

**STATE OF MICHIGAN**  
**IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM**

STEVE COOK, RICK TRAINOR, BONNIE  
BUCQUEROUX, REBEKAH WARREN,  
RASHIDA TLAIB, BRANDON DILLON,  
MICHIGAN EDUCATION ASSOCIATION,  
MICHIGAN STATE AFL-CIO, MICHIGAN  
BUILDING & CONSTRUCTION TRADES  
COUNCIL, AFL-CIO, and CHANGE TO  
WIN,

Case No. 12-1309-CL

Hon. William E. Collette

Plaintiffs,

vs.

STATE OF MICHIGAN, MICHIGAN  
HOUSE OF REPRESENTATIVES,  
MICHIGAN SENATE, Michigan State Police  
Captain KEVIN McGAFFIGAN, and other  
UNKNOWN PUBLIC OFFICIALS,

**RECEIVED**

**JAN 31 2013**

Clerk of the Court  
30th Judicial Circuit

Defendants.

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**FIRST AMENDED COMPLAINT**

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*At the time this lawsuit was filed there was no other  
pending or resolved civil action arising out of the  
same transaction or occurrence as alleged in the  
Complaint.*

AMERICAN CIVIL LIBERTIES UNION  
FUND OF MICHIGAN

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## INTRODUCTION

1. Open government is the cornerstone of our democracy. For this reason, the Open Meetings Act, MCL 15.261 *et seq.*, requires that public bodies such as the Michigan Legislature deliberate and cast votes in open sessions that are accessible to the public.

2. On December 6, 2012, the Legislature deliberated and voted upon some of the most controversial legislation in our state's history—namely, the so-called “right-to-work” legislation.

3. This legislation was rushed through the House of Representatives and the Senate without ever going through the standard committee hearing process in which the public has a right to testify and provide input.

4. As this historic and highly controversial legislation was being debated and voted upon, the doors to the Capitol were closed and locked for more than four hours.

5. The closure of the entrance to the Capitol when the Legislature was in session is believed to be unprecedented. It violated the Open Meetings Act, the Michigan Constitution, the First Amendment, and the bedrock principles of popular sovereignty upon which our country was founded.

6. The closure of the entrance to the Capitol while contentious right-to-work legislation was being debated and voted on inside unquestionably impaired the rights of the public to witness and influence the affairs of their government. Hundreds of concerned citizens from all over Michigan were prevented from accessing the Senate and the House of Representatives to watch the proceedings, make their presence known, communicate with and lobby their representatives, and report to others on what they observed.

7. The Open Meetings Act provides that when the doors of government are improperly closed and the rights of the public are thereby impaired, the resulting legislation may be

invalidated. That is the primary form of relief Plaintiffs now seek in this First Amended Complaint.

### **JURISDICTION AND VENUE**

8. This Court has jurisdiction under the Open Meetings Act, MCL 15.270 and 15.273, as well as the Revised Judicature Act, MCL 600.601 *et seq.*

9. Venue is proper under MCL 15.270 and MCL 600.1615.

### **PARTIES**

10. Plaintiffs Steve Cook and Rick Trainor are residents of the State of Michigan. They are officers of Plaintiff Michigan Education Association, a labor organization. They went to the Michigan Capitol on December 6, 2012 for the purpose of attending the legislative sessions dealing with right-to-work and communicating with their elected officials regarding that legislation, but they were prevented from doing so during the time that the Capitol was closed and locked to the public.

11. Plaintiff Bonnie Bucqueroux is a resident of Ingham County. She is a journalist who tried to attend the legislative proceedings inside the Capitol on December 6, 2012 for the purpose of observing and reporting on those proceedings in real time via the internet. She was prevented from doing so because the Capitol was closed and locked to the public.

12. Plaintiffs Rebekah Warren, Rashida Tlaib, and Brandon Dillon are elected officials who serve in the Michigan Legislature. Rebekah Warren is a Senator from Ann Arbor, Rashida Tlaib is a Representative from Detroit, and Brandon Dillon is a Representative from Grand Rapids. They were inside the Capitol on December 6, 2012 when the House and Senate were in session and right-to-work legislation was being debated and voted on, and they were deprived of

the opportunity to receive input and information from hundreds of constituents who were kept out of the building.

13. Plaintiff Michigan Education Association (“MEA”) is a labor organization representing more than 115,000 public school and higher education employees in Michigan. MEA brings this action on behalf of itself, its affiliates, and its members.

14. Plaintiff Michigan State AFL-CIO (“Michigan AFL-CIO”) is a voluntary unincorporated labor federation and is the state central body of labor organizations in Michigan affiliated with the national American Federation of Labor and Congress of Industrial Organizations (AFL-CIO). Local unions affiliated with Michigan AFL-CIO represent over 600,000 employees of public sector and private sector employers located throughout Michigan. Michigan AFL-CIO brings this action on behalf of itself, its affiliated labor organizations, and their members.

15. Plaintiff Michigan Building and Construction Trades Council, AFL-CIO (“Michigan Building Trades Council”) is a voluntary unincorporated association and labor organization, affiliated with the National Building Trades Council, AFL-CIO. The Michigan Building Trades Council’s membership is comprised of regional building and construction trades council affiliates and local unions representing employees of private and public sector employers employed in the building and construction trades industry in Michigan. The local unions affiliated with the Michigan Building Trades Council represent over 100,000 workers and retirees from various sectors of the building and construction trades industry throughout Michigan. The Michigan Building Trades Council brings this action on behalf of itself, its affiliated labor organizations, and their members.

