



MIRS Capitol Capsule, Wednesday, August 2, 2023

QUOTE OF THE DAY

"The 16 are having fundraisers, but they should go to Trump and say, 'You told us to do this, so we were just doing what you said to do, and you should pay for it.'"

- Former Michigan Republican Party Chair Susy **AVERY** talking about the 16 "Trump Republican delegates" who are now facing felony forgery charges for signing an alternate electoral college declaration form, even though Democrat Joe **BIDEN** won Michigan's 16 electoral votes.

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Republicans, Not Democrats, Seeking To Take Out Cavitt

The lone state representative who had recall language against him approved on Tuesday said in a statement that the attempt to unseat him is a "partisan tactic to divert our attention from harmful policies coming out of Lansing, such as the recently signed budget."

But a conservative Republican seeking Rep. **Cam CAVITT (R-Cheboygan)**'s seat in the 106th District told a local radio program recently that he was approached by Cavitt's recall organizers about appearing on the recall ballot with the Democratic nominee and Cavitt, himself.

The recall organizers against Cavitt were not Democrats, but Republicans. They felt Cavitt's voting record was not conservative enough. They were upset that Cavitt voted to elect Rep. **Joe TATE (D-Detroit)** Speaker of the House. Todd **SMALENBERG** told WBKB that Cavitt was also censured by four of the six county Republican Party chairs in his district.

"So, of course, I said I was running against him. I'll be more than happy to be the one who replaces him," Smalenberg said.



According to the Secretary of State's office, if organizers are able to get the needed number of signatures within a 60-day window, Cavitt would be the Republican nominee if he chooses to run in his own recall election. There will be a Democratic primary to determine that party's nominee. This is different than elections at the local level, which do not have a primary.

Another candidate, like Smalenberg, could also run in the recall general election, but it would be without party affiliation.

The listed head of the recall effort is Gary **WNUK** of Alcona County, who was an alternate delegate to the Michigan Republican Party convention this past February. Last year, he was elected as a write-in candidate for the Fairview School Board. Wnuk has also served on the Alcona County Commission and was a vice chair of the county's Republican Party.

The recall language is good for 180 days, but organizers need to collect what will amount to 11,903 valid signatures – 25% of those who voted for governor in the 2022 gubernatorial election – within a 60-day window.

Smalenberg said what's behind Cavitt's recall "was a combination of things." First was the Tate vote, which he equated to the U.S. Rep. **Jack BERGMAN (R-Watersmeet)** voting for U.S. Rep. Nancy **PELOSI** for speaker. Second, Smalenburg claims Cavitt has a 50% voting record. In a 67% Republican district "That's not good odds. You're not actually doing the work for the people who voted you in."

Third, Cavitt allegedly voted for the Gotion funding in committee, which Smalenberg compared to "giving the Chinese Community Party the keys to the house and keys to the car."

Cavitt's press release also included the quote: "My constituents sent me to Lansing to fight for projects like the Cornwall Flooding, a Veterans Cemetery in Presque Isle County, and for workforce housing at Alpena Community College. This is simply a distraction that takes away from the real issues those in my district care about."

Seven out of eight petitions filed for recall against state legislators were rejected for their lack of specificity when it comes to informing potential signees on what the recall was founded upon. The board decided a bill number and the legislator's vote on that bill isn't enough for a signee to make an informed decision. However, because Cavitt's recall was filed due to his vote to make Rep. **Joe TATE (D-Detroit)** Speaker of the House and it didn't include a bill number, his was the only recall petition approved.

Fouts Hoping Lawsuit Forces Do-Over Primary in Warren

(WARREN) – Warren Mayor James **FOUTS** and his private attorney Nabih **AYAD** want a federal lawsuit they filed today to lead to the city's election officials decertifying the Aug. 8 mayoral primary results and holding a special election in mid-September – with Fouts on the ballot.

"People are constantly calling me up. I'm running into people while I'm jogging or wherever, and they're saying 'why aren't you on the ballot?' Many are saying 'I want to write you in,'" Fouts said during a press conference at the Andiamo Warren Italian restaurant. "I've had overwhelming feedback, support from average Warren residents who've said 'I want to vote for you. What can you do?' So that's part of the reason I'm doing this."

In November 2020, a local ballot proposal limiting a mayor to serving the greater of three complete terms or 12 years in office was approved by 67.8% of Warren voters.

Fouts was initially elected as Warren mayor in 2007. During March of this year, Macomb County Circuit Court Judge Joseph **TOIA** gave Fouts' pursuit of a fifth-term as mayor the greenlight, issuing a decision stating that the proposal language did not clearly assert that the new term limits would be retroactive to include all years served before 2020.

However, in April, Toia's decision was reversed by the state Court of Appeals, and the Michigan Supreme Court later published a one-page order saying it was "not persuaded that the question presented should be reviewed by this court," (See "[End Of The Line For Fouts Dodging Local Term Limits Law](#)," 5/17/2023).

