

No.

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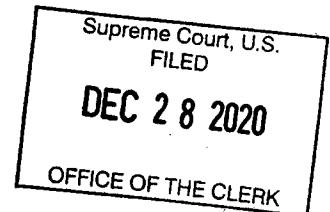
IN THE

## SUPREME COURT OF THE UNITED STATES

Cindy Bauer

—PETITIONER

(Your Name)



vs.

Edward McBroom et all —RESPONDENT(S)

## ON PETITION FOR A WRIT OF CERTIORARI TO

The United States Sixth Circuit Court of Appeals

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

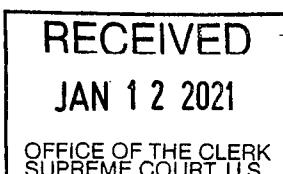
## PETITION FOR WRIT OF CERTIORARI

Cindy Bauer

(Your Name)

3447 East G Avenue, Apt. A

(Address)

Kalamazoo, MI 49004  
(City, State, Zip Code)269-491-3600  
(Phone Number)

## QUESTIONS PRESENTED

Article I § 17 of Michigan's Constitution states in part, *The right of all individuals, firms, and corporations, and voluntary associations to fair and just treatment in the course of legislative and executive investigations and hearings shall not be infringed.* Courts have relied upon Whitener v. McWatters and Bogan v. Scott-Harris to assert broad immunity for legislative activities, however, immunity for violations of fair and just treatment during Michigan legislative investigations and hearings would render the protections of Article I § 17 meaningless. Disenfranchisement of these protections has impacted 10 million citizens. The question whether Article I § 17 affords Michigan citizens the protections of fair and just treatment during legislative investigations and hearings, has not yet been addressed by the Courts.

The questions presented are:

1. Whether Michigan's Article I § 17 applies to legislative investigations and hearings as written, affording Michigan citizens the protections of fair and just treatment. If so, what are the standards of fair and just treatment during legislative investigations and hearings?
2. Whether a heightened pleading bar set by the Sixth Circuit's affirmation of the District Court's judgement granting Defendants-Appellees' motions to dismiss based on Rule 12(b)(6) and denial of motion to file a second amended complaint, is proper for Constitutional claims of violations of due process protections and fair and just treatment.

## LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgement is the subject of this petition is as follows:

Edward McBroom; Tim L. Bowlin; Keith Allard; Benjamin Graham; Joshua Cline; Kevin G Cotter; Brock Allen Swartzle; Norm Saari; Hassan Beydoun, in their individual capacities.

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## RELATED CASES

Todd Courser

v.

Michigan House of Representatives; Kevin Cotter, Tim L. Bowlin, Brock Allen Swartzle; Norm Saari; Edward McBroom; Hassan Beydoun, in their individual capacities.

Appeal from the United States District Court for the Western District of Michigan  
Southern Division  
(Civil Action No. 1:18-cv-00882)

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# **SUPREME COURT OF THE UNITED STATES**

## **PETITION FOR WRIT OF CERTIORARI**

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

### **OPINIONS BELOW**

For cases from federal courts:

The opinion of the United States Court of Appeals appears at appendix A to the petition and is

reported at Justia US Law No. 19-2364 or,  
[ ] has been designated for publication but is not yet reported; or,  
[ ] is unpublished.

The opinion of the United States District Court appears at appendix B to the petition and is

reported at Justia US Law No. 1:201cv01094 - Document 65; or,  
[ ] has been designated for publications but is not yet reported; or,  
[ ] is unpublished.

For cases from state courts:

The opinion of the highest state court to review the merits appears at appendix \_\_\_\_\_ to the petition and is

reported at \_\_\_\_\_; or,  
[ ] has been designated for publication but is not yet reported; or,  
[ ] is unpublished.

The opinion of the United States District Court appears at appendix \_\_\_\_\_ to the petition and is

reported at \_\_\_\_\_; or,  
[ ] has been designated for publications but is not yet reported; or,  
[ ] is unpublished.

## JURISDICTION

For cases from federal courts:

The date on which the United States Court of Appeals decided my case was July 29, 2020.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at appendix \_\_\_\_\_.

An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_\_\_.

The jurisdiction of the U.S. Supreme Court is invoked under 28 U.S. C § 1254(1).

For cases from state courts:

The date on which the highest court decided my case was \_\_\_\_\_.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at appendix \_\_\_\_\_.

An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_\_\_.

The jurisdiction of the U.S. Supreme Court is invoked under 28 U.S. C § 1257(a).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. Michigan Constitution Article I, § 17 .....Questions, p. 9, 10,11,13,30

No person shall be compelled in any case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law. The right of all individuals, firms, and corporations, and voluntary associations to fair and just treatment in the course of legislative and executive investigations and hearings shall not be infringed

2. U.S. Code § 1983 .....p. 5, 9

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

18 U.S.C § 2511 .....p. 5, 21,22

See Appendix D

3. U.S. Const. art. I, § 6, cl. 1 .....p. 9,

The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.Clause 1: Senators and Representatives will get paid by the government according to the law. Except for treason, stealing, or disturbing the peace, they cannot be arrested while they are at work, or on their way to work, in Congress. [Congress modified this a little bit in the 27th Amendment, making any change in pay for Congress apply to the next Congress, not the one that voted for it.]

4. Michigan Constitution 1963 art. IV, § 11.....*p. 9*

Except as provided by law, senators and representatives shall be privileged from civil arrest and civil process during sessions of the legislature and for five days next before the commencement and after the termination thereof. They shall not be questioned in any other place for any speech in either house.

5. Michigan Constitution art IV § 7 .....*p. 14*

Each senator and representative must be a citizen of the United States, at least 21 years of age, and an elector of the district he represents. The removal of his domicile from the district shall be deemed a vacation of the office. No person who has been convicted of subversion or who has within the preceding 20 years been convicted of a felony involving a breach of public trust shall be eligible for either house of the legislature.

