

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

ADELINE HAMBLEY,

Plaintiff,

File No. 23-7180-CZ

vs.

MOTIONS

OTTAWA COUNTY, a Michigan  
County; OTTAWA COUNTY BOARD  
OF COMMISSIONERS and; JOE MOSS,  
SYLVIA RHODEA, LUCY EBEL,  
GRETCHEN COSBY, REBEKAH CURRAN,  
ROGER BELKNAP, and ALLISON  
MIEDEMA, Ottawa County  
Commissioners in their individual  
and Official capacities,

Defendants.

R E C O R D

of the proceedings had in the above-entitled  
cause on the 31st day of March, 2023, before  
HONORABLE JENNY McNEILL, CIRCUIT JUDGE.

APPEARANCES:

For the Plaintiff: SARAH RILEY HOWARD, JD (P58531)  
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For the Defendants: DAVID A. KALLMAN, JD (P34200)  
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WITNESS:

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None

EXHIBITS:

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None

1 Friday, March 31, 2023

2 At 1:30:34 A.M..

3 Muskegon, Michigan

4 R E C O R D

5 THE COURT: Okay. We are on the record in  
6 File Number 2023-7180-CZ, Adeline Hambley versus  
7 Ottawa County and Ottawa County Commissioners. I'm  
8 Judge McNeill assigned to hear this case today. I'm  
9 afraid I do not know all of the attorneys that are  
10 here today, so I'm going to start -- I'm assuming  
11 you are Ms. Howard?

12 MS. HOWARD: I am, Your Honor. It's nice  
13 to meet you.

14 THE COURT: And then gentlemen?

15 MR. KALLMAN: Good afternoon, Your Honor.  
16 May it please the Court, Dave Kallman, along with my  
17 son Stephen. And we're here with Joe Moss, who is  
18 one of the defendants.

19 THE COURT: Okay. Thank you. I have --  
20 The first is a motion regarding a preliminary  
21 injunction based on the ex-parte motion that I signed  
22 I believe last -- or beginning of the month or the  
23 end of last month, that is our first issue. And then  
24 we also have your motion for summary disposition. So  
25 why don't we go ahead and get started on the

1 preliminary injunction issue.

2 MS. HOWARD: Thank you, Your Honor. Would  
3 you prefer argument from the lectern or from the  
4 counsel table?

5 THE COURT: From the counsel table is  
6 fine.

7 MS. HOWARD: Okay. Good afternoon, Your  
8 Honor. We're here this afternoon on our motion to  
9 extend the TRO that was granted ex-parte to a  
10 preliminary injunction pending the litigation of this  
11 case. Here in this case, Your Honor, we believe that  
12 extending the TRO is appropriate into a preliminary  
13 injunction for a few different reasons. Under the  
14 four factor test that I'm sure Your Honor is very  
15 familiar with, all of the factors are present and  
16 counsel toward continuing with a preliminary  
17 injunction in this case.

18 First, the harm -- And I think they're  
19 both at the same time in my briefing, Your Honor, so  
20 that it would be more concise. But the harm to the  
21 public and the harm to my client is irreparable if  
22 the defendants are permitted to remove my client from  
23 her duly appointed position.

24 As I'm sure Your Honor picked up on in the  
25 briefing, there -- a dispute developed after we filed

1 the initial complaint, which led to the filing of our  
2 first amended complaint, as to whether or not my  
3 client was duly appointed by the prior commission  
4 before the current commission took office on January  
5 3rd. Our position, Your Honor, is that she was duly  
6 appointed as the public health officer, and I'll  
7 address that issue in a second.

8 But if you assume that we are correct  
9 under the law and that she was appropriately and duly  
10 appointed as the health officer under the law, it  
11 would be irreparable to permit defendants to remove  
12 her in the manner that they indicated they would be  
13 doing on January 3rd, within an hour or so of taking  
14 office, by announcing they were demoting her to the  
15 interim health officer and announcing who they  
16 planned to replace her with. That evidence is a plan  
17 and intention to replace her contrary to statute.  
18 And under the statute, there are certain conditions  
19 under which she can be removed, but she cannot be  
20 removed in that manner. Given the statutory  
21 protection under Michigan law that is provided for  
22 the position of health officer and the public policy  
23 reasons behind that, Your Honor, the harm would be  
24 both irreparable to the public and to my client if  
25 she were to be removed in that manner.

1           There is not really helpful or analogous  
2 cases that apply to this situation. However, courts  
3 have granted preliminary injunctive relief in cases  
4 where a public official would be removed contrary to  
5 the rights they have under statute. The one case  
6 which I would call at all analogous here, the  
7 State Employees Association case, the court reversed  
8 a grant of a preliminary injunction, but that was  
9 because the -- there was actual cause alleged against  
10 the plaintiff and the state was honoring its  
11 obligation to go through the grievance process there.

12           Here, there's absolutely no allegation  
13 whatsoever made of any wrongdoing and, indeed, there  
14 really could have been none in the first 60 or so  
15 minutes of taking office against my client, and  
16 there's every indication that they have no intention  
17 of honoring any protections for her position under  
18 the law. So from that perspective, Your Honor, the  
19 harm to the public and to public policy as it's been  
20 stated by our state legislature would be to permit  
21 exactly what state law says can't be done.

22           The harm to my client is her reliance on  
23 the terms under which she took the position, her  
24 almost 19-year career at the county and her economic  
25 interests in having the position, those and her

1 interest in honoring the duty she undertook when she  
2 agreed to take the position, Your Honor.

3 The harm to the defendants in comparison  
4 is minimal, if any. My client is the person that  
5 they chose to keep in the office until they can  
6 install their own person, and so clearly they didn't  
7 have too much of an issue with her, at least in the  
8 short term. As Your Honor knows, under the court  
9 rules, if you grant a preliminary injunction pending  
10 litigation of this case, we have to have a trial  
11 within six months. That's per the court rule. So at  
12 most, the situation would only be extended six months  
13 until a final decision was made by this court. And  
14 then at that point, either we'd won or they'd won,  
15 but there's a determination at that point about who  
16 -- who's correct and then the situation -- the  
17 injunction will be resolved at that point.

18 And finally, Your Honor, on the merits,  
19 I'll address the merits before we get to the  
20 defendants' motion, since that is the fourth and  
21 final factor under the familiar test.

22 My client, we believe, is likely to  
23 prevail on the merits. If you assume that my client  
24 was duly appointed in December, 2022, by the prior  
25 commission then I think the case is fairly clear that

1 on the merits we're correct. If you assume that the  
2 defendant's position on the law is correct and that  
3 this Court is required to ascertain whether or not  
4 the prior commission intended there to be a second  
5 confirming vote to appoint my client or if they  
6 intended to appoint her contingent on two things  
7 which we all acknowledge happened as it's written in  
8 the resolution, if you have to look at those intent  
9 issues, we believe we've alleged sufficient facts  
10 which we can prove and will be able to prove in  
11 discovery that the prior commission intended to have  
12 only one vote, and that's if you have to look at  
13 their intent if we have to take depositions of prior  
14 commissioners and the current commissioners. The  
15 reason we would look for discovery from the current  
16 commissioners, Your Honor, is about their  
17 understanding about my client's appointment prior to  
18 her filing the lawsuit and any contrary understanding  
19 that she was appointed -- belief that she was  
20 appointed under the law would be an admission against  
21 interest at that point.

22 If we're correct on the law and the law is  
23 you look to the resolution that was passed by the  
24 prior board and whatever it says controls under the  
25 plain language -- if it's unambiguous, you cannot



1 look to intent and you don't need to look to  
2 intent -- then again, I would say she has been -- you  
3 can conclude today she's been duly appointed, because  
4 the resolution -- the original resolution is very  
5 clear that she was appointed contingent on two  
6 things: The background check and the state HHS  
7 approval, which everyone acknowledges has already  
8 happened.

9 So in that event, under the reading of the  
10 law that I believe is correct, she still wins on  
11 their argument that she was not duly appointed. So  
12 from that perspective, Your Honor, we think we have a  
13 very strong position on the fourth and final factor  
14 of likelihood of success on the merits, Your Honor.

15 Would you like me to address the defense  
16 motions or are you going to take those second, Your  
17 Honor?

18 THE COURT: You can go ahead and address  
19 those, also.

20 MS. HOWARD: That seems the most  
21 efficient, since I've just finished talking about the  
22 merits.

23 THE COURT: Yep.

24 MS. HOWARD: What I would say  
25 additionally, Your Honor, is that the defendants have

1 made a motion to dismiss under both the insufficient  
2 facts as stated claim and the no possible evidence to  
3 support these claims. Those are -- those are the  
4 main thrusts of their motion to dismiss.

5 The -- I'll go backwards and start with  
6 the no possible facts can prove these -- can prove  
7 this claim. It's clearly premature, Your Honor. The  
8 case law is -- it's well-known that a motion for  
9 summary based on the evidentiary record prior to any  
10 discovery being taken is almost always premature and  
11 I would argue it's very premature here.