16. Plaintiff Change to Win is a labor federation of four national and International labor unions - the International Brotherhood of Teamsters, Service Employees International Union, United Farm Workers of America, and United Food and Commercial Workers International Union - which collectively represent approximately five million working men and women throughout the United States, including more than 175,000 in the State of Michigan. Change to Win brings this action on behalf of itself, its affiliated labor organizations in Michigan, and their members.

17. Defendant State of Michigan is a sovereign State of the United States.

18. Defendant Michigan House of Representatives is a public body (as defined in MCL 15.262(a)) of elected representatives of the Michigan electorate. Its regular meeting place is the Michigan State Capitol Building.

19. Defendant Michigan Senate is a public body (as defined in MCL 15.262(a)) of elected representatives of the Michigan electorate. Its regular meeting place is the Michigan State Capitol Building.

20. Defendant Kevin McGaffigan is a captain with the Michigan State Police. He intentionally closed the entrance to the Capitol when the Legislature was in session and intentionally kept the Capitol closed for over four hours.

21. Defendants Unknown Public Officials are public officials whose identities are unknown to Plaintiffs at this time and who intentionally violated the Open Meetings Act.

## FACTS

### A. Background Regarding the Michigan Legislature

22. The Michigan Legislature is comprised of two public bodies, the House of Representatives and the Senate, both of which meet to debate and enact legislation in the building known as the Michigan State Capitol.

23. With the exception of the events of December 6, 2012, the Capitol is open to the public during business hours and whenever the House or Senate are in session.

24. Members of the press with proper credentials are allowed on the floor of the House and Senate to report on legislative proceedings.

25. To access the floor of the House and Senate, members of the press must first enter the Capitol along with other citizens, lobbyists, and visitors.

26. The general public is not permitted to enter the actual floor of the House or the Senate when those bodies are in session.

27. However, there are typically several other ways for citizens to attend meetings of the House and Senate, communicate with legislators, and participate in democratic activity in the Capitol.

28. Ordinarily, before a bill is debated and put to a vote on the floor of the House or Senate, it is discussed and voted upon at the committee level outside the Senate and House chambers.

29. Committee hearings on a bill normally take place several days, weeks, or months before the bill is brought up for deliberation by the House or Senate as a whole.

30. A central component of committee hearings is the opportunity for public comment. Professional lobbyists, citizen activists, and others directly address the legislative committee and provide verbal or written commentary on proposed legislation.

31. Thus, by the time a bill reaches the floor of the House or Senate, the public has typically provided input at one or more committee hearings.

32. It is exceptionally rare for major legislation to be debated and put to a vote on the floor of the House or Senate without going through committee for public hearing.

33. Once a bill is introduced on the floor of the House or Senate, the public does not formally comment on the bill as in a committee hearing.

34. However, the public may be physically present to witness legislative proceedings by sitting in public galleries that overlook the floor of both the House and Senate.

35. The galleries are by tradition and law open to the public whenever the House and Senate are in session.

36. To access the overhead galleries, the public must first enter the Capitol through a main entrance.

37. Citizens in the galleries are not permitted to speak aloud to legislators who are below them on the chamber floor, nor are they permitted to comment audibly regarding the proceedings or issues being debated.

38. However, legislators on the floor have access to electronic communications, so citizens in the galleries may sometimes communicate with them by email, text messages, Twitter, Facebook, and other silent means.



39. In addition, legislators on the floor can look up and see citizens in the galleries, so they are aware of the extent to which the public is present and scrutinizing their activities as they introduce bills, debate the issues, and vote on legislation.

40. Meanwhile, directly outside the floors of both the House and Senate is a lobby area where citizens may follow the legislative proceedings live on closed-circuit television monitors.

41. In these lobby areas directly outside the floors of both the House and Senate, citizens may write messages on slips of paper addressed to individual legislators on the floor, and “runners” employed by the sergeant-at-arms then deliver these messages directly to the legislators while the House and Senate are in session.

42. Because most constituents do not maintain regular electronic communications with Senators and Representatives, the message-slip system is the primary means by which they communicate with such officials when they are visiting the Capitol and the House or Senate are in session.

43. At times, individual legislators exit the floor to speak with a constituent who has sent a message slip. At other times, the legislators do not exit the floor but write back to the messaging constituent using electronic communication.

44. As with public access to the galleries, the public must first enter the Capitol through a main entrance in order to access the lobby area and send a message slip to a legislator.

45. The House chamber is situated at the Capitol’s north wing and the Senate chamber is situated at the south wing. Between the two chambers is a vast indoor public space including a large rotunda, balconies, and wide stairwells.

46. By design and tradition the Capitol accommodates large crowds when legislation of exceptional public interest is being considered.

47. In the past, large citizen crowds have come to the Capitol while the legislature is in session to communicate with legislators, protest, lobby, and advocate regarding controversial public issues.

48. Upon information and belief, prior to December 6, 2012, the entrance to the Capitol had never been closed for any significant period of time such that the public was denied entrance while the House or Senate were in session debating major legislation.

#### **B. Background Regarding Right-to-Work**

49. The term “right to work” is the term used by proponents for legislation that prohibits employers and labor unions from voluntarily entering into agreements under which workers are free to join the union that represents them and pay membership dues or not to join the union, but whereby employees who do not pay dues are required as a condition of employment to pay their fair share of the costs of union representation.

50. Just under half the states have right-to-work laws, but they are strongly opposed by many citizens, including employees and their labor unions, and are prevalent largely in states that do not have a tradition of strong labor unions.

