 come up with a plan to contact Netsmart, which is the
16 township's vendor for this BS&A software, and say, the
17 administrator is now the enterprise administrator with
18 authority and control over all of the software, not
19 the clerk; and if you need authority to make that
20 change, here's the job description that we passed in
21 February as updated from the August. They're using
22 the resolutions that we want vacated as the authority
23 to make these changes.

24 And the next document I provided is a
25 printout of a Netsmart report covering those first two

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1 weeks of May, and we see that on May 11th, and this is
2 Netsmart talking now, they're making notes in their
3 own journals the way that companies do when clients
4 contact them, saying, I spoke with Jim Merte and
5 confirmed with Christie Aiken that Jim has returned to
6 Scio Township. Will's e-mail -- this is supervisor
7 Will Hathaway -- was concerning since we have not yet
8 had very much interaction. I have enabled Jim's
9 access on the servers and in exchange 365.

10 Now if we jump to page 12 of that same
11 report, on Friday, May 13th, right before the close of
12 business at 4:55 p.m., heading into a weekend,
13 Netsmart says: Called Jim Merte and remoted into his
14 commuter. Logged into BS&A using admin for Scio
15 credentials. Enabled James Merte in BS&A and enabled
16 enterprise administrator access. Removed Jessica
17 Flintoft's enterprise administrator's access. Logged
18 out of BS&A. Disabled David Rowley's access -- he's
19 the now retired -- I mean, it couldn't be any more
20 clear what happened and it's not in dispute. The
21 clerk's out, she's got COVID. The board hires an
22 interim employee who then immediately calls the
23 Netsmart and says, out with Jessica, in with the
24 administrator and he's going to control the papers of
25 the township.

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1 We have also provided in the next document
2 a screen shot of that happening. This is now, I think
3 what we just looked at was 4:55 p.m. on Friday, so 18
4 minutes later -- no, it's 5:19 p.m., so 24 minutes
5 later with this newfound authority after five p.m. on
6 a Friday, Mr. Merte goes in, modifies Sandy Egeler's
7 access from the old value being set access meaning
8 read only, to new value administrator access. So now
9 the supervisor's deputy has the ability to edit the
10 journals and ledgers, including the general ledger of
11 the township under this action. And that's without
12 any input from the clerk or the treasurer or anyone
13 else. She's got that authority and access.

14 You might guess that that didn't sit well
15 with my client, and she rose all heck about it. And
16 within -- that's the last e-mail that I've presented
17 to Your Honor as an e-mail chain, and the e-mail chain
18 includes -- I'm not going to go through every
19 e-mail -- but it includes the opinion of the attorney
20 immediately to my left, who's now asking for the
21 clerk's whole lawsuit to be thrown out, where he is
22 agreeing that this action that was done, that we just
23 looked at, was not proper, was not valid. The exact
24 language is that, I agree with the clerk that they --
25 meaning these other employees of the township --

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1 should have read access. Because what Mr. Merte had
2 provided was administrator access. And it was only
3 after we amended our complaint and brought all of this
4 into this court in a pleading, that my client was
5 given back her, not administrator access, but at least
6 her ability to, what we've been using manipulate,
7 that's not meant to be a derogatory term, manipulate,
8 just meaning being able to edit the documents in BS&A.

9 And the township now takes the position oh,
10 don't worry about it, Your Honor, we messed up, she's
11 got her authority back. She doesn't have her
12 authority back, because what remains true under these
13 resolutions that we're asking be vacated, is that at
14 any time as the enterprise administrator, Mr. Merte or
15 anyone else they bestow with that power as the
16 administrator, can change it right back to the way
17 they had it or give anyone else access.

18 And again, going back to the statute, that
19 directly violates the notion and the law that the
20 clerk has to have the sole custody of the papers and
21 has to be at all times the custodian, the one able to
22 vouch for at threat of personal liability of these
23 records. And so even in this e-mail that we looked
24 at, even though Mr. Homier did agree that she should
25 have -- that some of those employees should only have

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1 read access, I still disagree and think that it's
2 violative of the law.
3 Well, let me be clear in the very first
4 sentence he said, I am not concerned about who has
5 enterprise access to the software. We're very
6 concerned about that, for all the reasons we've said;
7 the enterprise access has to be the, the control and
8 custody has to be with the clerk by law.
9 And so a couple of points to make before
10 moving to Count II. All of that was Count I, and the
11 primary authority we rely on for that, Your Honor, is
12 the McKim decision as well as the statute that we've
13 been talking about.
14 Before we move on to Count II, I just want
15 to make two observations. One is, we've been saying
16 all along that because of the board's action, the
17 township is in financial risk. And I understand the
18 reasoning, and I'm not quibbling or disputing even
19 when we were here earlier on a TRO that the court
20 denied, but the issue that we raised was that the
21 clerk was trying to get some emergency services from
22 Raymond Robson and other groups to perform financial
23 services and the board was saying no, we don't want
24 that contract.
25 Again, I'm not quibbling with the decision

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1 that that wasn't for the court to decide, but for the
2 board to now take the position in its papers that
3 there's a recent S&P downgrade and that the clerk is
4 incompetent, is really just an alternative fact,
5 alternative universe where we've been pounding our
6 fists all along saying, this is exactly what's going
7 to happen. You've got the clerk and you've got
8 township administrator Rowley advising the board, we
9 should have a robust finance staff with the kind of
10 revenue we're dealing with, and we should have someone
11 with a Master's degree or that is in the finance
12 director, and we submitted, I'm not going to go
13 through it all, all kinds of papers of what David
14 Rowley submitted as his support for his
15 recommendation, and every time it's been no, no, we're
16 not doing that. Brick wall. There's still no finance
17 director from November. The staff that has been
18 patchworked together are not qualified. And then they
19 say in their papers, look at this S&P downgrade, oh,
20 for shame, clerk. This is what we have been concerned
21 about because of these measures. So yes, there has
22 been a downgrade; the fears are happening.
23 And McKim is obviously a really important
24 case to us because this issue just hasn't been before
25 the Court of Appeals very many times, and --

