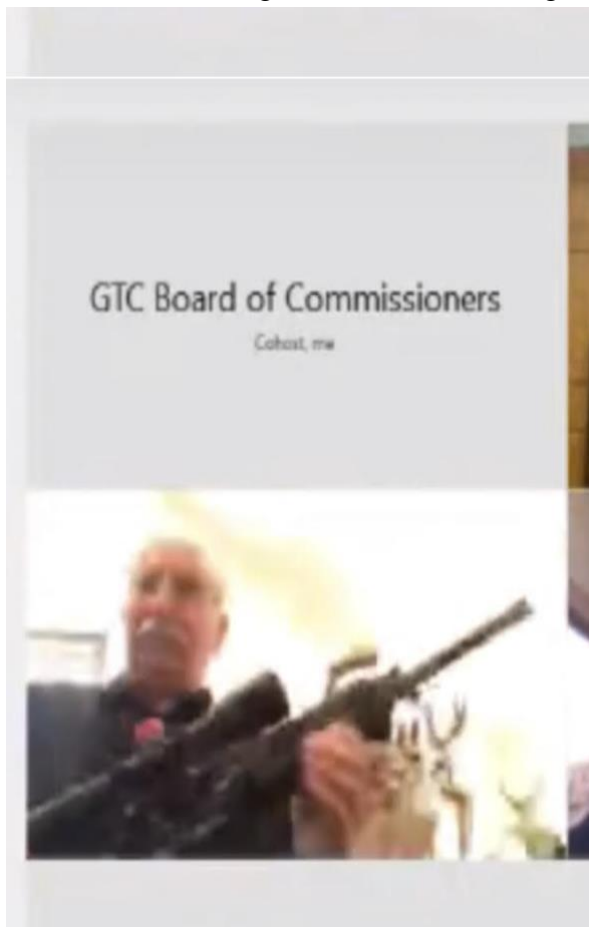




CLOUS' DEFENSE: I WASN'T VIOLATING YOUR FIRST AMENDMENT RIGHTS, I WAS JUST EXPRESSING MINE

July 20, 2021

Six months after Grand Traverse County commissioners refused to apologize or censure Vice Chairman Ron Clous for brandishing an assault rifle during a virtual commission meeting on January 20, the county's insurance carrier has hired two law firms to represent the county and Clous in a federal civil rights lawsuit.



Because the county and Clous have potentially competing legal interests, the county's liability insurer, the Michigan Municipal Risk Management Authority (MMRMA), has hired Andrew Brege, a Lansing lawyer who specializes in municipal law and civil rights defense, to represent Clous. The MMRMA also has retained Gregory Grant, a Traverse City lawyer who specializes in labor law and insurance defense, to represent the county.

Legal filings by Brege and Grant in U.S. District Court in Grand Rapids (case #1:21-cv-00309, assigned to Judge Hala Y. Jarbou) indicate that they are contesting plaintiff Keli MacIntosh's claim that Clous intimidated her when he pulled out his rifle, violating her First Amendment right to petition her government. On the contrary, the defense lawyers claim, Clous had a First Amendment right to engage in "symbolic speech" when MacIntosh asked the commissioners to renounce the Proud Boys and the other extremist groups that stormed the Capitol on January 6.

"Local legislative officials have both a First Amendment right and common law privilege to engage in demonstrative expression of their opinions on matters of public debate, even if such opinions are partisan, controversial and/or offensive,"

Grant said in his motion to dismiss MacIntosh's lawsuit. "Neither the board, nor the county otherwise, could have prohibited Clous' actions without infringing the First Amendment rights of Clous," he added.

Brege contends that Clous is entitled to qualified immunity because he was engaging in “symbolic speech,” expressing his support for the Second Amendment by retrieving his gun and displaying it on the live feed. Brege also claims that Clous never threatened MacIntosh because his gun “was devoid of its clip, never pointed directly at the camera, and his finger never touched or came near the trigger.”

MacIntosh’s lawyer, Blake Ringsmuth, counters that by taking no action whatsoever, county commissioners said that “brandishing a weapon in response to free speech is acceptable to them. The simple truth is that Commissioner Clous brought a gun to a word fight and no one has done anything about it.”

Ringsmuth said MacIntosh sued the county in addition to Clous because “we do have a claim against the county when they voted down taking some action. Once they had a motion in front of them saying, ‘Hey, you can’t do this’ . . . and they voted it down, there’s a tacit endorsement of the legality of what he did, and that’s wrong.”



