STATE OF MICHIGAN
IN THE 67TH JUDICIAL DISTRICT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

v

RICHARD DALE SNYDER,

Defendant.

Case No. 21G-0046-SM

Hon. William H. Crawford

Fadwa Hammoud (P74185)
Bryant Osikowicz (P72377)
Daniel John Ping (P81482)
Michigan Department of Attorney General
525 W. Ottawa Street
Lansing, Michigan 48933
517.335.7622
hammoudF1@michigan.gov
osikowiczb@michigan.gov
pingd@michigan.gov

Kym L. Worthy (P38875)
Molly Kettler (P59877)
Wayne County Prosecuting Attorney
1441 Saint Antoine Street, Floor 12
Frank Murphy Hall of Justice
Detroit, Michigan 48226
313.224.5777
kworthy@waynecounty.com
kettlerm@michigan.gov

Attorneys for the People

Brian P. Lennon (P47361)
Charles N. Ash, Jr. (P55941)
Warner Norcross + Judd LLP
150 Ottawa Avenue NW
Suite 1500
Grand Rapids, Michigan 49503
616.752.2000
blennon@wnj.com
cash@wnj.com

Judith S. Gracey (P39766)
The Gracey Law Firm
2200 Beechmont Street
Keego Harbor, MI 48320
248.221.7726
judith@thegraceylawfirm.com

Attorneys for Defendant

REPLY IN SUPPORT OF MOTION TO QUASH THE INDICTMENT FOR LACK OF JURISDICTION AND TO DISMISS THE CASE FOR IMPROPER VENUE

TABLE OF CONTENTS

Page

INTRODUCTION 1

ARGUMENT 1

I. Governor Snyder's alleged crimes were committed in Ingham County. 1

A. To make their case under the crime-committed rule, the People fabricate nonexistent duties and make meritless assertions. 1

B. Official omissions occur at a public officer's official residence as a matter of law 4

II. The single-judge grand juror was limited to indicting for crimes within the scope of his inquiry—i.e., crimes committed within Genesee County 7

A. MCL 767.3 and 767.4 limited the grand juror to indicting for crimes committed in Genesee County 8

B. The Legislature's inclusion of a special procedure to establish a grand jury with jurisdiction over multiple counties proves the point 10

C. This Court should quash the Indictment 12

III. Venue is proper in Ingham County, not Genesee County 12

CONCLUSION 15

INTRODUCTION

The People's arguments in their response to Governor Snyder's motion to quash the Indictment and dismiss this case are built on sand. The People assert that 7th Circuit Judge David Newblatt, in his capacity as grand juror, had a roving commission to indict for any offenses that were brought to his attention wherever they occurred. The People's position conflicts directly with longstanding, binding precedent from the Michigan Supreme Court and is inconsistent with the broader statutory scheme regarding grand juries. Even more important, the People continue to overlook a simple, yet fundamental, fact: not every action or inaction that allegedly contributed to the Flint water crisis took place in the City of Flint. This includes Governor Snyder's alleged inactions as Governor, which took place, if at all, at the seat of Michigan's government and the Governor's official residence in Lansing. Under well-settled Michigan law, that fact has two unavoidable, fatal consequences for the People's investigation and prosecution of Governor Snyder: a Genesee County one-person grand juror has no jurisdiction to indict Governor Snyder for his alleged offenses, and venue is improper in this Court because Governor Snyder's alleged crimes were not committed in Flint. This Court should quash the Indictment and dismiss this case.

ARGUMENT

I. Governor Snyder's alleged crimes were committed in Ingham County.

A. To make their case under the crime-committed rule, the People fabricate nonexistent duties and make meritless assertions.

The People's argument that Governor Snyder committed his alleged crimes in Flint relies on several unsustainable premises. To start, the People imply that Governor Snyder has been charged with neglecting "the City of Flint" and assert that he neglected duties that he "owed specifically to Flint." Resp at 7. Those assertions have no basis in law or fact. Neglecting a city is not a crime—certainly not one with which Governor Snyder has been charged. Nor did Governor

Snyder have any duties "owed specifically to Flint." *Id.* According to the Indictment, he allegedly had (a) the most general of duties under the Michigan Constitution to supervise inferior officers and (b) a duty under the Emergency Management Act to declare a state of emergency and/or disaster. See Indict Counts 1–2. Nothing in the Michigan Constitution or the Emergency Management Act indicates that Governor Snyder owed those duties "specifically to Flint" rather than any other Michigan citizen or group of citizens.[1] Quite the opposite, the only logical conclusion is that, to the extent the duties existed, Governor Snyder was required to execute them on behalf of all of Michigan's citizens, not any subset of them. See Const 1963, Art I, § 1 ("All political power is inherent in the people. Government is instituted for their *equal* benefit, security and protection." (emphasis added)).