Around 12 p.m. today, Fouts, who filed a federal complaint against the Warren City Council, the Warren City Election Commission, the Macomb County Clerk and the Warren City Clerk.

The complaint alleges that Fouts' U.S. Constitutional rights were violated, such as his First Amendment right to political expression and association. The Fifth Amendment right to due process protection and the 14th Amendment right to equal application of the laws were also listed, and the complaint featured a declaration that the Warren City Council's actions were unconstitutional.

"The law in the state and in our nation is crystal clear: statutes that intend to be applied retroactively must be very clear and unambiguous. Under our holdings of the United States Supreme Court, as well as the holdings of our Michigan Supreme Court, the Michigan Court of Appeals decision, which we know they're going to argue in this particular matter, does not apply to this case's constitutional argument," Ayad said. "These claims alleged, that we have here, are fundamental constitutional challenges, unique to the mayor himself, to run for office and to vote for whoever he desires, including himself."

When questioned about the timing of today's filing, with the primary election taking place six days from now and with absentee ballots already being returned, Ayad said his law firm was just recently retained "to be able to win this."

Fouts said he was extremely disappointed when the state Court of Appeals did not hear oral arguments ahead of reversing Toia's decision, believing he was denied his First Amendment rights and his right to speak to his attorneys. He added that the Michigan Supreme Court denied his due process by not hearing his case.

The complaint – on top of seeking a special election for the non-party-affiliated mayoral primary in Warren – asks for money damages from the city council.

"I apologize if I offend somebody. I've had four years of hell from this city council," Fouts said. "They have personally insulted and harassed all of my department heads and every week they start out with a personal gripe against me and disparaging comments and what have you."



He said the city council attempted to "be too smart" with the November 2020 ballot proposal, and failed to include the retroactivity language needed to bar him from reelection.

Meanwhile, the Warren City Council sent out a press release this morning, describing Fouts' behavior after the state court rulings as ranging from "outrageous to bizarre."

With the primary election in Warren less than one week away, City Council President Patrick **GREEN**, who's on the ballot for mayor, said he will instruct the municipality's attorneys to seek sanctions and costs, calling the lawsuit "last-minute," "frivolous" and "designed to suppress voter participation in next week's election."

Green said he fears more legal issues will be faced as Fouts' time in office winds down.

"I have spoken to many voters in Warren who have the same message for Mayor Fouts, which is 'thank you for your service but it is time to move on.' The mayor has spun out of control and residents are tired of the divisiveness and constant battles," Green said in a statement. "Instead of doing his job, he has been holding press conferences and speeches where he has lengthy outbursts against his perceived enemies in the government, media, and courts. This is a sad ending to a long political career for a mayor who cannot accept that his time is up."

What Stood Out To McQuade, Schneider In Trump Indictment?

What stood out to a pair of former U.S. Attorneys from Tuesday's indictment of former U.S. President Donald **TRUMP** and the alleged plot to overthrow the results of the 2020 election? It was the charges that were brought forward and the decision not to name or charge the co-conspirators.

Former U.S. Attorney Barbara **MCQUADE** served as a U.S. Attorney for the Eastern District of Michigan from 2010-2017. She stepped down in March 2017 as part of Trump's dismissal of U.S. attorneys. She is a professor of law at the University of Michigan Law School and a legal analyst for NBC and MSNBC.

McQuade said when reading the indictment, she was looking to see if U.S. Department of Justice Special Counsel Jack **SMITH** would charge Trump with inciting insurrection or seditious conspiracy, which he did not.

Trump, who is running for a second non-consecutive term, was indicted on four counts: conspiracy to defraud the United States, conspiracy to obstruct an official proceeding, obstruction of and attempt to obstruct an official proceeding and conspiracy against rights.

McQuade called the charges a "modest effort to enforce the law," which she said could be prudent in getting the case to trial before the 2024 election.

"He did not swing for the fences, which is probably prudent," McQuade said. "To have charged those other crimes might have invited a First Amendment challenge, and it seems that he (Smith) is more focused on making sure that this case is brought to trial before the November election. He didn't charge it

too big or too small, and kind of played it in the middle, which seems appropriate.”

McQuade said the other thing that struck her was the descriptions of the six co-conspirators in the indictment without charging or naming them.

“Ordinarily, you would charge all the co-conspirators in one indictment,” she said. “It makes me curious to know, are they cooperating? Are they being given an opportunity to cooperate, or is this just a strategic decision by Jack Smith to be laser-focused on Donald Trump?”

McQuade said the likelihood of getting to trial within 15 months is much slimmer with seven defendants than with only one.

“So it may simply be that he is working on getting Trump convicted before the election, and then you can worry about the others down the road,” she said. “If they call them conspirators, that means that the grand jury found that they did enter into a conspiracy without probable cause. So it appears, based on the evidence, he could have charged all six of those people.”

Former U.S. Attorney Matthew **SCHNEIDER** agreed that the prosecutor could have been time limited during potential negotiations with co-conspirators, and not yet able to determine if they’d be willing to cooperate.

