

STATE OF MICHIGAN  
IN THE SUPREME COURT

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THE DETROIT NEWS, INC.,  
DETROIT FREE PRESS, INC.  
THE CENTER FOR MICHIGAN, INC. /  
BRIDGE MICHIGAN,  
MICHIGAN PRESS ASSOCIATION,  
LISA McGRAW,

Plaintiffs,

v.

INDEPENDENT CITIZENS  
REDISTRICTING COMMISSION,

Defendant.

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Supreme Court No.

JURISDICTION:  
Const 1963, art 4, §19

BUTZEL LONG, P.C.  
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**EMERGENCY  
VERIFIED COMPLAINT**

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Plaintiffs *The Detroit News*, the *Detroit Free Press*, The Center for Michigan, Inc. / Bridge Michigan, the Michigan Press Association, and Lisa McGraw file this Complaint against the Independent Citizens Redistricting Commission:

**INTRODUCTION**

1. In November 2018, dissatisfied with the secretive and politicized process for legislative redistricting that had prevailed in Michigan for decades, Michigan voters amended Article 4, Section 6 of the Constitution (the “**Redistricting Amendment**”). This amendment transferred all power from the Legislature to a new redistricting commission to draw new state legislative districts and new congressional districts after each decennial census. Const 1963, art 4, §§6(1), 6(22).

2. Transparency is the touchstone of the Redistricting Amendment. The new commission is not only constituted of members of the public, but it must also conduct its business in public, with notice to the public, and give the public opportunities to aid and comment on its work. Const 1963, art 4, §§6(8)–6(12), 6(14)(b), 6(15)–6(17). Yet, the Commission has adopted rules that purport to let the commissioners meet in secret and to withhold several memoranda upon which they relied, on the basis that these meetings and

memoranda purportedly contained communications subject to the attorney-client privilege. Plaintiffs have repeatedly requested the release of all materials related to the closed meeting and copies of the withheld memoranda. Despite these efforts, Plaintiffs being unable to persuade the commissioners to hold all meetings in public and to release the memoranda. With only three weeks left in the period for public comment on the proposed redistricting plans—with intervening holidays—Plaintiffs, for themselves and the public, seek a declaration of the Commission’s constitutional duties and a writ of mandamus directing the Commission to comply with those duties.

### **PARTIES**

3. Plaintiff The Detroit News, Inc., a domestic corporation, owns and operates *The Detroit News*, Michigan’s second largest daily newspaper and one of the State’s longest operating newspapers. Its principal office is located at 160 West Fort Street, Detroit, Michigan 48226.

4. Plaintiff Detroit Free Press, Inc., a domestic corporation, owns and operates the *Detroit Free Press*, Michigan’s largest daily newspaper and news site. Its principal office is located at 160 West Fort Street, Detroit, Michigan 48226.

5. Plaintiff The Center for Michigan, Inc. / Bridge Michigan is a domestic nonprofit corporation and nonpartisan news organization. Its registered address is 4100 North Dixboro Road, Ann Arbor, Michigan 48105.

6. Plaintiff Michigan Press Association is the official trade association for more than 280 print and digital newspapers in Michigan. Its principal office is 827 North Washington Avenue, Lansing, Michigan 48906.

7. Plaintiff Lisa McGraw is a citizen of Michigan domiciled in Harrison Township, a municipality in Macomb County. She is the public affairs manager for the Michigan Press Association.

8. Defendant Independent Citizens Redistricting Commission (the “**Commission**”) is a permanent commission in the legislative branch of government. Const 1963, art 4, §6(1).

## JURISDICTION

9. The Court has original subject-matter jurisdiction over this action under Article IV, Section 19, of the Michigan Constitution of 1963.

10. The Court also has subject-matter jurisdiction under Section 217(3) of the Revised Judicature Act, MCL 600.217(3), and Michigan Court Rules 3.301(A)(1)(c) and (g) and Michigan Court Rule 3.305(A)(2).

11. The Court has general jurisdiction over *The Detroit News*, *Detroit Free Press*, The Center for Michigan, Inc. / Bridge Michigan, and Michigan Press Association under Section 711 of the Revised Judicature Act, MCL 600.711(1)–(3).