Next, the People assert that Governor Snyder failed to perform his duties "in Flint." Resp at 7–8. This assertion, too, is untethered from reality. The Indictment does not allege, as the People imply, that Governor Snyder failed to supervise any officials "located or operating in Flint." *Id.* at 8.[2] The People also misleadingly contend that Governor Snyder has been charged with failing to

[1] The People's lone support for the proposition that Governor Snyder owed a duty "specifically to Flint" is an unpublished decision from the U.S. District Court for the Western District of New York. The decision that Governor Snyder believes the People intended to reference is attached hereto as **Exhibit D-5**. The decision actually attached to the People's response has nothing to do with this issue. In any event, the Western District of New York's decision rested on the federal civil venue statute, which explicitly allows for multiple venues and does not turn on where the alleged misconduct was committed. See *Fox v Paterson*, unpublished opinion of the U.S. District Court for the Western District of New York, issued May 13, 2010 (No. 10-CV-6240), 2010 WL 11545717, p 4. Moreover, it goes without saying that the federal court in the Western District of New York said nothing about the duties of the Governor of Michigan under Michigan law.

[2] The Indictment on its face fails to connect Governor Snyder's alleged failure to supervise anyone to the Flint water crisis or anything else that occurred in Flint. The representations in their response notwithstanding, the People undoubtedly will assert in the future that Governor Snyder failed to supervise officials located or operating in Lansing, among other jurisdictions. Indeed, in their response brief the People claim that they have to wait until all the grand jury material is released before they can discuss more facts supporting their argument. Resp at 16–17. This is disingenuous at best. The People know what evidence they presented to the grand juror. And they know they

declare a state of emergency and/or disaster "in Flint." *Id.* Not so. Governor Snyder has been charged with failing to discharge his alleged duty to declare a state of emergency and/or disaster *regarding conditions in* Flint, see Indict Count 2; see also MCL 30.403(3)–(4) (providing for the declaration of a state of emergency or disaster if the Governor finds that a disaster or emergency has occurred or a threat of an emergency or disaster exists in a particular location), not failing to do so while *physically located in* Flint.[3] The Governor typically makes such declarations in Lansing—as Governor Snyder in fact did when he declared a state of emergency regarding the Flint water crisis. Br at 4 n 3; Br Ex D-2.

The People attempt to bolster their argument by analogizing Governor Snyder's alleged crimes to the crime of witness intimidation using a telephone. Resp at 8–9. They observe that in *People v Houthoofd*, 487 Mich 568; 790 NW2d 315 (2010), the Michigan Supreme Court stated in dicta that witness intimidation using a telephone "could be said" to have been committed in the county where the call was placed or in the county where the call was received. 487 Mich at 586 (observing that the case was brought in neither county). Witness intimidation using a telephone, however, is readily distinguishable from Governor Snyder's alleged crimes: unlike a defendant who *places a call* to intimidate another person, Governor Snyder is alleged *not* to have acted. It may well be true that, when one uses the telephone to commit a crime, the crime can be said to have been committed both where the call was placed and where the call was received. But here,

---

have no factual basis to support their argument, because the departments and department heads Governor Snyder allegedly would have failed to supervise are all located in Lansing, along with the Executive Office of the Governor.

[3] If this Court accepts the People's argument that these alleged crimes were committed against the people of the City of Flint, then the People must concede that all Flint residents who presumably would be called to jury service are victims of the alleged crimes and should be excluded for cause. The People's argument, therefore, is essentially a material admission supporting a change of venue motion.

the People allege that Governor Snyder *didn't make a call* or take other appropriate action. *Houthoofd* has no bearing on this case.