12 The defendant's claims are based on their  
13 argument that my client was not duly appointed and  
14 they argue that you would look to the intent by  
15 watching the video of the prior meeting and  
16 presumably by taking discovery from some of the prior  
17 commissioners. That's clearly a fact question to  
18 which I'm entitled to discovery on behalf of my  
19 client. And in that event, it would be inappropriate  
20 to grant summary disposition now on that position.

21 It's also their position that you can rule  
22 on the pleadings now, Your Honor, fails for a number  
23 of reasons. So their argument that the law is such  
24 that you are -- that you need to and that you can  
25 look at the intent of the commissioners making the

1 motion versus the plain language of the resolution I  
2 believe is clearly wrong under established law. And  
3 from that perspective, we should be granted summary  
4 judgment on those claims requiring interpretation of  
5 that position, not the defendants, Your Honor.

6 The other arguments that they have made I  
7 think have largely been made irrelevant by the first  
8 amended pleading. I don't agree that we need to name  
9 the Ottawa County Board of Commissioners instead of  
10 the county and individual commissioners. But to the  
11 extent they're correct about that, we have named them  
12 in the first amended complaint and rendered that  
13 argument moot.

14 Their argument about governmental immunity  
15 is -- similarly fails, Your Honor. Multiple claims  
16 that we have made in the first amended complaint  
17 wouldn't be dismissed by governmental immunity  
18 anyways. Individual defendants who are sued in their  
19 personal capacity wouldn't be dismissed by  
20 governmental immunity. The -- any claim for  
21 declaratory or injunctive relief that doesn't bring  
22 with it damages not -- not dismissed by governmental  
23 immunity. And then to the extent we're required to  
24 plead bad faith by the defendants, I believe we've  
25 sufficiently done so in the -- in the original

1 complaint, but certainly in the first amended  
2 complaint where we argued that they have held up  
3 various routine aspects of the job that my client's  
4 been trying to accomplish, that they've been doing  
5 this for political reasons, that they've been trying  
6 to replace her with a political appointee, despite  
7 knowing what the law is, Your Honor, because they  
8 have a majority on the commission, all of that would  
9 be sufficient bad faith to get around any  
10 governmental immunity exception, Your Honor. There's  
11 nothing further required to plead that we're required  
12 to plead there.

13 As for the motion for sanctions, Your  
14 Honor, I think that is probably the biggest stretch  
15 of all. These are hotly contested legal issues.  
16 There's absolutely no evidence of bad faith in the  
17 factual pleading or legal allegations and it's an  
18 issue of public concern. There would be absolutely  
19 no grounds for sanctions no matter who wins today,  
20 Your Honor.

21 Thank you.

22 THE COURT: Thank you. Mr. Kallman?

23 MR. KALLMAN: Yes. Thank you, Your Honor.

24 And may it please the Court, Dave Kallman appearing  
25 on behalf of the defendants in this matter.

1           We'll rely on our brief, as obviously Ms.  
2           Howard has, also, but I want to hit some points on a  
3           few things that she's brought up here.

4           In our opinion, there's no question that  
5           the individual defendants and Ottawa County should be  
6           dismissed from this matter. The proper party would  
7           be the board of commissioners. In the Crane case,  
8           they're the ones who act, they're the ones -- only  
9           ones with authority as a board to make any decisions  
10          regarding the health officer.

11          Next, the plaintiff's constructive  
12          termination claim has to be dismissed because  
13          plaintiff has admitted in Paragraph 28 of their  
14          complaint that she's not an at-will employment -- not  
15          an at-will employee. And that theory only applies to  
16          at-will employees who are fired for public policy  
17          reasons. She's not at will, so that count clearly  
18          needs to be dismissed.

19          As far as the immunity goes, again, as we  
20          pointed out, plaintiff has failed to allege and plead  
21          any exceptions to immunity. She's -- It's silent,  
22          both complaints, the original complaint and the  
23          amended complaint. We cited the cases. It's a  
24          mandatory requirement to plead the exceptions and  
25          they haven't.

1                   So as far as any damages claims, because  
2                   there are claims somehow for damages under injunctive  
3                   relief and declaratory ruling and now with a couple  
4                   of added counts, that standard has not been met. And  
5                   furthermore, opposing counsel just indicated that bad  
6                   faith is the issue. No, it's not. Under the  
7                   immunity statute, it's scope of authority. Did the  
8                   board act within the scope of their authority? They  
9                   made motions. They passed resolutions. I understand  
10                  plaintiff doesn't like them, but there's absolutely  
11                  no argument that that's within the scope of the  
12                  board's authority. She can disagree with them all  
13                  she wants, but it's within the scope of authority.  
14                  It's not a bad faith standard.

15                  Again, it's our position, it's clear from  
16                  the brief, and I'll go into this a little more in a  
17                  minute, but Ms. Hambley was never appointed in  
18                  December of 2022 as the permanent health officer, and  
19                  we'll go through that.

20                  Finally, plaintiff claims now that because  
21                  she's added a couple of counts and some -- a few  
22                  duties that she claims they're being infringed upon  
23                  that Your Honor cannot consider the summary  
24                  disposition motion at this time because of this  
25                  amendment filed a week ago. However, Your Honor,

1 that ignores MCR 2.116(I) -- (I)(1), which clearly  
2 states:

3 "If the pleadings show a party is  
4 entitled to judgements as a matter of law,  
5 (C)(8), or if the affidavits or other proofs  
6 show there's no genuine issue of material  
7 fact, (C)(10), the court shall render judgment  
8 without delay."

9 So I'm going to -- I'm going to address  
10 those, but it's our opinion Your Honor can deal with  
11 the complaint as a whole, even the amended complaint.

12 Now, I think the key issue here, and Ms.  
13 Howard has hit on it and this is going to be, I'm  
14 sure, most of our discussion is was Ms. Hambley  
15 appointed as the permanent health officer in December  
16 of 2022 as she claims? If not, her entire case  
17 collapses. There is no case if she was not appointed  
18 in December.

19 What does the plaintiff claim? That our  
20 clients' fired or demoted her illegally. And what  
21 proof does she offer to support that claim? Page 4  
22 of their brief, that the December unlawful resolution  
23 that was passed and signed by the board chair and the  
24 clerk controls. That alone -- that document alone  
25 controls everything else. No other admissible

1 evidence is offered. Parole evidence does not allow  
2 the Tavernier case, we put that in, all those things  
3 are in our brief.

4 Plaintiff claims that the unlawful secret  
5 December resolution trumps the actual motion and the  
6 official board meeting -- minutes that was put in  
7 place by the board back in December of 2022 -- not  
8 the current board, the last board. They made a  
9 motion. It's on the record. They have official  
10 minutes. And nobody claims those minutes are  
11 inaccurate. Those minutes, they're saying, are  
12 irrelevant. They don't matter. It's the later  
13 resolution that was signed, only by the chairperson  
14 and the clerk, which changed the -- the motion and  
15 the minutes and the minutes as they were laid out.  
16 And we'll get into that. But they're saying the  
17 resolution controls, Judge, ignore the minutes.  
18 Don't even look. Don't look over there. The  
19 resolution controls. We don't think that's the law  
20 and I'll go through why.

21 The board speaks through its official  
22 minutes and its lawful resolutions, that's Tavernier,  
23 again. Plaintiff cites no legal authority for her  
24 claims here, for her position. There's not a single  
25 case in her briefs refuting what -- what we put in



1           our brief, nothing.

2                   And even if this Court accepts this proof  
3           and somehow agrees, well, this resolution somehow  
4           trumps the actual -- what actually happened, the  
5           meeting and the actual official minutes, her case  
6           still collapses. And why is that? Because this  
7           unlawful December resolution changed the full board  
8           vote and action and it changed in secret out of the  
9           public view. This is a clear Open Meetings Act  
10          violation, an OMA violation. Again, plaintiff offers  
11          no response to our briefs on this issue, other than  
12          an endless insistence that somehow this unlawful  
13          resolution controls, as she's just stated now.

14                   Plaintiff fails to dispute the Lockwood  
15          decision, which we cite in our briefs, that makes it  
16          -- and any unlawful resolution is void on its face.  
17          It's of no force and no effect. Lockwood, it's  
18          clear, no case law has been provided to this Court  
19          refuting that clear case law.

20                   Your Honor, no other discovery is needed.  
21          These facts are not changing. What happened was the  
22          past board, at their last meeting on December 13th of  
23          2022, had a meeting. Ms. Hambley's appointment was  
24          not on the agenda. They amended their minutes -- or  
25          not the minutes, they amended their agenda at the

1 meeting, which is their right to do, and they added  
2 that issue onto the agenda for that day for that  
3 meeting. And then the motion was passed, and we've  
4 attached the exhibits and I know the Court's had a  
5 chance to see that, but the actual minutes say  
6 exactly what was passed by the board. And these are  
7 the official minutes. It's the official record of  
8 the board. And these minutes were approved by the  
9 new board at their meetings in January. That's  
10 uncontroverted, Judge. No discovery is going to  
11 change that. That's what happened that day.