51. For decades, the mere advocacy of right-to-work legislation has generated enormous controversy, public outcry, and heated debate.

52. The right-to-work issue is particularly contentious in Michigan, which has a tradition of strong labor unions.

53. For most of the first two years Governor Snyder was in office he stated publicly that he was not interested in advocating for a right-to-work law.

54. During the 2011-2012 legislative session, there were no legislative committee hearings on right-to-work bills.

55. Specifically, House Bills 4003 and 4054 and Senate Bill 116 (which later became the right-to-work bills) were all referred to committee without right-to-work language, and no right-to-work substitutions or amendments were made to those bills at the committee level.

56. Several weeks after the November 2012 election, legislators returned to Lansing to begin a so-called “lame duck” session.

57. “Lame duck” legislatures are those that remain in office after an election and before the newly elected legislators take their seats. Because of its timing, the lame-duck session is understood to be a period of diminished public accountability.

#### **C. The Events of December 6, 2012**

58. On the morning of December 6, 2012, with less than a week left in the lame-duck session of the Michigan Legislature, Governor Snyder publicly announced for the first time that he would support and sign right-to-work legislation.

59. As word got out on the morning of December 6 that the Legislature intended to pass a right-to-work law, hundreds of concerned citizens gathered at the Capitol, and many went inside in an effort to communicate with legislators or otherwise express their views on the legislative activity.

60. Approximately one hour after this announcement was made, the public entrance to the Capitol was closed, hundreds of concerned citizens were locked out, and right-to-work legislation was rushed to the floors of the Senate and House for swift debate and passage without public input.

61. At 12:05 p.m., the public entrance to the Capitol was closed and locked.

62. After 12:05 p.m., members of the public who were already inside the Capitol were permitted to stay, but no one from outside the Capitol was allowed in.

63. As people left the building after it was locked and closed, others who wished to enter the building were not let in.

64. The entrance to the Capitol remained closed until approximately 4:45 p.m..

65. This lawsuit was originally filed on December 6, 2012 after the doors to the Capital Building were closed and locked. The purpose of the suit was to open the Capitol Building so that the public could participate in and understand the legislative events that were taking place. Plaintiffs' motion for a temporary restraining order was granted on the afternoon of December 6, 2012 and the Capitol Building was eventually re-opened pursuant to the TRO.

66. At approximately 4:45 p.m. on December 6, 2012, public access to the Capitol Building was restored by order of this Court.

67. During this time, Michigan State Police officers enforced the closure of the Capitol and told members of the public that they were not allowed in.

68. Hundreds of citizens were seeking public access to the Capitol but were required to remain outdoors.

69. The police officers enforcing the closure of the Capitol were under the operational command of Defendant Kevin McGaffigan, and Defendant McGaffigan ordered the officers to deny the public access to the inside of the Capitol.

70. Upon information and belief, one or more Defendant Unknown Public Officials also participated in the decision to close the entrance to the Capitol and/or keep the entrance closed for over four hours.

71. At the time the entrance to the Capitol was closed, the Capitol was not at maximum capacity.

72. At the time the entrance to the Capitol was closed, there was enough room to safely allow additional members of the public inside.

73. At the time the entrance to the Capitol was closed, public safety did not require that all members of the public be denied access.

74. Closure of the Capitol was an unlawful and unnecessary response to the events of December 6, 2012.

75. The sustained and total denial of public access to the Capitol for over four hours was not reasonably calculated to serve any legitimate governmental purpose.

76. Because people were permitted to exit the Capitol but no one was permitted to enter, the Capitol became less crowded throughout the afternoon.

77. By mid-afternoon, many public areas of the inside of the Capitol were nearly empty.

78. During the time that the Capitol was closed, right-to-work bills and other legislation were introduced, debated, and voted upon in both the House and the Senate.

79. Legislators in both the House and the Senate knew that the entrance to the Capitol had been closed and that the public was being denied access, and these facts were brought to the attention of the presiding officers of those bodies.

80. The legislative sessions of the House and Senate nonetheless continued, including debates and votes on the right-to-work legislation, despite the legislators' and presiding officers' knowledge that the doors to the Capitol had been closed.

Events in the House of Representatives

81. Early in the day one or more Defendant Unknown Public Officials directed Republican legislative staff to fill up the House gallery and remain there throughout the day.

82. Defendant Unknown Public Officials' actions in directing legislative staff to "stack" the gallery prevented the general public, and in particular members of the public who opposed the right-to-work legislation, from entering the gallery and attending the proceedings.

83. The House gallery remained full throughout the day, and many members of the public were never allowed in the gallery because a large number of seats were being occupied by Republican legislative staff.

84. The House opened its session at 12:00 noon.

85. The entrance to the Capitol was closed to the public approximately five minutes after the House session began.

86. Immediately after the House opened its session, there was a "call of the House" that prevented all Representatives from leaving the House chamber to speak with members of the public.

87. A "call of the House" normally occurs late in a session when the House is ready to pass legislation.

88. The "call of the House" on December 6, 2012 occurred at the beginning of the session, when no bills were ready to be voted on, and lasted over four hours until the voting on right-to-work commenced.

89. At approximately 1:30 p.m., Representative Kate Segal, the minority floor leader, raised a point of order to inform the Chair that a lawsuit had been filed because the entrance to the Capitol was closed. She requested a recess until such time as the building was opened. Her request was denied.

