

STATE OF MICHIGAN
IN THE COURT OF APPEALS

LEE ESTES,

Plaintiff,

Case No.

-AW

v

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

URGENT ELECTION MATTER

Defendants.

_____/

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_____/

VERIFIED COMPLAINT FOR DECLARATORY
JUDGMENT AND MANDAMUS

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

/s/ Mark Brewer

MARK BREWER (P35661)

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

INTRODUCTION

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

-US Const, Am XIV, § 3

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

JURISDICTION AND VENUE

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

PARTIES

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

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

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

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

FACTUAL ALLEGATIONS

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

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

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

Kelley’s Acts of Insurrection

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

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

“COUNT ONE

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

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

COUNT TWO

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

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

COUNT THREE

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

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

COUNT FOUR

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

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

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

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

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

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



Source: <https://www.youtube.com/watch?v=xmF7qQdfcrQ&feature=youtu.be> (“4K Footage from Capitol Grounds during January 6 Insurrection.mp4”)

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



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

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



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

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



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

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



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

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



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

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



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

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



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

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



Sources:

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

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



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

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



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

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



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

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



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

Further FBI Investigation Confirming Identification of Ryan D. Kelley

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

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



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

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



Source: The Holland Sentinel online article.

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

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

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

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



Protest in Lansing Saturday in support of President Trump



Protest in Lansing Saturday in support of President Trump

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



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



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

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



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

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



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



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

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



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



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

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

The Insurrection Clause and Its Meaning

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

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

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

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

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

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

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

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

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

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

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

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

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

8, 2022).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THIS IS AN URGENT ELECTION MATTER REQUIRING IMMEDIATE ACTION

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

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

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

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

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

PRAYER FOR RELIEF SOUGHT

For the reasons stated Plaintiff asks that the Court:

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

Respectfully submitted,

/s/ Mark Brewer

MARK BREWER (P35661)

GOODMAN ACKER, P.C.

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Dated: July 14, 2022

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BRIEF IN SUPPORT OF VERIFIED COMPLAINT FOR
DECLARATORY JUDGMENT AND MANDAMUS

ORAL ARGUMENT REQUESTED

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BASIS OF JURISDICTION

This Court has jurisdiction over this Verified Complaint for Declaratory Judgment and Mandamus under MCL 600.4401, MCR. 2.605, and MCR 7.203(C)(2).

STATEMENT OF QUESTIONS PRESENTED

1. Has Ryan Kelley violated US Constitution Amendment XIV, § 3 (the Insurrection Clause) rendering him ineligible to be elected to or hold office as Governor?

Plaintiff says, “Yes.”

2. Do the defendants Benson and Board of State Canvassers have a clear legal duty not to count votes cast for Kelley at the August 2d primary and not to certify him as a general election candidate?

Plaintiff says, “Yes.”

3. Should defendant Benson advise voters that Kelley is ineligible to be Governor and assist voters who have already voted for him?

Plaintiff says, “Yes.”

INTRODUCTION

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

-US Const, Am XIV, § 3

This is an action to prevent Ryan Kelley (“Kelley” or the “Insurrectionist”) from appearing on the general election ballot as a candidate for Governor because he has “engaged in insurrection” in violation of § 3 of the Fourteenth Amendment and therefore is ineligible to be a candidate for Governor.

STATEMENT OF FACTS

Kelley took an oath to support the U.S. Constitution.

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

Kelley’s Acts of Insurrection

Factual revelations since Kelley was certified as a candidate May 26, 2022 demonstrate that Kelley has violated the Insurrection Clause.

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

“COUNT ONE

On or about January 6, 2021, in the District of Columbia, **RYAN KELLEY** did knowingly enter and remain in a restricted building and grounds, that is, any posted, cordoned-off, and otherwise restricted area

within the United States Capitol and its grounds, where the Vice President was and would be temporarily visiting, without lawful authority to do so.

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

COUNT TWO

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

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

COUNT THREE

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

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

COUNT FOUR

On or about January 6, 2021, in the District of Columbia, **RYAN KELLEY** did willfully injure and commit depredation, and did attempt to do the same, against property of the United States, and any of department agency thereof, and any property which has been and is being manufactured and constructed for the United States, and any department or agency thereof, that is the tarp covering the northwest

scaffolding of the United States Capitol Building, causing damage in an amount less than \$1,000.

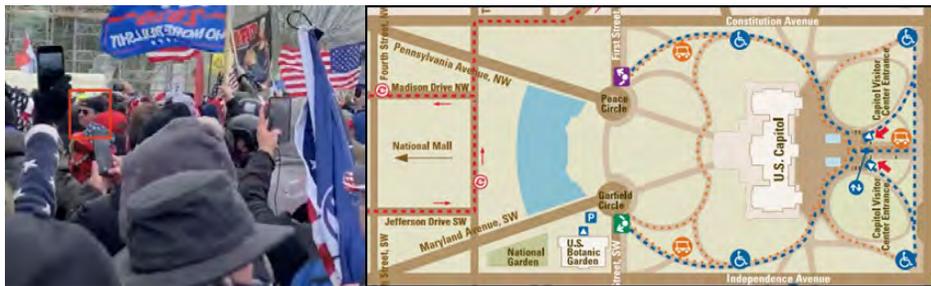
(Destruction of Government Property, in violation of Title 18, United States Code, Sections 1361 and 2)”

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

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

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

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



Source: <https://www.youtube.com/watch?v=xmF7qQdfcrQ&feature=youtu.be>
 (“4K Footage from Capitol Grounds during January 6 Insurrection.mp4”)

While near the entrance to the North Western scaffolding on the Western side of the U.S. Capitol, which provided access to the stairs leading towards the entrance to the U.S. Capitol

building, KELLEY, the individual with a black coat, aviator sunglasses, and a red watch band, uses their phone to film the crowd assaulting and pushing past U.S. Capitol Police Officers.



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

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



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

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

KELLEY, wearing a black hat and a black coat, recorded with his cellular telephone, is shown below.



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

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



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

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



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

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



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

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



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

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



Sources:

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

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



Source: YouTube (left) https://www.youtube.com/watch?v=xmF7qQdfcQ*feature=youtu.be (“4K Footage from Capitol Grounds during January 9 Insurrection.mp4”) at 10:28. Flickr (right) <https://flickr.com/photos/49283984@N05/50836136873/in/photostream/>

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



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

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



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

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



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

Further FBI Investigation Confirming Identification of Ryan D. Kelley

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

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



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

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



Source: The Holland Sentinel online article.

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

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

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

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



Protest in Lansing Saturday in support of President Trump



Protest in Lansing Saturday in support of President Trump

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



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



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

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



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

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



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



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

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



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



Kelley refers to himself as a “J6er,” referencing his admitted presence at the U.S. Capitol as part of the violent insurrectionist mob. *See* Exhibit 3. Kelley has participated in other insurrectionist activities, including calling for election audits and decertifying the Michigan election. *See* Exhibit 5.

ARGUMENT

KELLEY IS AN INSURRECTIONIST IN VIOLATION OF § 3 OF THE FOURTEENTH AMENDMENT, IS INELIGIBLE TO APPEAR ON THE GENERAL ELECTION BALLOT, AND PLAINTIFF IS ENTITLED TO DECLARATORY AND MANDAMUS RELIEF.

I. THE MEANING OF INSURRECTION CLAUSE

Section 3 of the Fourteenth Amendment states in pertinent part:

No person shall . . . hold any office, civil or military . . . under any State, who, having previously taken an oath . . . as a member of any State legislature . . . to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same.