6. 18 U.S.C § 2520 .....*p. 22*

See Appendix E

## **STATEMENT OF THE CASE**

Cindy Gamrat<sup>1</sup> was elected to State Representative and sworn into office in January 2015. As a newly elected State Representative, Gamrat was targeted by House leadership for not going along with their illegal and unethical demands. In the following months, Gamrat was stalked, bugged, threatened, and terrorized by defendants. The Speaker of the House ordered an investigation against Gamrat. False allegations were brought against Gamrat. During the House investigation and subsequent committee hearings, Gamrat was not afforded due process or fair and just treatment as required by Michigan and United States Constitutions. The hearings culminated in expelling Gamrat from office on September 11, 2015.

On February 26, 2016, two Misconduct in Office felony charges were brought against Gamrat to justify the expulsion. The criminal charges were based upon the false charges used to expel Gamrat in the legislature. During the criminal proceedings, Gamrat was finally afforded due process and the charges were quickly dismissed as baseless in the preliminary exam on June 14, 2016.

On September 10, 2016 Gamrat filed Pro Per in District Court for Violations of Due Process and Defamation against the Michigan House of Representatives, and Edward McBroom, Kurt Heise, Andrea LaFontaine, Rob Verheulin, and Tim L. Bowlin. After securing counsel, on April 6, 2017 Gamrat filed her First Amended Compliant and

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<sup>1</sup> Since the beginning of this case, Cindy Gamrat has legally changed her name to Cindy Bauer. However, in accordance with Fed. R. App. P. 28(d), she will be referred to as "Gamrat" in this brief because the District Court referred to her by that name in the Opinions and Orders at issue.

Jury Demand. The Amended Complaint included 251 paragraphs and alleged ten counts against thirteen Defendants—staffers Keith Allard, Benjamin Graham, and Joshua Cline; ex- husband Joseph Gamrat; Michigan House Of Representatives; Speaker of the House Kevin G. Cotter; HBO Business Director Tim L. Bowlin; Chief of Staff Brock Swartzle; Chief of Staff Norm Saari; Select Committee Chairperson Edward McBroom; House Majority Legal Counsel Hassan Beydoun; David Horr; and Vincent Krell.<sup>2</sup> The causes of action were alleged as follows:

- Count I: Violation of Procedural Due Process under State and Federal Constitutions – 42 U.S.C. § 1983 against House Defendants;
- Count II: Breach of Contract against Cotter, Bowlin, Swartzle, McBroom, and Beydoun;
- Count III: Promissory Estoppel against Cotter, Bowlin, Swartzle, McBroom, and Beydoun;
- Count IV: Malicious Prosecution/Abuse of Process against House Defendants, Allard, Graham, and Cline;
- Count V: Violation of Federal Wiretapping Act [ECPA] and Michigan's Eavesdropping Statute against all Defendants, except McBroom and the House;
- Count VI: Civil Stalking under MCL 600.2954 against all Defendants, except McBroom and the House;
- Count VII: Defamation against House Defendants, Allard, Graham, and Cline;
- Count VIII: Fraud against Cotter, Bowlin, Swartzle, McBroom, and Beydoun;
- Count IX: Indemnification against Cotter and the House; and
- Count X: Civil Conspiracy against all Defendants, except the House.

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<sup>2</sup> To maintain consistency with the District Court's references to the parties, references in this brief to the "House Defendants" includes Defendants-Appellees Cotter, Bowlin, Saari, Swartzle, McBroom, and Beydoun. The rest of the Defendants-Appellees will be referenced by name.

On May 22, 2017, Horr filed an Answer to the Amended Complaint. On June 15, 2017, Joseph Gamrat filed an Answer to Plaintiff's First Amended Complaint, Reliance on Jury Demand and Affirmative Defenses. On June 16, 2017, Gamrat filed a Notice of Voluntary Dismissal Without Prejudice as to Defendant Vincent Krell, dismissing him from the case pursuant to Rule 41(a)(1)(A)(i). Cline did not answer the Amended Complaint.

The House Defendants, Allard, and Graham filed separate motions to dismiss the Amended Complaint, which were fully briefed by the parties. The District Court heard oral argument regarding the motions to dismiss on March 5, 2018.

On March 15, 2018, the District Court issued its Opinion and Order after the hearing, granting the motions in their entirety and dismissing all claims against the moving Defendants-Appellees. The case continued with regard to Gamrat's claims against Joseph Gamrat, Horr, and Cline.

During discovery, Gamrat was able to take the depositions of the three remaining defendants. In addition, on July 3, 2018, Gamrat came into possession of hundreds of pages of texts and chat messages between Cline, Allard, Graham, and other third parties that implicated them in the allegations made by Gamrat. These documents had been attached to a public pleading by Todd Courser after he was able to conduct some discovery in his state criminal case.

On November 6, 2018, the District Court entered an order dismissing Joseph Gamrat from the case under Rule 41(a)(2). (Order, RE 116, Page ID # 1799.)

Based on the deposition testimony, responses to written discovery conducted with the three remaining defendants, and the hundreds of pages of texts and chat messages, Gamrat filed a Motion for Relief from Judgment on January 14, 2019. (Motion for Relief, RE 138, Page ID # 1929.) On January 22, 2019, Gamrat filed a Motion for Leave to File Second Amended Complaint. (Motion for Leave, RE 146, Page ID # 3508.) In her motions and proposed Second Amended Complaint, Gamrat laid out the new evidence and narrowly tailored her pleading to re-allege only Counts V, VI, and X against select Defendants-Appellees, the Counts most directly supported by the new evidence. The Second Amended Complaint was extremely detailed and included hundreds of pages of supporting exhibits. (Second Am. Complaint, RE 147-1, Page ID # 3525-3870.)