Schneider, who served as U.S. Attorney for the Eastern District of Michigan from 2018 through 2021, now a partner at Honigman LLP, said “it appears that the special counsel wanted to bring this charge as fast as possible.”

But Schneider said there’s “not a lot that came out in this indictment that we didn’t already know . . . so I don’t think there’s anything in there that will tip the scales.”

Much of the evidence referenced in the indictment had been previously laid out in the 840-page report on the Jan. 6, 2021 riots in Washington D.C., which was released by the U.S. House Select Committee in December 2022 (See “Michigan 3rd Most Mentioned State In Jan. 6 Report,” 12/28/22).

In Michigan, the indictment included reference to comments made by Trump about a suspicious dump of illegitimate ballots in Detroit, followed by statements alleging that “Detroit is totally corrupt” and including statements made on Jan. 6, 2021.

“In Detroit, there were hours of unexplained delay in delivering many of the votes for counting. The final batch did not arrive until four in the morning and — even though the polls closed at eight o’clock. So they brought it in, and the batches came in, and nobody knew where they came from,” Trump was quoted in the indictment as saying.

The indictment referenced meetings between Trump, then-House Speaker Lee **CHATFIELD** and then-Senate Majority Leader Mike **SHIRKEY**, where Shirkey told Trump he lost Michigan not because of fraud, “but because the Defendant had underperformed with certain voter populations in the state.”

Trump’s “co-conspirators” also sent several alleged text messages to both Shirkey and Chatfield asking for help reversing the certification of the electors for President Joe **BIDEN**.

Schneider said the outcome of the charges against Trump will depend on the ability of an impaneled jury to be fair and balanced, which “remains to be seen.

“I think there’s two different sides to this argument,” he said.

On the one hand, Schneider said the prosecution’s argument at this point is that former President Trump knew he had lost the election because his top aides, the Attorney General’s Office, the Justice Department and people closest to him were informing him.

“Even though he knew that, he tweeted things that were false and kept telling people he won in an attempt to get those Electoral College Votes to be switched to him,” Schneider said.

However, he added that the problem with the prosecution’s theory is that many presidents in the past have received advice from their aides, “and they ignored it.”

Schneider referenced former Presidents Abraham **LINCOLN**, Lyndon B. **JOHNSON** and Franklin D. **ROOSEVELT** as having sought outside counsel at some point.

“President Trump did the same thing. He listened to other lawyers,” Schneider said, “and I think his defense will be like a defense of advice of counsel. ‘I relied on these other people, and I believed what they said, and how are you to tell me who I’m supposed to listen to?’

“I think, if he goes to trial, that’s kind of how it will play out,” Schneider said.

McQuade said one defense could be a reiteration of Trump’s genuine belief that he won the 2020 election, “and in fact, ‘I still believe that to this day.’”

To prove that he defrauded the public, one would have to prove that he knew he lost the election, McQuade said.

However, she referenced the great deal of evidence described in the indictment, that he was informed by the Attorney General, Cyber Security Director and Director of National Intelligence that he had lost, along with the many failed lawsuits.

“At some point, the evidence becomes overwhelming,” McQuade said. “That no matter what he says, a jury can draw the reasonable inference that he did know that he lost the election.”

For those arguing in favor of Trump simply exercising his First Amendment rights when giving statements that he had won the election, McQuade warned that it is a “rather superficial defense.”

“If that’s what the indictment alleged, then that would be right. But that’s not what the indictment alleges,” she said. “The indictment alleges that he made conduct to try to undermine the outcome of the election, so this idea that this is all simply protected free speech is absolute nonsense.”

McQuade referenced the pressure on Shirkey and Chatfield in Michigan as one example of going beyond free speech.

When talking about the potential outcome of a trial, McQuade said the charges have made the case more manageable, for both a prosecutor to handle and a jury to understand.

She used the example that there were also no charges related to fraud in soliciting campaign donations in the indictment.

“Now, it may be that they just couldn’t make out the case,” McQuade said, “but it also strikes me as a possibility that they’re really just trying to keep their eye on the ball here... really focusing on the heart of this, which was an effort to overturn the election.”

McQuade said when she first went to train as a new prosecutor, she was told that the government wins 95% of its cases. In the 5% of instances when it loses, it isn’t normally because the jury didn’t believe the government’s evidence.

Would Maddock Go To Jail For Trump?

The day after former President Donald **TRUMP** was indicted by a grand jury for allegedly orchestrating a plot that would allow him to retain the presidency despite him losing the Electoral College in 2020, audio surfaced that has former Michigan Republican Party Co-Chair Meshawn **MADDOCK** saying the Trump campaign asked Michigan Republicans to fill out an alternate slate of electors.

Maddock and 15 other Republicans did exactly that and are now facing felony forgery charges (See “[AG Charges Maddock, Others In False Electors Case](#),” 7/18/23). Now, Maddock is on a recording taken from a Stand Up Michigan event [and obtained by CNN](#) saying “We fought to seat the electors. The Trump campaign asked us to do that . . . under a lot of scrutiny for that today.”