90. Numerous bills were introduced and debated while the entrance to the Capitol remained closed.

91. At approximately 3:00 p.m., House Bill 4054 was discharged from committee and placed on second reading on the House floor.

92. At this time House Bill 4054 was not a right-to-work bill.

93. Using a special procedural mechanism known as a “floor substitution,” legislators radically amended House Bill 4054 to replace its then-existing language with right-to-work language that had never been vetted by a legislative committee or given a hearing for public comment.

94. Included in the floor substitution was an extraneous appropriation of \$1,000,000, to the Department of Licensing and Regulatory Affairs, the sole or primary purpose of which was to render the law immune from popular referendum at the next election. Under Article II, § 9 of the Michigan Constitution, the voters have the right to reject laws enacted by the Legislature, but that right does not extend to acts making appropriations for state institutions.

95. Despite the historic nature of the bill and the profound importance of turning Michigan into a right-to-work state, debate was permitted for less than two hours.

96. Numerous legislators rose to condemn the undemocratic process by which the right-to-work legislation had been rushed to the floor for a swift debate and vote without public input at the committee level and while the public was locked out of the building.

97. At approximately 4:15 p.m., Representative Segal raised another point of order to inform the Chair that this Court had ordered the Capitol to be opened to the public but that the building remained closed in violation of the order. She asked that the House session not be permitted to continue while the public was being denied access. Her request was denied.

98. Immediately prior to the House vote on right-to-work, the “call of the House” was lifted.

99. At approximately 4:45 p.m., the House voted on right-to-work and it passed by a vote of 58-52.

#### *Events in the Senate*

100. The Senate opened its session at 10:00 a.m. and immediately went into recess.

101. After being in recess for approximately three hours, the Senate session resumed at approximately 1:00 p.m.

102. At that time the doors to the Capitol had been closed for almost an hour.

103. Senator Gretchen Whitmer, the minority leader, immediately moved for a recess “pending the outcome of a lawsuit filed to open up the Capitol so the public can come in to watch us conduct our business.” The motion did not prevail.

104. At approximately 1:30 p.m., Senator Whitmer moved to adjourn proceedings because the building was locked and the public was not allowed inside. The motion did not prevail.

105. Senator Whitmer also moved for an order directed to the Michigan State Police that the Capitol be opened to the public. The motion did not prevail.

106. At approximately 3:15 p.m., the Senate took up Senate Bill 116 and House Bill 4003.

107. At this time Senate Bill 116 and House Bill 4003 were not right-to-work bills.

108. At approximately 3:30 p.m., legislators used floor substitutions to radically amend Senate Bill 116 and House Bill 4003, replacing their then-existing language with right-to-work



language that had never been vetted by a legislative committee or given a hearing for public comment.

109. Included in the floor substitutions were extraneous appropriations of \$1,000,000 per bill, the sole or primary purpose of which was to render the resulting statutes immune from popular referendum under Article II, § 9 of the Michigan Constitution.

110. While the entrance to the Capitol remained closed, a majority of the Senate voted down many proposed amendments to the bills, including:

- a. delaying the effectiveness of the law until 2014;
- b. submitting the law to a referendum vote by the people at the 2014 general election;
- c. conditioning the law's effectiveness on low unemployment in the state;
- d. exempting from the law employees who were already part of a collective bargaining agreement.;

111. During the time that the entrance to the Capitol was closed and right-to-work legislation was being considered, there were dozens of open seats in the Senate gallery.

112. Numerous legislators rose to condemn the undemocratic process by which the right-to-work legislation had been rushed to the floor for a swift debate and vote without public input at the committee level and while the public was locked out of the building.

113. Debate on the bills continued for several hours.

114. At approximately 7:30 p.m., the Senate took its last vote on right-to-work and it passed by a margin of 22-16.

**D. Facts Regarding the Plaintiffs**

115. Plaintiffs are citizens, legislators, and labor organizations who had an interest in the legislative action taking place on December 6, 2012.

116. The citizen plaintiffs were excluded from the Capitol on December 6, 2012 when the House and Senate were in session and right-to-work legislation was being debated and voted on. Had the Capitol been open, they would have attended the sessions of the House and Senate when the right-to-work bills were being considered, used the message-slip system to communicate with legislators and urge them not to support the legislation, and reported to others what they experienced. The citizen plaintiffs did not breach the peace.

117. The legislator plaintiffs were inside the Capitol on December 6, 2012 when the House and Senate were in session and right-to-work legislation was being debated and voted on, and they were deprived of the opportunity to receive input and information from hundreds of constituents who were excluded.

118. The labor organization plaintiffs oppose right-to-work legislation. Many of their members who went to the Capitol on December 6, 2012 to witness the historic proceedings and urge legislators not to support the bills were locked out.

***Steve Cook and Rick Trainor***

119. Plaintiffs Steve Cook and Rick Trainor are officers of the Michigan Education Association (“MEA”), a labor organization representing more than 115,000 teachers, faculty, and education support staff throughout the state of Michigan. Cook is president of the MEA and Trainor is its secretary-treasurer.

120. On December 6, 2012, Cook was attending a meeting when he heard that Governor Snyder had announced his support for so-called “right-to-work” legislation. Cook left

his meeting immediately and went to the Capitol. By the time he arrived, the doors to the Capitol were closed and he was unable to enter.

121. Members of the Michigan State Police provided Cook with inconsistent explanations for why the building had been closed to the public, ranging from a claim that it was ordered by the Fire Marshall to alleged concerns about the structural safety of the Capitol.