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

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

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

II. THE EVENTS LEADING UP TO AND OCCURRING ON JANUARY 6, 2021 WERE AN INSURRECTION.

The January 6 attack was an “insurrection” under Section Three of the Fourteenth Amendment.

The insurrectionists defied the authority of the United States. *See, e.g., Davila, supra; In re Charge to Grand Jury*, 62 F 828, 830 (ND Ill 1894) (defining insurrection as an uprising “so formidable as for the time being to defy the authority of the United States”); *Insurrection*, Worcester’s Dictionary (1835) (leading pre-1868 dictionary defining “insurrection” to mean “[a] seditious rising against government”); *Allegheny Cty. v. Gibson*, 90 Pa. 397, 417 (1879) (applying a similar definition).

The insurrectionists’ goal was to overthrow the government or obstruct its core functions. *See, e.g., Davila, supra; Pan Am World Airways, Inc v Aetna Cas & Sur Co*, 505 F2d 989, 1005 (CA2 1974) (insurrection requires “an intent to overthrow a lawfully constituted regime”). The goal of the January 6 protests was to intimidate Congress and Vice President Pence into violating the Twelfth Amendment and the Electoral Count Act by ignoring the legal electoral votes for Biden. The insurrectionists attacked the U.S. Capitol and the government officials inside for the purpose of preventing the Vice President of the United States and the United States Congress from fulfilling their constitutional roles in ensuring the peaceful transition of power.

On January 6th, speakers at the pre-riot rally repeatedly advocated violence. Trump’s lawyer, Rudy Giuliani, called for “trial by combat.” Representative Mo Brooks urged the crowd to be prepared to sacrifice their “blood” and “lives,” and to “do what it takes to fight for America” by “carry[ing] the message to Capitol Hill,” since “the fight begins today.” Trump told the mob to march on the Capitol, saying “if you don’t fight like hell, you’re not going to have a country anymore.” *See Wash Post, Trump, Republicans incite crowd before mob storms Capitol*, YouTube

(Jan 6, 2021) <https://youtu.be/mh3cbd7niTQ>; The Hill, *Mo Brooks give FIERY speech against anti-Trump Republicans, socialists*, YouTube (Jan 6, 2021), <https://www.youtube.com/watch?v=ZKHwV6sdrMk>; *During: Bloodshed*, Wash Post (Oct 31, 2021).

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

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

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

Weisman & Karni, *McConnell Denounces RNC Censure of Jan 6 Panel Members*, NY Times (Feb 8, 2022). Representative Peter Meijer of Michigan described the January 6 attack as "a violent attempt to interfere with the proceedings of Congress, and specifically the certification of the Electoral College results." *Death threats, primary challenge follow Rep. Meijer's vote to impeach Trump after Jan 6*, PBS (Jan 4, 2022).

The subsequent articles of impeachment of President Trump declared that those events were an insurrection. *See, e.g.*, Articles of Impeachment, 167 Cong Rec No 28 (Feb 13, 2021)

(describing the assault on the Capitol as an “insurrection” in articles of impeachment adopted on a bipartisan basis).

The Department of Justice has so far charged more than ten individuals with seditious conspiracy for their role in the January 6 attack, in which two or more persons “conspire to overthrow, put down, or to destroy by force the Government of the United States, or to levy war against them, or to oppose by force the authority thereof, or by force to prevent, hinder, or delay the execution of any law of the United States, or by force to seize, take, or possess any property of the United States contrary to the authority thereof.” 18 U.S.C. § 2384. *See* Department of Justice Press Release, *Leader of Oath Keepers and 10 Other Individuals Indicted in Federal Court for Seditious Conspiracy and Other Offenses Related to U.S. Capitol Breach* (Jan 13, 2022), <https://bit.ly/3twSYyp>. One of the co-conspirators has pleaded guilty to seditious conspiracy. Department of Justice Press Release, *Leader of Alabama Chapter of Oath Keepers Pleads Guilty to Seditious Conspiracy and Obstruction of Congress* (Mar. 2, 2022), <https://bit.ly/3iru3zo>.

III. KELLEY VIOLATED THE INSURRECTION CLAUSE.

Kelley plainly violated the Insurrection Clause. He “voluntary[ily] assist[ed],” *Powell, supra*, 27 F Cas at 67, the January 6 insurrection and he “voluntarily aid[ed],” it “by personal service” and “by contribution” of “thing[s] that [were] useful or necessary to it,” *Worthy, supra*, 63 NC at 202. He did this, as detailed in the criminal charges against him, by participating in and helping lead the violent attack on the U.S. Capitol on January 6, 2021.

Kelley violated the Insurrection Clause.

IV. PLAINTIFF IS ENTITLED TO DECLARATORY RELIEF THAT KELLEY VIOLATED THE INSURRECTION CLAUSE AND IS INELIGIBLE TO BE GOVERNOR.

MCR 2.605(A)(1) states: “In a case of actual controversy within its jurisdiction, a Michigan

court of record may declare the rights and other legal relations of an interested party seeking a declaratory judgment, whether or not other relief is or could be sought or granted.” The Michigan Supreme Court has held that “[a]n actual controversy exists when a declaratory judgment is needed to guide a party’s future conduct in order to preserve that party’s legal rights.” *League of Women Voters of Mich v Sec’y of State*, 506 Mich 561, 586; 957 NW2d 731 (2020). “The Declaratory Judgment rule was intended and has been liberally construed to provide a broad, flexible remedy with a view to making the courts more accessible to the people.” *Shavers v Kelley*, 402 Mich 554, 588; 267 NW2d (1978). “In general, ‘actual controversy’ exists where a declaratory judgment or decree is necessary to guide a plaintiff’s future conduct in order to preserve his legal rights.” *Id.* “An actual controversy is deemed to exist in circumstances where declaratory relief is necessary in order to guide or direct future conduct. In such situations, courts are “not precluded from reaching issues *before actual injuries or losses have occurred.*” *City of Huntington Woods v City of Detroit*, 279 Mich App 603; 761 NW2d 127, 136 (2008) (citation and quotation marks omitted).

There is an actual controversy because Plaintiff has a legal right to have only eligible candidates on the general election ballot. *See Barrow v City of Detroit Election Comm’n*, 301 Mich App 404, 412; 836 NW2d 498 (2013), *lv den*, 494 Mich 866; 831 NW2d 461 (2013). Moreover, voters are voting and they should not be disenfranchised by casting their primary election votes for an ineligible candidate. The defendants should not be required to count primary election votes for or certify a candidate who is ineligible. These are present and future injuries which the declaratory judgment rule was designed to prevent.

As demonstrated *supra*, Kelley has violated the Insurrection Clause, is ineligible to appear on the general election ballot, and has no legal right to appear on that ballot. Plaintiff is entitled to a declaratory judgment that Kelley violated the Insurrection Clause and is ineligible to be Governor

in order to preserve Plaintiff's right to have only eligible candidates on the general election ballot as well to protect the rights of primary election voters and the defendants.

V. MANDAMUS SHOULD ISSUE TO ORDER DEFENDANTS NOT TO COUNT VOTES CAST FOR KELLEY ON AUGUST 2d, AND TO ORDER DEFENDANTS NOT TO PLACE KELLEY'S NAME ON THE GENERAL ELECTION BALLOT.

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

To be entitled to a writ of mandamus, a plaintiff must show that: "(1) the plaintiff has a clear, legal right to performance of the specific duty sought, (2) the defendant has a clear legal duty to perform, (3) the act is ministerial, and (4) no other adequate legal or equitable remedy exists that might achieve the same result." *Rental Props Owners Ass'n of Kent Co v Kent Co Treasurer*, 308 Mich App 498, 518; 866 NW2d 817 (2014) (citation omitted).