12 Then there was a request made to DHHS, the  
13 state agency, to check her background -- I mean, to  
14 check her qualifications. And the letters came back.  
15 It's kind of confusing as to which letter, but  
16 clearly the department says, okay, she's qualified.  
17 We're not disputing that. Nobody is disputing that.  
18 Those are facts, no dispute.

19 So, what happened next? Nothing until the  
20 January 3rd meeting of the new board this year. And  
21 what did the actual official record show? There were  
22 three contingencies that had to be met before Ms.  
23 Hambley was appointed current health officer, three  
24 contingencies, not two, as Counsel was just saying.  
25 They're ignoring the first contingency, approval by

1 the board of commissioners.

2 And when you think about it, Judge, that  
3 makes total sense, because everybody knows, again  
4 uncontroverted, nobody can be appointed to be a  
5 health officer until after the state has approved  
6 them for their qualifications. So on December 13th,  
7 it was a literal impossibility for the board to  
8 appoint her as the health officer. They couldn't do  
9 it and so they had to wait for the approval.

10 Well, they got the approval, I guess  
11 depending on which letter you accept, you know,  
12 December 20th or December 21st, whichever one --  
13 honestly, that doesn't matter. We don't dispute that  
14 that came through at that time.

15 But then what did the board do after that?  
16 Nothing. They had a meeting scheduled for December  
17 27th. They canceled it. No further actions were  
18 taken. All of these are undisputed, uncontroverted  
19 facts, Judge.

20 So then January 3rd, the new board comes  
21 in. They appoint Ms. Hambley as the interim health  
22 officer. And I know you've seen the minutes from  
23 that meeting. These are all facts that won't be  
24 changed whether we had three years of discovery, you  
25 know, or three months. Those are uncontroverted

1 facts.

2 So the board in December 13th last year  
3 approved a motion to authorize the board chair and  
4 the clerk to sign a resolution -- not create a new  
5 resolution as they claim, to sign a resolution that  
6 did what they told them to do with all three  
7 contingencies -- approval by the board, MDHHS  
8 approval, passing the background check. It was not a  
9 motion to authorize the board chair and the clerk to  
10 write up a more detailed resolution as Ms. Howard  
11 alleges. Where is that in here? It doesn't say  
12 that. It's a -- You're approved to sign a  
13 resolution to do the -- and to do exactly those  
14 things. There's nothing in there that gives them the  
15 right to change it or delete things from it, as  
16 plaintiff claims on Page 9 of their brief. The  
17 motion specifically stated what was required to be in  
18 resolution. They had no authority -- the board chair  
19 and the clerk -- to alter or change it.

20 Now, I know, Judge, they're here saying  
21 now: Well, look, Judge, they didn't mean to do that.  
22 They meant to appoint her. Sorry, we kind of messed  
23 up. You know, I mean, that's not what we meant to  
24 do. Your Honor, the Tavernier case, parole evidence  
25 is not permitted. In fact, we're seeing this play

1 out this week at the state level. Our Attorney  
2 General Nessel just came out with a written opinion  
3 on this tax issue that the legislation that was  
4 passed reading the legislation means certain thing,  
5 that the tax rate cut is only a one-time thing for  
6 this year and then it's looked at again from there.  
7 What did we hear? Governor Snyder, Senator Meekhof,  
8 all the people screaming bloody murder, that's not  
9 what we intended. We meant it to be a permanent  
10 drop, that it can't be -- and you can't do this,  
11 blah, blah, blah. Well, guess what? It doesn't  
12 matter.

13 Public agencies speak through what they  
14 actually put in writing, just like this Court speaks  
15 through its orders. So it's kind of -- You know, if  
16 they didn't write their legislation at the state  
17 level correctly and it does something differently  
18 than they intended, it's irrelevant.

19 And we have not once in any of our  
20 pleadings said we want to get to the intent of the  
21 commissioners, as is alleged. I'm not sure where  
22 this is coming from. We have not asked for that.  
23 We're saying the opposite, that there is no intent  
24 for this court to look at. And under case law, you  
25 can't look at it. Parole evidence cannot change the

1 official records, period. The language is what the  
2 language is.

3 So then what did the board chair and clerk  
4 do after this was passed December 13th? They  
5 prepared and signed a resolution in secret to appoint  
6 plaintiff and intentionally omitted the first  
7 contingency, because it's not there. In that Exhibit  
8 E we attached, the resolution that they passed, they  
9 did that later, after that meeting. There was no  
10 public meeting. There was no transparency. There  
11 was no -- They violated the Open Meetings Act, the  
12 very thing they claim we're do -- that our clients  
13 are doing, they did. And they passed a resolution  
14 conflicting with what the board actually did. And  
15 again, their intent is meaningless. That's what they  
16 did.

17 Boards speak through their official  
18 minutes and their lawful resolutions, it's that  
19 simple -- lawful resolutions based on their actions  
20 at a public hearing. Now, boards don't speak through  
21 unlawful, altered and doctored resolutions signed  
22 later by one commissioner, not the whole board, done  
23 in secret without transparency outside the view of  
24 the public, because that's what's happened here.

25 Now again, I'm not speaking to did they

1 intentionally, I'm just saying what happened, Judge.  
2 This is what happened. They had a duty -- My --  
3 Our clients had a duty to correct the illegitimate  
4 and unlawful resolution, that's Lockwood and other  
5 cases we cite in our brief. Any board action,  
6 including this December unlawful resolution, done in  
7 violation of the Open Meetings Act is not valid, is  
8 of no force and effect, Lockwood. Nothing has been  
9 given to you refuting that, that's the law in this  
10 state, crystal clear.

11 Therefore, since their altered revisionist  
12 resolution is void as a matter of law in the official  
13 minutes and the corrected resolution that our clients  
14 passed in February controls, plaintiff was not  
15 appointed as the permanent health officer last  
16 December. Because there was no subsequent vote, that  
17 third contingency was not met. There's no dispute,  
18 contingencies two and three were met, the MDHHS and  
19 the background check. The first contingency, another  
20 vote of the board, there's no dispute that never  
21 happened. There's been no claim it happened. These  
22 are all uncontroverted facts, Judge. No discovery is  
23 going to change it.

24 Now, it's interesting, plaintiff takes the  
25 holding in Hardaway -- the Hardaway versus Wayne

1        County case and tries to say that somehow supports  
2        her, and I -- I honestly don't get that. That case  
3        dealt with a county resolution by a board of  
4        commissioners where nobody disputed the lawfulness of  
5        the resolution itself. Everybody agreed that was the  
6        resolution that was passed. Everybody agreed with  
7        it. It was lawful and correct. The case was only  
8        deciding, well, there is some ambiguous language in  
9        it. What does it really mean? It was fighting over  
10       what the language itself meant.

11                So that's clearly separate from our  
12        situation. We're not fighting over ambiguous  
13        language. We're fighting over whether or not the  
14        resolution was lawful or not. It did not accurately  
15        state what the board did back in December. Hardaway  
16        is completely inapplicable.

17                And so I -- you know, it's clear. And if  
18        they say, "well, no", as they are arguing, "well, we  
19        have this resolution, it was done. The board chair,  
20        one commissioner signed it, the clerk signed it, that  
21        controls. Don't look at anything else", that's then  
22        a violation of the Open Meetings Act. Lockwood, it's  
23        void on its face. And either way, they lose, Judge.  
24        And this is a legal issue. This is not a factual  
25        issue at all. No facts are in dispute on these



1 points that I'm giving you right now.

2 The board passed the motion as stated in  
3 the official and approved board minutes. And if you  
4 read through plaintiff's briefs, they conspicuously  
5 avoid talking about the minutes because they know  
6 that kills their case. And they ignore it.

7 One commissioner and the clerk made the  
8 decision to eliminate one of those three  
9 contingencies so it did not comport with the official  
10 minutes of the board. This violates the requirements  
11 that the board acts as a whole, the Crane case that  
12 we cited in our brief. Board -- Commissioners  
13 don't act individually. They act as a board and so  
14 it's a violation of the Open Meetings Act.

15 The current board properly and legally  
16 fixed this aberrant and unlawful resolution,  
17 corrected it February 28th. Plaintiff claims that  
18 this December resolution somehow supercedes or  
19 overrides the action of the board on December 13th in  
20 the official minutes. This makes no sense. And they  
21 offer no law to support such a novel interpretation.  
22 If the board truly intended to change the official  
23 board minutes and the board action, they can -- they  
24 can't do it through the act of the chair acting alone  
25 and the clerk signing along with them. That's not --

1 that's not permissible. You don't change the  
2 official minutes through that. There's a process for  
3 doing that. It's in the Open Meetings Act and that  
4 was not followed.

5 This further violates MCL 46.3. It  
6 requires the board to only act by the votes of the  
7 majority of the members present. That did not happen  
8 with this resolution and, again, nobody disputes  
9 that, nobody. Therefore, under Lockwood, this  
10 revisionist resolution is completely void and of no  
11 effect.