Does this mean Maddock is throwing the Trump folks under the bus or would she be willing to go to jail for Trump, if it were to come to that?

MIRS asked four political observers this question.

Former Michigan Republican Party Chair Susy **AVERY** pointed out that Maddock is hosting a pool party at her house on Friday (\$30 a head, BYOB) as a way to raise money for the legal defense fund of the 16 total defendants.

“The 16 are having fundraisers, but they should go to Trump and say, ‘You told us to do this, so we were just doing what you said to do, and you should pay for it,’” she said.

She said she feels bad for the 16 Republicans, especially since they are mostly over age 70.

“The whole thing to me is just bizarre. It’s just bizarre. They’re having a fundraiser here for an 81-year-old guy who signed the thing and he’s 81 years old. I mean, he just said well, they told me to sign something and I did,” she said.

She said the Republicans had always run as the party of law and order and needed to stick to the laws.

“The thing is that you can’t go into these things and make up your own rules. I’ll just put it very simply. There are laws and rules that rule even over political parties. I know it’s difficult for some people to understand because they think they can make up the rules, but you cannot make up rules. We’ve got to follow the law,” she said.

Former journalist and Truscott Rossman Senior Advisor Ron **FOURNIER** said he hadn’t met Maddock, but there are many people who have already shown they are willing to go to jail for Trump.

“We’ve also seen many unwilling to go to jail for him and several have flipped on him. I don’t know which category she will fall under,” he said.

He wondered if she would be a Michael **COHEN** or a Rudy **GIULIANI**.

Political consultant Jamie **ROE** said she has already pleaded not guilty.

“So, she obviously believes she’s innocent of the charges,” he said.

Former Jennifer **GRANHOLM** staffer Felix **SHARPE-CABALLERO** said he couldn’t talk for Maddock, but that the entire saga would be played out in court.

“We will see who’s loyal to the Constitution and who’s loyal to the individual, and that’s what it really comes down to,” he said.

MIRS asked the four pundits two other questions.

[Does the indictment of Trump impact Michigan House Republicans’ chances of taking back the chamber next year?](#)

Avery said Republicans were already avoiding the state party and instead giving directly to the House and Senate political action committees or to the individual candidates.

"I don't know if that's going to have that much of an effect on next year. I think it might have an effect on some of these people who have been in a position to try to get candidates to run when they themselves are under an indictment. That would be difficult, I would think," she said.

She said the indictment was just piling on the problems within the party itself.

"I wish these new people all the luck in the world and you're talking to someone who has been disavowed and censured by these people," she said.

Fournier said politics was always difficult to predict but, based on the 2020 and 2022 election cycles, it would hurt them.

"Now, all that to say, anybody who tells you there's no way Donald Trump can become president again they're fools, they're naïve, or they're witch-casting because anything can happen in politics once you win a nomination," he said.

Roe said it wasn't Trump that was going to give the Michigan Legislature back to the Republicans, but instead the Democrats themselves.

"Which has undone 40 years of progress in about six months and they are going to be judged on their record, not on Donald Trump," he said.

Sharpe-Caballero said the indictment would absolutely solidify the Democratic Party's hold over the House and the state itself.

"Michigan has been at the forefront of this internal revolution, for a lack of a better term, in our country, where we are officially divided 50% on the left and 50% on the right. Michigan began that process back in the Reagan era," he said.

He said the Democrats saw many jump ship and join the Republicans during that time.

"We're seeing this tumultuous change to the American body politics and Michigan was a space that started that process as the Republicans look to regain control of the House," Sharpe-Caballero said.

Does the indictment weaken or strengthen the case against the 16 Republicans charged with forgery in Michigan?

Avery said there was some carryover between the 16 Republicans and the indictment mentioning Detroit and Trump's claims about ballots being brought into the facility where they were being taken to the former TCF Center, now called Huntington Place and formerly Cobo Hall.

"I think the person who was after it at one time is now the chair of the Michigan Republican Party, but I haven't seen where her name came up in that," she said.

She said Trump lost Michigan because Republicans were not able to pull the votes out of Oakland and Kent counties, who voted in down ticket GOP members.

"If you're going to run statewide, you have got to get Oakland and Kent. It didn't used to be that way, but now it is that way," she said.

Fournier said he isn't a lawyer and couldn't talk about the merits of the case, but, politically, Trump defied conventional wisdom.

"There was a time not too long ago in which an indictment of a politician ended their career. There was a time not too long ago when a politician being indicted for fomenting an insurrection, conspiring to overturn an election, would have ended a career in shame, but Donald Trump defies all expectations, including those," Fournier said.

He said it was the exact opposite and Trump's base was growing just as fast as the detractors and he pointed to the 2020 election where he gained 7 million voters.

"Polls are showing us that with every indictment that he gets this cycle, he gets stronger among core Republican voters, among the base," he said.

He said the same logic could be applied to Maddock and the other 15 signers.

"This just makes them stronger among the core Republican voters, people who make up the new Republican Party, the MAGA party. This helps them. It doesn't hurt them," Fournier said.