Clous’ shocking decision to display his gun on camera, prompting Chairman Rob Hentschel to double over with laughter, continues to be an international embarrassment to this community. Both men remain unrepentant and Hentschel has gone out of his way to antagonize the commissioners’ many critics, saying this when he was asked how he thought his and Clous’ conduct was perceived: “It says, ‘If you’re going to start trouble, don’t start it here.’ ”

The competing claims in MacIntosh’s lawsuit illustrate what has sometimes been referred to as the “elasticity” of the First Amendment. As her complaint notes, MacIntosh was exercising her constitutional right “to petition her government for the redress of her grievances” when she asked the commissioners to

renounce the Proud Boys and other violent insurrectionists.

But even though he responded to MacIntosh in a loathsome and offensive manner, Clous contends that he also had a First Amendment right to express his support for the Second Amendment, which he said he was doing when he decided to fetch his gun.

Clous’ claim is bunk, but it’s certainly not the most outrageous First Amendment defense we’ve heard in recent months. This is what the lawyer for Adam Fox, the accused ringleader of the militant group that was charged with conspiring to kidnap Governor Gretchen Whitmer, said about the charges filed against the free-speech warrior he represents: “This case presents a complex mixture of social and political speech and advocacy for action in the indefinite future (both legal and illegal) that is protected by the First Amendment.”

In remarks that she made on April 12 at a press conference held to announce her lawsuit, MacIntosh, quivering with grief and rage, said, “I’m not the only one who has been hurt. This incident has injured our entire community.” She’s right, of course. And our injured community will now endure further injury by being forced to finance a legal defense of Clous’ and the county’s embarrassing and shameful conduct.

WEDNESDAY'S BOC AGENDA: WHAT TO WATCH FOR

OAKLEAF VILLAGE/APPLICATION FOR REVENUE BONDS – At its July 7 meeting, the BOC approved the construction of a 154-unit senior living facility and 33 single-family home subdivision in Garfield Township on North Long Lake Road. Commissioners also supported the issuance of up to \$60 million in tax-free revenue bonds to help finance the construction.

Tomorrow, commissioners are expected to approve a public hearing for the project, set for August 18 at 8 a.m. at the Governmental Center (agenda item b.6).

Commissioners approved the project – which will be called Meadow Valley Senior Living – by a vote of 6-1, with Commissioner Brad Jewett dissenting. Jewett said he was opposed to the county giving an economic advantage to a for-profit entity that competes with other for-profit businesses.

That's a valid point – for someone else to make. Jewett co-owns two Culver Meadows Senior Living facilities in Garfield Township, meaning he has a conflict of interest and should have recused himself from voting. Clous, who voted to approve the project, also co-owns a pair of senior care facilities and also should have recused himself.

Unfortunately, in the ethics-free environment in which our county commission operates, neither commissioner disclosed his conflict or recused himself.

Clous' and Hentschel's votes to approve the project are particularly curious. In December, they, along with Jewett, opposed a financially advantageous request by management of the Pavilions to authorize the issuance of up to \$6.3 million in bonds to fund the county-owned nursing home's pension plan.

The reason? Jewett and Clous were sticking it to the Pavilions because their nursing homes directly compete for patients with the Pavilions.

Clous' vote to green-light Oakleaf Village LLC's application raises the most questions. It makes us wonder what other undisclosed financial interests he might have.

COMMUNITY CORRECTIONS ADVISORY COMMITTEE RECOMMENDATION – An ad hoc committee comprised of Jewett and fellow Republican commissioners Darryl Nelson and Penny Morris is recommending the appointment of county resident Darcie Pickren to a four-year term on the Community Corrections Advisory Committee (agenda item b.1).

For those of you who have been following the efforts of the Traverse City Area Public Schools to address alarming incidents of bullying, discrimination and racism in the city schools, Pickren has been claiming at TCAPS meetings that the school board's efforts are creating a racially divisive environment. She also has accused the board of trying to impose a "critical race theory" curriculum on students, a crackpot claim that race-baiting cranks and Trump supporters throughout the country have been making in recent months.

"It sounds like we're going to be teaching our kids our country is founded on racism and show them that if they're white they're privileged and they're part of the problem," Pickren told the Record-Eagle last month. "I find that mind-boggling."