122. While Cook stood outside the Capitol, and while the doors were still closed and locked to the public, he received photos, via e-mail and text message, from people inside the building. The photos showed that there were large areas inside the building that were almost empty, suggesting that it was safe for additional people to come inside.

123. Cook's purpose for coming to the Capitol on December 6, 2012 was: (1) to speak with state legislators, including the office of the House Minority Leader, to find out exactly what the status of the "right-to-work" legislation was at that point in time; (2) to find a seat in the House gallery to observe the proceedings; and/or (3) to attempt to communicate directly with constituents, lobbyists, members of the media and state legislators themselves inside the Capitol.

124. On December 6, 2012, Rick Trainor was initially able to enter the Capitol in the morning. However, he left for lunch shortly before the building was closed to the public and was unable to re-enter when he returned.

125. Trainor's purpose for coming to the Capitol on December 6, 2012 was: (1) to meet and speak with individual MEA members to discuss the MEA's perspective on pending legislation; (2) to help inform individual members on how they could meet or communicate with state legislators, including offering advice and guidance to members on how to use "message slips" to communicate with legislators; (3) to meet and speak with other members of the public and the media regarding pending legislation; (4) to introduce individual members of the MEA to

lobbyists and other resources; and (5) to meet and speak with legislators, individual MEA members, other members of the public and the media to gather information regarding pending legislation and other issues of public concern.

126. As a result of the closure of the Capitol on December 6, 2012, Cook and Trainor were unable to engage in any of the activities described above.

***Bonnie Bucqueroux***

127. Plaintiff Bonnie Bucqueroux is a resident of Ingham County.

128. Bucqueroux is employed by the Michigan State University School of Journalism as the Coordinator of its “Victims and the Media” Program.

129. Bucqueroux co-founded the internet-based Lansing Online News (“LON”).

130. LON is a community-based form of journalism produced exclusively by volunteers and concerned citizens. LON publishes video and written material regarding matters of public interest and concern focusing on state and local stories. LON has blog features and other internet portals permitting community journalists in the field to provide instant news updates and comments as events are unfolding.

131. On the morning of December 6, 2012, Bucqueroux left the MSU Campus and headed for the Capitol to observe and record via video the legislative activities scheduled to take place on the House and Senate floors.

132. Bucqueroux intended to observe and report on the legislative activities concerning the right-to-work legislation.

133. Bucqueroux arrived at the Capitol around noon and attempted to enter. She was in possession of a press pass.

134. Bucqueroux was informed by a Michigan State Police officer that the doors of the Capitol were locked and that even with a press pass she would not be permitted to enter the building. The officer was not able to estimate the time when the Capitol would be accessible to the public.

135. Bucqueroux, as a journalist for LON, interviewed some members of the crowd outside of the building and captured video scenes of the activities outside the Capitol from approximately noon to 1:30 p.m. when she returned to the MSU Campus to carry out her duties as an instructor.

136. Bucqueroux intended to use her press pass to enter the press area located on the House and Senate floors to do a real-time report for her audience at LON on the activities taking place in the Legislature.

137. From that location, Bucqueroux wished to video record the proceedings on the House and Senate floors and provide real-time commentary through live-blogging, Twitter, or Facebook about the legislative activities as they were occurring.

138. Under the Open Meetings Act, the right to attend a meeting of a public body includes the right to take video and audio footage of the meeting.

139. Had she not been excluded from the Capitol, Bucqueroux would have had the opportunity to stream video live to LON so that the public could have witnessed firsthand the proceedings on the House and Senate floors as they were occurring.

***Rebekah Warren, Rashida Tlaib, and Brandon Dillon***

140. Rebekah Warren, Rashida Tlaib, and Brandon Dillon are Michigan legislators. Warren is a State Senator from Ann Arbor who represents the 18th District of Michigan. Rashida Tlaib is a State Representative from Detroit who represented the 12th District of

Michigan. Brandon Dillon is a State Representative from Grand Rapids who represents the 75th District of Michigan.

141. Warren, Tlaib, and Dillon were inside the Capitol on December 6, 2012 when the House and Senate were in session and right-to-work legislation was being debated and voted on.

142. In general, Warren, Tlaib, and Dillon rely heavily on input from constituents to inform them about how legislation affects the lives of people in their districts.

143. Because the right-to-work legislation was not introduced until December 6, 2012, Warren, Tlaib, and Dillon had no prior reason to communicate with constituents about the bills.

144. While some constituents are able to communicate with legislators via text message, email, or through social media, not all constituents have access to these technologies and/or legislators' personal contact information. For hundreds of constituents who wished to speak with Warren, Tlaib, and Dillon about right-to-work, the best way for them to do so was to approach them in person or, when the Legislature was in session, through the message slip system provided by the sergeants-at-arms.

145. Warren, Tlaib, and Dillon represent many constituents whose work and lives are deeply impacted by right-to-work legislation.

146. Warren, Tlaib, and Dillon wished to speak with their constituents about right-to-work on December 6, 2012 before the legislation was debated and voted on to learn where their constituents stood on right-to-work legislation, engage in fully informed discussions with their fellow legislators, and provide informed representation of their legislative districts.

147. Warren, Tlaib, and Dillon wished to communicate face-to-face with constituents who were present at the Capitol.

148. Warren, Tlaib, and Dillon wished to communicate with constituents present at the Capitol through the message slip system provided by the sergeants-at-arms outside the House and Senate chambers.