Roe confirmed that it could help because the forgery cases against the 16 Republicans were something that happens in the country but has never been charged.

"I don't know the basis of how strong the case is that the Attorney General has or if it's going to stand up in court. We'll see. All I know is that for an Attorney General that couldn't find the time to investigate thousands of needless deaths in a nursing home, it is interesting that she's decided to instead focus on bringing criminal indictments to put senior citizens in prison for 70 years. It's just mind boggling to me what her priorities are," Roe said.

Sharpe-Caballero said he believes the Trump indictment significantly strengthens the case against the 16 Republicans in Michigan.

"It sheds light on the fact that as the nation prepares for this first-time experience in American democracy, that Michigan is at the forefront of this trial that we're going to go through," Sharpe-Caballero said.

How Does 2023 Bill Count Compare With Years Past?

Michigan's first Democratic trifecta in 40 years created 121 public acts in its first seven months in control, a numerical increase from the prior three odd-numbered years and higher than the 20-year average of laws signed between Jan. 1 and July 31.

However, when compared to the past 50 years, 121 new public acts is a mediocre number for the first year of a two-year legislative term. From 1973 to the present, an average of 114 bills are typically signed in the first seven months of a House term.

Since 1973, the 121 PAs rank 13th out of 26 first years of a House term. The most were 183 in 1975 and the least was 46 in 2007. See the chart listing out the numbers here. [PAs In First 7 Months 1973-2023](#)

One striking trend found in reviewing the numbers gathered from official state documents was the higher number of PAs during the non-term limited era of legislators.

Between 1999, the first year term limits swept out long-serving members, and 2023, the average number of bills signed into law from Jan. 1 to July 31 in odd-numbered years was 103. The average number of bills signed into law from Jan. 1 to July 31 in odd-numbered years was 125.

Longtime political operative and attorney Richard **McLELLAN** suggested that experience could be playing a role in the numbers. With literally half of the 110-member state House populated with first-term representatives, several may not even have a relationship with the Legislative Service Bureau, let alone know the logistics of writing a bill.

He also noted that the Democrats haven't been in charge for a while and may not have a staff that's been in a position of regularly passing laws. It takes time to get into a groove, he said.

All that aside, McLellan noted that the Democrats have focused on major pieces of legislation that could be addressed in a bill or two. Right to Work, for example, required only one bill. The 1,600-page state budget for Fiscal Year 2024 was reduced to two bills. In previous sessions, a budget was divided up into 15 or 16 bills.

McLellan also remembered years when a bill package was 50 bills or more. This legislature hasn't cleared something like that, yet.

On the actual bill number, he said, "It's an interesting fact, but in my opinion, it's been a fairly active session."

That was Bill **BALLENGER** of *The Ballenger Report's* initial reaction, as well.

"The big-ticket items were so strong and overpowering -- like Right to Work repeal and the gun stuff that dominated the headlines -- that it gave everybody this feeling of 'Holy shit, this is Niagara Falls here. In fact, there was a drop off from the high-profile stuff and the dogs-and-cats bills that tend to dominate a session."

He noted that some sessions were also light because the prior session's lame duck had such a house cleaning, there weren't many odds-and-ends or the next crew to occupy themselves with.

In 1996 and 2018, in particular, the Republicans were surrendering their total control of the executive and legislative control, so they opened up the books and passed literally hundreds of bills in lame duck.

It's also worth noting that the one-seat majorities in the House and Senate were so slim that in the House, in particular, several session days didn't happen because the Democrats didn't have 56 votes ready to go.

Session days were long when all 56 members were present, but could more have been done if legislators actually met every day they were scheduled?

Judge: State Needs Parental Consent To Keep Newborn's Blood Samples

Michigan cannot keep newborns' blood samples taken at birth without their parents' consent, according to a federal judge's **final order** issued Monday.

U.S. District Judge Thomas L. **LUDINGTON** became the first judge in the country to grant an injunction that gives the state one year to obtain informed consent from the parents "for the retention and use of their children's samples and the associated data."

"Failing to accomplish this within a year will require the state to destroy all the samples and data," Ludington's Friday opinion notes. "In addition, the state will have to offer by mail the options to return and to destroy the samples and data."

While Ludington's ruling in *Kanuszewski v. Department of Health and Human Services* could have broad ramifications, it specifically is limited to the blood spots and data for the four families and their combined nine Michigan-born children who are the named plaintiffs because it is not a class-action lawsuit.

A DHHS spokesperson said the department “continues to fulfill its commitment to protect the health and well-being of all Michigan’s residents, including its youngest and most vulnerable, newborn babies.” The department is reviewing the decision before deciding its next step.

Plaintiffs’ attorney, Philip **ELLISON**, who learned about the taking of blood samples when his son was born, did not return a message seeking comment.

The plaintiffs sued the state in 2018, alleging the state taking their newborn’s blood without consent violated the Fourth and Fourteenth Amendments (See [“Federal Lawsuit Challenges Taking, Storing Of Newborn’s Blood Samples,”](#) 2/9/18).