12 Now, plaintiff admits in her summary  
13 disposition brief, Page 4 at the top, that twice in  
14 her complaint, Paragraphs 41 and 45, that the wording  
15 of the February 28th resolution basically means  
16 plaintiff was never appointed as health officer. She  
17 admits our point and it's in their pleadings and in  
18 their brief. The February 28th resolution simply  
19 copied the exact language contained in the official  
20 minutes from the December 13th meeting. They didn't  
21 change anything. They simply put it over properly  
22 under the resolution.

23 And this is exactly why plaintiff's case  
24 falls apart in its entirety. Since plaintiff admits  
25 this language in the February 28th resolution did not

1           appoint her as the health officer then she has to  
2           admit the exact same language in the minutes of the  
3           February -- or the December 13 official board minutes  
4           also did not appoint her to that position. So the  
5           minutes didn't appoint her and she could not have  
6           been appointed, because MDHHS -- And we attached to  
7           our exhibits, they say in their rules and regs, you  
8           can't appoint anybody until we've given approval.

9                         So on December 13th, the argument that she  
10           was appoint -- it's an impossibility legally, no way.  
11           Therefore, the plaintiff has admitted by the plain  
12           language of the motion and official minutes that she  
13           wasn't appointed in December. Her entire complaint  
14           must be dismissed because this is the hinge pin for  
15           everything. She was never appointed as health  
16           officer until the current board promoted her and  
17           appointed her in the interim under the terms and  
18           conditions of the January 3rd motion, which I know  
19           has been attached and the Court's seen.

20                        There's no way plaintiff is entitled to  
21           injunctive relief or declaratory relief or any kind  
22           of relief for a job she never held. It's that  
23           simple, Judge.

24                        Let me put it like this. Your Honor hears  
25           a case. You make a ruling. Then you sign and date

1 an order. And then -- I don't mean you, Judge, but  
2 let's just say a hypothetical judge. And the judge  
3 does an order, signs and dates it, and then hands it  
4 to one of the parties and says, "here, go take that  
5 and if you want to change something in it or you want  
6 to take something out of what I put in my order,  
7 yeah, go ahead. Make those changes as you see fit",  
8 and then that judge enforces the altered order, even  
9 though it conflicts with the judge's actual ruling.  
10 Now, does anybody sitting here today think that -- I  
11 mean, everybody would go: You're crazy. That's  
12 impossible. You cannot do that.

13 The court speaks through its orders. They  
14 get put in writing, they're followed. And if there's  
15 an error in the order, what do we do as lawyers? We  
16 come back to the court. Judge, there's been an  
17 error. We have to make a motion. We have to do  
18 something, try to -- get the transcript, try to prove  
19 the error.

20 That hasn't happened here. The act was  
21 done. The official minutes are clear. There is no  
22 dispute, that resolution passed in December didn't  
23 follow the minutes. The board speaks through its  
24 minutes and those minutes were approved later by the  
25 subsequent board.

1                   So I ask where is there any proof that  
2                   this resolution passed in December was ever brought  
3                   out before the public, at a public meeting where it  
4                   was properly noticed and people could come and  
5                   question about this? Was there any kind of meeting  
6                   at all? No. They just did it and signed it.

7                   And again, I'm not casting aspersions on  
8                   anyone. You don't think it was a mistake -- It  
9                   doesn't matter. It's all irrelevant. They speak  
10                  through what they did and they're stuck with what  
11                  they did. It's that simple.

12                  This is exactly why the plaintiff in this  
13                  case is arguing that they have the right to do this  
14                  with the resolution and they openly admit doing it.  
15                  This claim is ludicrous, Judge. Plaintiff can't show  
16                  the decision to appoint her with only two  
17                  contingencies -- with only two contingencies was ever  
18                  done at a public meeting because it wasn't. There's  
19                  no evidence to prove that.

20                  Let me quote from plaintiff's brief --  
21                  summary disposition brief, Page 9, plaintiff says --  
22                  quote:

23                                 "When a motion is made for the sole  
24                                 purpose of proposing a more detailed resolution,  
25                                 the motion is nothing more, other than the

1           vehicle by which the resolution is introduced  
2           and subsequently decided."

3           I mean, do you catch what they're saying  
4           there? Look at what they admit in this statement in  
5           their own pleadings, Judge, in their brief. The  
6           12-13 motion was only to propose a more detailed  
7           resolution. Oh, really? Where does it say that  
8           here? It doesn't say that. They're making it up.  
9           They're admitting they did something different than  
10          what the board approved on December 13th.

11          The motion is only a vehicle to introduce  
12          a resolution? What? This strange credulity, Judge.  
13          Where does it say that in here? It doesn't say that.  
14          They say, "the clerk and chairperson are authorized  
15          to sign a resolution to do the following", and they  
16          lay it out. There's nothing in here that says, oh,  
17          do what you want. If you need to change things  
18          around, go ahead. There's nothing like that there.

19          And then finally, the resolution will be  
20          decided later, they say, subsequently decided. What?  
21          No, no. It was decided December 13th. So they're  
22          trying to muddy the waters here, Judge. This other  
23          resolution -- This resolution wasn't a subsequent  
24          decision. And if it was, they violated the OMA.  
25          There was nothing done in public.

1                   So you see how either way they lose.  
2                   There's no legal way they can prevail here, none at  
3                   all. Plaintiff cites no legal authority for this  
4                   claim. They -- Motions are only vehicles for them  
5                   to change something out of the public eye later?  
6                   I've never heard of such a thing. The motion did not  
7                   state it was for the purpose of proposing a more  
8                   detailed resolution. The minutes stated exactly  
9                   what's there. This resolution was never introduced  
10                  at a later meeting. It was never subsequently  
11                  decided or approved at a later meeting.

12                  It's crystal clear, Judge. Therefore,  
13                  even under the plaintiff's theory the December  
14                  resolution was not properly enacted or approved, it's  
15                  an OMA violation. If plaintiff's theory is correct,  
16                  Judge -- Let's think about this for a minute. If  
17                  their theory is right, the OMA is a nullity. Might  
18                  as well take it off the books. You don't need it  
19                  anymore. County boards are free to do whatever they  
20                  want outside the view of the public. The board can't  
21                  pass a motion to have the board chair and clerk write  
22                  up a resolution that contradicts the actual motion in  
23                  the minutes is passed by the board. They can't  
24                  delete or add language however they want or fill in  
25                  their own terms. This violates Lockwood. It would

1 nullify and negate the OMA.

2 Plaintiff's requesting injunctive relief  
3 that will let them get away with their illegal  
4 activity, pure and simple. I'll just be blunt.  
5 They're proposing to this Court give us an injunction  
6 to allow our illegal OMA violations and everything we  
7 did here with this resolution to be upheld, that's  
8 what they're asking for.

9 If plaintiff prevails, it sets a terrible  
10 precedent. It opens the door to abuse of power and  
11 corruption on a huge scale by county boards and the  
12 public will never know because they'll just change  
13 resolutions later after the meeting and do whatever  
14 they want and nobody knows. That's ridiculous.

15 Plaintiff's complaint must be dismissed.  
16 This issue alone decides the case, Judge. She raises  
17 some other things I just want to touch on quickly  
18 here. I know I've been going for awhile so I'll try  
19 to be quick here.

20 The amended complaint, Judge. I just want  
21 to bring up a couple things. And again, I think the  
22 Court, based on these facts, can rule on this matter  
23 right now. But when we pointed out in our first  
24 brief that plaintiff had alleged not one specific  
25 duty that she was being denied or interfered with



1 from doing, not one, so now in the amended complaint  
2 they've essentially raised three new duties and then  
3 they added two counts. So let me talk about the  
4 duties just briefly.

5 One is this community dental center  
6 contract that she's claiming my clients interfered  
7 with that; second, this community health needs  
8 assessment survey that the hospitals do; and third,  
9 applying for grants. Those are the three things that  
10 she's claiming this is how the defendants are  
11 interfering with my job, my duties.

12 Now, it's interesting, these are the only  
13 three she could come up with and they're in the  
14 complaint after we've raised this, so let me go  
15 through them real quickly and explain how they're all  
16 meaningless and not true.

17 The first one, the dental center contract.  
18 Plaintiff alleges not one action by the defendants,  
19 not one. What does she allege? That legal counsel  
20 asked her some questions. Legal counsel was  
21 questioning some things asking for information, not  
22 the defendants. Legal counsel is not permitted to  
23 ask questions of county department heads as we're  
24 looking at contracts? That's interesting.

25 Secondly, Judge, you know what's omitted?

1           And this is, I think -- Well, you can take it the  
2           way you want to take it. I know how I take it. Did  
3           you hear in their pleadings or anything that they put  
4           in there that that contract is in place for six more  
5           months; that that contract is in effect until  
6           October -- October 1st, 2023, six more months; that  
7           this is an extension -- counsel's office asked for  
8           some more information? We have six months to approve  
9           this contract. Nothing has been denied. We've asked  
10          for information, Judge. None of this interferes with  
11          her duties.