12. The Court has general personal jurisdiction over Lisa McGraw under Section 701(3) of the Revised Judicature Act, MCL 600.701(3).

13. The Court has general personal jurisdiction over the Commission under Section 2051(4) of the Revised Judicature Act, MCL 600.2051(4).

## BACKGROUND

14. In 2017, Voters Not Politicians, a ballot proposal committee, filed an initiative petition to amend the Michigan Constitution. See *Citizens Protecting Michigan’s Constitution v Secy of State*, 324 Mich App 561 (2018). The proposal principally sought to amend the apportionment provisions in Article 4, Section 6, of the Constitution.

15. Identified as Proposal 18-2 on the November 6, 2018 general election ballot, the proposal passed overwhelmingly. 2018 Michigan Election Results, available at <https://bit.ly/3y0WqLP>. The amendments became effective December 22, 2018. See Const 1963, art 12, §2.

16. The amendments established a commission—the Independent Citizens Redistricting Commission—charged with redrawing Michigan’s state senate, state house, and congressional districts according to specific criteria. Const 1963, art 4, §§ 6(1), (13). The commissioners for this redistricting cycle were initially selected by a random draw on August 17, 2020. See *History made with selection of 13 commissioners to redraw election districts*

*statewide* (Aug. 17 2020), <https://bit.ly/301cLTY>. One commissioner was randomly selected on October 21, 2020, to fill a vacancy. Const 1963, art 4, §6(3).

17. Under the Constitution, the Secretary of State was required to convene the Commission by October 15, 2020, which she did. The first meeting was held September 17, 2020. Const 1963, art 4, §6(7). Thereafter, the Commission was required “to hold at least ten public hearings throughout the state for the purpose of informing the public about the redistricting process . . . and soliciting information from the public about potential plans,” before the Commission may draft plans. *Id.*, § 6(8).

18. The Commission has a website where it posts meeting notices, agendas, minutes, transcripts and copies of materials presented and/or discussed at the meetings. ICRC Meeting Notices & Materials, <https://bit.ly/3pt5zZC>. The website also provides access to data, support materials and other information related to the redistricting process.

19. On October 27, 2021, the Commission conducted a noticed meeting from 3:17 pm to 5:26 pm located at the Michigan State University Union. Exhibit 1, Proposed Meeting Minutes, 1 (Oct. 27, 2021). The meeting began in open session, with the adoption of an agenda and hearing public comments, after which the Commission voted to go into closed session. *Id.* at 1-3.

20. The Commission met privately for about 75 minutes to discuss two memoranda from one of its attorneys: a memorandum on the Voting Rights Act dated October 14, 2021, and a memorandum concerning the history of discrimination in Michigan and its influence on voting dated October 26, 2021. Exhibit 2, Commission Meeting Tr., 9-12 (Oct. 27, 2021). During this nonpublic meeting, the Commission, on information and belief, discussed how the contents of the memoranda (*i.e.*, the Voting Rights Act, discrimination in Michigan, and how that discrimination affects voting) would inform redistricting plans, thereby using these memoranda to develop proposed redistricting plans. Video of Commission Meeting 0:28:52-1:24:51 (Jun. 15, 2021), <https://bit.ly/3oqjAYI>; Video of Commission Meeting 0:18:51-1:49:38 (Jul. 9, 2021), <https://bit.ly/3GgTSMf>; Exhibit 14, Commission Meeting Tr. 5-33 (Jul. 9, 2021); Video of Commission Meeting 3:47:57-3:50:12 (Dec. 2, 2021), <https://bit.ly/>

3EuGxPV. The Commission did not release the two memoranda to the public at the time of the meeting.