The state argued Fourth Amendment protections don’t apply because parents can ask for the samples to be returned or destroyed. However, deletion from the computerized laboratory information management system (LIMS) used to store the information is not doable, Ludington’s opinion reads.

Ellison and his wife filed their own lawsuit in the Court of Claims against DHHS for not returning or destroying their son’s blood sample. In April 2018, the judge put the case on hold (See [“Couple Claims MDHHS Didn’t Destroy Newborn’s Blood As Requested,”](#) 1/23/18).

The state also argued Fourth Amendment protections don’t apply because the retention is done “for purely medical purposes,” but Ludington rejected that argument, noting the state has used the blood samples to identify victims and perpetrators of crimes.

“The potential uses for Plaintiff-infants’ blood samples beyond the realm of immediate medical aid raises concerns about unwarranted government intrusion into individual privacy,” Ludington wrote.

Michigan has collected blood samples since the 1960s to test for various diseases. In the past 60 years, DHHS has diagnosed roughly 0.2% to 0.25% of newborns with at least one of 58 disorders using the procedure, Ludington’s opinion noted.

The samples and data – including disease diagnoses and genetic markers – are stored indefinitely in LIMS, which licensed healthcare providers can access.

BioTrust for Health assists in storing and furnishing the samples to third parties, such as research institutions and law enforcement agencies.

The state keeps the demographic cards for 35 years and sends the blood spots to the Michigan Neonatal Biobank in Detroit for 100 years.

Rogers Nearing U.S. Senate Announcement

During an *Off the Record* appearance last March, former U.S. Rep. Mike **ROGERS** sent signals that he was focused on running for the Republican presidential nomination.

He was fixed on sharing his message of collaborative problem-solving in the early presidential primary states of Iowa, New Hampshire, South Carolina, and Nevada, hoping a focus on policy might “reignite optimism in the American Dream” (See [“Rogers Talking...,”](#) 3/2/23).

When quizzed on the possibly more feasible bid for the Michigan U.S. Senate seat, he reflected, “I’m not sure I’m thinking about running for the U.S. Senate now (but) I’ve learned never to say never in politics. I have learned that.”

Off camera, the Livingston County native conceded that he and his wife, Kristi **ROGERS**, were living in Florida, making a U.S. Senate run a little bit of a hurdle.

Well, that was then. Now is now.

Although he’s not ready to announce his candidacy for the GOP senate nomination, *MIRS* has learned the former state Senate Majority Floor Leader is nearing an announcement for the post being left next year by U.S. Sen. **Debbie STABENOW (D-Lansing)**.

MIRS has learned Rogers has received strong encouragement, especially from those disaffected Republicans who are looking for someone to re-unite a badly divided state party. They think the national security-minded Rogers could be that person.

Those who have closed their checkbooks and left the new state party leaders to fend for themselves, have reportedly told Rogers they will re-open those checkbooks to help him out.

Before the formal announcement, there are some loose-end business issues to be resolved before he is ready to confirm all this.

But after that, you can look for those Mike Rogers for U.S. Senate bumper stickers to appear in a move that will significantly change the chemistry of the race to replace outgoing Stabenow.

Currently, the state Board of Education member Nikki **SNYDER** and business executive Michael **HOOVER** are the only Republicans to report raising money for a U.S. Senate campaign. Attorney Alexandria **TAYLOR** has launched a campaign for the GOP nomination, as well.

6th Circuit Hears Arguments Against Blaine Amendment

Michigan's Blaine Amendment – which prohibits public funds for non-public school expenses – disadvantages private schools, which should be allowed to lobby the Legislature for state funding, an attorney argued today before a federal appeals court.

Caledonia attorney John **BURSCH** made the argument on behalf of five families who saved money through the Michigan Education Savings Program, a tax-exempt 529 plan, and want to use those funds to help pay for K-12 private school tuition.

The legal strategy employed by Bursch and the Mackinac Center is that the Blaine Amendment was passed in 1970 on the backs of religious bigotry, which is a violation of the U.S. Constitution. If the Amendment is ruled unconstitutional, the plaintiffs will be cleared to lobby the Legislature to pass legislation that would allow 529s to be used to cover private school tuition.

"There's a certain futility to lobbying today for a law that is facially invalid under Michigan's Constitution as it stands, but certainly, these plaintiffs, this organization and the individual plaintiffs are ready and willing to go forward and ask for that," he told a U.S. Sixth Circuit Court of Appeals panel today as he sought a reversal of the lower court's dismissal of his client's equal protection claim.

Assistant Attorney General Linus **BANGHART-LINN** argued the plaintiffs lack standing and their effort to invoke a rarely used theory – that Michigan's citizens violated the equal protection clause by placing the policy decision embodied by the no-aid clause in the Constitution – exceeds the legislative process.

Banghart-Linn said that while it is understandable that the plaintiffs want to lobby the Legislature for a new policy – they can't.