B. Official omissions occur at a public officer's official residence as a matter of law.

More fundamentally, the People give short shrift to the fact that they have charged Governor Snyder with an official omission, and, when a public official *fails* to act, that failure occurs at his official residence. Br at 3–5. Bafflingly, the People assert that Governor Snyder has been charged as an individual, no different from any other citizen, and that his charges have nothing to do with his holding the office of Governor. Resp at 11–12. The People apparently do not understand the crimes with which they have charged Governor Snyder, which turn on his former status as a public officer—indeed, the chief executive of the state—and his alleged failure to take action in his official capacity. E.g., *People v Waterstone*, 296 Mich App 121, 136; 818 NW2d 432 (2012) ("MCL 750.478 criminally punishes a public officer for 'failing to perform any act that the duties of the office require of the officer, nonfeasance.'" (quoting *People v Perkins*, 468 Mich 448, 456; 662 NW2d 727 (2003)). Governor Snyder did not have his alleged duties by virtue of being a Michigan citizen; he had them by virtue of holding the office of Governor.

The People next attempt to discount the numerous state supreme court decisions holding the venue in mandamus actions—the willful-neglect statute's civil analogue, *People v Parlovecchio*, 319 Mich App 237, 243; 900 NW2d 356 (2017)—lies at the place of the officer's official residence, Br at 4–5 (collecting cases). They first assert that Governor Snyder is alleged to have violated "a duty owed specifically to the City of Flint." Resp at 9. As discussed above, that assertion has no basis under Michigan law. Moreover, if the People's argument had merit, the plaintiffs in each of the cases cited by Governor Snyder could also have claimed that the defendants violated duties owed to the them to do something in a particular place. E.g., *Denver Bd of Water*

Comm'rs v Bd of Co Comm'rs of Arapahoe Co, 528 P2d 1305, 1307 (Colo 1974) (en banc) (claim by neighboring counties that the city and county of Denver violated a duty to supply water in their counties); *State ex rel State Dry Cleaners' Bd v Dist Court of Nowata Co*, 340 P2d 939, 942 (Okla 1959) (failure to hold hearing in particular county). If the distinction drawn by the People made a difference, the state supreme court decisions cited by Governor Snyder would have reached very different results.

The People also contend that, unlike the defendants in the cases cited by Governor Snyder, a Michigan Governor "operates across the entire state." Resp at 10. Here again, the line drawn by the People does not exist. Each of the cases cited by Governor Snyder involved defendants who operated outside a single locality. *Lunt v Div of Workmen's Comp*, 537 P2d 1080, 1081 (Mont 1975) (statewide workers' compensation division); *Denver Bd of Water Comm'rs*, 528 P2d at 1307 (water authority for the city and county of Denver, which supplied water to neighboring counties); *State ex rel State Dry Cleaners' Bd*, 340 P2d at 942 (statewide dry cleaners' board); *State ex rel Hawley v Indus Comm'n*, 30 NE2d 332, 333 (Ohio 1940) (statewide industrial commission). The point these cases make is that when a public officer *fails* to act, he does so not at any or all locations in the state, but rather from the place where his duty arises—i.e., his official location or residence.

The People also cite three federal district court decisions purportedly showing that "when a governmental official operates across the state, venue in an action against that official is not limited to the seat of government." Resp at 11. The cases the People cite, however, do not bear the weight they place on them. To begin, all of the cases turn on the federal civil venue statute, which is considerably broader than the venue rule applicable to criminal prosecutions in Michigan. *Bay Co Democratic Party v Land*, 340 F Supp 2d 802, 806 (ED Mich, 2004); *Lynch-Bey v Caruso*, unpublished opinion of the U.S. District Court for the Eastern District of Michigan, issued October

19, 2006) (Case No. 05-CV-72378), 2006 WL 5431390, p 1; *Taylor v White*, 132 FRD 636, 640 (ED Pa, 1990). Among other things, the federal civil venue statute allows venue to lie "where the effects of the decision are felt," *Bay Co Democratic Party*, 340 F Supp 2d at 809, counter to Michigan's rule that the location where the consequences of a crime are felt "is immaterial" to criminal venue analysis, *People v McBurrows*, 504 Mich 308, 317; 934 NW2d 748 (2019).

Perhaps more to the point, all of the cases the People cite address official *actions*, not official *omissions*. *Bay Co Democratic Party*, 340 F Supp 2d at 803 (restraining imminent official action); *Lynch-Bey*, unpub op at 1 (official action); *Taylor*, 132 FRD at 639 (official action). It may well be that, when a public officer's *action* in his official capacity outside the jurisdiction of his official residence constitutes a crime, the officer may be prosecuted in the jurisdiction in which he acted. This case does not present that fact pattern. Here, the People have charged Governor Snyder not for acting but for failing to act—nonfeasance. He necessarily did so where his duty arose—his official location or residence as Governor, Lansing.