21. After the Commission's nonpublic meeting on October 27, 2021, Plaintiffs Michigan Press Association and The Center for Michigan, Inc. / Bridge Michigan asked the Commission's communications director for copies of the two memoranda that the Commission discussed during the nonpublic meeting. See Exhibit 3, Letter from Julie Stafford, President of the Michigan Press Association, John Bebow, President of The Center for Michigan, Inc. / Bridge Michigan, Peter Bhatia, Editor of the *Detroit Free Press*, and Gary Miles, Editor and Publisher of *The Detroit News*, to Julianne V. Pastula, General Counsel to the Commission (Nov. 30, 2021) ("PRESS LETTER"), p. 2. The Commission's communications director denied the request. *Id.*

22. On October 28, 2021, Senator Ed McBroom and Senator Jeff Irwin asked the Attorney General to provide her opinion on whether the Commission, by entering a closed session on October 27, 2021, violated the Redistricting Amendment. The Senators specifically referenced the two memoranda of October 14 and October 26. Exhibit 4, Letter from Senator Ed McBroom and Senator Jeff Irwin to the Attorney General, 1 (Oct. 28, 2021).

23. On October 29, 2021, the *Detroit Free Press* formally requested copies of the memoranda discussed at the nonpublic meeting. Exhibit 5, Letter from Clara Hendrickson, Reporter for the *Detroit Free Press*, to Julianne V. Pastula, General Counsel to the Commission, 1 (Oct. 29, 2021). The Commission denied the request on November 23, 2021 and continued to assert that the documents were protected from disclosure by the attorney-client privilege. Exhibit 6, Letter from Julianne V. Pastula, General Counsel to the Commission, to Clara Hendrickson, Reporter for the *Detroit Free Press*, 1 (Nov. 23, 2021).

24. On November 5, 2021, the Michigan Press Association and The Center for Michigan, Inc. / Bridge Michigan asked the Commission's Executive Director and Commissioners Rothhorn and Szetela for copies of the memoranda. Exhibit 7, Letter from Michigan Press Association and The Center for Michigan, Inc. / Bridge Michigan to Sue Hammersmith, Rebecca Szetela, & M.C. Rothhorn, 1-2 (Nov. 5, 2021). The Commission's

general counsel responded on November 12, 2021, that the Commission interpreted the request as a request for documents under the Freedom of Information Act and that it would answer the request on or before December 2, 2021. Exhibit 8, Email from Julianne V. Pastula, General Counsel to the Commission to the Michigan Press Association and The Center for Michigan, Inc. / Bridge Michigan, 1 (Nov. 12, 2021). The Commission denied the request on December 2, 2021, claiming that the documents were “information or records subject to the attorney-client privilege and therefore exempt from disclosure under MCL 15.243(1)(g).” Exhibit 9, Letter from Julianne V. Pastula, General Counsel to the Commission, to John Bebow, President of The Center for Michigan, Inc. / Bridge Michigan, and Lisa McGraw, Public Relations Manager of the Michigan Press Association, 1 (Dec. 2, 2021, sent via email on Dec. 1, 2021).

25. On November 5, 2021, *The Detroit News* also sent a letter to Commission Chair Szetela asking her to (1) disclose the documents discussed during the nonpublic meeting and (2) conduct all meetings in public. Exhibit 3, Press Letter at 2. *The Detroit News* received no response to that letter. *Id.* at 3.

26. On November 16, *The Detroit News* followed up with a “FOIA request” per the Commission’s Rule of Procedure 13.1.B. The Commission responded on November 19 extending its time to respond by 10 business days—*i.e.*, until December 9—“to determine whether the [Commission] possesses existing, nonexempt records responsive to the request.” Exhibit 10, Email from Julianne V. Pastula, General Counsel to the Commission, to Craig Mauger, *The Detroit News* (Nov. 19, 2021). Since general counsel participated in the public meeting at which the memoranda were identified as supporting a nonpublic session, and also participated in the nonpublic meeting where they were discussed, she plainly knew they existed, knew that she intended to assert the privilege, and knew this extension was unwarranted under the Commission’s Rules of Procedure and would be perceived as bad faith delay.