"There are policies I would prefer that are different than the current policy, but the Legislature can't do anything about it because of the Michigan Constitution," he said. "... Michigan voters chose not to fund private schools. The fact that the majority of schools were Christian schools and Catholic schools ... is not the fault of the Michigan voters."

Circuit Judges John K. **BUSH** and Eric E. **MURPHY** participated in today's oral arguments while Circuit Judge Jane Branstetter **STRANCH**, who was not present, will listen to the arguments at a later date and will participate in the decision.

The case, *Hile v. State of Michigan*, was first brought in September 2021 on behalf of five families seeking to use funds they have saved through the Michigan Education Savings Program, a tax-exempt 529 plan, to help pay for private educational opportunities (See "Mac Center Suit Takes On Amendment Barring Public Funds On Private Education," 9/24/21).

The Blaine Amendment, which was passed in 1970, doesn't specifically draw a line based on religion. Rather, it makes a public versus private distinction, Banghart-Linn said.

Bursch argued, however, that public officials in Michigan recognized the Blaine Amendment was "one of the most anti-Catholic political campaigns that they had ever seen."

Bursch essentially argued that the state placed a political restriction on religious persons' ability to obtain aid for religious school tuition.

Banghart-Linn argued this doctrine hasn't been recognized outside the realm of intentional racial discrimination and no caselaw allows the plaintiffs to expand it to religious discrimination.

In September 2022, U.S. District Judge Robert J. **JONKER** dismissed the suit in an **order** that acknowledged both sides had a "reasonable argument" to support their interpretation of the MESP, but neither side demonstrated "any state practice at odds with the way Michigan says its own law works."

MSU Study Finds Political Animosity Is Global

Political polarization, the tendency to dislike people who belong to an opposing political party while favoring people from their own political party, is a global bias -- not just an American one, according to a new study coming out of Michigan State University.

The school's interdisciplinary team of researchers across six different countries found by looking into "affective polarization" that the dislike grows stronger when two people think about political issues the same way but come away with different beliefs about those issues.

For instance, two people from two separate political parties may both think that tax policy and trade should be thought of together as a package.

The researchers found that even though these two people share a way of thinking about political issues, they will have the largest degree of affective polarization if they end up having different conclusions.

This suggests that sharing cognitive frameworks with political outgroups can intensify negative attitudes toward them.

"You can imagine how frustrating it is to interact with someone who seems to think about things in a similar way and who shares the same basic logic of how things work as you do, but yet come to opposite conclusions," said Mark **BRANDT**, an associate professor of psychology at Michigan State University and a researcher in the field of social psychology. "We think that sharing a way of thinking about issues with a political outgroup is likely a signal that they are competitors in the political system."

This study, led by Felicity **TURNER-ZWINKELS**, a social psychologist from Tilburg University's Department of Sociology, found that regardless of the country, people dislike political outgroups the more they disagree with them.

Nearly 30,000 people from 36 countries on six continents were sampled as part of the study. The work was financed by the NORFACE Joint Research Programme on Democratic Governance in a Turbulent Age.

"This study matters because we examined a topic (affective polarization) that is heavily discussed and studied in America and brought it to a global scale. This shows that it is global and not just an American phenomenon," said Brandt. "People should care because it helps better explain the way humans interact with each other in the realm of politics."

"Why do we dislike each other so much even when we think about an issue similarly? This helps explain it," said Brandt. "This tells us that these feelings are widespread. Americans might think we're special in our political entrenchment, but it turns out we're not."

The research suggests two potential interventions that were not directly tested: highlighting shared opinions across political groups, which could reduce affective polarization, and encouraging individuals to contemplate political issues and their interconnectedness in new and unique ways.

(Contributed by Shelly DeJong of Michigan State University).

Lawsuit: Adult Care Resident Burned To Death In 128 Degree Bathwater

A lawsuit filed today against Thresholds Inc., the operator of a Grand Rapids adult foster care home for people with mental challenges, alleges staff allowed a resident to be scalded to death in a bathtub.

The lawsuit, filed in Kent County Circuit Court, alleges negligence and gross negligence in the death of Robert **HOFFMAN**, a man with severe autism, cerebral palsy and cognitive impairments who lived in Thresholds' Grand Rapids group home.

"This is a horrific case," plaintiff's attorney Jonathan **MARKO** said. "No one should have to worry about the safety of someone with mental disabilities in a home that exists specifically to care for them."

"This home, entrusted with Robert's safety, had no greater priority than his wellbeing and the welfare of vulnerable people like him. It's absolutely sickening what they allowed to happen to Robert," he added.

Efforts late today to reach Thresholds were not successful.

According to the complaint, Hoffman was entirely dependent upon staff to complete many basic day-to-day tasks, including bathing.

On the morning of Feb. 21, 2022, an employee prepared Hoffman's bath with "scalding hot water" and left him alone in the bath "for a prolonged period of time," the suit alleges.

Later that day, Hoffman was found in a "fetal position making a choking noise."

First responders tried to administer cardiopulmonary resuscitation, during which Hoffman's "back began peeling off," the lawsuit alleges.