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1 THE COURT: Let me -- I know I'm
2 interrupting you, but on that point, I looked at that.
3 McKim came down May 6, 1987. That's 35 years ago.
4 There's nothing -- you have found nothing else since
5 then? This is the decision that you think is on
6 point? This is the decision you think is the best
7 case for you?
8 MR. MAGYAR: I do believe it's controlling,
9 Your Honor.
10 THE COURT: How do you think all these
11 other townships kept out of the Court of Appeals for
12 35 years?
13 MR. MAGYAR: Well, hopefully there has been
14 a little bit more of an ability to come to a gathering
15 table and resolve some of the things. And I do think
16 a lot of times it is a policy or a ballot question
17 that doesn't belong in the court. And when it comes
18 to specific duties, I think hopefully it's well known
19 enough that you cannot be doing this, that this is a
20 pretty rare case indeed that we're having to enforce
21 what is clear by statute.
22 And one other point to answer your
23 question, because Your Honor rightfully pointed out
24 the year of the decision, there is a court rule that
25 the board cited saying that because in some un-

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1 published Court of Appeals recent case, where the
2 township -- the board lost in that case as well but
3 for different facts. The Court of Appeals invicta
4 mentioned that under a court rule saying that the
5 Court of Appeals is not bound by opinions before 1990,
6 that McKim falls under that rule.
7 My understanding, I don't think that
8 applies to Your Honor. That's a Court of Appeals rule
9 in terms of what's binding precedent. I think McKim
10 on all fours here squarely applies and governs.
11 THE COURT: Thank you.
12 MR. MAGYAR: I already talked about, so I
13 won't repeat that McKim is broader than just the mail.
14 Count II I'm going to spend really little time on,
15 except to say that the Wayne County case we've cited
16 is a county case, it's not township case. And in that
17 court, the court says, where the legislature has
18 statutorily imposed on public officials various duties
19 and obligations, budgeted sums must be sufficient to
20 allow such officers to carry out their duties and
21 obligations.
22 So to be clear, we're not asking for
23 minimum staffing, we're not asking to invade the sort
24 of general province of the board from a policy
25 standpoint, but what we are saying is, don't

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1 intentionally and arbitrarily and capriciously strip
 2 the finance staff including leaving vacant the finance
 3 director position, leaving the whole finance team so
 4 barren that the clerk can't perform her statutory
 5 required duties, and then when she doesn't perform
 6 them, say, look at how bad the clerk is. Which is
 7 what's happening here.
 8 And what we cited, and again, as I
 9 mentioned before, it's not controlling authority, but
 10 it is what's kind of considered the Bible of township
 11 management called the Managing the Modern Michigan
 12 Township by Kenneth Verburg, there is a section on
 13 this very issue citing that Wayne County case. And
 14 the author said that because the law holds these
 15 officers, meaning the clerk and the treasurer,
 16 responsible for their duties, that short of their own
 17 gross improprieties, others in the township may not
 18 interfere with their performance. And this author
 19 concluded that this Wayne County case may very well in
 20 these circumstances apply and should apply to township
 21 officials, not just county officials, for the same
 22 legal reasoning that was in the Wayne County cases;
 23 that these township officials, like county officials,
 24 also have statutorily prescribed duties that when not
 25 provided with sufficient resources, impede their

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1 ability to perform those functions.
 2 And just a couple provisions that I
 3 highlighted here. It says, in view of these rulings,
 4 including the Wayne County case, can the township
 5 board set minimum qualifications and establish working
 6 conditions for employees in the offices of elected
 7 officials. Certainly it can if the officer concurs.
 8 But boards that do so in the face of opposition by the
 9 clerk may be treading on thin ice.
 10 And actually, what I meant to then get into
 11 the next section is, similarly, in the matter of
 12 budget appropriations, the township board must
 13 exercise some care. In a Wayne County case, which is
 14 the one I've been talking about, a circuit court ruled
 15 that the county board could not make an across the
 16 board funding cut of 15 percent for all county
 17 departments, and elected officers were mandated to
 18 provide certain services and the board of county
 19 commissioners was obligated to appropriate funds
 20 sufficient to carry out those duties. The judge in
 21 that case, this author notes, did not say you just
 22 have to give an elected official whatever they ask
 23 for, and that's not what we're asking for, but the
 24 cuts cannot be quote, "so severe as to render the
 25 office unable to perform the constitutionally and

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1 statutorily mandated functions." And because township
 2 officers like county officers have statutory and
 3 constitutional duties, the author says, the principles
 4 of this decision may apply to township boards. We're
 5 suggesting that they should under Count II.
 6 And then finally, the last sentence of I
 7 think this author's opinion is I think particular apt
 8 here. A clerk or treasurer may be fair game in the
 9 political arena but not to the point that these
 10 officials cannot carry out their statutory
 11 responsibilities.
 12 Obviously, we really agree and we hope the
 13 court does with that author's conclusion and its
 14 application of the Wayne County case from the county
 15 context to the township context.
 16 And just to reiterate going back to the
 17 proposed order that I handed to you first, when it
 18 comes to Count II and under that authority that I just
 19 discussed, we would be asking that it be -- that the
 20 finance director and the finance staff, anyone
 21 reporting under the finance director, that they report
 22 to the clerk, not as set up in this newly concocted
 23 job description that they now report to the
 24 supervisor, and that it be the clerk who oversee the
 25 hiring of the finance team for approval to submit for

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1 approval to the board, just as how they now have it
 2 the set up that the supervisor submits it for approval
 3 to the board under that resolution. We think under
 4 the law it should be flip-flopped which is how it was
 5 before and we want that right back.
 6 And finally, Your Honor, the fees.
 7 Certainly, we don't like to sit here asking for
 8 taxpayer money. My client didn't like putting a
 9 target on her back and filing this suit. My client
 10 didn't like getting the ire of the entire board and in
 11 some cases negative media attention. But I think
 12 we've established that the violation here was real,
 13 substantial and egregious. And when that happens, a
 14 public servant like the clerk, who has been her entire
 15 life, took the hard gulp and says, whatever the
 16 consequences may be, we need to right this wrong. And
 17 the board is being insured. And so they don't feel
 18 this litigation as much as the clerk does, but she did
 19 what she thought was right to correct this, and we're
 20 asking that she not shoulder that burden alone, that
 21 she did a service to the township to make sure that
 22 the powers were adequately set where they're supposed
 23 to be by constitution and statute, and therefore, that
 24 the court exercise its discretion and we would submit
 25 our bill of costs if fees were awarded at whatever

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1 date the court determines.
 2 THE COURT: Thank you. I do have a
 3 question about your proposed order.
 4 MR. MAGYAR: Yes, Your Honor.
 5 THE COURT: How do you reconcile your
 6 request in paragraph 7 that quote, the court retains
 7 continuing jurisdiction to ensure that the clerk is
 8 not prevented from performing her statutory duties or
 9 interfered with in the performance of her statutory
 10 duties with your proposed last sentence of the order,
 11 this is a final order deciding all issues between all
 12 parties and providing complete relief as between all
 13 parties and closes this case.
 14 MR. MAGYAR: Your Honor, I think
 15 procedurally, you're correct and I'm incorrect. I
 16 understand that that language is required to have a
 17 final order, but if retaining continued jurisdiction
 18 means that it's not final, then I think that would be
 19 incorrect. So I think one of the two would have to
 20 give.
 21 THE COURT: My point is, it's highly
 22 possible, I think you would agree, that whatever I do
 23 decide, you'll probably ask a panel from the Court of
 24 Appeals (inaudible) and we'll have a new decision 35
 25 years later one way or the other.