27. Plaintiffs have learned that the Commission’s attorneys have also given to the Commission at least eight additional memoranda that have not been released to the public:

- (a) *Guidance on Subsection 11 of Art. IV § 6 of the Michigan Constitution ICRC Communications with the Public* (Jan. 21, 2021);
- (b) *MICRC Litigation Options to Address Delay of Census Data* (Mar. 2, 2021);
- (c) *Update on Michigan Supreme Court Petition and Next Steps* (May 25, 2021);
- (d) *One Person, One Vote and Acceptable Population Deviations* (Jun. 24, 2021);
- (e) *Legal Considerations & Discussion of Justifications re: Criteria* (Oct. 7, 2021);
- (f) *Memorandum Regarding Renumbering of Electoral Districts* (Nov. 3, 2021);
- (g) *Redistricting Criteria* (Nov. 4, 2021); and
- (h) *Memorandum Concerning Subsections 9 and 14 of Art. IV, § 6* (Nov. 7, 2021).

Exhibit 11, Email from Julianne V. Pastula, General Counsel to the Commission, to Edward Woods III, Communications and Outreach Director of the Commission, 1 (Nov. 9, 2021). On information and belief, the Commission has also used these eight memoranda to develop redistricting plans.

28. The Commission has withheld the two memoranda referenced in Paragraph 20, the eight memoranda referenced in Paragraph 27, and an unknown number of other records (the “**withheld materials**”), despite using them to develop proposed redistricting plans, based on claims of attorney-client privilege.

29. On November 12, 2021, the Commission published its proposed redistricting plan.

30. Plaintiffs and the public lost **15 days** (October 28–November 12, 2021) to review the withheld materials and comment before publication of the proposed plans during the six meetings the Commission held during that period.

31. On November 22, 2021, the Attorney General issued Opinion No. 7317, in which she opined that a closed meeting to discuss memoranda presumably providing commissioners with certain legal parameters and historical context that should be considered in developing, drafting, and adopting the redistricting plans, required not only that the memoranda be disclosed under Article 4, Section 6(9) of the Constitution, but also that the



discussion be held at an open meeting. Exhibit 12, Attorney General Opinion, 6–14 (Nov. 22, 2021). On November 30, 2021 in anticipation of the Commission’s next meeting on December 2, 2021, the corporate Plaintiffs sent a letter to the Commission’s general counsel urging release of the withheld materials. Exhibit 3, Press Letter, 1–4. The same day, the Commission’s general counsel, together with its litigation counsel, local counsel, and Voting Rights Act counsel, sent a letter to the commissioners urging them not to release the memoranda. Exhibit 13, Letter to the Commission from Julianne V. Pastula, General Counsel to the Commission, Katherine L. McKnight, Litigation Counsel to the Commission, David H. Fink, Local Counsel to the Commission, and Bruce L. Adelson, Voting Rights Act Counsel to the Commission, 1–3 (Nov. 30, 2021).

32. On December 2, the Commission voted 7–5 against releasing the withheld materials and 8–4 against releasing the recording of the closed meeting.

33. Plaintiffs and the public lost **20 additional days** (November 13–December 2) because of the unwarranted “extensions” that the Commission claimed under FOIA.

34. Within three business days of the Commission’s decision, Plaintiffs now come to this Court seeking a declaratory judgment and a writ of mandamus to force the Commission to disclose the withheld materials.

35. As of the filing of this Emergency Complaint, Plaintiffs and the public have been deprived of the opportunity to assess all of the information related to the Commission’s business for a total of **39 days** (October 28–December 6) and deprived of **24 days** of the 45-day public comment period to review the materials and submit comments about them to the Commission.

36. The 45-day public comment period will close on December 27.

#### **STANDARD FOR DECLARATORY JUDGMENT**

37. The Court has the power to enter declaratory judgments. MCR 2.605(A)(1).

38. A declaratory judgment “declare[s] the rights and other legal relations of an interested party.” MCR 2.605(A)(1). “The Declaratory Judgment rule was intended and has

been liberally construed to provide a broad, flexible remedy with a view to making the courts more accessible to the people.” *Shavers v Kelley*, 402 Mich 554, 588; 267 NW2d 72, 82 (1978). “One great purpose [of declaratory judgments] is to enable parties to have their differences authoritatively settled in advance of any claimed invasion of rights, that they may guide their actions accordingly and often may be able to keep them within lawful bounds . . . .” *Merkel v Long*, 368 Mich 1, 13; 117 NW2d 130, 136 (1962) (citation omitted).