12                        The board of commissioners is not  
13          obligated -- obligated to blindly approve all of  
14          plaintiff's requests without any deliberation or  
15          oversight. So the Court understands, we've made a  
16          recommendation at this point and we're making a  
17          recommendation for one little change dealing with how  
18          Elliott-Larsen should be complied with in the  
19          contract. That is clearly within the scope of legal  
20          counsel's duties. Defendants had nothing to do with  
21          it. This kind of give and take is normal for  
22          contract review. And it's not like this contract  
23          died a month ago and now we're without it. This is a  
24          ridiculous claim. The bottom line, the board did  
25          nothing to interfere with her duties regarding this

1 dental center contract.

2 Let's look at the survey, community health  
3 needs survey. We attached the memorandum of  
4 understanding, the CFR regulations from the IRS,  
5 we've attached all those to our briefs. Nothing in  
6 the -- Did you hear this from plaintiff? Nothing in  
7 the CFR regs requires the Ottawa County Health  
8 Department to do anything. Nothing. This is an  
9 obligation on the local hospitals in the area.

10 Now, of course the county health  
11 department can help, can provide input, can do all  
12 kinds of things, but their claim is it's a duty,  
13 Judge. Okay? There is no duty. The county doesn't  
14 have to do a thing, only the legal -- only the  
15 hospitals have the legal duty to do this community  
16 survey. As plaintiff admits in Paragraph 50 of her  
17 complaint, the local hospitals do this survey and  
18 they're going to do it with or without county  
19 involvement, and that's the key point. The plaintiff  
20 has no duty regarding the survey, but yet they put it  
21 up to you as, see, I'm being stopped from doing my  
22 job. When you have a non-duty? I don't understand.

23 More -- Furthermore, and why we attached  
24 the agreements and the memorandums to our pleadings  
25 or to the briefs, plaintiff is requesting the county

1 spend directly over \$31,000 to pay for a survey it  
2 has no obligation to perform. The -- Again, the  
3 board has a legal duty to oversee all county  
4 spending. The county would also be spending an  
5 unknown huge amount of money beyond the 31,000 in  
6 additional funds because the contract requires the  
7 county to coordinate all the logistics of the survey,  
8 oversee all the contractors, manage and house all the  
9 raw data using county IT personnel and resources,  
10 arrange and conduct all meetings, serve as fiduciary  
11 for the project, be responsible for reporting  
12 requests and on and on.

13 Now, again, those all might be very good  
14 things. This board has not made a decision at this  
15 point because it's not -- it's not anything that has  
16 to be decided right away. They just ask for  
17 information, but yet plaintiff comes to you and says  
18 they need to do it now because I asked for it,  
19 because I told them. I'm the health officer, which  
20 she's not. But I'm the health officer, they have to  
21 do what I say.

22 All of this requires more county money and  
23 resources. How much money is going to be spent by  
24 the health department on this project? Nobody knows,  
25 no one. I doubt plaintiff knows. The board has a

1 right to know and assess whether the county should  
2 expend funds on this program and how much it will  
3 cost. That's their legal job. That's what they're  
4 supposed to do. Nothing the board has done prohibits  
5 her from cooperating with the hospitals to move this  
6 project along.

7 Again, plaintiff seems to believe she's  
8 not subject to the board oversight and this violates  
9 MCL 46.11(k), because she has a duty to report to the  
10 board on anything they ask her about. Just because  
11 large expenditures and tax dollars are being  
12 questioned by the board and they ask for more  
13 information is not interference with her duties, nor  
14 is it inference with her non-duty in this situation.  
15 The board is not required to rubber stamp her  
16 open-ended blank check funding request.

17 Now, again, this might be a very proper,  
18 important survey thing to do and the board could  
19 decide here, yeah, we're onboard. We'll do it. But  
20 they can't ask questions? They can't ask: Well, we  
21 know it's 31,000. Is this going to cost us 100,000  
22 because of all the man hours and all the other work  
23 we're doing? Is this going to cost us 200,000? I  
24 mean, they can't ask? Do you see how silly that is,  
25 Judge? But that's what they're claiming.

1                   And then finally on this point, plaintiff  
2 admits in her own complaint, Paragraph 52, two of the  
3 three surveys have not even been fully developed or  
4 constructed yet, so they're not even done, and yet  
5 there's this urgency? They're obstructing her  
6 non-duty, because -- for -- for surveys that aren't  
7 even done? She admits at Paragraph 52 of her  
8 complaint, apparently the plaintiff believes the  
9 board's required to approve a proposal that is even  
10 not yet fully prepared. This would be an abdication  
11 of their oversight duty if the board did that and she  
12 knows it. The bottom line, Judge, this survey thing  
13 did nothing to interfere with the duty.

14                   So now the last one, the grants. It's  
15 another spurious claim unsupported by any facts.  
16 Plaintiff does not allege a single grant that has  
17 been denied by the board, not one. Well, then how  
18 have they interfered? There's not a single grant.  
19 They don't even allege that it's been denied.

20                   A hypothetical fear -- Because this is  
21 how it's phrased in their complaint, a hypothetical  
22 fear that some grant proposals might be denied in the  
23 future is not evidence that the board has interfered  
24 with her duties. Again, the board has oversight of  
25 all county expenditures.

1                   The Brownstown Township case, Judge, I'll  
2                   just refer you back to that briefly. Remember, that  
3                   was the one Wayne County Sheriff, the county  
4                   commissioner said we're not going to pay for road  
5                   patrols. We're not going to fund it, because they  
6                   had limited resources. The argument was, well, it's  
7                   for the public good. It's for the public safety,  
8                   public health. I mean, all good things. But the  
9                   county didn't have the money so they didn't fund the  
10                  road patrols for awhile. And so township sued,  
11                  trying to force them to do it. And guess what the  
12                  court of appeals said? Nope, they don't have to do  
13                  that.

14                  If funding of police road patrols by a  
15                  county is not required and is a decision within the  
16                  purview of the board of commissioners then neither is  
17                  discretionary decisions to either accept or decline  
18                  grant money or to expend funds for optional surveys  
19                  or other programs outside the purview of the board.  
20                  Plaintiff is not a law unto herself where she can  
21                  unilaterally make decisions unfettered by any  
22                  oversight by the board.

23                  Now, plaintiff apparently takes umbrage at  
24                  the board exercising their constitutional and  
25                  statutory obligations. Apparently, in the past,

1 prior boards have not done this. She admits that in  
2 her complaint. We have not been micromanaged like  
3 this before. Well, Judge, I can't speak to what  
4 other commissions have done in the past. And if they  
5 shirk their duty or they didn't exercise oversight,  
6 that's on them. This board is going to do its duty.  
7 She's subject to their oversight, whether she likes  
8 it or not. Whether the board decides to renew the  
9 dental contract or let it lapse or to fund the  
10 hospital survey or not fund it is wholly up to the  
11 board's authority, not this Court, not the plaintiff.  
12 Legislatively, the statutes are clear, it's entirely  
13 in their purview.

14 And in that Wayne County Sheriff case, I  
15 just want to read this, Judge, because this is really  
16 on point and we cite it in our brief.

17 "Under the American system of  
18 constitutional government, it's the duty of  
19 the board of commissioners to raise the funds  
20 for government operation, distribute them  
21 among the various executive departments.  
22 Since public funds are not unlimited and  
23 every executive always needs more money than  
24 he or she can get, the matter of appropriations  
25 is a highly political one. For the necessarily



1           apolitical court to attempt to resolve such  
2           political disputes by legal methods would be  
3           the height of folly."

4           It's our court of appeals saying this.  
5           This court, that court of appeals panel said: We're  
6           not that foolish. The parties should argue this  
7           question to the voters. They're asking you to step  
8           in and micromanage the board, Judge, over their  
9           duties. That's not this Court's role.

10          So none of these duties that she's raised  
11          are actual duties of anything -- To begin with,  
12          there hasn't been any interference, despite their  
13          allegation. And they really, if you read carefully  
14          what they say, they kind of acknowledge it. And so  
15          once again, there are no duties.

16          Now as to the last point, the two counts,  
17          Judge, Count IV, Count V, again, I think this Court  
18          can rule on our summary disposition motion because  
19          these two counts don't really change anything. They  
20          can add 10 counts and it's not going to change the  
21          fact that she was never appointed as the permanent  
22          health officer back in December of last year.

23          But Count IV deals with two things. They  
24          want a declaratory ruling that she was appointed as  
25          the health officer. Well, that's duplicative.

1 They've already asked for that in Count I, so it's  
2 the same thing, so I don't see how that's a new  
3 claim.

4 The second half of that count is the  
5 February 28th resolution. She wants you somehow to  
6 declare that the board couldn't do that. Does she  
7 cite any law? Does she cite anything to say that you  
8 can step in and tell the board: You know what? I'm  
9 going to be the referee here and I'm -- I don't think  
10 you guys can do that. No. And we've cited all the  
11 law and everything that says the opposite. So that's  
12 a totally baseless claim.