Hoffman, whose skin was described as "sloughing off easily," was taken to the hospital with severe burns on his legs, groin area and buttocks, and blisters on his feet, arms and hips.

Hoffman died the next day.

The suit claims that the staff member indicated the bath's temperature was lukewarm, but a police investigation showed the temperature of the bath water was 128.1 degrees Fahrenheit, despite the legal maximum water temperature being between 105 degrees and 120 degrees.

The suit also alleges staff delayed emergency treatment for Hoffman by first calling a supervisor before calling 911.



Photo depicting the temperature test Police conducted on Defendant's water

Feature Of The Week - Scheduling A Recurring Alert Report

Last week, we featured how to set up a keyword or key phrase alert to keep you as informed as possible.

Once you create an alert though, you'll want to have a way to be regularly informed of matches. That's where a Recurring Alert Report comes in. With recurring reports, MIRS' subscribers can select when and how they'd like to be informed not only keyword alerts, but MCL, Category, Lawmaker and Committee alerts.

To create a recurring report, simply go to the MIRS.news website, select the Legislation/Tracking Menu, then select the submenu Tracking Reports and pick Recurring Alert Reports.

We've prepared a 2 minute 12 second video to demonstrate how to create your first Recurring Alert Report.

Recurring Alert Reports In MIRS



Bits And Tidbits

USDA Announces \$2.1M Grants Expand Access To Rural Health Care

U.S. Department of Agriculture Rural Development State Director for Michigan Brandon **FEWINS** announced \$2.1 million in grants to three rural Michigan communities.

The city of Owosso, in Shiawassee County, will use two grants totaling \$152,500 to purchase an ambulance and three heart monitors/defibrillators and Covered Bridge Healthcare of St. Joseph County Inc. will use a \$1 million grant to purchase equipment that will improve telehealth services among other future pandemic and medical surge preparation projects.

Harbor Beach Community Hospital, in Huron County, will use a \$1 million grant to purchase a standard X-ray machine, a portable X-ray machine to limit movement of highly infectious patients throughout the facility, and a nuclear medicine machine.

Highland Park Man Sues U-M Over Public Records Request Denial

A litigious Highland Park man is suing the University of Michigan over its denial of a public records request.

Robert **DAVIS'** complaint filed in the Court of Claims alleges the University denied his Freedom of Information Request Act request for copies of allegations, "including drafts," U-M's athletic department received from NCAA representatives in November, December and January related to alleged violations of the NCAA rules.

In its denial letter, U-M said the information is exempt because it constitutes an "unwarranted invasion of an individual's privacy" because draft reports are not final.

On Jan. 9, Davis also requested copies of alleged NCAA violations “committed by head football coach Jim **HARBAUGH**” and former/current assistant coaches.

Insurance Company Sues For Police Report

A Tuscola County insurance company alleges the Michigan State Police has used a “flawed exemption” under the public records act to “deliberately” delay providing public records for an August 2022 crash.

In its Court of Claims complaint filed Tuesday, Auto Owners Insurance Company said it sought under the Freedom of Information Act a supplemental police report related to a personal injury motorcycle crash in which the at-fault driver fled the scene.

Auto Owners said the report is needed to “facilitate the investigation of a first party Michigan no-fault claim,” but MSP redacted the at-fault driver’s personal information, including name, address, date of birth, driver license number and telephone number, under an exemption that personal information is an unwarranted invasion of privacy.

Federal Judge Ludington To Receive Award

U.S. District Judge Tom **LUDINGTON** will receive the American Bar Association’s Civility Award on Thursday at the Colorado Bar Association’s annual meeting in Denver.

Ludington’s chambers staff nominated him for the award, which was supported with letters from fellow judges in Michigan’s Eastern District and a Sixth Circuit Court of Appeals judge, the ABA said.

The award honors judges and legal professionals who exhibit exceptional qualities of civility, courtesy, and professionalism toward colleagues, litigants and the public, the AVA said. It is named in honor of the late Judge William D. **MISSOURI** of Maryland.

Ludington, who was nominated to the bench by President George W. **BUSH** in 2006, is the only federal judge serving the Northern Division.

In other news:

- The Michigan Department of Transportation will begin multiple road and bridge repair projects next week, including repair work on Interstate 96 in Kent County, resurfacing work on M-5 in Wayne County, and rebuilding projects on M-85 in Wayne County. Based on economic modeling, these investments are expected to support 167 jobs.

On This Day In Michigan History

On August 2, 1923, a wooden car ferry named the Ariel made her maiden voyage across the Straits of Mackinac, carrying three cars, though she was capable of transporting up to 20 vehicles. Soon the service’s popularity grew and the Ariel transported 10,351 vehicles in the first year. The state judged this to be a success and soon purchased additional ferries and even an ice breaker to extend the operating season. The Mackinaw car and passenger ferries remained an important part of Michigan’s transportation system until the Mackinaw Bridge opened in 1957 and the small fleet was dispersed.

Source: *Michigan Day By Day*