39. To bring a successful declaratory judgment action, a plaintiff must demonstrate that (i) there is “a case of actual controversy” and (ii) the case of actual controversy is within the Court’s jurisdiction. MCR 2.605(A)(1); *League of Women Voters of Mich v Secy of State*, 506 Mich 561, 586; 957 NW2d 731, 743 (2020).

40. “An actual controversy exists when a declaratory judgment is needed to guide a party’s future conduct in order to preserve that party’s legal rights.” *League of Women Voters of Mich*, 506 Mich at 586.

41. The case of actual controversy is within the Court’s jurisdiction when “the court would have jurisdiction of an action on the same claim or claims in which the plaintiff sought relief other than a declaratory judgment.” MCR 2.605(A)(1); See *Allstate Ins Co v Hayes*, 442 Mich 56, 66; 499 NW2d 743, 747 (1993) (recognizing that if—among other things—“a court would not otherwise have subject matter jurisdiction over the issue before it,” the court would lack the authority to “declare the rights and obligations of the parties before it”).

#### **STANDARD FOR MANDAMUS**

42. The Court has the power to issue prerogative writs, including writs of mandamus. Const 1963, art 6, §4; MCL 600.217(3); MCR 3.301(A)(1), (G)(1); MCR 3.305(A)(2).

43. “The primary purpose of the writ of mandamus is to enforce duties created by law where the law has established no specific remedy and where, in justice and good government, there should be one.” *Taxpayers for Mich Const Gov’t v Dep’t of Technology, Mgt & Budget*, —Mich—; —NW2d— (2021) (Docket No. 160660); slip op at 27 (cleaned up).

44. To obtain a writ of mandamus, the plaintiff must show that (i) the plaintiff has a clear legal right to the performance of the specific duty to be enforced, (ii) the defendant has a clear legal duty to perform the act; (iii) the act is ministerial; and (iv) no other adequate legal or equitable remedy exists that might achieve the same result. *Id.*

45. “A clear legal right is one clearly founded in, or granted by, law; a right which is inferable as a matter of law from uncontroverted facts regardless of the difficulty of the legal question to be decided.” *Nykoriak v Napoleon*, 334 Mich App 370, 374; 964 NW2d 895 (2020) (cleaned up).

46. A clear legal duty exists when the defendant has a constitutional obligation to perform a specific act. *Cf. Barrow v City of Detroit Election Comm*, 301 Mich App 404, 412; 836 NW2d 498 (2013) (so holding where there was a statutory obligation to perform a specific act).

47. “A ministerial act is one which the law prescribes and defines the duty to be performed with such precision and certainty as to leave nothing to the exercise of discretion or judgment.” *Nykoriak*, 334 Mich App at 374 (cleaned up).

**COUNT I**  
**VIOLATION OF THE REDISTRICTING AMENDMENT**  
**FOR WITHHOLDING SUPPORTING MATERIALS**

48. Plaintiffs incorporate all the earlier paragraphs by reference.

49. The Court, “in the exercise of original jurisdiction, shall direct . . . the commission to perform [its] duties.” Const 1963, art 4, §6(19). Accordingly, the Plaintiffs bring this direct action to have the Court order the Commission to perform one of its duties.

50. The Redistricting Amendment unambiguously commands that the Commission “shall publish the proposed redistricting plans and *any data and supporting materials used to develop the plans.*” Const 1963, art 4, §6(9) (emphasis added).