The motions for relief and for leave—along with Cline’s motion to dismiss— were heard by the District Court on June 25, 2019. On July 11, 2019, the District Court issued its Opinion and Order granting Cline’s motion to dismiss and denying Gamrat’s Motion for Relief from Judgment and her Motion for Leave to File a Second Amended Complaint. Gamrat’s claims against Horr continued.

On October 23, 2019, the District Court issued an order dismissing Horr, which was designated a “final order disposing of all claims against all parties in this litigation.” On November 21, 2019, Gamrat filed a timely Notice of Appeal with the District Court.

On February 18, 2020 Gamrat filed an appeal to the Sixth Circuit Court requesting to reverse the District Court’s Orders granting Defendants Motions to Dismiss with regard to Counts I, V, VI, and X of Gamrat’s Amended Complaint; reverse

the District Court's Order denying Gamrat's Motions for Relief from Judgment and for Leave to File Second Amended Complaint; and remand this case to the District Court for further proceedings.

On March 19, 2020, House Defendants-Appellees filed a Brief. April 17, 2020 Allard and Graham filed a Response Brief. On May 8, 2020 Gamrat filed a Reply to Briefs of House Defendants and also to Allard and Graham. On May 20, 2020 Allard and Graham filed a Motion for Leave to File a Sur-Reply Brief. Gamrat responded to Allard and Graham's Sur-Reply on May 29, 2020.

On July 29, 2020, the Sixth Circuit Court issued it's opinion, affirming the District Court's dismissal of Gamrat's suit for failure to state a claim and also for declining Gamrat leave to file her second amended complaint citing that the new information was conclusory.

## REASON FOR GRANTING THE WRIT

- A. To provide clarity on the due process and fair and just treatment protections during legislative investigation and hearings afforded by Article I § 17 of the Michigan Constitution.**

Article I § 17 of Michigan's Constitution states, *No person shall be compelled in any case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law. The right of all individuals, firms, and corporations, and voluntary associations to fair and just treatment in the course of legislative and executive investigations and hearings shall not be infringed* (emphasis added). During a legislative investigation and subsequent hearings to remove her from office, Gamrat was summarily denied due process and fair and just treatment. Gamrat filed well-pled and detailed claims of these violations accordingly, under state and federal constitutions 42 U.S.C. § 1983, as well as others tortuous claims.

In its decision, The Sixth Circuit asserted, "State legislators, as well as their aides and counsel, are immune from suit for "all actions taken in the sphere of legitimate legislative activity." *Bogan v. Scott- Harris*, 523 U.S. 44, 54 (1998); *Eastland v. U. S. Servicemen's Fund*, 421 U.S. 491, 507 (1975); see also U.S. Const. art. I, § 6, cl. 1; Mich. Const. 1963 art. IV, § 11" "Here, the House Defendants investigated Gamrat, recommended expelling her, and then voted to do so—all of which are integral parts of the expulsion process. *See id.* at 624–25. And that process is within the legislature's sole jurisdiction. See Mich. Const. 1963 art IV, § 16. The House's expulsion of Gamrat

was legislative activity, regardless of any bad faith, and Gamrat cannot sue the House Defendants for participating in that process. *Accord Whitener v. McWatters*, 112 F.3d 740, 742–44 (4th Cir. 1997)."

The Sixth Circuit erred in its failure to acknowledge or address Michigan's Article I § 17, which specifically imposes a right to fair and just treatment during legislative investigations and hearings conducted in Michigan.

The Sixth Circuit also failed to address Gamrat's pleadings with specificity given the unique nature of her case: Gamrat's case was not simply a case involving the discipline of a member of the House. Instead, this case involved the systematic and illegal surveillance, recording, and stalking of Gamrat by individuals employed as House staff and at the direction of and condoned by House leadership, who eventually used the information gained as a result to expel Gamrat in proceedings that lacked a modicum of due process.

This case is more akin to the case of *Powell v. McCormack*, 395 U.S. 486 (1969). Gamrat had been duly elected by her constituents and at all times met the constitutional requirements to hold office, but was expelled from office in a manner that violated her due process rights. In fact, the Supreme Court in *Powell* stated the following regarding the legislature's proceedings:

Especially is it competent and proper for this court to consider whether its [the legislature's] proceedings are in conformity with the Constitution and laws, because, living under a written constitution, no branch or department of the government is supreme; and it is the province and duty of the judicial department to determine in cases regularly brought before them, whether the powers of any branch of the government, and even those of the legislature in the enactment of laws, have been

exercised in conformity to the Constitution; and if they have not, to treat their acts as null and void.

*Powell*, 395 U.S. at 506 (emphasis added) (citing *Kilbourn v. Thompson*, 103 U.S. 168, 199 (1881)).

Importantly, Congress cannot impose additional qualifications on its members, as that would violate that “fundamental principle of our representative democracy . . . ‘that the people should choose whom they please to govern them.’” *Powell*, 395 U.S. at 547 (citation omitted). However, the House imposed qualifications on Gamrat that are not enumerated in the Constitution, with the result being the loss of her constituents’ democratically-chosen and duly-elected representative.

In this case, Gamrat was denied Constitutional protections of fair and just treatment during legislative investigations and hearings that are specifically provided in Article 1 § 17. The Courts did not address this protection nor the violations which occurred.

**B. To avoid erroneous deprivations of the right to seek legal remedy for violations of constitutional protections and other tortuous acts.**

Erroneously, and in contradiction to established precedent, the Sixth Circuit Court of Appeals affirmed the district court’s extraordinary high pleading bar for Gamrat, requiring pleadings more akin to probability than plausibility. These aberrant standards circumvent the necessary review this case brings in balancing constitutionally required fair and just treatment for individuals against legislative protection. This imbalance has

not only caused injury to Gamrat, but also to 90,000 thousand citizens in her district and impacted 10 million Michigan citizens.