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

Plaintiff has a clear legal right to have only qualified candidates on the general election election ballot. *See Barrow*, 301 Mich App at 412. Defendants have a clear legal duty, grounded in statute, to place only eligible candidates on the general election ballot. *See id.* "The inclusion or exclusion of a name on a ballot is ministerial." *Id.*

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

Kelley is not qualified to be on the general election ballot because he has violated the Insurrection Clause as demonstrated *supra*. Plaintiff therefore has a clear legal right that Kelley not appear on that ballot, Defendants have a clear legal duty not to count votes cast for Kelley in the August 2d primary and not to place Kelley on the general election ballot, and Plaintiff has no other remedy except mandamus. Mandamus should issue.

VI. THIS IS AN URGENT ELECTION MATTER REQUIRING IMMEDIATE ACTION.

Declaratory judgment actions may be expedited, MCR 2.605(D), and election matters such as this should be expedited, *see* MCR 7.213(C)(4); *Scott v Mich Dir of Elections*, 490 Mich 888; 804 NW2d 119 (2011).

The primary election is August 2d. Voters are voting for Kelley not knowing that he is ineligible to be Governor. Those voters are wasting their votes and being disenfranchised. This matter should be expedited so voters know he is ineligible and have the opportunity to vote for someone else in the primary.

PRAYER FOR RELIEF SOUGHT

For the reasons stated Plaintiff asks that the Court:

1. Declare that Ryan Kelley has violated the Insurrection Clause and is ineligible to be a candidate for Governor;
2. Order Benson to advise voters that Kelley is ineligible to be governor and that votes for him in the August 2nd primary will not be counted;
3. Order Benson to advise voters that have already voted for Kelley how to spoil their ballots and vote for another candidate;
4. Order Benson and the local clerks she supervises not to count votes cast for Kelley in the August 2nd primary;

5. Order the Defendants not to place or to certify Kelley on the general election ballot;
6. Expedite the hearing and disposition of this matter; and
7. Grant such other relief as necessary or appropriate.

Respectfully submitted,

/s/ Mark Brewer

MARK BREWER (P35661)

GOODMAN ACKER, P.C.

Attorney for Plaintiff

17000 W. Ten Mile Road

Southfield, MI 48075

(248) 483-5000

mbrewer@goodmanacker.com

Dated: July 14, 2022

**STATE OF MICHIGAN
IN THE COURT OF APPEALS**

LEE ESTES,

Plaintiff,

Case No.

-AW

v

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

URGENT ELECTION MATTER

Defendants.

GOODMAN ACKER, P.C.
MARK BREWER (P35661)
Attorneys for Plaintiff
17000 W. Ten Mile Road
Southfield, MI 48075
(248) 483-5000
mbrewer@goodmanacker.com

VERIFIED COMPLAINT

EXHIBITS

1. Oath of Office
2. Criminal Complaint
3. July 5, 2022 New York Sen article
4. Department of Justice press release
5. Kelley social media posts

EXHIBIT 1

STATE OF MICHIGAN, }
COUNTY OF Ottawa } ss.

Ryan Kelley
12/31/19

I do solemnly swear (or affirm) that I will support the
Constitution of the United States, and the Constitution of this State, and that

I will faithfully perform the duties of the office of Planning
Commissioner

in and for the Township of Alendale
County of Ottawa and State of Michigan, according to the best
of my ability, so help me God.

Ryan Kelley

Subscribed and sworn to before me, this 12th

day of December 2019

James White
Alendale Township Clerk
Ottawa County, Michigan.

EXHIBIT 2

UNITED STATES DISTRICT COURT

for the

District of Columbia

United States of America

v.

Ryan Kelley

DOB: XXXXXX

) Case: 1:22-mj-00133
) Assigned To: Magistrate Judge Zia M. Faruqi
) Assign. Date: 6/7/2022
) Description: Complaint with Arrest Warrant
)
)
)

Defendant(s)

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of January 6, 2021 in the county of in the
in the District of Columbia, the defendant(s) violated:

Code Section

Offense Description

18 U.S.C. § 1752(a)(1) - Knowingly Entering or Remaining in any Restricted Building or Grounds Without Lawful Authority,

18 U.S.C. § 1752(a)(2) - Disorderly and Disruptive Conduct in a Restricted Building or Grounds,

18 U.S.C. § 1752(a)(4) - Knowingly Engage in any Act of Physical Violence Against Person or Property in any Restricted Building or Grounds,

18 U.S.C. § 1361 - Willfully injure or commit any Depredation Against any Property of the United States.

This criminal complaint is based on these facts:

See attached statement of facts.

Continued on the attached sheet.



Printed name and title

Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1 by telephone.

Date: 06/08/2022

Judge's signature

City and state: Washington, D.C.

Zia M. Faruqi, U.S. Magistrate Judge

Printed name and title

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	:	CRIMINAL NO.
	:	
v.	:	MAGISTRATE NO. 1:22-MJ-133-ZMF
	:	
RYAN KELLEY,	:	VIOLATIONS:
	:	18 U.S.C. § 1752(a)(1) - Knowingly
Defendant.	:	Entering or Remaining in any Restricted
	:	Building or Grounds
	:	Without Lawful Authority,
	:	18 U.S.C. § 1752(a)(2) - Disorderly and
	:	Disruptive Conduct in a Restricted
	:	Building or Grounds,
	:	18 U.S.C. § 1752(a)(4) - Knowingly Engage
	:	in any Act of Physical Violence Against
	:	Person or Property in any Restricted
	:	Building or Grounds,
	:	18 U.S.C. § 1361 - Destruction of
	:	Government Property

INFORMATION

The United States Attorney charges that:

COUNT ONE

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

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

COUNT TWO

On or about January 6, 2021, in the District of Columbia, **RYAN KELLEY** did knowingly, and with intent to impede and disrupt the orderly conduct of Government business and official

functions, engage in disorderly and disruptive conduct in and within such proximity to, a restricted building and grounds, that is, any posted, cordoned-off, and otherwise restricted area within the United States Capitol and its grounds, where the Vice President was and would be temporarily visiting, when and so that such conduct did in fact impede and disrupt the orderly conduct of Government business and official functions.

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

COUNT THREE

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

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

COUNT FOUR

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

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

Dated: June 22, 2022

Respectfully submitted,

MATTHEW M. GRAVES
United States Attorney
D.C. Bar No. 481052

By: /s/ April Ayers-Perez
April Ayers-Perez
Assistant United States Attorney
Southern District of Texas
(detailed to the District of Columbia)
Texas Bar No. 24090975
11204 McPherson Rd., Suite 100A
Laredo, Texas 78045
Phone No.: (956) 754-0946
April.Ayers-Perez@usdoj.gov

STATEMENT OF FACTS

The affiant, [REDACTED] is a Special Agent of the Federal Bureau of Investigation, and has been so employed since January of 2017. I am presently assigned to the FBI's Detroit Division. In my duties as a special agent, I investigate Domestic and International Terrorism matters. Currently, I am tasked with investigating criminal activity in and around the Capitol grounds on January 6, 2021. As a Special Agent, I am authorized by law or by a Government agency to engage in or supervise the prevention, detection, investigation, or prosecution of a violation of Federal criminal laws.

The U.S. Capitol is secured 24 hours a day by U.S. Capitol Police. Restrictions around the U.S. Capitol include permanent and temporary security barriers and posts manned by U.S. Capitol Police. Only authorized people with appropriate identification were allowed access inside the U.S. Capitol. On January 6, 2021, the exterior plaza of the U.S. Capitol was also closed to members of the public.