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1 MR. MAGYAR: Your Honor, I think you are
 2 very much potentially on to something there, and I
 3 don't think it's our position that we want to prevent,
 4 if that be one of the parties' desires, letting that
 5 court review this. So in terms of, if continuing
 6 jurisdiction impedes that, I think we could remove
 7 paragraph 7 from this proposed order. Because as I
 8 alluded to at the beginning, I think there are other
 9 ways to get back to the court even if we didn't have
 10 that provision.
 11 THE COURT: Thank you. Response?
 12 MR. HOMIER: Good afternoon, Your Honor.
 13 Mike Homier on behalf of the Scio Township Board.
 14 Obviously, the judiciary is not the place to settle
 15 political scores or grievances, and that's exactly
 16 what this is. There's a disagreement between the
 17 clerk and majority of the board about how resources in
 18 the township should be allocated. I think really, the
 19 avoidance of naming or discussing statutory authority
 20 is important here. For instance, 41.75(A), 41.75(A)
 21 says, the township board may employ a township manager
 22 and other employees as are necessary. Not the clerk.
 23 There's no authority for the clerk to employ anybody
 24 except for the deputy clerk under 41.69. Otherwise,
 25 it's the board that has the authority to employ

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1 employees. That is textbook statutory letter. That's
 2 what it says. The clerk wants to expand that to say
 3 somehow, because I'm responsible for preparation of
 4 the journals and ledgers, that somehow now I get to
 5 decide who we hire as a township board, as an entity.
 6 And I want to come back because the
 7 exhibits that were mentioned. First, we've filed a
 8 motion to strike Exhibits 1 and 7. They're attorney-
 9 client privilege, they belong to the township, the
 10 township board has not waived privileged. They were
 11 used knowingly that they are attorney-client
 12 privileged communications. So the court cannot
 13 consider those in its ruling because they were
 14 improperly disclosed.
 15 As I understand it, the clerk is looking
 16 for three things, really. Vacate the resolutions,
 17 restore enterprise authority over BS&A and that the
 18 clerk have sole province, as counsel used at the last
 19 hearing, sole province to recommend hiring and that
 20 the board must hire from those recommended.
 21 So let's break this down into actual
 22 authority, okay? So we've got vacate the resolutions,
 23 we'll talk about that in a minute. But as it pertains
 24 to restore enterprise authority over BS&A, my
 25 understanding is that the clerk is arguing that

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1 41.56(A), which deals with custody of records, books
 2 and papers, somehow now means exclusive. And yet,
 3 that's not how public records are ever treated. So,
 4 for example, there are public records that are in the
 5 fire department; there are public records that are
 6 held by the utility department; there are public
 7 records held by the treasurer's office, the
 8 supervisor's office, in fact, there are public records
 9 all over the township.
 10 Nobody has deprived the clerk of custody of
 11 those. She still has an obligation under 41.65 to
 12 have custody of all records, books and papers of the
 13 township. In fact, they don't allege that she's ever
 14 been deprived of that custody. And if you look at
 15 their complaint, they have 13 declarations, and yet,
 16 it's all anticipated behavior, it's all speculative;
 17 well, what if, what if this happens. What if the
 18 administrator locks the clerk out of BS&A? Hasn't
 19 happened, mind you. Wouldn't happen. In fact, when
 20 the interim administrator was with the township as the
 21 assessor, he then had enterprise access over BS&A when
 22 the clerk was there, and she had no problem with it
 23 then. Now she has a problem with it, trying to expand
 24 what is statutorily her obligation under 41.65.
 25 41.65 also says the township clerk shall be

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1 responsible for the detailed accounting records of the
 2 township, utilizing the uniform charts of accounts
 3 prescribed by the state treasurer. The township clerk
 4 shall prepare and maintain the journals and ledgers
 5 necessary to reflect the assets, liabilities, fund
 6 equities, revenues and expenditures for each fund of
 7 the township.

8 So in terms of software administration,
 9 which the board rightfully gave to the interim
 10 administrator, even though I understand the clerk
 11 disagrees with that decision, her statutory ability is
 12 not hampered. We're talking about prepare and
 13 maintain those records. If, and I don't disagree, if
 14 the interim township administrator walked into the
 15 office, picked up what he believed to be the journals
 16 and ledgers and carried them away, we might have a
 17 case here. But that's not what happened.

18 What happened is, the township board
 19 decided they were going to hire an administrator. The
 20 administrator was going to be responsible not only for
 21 the BS&A software but all other software of the
 22 township. There is no prohibition against that
 23 anywhere in statute dealing with township government.
 24 I've been practicing municipal law for 23 years,
 25 represent a hundred different townships around the

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1 state. You will not find in statutes governing either
 2 general townships or charter townships a restriction
 3 on the ability for the board to either hire employees
 4 or assign duties to those employees that are hired.
 5 Which is exactly what happened here. Not necessarily
 6 to the detriment of the clerk's obligation to prepare
 7 and maintain. Nothing the board has done has stopped
 8 her from doing that.

9 I want to talk about Mr. Rowley just
 10 briefly, because Mr. Rowley was charged with putting
 11 together a plan to deal with the finance department.
 12 And he actually put together two plans. One where
 13 they hired somebody to do it and the other was to
 14 utilize existing staff. And do you know what
 15 happened? The board decided option two was the better
 16 option.

17 Now Your Honor may not agree with that, the
 18 clerk certainly doesn't agree with that, Mr. Magyar
 19 doesn't agree with that, but it's not our role to
 20 second guess. You can hardly characterize that as
 21 arbitrary or capricious where you have actual
 22 resolutions that the board not only moved to adopt,
 23 debated and then voted on to do. And there's nothing
 24 in the law that prevents them from doing that.
 25 Now Mr. Magyar wants to expand the

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1 definitions under the statute and allege that somehow
 2 the clerk's obligations under statute are somehow
 3 impeded. And yet, they don't actually allege in their
 4 complaint actual interference. Nowhere. And that's
 5 because the clerk has the same read/write access that
 6 she would otherwise have, even if she had enterprise
 7 access. The only issue is, now she's construing that
 8 prepare and maintain to say something other than what
 9 it says, which is prepare and maintain.