13 So finally, we're down to -- Well, Judge,  
14 let me just say this. If this unlawful and  
15 inaccurate resolution controls, the prior board  
16 violated the OMA, as I've already said. This  
17 revisionist resolution was never voted on and it was  
18 done in secret. This is a novel argument that they  
19 can't do these things. We've been through it.

20 Now, the Whistleblower Act, another  
21 meritless claim, Judge. Think about this for a  
22 minute. This is a very specific statute on what you  
23 have to have in order to have a whistleblower claim.  
24 Again, these are -- No discovery is going to change  
25 these facts here. What law was violated by the

1 board? What law? None.

2 And plaintiff doesn't cite any law, a  
3 statute or something that our clients did that  
4 violated -- that was any kind of an illegal act in  
5 her original complaint on February 13th of this year.  
6 And remember, she says here in her pleadings, the  
7 Whistleblower Act is based on the notice she gave in  
8 her original complaint -- not the amended complaint,  
9 the original complaint. There's nothing in that  
10 complaint that says anything about any law being  
11 violated. There's not a single allegation.

12 Retaliation, Judge, which you got to have,  
13 whistleblower cases, how is it retaliation when  
14 plaintiff claims defendant already demoted her back  
15 on January 3rd? Well, you can't be demoted twice to  
16 the same position. I mean, which is it? They're  
17 already alleging she was demoted. Our position,  
18 obviously, clearly is she was not demoted. She  
19 wasn't in the position. She was elevated. She was  
20 promoted to the interim position. So there's no  
21 retaliation.

22 The February 28th resolution did not cause  
23 plaintiff to suffer any changes. And this is, again,  
24 right in the act. Where have they alleged a change  
25 to her compensation, terms, conditions, location,

1 privileges or anything else? Do they allege she was  
2 discharged, threatened or otherwise discriminated  
3 against? No. There have been absolutely no  
4 allegations that she suffered pecuniary harm or  
5 anything else. This is all required by MCL 15.362.  
6 She has completely failed to properly state a cause  
7 of action. There are no disputed facts. Her  
8 complaint and resolution speak for themselves. No  
9 additional discovery is going to change these things.  
10 No additional briefing is going to change these  
11 things. This count is completely baseless.

12 So for those reasons on our summary  
13 disposition, we believe it's appropriate for it to be  
14 granted.

15 Now briefly on the preliminary injunction,  
16 I'll say -- I'm going to spend just a minute here on  
17 irreparable harm, because I think this is important.  
18 Harm to the public is irrelevant to this factor and  
19 it cannot be considered. We cited the case law. And  
20 yet even here today, she talked about, well, I'm  
21 blurring them together. I'm putting four and one  
22 together. You can't do that. The first one is  
23 irreparable harm to the plaintiff alone and that harm  
24 has to be imminent and she has to have no adequate  
25 remedy at law. Well, what is she -- what's she

1 asking for, Judge? She's only asking for her job to  
2 be -- that she can stay at this job that she never  
3 had to begin with. But don't you have a remedy at  
4 law if you're wrongfully terminated as she claims she  
5 is? Of course you do. Damages. She has adequate  
6 remedies at law.

7 She claims she's been harmed to such a  
8 degree that she can't perform her duties, but yet I  
9 just went through all that. She's not been prevented  
10 from doing any duty. She knows the board's not  
11 interfering with her.

12 So what about all of these duties? Why  
13 didn't -- Why didn't the plaintiff ask for any  
14 injunctive relief on these points, Judge? No, no.  
15 It was only for her own self-interests, save my job,  
16 which she doesn't have, but save it, you know, let me  
17 stay it in. Tie the board's hands who did things the  
18 right way.

19 Why didn't she ask this Court to order the  
20 board to sign the dental contract if she believes  
21 they had a duty to -- you know, that that had to be  
22 signed right away? She hasn't asked you to do that.  
23 Why didn't she ask the Court to order the board to  
24 pay 10's of thousands of dollars for this optional  
25 health survey that the county is not required to do?

1 She didn't ask you to do that. Why didn't she ask  
2 the Court to order the board to approve all grant  
3 applications without any review or oversight? Well,  
4 she's not asking you to do that. She's not asking.  
5 Why doesn't she ask the Court to just order the board  
6 to approve any action she wants and every project she  
7 wants. Why not? Because she knows she can't ask for  
8 that relief, it would never be granted. She has no  
9 right to any of these things and she knows that.  
10 This puts the lie to her lawsuit, Judge. It's about  
11 her and her claim.

12 And again, I'm not casting aspersions  
13 here. I'm not doubting for a minute that Ms. Hambley  
14 thought she was appointed. I'm -- That's not what  
15 I'm saying. But the reality is she was not. She was  
16 not appointed. That's why this lawsuit fails.

17 All the plaintiff is asking for in this  
18 injunction is her personal job security to a job she  
19 never held in order to allow her to do a job she now  
20 claims the board is preventing her from doing, which  
21 they're not. If there's no irreparable harm to her,  
22 to the party, she loses. You don't even have to look  
23 at the other elements, Judge -- the Woodhaven School  
24 District case, Page 2 of our brief. That's it. Case  
25 over. And she has alleged no harm for which she does

1 not have an other -- otherwise legal remedy, because  
2 she does. And again, I don't think she'd ever  
3 prevail on it, but she does have a legal remedy.

4 Now the likelihood of success, we talked  
5 about it for the last half hour, so I think you  
6 understand our position.

7 The balance of the harms. There is no  
8 harm to her. Nothing has happened to her and she has  
9 not and will not suffer any harm. She's getting the  
10 full pay, the benefits. She has all the authority.  
11 She's the interim health officer right now.

12 But the board is directly harmed by the  
13 use or patience of its authority to appoint a health  
14 director. The board is harmed if the illegal actions  
15 of the prior board, OMA violations, are upheld. That  
16 harms my clients big time. Moreover, the board is  
17 directly harmed by the constitutional violation of  
18 the separation of powers doctrine if this injunction  
19 continues. And that is crystal clear. Any violation  
20 of a constitutional right is always irreparable harm,  
21 always, even a temporary violation, Garner v MSU, 185  
22 Mich App 750, 1990. A violation of their rights --  
23 constitutional rights, the board's rights, is  
24 irreparable harm.

25 The public interest, I'll just say this.

1           There's no public interest in ensuring plaintiff as  
2           the health director or that she has job security.  
3           How is that the public interest? There is a -- And  
4           she wants -- I'm worried because these things aren't  
5           happening, then why didn't she ask you to do anything  
6           about it? So again, she's blurring this stuff,  
7           Judge. Don't fall for that. The only thing she's  
8           asking for is her personal security, her job, which  
9           she has other remedies to pursue if she wants.

10                         There is a great public interest to not  
11           reward Open Meetings Act violations to ensure all  
12           laws are complied with and to ensure the board does  
13           not have its authority usurped in any way. That's a  
14           huge public interest. The board must be able to  
15           perform its statutory and constitutional duties free  
16           of any unwarranted interference for personal gain of  
17           plaintiff.

18                         So for all these reasons, the injunction  
19           should be denied. Our motion should be granted.  
20           I'm happy to answer any questions that the Judge has,  
21           if you have any, Your Honor, but I think we've laid  
22           out our position. Thank you.

23                         THE COURT: Do you have a response?

24                         MS. HOWARD: I do, Your Honor. There are  
25           a number of statements by my brother counsel that I



1 think misrepresent what was in the briefs and what  
2 we've alleged in the complaint.

3 As I'm sure Your Honor knows, in our  
4 response to their motion for summary disposition, we  
5 talked at Page 8 and 9 about all of the cases that  
6 say a written resolution is what controls unless the  
7 language is ambiguous. The language here is not  
8 ambiguous.

9 Mr. Kallman also spent a lot of time  
10 talking about a variety of facts which we disagree  
11 with significantly. We think you can go straight to  
12 our complaint for the allegations and they're  
13 significantly different than what Mr. Kallman is  
14 alleging. He's alleging that the resolution -- the  
15 original resolution wasn't in front of the board when  
16 they considered it and voted upon it. That's not  
17 true. But nonetheless, if that's relevant, that's a  
18 fact dispute.

19 The reason why we subpoenaed Mr. Moss here  
20 today is because we believe he made statements  
21 against interest about my client's appointment and,  
22 again, that wasn't addressed by Mr. Kallman.

23 If the manner in which the resolution was  
24 drafted and signed is relevant here then that's a  
25 fact issue. But it was in front of the board at the

1 time they voted at a public meeting and it was signed  
2 by the clerk and the chair of the commission like all  
3 resolutions are signed. They're not signed by all of  
4 the board of commissioners.