Speaking of mind-boggling, Pickren appears to have a unique qualification for appointment to the corrections committee because she has served time behind bars. In 1991, she was convicted on a count of solicitation to commit great bodily harm for hiring an undercover police officer to beat up her ex-husband, Mark Fleet, whom she suspected of molesting her children. Pickren subsequently had her conviction expunged after Fleet admitted that he indeed had molested the couple's children. He was

convicted of criminal sexual assault and sentenced to 20 to 40 years in prison.

Pickren's public Facebook page also is troubling. It's filled with off-the-wall rants about Anthony Fauci and President Biden, including this head-slapper: "Biden is the biggest racist in this country and has been for over 5 decades!!!"

To her credit, Pickren co-founded an organization in Traverse City called Before During and After Incarceration and she has been active in local restorative-justice efforts, which emphasize rehabilitation over incarceration. If she's appointed, she may prove to be a productive member of the corrections committee, but she certainly bears watching.

HIGH (AND LOW) LIGHTS FROM THE LAST MEETING

REAPPORTIONMENT COMMISSION – On July 15, the five-member Grand Traverse County Reapportionment Commission held its first meeting to redraw county commission districts. By law, the commission must redraw county districts every 10 years to reflect population shifts based on the most recent census.

The reapportionment, or redistricting, process is being closely monitored by local Democrats because four of the five commission members are Republicans and because Republicans over the years have perfected the dark art of political gerrymandering – manipulating electoral boundaries so that Republicans can pick their voters instead of vice versa. They've done so by employing two core concepts – "packing" (concentrating Democrats' voting power in a single district to reduce their voting power in other districts) and "cracking" (diluting the voting power of Democrats by spreading them across multiple districts).

That said, we were encouraged by the commission members' professionalism and their commitment to good government at their first meeting. All

expressed their commitment to a fair district-drawing process that does not "effect partisan political advantage."

The members of the commission and their political affiliations are:

- ✓ Bonnie Scheele – county clerk (R), commission chair
- ✓ Heidi Scheppe – county treasurer (R)
- ✓ Noelle Moeggenberg – county prosecutor (R)
- ✓ Chris Cracchiolo – county Democratic Party chair
- ✓ Lisa Trombley – county Republican Party chair

Commissioners have scheduled their second meeting for Tuesday, August 10, at 2 p.m. at the Governmental Center. At that meeting they will hear how the county Equalization Department can assist them in the map-drawing process. By law, each of the five commission members can submit three maps.

Before commissioners submit maps, however, they must first establish the number of districts – anywhere between five and 21. In 1970, there were 15 districts. There were nine in 1980. Since 2010,

there have been seven districts – five represented by Republicans and two by Democrats.

Under Michigan law, districts should be

compact and "nearly square." They should not resemble, as a federal judge described one gerrymandered Maryland congressional district, "a broken-winged pterodactyl lying prostrate across the center of the state."



The law also requires that there should be a maximum difference of 11.9% of the average district between the largest and smallest district.

Although we were heartened by the commission's sincerity and diligence at its first meeting, we were disappointed to hear that commissioners will not allow independent parties – some of whom have far more map-drawing expertise than the members of the commission – to submit proposed maps “except as required by law,” i.e., only if the commission fails to draw a map that meets legal requirements.

The arguments for declining to accept redistricting recommendations from the public are that political mapping is a complex undertaking and that commissioners don't want to be inundated with a large number of proposed districts. In our opinion, those aren't very persuasive arguments.

More information about the commission and its mandate are available at <https://www.gtcountymi.gov/2488/Appportionment-Commission> and <https://www.fairlinesgt.com>.

And that's a wrap. Stay safe, get vaccinated and enjoy this beautiful summer weather. Thanks for reading.

HELPFUL LINKS & INFO

BOC meetings are held at 8 a.m. on the first and third Wednesday of the month. The next meeting is July 21.

You can find a link to the agenda and minutes at:
<https://grandtraversecounty.civicweb.net/Portal/MeetingInformation.aspx?Org=Cal&Id=238>

You can watch a livestream of the meetings and view replays of previous meetings online at:
<http://www.co.grand-traverse.mi.us/184/Board-of-Commissioners>

You will have to attend the in-person meeting in order to make a public comment. The BOC permits public comment for three minutes at the beginning and end of each meeting.

The BOC has seven commissioners – five Republicans and two Democrats – each of whom represents a district. You can find your commissioner at this link:
<https://www.grandtraversedems.com/boc>

You can find contact info for the BOC members here:
<http://grandtraverse.org/184/Board-of-Commissioners>

You can email all the commissioners at this address:
commissioners@gtcountymi.gov