On January 6, 2021, a joint session of the United States Congress convened at the United States Capitol, which is located at First Street, SE, in Washington, D.C. During the joint session, elected members of the United States House of Representatives and the United States Senate were meeting in separate chambers of the United States Capitol to certify the vote count of the Electoral College of the 2020 Presidential Election, which had taken place on November 3, 2020. The joint session began at approximately 1:00 p.m. Shortly thereafter, by approximately 1:30 p.m., the House and Senate adjourned to separate chambers to resolve a particular objection. Vice President Mike Pence was present and presiding, first in the joint session, and then in the Senate chamber.

As the proceedings continued in both the House and the Senate, and with Vice President Mike Pence present and presiding over the Senate, a large crowd gathered outside the U.S. Capitol. As noted above, temporary and permanent barricades were in place around the exterior of the U.S. Capitol building, and U.S. Capitol Police were present and attempting to keep the crowd away from the Capitol building and the proceedings underway inside.

At such time, the certification proceedings were still underway and the exterior doors and windows of the U.S. Capitol were locked or otherwise secured. Members of the U.S. Capitol Police attempted to maintain order and keep the crowd from entering the Capitol; however, around 2:00 p.m., individuals in the crowd forced entry into the U.S. Capitol, including by breaking windows and by assaulting members of the U.S. Capitol Police, as others in the crowd encouraged and assisted those acts.

Shortly thereafter, at approximately 2:20 p.m. members of the United States House of Representatives and United States Senate, including the President of the Senate, Vice President Mike Pence, were instructed to—and did—evacuate the chambers. Accordingly, the joint session of the United States Congress was effectively suspended until shortly after 8:00 p.m. Vice President Pence remained in the United States Capitol from the time he was evacuated from the Senate Chamber until the sessions resumed.

During national news coverage of the aforementioned events, news media coverage and video footage which appeared to be captured on mobile devices of persons present on the scene, depicted evidence of violations of local and federal law, including scores of individuals inside the U.S. Capitol building without authority to be there. This allowed investigators to collect publicly-available photo and video media depicting many individuals accessing restricted areas of the U.S. Capitol.

*Investigative Leads Regarding Ryan Kelley's
Possible Involvement in Events of January 6, 2021*

Due to the nature of the events at the U.S. Capitol on January 6, 2021 and the intense news media and online amateur journalist coverage, many private individuals were able to review a large amount of photos and videos produced that day. In this case, the FBI received multiple tips regarding Ryan Kelley's presence at the U.S. Capitol on January 6, 2021.

On January 16th, 2021, an anonymous tipster from Michigan submitted an online tip to the FBI National Threat Operations Center (NTOC) via tips.fbi.gov, which identified that Ryan Kelley was at the Capitol attack on January 6, 2021. The tipster provided photos of who they believed was Ryan D. Kelley (KELLEY) at the Capitol on January 6, 2021. The information provided by the tipster showed KELLEY at the U.S. Capitol wearing a black coat, a backwards black baseball cap with a rectangular U.S. flag emblem above the bill, and aviator sunglasses.

This anonymous tip contained the same information posted on the Twitter account "@MichiganTea" in which the same or similar pictures were used to identify KELLEY at the U.S. Capitol on January 6, 2021. The relevant @MichiganTea post is below (A PDF document of the post on this website is **Item #1**).



On January 19, 2021, an individual stating that their name was “Kate” called the FBI tip line and identified that they had seen KELLEY of Allendale, Michigan in numerous pictures and videos from the January 6, 2021 event at the U.S. Capitol.

On January 28, 2021, a Confidential Human Source (CHS1) that had been working with the FBI since 2020 to provide information about Domestic Terrorism groups in Michigan identified an individual in a publicly available news media video that they believed to be KELLEY. A screenshot from the video, which is publicly available and was pointed out to the FBI by CHS1, is below. (A screenshot is below as **Item #2**)



Source: <https://projects.propublica.org/parler-capitol-videos/?id=zOZ8CgfNU1SY>

Review of Public Information Produces a More Complete Narrative of Kelley’s Actions

Based on the tips and information that had been provided, law enforcement took additional steps to review available media in which the individual alleged to be KELLEY appeared, in order to assemble a more complete record of that individual’s actions on January 6, 2021. To support this effort, the FBI employed the assistance of the Confidential Human Source referenced above (CHS1), because that Source had an extensive background in online research and data management.

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

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

A screenshot from the video posted online in a publicly available location, is below. (The full video this screenshot was taken from is **Item #3**)



Source: <https://www.youtube.com/watch?v=xmF7qQdfcrQ&feature=youtu.be>
 (“4K Footage from Capitol Grounds during January 6 Insurrection.mp4”)

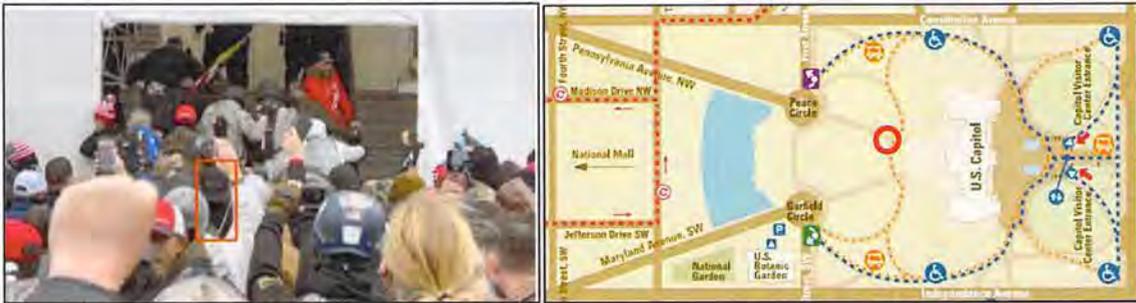
While near the entrance to the North Western scaffolding on the Western side of the U.S. Capitol, which provided access to the stairs leading towards the entrance to the U.S. Capitol building, KELLEY, the individual with a black coat, aviator sunglasses, and a red watch band, uses their phone to film the crowd assaulting and pushing past U.S. Capitol Police Officers. A screenshot from the video posted online in a publicly available location, is below. (The full video this screenshot was taken from is **Item #4**)



Source:
<https://www.youtube.com/watch?v=9mt8YGpJ5vs&feature=youtu.be>
 “Capitol Protest in WashingtonD.C. on January 6- 2021.mp4” at 05:38

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

Another screenshot from the same video, posted online in a publicly available location, is below. (The full video this screenshot was taken from is also **Item #4**)



Source:

<https://www.youtube.com/watch?v=9mt8YGpJ5vs&feature=youtu.be>
 “Capitol Protest in Washington D.C. on January 6- 2021.mp4” at 05:38

Publicly available new media reporters and photographers captured images of the North Western scaffolding on the Western side of the U.S. Capitol. This is one such image, which shows another vantage point of the Crowd engaged with U.S. Capitol Police on North West stairs, which KELLEY recorded with his cell phone. KELLEY off camera to the left. The area of the U.S. Capitol shown in this image is marked with a red circle on the map. A photo of the area that KELLEY, wearing a black hat and a black coat, recorded with his cellular telephone, is shown below. (The Photo shown below is **Item #5**)



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

After causing the U.S. Capitol Police officers to retreat, the crowd climbed the stairs towards the entrance to the interior of the U.S. Capitol. At approximately 1:51 p.m., KELLEY moved towards the side of the nearby stairs and began to climb onto an architectural feature next to those stairs. In this publicly available news media image, KELLEY can be seen through the scaffolding on the stairs. Other members of the crowd are also identifiable. The area of the U.S. Capitol shown in this image is marked with a red circle on the map below.