10 So they want to construe prepare and
 11 maintain to be something like, nobody else can have
 12 read access to BS&A, because she has an obligation to
 13 prepare and maintain. Statute doesn't say that. Now,
 14 albeit, the statute didn't contemplate electronic
 15 records probably either. But nonetheless, nobody has
 16 interfered with that ability to prepare and maintain.

17 The second one, or I should say the third
 18 relief that they ask for is that the clerk has sole
 19 province to recommend employees and the board has to
 20 hire them. Regardless of whether or not the court
 21 believes that maybe the board should allocate more
 22 resources, maybe they shouldn't, that is in the sole
 23 discretion of the township board pursuant to 41.75(A).
 24 It delegates that authority only to the township
 25 board, not to the clerk, not to the treasurer, not to

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1 the supervisor, to the board itself. And the board
 2 has to make that decision.

3 And if the court were asked as they are for
 4 it to step in, how in the world is the court supposed
 5 to manage that to begin with? Is the court going to
 6 sit on interviews then and decide who is, say,
 7 qualified according to the clerk, or is the board
 8 given that authority pursuant to statute. I think
 9 it's pretty clear that pursuant to the statute, the
 10 board has the sole authority. It's not even a
 11 question.

12 The last thing I want to talk about is this
 13 McKim case, because that's where we really get into
 14 trying to expand what custody means of the township
 15 records. And the clerk cites to McKim and says that's
 16 our best case, that's it. As the judge mentions, it's
 17 35 years ago and, in fact, there was a decision
 18 recently that called into question the precedential
 19 value.

20 Now we could, I suppose, sit here and argue
 21 about whether that is binding or not on the circuit
 22 court, but if the Court of Appeals itself is calling
 23 the authority of McKim into question, then I think the
 24 court probably should pay attention to that. That's
 25 what you would do. Look to see what is binding

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1 precedent and look to see what is not.
 2 THE COURT: I'm going to interrupt you if I
 3 may, because I was going to ask you some specific
 4 questions about McKim. When we look at McKim, and the
 5 appellate court did vacate two resolutions. The first
 6 resolution -- in light of the statute. The first
 7 resolution had to do with mail procedures, mail coming
 8 in and bills; and the second part was really getting
 9 to the chase of it, allowing the clerk to have records
 10 in their home so they could work on it. So location
 11 of the records and custody and who's going to open the
 12 mail.
 13 And they have an explanation of how that
 14 would impede a duty, in the analysis of McKim. Again,
 15 it's -- well, I'll comment later in my ruling. It's
 16 amazing to me that we have appellate review who opens
 17 the mail and whether he can (inaudible) records. But
 18 we do.
 19 Tell me how you think, even -- because it
 20 is the published decision, it is the one that I have,
 21 tell me why you think that there is no -- and you kind
 22 of, you really did kind of address that in your
 23 argument, no one's impeding, this isn't exclusive
 24 control, no one's barring it, no one's saying you
 25 don't have access, but tell me then, even if we're

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1 both wrong and McKim is controlling, how I get around
 2 that.
 3 MR. HOMIER: So McKim is completely
 4 different than this case because in McKim, the board
 5 actually precluded the clerk from accessing those
 6 records. Here, the board has done no such thing. In
 7 fact, the clerk still has read/write access to all of
 8 those records, all of them. It's just that she
 9 believes she should be able to control who else has
 10 access to those records under some theory that prepare
 11 and maintain the journals and records mean to the
 12 exclusion of everybody else even looking at them.
 13 THE COURT: And I think McKim was talking
 14 about the fact why the clerk needed those things so
 15 that they're available to the public, that these
 16 records are available to the public. It was really
 17 pointing out the idea it's ultimately these are
 18 public records.
 19 MR. HOMIER: That's exactly right.
 20 Ultimately, these are the public records. Now, I will
 21 say in McKim -- and we cited this in our brief -- in
 22 2017, there was a case, Charter Township of Royal Oak
 23 versus Brinkley, and it's an unpublished decision, but
 24 it's important because in that case, the court noted
 25 that the decision in McKim could be considered non-

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1 binding because it was issued before November 1st,
 2 1990, and then cited the Court Rule MCR 7.215(J)(1).
 3 Further, the Brinkley court limited McKim's holding
 4 reasoning that, quote, "Neither McKim nor MCL41.65
 5 expressly gives a township clerk authority to open all
 6 mail that is delivered to the township. Rather, the
 7 authorities give a clerk custody over the mail. It is
 8 not apparent that custody means a clerk can open mail
 9 addressed to anyone regardless of the subject of the
 10 mail." Closed quote.
 11 That's instructive here only inasmuch as
 12 again, we're not talking about prohibiting anybody
 13 from accessing the records. That's exactly what McKim
 14 was addressing in those resolutions. The resolutions
 15 here that we're talking about, one, are job
 16 descriptions and saying okay, you're going to do these
 17 functions administrator, right, this is within your
 18 job duties. For example, when it comes to BS&A,
 19 you're going to have enterprise access over BS&A to
 20 determine who can have access to the various
 21 components of BS&A.
 22 So for example, there are clearly some
 23 areas, like assessing, for instance, where the clerk
 24 would have no authority to have access to those
 25 modules; not by statute and not by practical practice

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1 in terms of talking about checks and balances. Right.
 2 There would be no reason to give the clerk access to
 3 assessing. And yet, that's exactly what they're
 4 asking for is, we ought to, by law, have enterprise
 5 access. The problem is, "by law" is missing here.
 6 There is no such law. There is no law that says the
 7 township cannot decide that an administrator, like a
 8 township manager, allocates the resources of the
 9 township. In fact, that is their function as the
 10 administrator. And the board debated that and passed
 11 a motion. They disagree with it. I understand that.
 12 But again, it's a policy issue, it's not a legal
 13 right. And that's why their complaint fails, because
 14 it does not state a cause of action. There is no
 15 cause of action certainly that I have ever come across
 16 where the circuit court would maintain or retain
 17 jurisdiction for the purpose of determining who the
 18 township board wants to hire. And I don't think Your
 19 Honor wants to fill that role. I mean, you can
 20 imagine all -- first of all, it's a separation of
 21 powers issue, I mean, on its face.
 22 When we talk about the finance
 23 staff, and the township board debated whether or not
 24 they could meet the needs with existing staff, the
 25 problem is, the clerk believes that those staff are