The improper pleading standards, affirmed by the Sixth Circuit and imposed on Gamrat, are in conflict with prior decisions of the U.S. Supreme Court and also recently the Second Circuit. Judge Walker, writing for the Second Circuit in Palin v New York Times (2019), stated, “This case is ultimately about the First Amendment, but the subject matter implicated in this appeal is far less dramatic: rules of procedure and pleading standards.” The Second Circuit reversed the district court’s decision granting a 12(b)(6) motion to dismiss, finding that Palin had met the standards of plausibility in stating a claim.

In its decision, The Second Circuit stated, “The pleading standards articulated in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009) are well-known: in order to satisfy Federal Rule of Civil Procedure 8, a complaint must contain “enough facts to state a claim to relief that is plausible on its face.” A claim is plausible “when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” A well-pleaded complaint will include facts that “raise a right to relief above the speculative level.” “The plausibility standard is not akin to a ‘probability requirement,’ but it asks for more than a sheer possibility that a defendant has acted unlawfully.”

Gamrat also relied upon these same standards when submitting her claims, however, in contrast, the Sixth Circuit set a higher standard in Gamrat’s case, more akin to a ‘probability requirement’ than plausibility. The Sixth Circuit affirmed the district

court's decision granting a 12(b)(6) motion for failure to state a claim, even though Gamrat's pleadings were enhanced and corroborated by scores of facts and elements, going well beyond plausibility requirements identified by the Second Circuit in Palin.

In making its determination, the Sixth Circuit reviewed *de novo* the district court's dismissals under Civil Rules 12(b)(6) and 12(c) and made assertions as to Gamrat's due process, wiretapping, eavesdropping, civil stalking, and civil conspiracy claims against House Defendants and staff members. Overall, the Sixth circuit affirmed the district courts dismissal against Gamrat for "failure to state a claim."

The Sixth Circuit erred by wrongfully ignoring a litany of facts and hundreds of pages of evidence and documents supporting Gamrat's allegations in her pleadings.

## 7. Due Process, Fair and Just Treatment

Pertaining to the violations of due process and fair and just treatment claims, Gamrat pled the following which entail facts and evidence (in part):

- Gamrat was employed by the House as a duly elected state representative and, at all relevant times, met the constitutional requirements to hold the position as an elected representative - she was a citizen of the United States, at least 21 years of age, an elector of the district she represented, had not been convicted of subversion, and had not been convicted of a felony involving a breach of public trust in the preceding 20 years. Mich. Const art IV § 7. (First Amended Complaint)
- Because of Gamrat's staunch opposition to Proposal 1 and her issues with the Caucus Pledge—among other things—Cotter and his staff had a contentious relationship with Gamrat. (Cline Dep. at p. 129, **Ex. 1.**) (proposed Second Amended Complaint Para 56)

- It was this contentious relationship between Gamrat and Cotter and his staff that led Cotter, Saari, and Swartzle to try to “put a lasso” around Gamrat “from day one” in order to get her to be a “functional” member of the Caucus. (Saari MSP Interview at p. 25, **Ex. 2.**) (*Id* Para 57)
- In or around January 2015, Allard, Graham, and Cline began meeting with Saari and Swartzle under the guise of presenting alleged workplace issues with Courser and Gamrat. (Cline Dep. at pp. 71-74, **Ex. 1.**) (*Id* Para 57)
- The House Rules directed that all workplace issues to be brought to the attention of Tim Bowlin, House Business Director/CFO at that time. However, Saari did not notify Bowlin of the alleged workplace issues. Further, Gamrat was never informed of any workplace issues or concerns by anyone, including Saari, Swartzle, Cotter, or Bowlin. (*Id* Para 68-69)
- These meetings took place on a regular basis and were at all times kept hidden from Gamrat. (*Id* Para 59)
- 4/28/15 text from Allard to Joey Gamrat: “Yeah.... just had a ‘nice’ meeting with the Speaker’s chief of staff. don’t tell them.” (*Id* Para 74 c)
- Allard, Graham, and Cline acted maliciously in giving information to Cotter and his staff about Gamrat during her time in office—especially since the alleged “workplace issues” were primarily regarding treatment of the staff by Courser and had little to do with any actions by Gamrat. (Cline Dep. at pp. 115-16, **Ex. 1.**) (*Id* Para 71)
- Examples of the malicious intent of Allard, Graham, and Cline in relaying information about Gamrat include, but are not limited to, the following: 4/19/15 text from Allard to Graham and Cline: “fuck these idiots. It’s so funny to watch them fail though”; 4/27/15 text from Allard to Joey Gamrat: “I fucking hate listening to them talk.”; 5/22/15 text from Allard to Graham and Cline: “they are pathetic. I can’t even believe this shit is real”; 6/25/15 text from Allard to Graham and Cline: “Fuck these two assholes”; 6/8/15 text from Allard to Graham: “but regardless, fuck them.”; 7/6/15 text from Allard to

Graham and Cline: “I’m ready for these two to burn”; 8/25/15 message from Allard to Graham: “I’m willing to fund an independent expenditure against both of these fuckers”; and 8/31/15 message from Allard to Madeline Schaab: “Were [sic] ready for blood.” [Texts, Chat Messages, and Emails; attached as **Exhibit 4.**] (Second *Id* Para 72 a-i)