Another image, from a news media reporter, shows KELLEY climbing near the scaffolding. (The full video this screenshot was taken from is **Item #6**)



Source: Washington DC A Reporter's Footage from Inside the Capitol Siege The New Yorker.mp4 at 02:01

At approximately 2:00 p.m., KELLEY climbed onto and stood on an architectural feature next to the North West stairs and indicated by waving his hand that the crowd behind him should move towards the stairs leading into the U.C. Capitol building. This activity can be seen in a video that was posted online on the internet site YouTube. (The full video this screenshot was taken from is **Item #7**)



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

This activity was also captured on CCV, showing KELLEY using his hands to support another rioter who is pulling the metal barricade onto the scaffolding (Screenshots **Items #8** and **#9** below)



KELLEY remained standing on the architectural feature next to the North West stairs and, at approximately 2:05 p.m., used his hands to pull a covering off of a temporary structure that U.S. Capitol personnel had erected in support of a future planned event. An image of this is shown below as **Item #10**.



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

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

(The photo shown on the **left** is **Item #11**)

(The full video that the screenshot on the **right** was taken from is **Item #12**)



Sources:

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

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

(The full video that the screenshot on the **left** was taken from is **Item #3**)

(The photo shown on the **right** is **Item #13**)



Source: YouTube (left) <https://www.youtube.com/watch?v=xmF7qQdfcrQ&feature=youtu.be> (“4K Footage from Capitol Grounds during January 6 Insurrection.mp4”) at 10:28.
 Flickr (right) <https://flickr.com/photos/49283984@N05/50836136873/in/photostream/>

At approximately 2:28 p.m., the same individual runs on top of the stair railing towards the U.S. Capitol’s North West Courtyard. These images from a video posted to YouTube show the individual running towards the North West Courtyard. The area of the U.S. Capitol shown in this image is marked with a red circle on the map. (The full video that this screenshot was taken from is **Item #14**)



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

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

(The full video that the screenshot on the **left** was taken from is **Item #15**)

(The full video that the screenshot in the **middle** was taken from is **Item #16**)



Source: (left) <https://banthis.tv/watch?id=5ff6857e00bac0328da8e888>
 (“Washington DC Capitol Resistance Video banthis.tv banned-video CLIP.mp4”)

(middle) <https://projects.propublica.org/parler-capitol-videos/?id=fo1Bh9ciOrwi>

At approximately 3:26 p.m., the individual in the black hat is seen in the U.S. Capitol’s North West Courtyard. By this time, U.S. Capitol police had regained control of many parts of the interior of the U.S. Capitol building, and were instructing unauthorized persons to leave the area. This is the latest time at which this individual is noted. (The full video that the screenshots below were taken from is **Item #17**)



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

Further Investigation Confirming Identification of Ryan D. Kelley

In May of 2020, KELLEY attended the American Patriot Council “Judgement Day” rally in Lansing, Michigan. During that event, KELLEY wore a backwards black hat, a blue shirt, and a black coat. Parts of this attire were also worn by KELLEY in photos and videos from the U.S. Capitol grounds on January 6, 2021. During that event, KELLEY also stated that: : “...the American Patriot Rally was organized with one thing in mind: to encourage the senate to vote no on extending [Governor] Whitmer’s emergency declaration, which they did. It was a victory....we got exactly what we came for.” (Source: <https://griid.org/2020/05/12/more-anti-lockdown-protests-planned-for-may-14-in-lansing-and-grand-rapids/>). KELLEY appears at the May 2020 event in the image below. (The photo shown below is part of an original photo. The original is **Item #18**)



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

In October of 2020, KELLEY attended the “American Patriot Council Nationwide Freedom March” in Allendale, Michigan. During that event, KELLEY wore a blue shirt, a black coat, a watch with a red watch band, and aviator sunglasses. Parts of this attire were also worn by KELLEY in photos and videos from the U.S. Capitol grounds on January 6, 2021. KELLEY appears at this event in the image below. (The photo shown below is **Item #19**)



Source: The Holland Sentinel online article.

In November of 2020, KELLEY was a featured speaker and introduced by name at a “Stop the Steal” rally at the Michigan Capitol in Lansing. During that event, KELLEY indicated that those attending the rally should stand and fight, with the goal of preventing Democrats from stealing the election.

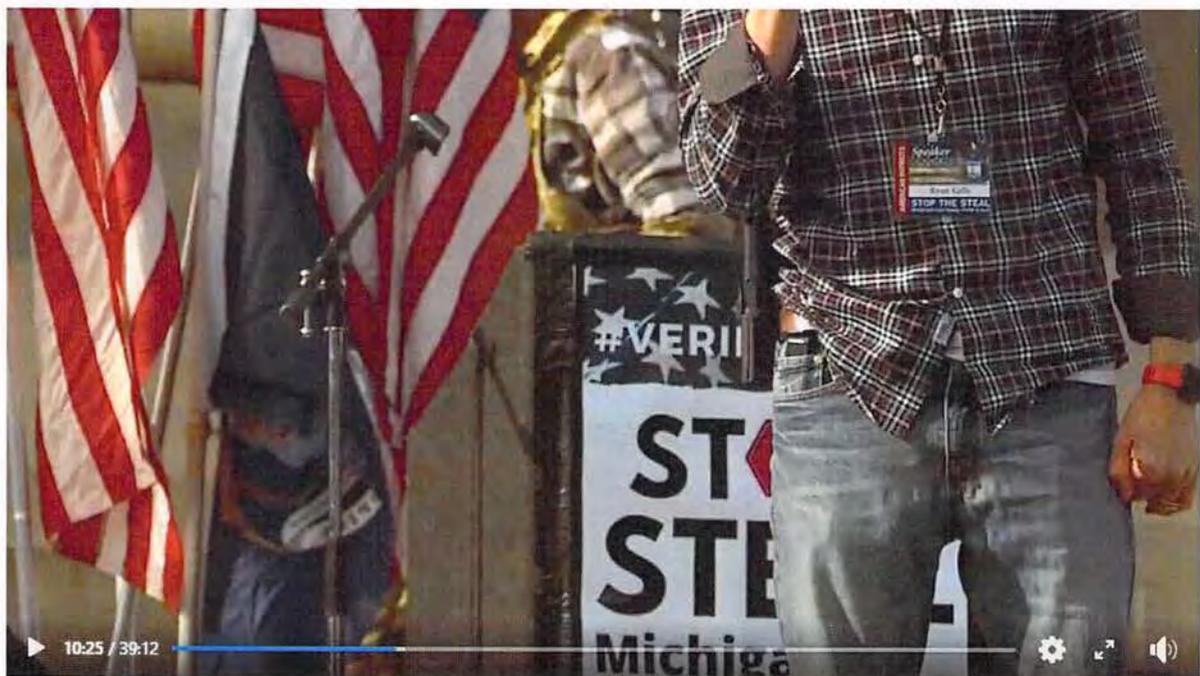
He gave a speech while wearing a name tag and stated “Covid-19 was made so that they can use the propaganda to control your minds so that you think, if you watch the media, that Joe Biden won this election. We’re not going to buy it. We’re going to stand and fight for America, for Donald Trump. We’re not going to let the Democrats steal this election”.

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

“Ryan Kelley 11-14-2020 Stop the Steal Rally Facebook WXYZ-TV-Channel-7-fbdown.net.mp4”
(Screenshots from the video shown below are **Items #20** and **#21**)



Protest in Lansing Saturday in support of President Trump



Protest in Lansing Saturday in support of President Trump

Also in November of 2020, KELLEY maintained an online presence on social media and on Twitter, and used these online services to post publicly available messages. This post has a

name of Ryan D. Kelley and a photo of him. It states “Expose the corrupt Democrats and try them for treason! #justiceiscoming.” (The photo shown below is a screenshot of a social media post, and is **Item #22**)



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



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

Also, in a February 2, 2021 video interview with a local television news channel, KELLEY speaks about being at the U.S. Capitol on January 6, 2021, and denies having gone inside the building. KELLEY refuses to identify whether he is the individual wearing a dark coat and black baseball cap in photos shown to him by the reporter. (The image shown below is a screenshot from a video of a news interview. The video of the interview is **Item #23**).