* * *

For all its bluster, the People's response never seriously addresses the core flaw in its effort to establish venue for this case in Genesee County. The foundation for a willful-neglect-of-duty charge is the defendant's public office; his alleged neglect, in his official capacity, of a duty imposed on that office is what gives rise to a violation. E.g., *Waterstone*, 296 Mich App at 136. Given the fundamental nexus between the defendant's public office and the alleged offense, the officeholder's official location or residence is necessarily where the crime is committed. His duty arises there, and that location consequently is where he fails to perform it.[4] In this case, Governor

[4] For this reason, further factual development—which the People suggest may be helpful, Resp at 16–17—is irrelevant.

Snyder's undisputed official residence was at the seat of government—Lansing. His alleged crimes were committed, if at all, from that location, not in the City of Flint or anywhere else in Genesee County.

II. The single-judge grand juror was limited to indicting for crimes within the scope of his inquiry—i.e., crimes committed within Genesee County.

The People concede that MCL 767.3 allows a court to authorize a single-judge grand jury *only if* it has probable cause to believe that a crime was committed within its territorial jurisdiction. Resp at 2. That concession is fatal to the People's assertion that, once authorized, a single-judge grand jury may investigate and charge any crimes upon which the grand juror may stumble. *Id.* As the Michigan Supreme Court has recognized, the single-judge grand jury statute "[n]o longer . . . permit[s] a grand juror to search out criminal conduct generally" but rather limits him to investigating and charging crimes within the scope of the order authorizing the inquiry. *In re Colacasides*, 379 Mich 69, 99 & n 13; 150 NW2d 1 (1967). If nothing else, that scope necessarily is limited to investigating a suspected crime "committed within [judge's] jurisdiction." MCL 767.3.

The People had three options to seek charges against Governor Snyder: (1) present them to an Ingham County grand jury, (2) present them to a multicounty grand jury convened under MCL 767.7b–.7g with jurisdiction over Ingham County and any other county in which the People had probable cause to believe criminal activity occurred, and (3) simply file a misdemeanor complaint in the proper district court in Ingham County. For reasons that almost certainly have much to do with attempting to tip the scales in their favor,[5] the People opted not to pursue any of

[5] The public extrajudicial, inflammatory, and inappropriate comments made by SG Hammoud and Prosecutor Worthy at their January 14, 2021 press conference are informative to this point. See video of the Press Conference at the People's public website at https://tinyurl.com/cd4ix2dv with

these options. That decision means that the grand juror in this case could not indict for offenses committed outside Genesee County, including Governor Snyder's alleged offenses.

A. MCL 767.3 and 767.4 limited the grand juror to indicting for crimes committed in Genesee County.

The People's contention that, once convened, a single-judge grand jury can charge any crimes brought to the grand juror's attention is meritless. To start, for more than 80 years, the Michigan Supreme Court has understood the statute to limit a single-judge grand jury's "authority . . . [to] the territorial jurisdiction of the court of which the judge conducting the inquiry is a member." *Petition of Hickerson*, 301 Mich 278, 281; 3 NW2d 274 (1942); see also *In re Watson*, 293 Mich 263, 269; 291 NW 652 (1940). *Watson* considered the intersection between 3 Comp Laws 1929 § 17217 (the statute now codified, as amended, at MCL 767.3) and 3 Comp Laws 1929 § 16300.[6] In that case, the petitioner contended that the grand juror—a Wayne County circuit judge—had no authority to investigate and charge gambling in Detroit under § 17217 because § 16300 gave exclusive subject-matter jurisdiction over crimes committed within Detroit to the recorder's court. 293 Mich at 269. The Michigan Supreme Court rejected that proposition, holding the grand juror was "empowered to investigate gambling *in Wayne county*" under the statutes. *Id.* (emphasis added).

---

particularly inflammatory excerpts therefrom in Defendant Howard Croft's Reply Brief in support of his Motion to Disqualify at pages 2-3, attached as **Exhibit D-6**.