- On August 8 and 9, 2015, the House locked Gamrat’s office and seized the laptops and other electronic devices of Gamrat, Courser, and their staff members. (*Id.*; Swartzle; MSP Interview at pp. 5-6, attached as **Exhibit 26.**) (*Id* Para 192)
- During the time when the computers and electronic devices were in the sole possession of the House—and under a litigation hold—a monumental amount of electronic data was modified, deleted, written over, and destroyed completely. (Expert Reports of Neil Broom, attached as **Exhibit 27.**) (*Id* Para 193)
- Before depriving Gamrat of her Constitutionally protected interest in continued employment, Defendants did not give Gamrat adequate notice, conduct an adequate pre-termination hearing, or otherwise afford Gamrat a full and fair opportunity to respond to the allegations against her or to confront and cross examine the witnesses upon whose testimony the HBO Report was prepared.” (First Amended Complaint Para 151)
- As an example of how insufficient and suspect the investigation really was, Bowlin later stated during an interview with the MSP that he asked other members during the investigation just how low they wanted the bar to be set for the expulsion of Gamrat and that “they set it the way they wanted to set it.” (Bowlin MSP Interview at pp. 6-7, **Ex. 20.**) (proposed Second Amended Complaint Para 187)
- 8/24/15 chat messages between Allard and Graham: “Because the speaker’s office has to scrub it of anything that involves them” – “And we’ll start calling out the Speaker’s office” – “And if the investigation is a white wash, I will be enraged. We dedicated too much time and suffered too many blows to our reputations to allow them to scrub this” – “Part of my thinks it is horseshit that taxpayers take the hit on this

investigation, and then the Speaker’s office sanitizes it to remove their involvement” – “I say we keep out powder dry and see what the report says. We can burn them anytime. Who knows they may do the right thing”; (*Id* Para 74i)

- 8/24/15 text from Allard to Don Goris: “I know our testimony and evidence is extremely damning. And the Speaker is going to have to spend some time whitewashing his role before anything is publicly released. (*Id* Para 74 j)
- On August 31, 2015, Allard received a call from John Truscott at Truscott Rossman, a public relations firm, stating that he wanted Allard and Graham to come into his office because Bowlin wanted to have a discussion with them about how he could help them. (8/31/15 chat message from Allard to Madeline Schaab, attached as **Exhibit 28.**) (*Id* Para 203)
- On August 31, 2015 Cotter, Bowlin, Swartzle, Saari, and Beydoun published a report called the “Report on the Investigation of the Alleged Misconduct by Representative Todd Courser and Representative Cindy Gamrat” (the “HBO Report”). (First Amended Complaint Para 100.)
- The HBO Report was based almost entirely on unsworn testimony of Allard and Graham. (*Id* Para 101.)
- Further, the recordings made by Graham that were included in the HBO Report and relied upon for Gamrat’s ultimate expulsion were not original recordings, and were intentionally manipulated to add or remove certain information. (**Primeau Affidavit, Ex. 13.**) (proposed Second Amended Complaint Para 207)
- The HBO Report issued “findings” about Gamrat which were not true, painted Gamrat in a false light, and which caused a detrimental impact on Gamrat personally and professionally. (*Id* Para 200)
- 9/1/15 chat messages between Allard and Graham: “Matt Golden KNEW Todd sent that e-mail, and told Cody and JJ it was a fireable offense to ever discuss it” – “and Golden KNEW about the Radisson and was trying to track down a police report” – “so

the Speaker's deputy chief of staff [Swartzle] knew ALL of this affair stuff and was actively trying to cover it up" – "Yep. They just wanted us to tell them what we have so they could whitewash it" (*Id* Para 74 k)

- 9/1/15 texts between Allard and Graham: "Also, listening to Big Show and Cotter's interview on it this morning. He says we were just saying 'gossip' to Norm [Saari]" – "File it in the 'they're screwed' file"; (*Id* Para 74 l)
- 9/6/15 texts between Allard and Graham: "If the speaker doesn't get this done after all the heat we've taken, I will never forgive him" – "Yeah it will be total bullshit. We gave him everything he needs to get them and he's screwing it up. Yeah they better" (*Id* Para 74 m)
- By the time committee hearings began on Tuesday, September 8, 2015, Gamrat had only been allowed a quick review of the hundreds of pages of documents and audio, and had been denied the opportunity to have a copy of any of the evidence in the HBO Report-evidence that was the foundational evidence of the special committee hearing. (First Amended Complaint Para 117)
- Gamrat was not afforded the same procedure afforded to past legislators facing censure or expulsion. (*Id* Para 152)
- Further, Cotter created the Select Committee with four Republicans and two Democrats, allowing the Republicans to control the committee. This partisanship is contrary to ethics committees, and also contrary to the previous expulsion Select Committee formed for another state legislator in 2001, which was composed of three Democrats and three Republicans. (Proposed Second Amended Complaint Para 197)
- During the committee hearing, Gamrat was not allowed to fully participate in the hearing as previous members of the legislature had been allowed in past expulsion hearings. (*Id* Para 208)
- Gamrat was also not allowed to call witnesses, cross-examine witnesses, make objections, or provide any argument in her defense. (*Id* Para 209)

- In fact, a new rule had been placed by Cotter's hand-picked committee that would have held Gamrat and her attorney in contempt if they objected or disrupted the hearings in any way. To Gamrat's knowledge, this rule had not been included in any other previous expulsion hearings. (*Id* Para 210)
- Cotter further deviated from the precedent that was set in previous expulsions to prevent Allard and Graham from being questioned. (*Id* Para 211)
- During the committee hearing, the House played one of Graham's recordings over the loudspeaker for the public and committee members to hear, even though that recording was modified and manipulated beforehand. (*Id* Para 213)
- The House had a duty to authenticate the evidence that it was using in an effort to expel two representatives or, at the very least, a duty to require Graham to testify under oath as to the alleged authenticity of the recordings. The House did not do either of these things. (*Id* Para 214)
- Democrats Chirkin and Liberati put forward House Resolution 137 (.R. 137) to subpoena Allard and Graham to allow the veracity of their allegations to be questioned under oath. McBroom and the Republican members all voted against this resolution. (First Amended Complaint Para 119)
- 9/8/15 chat messages between Madeline Schaab, Allard, and Graham: "Talk about your name being dragged through the mud in efforts for these two nut jobs to cover their own assess." – "Not just two nut jobs.. but the entire Speaker's office and House Business Office"; (Proposed Second Amended Complaint Para 74 n)
- 9/8/15 chat messages between Schaab, Allard, and Graham: "Brock [Swartzle] you better defend us" – "Fuck you Brock [Swartzle]" – "Wait... did he just say he only met with me once?"; (*Id* Para 74 0)
- 9/8/15 chat messages between Schaab, Allard, and Graham: "I would also do it now before you sign any confidentiality agreement" (*Id* Para 74 p)

