

STATE OF MICHIGAN
IN THE COURT OF APPEALS

TAXPAYERS FOR MICHIGAN
CONSTITUTIONAL GOVERNMENT,
STEVE DUCHANE, RANDALL BLUM,
and SARA KANDEL,

Plaintiffs,

Case No. 334663

vs.

THE STATE OF MICHIGAN, THE
DEPARTMENT OF TECHNOLOGY,
MANAGEMENT AND BUDGET OF THE
STATE OF MICHIGAN; and the MICHIGAN
OFFICE OF THE AUDITOR GENERAL.

Defendants.

**MOTION TO ENFORCE THE OCTOBER 29, 2019 MANDAMUS
AND JUDGMENT OF THIS COURT**

NOW COME Plaintiffs, Taxpayers for Michigan Constitutional Government, Steve Duchane, Randall Blum, Sara Kandel, pursuant to MCR 7.215(F), by and through their attorneys and for their *Motion to Enforce the October 29, 2019 Mandamus and Judgment of This Court*, do hereby state as follows:

1. On October 29, 2019, this Honorable Court entered its Opinion and Order granting mandamus requiring the state, its officers, and departments to honor the annual disclosure and reporting duties set forth in both MCL 21.235(3) and MCL 21.241.
2. In an original action before the Court of Appeals, the court's opinion and order is its judgment. MCR 7.215(E).

3. The October 29, 2019 Opinion and Order is effective after the expiration of the time for filing an application for leave to appeal to the Supreme Court, or, if such an application is filed, after the disposition of the case by the Supreme Court. MCR 7.215(F)(a).

4. Pursuant to MCR 7.305 (C)(a & c), applications for leave to appeal are required to be filed within 42 days after entry of the opinion and order. See MCR 7.305 (C)(2)(a) & (c).

5. In this case, applications for leave to appeal to the Supreme Court were required to be filed by December 10, 2019.

6. The Defendants State of Michigan and the Department of Technology, Management and Budget (DTMB) did not file an application for leave to appeal the mandamus granted in Section E of this court's opinion and order.

7. Defendants filed an application that solely sought leave to appeal portions of the opinion that are unrelated to the mandamus granted against the State of Michigan and the DTMB.

8. As a result, the mandamus relief granted by this court's opinion and order against the State of Michigan and the DTMB has not been appealed to the Supreme Court, is not being addressed by that Court.

9. Therefore, this court's October 29, 2019 Opinion and Order granting mandamus is a final judgment that is in effect and enforceable.

10. To date, the Defendants State of Michigan and the DTMB have not complied with the mandamus and judgment of this court requiring the state, its officers, and departments to comply with the reporting requirements of MCL 21.235(3) and MCL 21.241.

11. Pursuant to MCL 21.235(3), the state is required to prepare a report of "those amounts which the governor determines are required to make disbursements to each local unit of government *for the necessary cost of each state requirement for that fiscal year and the total*

amount of state disbursements required for all local units of government.” MCL 21.235(3) (emphasis added). This report is to be submitted by the governor to the state legislature with the annual budget recommendation. *Id.*

12. The MCL 21.235(3) report is to be prepared by the DTMB’s State Budget Office. See MCL 18.1341.

13. The governor’s annual budget recommendation is due within 30 days after the legislature convenes in regular session. MCL 18.1363. Typically, this requires the governor to submit a budget recommendation in early February each year. This year the Governor submitted her annual budget recommendation on February 6, 2020.

14. No MCL 21.235(3) report was prepared or submitted when the Governor delivered her annual budget recommendation to the state legislature this year.

15. Pursuant to MCL 21.241, the DTMB is required to prepare a report of the “*state financed proportion of the necessary cost of an existing activity or service required of local units of government by existing law.*” MCL 21.241(1)(a) (emphasis added). The report is to include specific information concerning each state requirement that requires a disbursement pursuant to art. 9, § 29. MCL 21.241(1) & (2).

16. The MCL 21.241 report is to be submitted to the state legislature and updated annually by January 31. MCL 21.241 (3).

17. No such report was prepared by the state or submitted to the legislature by January 31, 2020 or at any time this year.

18. As a result, Defendants are in violation with MCL 21.235(3) and MCL 21.241 and are in violation of the mandamus and judgment of this court.

WHEREFORE, Plaintiffs respectfully pray that this Honorable Court enter an order finding in Contempt the Defendants State of Michigan and the DTMB, and responsible state officials from October 29, 2019 to the present, including the DTMB's Director(s) and Deputy Director(s); and the State Budget Office's Director, Deputy Director, Manager of Budget Coordination and Development, Director of Public Protections, and Director of Legislature and External Affairs and that:

- a. Defendants State of Michigan and DTMB be directed to prepare, submit, and disclose the reports required by MCL 21.235(3) and MCL 21.241 within 30 days;
- b. If Defendants do not prepare, submit and disclose the required reports within that time frame, monetary fines of \$7,500 be imposed on each of the officials identified above and that the fines be paid by the individuals from their personal funds and not from the state funds of any kind; or if paid by the state on behalf of the individuals, then the fines must be paid to a public nonprofit charitable organization to be designated by the court;
- c. If Defendants do not prepare, submit, and disclose the required reports within 30 days, an evidentiary hearing date will be set to determine the amount of an award of damages to be awarded to the Plaintiffs;
- d. Plaintiffs are awarded attorneys' fees and costs for the preparation, filing and any proceedings related to this motion; and
- e. Other relief that the court finds fair, just, legal, and equitable under the circumstances.

Respectfully Submitted,

By: /s/ John C. Philo
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Date: August 12, 2020

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CERTIFICATE OF SERVICE

I hereby certify that on August 12, 2020, I electronically filed the attached *MOTION TO ENFORCE THE OCTOBER 29, 2019 MANDAMUS AND JUDGMENT OF THIS COURT* with the Clerk of the Court using the MiFILE e-filing system, which will send notification of such filing to all electronic case filing participants and attorneys of record.

Respectfully Submitted,

By: /s/ John C. Philo
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Date: August 12, 2020