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1 not qualified, and yet, it's some of those staff, like
 2 the deputy treasurer, who are being used to reconcile
 3 the books so they can get their audit done. So you
 4 can't have to both ways. You can't on one hand say,
 5 well, I've got a personality dispute with the deputy
 6 treasurer and I don't want her working on my stuff and
 7 she's
 8 not qualified, but yeah, okay, fine, I'll use her and
 9 she's now qualified to do some of those
 10 reconciliations.
 11 Again, this amounts to policy
 12 disputes within the township, and there are remedies
 13 for that. Obviously, the election cycle is two years
 14 away; that's when voters get to decide who they're
 15 going to keep and who's going to go. I'm not
 16 certainly contending in the policies here who's right
 17 and who's wrong. What I look at, what I have looked
 18 at are the actions of the township board. The actions
 19 of the township board, a majority of the board was to
 20 pass a resolution or move that resolution, debate that
 21 resolution and then adopt that resolution. That could
 22 hardly be characterized as arbitrary and capricious.
 23 Now, we may disagree with the policy choices, but
 24 that's for the voters to decide, not the judiciary.
 25 So McKim is not on point here at all.

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1 The clerk still has read/write access, the interim
 2 township administrator when he was the assessor at the
 3 township had enterprise access then. The board gave
 4 it back to the township administrator now. There's
 5 nothing in there that violates any statute or law.
 6 Period. And to suggest otherwise, it's just not
 7 supportable. There's no claim, there's no cause of
 8 action. And that's why we filed a motion in lieu of
 9 an answer under C(8). I'm happy to answer any more
 10 questions
 11 THE COURT: I understand. Thank you.
 12 Anything else you wanted to say, sir?
 13 MR. MAGYAR: Yes, Your Honor. I think just
 14 a couple of points really must be addressed that are
 15 just not accurate at all.
 16 First of all, I would encourage the court,
 17 if the board is sticking by their position that they
 18 filed a motion to strike, to actually see what that
 19 motion looks like, because it's not a standalone
 20 motion, it's the very last page of a C(8) motion that
 21 spans about four sentences without citation to
 22 authority, not even a court rule on striking. And we
 23 were very thorough in our response to why these
 24 e-mails outside of any board setting responding to the
 25 clerk's questions are not privileged, and even if they

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1 were, we cited the law why they would still be
 2 considered -- be able to be considered by this court.
 3 So as much as Mr. Homier might not want the
 4 court to consider or take the side of the clerk and
 5 now is in conflict of interest saying her case should
 6 be dismissed, the exhibits we provided are perfectly
 7 acceptable to consider and should be by the court.
 8 Second, this is not the first case nor will
 9 it be the last that the Scio Township Board, when in a
 10 tumultuous situation hangs its hat on policy. This is
 11 not a policy dispute. I don't see how McKim could be
 12 any more clear on point why we're here. And Your
 13 Honor made the correct observation that that was also
 14 a case where the court vacated two resolutions. Not
 15 the public, not on a vote, a judicial vacating of
 16 violative resolutions.
 17 And I've been accused of trying to expand
 18 the legislative language, but I think what's actually
 19 happening here, what I know is happening is the board
 20 is unlawfully restricting the language of the statute.
 21 And we know that because McKim already said what
 22 custody means. McKim said custody is, quote,
 23 "immediate charge and control exercised by a person or
 24 an authority." And they defined paper as any writing
 25 or printed document and so on and so forth. I won't

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1 say it again.
 2 So Mr. Homier stands up and says I'm
 3 expanding what custody means, he's exactly ignoring
 4 the definition our Court of Appeals in a published
 5 decision gave to that word for this statute. And it
 6 was control, immediate control.
 7 And a part that I didn't talk about from
 8 McKim earlier is that the board in that case pointed
 9 out that the supervisor and the treasurer -- there are
 10 specific statutes where certain papers are given to
 11 those offices specifically. And the court said, but
 12 we have found no other statutory provision which
 13 authorizes a person other than the clerk to have,
 14 quote, "control", there's the word again in this
 15 decision, "control of the township's papers."
 16 So McKim said if you're the clerk and you
 17 have control over the papers, you have control over
 18 the papers unless another statutory provision gives
 19 somebody else that control. And we didn't hear from
 20 Mr. Homier what provision they're relying on for
 21 taking all of the control over the papers and giving
 22 it to Mr. Merte as the township administrator.
 23 I have also been criticized for having my
 24 one case from 1987. Yes, it's a great case for us.
 25 There's no getting around that, and I haven't heard

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1 one case from the board that they're relying on. So I
 2 would say one case to zero is a win for the clerk's
 3 side.
 4 And the McKim court went on again, as I
 5 mentioned, I don't want to belabor the point, but
 6 after talking about control, they again repeat that
 7 under MCL 41.69, it's the clerk, not the general
 8 township secretary or anyone else, that has to file a
 9 bond especially for the safekeeping of the records,
 10 books and papers of the township in the manner
 11 required by law.
 12 When you are a clerk and someone else has
 13 the authority to grant any other employee the power to
 14 edit the journal, you are no longer able to safe keep
 15 the records and the books subject to your personal
 16 liability, and that's exactly the status of Scio
 17 Township.
 18 There was a comment earlier that Mr. Merte
 19 has had access before to BS&A enterprise
 20 administrator. Yeah, he absolutely did, because he
 21 was the assessor and the IT director, he came back as
 22 the administrator. The new IT director is Netsmart,
 23 and they, of course, have enterprise administrator.
 24 So there's nothing significant about that.
 25 Now another thing, there was an assertion

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1 that we haven't alleged an (inaudible) violation, and
 2 frankly, I'm floored to hear that. Because the entire
 3 fight over e-mail in the exhibits I've provided Your
 4 Honor, were that immediately upon Mr. Merte being made
 5 the administrator, he granted access to another
 6 employee, Sandy Egeler, to actually write over and
 7 edit and manipulate the general ledger. There's no
 8 dispute, even by this side of the table, that that's a
 9 violation that did occur. And apparently, by stopping
 10 that behavior and returning her to read only, as all
 11 attorneys agreed was the right -- that had to happen,
 12 that that somehow erases the violation that admittedly
 13 without dispute occurred.
 14 But the problem is, until the authority
 15 that allowed that to happen is vacated, it can happen
 16 any time again. It can happen as soon as we walk out
 17 of this courtroom, if Mr. Merte decides under the
 18 authority he still possesses to assign read/write
 19 access to any township employee he wants to in
 20 Netsmart, and all he's got to do like he did last time
 21 is call up Netsmart and say, here's the resolution
 22 that gave me in my job description the authority to do
 23 that. So let's not lose sight of the fact that this
 24 screen shot that we looked at before when Mr. Merte
 25 gave her that access, that was a violation and it can