- 9/10/15 chat messages between Madeline Schaab, Allard, and Graham: “Can you guys just testify? The speaker of the house just wants this done so he can sweep it under the rug.” – “Madds, it hurts our legal case to testify” – “Confidentiality goes out and they have no reason to settle”. [Texts, Chat Messages, and Emails; **Ex. 4** (emphasis added).] (*Id* Para 74 q)
- The credibility of Allard and Graham, as accusers, was not allowed to be questioned or countered by Gamrat, Courser, or any of the committee members. This was in spite of the fact that McBroom would later admit that Allard and Graham had “precious little” credibility. (Allegations contained in Complaint and Jury Demand in Allard and Graham v Michigan House of Representatives, Para 72, EX1; Fox 2 News Article dated December 8, 2015, attached as Exhibit 11.) (First Amended Complaint Para 120)
- During the committee hearings, evidence and testimony from Anne Hill and Karen Couture that corroborated Gamrat’s testimony and discredited Allard and Graham was not presented by McBroom, Beydoun, Cotter, Swartzle, or the House. (*Id* Para 122)
- At or around 4:00 a.m. on September 11, 2015—after the representatives had been forced to remain in chambers for several hours without being able to leave for any reason—Gamrat was expelled from the House. (*Id* Para 132)
- Gamrat had never missed a committee or subcommittee, never missed a vote, sponsored 21 pieces of legislation, and co- sponsored dozens more. In just eight short months, Gamrat had worked hard and followed through on the votes and legislation she had promised her constituents when running for office. (*Id* Para 133)
- This result was in line with Cotter’s sentiment that “it didn’t make a difference of how we got there [expulsion] as we got to the result of both of these members no longer being a member of the body.” (9/11/15 Article, attached as **Exhibit 31**.) (Proposed Second Amended Complaint Para 221)

- In fact, several other past members of the State Congress have committed felonies and other misconduct and never faced censure or expulsion. (First Amended Complaint Para 153)
- Defendants acted maliciously, recklessly, intentionally, or by reason of gross negligence or violation of the law in arbitrarily expelling Gamrat -who had not even yet been charged with a crime at the time of her expulsion. (*Id* Para 156)
- Gamrat's life has been ruined-personally, financially, and professionally-as a result of Defendants' actions as described in this Amended Complaint. (*Id* Para 141).
- On November 22, 2016, the House agreed to a large settlement with Allard and Graham in the Federal Case, which included an agreement to indemnify Allard and Graham in litigation and payments of almost \$170,000.00 to each Allard and Graham. (Proposed Second Amended Complaint Para 227)

## 2. Wiretapping, Eavesdropping

The Sixth Circuit determined, "Gamrat alleged nowhere that any House Defendant acquired one of her communications during transmission; she made only the conclusory allegation that they received recordings that violated § 2511." In doing so, the Court placed inappropriate barriers to Gamrat's claim, limiting it to only "acquired" communications and "during transmission." However, 18 U.S. Code § 2511 includes, "any person who (a) intentionally intercepts, endeavors to intercept, or procures any other person to intercept, or endeavor to intercept, any wire, oral, or electronic communication."(emphasis added). The ECPA imposes civil liability on those who unlawfully intercept electronic communications. It states, in relevant part, that "any person whose wire, oral or electronic communication is intercepted, disclosed, or

intentionally used in violation of this chapter may in a civil action recover from the person or entity, other than the United States, which engaged in that violation such relief as may be appropriate.” 18 U.S.C. § 2520(a). In other words, “the person or entity . . . which engaged in that violation” is the person or entity that “intercepted, disclosed, or intentionally used” the communication. *Kirch v. Embarq Mgmt. Co.*, 702 F.3d 1245, 1246 (10th Cir. 2012).

The Sixth Circuit erred when determining Gamrat’s pleadings only made conclusory allegations “that they received recordings that violated § 2511. Gamrat’s pleadings not only met these the criteria for her claim, but included facts and evidence to support it, not just “conclusory allegations.” Gamrat pled (in part):

- 5/19/15 Graham recorded a private conversation between Gamrat and Courser at Courser’s law office to which he as not a party (Proposed Second Amended Complaint Para 109a)
- 5/22/15 text from Allard to Graham and Cline: “I’m listening to Thursday recording now. Ben you fucking killed it. It’s awesome” (*Id* Para 109b)
- 6/24/15 text from Allard to Graham: “I say we meet and try to get shit for recording” (*Id* Para 103 c.)
- 7/03/15 text exchange between Graham and Allard: “How do you know that? Lol That’s a dumb idea”, to which Allard responded, “Bug” (*Id* Para 109 c)
- 7/3/15 text from Graham to Allard: “We need to hear that recording so we can prepare” (*Id* Para 109 d)