5 Mr. Kallman acknowledged that the board  
6 can add an agenda item, which it would be ironic if  
7 he didn't because this board adds a lot of agenda  
8 items. The -- There is no question that this is the  
9 resolution that was in front of this group when they  
10 voted. And this wasn't a secret sneak attack, Your  
11 Honor. The county posted the position for three  
12 months, did a number of interviews for the  
13 candidates, and so anyone paying attention would have  
14 seen that this is what was coming down the pipe.

15 But, again, if it's relevant about how --  
16 how the resolution was signed, where it was signed,  
17 if the commissioners had it in front of them, if  
18 that's relevant, that's a fact question. I don't  
19 think it is; but if it is, that's a fact question.  
20 And if that fact question is relevant, that's why we  
21 gave a subpoena to Mr. Moss so we can ask him about  
22 the e-mail where he concedes she had been appointed  
23 and about other issues, Your Honor, but I don't even  
24 think that's necessary. This is the resolution that  
25 was in front of the board, voted on and the language

1 of the resolution controls, as we stated in eight and  
2 nine.

3 And then it's unfortunate that brother  
4 counsel spent some time arguing about whether or not  
5 my client's interests were sufficiently pure. Even  
6 if she were only here about her own job, that would  
7 be enough. One's job is important and one's  
8 investment in their career is important. However,  
9 she has alleged there are a variety of things which  
10 she is reported to do under state law and that's why  
11 she's here and those things are important.

12 And to the extent -- Again, there's a lot  
13 of discussion about the ways in which -- we have four  
14 different ways we've alleged that the board and its  
15 agents have been interfering with her. And if that's  
16 relevant, we disagree sharply with some of the facts  
17 that were stated, and that's a factual dispute, if  
18 it's relevant.

19 But the larger point is that my client is  
20 going to do her best to fulfill the duties she has  
21 under state law, but there are a number of examples  
22 already of ways in which they've been attempting to  
23 interfere. And I think it's very clear from the  
24 beginning that they want to appointment their own  
25 person who is a political appointee, and that is what

1 the statute prohibits.

2 So for all of those reasons, Your Honor, I  
3 think it's appropriate to continue the TRO into a  
4 preliminary injunction and to deny both of the  
5 defendants' motions.

6 THE COURT: I've got a few questions.  
7 I'll start with you.

8 MS. HOWARD: Okay.

9 THE COURT: I have a few questions. So in  
10 I believe their response, they made an allegation  
11 that simply entering the temporary restraining order  
12 conflicts with MCL 46.11(N). What is your response  
13 to that?

14 MS. HOWARD: It doesn't, Your Honor. So  
15 46.11(N) is one statute that applies here and talks  
16 about county officers. That statute provides certain  
17 criteria under which an appointed officer can be  
18 removed from her job. In this case, again, we take  
19 the position that she was duly and appropriately  
20 appointed. So once that occurred, they could not  
21 remove her at all, demote her to interim or anything  
22 else, without following the dictates of 46.11(N).  
23 That provides for a hearing and with respect to  
24 certain types of allegations. It requires a board  
25 finding or a board opinion about incompetence to

1 exercise her duties. And again, there's no way they  
2 had found that or had that opinion in the first 60  
3 minutes after they had taken office, Your Honor. So  
4 none of those things had occurred here to  
5 appropriately remove her.

6 But I would also mention that in this  
7 case, it's not just MCL 46.11(N) that applies. The  
8 larger public health code applies and talks about the  
9 ways in which you appoint a public health officer,  
10 and so that also is an overlay over 46.11 and  
11 requires that she be given the due process and the  
12 requirements that are talked about in 46.11 before  
13 she can suffer any adverse employment action. And  
14 being demoted to interim and a statement of "we  
15 intend to replace you in the future" is a very clear  
16 adverse employment action, Your Honor.

17 THE COURT: And so it's your position that  
18 when that -- when that resolution was signed on I  
19 believe it was on or about December 13th, after the  
20 December 13th meeting, she was then appointed the  
21 full county health officer, that's your position?

22 MS. HOWARD: Almost, but not exactly, Your  
23 Honor.

24 THE COURT: Once she got the requirements?

25 MS. HOWARD: Yes, Your Honor. Once the

1 two contingencies were met. Once she passed the  
2 background check and HHS approved her which, again,  
3 Mr. Kallman confirmed, nobody disputes those things  
4 happened.

5 THE COURT: So how do you account for the  
6 discrepancy that they're saying exists between the  
7 meeting minutes and the resolution?

8 MS. HOWARD: Well, I think the meeting  
9 minutes probably follow what I would charitably say  
10 is the awkward way in which Commissioner Kuyers  
11 introduced this action. He talked about appointing  
12 her and he talked about passing the background check  
13 and the HHS approval. And I personally think it is  
14 clear that what he intended was we are appointing her  
15 today contingent on these things happening.

16 But what is important is what is in the  
17 resolution that they all had in front of them is they  
18 were asked to consider that as the action of the  
19 board. They had it in front of them. It said:  
20 We're appointing her with these two contingencies.  
21 Nobody wrote anything later in secret. It was in  
22 front of the board. And again, if we have a dispute  
23 about that, that's a factual dispute.

24 And it has what I would call a merger  
25 clause at the end that says if this conflicts with

1 motion, anything else, the written resolution  
2 controls. Again, pretty standard language for  
3 resolutions that are drafted and put in front of a  
4 county board when they're voting on something like  
5 this.

6 It's important to note Mr. Kuyers even  
7 came and said: Yes, what I meant was this, not how  
8 you're viewing my statement now. To the extent the  
9 minutes took down anything talking about what he had  
10 to say, again, I can see where that would happen,  
11 where somebody is following along and sort of  
12 transcribing what's said. But what they were asked  
13 to consider is what's in the resolution. There's no  
14 --

15 If we -- if we were to go and look at  
16 everything someone said in introducing a resolution  
17 every single time a new board didn't like the  
18 resolution, we would be looking at videos of  
19 commissioner meetings all the time. That's why the  
20 case law that I cited, eight and nine, is pretty  
21 clear about the written resolution controls. And  
22 there was no dispute about that or controversy about  
23 that until my client filed the complaint here and  
24 argued that they were clearly illegally demoting her  
25 and intending to fire her entirely from the position,

1 Your Honor.

2 THE COURT: Thank you. So Mr. Kallman,  
3 was that written resolution in front of the board  
4 when that vote occurred?

5 MR. KALLMAN: Well, what I can tell you is  
6 I -- I've not -- they've not alleged that. I've not  
7 seen evidence of that. What I do know is they didn't  
8 attach the resolution to the minutes. They didn't  
9 insert it into the official record book of the board.  
10 It's not there.

11 And honestly, though, Judge, that is  
12 irrelevant. It doesn't really matter, because the  
13 minutes of the meeting itself -- And, you know,  
14 Counsel can say that the former commissioner was  
15 awkward in the way it was -- Well, you know, I guess  
16 that's her interpretation, but he read a motion into  
17 the record.

18 But all that doesn't matter. It's what  
19 got in here and what got approved and it -- this is  
20 what it says. And it doesn't say, you know, we have  
21 a resolution in front of us and we're going to -- you  
22 know, and it's going to be blah, blah, blah. It  
23 doesn't say that. It says Mr. Kuyers approved --  
24 moved to approve and authorize the chair and the  
25 clerk to sign a resolution. So it's giving them



1 authority in the future to sign a resolution to  
2 appoint plaintiff contingent on the three  
3 contingencies. It's that pure and simple, Judge.

4 THE COURT: Is that typically how they  
5 would do it, though, with the health officer? You  
6 would say, "we want to appoint this person" and then  
7 make them come back? I mean, why does that make  
8 sense that you would have a vote on the person? Of  
9 course they have to get the credentials from the  
10 state, pass the background --

11 MR. KALLMAN: Right.

12 THE COURT: -- and then come back. Why  
13 would you have them come back?

14 MR. KALLMAN: Because you got to get the  
15 credentials from the state. I mean, I don't know. I  
16 can't read their minds.

17 And I know plaintiff keeps saying we want  
18 to get into the intent. No, we don't. I could care  
19 less about the video itself, because this controls  
20 and the video backs this up. But that's not what  
21 we're talking about here. It's the official minutes  
22 that control. And the resolution, again, can't trump  
23 what the board official action was. And the -- I'm  
24 sorry, Your Honor. Your initial question was -- I'm  
25 getting off on a tangent here.

1 THE COURT: Why -- why would they -- why  
2 would you come back again?

3 MR. KALLMAN: Right. Because under -- and  
4 we attached the rule -- we attach it in our exhibits  
5 from MDHHS, no one can be appointed as the health  
6 officer prior to our affirming that they have the  
7 credentials. So it is an impossibility for them. So  
8 in my mind, I guess that's the only thing that makes  
9 sense to me is that's why they put in here, well,  
10 it's subject to further approval by the board of  
11 commissioners, because we all know we have to get the  
12 approval from the State of Michigan and then we'll  
13 have a final vote. That's what it says.