51. Despite that constitutional requirement, the Commission is withholding these materials, which it used to develop redistricting plans:

- (a) *Guidance on Subsection 11 of Art. IV § 6 of the Michigan Constitution ICRC Communications with the Public* (Jan. 21, 2021);
- (b) *MICRC Litigation Options to Address Delay of Census Data* (Mar. 2, 2021);
- (c) *Update on Michigan Supreme Court Petition and Next Steps* (May 25, 2021);
- (d) *One Person, One Vote and Acceptable Population Deviations* (Jun. 24, 2021);
- (e) *Legal Considerations & Discussion of Justifications re: Criteria* (Oct. 7, 2021);
- (f) *Voting Rights Act* (Oct. 14, 2021);
- (g) *The History of Discrimination in the State of Michigan and its Influence on Voting* (Oct. 26, 2021)
- (h) *Memorandum Regarding Renumbering of Electoral Districts* (Nov. 3, 2021);
- (i) *Redistricting Criteria* (Nov. 4, 2021); and
- (j) *Memorandum Concerning Subsections 9 and 14 of Art. IV, § 6* (Nov. 7, 2021).

52. Accordingly, by withholding those materials, the Commission is violating its clear constitutionally imposed duty that it “shall publish the proposed redistricting plans and any data and supporting materials used to develop the plans.” Const 1963, art 4, § 6(9).

**COUNT II**  
**DECLARATORY JUDGMENT**  
**FOR WITHHOLDING SUPPORTING MATERIALS**  
**IN VIOLATION OF REDISTRICTING AMENDMENT**

53. Plaintiffs incorporate all the earlier paragraphs by reference.

54. Plaintiffs seek a declaratory judgment that the Redistricting Amendment requires the Commission to publicly disclose *all* supporting materials it uses to develop redistricting plans.

55. A declaratory judgment requires—among other things—the existence of an actual case of controversy between the parties. Plaintiffs and the Commission starkly disagree on whether the Commission is violating its constitutionally imposed duty to publicly disclose all the supporting materials it used develop redistricting plans by withholding materials, including the materials enumerated in Paragraph 51. Accordingly, an actual case

of controversy exists between the parties.

56. Additionally, the actual case of controversy must be within the Court’s jurisdiction to adjudicate. The Constitution directs that the Court, “in the exercise of original jurisdiction, shall direct . . . the commission to perform [its] duties.” Const 1963, art 4, §6(19). Accordingly, the controversy between the parties (i.e., whether the Commission is failing to perform its constitutional duty by refusing to publicly disclose all materials it has used to develop redistricting plans), is within the Court’s jurisdiction to adjudicate.

**COUNT III**  
**WRIT OF MANDAMUS**  
**TO RELEASE SUPPORTING MATERIALS WITHHELD**  
**IN VIOLATION OF THE REDISTRICTING AMENDMENT**

57. Plaintiffs incorporate all the earlier paragraphs by reference.

58. Plaintiffs seek a writ of mandamus to compel the Commission to publicly disclose the withheld materials, which it used to prepare proposed redistricting plans.

59. The Redistricting Amendment imposes an unambiguous and mandatory legal duty on the Commission to publish with the proposed redistricting plans all data and supporting materials used to prepare the plans. Const 1963, art 4, §6(9).

60. Plaintiffs have a clear legal right to have the Commission perform the act—*i.e.*, to have it publish the withheld materials. This right flows from the express requirements in the Redistricting Amendment that the Commission conduct all business in open meetings and provide all supporting materials to the public, in addition to the guarantees in the Redistricting Amendment that the public can robustly participate in the redistricting process by attending and offering public comment at all of the Commission’s meetings and hearings, by submitting proposed plans for redistricting with data and other supporting materials, and by commenting on the Commission’s proposed plans. See, *e.g.*, Const 1963, art 4, §§6(8)–6(10), 6(14)(b). Michigan voters went to great lengths to ensure transparency and meaningful public participation in the redistricting process. *Id.* Accordingly, Plaintiffs, as members of the public, have the necessary clear legal right to public disclosure of the

redistricting materials.

61. The Commission’s duty to publish the withheld materials is accomplished by a ministerial act. The Redistricting Amendment plainly commands that the Commission “*shall* publish the proposed redistricting plans and *any* data and supporting materials used to develop the plans.” *Id.* at §6(9) (emphasis added). The term “shall” makes the command mandatory. The term “any” that precedes “supporting materials used to develop the plans” means that the Commission must publicly disclose *everything* in the category of “supporting materials used to develop the plans.” The voters chose precise and certain constitutional language on this point; the language leaves no discretion for the Commission to publicly disclose only *some* of the supporting materials, but not others. Accordingly, the act—the Commission’s public disclosure of the withheld materials that it used to develop redistricting plans—is ministerial.