- 6/3/15 text from Joseph Gamrat to Allard: “How do you know they were there? Do they know that you know?” Allard responds, “They don’t know we know. I’ll explain when I get a chance.”; (*Id* Para 79 i)
- 6/25/15 text from Allard to Graham: “Darn. Josh says Joe should sit on it for a bit and now that he knows their hiding spot try and catch them doing it.” (*Id* Para 79 k)
- 6/30/15 texts from Joseph Gamrat to Allard: “I need a picture of the cars or something if he can do it. Thanks.” (This text was sent while Graham was following Gamrat across the state) . . . “What are you guys going to do with this? Anything? Just let me know so I can figure out what I’m doing.” (*Id* Para 79 l)
- 6/30/15 text from Allard to Graham and Cline: “Can you get a better pic without that screen on it?” (*Id* Para 79 m)
- 9/6/15 text from Allard to Graham: But seriously...We could release 45 seconds of tape every week for the next year and a half” (*Id* Para 109 i);
- By July 17, 2015 Allard and Graham had compiled at least 13 separate recordings of Gamrat and Courser (Emails between Allard, Graham, and Chad Livengood, attached as Exhibit 12.); Of the 13 recordings, only four duplicates were ever produced. None of the originals were produced, and at least one of the four duplicates was intentionally manipulated to add or remove certain information. (Affidavit of Edward Prime, attached as Exhibit 13.) (*Id* Paras 113, 114)

### 3. Stalking

The Sixth Circuit stated, “Most of Gamrat’s allegations do not actually assert that the defendants contacted her. See Mich. Comp. Laws § 750.411h. Gamrat says that she received anonymous threatening texts, but none of the House Defendants or staff

members sent those texts. She also alleges that the staff members followed her, but she does not allege that this caused her emotional distress. Thus, Gamrat does not plausibly allege a violation of Michigan's civil-stalking law."

The Sixth Circuit erred by ignoring Gamrat's factual pleadings and disregarding the role the House Defendants and staff played in providing information utilized in the texts to harass Gamrat. Gamrat pleaded such with the following:

- "Specifically on two or more separate occasions Allard, Graham, and Cline made unconsented contact with Gamrat by, among other things, placing "bugs" or recording devices on property owned or occupied by Gamrat; following Gamrat and reporting her whereabouts to third parties; and disclosing information that they knew was being used in the extortion texts that were sent to Gamrat. (Proposed Second Amended Complaint Para 254);
- 6/24/15 text exchange between Allard and Cline: I say we follow them after they leave our meeting to see what happens. . :)" - "I'm down. My friend suggested we do that as well" - "Okay deal. We'll 'leave for lunch' at the same time they do." (*Id* Para 103b)
- 6/25/15 text from Allard to Graham with a picture of Gamrat's and Courser's vehicles (*Id* Para 103d)
- 6/30/15 text exchange between Allard, Graham, and Cline wherein they are discussing their surveillance of the vehicles, driven by Gamrat and Courser, take and send pictures of the vehicles, following the vehicles from Lapeer toward Lake Orion and eventually toward Clarkston and Auburn Hills, and calling Joseph Gamrat during the surveillance. [Texts, Emails, and Chat Messages, Ex. 4] (*Id* Para 103 e)
- The surveillance activities above were conducted by Allard, Graham, and Cline during business hours and while on State time. (*Id* Para 105)

- The MSP (Michigan State Police) Report also indicated that “[t]he extortionist knew personal information about the complainant victim that someone close to the complainant/victim would know (travel plans, times/dates, votes on bills etc.)” (MSP Report Excerpt, Ex.7); (*Id* Paras 144-145)
- The MSP Report also identified one of the extortionist’s texts as the following: “Wow! Firing staff...be careful, the boys have A TON on you...they know everything. I saw you recently. Flint then near Great Lakes Crossing later. You guys are easy but idiots. Oh, the Speaker is meeting with me on 8/3.” (MSP Report Excerpt Ex. 7)(*Id* Para 146)
- This text was send to Gamrat on July 8, 2015- just eight days after Allard, Graham, and Cline followed and surveilled Gamrat all the way to Auburn Hills, which is where Great Lakes Crossing is located; The text also indicated that Cotter and his office were in direct contact with the extortionist (*Id* Para 147)
- Cline saw the extortion texts and knew that information he was giving to Joseph Gamrat was being used in that manner to harm Gamrat. (Cline De. At pp. 143-144; 193; 243-244; Ex. 1); Despite this knowledge Cline did not say anything to Gamrat (*Id* Paras 148 - 149))
- Further evidence supporting the involvement of Allard, Graham, and Cline with the extortion is that on 5/17/15 they exchanged texts that discuss revealing the affair at the Mackinac conference (Texts, Emails, and Chat Messages, Ex. 4) On May 28, 2015 a text from the extortionist alluded to revealing the affair at the Mackinac conference and talking to well-known political report Tim Skubick - who interviewed Allard as a guest just months prior. (*Id* Para 150)
- Karen Couture - a former staffer in Courser’s office - has submitted a sworn affidavit stating among other things, that she witnessed Allard and Graham planning to follow and surveil Courser and Gamrat while on State time in the House offices. (Couture Affidavit, attached as Exhibit 11.) (*Id* Para 107)

Gamrat also attached evidence to the Amended Complaint regarding the meetings that were taking place between the House Defendants and Allard, Graham, and Cline throughout the time Gamrat was being stalked, harassed, and surveilled. ((Am. Complaint ¶¶ 56-60, 65-67, 190- 193, RE 20, Page ID # 120-122, 138.) In total Gamrat included 22 separate allegations in her Amended Complaint directly related to the stalking activities of Defendants, many of which were supported by attached documents, text messages, the MSP Report, and the HBO Report.