149. As a result of the closure of the Capitol on December 6, 2012, Warren, Tlaib, and Dillon were unable to communicate with and receive input from hundreds of constituents who were not able to enter the Capitol.

#### ***Michigan Education Association***

150. Plaintiff Michigan Education Association (“MEA”) is a labor organization representing more than 115,000 public school and higher education employees in Michigan.

151. MEA, through its approximately 1,150 local affiliates, has bargained agency fee provisions in nearly all of their collective bargaining agreements with employers.

152. MEA and its members had a direct and significant interest in the right-to-work legislation that was being considered by the Legislature on December 6, 2012 because that legislation could affect agency fee agreements.

153. Numerous MEA leaders, members, and employees were at the Capitol on December 6, 2012, with the intention of speaking to legislators regarding the proposed legislation.

154. As a result of the closure of the Capitol Building on December 6, 2012, the MEA and its members were denied their rights to engage in the activities described above.

#### ***Michigan State AFL-CIO***

155. Plaintiff Michigan State AFL-CIO (“Michigan AFL-CIO”) is a voluntary unincorporated labor federation and is the state central body of numerous labor organizations in

Michigan representing over 600,000 public sector and private sector employees throughout Michigan.

156. Among Michigan AFL-CIO's purposes as set forth in its Constitution is: "[t]o propose, support and promote legislation that will safeguard and promote the principles of free collective bargaining, the rights of workers, farmers and consumers, and the security and welfare of all the people and to oppose legislation inimical to these objectives."

157. Michigan AFL-CIO, and its affiliated labor organizations and their members, had a direct and substantial interest in the "right-to-work" legislation that was being considered by the Legislature on December 6, 2012, because such legislation would negatively affect collective bargaining agreements negotiated by its affiliated labor organizations, and it was inimical to the Michigan AFL-CIO's institutional objectives of promoting free collective bargaining and the interests of workers. Michigan AFL-CIO has a direct and substantial interest, on behalf of itself, its affiliated labor organizations, and their members, in ensuring open, transparent and responsive government, the ability to freely participate in and influence legislative action, and in full adherence by Michigan public bodies with the Open Meetings Act.

158. Numerous leaders of the Michigan AFL-CIO, as well as members and leaders of labor organizations affiliated with Michigan AFL-CIO, were gathered at the Capitol on December 6, 2012, and wished to enter the Capitol, for the purpose and with the intention of observing the legislative proceedings and communicating with legislators and expressing their views regarding the proposed "right-to-work" legislation.

159. As a result of the closure of the Capitol on December 6, 2012, the aforementioned Michigan citizens were denied their rights to engage in the activities described above.



***Michigan Building & Construction Trades Council, AFL-CIO***

160. Among the purposes and objectives of the Michigan Building & Construction Trades Council, as stated in its Constitution and Bylaws, are “[t]o safeguard, advance and promote free collective bargaining [and] the rights of workers . . . by political, educational and other community activity;” and “[t]o engage in cultural, civic, political, legislative . . . and other activities which further the interests of building and construction trades unions and their members and to protect and advance the interests of the building and construction trades industry.” Accordingly, the Michigan Building Trades Council has a direct and immediate interest on behalf of itself, its affiliated labor organizations, and their members, in ensuring open and transparent government, the ability to participate in and influence legislative affairs, and in full adherence by governmental bodies in Michigan with the Open Meetings Act.

161. The Council, its affiliates, and their members had a direct and significant interest in the legislation that was being considered by the legislature on December 6, 2012 because that legislation would negatively impact their collective bargaining agreements

162. Numerous representatives of the Michigan Building Trades Council and its affiliated labor organizations, and their members, were present outside the Capitol on December 6, 2012 with the intention of entering the Capitol, observing the legislative sessions taking place, and speaking with and otherwise communicating with legislators regarding the proposed legislation.

163. As a result of the closure of the Capitol on December 6, 2012, the representatives of the Council and its affiliates, and their members described above were unable to engage in any of the activities described above.

### *Change to Win*

164. As set forth in its constitution, Change to Win believes in holding "public officials accountable to working people" as one way "To unite working people for economic, political, and social justice" and "To ensure that working people are valued and rewarded for playing a central role in creating economic well-being, political democracy and stable families and communities." Change to Win therefore has a direct and immediate interest in insuring that the requirements of the Open Meeting Act are faithfully enforced with respect to any legislation affecting the rights of working people within the State of Michigan.

165. Change to Win, its local union affiliates, and their members had a direct and significant interest in the legislation that was being considered by the legislature on December 6, 2012 because that legislation would negatively impact the collective bargaining agreements covering their members working in Michigan. Numerous representatives of Change to Win and its affiliated labor organizations, and their members, were present outside the Capitol on December 6, 2012 with the intention of entering the Capitol, observing the legislative sessions taking place, and speaking with and otherwise communicating with legislators regarding the proposed legislation.

166. As a result of the closure of the Capitol on December 6, 2012, the representatives of Change to Win and its affiliates, and their members described above were unable to engage in any of the activities described above.

#### **E. Allegations Regarding Impairment of the Rights of the Public**

167. The adoption of a right-to-work law in Michigan was a major event in the history of labor, and in the history of the public policy of this state.

168. The total closure of the entrance to the Capitol for over four hours while both the House and the Senate were in session is believed to be unprecedented in recent history.

169. The fact that the events described in the preceding two paragraphs coincided underscores the gravity of the harm that occurred.

170. Whether Michigan is or is not a right-to-work state affects the lives of hundreds of thousands of people, many of whom are members of the plaintiff labor organizations.