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1 still happen at any time.
 2 Now again, the unpublished decision that
 3 the board relies on did not call into question McKim.
 4 In fact, the only thing that was on appeal was whether
 5 the board's pleadings were so frivolous that there
 6 should have been frivolous filing sanctions in that
 7 case. That was the only issue there. And again, it
 8 was just noted of what year the decision was.
 9 I think -- I want to just address a couple
 10 points that there was a violation and what custody
 11 means, but I think Your Honor has heard enough from
 12 both of us and those were the main points and, of
 13 course, this is not a policy dispute. Thank you.
 14 THE COURT: Thank you. Counsel, anything
 15 else you wanted to say?
 16 MR. HOMIER: Yes, just briefly. The clerk
 17 wants to equate custody with enterprise access, even
 18 control, and yet, they're different things. So, for
 19 example, let's suppose for a minute that custody means
 20 immediate access to those. Nobody's -- the clerk
 21 today can go and get those records. That's access.
 22 What the clerk is saying, that I have exclusive
 23 access, I get to determine who else has access, I get
 24 to determine who the township board hires, I get to
 25 determine what finance staff are qualified, I get all

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1 these powers that you won't find in any statutory
 2 provision, you won't find in McKim and you won't find
 3 in the Wayne County case either. So there is no
 4 authority for the position that the clerk has this
 5 sole and exclusive custody of those records.
 6 It's not sole and exclusive, as Your Honor
 7 noted, these are the public records. All you have to
 8 do is file a FOIA request and say, I'd like these
 9 documents. And then what happens? Either the FOIA
 10 administrator needs to compile those documents and
 11 then turn them over. It's never exclusive. There are
 12 public records throughout the township at their
 13 various different departments. Yes, the clerk is
 14 charged with custody of those, but it's never been
 15 exclusive and will never be exclusive, it can't be.
 16 And so in the end, what they're advocating
 17 for is this huge expanse of authority under the
 18 statute, and you see that when they talk about the
 19 sole province to hire people. I mean, you won't find
 20 that anywhere. Look at their proposed order. The
 21 finance director in paragraph number 6, finance
 22 director and any additional staff of Scio Township
 23 shall report to the clerk. There's no statutory
 24 authority for that. There's not even a case that says
 25 that. That's just made up. What the statute actually

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1 says, 41.69, is that it's only the deputy clerk that
2 serves at the pleasure of the clerk, and even then,
3 the board gets to decide what compensation is and the
4 scope of the duties performed of the deputy clerk;
5 unless the clerk is absent by reason of sickness,
6 death, disability. That's what the statute allows.
7 There's no other statute that says finance director
8 shall report to the clerk. The board decided
9 otherwise. That's a policy dispute.
10 The clerk shall have exclusive enterprise
11 access and authority over BS&A modules. Again,
12 there's no authority for any of this. The statutes
13 say otherwise. When they say they're not calling for
14 minimum staffing, that's exactly what they're calling
15 for, and 41.3(A) says any minimum staffing
16 requirements are void as a matter of public policy.
17 Now, the legislature changed that in 2011,
18 post Wayne County case, post McKim, in 2011. And they
19 did it not only for general townships but for charter
20 townships as well. So there is no minimum staffing
21 requirement. The board can't be compelled to hire
22 particular staff. It's not within the province of the
23 clerk to determine who gets hired. Pursuant to
24 41.75(A), that authority rests with the board. Thank
25 you, Your Honor.

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1 THE COURT: I can see you're nervous as a
2 cat there. Do you want to say something else?
3 MR. MAGYAR: I wouldn't say nervous, Your
4 Honor.
5 THE COURT: Agitated as a dog, how's that?
6 MR. MAGYAR: That's better. I'll keep it
7 really brief. I don't think I need to go to the
8 podium. Your Honor, there's a lot of blanket
9 statements about not authority this, no authority
10 that. McKim is the authority. When he say we want
11 exclusive authority as an enterprise access, it's no
12 different than saying we want exclusive custody, i.e.
13 control as McKim says over the papers of the township.
14 That is what we are saying. That is what the statute
15 says.
16 When we say -- when he says it's made up in
17 Count II, I copied the language from the board's
18 resolution. If anyone made it up, it's the board.
19 Because it comes from the August 17, 2021 resolution
20 when they said the supervisor -- the finance director
21 reports to the supervisor. That was a change from
22 when the finance team reported to the clerk. And I've
23 already established and already explained why we think
24 the Wayne County and the Verburg authority, he says we
25 are exactly asking for minimum staffing; yet, counsel

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1 can't point to, am I asking for one employee, two
2 employees, three employees. What minimum staffing am
3 I asking for? There's not -- you can't point to a
4 single one because it's much more -- it's not so black
5 and white as that. It's the Wayne County case, it's
6 that if the board has prevented her from doing her
7 duties, then she at least has, as we've asked for
8 using her language, the right to be the one having the
9 finance staff, when hired, when approved by the board,
10 report to her, under her recommendation, because it's
11 her position and her statutory duties that are
12 affected. So I would challenge counsel to support
13 that assertion about minimum staffing with where have
14 we asked for that.
15 Respectfully, Your Honor, I think
16 everything we've asked for is legally required under
17 the authority as we've provided.
18 THE COURT: Thank you. In this matter, the
19 clerk of Scio township has submitted a request of
20 eight paragraphs for specific relief, which would
21 include continuing jurisdiction by this court. I
22 appreciated the reference to a FOIA request because
23 those types of cases I routinely hear all the time,
24 and I just had the Court of Appeals weigh in on one.
25 So I'm very familiar with that and it's absolutely the

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1 ability of anyone to receive public documents.
2 In terms of this record, the exhibits that
3 consist of various e-mails that Scio Township argues I
4 should not consider, should not be part of this record
5 as privilege and they haven't waived the privilege, I
6 go back to my underlying observation that all of us,
7 meaning me as a judge and the clerk and the board of
8 trustees are all elected public officials.
9 And so I am going to consider it as part of
10 the record, because all I have to do is look at the
11 courtroom and pick up that no matter what I decide,
12 one side or the other probably would like to get
13 relief from the Court of Appeals to weigh in and
14 sounds like we're going to give them another
15 opportunity since McKim 35 years ago.
16 Since McKim is cited as controlling and as
17 the best case for the plaintiff, I would like to start
18 with the last statement of the Court of Appeals on
19 that. And granted, it comes at the request to vacate
20 the award of attorney fees, where they said the trial
21 court judge didn't have enough of a record, they could
22 look at it.
23 They did say, as a general rule, attorney
24 fees may be awarded only when authorized by statute or
25 court rule. Under certain circumstances, the

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1 appellate courts of the state, this state have
 2 recognized an exception to this general rule when a
 3 public official incurs attorney fees in connection
 4 with asserting or defending the performance of his or
 5 her legal duty. They also indicate the decision to
 6 award attorney fees is discretionary. Which is always
 7 something we talk about, is the law shall or may. So
 8 they acknowledge it was discretionary, they
 9 acknowledge they can be awarded in certain occasions
 10 but the record wasn't clear here.