The Sixth Circuit was also wrong in its determination that Gamrat did not allege that stalking caused her emotional distress. Gamrat pleaded the following:

- Defendants course of conduct involved repeated and continued harassment directed toward Gamrat - including among other things, continued surveillance, following Gamrat, reporting her whereabouts, and sending extortion texts - that caused her emotional distress and mental anguish. (First Amended Complaint Para 209)
- Defendants' conduct has actually made Gamrat feel terrorized, threatened, frightened, intimidated, harassed, and molested. (*Id* Para 211)
- These actions by Defendants caused Gamrat emotional distress and mental anguish. That is especially true because Gamrat knew very well that she was being surveilled and stalked, but she did not know who was surveilling, recording, and stalking her at the time or who was sending the extortion texts - which amplified the emotional distress and anguish that she experienced. In fact, Gamrat had asked Allard directly if he was communicating with Joseph Gamrat in or around the time the extortion texts started, and Allard lied to her and denied that he had such communications. (Proposed Second Amended Complaint Paras 259 - 261).

#### 4. Civil Conspiracy

In regards to Gamrat's final claim for civil conspiracy, the court simply stated, "Gamrat fails to state a plausible claim for any other actionable tort, so she also fails to state a claim for civil conspiracy." The elements of a civil conspiracy are: (1) a concerted action (2) by a combination of two or more persons (3) to accomplish an unlawful purpose (4) or an unlawful purpose by unlawful means. *Mays v Three Rivers Rubber Corp.*, 352 N.W. 2d 339, 341 (Mich. Ct. App. 1984). The Sixth Circuit erred in dismissing this count as Gamrat's Amended and proposed Second Amended Complaints plead numerous facts supported by attached evidence showing Defendants were working together to perpetrate tortious wiretapping, surveillance, and stalking activities against Gamrat. Gamrat supplied evidence of their meetings together and Cline testified himself in his deposition that he saw himself, Allard, and Graham as a "trifecta." Some additional facts related to conspiracy Gamrat pled in addition to those already included within this filing are:

- 6/2/15 text from Allard to Joseph Gamrat: "[T]he Speakers office seems to know everything about it, and apparently a reporter is looking into it too" (Proposed Second Amended Complaint Para 74 d)
- 6/30/15 text from Graham to Allard: "Tell him to shut the fuck up!!!! Gonna blow my cover even more then it's already blown." (*Id* Para 74 f)
- Although no longer a House employee, Cline continued to be copied on emails and had unauthorized password access to Gamrat's email accounts. (See 6/20/15, Email from Graham to Allard and Cline, attached as **Exhibit 15**; 4/19/15 text from Cline to Allard requesting that Allard forward him an email from Courser, attached as **Exhibit**

16.); Cline was also given unauthorized access to Gamrat's personal and official calendar and schedule. (*Id* Para 124 - 125)

- A forensics report shows that Cline's user name to access the House server was used on many occasions after Cline's resignation. Cline was unable to explain this information at his deposition. (Forensics Report, attached as **Exhibit 17.**) (*Id* Para 126)
- Hassan Beydoun, Majority Legal Counsel to the House, would later state in his interview with the MSP that Allard was "the most manipulative, deceitful person involved in all of this" and described him as "the mastermind." (Beydoun MSP Interview at pp. 21, 25; attached as **Exhibit 24.**) (*Id* Para 189)

## 5. Motion for Leave to File a Second Amended Complaint

Lastly, regarding Gamrat's Motion for Leave to File a Second Amended Complaint, the Sixth Circuit concluded, "the motion merely repeated conclusory statements and cited entire lengthy documents (with scant reference to specific statements therein) in an attempt to revive claims that the district court had dismissed ten months prior. That information gave the court no cause to allow Gamrat to amend her complaint...The district court recognized that it had the authority to revise its order, but it chose not to do so for the same reason that it denied Gamrat leave to amend her complaint: the allegedly new information was conclusory. The district court's judgement is affirmed."

This decision was an egregious error by the Sixth Circuit and District Court. Gamrat's proposed Second Amended complaint was 157 paragraphs and 47 pages with

hundreds of exhibits, filled with newly acquired facts and evidences supporting her claims. This evidence was uncovered through depositions and Courser's publicly filed amended complaints which included 1,500 pages of exhibits, many which were email and text messages between the Defendants and relevant to Gamrat's claims.

Gamrat has already listed above numerous facts supporting her claims which were added in the proposed Second Amendment Complaint. Gamrat pled additional facts and attached evidence beyond the room that is allowed here. As example:

- 2/10/15 text from Cline to Allard: "You are in the clear. You made it out and they did not know a thing." (Proposed Second Amended Complaint Para 103a)
- A 5/26/15 text from Allard to Graham also references the "blackmailer" in quotation marks. (Texts, Emails, and Chat Messages, **Ex. 4.**) (*Id* Para 152)
- On July 7, 2015, Allard texted Joseph Gamrat, "I want to scare the living shit out of them," to which Joseph Gamrat responded, "Nice. I have no idea how to do that but that's all right." (7/7/15 Text from Allard to Joseph Gamrat, attached as **Exhibit 21.**) (*Id* Para 177)
- Based on evidence turned over by Allard in Courser's criminal case, Allard had almost 800 recordings just on his phone, which is currently, upon information and belief, still in the possession of his counsel (*Id* Para 117)
- Even though they were no longer House employees, Allard and Graham continued to have unauthorized access to Gamrat's email, as evidenced by the following text from Allard to Graham and Cline almost two weeks after the termination of Allard and Graham, which is only one example that demonstrates this unauthorized access: "Ben have you seen any more donation emails for Cindy come through?" (7/19/15 Text, attached as **Exhibit 23.**) (*Id* Para 179)

## **Conclusion**

This case presents this Honorable court with an opportunity to provide clarity in regards to protections afforded in Article I § 17 of the Michigan Constitution and also to correct an improper standard from preventing the right to seek legal remedy for violations of constitutional protections and other tortuous acts.

Absent intervention by this Court, the Sixth Circuit's decision will work to undermine constitutional protections by setting a nearly impossible bar for legal remedy.

For the foregoing reasons, Ms. Gamrat respectfully requests that this Court issue a writ of Certiorari to review the judgement of the Sixth Circuit Court of Appeals.