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

In a continued effort to conclusively identify the individual alleged to be KELLEY, the FBI interviewed three people familiar with KELLEY to confirm his identity. On March 31, 2021, FBI agents interviewed a person who knows KELLEY personally, Witness 1. Witness 1 sees KELLEY in person once or twice per week. When presented with a collection of pictures (**Item #24**) of KELLEY from January 6, 2021, Witness 1 positively identified them as KELLEY. Witness 1 was confident in the identification of KELLEY.



On April 3, 2021 FBI interviewed a law enforcement officer from Ottawa County Sheriff's Office (OSCO), Witness 2. OSCO Deputies work in and around the Allendale, Michigan area, including Allendale Township and the Allendale Township Town Hall. As part of these official duties, Witness 2 sees or interacts with KELLEY approximately every few months. At the time of the interview, Witness 2 estimated that it had been approximately three months since the last in-person encounter with KELLEY. When presented with a collection of pictures from January 6, 2021 (**Item #25**), Witness 2 positively identified them as KELLEY. Witness 2 was confident in the identification of KELLEY.



On March 3, 2021, FBI interviewed a public official of Allendale Township who knows KELLEY personally, Witness 3. When presented with pictures of the individual at the U.S. Capitol believed to be KELLEY, Witness 3 positively identified the pictures (**Item #26**) as

KELLEY. Witness 3 stated that he was not sure enough to testify to this fact in legal proceedings however because Witness 3 had never seen KELLEY in a hat.



In a further attempt to identify whether images identified by investigators were of Ryan KELLEY, the following information was presented to an FBI Assistant Special Agent in Charge who interviewed Ryan KELLEY in person in FBI office space on July 30, 2020. The ASAC was able to identify KELLEY in the following two photos (which are **Items #11** and **#13** from above, respectively):



KELLEY is an appointed Planning Commissioner in Allendale Township. Database checks show KELLEY of Allendale, Michigan is assigned to telephone number ending in -1265, with an address in Allendale, Michigan.¹

Based on the foregoing, your affiant submits that there is probable cause to believe that KELLEY violated 18 U.S.C. § 1752(a)(1), (2) and (4), which makes it a crime to (1) knowingly enter or remain in any restricted building or grounds without lawful authority to do; (2) knowingly, and with intent to impede or disrupt the orderly conduct of Government business or official functions, engage in disorderly or disruptive conduct in, or within such proximity to, any restricted building or grounds when, or so that, such conduct, in fact, impedes or disrupts the orderly conduct of Government business or official functions or attempts or conspires to do so; and (4) knowingly engage in any act of physical violence against any person or property in any restricted building or grounds. For purposes of Section 1752 of Title 18, a “restricted building” includes a posted, cordoned off, or otherwise restricted area of a building or grounds where the President or other person protected by the Secret Service, including the Vice President, is or will be temporarily visiting; or any building or grounds so restricted in conjunction with an event designated as a special event of national significance.

¹ Both the phone number and address are known to the FBI but are redacted here due to the public nature of this filing.

Your affiant submits there is also probable cause to believe that KELLEY violated 18 U.S.C. § 1361, which makes it a crime to willfully injure or commit any depredation against any property of the United States, or of any department or agency thereof, or any property which has been or is being manufactured or constructed for the United States, or any department or agency thereof, or attempt to commit any of the foregoing offenses.



FBI

Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1 by telephone, this 8th day of June, 2022.

ZIA M. FARUQUI
U.S. MAGISTRATE JUDGE

EXHIBIT 3

NATIONAL

Michigan GOP Gubernatorial Hopeful Shoots to Top of Polls Since Capitol Riot Arrest

Ryan Kelley has been pitching himself as a ‘fighter’ and a ‘political prisoner’ and turned his role in the January 6 events into a point of pride. He now refers to himself as a ‘J6er.’



A Michigan gubernatorial candidate, Ryan Kelly, kisses his wife, Tabitha Kelly, outside the U.S. District Court at Grand Rapids, Michigan. Daniel Shular/The Grand Rapids Press via AP

**STEPHEN PRAGER**

Tuesday, July 5, 2022

06:28:51 pm

The sudden rise in the political prospects of a Republican gubernatorial candidate in Michigan after his arrest for participating in the January 6 riot at the U.S. Capitol has political observers wondering whether being a “J6er” is a boon or a burden for Republican candidates in that state and elsewhere.

Real estate broker Ryan Kelley, who was polling in the single digits until recently, has seen his stock rise, not fall, since his arrest last month on federal charges stemming from the riot. He now holds a slim lead over his nearest competitor, car dealer Kevin Rinke.

“Extremist candidates tend to do well in primaries in both parties, and the Republican Party in Michigan has been radicalizing even more than most,” a political science professor at Michigan State University, Daniel Slater, told the Sun.

“I strongly suspect that Mr. Kelley’s criminal and insurrectionist behavior on January 6th will win him more primary voters than it loses him,” he added. “But it will likely doom him in the general election and assure four more years of Governor Gretchen Whitmer, which is exactly what Michigan’s Republican voters fear most.”

Mr. Kelley is scheduled to appear in federal court at Washington for a preliminary hearing on Thursday. Michigan’s GOP primary is set for August 2.

Since his arrest, Mr. Kelley has been pitching himself to voters as a “fighter” and a “political prisoner.” He has turned his participation in the events of January 6 into a point of pride, one that sets him apart from others in the race. He now refers to himself as a “J6er.”

“They talked about it all over the nation, all over the state of Michigan,” Mr. Kelley said in an interview. “It boosted my name. There’s been a ton of support.”

“You want to know who’s the fighter for the people?” Mr. Kelley asked in a debate on Thursday. “Look at the one the left is trying to silence the hardest. I think that’s evident with the FBI raiding my house, intimidating me, my wife, my children, my supporters.

“We will not be intimidated by the radical left,” he said.

The complaint from the Justice Department accuses Mr. Kelley of entering a restricted area, impeding the orderly conduct of government business, inflicting property violence in a restricted area, and destroying government property.

[Videos](#) from the day appear to show Mr. Kelley standing among the mob on the steps of the Capitol, shouting, “Let’s go. Let’s go. This is war, baby.” [Photos](#) entered into evidence apparently show Mr. Kelley climbing over barricades and motioning for other rioters to do the same.

Since his arrest, Mr. Kelley has vaulted to the front of the pack running to unseat Ms. Whitmer, and now leads the field by 1.5 percentage points, according to RealClearPolitics. Mr. Kelley enjoys the support of about 15 percent of GOP voters. Mr. Rinke, who has himself questioned the 2020 election results, follows close behind with 13.5 percent support.

Behind him with 10 percent is the former host of the conservative talk show “America’s Voice Live,” Tudor Dixon. Ms. Dixon has received endorsements from the Michigan

Chamber of Commerce, the wealthy DeVos family, and the Michigan senate's majority leader. She has also received praise from President Trump, who stopped short of an official endorsement.

A political scientist at the University of Michigan, Ken Kollman, said Mr. Kelley's rise illustrates the divide between Trump loyalists and mainstream Republicans that is being played out across the country.

"Kelley's surge, even short-lived, can only hurt Dixon and help Riske because he takes votes away from Dixon," Mr. Kollman said. He is unsure, however, whether that surge can be explained entirely by the January 6 charges.