62. No other adequate legal or equitable remedy exists that might achieve that same result as a writ of mandamus.

**COUNT IV**  
**VIOLATION OF THE REDISTRICTING AMENDMENT**  
**FOR CONDUCTING BUSINESS IN CLOSED MEETING**

63. Plaintiffs incorporate all the earlier paragraphs by reference.

64. The Court, “in the exercise of original jurisdiction, shall direct . . . the commission to perform [its] duties.” Const 1963, art 4, §6(19). Accordingly, the Plaintiffs bring this direct action to have the Court order the Commission to perform one of its duties.

65. Specifically, the Redistricting Amendment unambiguously commands that the Commission “shall conduct all of its business at open meetings.” Const 1963, art 4, §6(10).

66. Despite that constitutional requirement, the Commission conducted business during a closed meeting on October 27, 2021. The business manifested as the Commission—on information and belief—discussing how the contents of the memoranda dated October 14, 2021 and October 26, 2021 (*i.e.*, the Voting Rights Act, discrimination in Michigan, and how that discrimination affects voting), would inform redistricting plans, which amounted to

using those memorandum to develop proposed redistricting plans.

67. Accordingly, by using those two memoranda to develop redistricting plans in a nonpublic meeting, the Commission violated its clear constitutionally imposed duty that it “shall conduct all of its business at open meetings.” Const 1963, art 4, §6(10).

**COUNT V  
DECLARATORY JUDGMENT  
THAT NONPUBLIC BUSINESS MEETINGS  
VIOLATE THE REDISTRICTING AMENDMENT**

68. Plaintiffs incorporate all the earlier paragraphs by reference.

69. Plaintiffs seek a declaratory judgment that the Redistricting Amendment requires the Commission to conduct all of its business in open meetings.

70. A declaratory judgment requires—among other things—the existence of an actual case of controversy between the parties. Plaintiffs and the Commission starkly disagree on whether the Commission has violated its constitutionally imposed duty to conduct all of its business in open meetings when it conducted business at a nonpublic meeting on October 27, 2021. Accordingly, an actual case of controversy exists between the parties.

71. Additionally, the actual case of controversy must be within the Court’s jurisdiction to adjudicate. The Constitution directs that the Court, “in the exercise of original jurisdiction, shall direct . . . the commission to perform [its] duties.” Const 1963, art 4, §6(19). Accordingly, the controversy between the parties (*i.e.*, whether the Commission failed to perform its constitution duty when it conducted business during a nonpublic meeting), is within the Court’s jurisdiction to adjudicate.

**COUNT VI  
WRIT OF MANDAMUS  
TO RELEASE RECORDING OF NONPUBLIC MEETING AND  
TO REQUIRE ALL FUTURE BUSINESS MEETINGS BE OPEN TO THE PUBLIC**

72. Plaintiffs incorporate the earlier paragraphs by reference.

73. Plaintiffs seek a writ of mandamus to compel the Commission to (a) release the audio recording of the nonpublic meeting that it held on October 27, 2021, and (b) conduct all of its future business only at open meetings that the public can observe contemporaneously and in which the public can meaningfully participate.

74. The Redistricting Amendment imposes an unambiguous and mandatory legal duty on the Commission to perform the requested acts. Specifically, it commands that the Commission “*shall conduct all of its business at open meetings.*” Const 1963, art 4, §6(10) (emphasis added). Moreover, the Constitution mandates that the Commission “*shall use technology to provide contemporaneous public observation and meaningful public participation in the redistricting process during all meetings and hearings.*” *Id.*

75. Plaintiffs have a clear legal right to have the Commission perform these two acts. Their clear legal right flows from the guarantees in the Redistricting Amendment that the Commission conduct all of its business in open meetings and in such a manner that the public can observe the Commission doing its business and robustly participate in the redistricting process. Const 1963, art 4, §6(10). Michigan voters went to great lengths to ensure transparency in the redistricting process and meaningful public participation in that process. *Id.* Accordingly, Plaintiffs, as members of the public, have the necessary clear legal right to the conduct of all Commission business at open meetings.