[6] Copies of 3 Comp Laws 1929 §§ 16300, 17217–18 are attached hereto as **Exhibit D-7**. Because 3 Comp Laws 1929 §§ 17217–18 are the predecessors to MCL 767.3–.4, the Michigan Supreme Court's interpretation of them remains binding on this Court. See *Associated Builders & Contractors v City of Lansing*, 499 Mich 177, 191–192 & n 32; 880 NW2d 765 (2016) (admonishing the Court of Appeals for departing from precedent interpreting Michigan's 1908 Constitution and explaining that "[t]he Court of Appeals is bound to follow decisions by [the Michigan Supreme Court] except where those decisions have *clearly* been overruled or superseded").

Hickerson, decided two years later, resolved a similar question. There, the grand juror was a justice of peace of the Pontiac municipal court. 301 Mich at 280. The petitioner claimed that the grand juror had no authority regarding "offenses not cognizable by a justice of the peace." *Id.* at 281. The Supreme Court recognized that *Watson* raised "in principle the same" question: "[I]s the authority of the grand jury circumscribed by the limitations placed upon the court's power to hear and determine issues, or is the authority coextensive with the territorial jurisdiction of the court of which the judge conducting the inquiry is a member?" *Id.* Following *Watson*, the Court held "that the controlling element [is] the territorial jurisdiction of the court conducting the grand jury." *Id.* at 282; see also *id.* (explaining that § 16300, which gave "the recorder's court exclusive jurisdiction of crimes committed in the City of Detroit, reserved to the grand jury of Wayne County authority to investigate crimes in said county, *the same as it had prior to the enactment of the statute*," i.e., under § 17217 (emphasis added)).

What's more, a later amendment to the single-judge grand jury statute confirms that the grand juror lacks authority to root out and charge any crimes he may uncover. In 1965, the Legislature amended MCL 767.3 to require the order convening the grand jury to "be specific to common intent of the scope of the inquiry to be conducted." MCL 767.3; see also *Colacasides*, 379 Mich at 99 (identifying the 1965 amendment). MCL 767.4, in turn, limits the grand jury's charging decisions to "such inquiry." MCL 767.4. Just two years after the 1965 amendment, the Michigan Supreme Court recognized its obvious effect: "No longer does the statute permit a grand juror to search out criminal conduct generally" but instead limits the grand juror to the scope of the inquiry specified in the order authorizing the inquiry. *Colacasides*, 379 Mich at 99; see also *People v DiPonio*, 20 Mich App 658, 665; 174 NW2d 572 (1969) (quashing an indictment because "it would be a clear abuse of judicial interpretation to say that the crimes charged to this defendant

were encompassed within the scope of the inquiry" set forth in the order establishing the grand jury under MCL 767.3).

Because the statute explicitly limits the scope of permissible inquiry to matters occurring within grand juror's territorial jurisdiction, see MCL 767.3 (court may enter an "order directing that an inquiry be made into the matters relating to the complaint," i.e., that a "crime, offense or misdemeanor has been committed within his jurisdiction"), the 1965 amendment makes it even clearer that a grand juror cannot charge any crimes he uncovers wherever they may have occurred. Rather, he is limited to charging crimes committed within his territorial jurisdiction and that fall within any other limitations on the scope of inquiry specified in the order authorizing the grand jury.

B. The Legislature's inclusion of a special procedure to establish a grand jury with jurisdiction over multiple counties proves the point.

As discussed in Governor Snyder's initial brief, the Legislature's inclusion of a procedure to convene a grand jury with territorial jurisdiction over multiple counties proves the more limited jurisdiction of grand juries convened through other means. Br at 6–7. The People assert that their reading of the single-judge grand-jury statute does not render the multicounty grand-jury procedure surplusage because the latter authorizes a multicounty grand jury only if the court of appeals finds that a multicounty grand jury "could more effectively address criminal activity referred to in the petition than could a grand jury with jurisdiction over 1 of those counties." Resp 4 (quoting MCL 767.7d).) This is nonsense. As an initial matter, the statute explicitly recognizes that the alternative to multicounty grand jury is "a grand jury with jurisdiction *over 1 of those counties*." MCL 767.7d (emphasis added). Moreover, the People do not explain how a multicounty grand jury *ever* would be more effective than an ordinary grand jury if their reading of the statute were correct. If a single-judge grand jury could indict a person for any and all offenses committed

anywhere in the state, a multicounty grand jury—and its attendant procedural hoops—*never* would be more effective.