"Certainly, for a slice of the Republican electorate, participation in the January 6 violence at the Capitol will stand as a noteworthy candidate attribute," Mr. Kollman told the Sun. "But I have to believe that that slice is small."

"If Kelley does well in the primary," he added, "it will be because the crowded field divides up the mainstream Republican electorate to the point where a small percentage boost for him can make him competitive."



STEPHEN PRAGER

Mr. Prager is a political reporter for The New York Sun. He is a Political Science, History, and Communications graduate from Villanova University.

EXHIBIT 4



THE UNITED STATES ATTORNEY'S OFFICE
DISTRICT *of* COLUMBIA

[U.S. Attorneys](#) » [District of Columbia](#)

18 Months Since the Jan. 6 Attack on the Capitol

18 Months Since the Jan. 6 Attack on the Capitol

Wednesday, July 6, 2022, marked 18 months since the attack on the U.S. Capitol that disrupted a joint session of the U.S. Congress in the process of affirming the presidential election results. The government continues to investigate losses that resulted from the breach of the Capitol, including damage to the Capitol building and grounds, both inside and outside the building. As of April 5, 2022, the approximate losses suffered as a result of the siege at the Capitol totaled \$2,734,783. That amount reflects, among other things, damage to the Capitol building and grounds and certain costs borne by the U.S. Capitol Police.

Under the continued leadership of the U.S. Attorney's Office for the District of Columbia and the FBI's Washington Field Office, the investigation and prosecution of those responsible for the attack continues to move forward at an unprecedented speed and scale. The Department of Justice's resolve to hold accountable those who committed crimes on Jan. 6, 2021, has not, and will not, wane.

Based on the public court documents, below is a snapshot of the investigation as of the close of business Wednesday, July 6, 2022. Complete versions of most of the public court documents used to compile these statistics are available on the Capitol Breach Investigation Resource Page at <https://www.justice.gov/usao-dc/capitol-breach-cases>.

Arrests made: More than **855** defendants have been arrested in nearly all **50** states and the District of Columbia. (This includes those charged in both District and Superior Court).

Criminal charges:

- Approximately **263** defendants have been charged with assaulting, resisting, or impeding officers or employees, including approximately **90** individuals who have been charged with using a deadly or dangerous weapon or causing serious bodily injury to an officer.
 - Approximately **140** police officers were assaulted Jan. 6 at the Capitol, including about **80** U.S. Capitol Police and about **60** from the Metropolitan Police Department.
- Approximately **11** individuals have been arrested on a series of charges that relate to assaulting a member of the media, or destroying their equipment, on Jan. 6.
- Approximately **747** defendants have been charged with entering or remaining in a restricted federal building or grounds. Over **80** additional defendants have been charged with entering a restricted area with a dangerous or deadly weapon.
- More than **50** defendants have been charged with destruction of government property, and approximately **35** defendants have been charged with theft of government property.
- More than **280** defendants have been charged with corruptly obstructing, influencing, or impeding an official proceeding, or attempting to do so.
- Approximately **50** defendants have been charged with conspiracy, either: (a) conspiracy to obstruct a congressional proceeding, (b) conspiracy to obstruct law enforcement during a civil disorder, (c) conspiracy to injure an officer, or (d) some combination of the three.

Pleas:

- Approximately **329** individuals have pleaded guilty to a variety of federal charges, many of whom faced or will face incarceration at sentencing.
 - Approximately **264** have pleaded guilty to misdemeanors. Another **65** have pleaded guilty to felonies.
 - A total of **24** of those who have pleaded guilty to felonies have pleaded to federal charges of assaulting law enforcement officers. Approximately **10** additional defendants have pleaded guilty to feloniously obstructing, impeding, or interfering with a law enforcement officer during a civil disorder. Of these **34** defendants, **12** have now been sentenced to prison terms of up to 63 months.
 - **Three** of those who have pleaded guilty to felonies have pleaded guilty to the federal charge of seditious conspiracy.

Trials:

- **10** individuals have been found guilty at trials, including **8** who were found guilty of felony charges. **One** of these defendants was found guilty of assaulting, resisting, or impeding officers using a deadly or dangerous weapon, a felony.

Sentencings:

- Approximately **203** federal defendants have had their cases adjudicated and received sentences for their criminal activity on Jan. 6. Approximately **99** have been sentenced to periods of incarceration. Approximately **67** defendants have been sentenced to a period of home detention, including approximately **11** who also were sentenced to a period of incarceration.

Public Assistance:

- Citizens from around the country have provided invaluable assistance in identifying individuals in connection with the Jan. 6 attack. The FBI continues to seek the public's help in identifying more than **350** individuals believed to have committed violent acts on the Capitol grounds, including over **250** who assaulted police officers.
- Additionally, the FBI currently has **16** videos of suspects wanted for violent assaults on federal officers and **one** video of **two** suspects wanted for assaults on members of the media on January 6th and is seeking the public's help to identify them. For images and video of the attackers, please visit <https://www.fbi.gov/wanted/capitol-violence>. Anyone with tips can call 1-800-CALL-FBI (800-225-5324) or visit tips.fbi.gov.

Earlier Statistical Updates:

- - Six-Month Update

<https://www.justice.gov/usao-dc/six-months-january-6th-attack-capitol>

- 12-Month Update

<https://www.justice.gov/usao-dc/one-year-jan-6-attack-capitol>

Updated July 7, 2022

Was this page helpful?

Yes No

EXHIBIT 5



Ryan D. Kelley for 50th Governor of Michigan

October 16, 2021 · 🌐



Ryan D. Kelley

@kelleyforgov

“The most secure election in American history”... wasn’t.

Almost like someone already called it...

- Trump
- Ryan Kelley
- Most of America

Decertify MI NOW!

[#AuditAll50States](#)
[#decertifyMichigan](#)
[#BREAKING](#)

[@SKeshel](#) [@mtgreenee](#)
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MICHIGAN

Nessel charges three Metro Detroit

360

8 Comments 27 Shares



Ryan D. Kelley for 50th Governor of Michigan

October 15, 2021 · 🌐



<https://bit.ly/3mV1zQl>



Ryan D. Kelley

@kelleyforgov

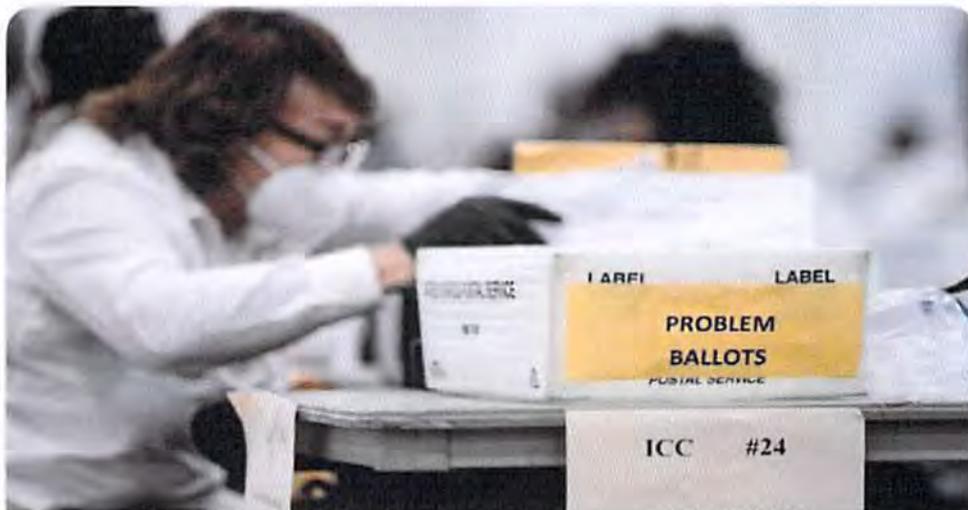


Michigan AG & SOS want us to believe that the 2020 election was the most secure election in American history, to now; it was only these 3 ladies that committed massive fraud.