76. The Constitution plainly commands that the Commission “*shall conduct all of its business at open meetings.*” Const 1963, art 4, §6(10). The term “shall” makes the command mandatory. The term “all” that precedes “its business at open meetings” means that anytime the Commission is conducting business, the Commission must be at an open meeting. The voters chose precise and certain constitutional language on this point; the language leaves no discretion for the Commission to conduct only *some* of its business in open meetings. Accordingly, the act—the Commission conducting all of its future business on in public meetings and releasing the audio recording of the nonpublic meeting that it held on October 27, 2021—is ministerial.



77. No other adequate legal or equitable remedy exists that might achieve that same result as a writ of mandamus.

### **MOTION FOR ORDER TO SHOW CAUSE AND TO EXPEDITE**

Under MCR 3.305(C) and MCR 7.311(E), Plaintiffs respectfully ask the Court to issue an order to show cause and to expediate consideration of these proceedings.

Time is of the essence. Under the default timeline in MCR 7.306(D)(1), the Commission would have seven days to file an answer, which would be Tuesday, December 14, 2021—only **13 days** from the close of the public comment period on the proposed redistricting plans on Monday, December 27, 2021. Oral argument and a decision from this Court would take additional time, which would leave just a few days in the comment period. The default timeline would therefore substantially risk thwarting the Constitution’s goal of robust public participation in the redistricting process.

To give Plaintiffs and the public a meaningful amount of time to review the improperly withheld materials and submit their comments, Plaintiffs ask the Court to direct the Commission to file its answer by 11:59 p.m. on Thursday, December 9, 2021. Additionally, Plaintiffs ask the Court to schedule oral argument on or before Thursday, December 16, 2021, and to render a decision by Friday, December 17, 2021.

### **CONCLUSION**

WHEREFORE, Plaintiffs respectfully ask the Court to grant them the following relief:

1. Find that the Commission violated the Redistricting Amendment by withholding materials from the public that it used in the development of proposed redistricting plans;
2. Enter a declaratory judgment that the Commission has a mandatory duty under Article 4, Section 6(9), of the Constitution to publicly disclose all supporting materials it uses to develop redistricting plans;
3. Issue a writ of mandamus that orders the Commission to publish the withheld materials;

4. Find that the Commission violated the Redistricting Amendment and by conducting business in a nonpublic meeting.

5. Enter a declaratory judgment that the Commission has a mandatory duty under Article 4, Section 6(10), of the Constitution to conduct all of its business in open meetings; and

6. Issue a writ of mandamus that orders the Commission to (a) publicly disclose the audio recording of the nonpublic meeting held on October 27, 2021, as a remedy for the Commission’s violation of Article 4, Section 6(10), of the Constitution occasioned by the nonpublic meeting, and (b) conduct all of its future business at open meeting and not in closed session.

Respectfully submitted,

BUTZEL LONG, P.C.

**JOSEPH E. RICHOTTE P70902**

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Dated: December 7, 2021


DET2215551.1



**VERIFICATION OF PETER BHATIA**

STATE OF MICHIGAN     )  
  ) ss  
COUNTY OF Wayne

I, Peter Bhatia, the Editor and Vice-President of the Detroit Free Press, having first been duly sworn, depose and state that I have read the foregoing Verified Complaint and know its content; and that the statements of fact set forth in the above Verified Complaint are true and accurate, except as to matters therein stated to be on information and belief, and as to those matters that I believe the same to be true to the best of my knowledge and belief.

  
Peter Bhatia

Subscribed and sworn to before me  
this 6<sup>th</sup> day of December, 2021

Devyani P. Bhatt  
Notary Public, Wayne County, MI  
My Commission Expires: 10/10/2026

**DEVYANI P BHATT**  
Notary Public- Michigan  
Wayne County  
My Commission Expires: 10/10/2026