11 But when I say I want to go back to the
 12 last comment of McKim, it's because I actually think
 13 it perhaps is the most profound observation. The last
 14 paragraph of McKim is: Finally, we wish to register
 15 our dismay that as a result of what can best be
 16 characterized as a squabble between township officers,
 17 the parties have expended approximately 15,000 dollars
 18 for legal representation before appeal and have no
 19 doubt burdened the resources of the trial court. We
 20 view this as an affront to the legal system and the
 21 township's taxpayers and an embarrassment to the
 22 parties. We hope that in the future, such divisive
 23 conduct can be set aside in favor of more productive
 24 behavior.

25 Perhaps that's why we don't have an opinion

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1 in the last 35 years. Maybe somebody actually
 2 listened to, that's a pretty strong statement.

3 In this case on the proposed motion in
 4 Count I and Count II of Plaintiff's Complaint, it
 5 starts with a request to vacate two resolutions of the
 6 board as violating or impeding the clerk's statutory
 7 responsibilities. The first one was dated August
 8 17th, 2021, the second was dated February 22nd, 2022.
 9 The rest of the relief requested really emanates from
 10 a decision that those resolutions under McKim must be
 11 vacated, and as the township indicated, it speaks of
 12 things like restoring enterprise's authority over BS&A
 13 and that the clerk have the sole province of
 14 recommending certain people for hiring by the board.

15 I think the township's point that the
 16 language of a statutory responsibility to maintain
 17 custody of records, again, so that they're there and
 18 available for things like FOIA requests for the
 19 public, I do not read into that language that this is
 20 exclusive. And the relief that's being requested I
 21 think is asking me to read something into the
 22 responsibility and statute that I don't see.

23 Unlike McKim, I don't think these two
 24 resolutions impede the clerk from performing statutory
 25 responsibilities, and therefore, I don't see a basis

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1 legally to vacate the decision of Scio Township Board.
 2 I take no position as to whether it's wise, not wise,
 3 whether I agree or whether I disagree. It's frankly
 4 none of my business. It's the business of the elected
 5 officials and the public that has elected them to
 6 perform their duties.

7 Because the rest of the relief requested in
 8 the seven point proposed order really derives out of a
 9 determination that these resolutions overstepped the
 10 bounds and, in fact, impeded the clerk from performing
 11 function, I see no basis to consider those as well.
 12 Therefore, on behalf of the Scio Township, would you
 13 please, sir, submit an order saying the case is
 14 dismissed for the reasons stated on the record, it is
 15 a final order of this case, and close it so that both
 16 sides can get appellate review. And I am more than
 17 happy to reopen the case and do whatever the Court of
 18 Appeals tells me to do because that's their province.
 19 Thank you very much.

20 MR. MAGYAR: Thank you, Your Honor.
 21 MR. HOMIER: Thank you, Your Honor.
 22 (Proceedings concluded at 3:01 p.m.)
 23
 24
 25

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 10
 11 CERTIFICATE OF NOTARY
 12 STATE OF MICHIGAN)
 13) SS
 14 COUNTY OF MACOMB)
 15
 16
 17 I, CAROLYN GRITTINI, certify that this
 18 proceeding was transcribed by me on the date
 19 hereinbefore set forth; that the foregoing proceeding
 20 was recorded by me stenographically and reduced to
 21 computer transcription; that this is a true, full and
 22 correct transcript of my stenographic notes so taken;
 23 and that I am not related to, nor of counsel to,
 24 either party nor interested in the event of this
 25 cause.

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Carolyn Grittini

CAROLYN GRITTINI, CSR-3381
Notary Public,
Macomb County, Michigan.

My Commission expires: July 15, 2024

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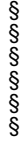
Zoom 3:14

EXHIBIT D

REGISTER OF ACTIONS

CASE NO. 22-000414-CZ

Flintoft, Jessica vs Scio Township Board



Case Type: **General Civil (Other) (CZ)**
Date Filed: **04/11/2022**
Location: **Civil**
Judicial Officer: **Connors, Timothy P.**

PARTY INFORMATION

Defendant Scio Township Board

Attorneys
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Plaintiff Flintoft, Jessica

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Mark J. Magyar
Retained
(616) 776-7523(W)

EVENTS & ORDERS OF THE COURT

OTHER EVENTS AND HEARINGS

- 04/11/2022 **Summons Issued (Summons and Complaint)**
- 04/11/2022 **Summons**
 Scio Township Board Unreserved
- 04/11/2022 **Ex Parte Motion**
 For entry of a temporary restraining order, order to show cause and preliminary injunction
- 04/11/2022 **Complaint**
 (verified) for declaratory judgment and injunctive relief
- 04/12/2022 **Zoom Notice of Motion Hearing**
 Scheduled
- 04/14/2022 **Proof of Service**
- 04/15/2022 **Document**
 Amendment to motion for entry of a tro and revised proposed order
- 04/15/2022 **Proof of Service**
- 04/15/2022 **Appearance**
 & proof of service
- 04/15/2022 **Proof of Service**
- 04/18/2022 **Proof of Service**
- 04/18/2022 **Brief**
 In opposition to plaintiff's ex-parte motion for a tro and to amendment to motion for entry of a tro
- 04/21/2022 **Motion Hearing** (11:30 AM) (Judicial Officer Connors, Timothy P.)
 Plntf/TRO
 Result: Held
- 04/21/2022 **Proof of Service**
- 04/21/2022 **Brief**
 In support of her ex-parte emergency motion for entry of a temporary restraining order, order to show cause and preliminary injunction
- 04/21/2022 **Proof of Service**
- 04/21/2022 **Appearance**
- 04/22/2022 **Proof of Service**
- 04/25/2022 **Order**
 Denying plaintiff's emergency ex parte motion for entry of a temporary restraining , to show cause and preliminary injunction (sgd 4/25/22)
- 05/05/2022 **Motion for Summary Disposition**
 Under mcr 2.116(c)(4) and (c)(8)
- 05/05/2022 **Zoom Notice of Motion Hearing**
 Scheduled
- 05/05/2022 **Proof of Service**
- 05/19/2022 **Proof of Service**
- 05/19/2022 **Amended Complaint**