171. Hundreds of people, including the citizen plaintiffs, were denied the right to enter the Capitol and attend the meetings of the House and Senate on December 6, 2012.

172. The purpose of the Open Meetings Act is to promote governmental accountability by facilitating public access to official decision making.

173. From start to finish, the legislative process used here was cynically manipulated to evade governmental accountability and public access to official decision making.

174. Because of its timing, the lame-duck session is understood to be a period of diminished public accountability because the electorate is no longer able to express their displeasure with their elected representatives at the polls.

175. Defendants House and Senate waited until the lame-duck session to place right-to-work on the agenda so that it could not be an election issue.

176. Defendants House and Senate also intentionally evaded another public accountability mechanism, the popular referendum.

177. Under Article II, § 9 of the Michigan Constitution, voters have the right to reject laws enacted by the Legislature at the next election. However, the right of referendum does not extend to acts making appropriations for state institutions.

178. By including appropriations of \$2,000,000 to the Department of Licensing and Regulatory Affairs, Defendants House and Senate designed the right-to-work legislation to be referendum-proof.

179. Defendant House and Senate's sole or primary purpose in making appropriations as part of right-to-work was to prevent the public from exercising what would otherwise be their constitutional right to reject the legislation at the next election.

180. Under the Open Meetings Act, members of the public have the right to address a meeting of a public body. This opportunity, often referred to as public comment time or public testimony, allows the public to express views and concerns regarding policies, proposals, and decision making.

181. A narrow exception to this statutory requirement exists for the Legislature, which is permitted to limit public comment to committee hearings, where ordinarily all major legislation begins.

182. By substituting right-to-work language on the House and Senate floors into bills that had nothing to do with right-to-work when they were in committee, Defendants House and Senate deprived the public of any opportunity to provide formal input on the legislation at a committee hearing or at any other occasion.

183. It is in the context of the facts described above that the doors to the Capitol were locked and the public denied access to the sessions of the House and Senate on December 6, 2012. Rushing major legislation through the Legislature when the public was locked out of the Capitol was integral to a larger overall effort by a slim majority of legislators to evade public accountability for taking unpopular legislative action.

184. The right of the public to be present when the Legislature meets, deliberates, and decides on major legislation is central to the democratic process.

185. The importance of open meetings in the Legislature is specifically recognized by article IV, § 20 of the Michigan Constitution, which is entitled “Open meetings” and provides: “The doors of each house shall be open unless the public security otherwise requires.” Public security did not require the entrance to the Capitol to be entirely closed to the public for over four hours on December 6, 2012.

186. The right of the public to petition the government is enshrined in article I, § 3 of the Michigan Constitution, which provides: “The people have the right . . . to instruct their representatives and to petition the government for redress of grievances.”

187. The right to petition the government is also guaranteed by the First Amendment to the United States Constitution.

188. Lobbying—the right of the people to inform their representatives in government of their desires with respect to the passage or enforcement of laws—is core political speech, prototypical of the kind of speech protected by the First Amendment and the Michigan Constitution.

189. In general, the grounds and buildings of state and federal capitol complexes and similar buildings have consistently been held to be public fora where protection for the public’s First Amendment rights are at their zenith.

190. The closure of the entrance to the Capitol impaired the public’s right to petition and lobby in numerous ways.

191. When the public was denied access to the galleries overlooking the House and Senate, they were deprived of the ability to send their legislators the message, by their very

presence in the gallery, that the government was being watched, that its decisions were being scrutinized, and that the elected representatives of the people may not act with impunity outside the watchful eyes of their constituents.

192. The public's rights were impaired by lack of access to the galleries regardless of whether such lack of access resulted from the closure of the entrance to the Capitol or the intentional stacking of the galleries by legislative staff at the direction of public officials who did not want citizens who opposed right-to-work legislation to be present.

193. When the public was denied access to the Capitol, they were also deprived of the ability to meaningfully communicate with their legislators about the right-to-work legislation. Citizens who were locked out of the building could not use the message-slip system to communicate or meet with their representatives. Because the right-to-work legislation was being debated and put to a vote on the same day it was introduced, public access to the Capitol on December 6 was critical for lobbying and petitioning purposes.

194. When the public was denied access to the Capitol, they were further deprived of the ability to report to others what was taking place there. The ability of journalists, bloggers, and other citizens inside the Capitol to electronically transmit news of events there across the state allows citizens who live far away to call or email the legislators who might otherwise be unmoved by the opinions of citizens who live near Lansing.

## COUNT I

### VIOLATION OF THE OPEN MEETINGS ACT — CLAIM FOR INVALIDATION

195. The Open Meetings Act provides as follows:

- a. “All meetings of a public body shall be open to the public and shall be held in a place available to the general public. All persons shall be permitted to attend any meeting except as otherwise provided . . . .” MCL 15.263(1).
- b. “All decisions of a public body shall be made at a meeting open to the public.” MCL 15.263(2).
- c. “All deliberations of a public body constituting a quorum of its members shall take place at a meeting open to the public except as [otherwise] provided . . . .” MCL 15.263(3).
- d. “[A]ny person may commence a civil action in the circuit court to challenge the validity of a decision of a public body made in violation of this act.” MCL 15.270(1).
- e. “A decision made by a public body may be invalidated if the public body has not complied with the requirements of [MCL 15.263(1), (2), and (3)] in making the decision . . . and the court finds that the noncompliance . . . has impaired the rights of the public under this act.” MCL 15.270(2).