The People next contend that the fact that the statute permits, but does not require, the Attorney General to seek a multicounty grand jury shows that a single-judge grand jury has multicounty jurisdiction. Resp 5 (citing MCL 767.7b). This, too, does not hold water. The statute's use of the verb "may" plainly recognizes that the Attorney General has options. She may choose (1) to seek a multicounty grand jury, (2) to utilize two or more grand juries (one in each county), or (3) to utilize, at her possible peril, only one grand jury with jurisdiction over offenses committed within its territorial jurisdiction. It does not prove that a run-of-the-mill grand jury has limitless territorial jurisdiction.

The People last claim that Governor Snyder's position means that "an accused would be totally immune from grand jury investigation if his crime qualified for multicounty grand jury treatment but nevertheless could 'more effectively' be addressed by a single county." Resp at 5 n 2. Not so. Governor Snyder does not contend that only a multicounty grand jury could have investigated and charged his alleged crimes. Quite the opposite, he submits that an Ingham County grand jury would have been the obvious forum in which to seek charges against him relating to his actions or inactions in his official capacity as Governor. Similarly, the People could have pursued prosecution as they generally do, by simply filing a misdemeanor complaint in Ingham County. Insofar as the Solicitor General wished to utilize only one grand jury to investigate all Flint Water-related matters whether they occurred in Flint, Lansing, or another place, Michigan law gave her an option (assuming she could meet the statutory requirements). Specifically, she could have petitioned for a multicounty grand jury with jurisdiction over Genesee County, Ingham County (for, at minimum, Governor Snyder and Jarrod Agen), and any other county in which she had

probable cause to believe a crime was committed. The Solicitor General, however, chose to utilize only a Genesee County grand jury. Her decision means that the grand jury lacked jurisdiction to indict for offenses committed outside Genesee County, including, at a minimum, Governor Snyder's alleged misdemeanor offenses, and the alleged perjury charge against Jarrod Agen.[7]

C. This Court should quash the Indictment.

The People do not dispute that a trial court must quash an indictment returned by a grand jury that lacked jurisdiction. Br at 7. As discussed above and in his initial brief, see *supra* Part I; Br at 3–5, Governor Snyder's alleged offenses occurred, if at all, in Ingham County, not Genesee County. Accordingly, neither alleged offense occurred within the territorial jurisdiction of Judge Newblatt. Because the grand juror therefore lacked jurisdiction, this Court should quash the Indictment.

III. Venue is proper in Ingham County, not Genesee County.

This Court should dismiss this case for improper venue for the same reasons. The People concede that, in Michigan, venue in criminal cases lies where the alleged crime was committed. Resp at 5–6. Here, Governor Snyder's alleged offenses were committed in Lansing, not Flint. See *supra* Part I; Br at 3–5. Although that fact alone means that venue is improper in Genesee County, the People's other arguments regarding venue bear brief mention.

---

[7] This Court should know that in *People v. Jarrod Agen*, Case No. 21-047372-FH, which is currently before the Honorable Elizabeth Kelly, the People have charged Mr. Agen with perjury for allegedly false sworn testimony he gave in Lansing in 2017. Perjury is the only charge against Mr. Agen. See **Exhibit D-8,** Agen's Indictment (attached). Counsel for Mr. Agen has similarly raised the same two challenges to the jurisdiction of the grand juror and improper venue, as we have raised here. See **Exhibit D-9**, Agen's Motion to Dismiss Indictment. Did the People present false testimony to the grand juror that Mr. Agen's sworn testimony was given in the City of Flint rather than the City of Lansing? Or was the People's consideration of the jurisdiction of the grand juror and venue for Mr. Agen's crime simply an afterthought, as it appears to have been for Governor Snyder, which the People are now trying to justify and defend to cover for their error? The latter seems more plausible.

As an initial matter, relying on *People v Webbs*, 263 Mich App 531; 689 NW2d 163 (2004), the People contend that Genesee County is the correct venue for this case because it is most convenient for the witnesses in Genesee County and because the effects of Governor Snyder's alleged misconduct purportedly were felt in Flint. Resp at 12–13. The People's argument suffers from several flaws. To start, the People have failed to identify a single witness to Governor Snyder's alleged crimes. How can the People argue "convenience to witnesses" to this Court when they have failed to identify a single witness? Even more important, the Michigan Supreme Court recently held that, "in the absence of an applicable *statutory* exception," the rule that criminal venue lies in the county or city where the offense was committed "is a mandatory aspect of criminal venue in Michigan." *McBurrows*, 504 Mich at 315 (emphasis added). The public-policy arguments advanced by the People are not contained in a statutory exception. What's more, in the same opinion, the Michigan Supreme Court also recognized that the location where the consequences of an offense are felt "is immaterial"[8] *even when* those consequences are required elements[9] of the offense. *Id.* at 318.