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For declaratory judgment and injunctive relief

05/20/2022 **Proof of Service**

05/20/2022 **Notice**
Of withdrawal of defendant's motion for summary disposition under mcr 2.116(c)(4) and (c)(8)

05/23/2022 **Motion for Summary Disposition**
Under mcr 2.116(c)(10) and mcr 2.116(i)(1)

05/23/2022 **Proof of Service**

05/23/2022 **Zoom Notice of Motion Hearing**
Scheduled

06/09/2022 **CANCELED Motion for Summary Disposition** (11:00 AM) (Judicial Officer Connors, Timothy P.)
Cancel
ZOOM- Def/ Motion for Summary Disposition Under MCR 2.116(C)(4) and (C)(8)

06/09/2022 **Brief**
In support of motion for summary disposition

06/09/2022 **Motion for Summary Disposition**
Under mcr 2.116(c)(8) re: plaintiff's first amended complaint

06/09/2022 **Zoom Notice of Motion Hearing**
Scheduled

06/09/2022 **Proof of Service**

06/15/2022 **Brief**
In support of plaintiff's motion for summary disposition under mcr 2.116(c)(10) and mcr 2.116(i)(1)

06/15/2022 **Proof of Service**

06/15/2022 **Exhibit**
List and support for motion for summary disposition

08/18/2022 **Response**
In opposition to defendant's motion for summary disposition under mcr 2.116(c)(8) and to strike exhibits 1 and 7 to the verified first amended complaint

08/18/2022 **Proof of Service**

08/18/2022 **Document**
Index to exhibits to plaintiff's response

08/18/2022 **Proof of Service**

08/18/2022 **Brief**
In opposition to plaintiff's motion for summary disposition under mcr 2.116(c)(10) and (i)(1)

08/22/2022 **Proof of Service**

08/22/2022 **Brief**
(reply) in support of motion for summary disposition under mcr 2.116(c)(4) and (c)(8)

08/22/2022 **Brief**
(reply) in support of plaintiff's motion for summary disposition under mcr 2.116(c)(10) and mcr 2.116(i)(1)

08/22/2022 **Proof of Service**

08/22/2022 **Document**
Index to exhibits to plaintiff's reply brief in support of summary disposition

08/25/2022 **Motion for Summary Disposition** (10:30 AM) (Judicial Officer Connors, Timothy P.)
ZOOM- Plt/ Motion Summary Disposition Under 2.116(C)(10) and MCR 2.116(1)(i); Def/ MSD
07/07/2022 Reset by Court to 08/25/2022

Result: Held

09/21/2022 **Motion for Summary Disposition** (1:30 PM) (Judicial Officer Connors, Timothy P.)
09/21/2022 Reset by Court to 09/21/2022
09/21/2022 Reset by Court to 09/21/2022

Result: Held

09/23/2022 **Proof of Service**

09/27/2022 **Order**
Denying plaintiff's motion for summary disposition and granting defendant's motion for summary disposition (sgd 9/27/22)

FINANCIAL INFORMATION

Plaintiff Flintoft, Jessica			
	Total Financial Assessment		235.00
	Total Payments and Credits		235.00
	Balance Due as of 10/13/2022		0.00
04/11/2022	Transaction Assessment		175.00
04/11/2022	E-File	Receipt # EFILE-2022-02017	Dykema Gossett PLLC (175.00)
05/06/2022	Transaction Assessment		20.00
05/06/2022	E-File	Receipt # EFILE-2022-02577	FosterSwift (20.00)
05/24/2022	Transaction Assessment		20.00
05/24/2022	E-File	Receipt # EFILE-2022-02943	Dykema Gossett PLLC (20.00)
06/10/2022	Transaction Assessment		20.00
06/10/2022	E-File	Receipt # EFILE-2022-03300	Foster Swift (20.00)

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EXHIBIT E

Michigan Court of Appeals Jurisdictional Checklist

Lower Court/Tribunal: Washtenaw Cir. Ct.

Lower Court Case No.: 22-000414-CZ

Case Name: Jessica Flintoft, as Clerk of Scio Township v. Scio Township Board of Trustees

Jurisdiction

INSTRUCTIONS: For a **civil** claim of appeal, please complete the following statements.

[SELECT ONE] An **appeal of right** may be filed because the order is: MCR 7.203(A)

- A final order of the circuit court under MCR 7.202(6). Specify subsection: MCR 7.202(6)(a)(i)
- A probate court order that falls within MCR 5.801(A). Specify subsection: _____
- Appealable as of right by law or court rule. Specify law or rule: _____

[SELECT ONE] This claim of appeal is **timely** because it is being filed: MCR 7.204(A)

- Within 21 days from entry of the order appealed from (*as identified above*).
- Within 21 days of an order deciding a motion for new trial, rehearing, reconsideration, or other relief from the order appealed, *and the postjudgment motion was filed within 21 days of the order appealed from.*
- Other: _____

Filing Requirements

INSTRUCTIONS: Please complete the checklist and file with your claim of appeal.

Failure to file all required documents and requisite fees may result in rejection of your claim of appeal. MCR 7.201(B)(2)

- A **signed** claim of appeal. The caption must list all of the parties in each lower court case appealed. MCR 7.204(B)(1) & (D)
- A copy of the order you are appealing (*as identified in Jurisdiction section*). MCR 7.204(C)(1)
- An official **current** register of actions from the lower court or tribunal showing entry of the order appealed. MCR 7.204(C)(5)
- The filing fee or exception (*example: motion to waive fees*). MCR 7.202(3), MCR 7.204(B)(2)
- Evidence of the transcript (Select one): MCR 7.204(C)(2)
 - The complete transcript has been ordered. MCR 7.210(B)(1)(a)
 - No transcript will be filed. MCR 7.204(C)(2)
 - The transcript has already been filed. MCR 7.210(B)(1)(a)
 - Other: _____ MCR 7.210(B)(1)(b)-(e)
- All parties to the case (*including non-appellees*) are being **e-served through MiFILE**. Service by mail is only acceptable if (1) appellant is a self-represented party, or (2) the receiving party is not registered with **MiFILE**. MCR 7.204(C)(3), MCR 1.109(G)(6)(a)(ii), IOP 7.204(C)(3)

Preparer's Signature: /s/ Mark J. Magyar

Date: 10/17/22

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