14 THE COURT: But doesn't the letter from  
15 the State of Michigan say she's duly appointed?

16 MR. KALLMAN: Well, the state doesn't  
17 appoint her. The board of commissioners does, Judge.  
18 I mean, some extra language in a state letter -- I  
19 mean, the only thing the state is supposed to do is  
20 approve her credentials and they did that. They  
21 don't have the authority to say: And, therefore, we  
22 appoint her as the new health director of Ottawa  
23 County. They don't have the authority. That's a  
24 violation of the law if that's the interpretation  
25 that they try to do. That's not what the -- that's

1 not accurate, Your Honor.

2 THE COURT: Well, why would they say that,  
3 then?

4 MR. KALLMAN: Well, because again, we're  
5 asking for parole evidence and for why certain people  
6 did certain things. I can conjecture that it was  
7 because when they were asked to get the credentials  
8 of Ms. Hambley approved that then in that same  
9 communication I'm assuming they said something like  
10 because we want to approve her and, you know, we had  
11 a meeting. We're all set, we just need your approval  
12 and so I -- You know, I can assume that.

13 But, again, Judge, it doesn't matter. I  
14 mean, what matters is the board acted December 13th.  
15 These minutes were passed. That's the official  
16 record. The resolution was done after the meeting.  
17 It was not attached to the minutes. It was not  
18 signed at the meeting. Nobody alleges that. It was  
19 done later. And so it doesn't matter whether they  
20 did it later that day, five days later, none of that  
21 really matters. It's irrelevant, Judge. What  
22 controls is the clear language in the minutes and the  
23 clear language of the resolution which changed the  
24 minutes. That's what's relevant.

25 THE COURT: So when did Ms. Hambley then

1 start acting as the -- the health officer?

2 MR. KALLMAN: Well, I don't know. I  
3 assume probably sometime after December -- after the  
4 letter from MDHHS. And the fact -- Even if she did,  
5 if there was a week or 10 days in there where she was  
6 acting as the health officer because nobody contested  
7 it doesn't mean she was. I mean, just because she  
8 did it doesn't mean it was legal.

9 THE COURT: And the other comment you made  
10 I think in your brief, you made a comment that -- I  
11 think it was on Page 2 of your reply brief in support  
12 of your motion for summary disposition, you state  
13 that "the plaintiff claims the chair admitted in  
14 writing plaintiff's appointment" and you stated  
15 false. Are you denying that he wrote that e-mail  
16 or --

17 MR. KALLMAN: No.

18 THE COURT: Are you just saying that he  
19 wasn't the chair at that time?

20 MR. KALLMAN: Exactly. It's irrelevant,  
21 Judge. Mr. Moss was not the chair. We're not  
22 denying that. I mean, I'll sit here today and say:  
23 Yeah, that was an e-mail. We're not going to contest  
24 that. It doesn't matter. He wasn't on the board.  
25 He wasn't board chair. He didn't have full access

1 to, you know, information and stuff. He wasn't  
2 getting cooperation from people at that point, so who  
3 cares? He's operating on what other people tell him.  
4 And because he just kind of throws in an e-mail,  
5 "well, I guess since you're appointed", you know,  
6 that means she is? I mean, Joe Moss didn't have the  
7 authority to appoint her. I think that's a silly  
8 argument, Judge. I don't understand it, honestly.

9 THE COURT: Okay.

10 MR. KALLMAN: Again, we're not asking for  
11 any intent or anything to be -- you know, there's no  
12 reason and, frankly, you can't get into it under  
13 Tavernier and the case law we site, which is  
14 unrebutted by plaintiff.

15 And Judge, if I could, I know we go first,  
16 second, third, but we do have our motion. If I could  
17 just take one minute and respond to a couple points  
18 that opposing counsel made. She says that I said the  
19 original resolution was -- No. What I said was the  
20 original resolution was signed after the meeting,  
21 that's what I said. And I've seen nothing refuting  
22 what we said.

23 And again, it doesn't -- as I just said,  
24 it really doesn't matter because everybody agrees  
25 this -- the plain language of what was done says

1 they're authorizing them to sign a resolution, not we  
2 are signing a resolution as part of this motion in  
3 our meeting and the resolution is attached. I mean,  
4 where -- It doesn't say that. Judge, they can't --  
5 they can't make up, you know, theoretical things. It  
6 has to be what's in here.

7 Now, she says, you know, facts are  
8 contested. What facts? Did you hear her contest any  
9 of the main facts? Did she contest that's the action  
10 of the board on December 13th? Nope. Did she  
11 contest this resolution did not include the first  
12 contingency? Nope. The key facts that matter are  
13 uncontested.

14 Plaintiff keeps trying to muddy the waters  
15 and throw in intent and somebody stood up -- one of  
16 the prior commissioners stood up in a meeting and  
17 said: Well, that's not what we meant to do. Who  
18 cares? It's what they did do. You can not take  
19 parole evidence to change what they did. No parole  
20 evidence is permitted, Judge.

21 You know, the only question here is  
22 whether the resolution matched the minutes, and it  
23 doesn't, end of story. Nothing else -- Everything  
24 else is just fog and glass and trying to muddy the  
25 waters up.

1                   Again, our OMA and Lockwood and that whole  
2 argument, not a -- no response to those points that  
3 we're making, Judge, none at all.

4                   And then this last point. She -- she  
5 throws this, oh, they're going to appoint a political  
6 appointee, you know, to the health officer. Well,  
7 what's Ms. Hambley? I mean, anybody who gets  
8 appointed to one of these positions is a political  
9 appointee. So if the prior board and the politics of  
10 that board and everything decided to appoint Ms.  
11 Hambley, that political appointment is okay. But  
12 when the new board comes on and they want to exercise  
13 their authority, they look at all this and realize  
14 she was never appointed and they want to exercise  
15 their authority, that's political. Come on, Judge.

16                   And I think resorting to those kinds of  
17 arguments I think it's instructive and I ask the  
18 Court to think about those things and realize there's  
19 nothing here because she was never appointed, pure  
20 and simple, end of story. Thank you.

21                   THE COURT: All right. And you're not  
22 arguing that she's doing a bad job at this --

23                   MR. KALLMAN: No.

24                   THE COURT: -- point in time? There's no  
25 issue with that?

1 MR. KALLMAN: Absolutely not.

2 THE COURT: Okay.

3 MR. KALLMAN: And as we even said in our  
4 brief, whoever gets appointed -- You know, they keep  
5 harping on Mr. Kelly. His credentials have not even  
6 been approved -- haven't been approved or submitted  
7 yet. Our clients are looking at a lot of options.  
8 And we said in our brief including it could be Ms.  
9 Hambley. Now, I don't know now all this stuff is  
10 going on, she might have deep six'd that. But you  
11 know, to argue that they don't have the authority  
12 somehow is -- is -- I don't -- I don't understand the  
13 argument. Of course they have the authority.

14 THE COURT: Well, what I will do is I will  
15 issue a written opinion as quickly as possible. And  
16 I'm going to leave a temporary restraining order in  
17 place until I issue that -- issue that opinion.  
18 Okay?

19 MR. KALLMAN: Your Honor, if could ask one  
20 thing?

21 THE COURT: Sure.

22 MR. KALLMAN: Again, I know Your Honor is  
23 going to look at it all and come up with a decision.  
24 If the Court decides that you are going to issue a  
25 preliminary injunction, I would request a stay for



1 purposes of appeal and so I would ask that the order  
2 include a denial of our stay if the Court -- if you  
3 make that ruling, Judge. Obviously if you don't, if  
4 you end the permanent injunction then it doesn't  
5 matter. But I would make that request right now so  
6 that it could be included in her order.

7 THE COURT: All right.

8 MR. KALLMAN: Thank you.

9 THE COURT: All right. Thank you, then.  
10 The hearing is closed.

11 MR. KALLMAN: Thank you, Your Honor.  
12 Thanks for the time. 2:50:49 PM.

13 (Whereupon, proceedings concluded  
14 at 2:50:49 P.M..)

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STATE OF MICHIGAN     )  
                                  )  ss.  
COUNTY OF MUSKEGON    )

I, certify that this transcript,  
consisting of 66 pages is a complete, true, and  
correct transcript of the videotaped proceedings and  
testimony taken in ADELINE HAMBLEY versus OTTAWA  
COUNTY, a Michigan County; OTTAWA COUNTY BOARD OF  
COMMISSIONERS and; JOE MOSS, SYLVIA RHODEA, LUCY  
EBEL, GRETCHEN COSBY, REBEKAH CURRAN, ROGER BELKNAP,  
and ALLISON MIEDEMA, Ottawa County Commissioners in  
their individual and Official capacities, File No.  
23-7180-CZ, on March 31, 2023, Videotaped.

\*\*Please note proper names and/or case names unknown  
to this reporter are spelled phonetically and may not  
be correct.

Electronically signed

*Michelle M. McKee*

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Michelle M. McKee, CSR-3841  
Certified Shorthand Reporter

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