The People imply that MCL 762.8—which, in *felony* cases, allows venue to lie "in any county that the defendant *intended* the felony or acts done in perpetration of the felony to have an effect"—provides a foothold to consider the location of effects in this case. Resp at 14. But as the People are forced to admit, MCL 762.8 does not apply to this *misdemeanor* case. *Id.* Moreover,

[8] The People attempt to distinguish the Court's holding in *McBurrows* as dicta. Resp at 14 n 4. It was not. The Supreme Court held that the location of an offense's effects is immaterial in the course of deciding where the crime at issue was committed. 504 Mich at 317–318. If location of effects *were* material to the venue analysis, then the People would have won, not lost, in *McBurrows*.

[9] Here, of course, consequences in Flint or any other place are *not* required elements of Governor Snyder's alleged misdemeanor offenses. Br at 2 (discussing elements of willful neglect of duty).

the People nowhere explain the basis for concluding that Governor Snyder "intended" any effects to be felt in Genesee County. The Indictment is devoid of any such allegation.

The People next suggest that, if the Court concludes that the situs of Governor Snyder's crimes is impossible to determine, it should conclude that the Attorney General exercised her authority under MCL 762.3(3)(c) to designate Flint as the venue. This Court should reject the People's post hoc attempt to invoke MCL 762.3(3)(c). The People's position is not that the location of Governor Snyder's alleged crimes is undeterminable; that is not what the Indictment charges nor what the People argue in their response. Moreover, the Attorney General has taken no steps to exercise her purported authority under MCL 762.3. See Resp at 15–16 (admitting that, in the normal course, the Attorney General issues an order under MCL 762.3). Most important, the location of Governor Snyder's alleged crimes is easily determinable as a matter of law for the reasons previously discussed.

Last, the People contend that the proper remedy for improper criminal venue is transfer, not dismissal. The People's argument starts with the erroneous proposition that a single-judge grand jury may indict for any offense committed anywhere in Michigan. Resp at 17–18. As Part II of this brief explains, the People misstate the law. Next, although the People apparently concede that *People v White*, unpublished opinion of the Court of Appeals, issued September 3, 2020 (Docket No. 346661), 2020 WL 5261284, correctly held that dismissal, not transfer, is the proper remedy when venue is improperly laid, they argue that this "is not the usual case." Resp at 18. The People, however, overlook one of the core reasons *White* concluded that transfer is improper: subject to a limited exception applicable to cases initially brought in the proper venue (MCL 762.7), neither the Michigan Compiled Laws nor the Michigan Court Rules provide a basis to

transfer criminal cases to another venue. *White*, unpub op at 9. Because venue is improper in this Court, it should dismiss the case rather than transfer it.

CONCLUSION

In seeking to stack the deck against Governor Snyder by pursuing charges outside the scope of the grand juror's jurisdiction and in the wrong venue, the People's response brief twists facts, distorts case holdings, ignores longstanding, binding precedent from the Michigan Supreme Court, and is inconsistent with the broader statutory scheme regarding grand juries. And when the People were given the opportunity to acknowledge this fatal flaw shortly after arraignment, and to voluntarily dismiss the charges against Governor Snyder, they refused to do so. Instead, they have submitted a response brief that requires this Court to perform breathtaking legal and logical gymnastics in order to cover for their mistake of bringing these charges in Genesee County rather than Ingham County. For the reasons set forth herein and in Governor Snyder's initial brief, this Court should quash the Indictment for lack of jurisdiction and dismiss this case for improper venue.

Respectfully submitted,

February 21, 2021

Brian P. Lennon (P47361)
Charles N. Ash, Jr. (P55941)
Warner Norcross + Judd LLP
150 Ottawa Avenue NW, Suite 1500
Grand Rapids, Michigan 49503
616.752.2000
blennon@wnj.com
cash@wnj.com

Judith S. Gracey (P39766)
The Gracey Law Firm
2200 Beechmont Street
Keego Harbor, MI 48320
248.221.7726
judith@thegraceylawfirm.com

Attorneys for Defendant

21392661