196. Defendant Michigan House of Representatives did not comply with the requirements of MCL 15.263(1), (2), and (3) in making the decision to pass right-to-work legislation.

197. Defendant Michigan Senate did not comply with the requirements of MCL 15.263(1), (2), and (3) in making the decision to pass right-to-work legislation.

198. Defendants’ noncompliance impaired the rights of the public under the Open Meetings Act.

199. Pursuant to MCL 15.270, Defendants’ decisions, and thus the resulting legislation, Public Acts 348 and 349 of 2012, may and should be invalidated.

## **COUNT II**

### **VIOLATION OF THE OPEN MEETINGS ACT — CLAIM FOR DAMAGES**

200. The Open Meetings Act further provides: “A public official who intentionally violates this act shall be personally liable in a civil action for actual and exemplary damages of not more than \$500.00 total, plus court costs and actual attorney fees to a person or group of persons bringing the action.” MCL 15.273(1).

201. Defendant Kevin McGaffigan and/or Defendant Unknown Public Officials intentionally violated the Open Meetings Act when he or they ordered the entrance to the Capitol to be closed to the public for over four hours while the Legislature was in session.

202. In addition or in the alternative, Defendant Kevin McGaffigan and/or Defendants Unknown Public Officials intentionally violated the Open Meetings Act when he or they continued to keep the entrance to the Capitol closed to the public while the Legislature was in session.

203. Defendant Unknown Public Officials intentionally violated the Open Meetings Act when they caused the public gallery to be occupied by legislative staff for the purpose of denying public access.

204. Pursuant to MCL 15.273, Defendants are personally liable for their violations of the Open Meetings Act.



### **COUNT III**

#### **VIOLATION OF THE MICHIGAN CONSTITUTION OF 1963**

##### **ARTICLE I, SECTION 3**

205. Article I, Section 3 of the Michigan Constitution of 1963 provides: “The people have the right peaceably to assemble, to consult for the common good, to instruct their representatives and to petition the government for redress of grievances.” MI Const. 1963, Art. I, §3.

206. Defendants violated the Michigan Constitution when they (a) Ordered the entrance to the Capitol to be closed to the public for over four hours while the Legislature was in session; (b) Continued to keep the entrance to the Capitol closed to the public while the Legislature was in session; and (c) Caused the public gallery to be occupied by legislative staff for the purpose of denying public access.

### **COUNT IV**

#### **42 U.S.C. § 1983**

##### **VIOLATION OF THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION**

207. The First Amendment to the United States Constitution, as enforced upon Defendants through the Fourteenth Amendment, guarantees a public right of access to governmental proceedings such as the proceedings conducted by the Michigan House and Senate on December 6, 2012.

208. The First Amendment to the United States Constitution, as enforced upon Defendants through the Fourteenth Amendment, also guarantees the public the rights of free speech and assembly and the right to petition the government.

209. Defendants violated the Plaintiffs' First Amendment rights of access, speech, assembly and petition when they (a) Ordered the entrance to the Capitol to be closed to the public for over four hours while the Legislature was in session; (b) Continued to keep the entrance to the Capitol closed to the public while the Legislature was in session; and (c) Caused the public gallery to be occupied by legislative staff for the purpose of denying public access.

### **RELIEF REQUESTED**

Based on the violations of the Open Meetings Act, the Michigan Constitution and the United States Constitution alleged above, Plaintiffs request that this Court:

1. Declare that Defendant Michigan House of Representatives violated the Open Meetings Act in the process of meeting, deliberating, and voting upon the "right-to-work" legislation on December 6, 2012;
2. Declare that Defendant Michigan Senate violated the Open Meetings Act in the process of meeting, deliberating, and voting upon the "right-to-work" legislation on December 6, 2012;
3. Declare that the Defendants violated Article I, Section 3 of the Michigan Constitution of 1963;
4. Declare that the Defendants violated the First Amendment to the United States Constitution, as enforced through the Fourteenth Amendment and 42 U.S.C. § 1983;
5. Invalidate the resulting legislation, Public Acts 348 and 349 of 2012 and declare it unlawful, null and void, and unenforceable;
6. Enjoin Defendant State of Michigan from implementing and enforcing Public Acts 348 and 349 of 2012;
7. Award actual and exemplary damages of up to \$500 against Defendant McGaffigan for his intentional violation of the Open Meetings Act;
8. Award actual and exemplary damages of up to \$500 per violation against each Defendant Unknown Public Official who is found to have intentionally violated the Open Meetings Act;

9. Award damages for Defendants' violations of Article I, Section 3 of the Michigan Constitution;
10. Award damages for Defendants' violations of the First Amendment to the United States Constitution, as enforced through the Fourteenth Amendment and 42 U.S.C. § 1983;
11. Award costs and attorney fees; and
12. Grant any and all further relief that is just and equitable.

Respectfully submitted,

AMERICAN CIVIL LIBERTIES UNION  
FUND OF MICHIGAN

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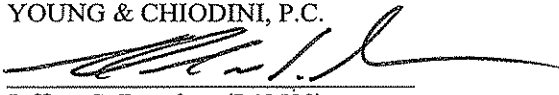
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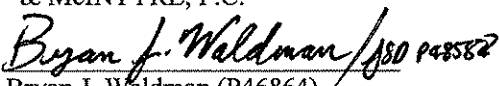
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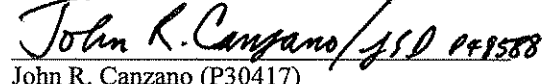
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