Yeah right, DECERTIFY NOW!!!

[@MISenate](#) [@SKeshel](#)

A little fraud = massive fraud



detroitnews.com

Nessel charges three Metro Detroit women wit...



Ryan D. Kelley for 50th Governor of Michigan

June 19 at 8:52 PM · 🌐



This just in... Texas GOP passed a resolution, declaring that Biden was not legitimately elected. Many of us have know this since Nov 3, 2020.

Michigan Legislature needs to DECERTIFY the 2020 election results and retract Michigan's 16 electoral votes.

Let's Go!

Let's start tracking down the mules and organizations that corrupted the 2020 election.

Governor Kelley will open an investigation into all the suspicious activity and proven voter fraud on the 2020 election.

Vote RYAN KELLEY August 2 🇺🇸



THEEPOCHTIMES.COM

Texas GOP Passes Resolution Declaring Biden 'Not Legitimately Elected'

Texas Republicans passed a resolution on June 18 stating that President Joe Biden was "no...



Ryan D. Kelley for 50th Governor of Michigan

March 29 · 🌐



Most know I've been strong on election integrity and have been speaking out against the fraudulent 2020 election since November 3, 2020.

Multiple times I've publicly called for the Michigan legislature to DECERTIFY to 2020 election and recall the electors until a full forensic audit is conducted.

Michigan RINOs Shirkey and Wentworth will not do the right thing and protect our Republic from election fraud and stolen elections. McBroom report is BS!

A new petition will initiate legislation to DECERTIFY the 2020 election and restore election confidence in Michigan.

I fully support this effort to DECERTIFY to 2020 election in Michigan, recall the 16 electoral college votes from fake President Joe Biden, and hold those electors until a full forensic audit is conducted.

If the RINOs and Democrats had nothing to hide they would encourage we find the truth!

Site to explore and read petition:

<https://decertifymi.com/>

Vote RYAN KELLEY for MICHIGAN GOVERNOR on Aug 2, 2022! 🇺🇸

(Photo Nov 2020)



👍❤️ 72

5 Comments 4 Shares



Ryan D. Kelley for 50th Governor of Michigan

March 26 · 🌐

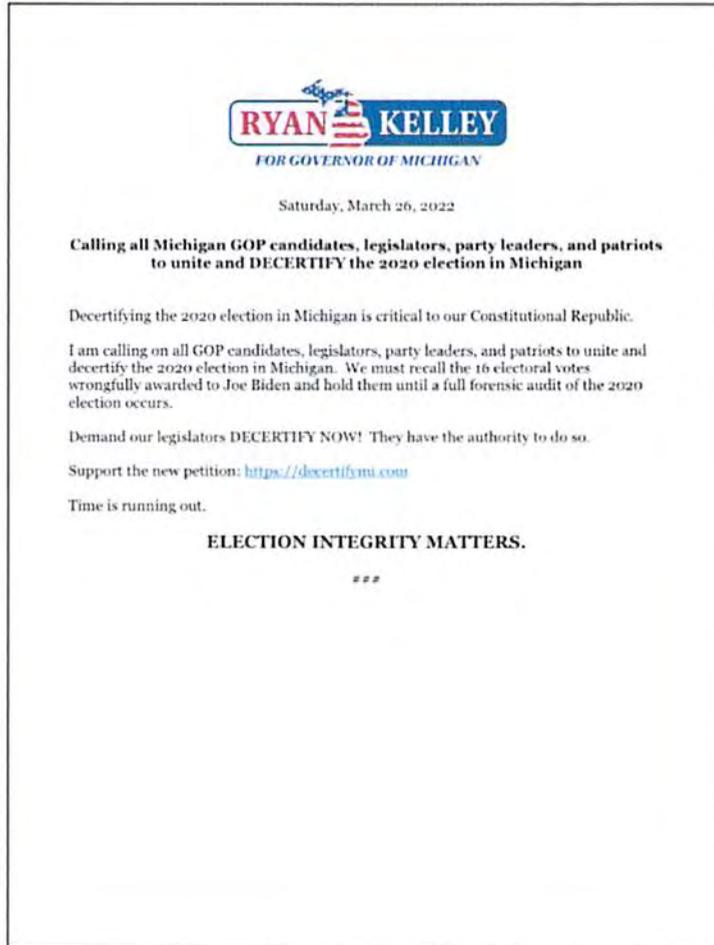
Today I am calling on all GOP candidates, legislators, party leaders, and patriots to unite and DECERTIFY the 2020 election.

ELECTION INTEGRITY MATTERS.

Share this with every legislator, candidate, and patriot you know.

The more they try to silence us, the louder we will get! 🇺🇸

Vote RYAN KELLEY for MICHIGAN GOVERNOR on Aug 2, 2022 in the primary election.



👍❤️ 101

7 Comments 28 Shares



**STATE OF MICHIGAN
IN THE COURT OF APPEALS**

LEE ESTES,

Plaintiff,

Case No.

-AW

v

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

Defendants.

_____/

GOODMAN ACKER, P.C.
MARK BREWER (P35661)
Attorneys for Plaintiff
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Southfield, MI 48075
(248) 483-5000
mbrewer@goodmanacker.com

_____/

PROOF OF SERVICE

STATE OF MICHIGAN)
)ss
COUNTY OF OAKLAND)

The undersigned certifies that on July 14, 2022, he personally served Plaintiffs' Verified Complaint, Brief in Support, Exhibits, and Motion to Expedite and Shorten Time on Defendants at their address at 430 W. Allegan St., Richard H. Austen Bldg – 4th Floor, Lansing, Michigan 48918.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

/s/ Mark Brewer

**STATE OF MICHIGAN
IN THE COURT OF APPEALS**

LEE ESTES,

Plaintiff,

Case No.

-AW

v

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

URGENT ELECTION MATTER

Defendants.

GOODMAN ACKER, P.C.
MARK BREWER (P35661)
Attorneys for Plaintiff
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(248) 483-5000
mbrewer@goodmanacker.com

**PLAINTIFF'S MOTION TO EXPEDITE AND SHORTEN
TIME FOR ANSWER**

NOW COMES Plaintiff by and through counsel and moves to expedite this matter, including shortening the time for answer, as follows:

1. This is an urgent election matter involving the eligibility of candidate Ryan Kelley to appear on the primary election ballot, to have votes cast for him counted, and his eligibility to appear on the general election ballot if nominated.
2. Voters are voting in the August 2d primary election. They will be disenfranchised and their votes wasted by voting for Kelley, They deserve to know if they can cast their vote for an eligible candidate.

3. Declaratory judgment actions may be expedited, MCR 2.605(D), and election matters such as this should be expedited, *see* MCR 7.213(C)(4); *Scott v Mich Dir of Elections*, 490 Mich 888; 804 NW2d 119 (2011).

For all these reasons and those set forth in the Verified Complaint and Brief, Plaintiff prays that:

1. This Motion be granted;
2. The time for defendants to answer be shortened to seven (7) days; and
3. That the Court expedite the handling of and decision in this case.

Respectfully submitted,

/s/ Mark Brewer

MARK BREWER (P35661)

GOODMAN ACKER, P.C.

Attorney for Plaintiff

17000 W. Ten Mile Road

Southfield, MI 48075

(248) 483-5000

mbrewer@goodmanacker.com

Dated: July 14, 2022