

No. 23A641

In the Supreme Court of the United States

MICHIGAN INDEPENDENT CITIZENS REDISTRICTING COMMISSION, ET AL., APPLICANTS

v.

DONALD AGEE JR., ET AL.

**RESPONSE IN SUPPORT OF EMERGENCY APPLICATION
FOR STAY AND REQUEST FOR AN IMMEDIATE ADMINISTRATIVE STAY**

**To the Honorable Brett M. Kavanaugh,
Associate Justice of the Supreme Court of the United States and
Circuit Justice for the Sixth Circuit**

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INTRODUCTION

The district court’s injunction ordering the Michigan Independent Citizens Redistricting Commission to redraw state house districts in time for Michigan’s August 6, 2024, primary election threatens an orderly administration of that election. As Michigan’s chief election officer, the Secretary of State supports a stay of the order to the extent it requires her to implement new district lines in time for that election.

In 2018, Michigan voters determined it was vital to retake control over the redistricting process from the State Legislature and place it in the hands of citizens. To that end, the people amended the Michigan Constitution to entrust this crucial task to an independent, citizen-led commission. See Mich. Const. art. IV, § 6; *Rucho v. Common Cause*, 139 S. Ct. 2484, 2507 (2019) (recognizing Michigan’s effort to reduce partisanship in redistricting “by placing power to draw electoral districts in the hands of [an] independent commission[]”).

In doing so, the people gave the Secretary of State the purely administrative role of supporting the work of Michigan’s Independent Citizens Redistricting Commission. See Mich. Const. art. IV, § 6(4). The Secretary does not participate in either the drawing of district plans or the adoption of any plans drawn. The people made it clear in creating the Commission that they desired to take partisan elected officials out of the equation in drawing districts. See *Daunt v. Benson*, 999 F.3d 299, 304–05 (6th Cir. 2021) (discussing the amendment and criteria for membership on the commission). In that spirit, the Secretary declined to place her thumb on the scale

regarding the constitutionality of the state legislative plans challenged here. She maintains that position before this Court as well.

Nevertheless, consistent with her role as Michigan's chief election officer, the Secretary consistently apprised the district court of the complexities involved in updating the state's electronic voter list to incorporate new district lines. In her most recent brief to that court since it declared certain districts unconstitutional, the Secretary advised she could *likely* or *probably* implement revised districts in time for Michigan's August 2024 primary election.

The Secretary's statement is qualified because, until a new plan is drawn, it remains unclear exactly how many districts will be affected by the redrawing. Therefore, it also remains unclear how many voter registrations, distinct political areas, and precincts will need to be adjusted. That remains true as of this filing. Thus, it remains uncertain whether the Secretary can put in place district changes without risk of error or disruption to the August 2024 primary election.

Further, even if the changes can be implemented in time and with an acceptable risk of error or voter confusion, should this Court later reverse the injunction, the Secretary and her staff will be confronted with reverse-engineering the changes they just worked with all speed to implement. The possibility that the Secretary and her staff, local election officials, and candidates and voters could be whipsawed in this manner is untenable.

The Court should thus grant a stay of the district court's injunction to the extent it requires the Secretary to implement new district lines in time for the 2024

election cycle. The Secretary does not oppose the request for a stay of the remedial proceedings requiring the Commission to draw new districts. Simply, the Secretary's primary concern is the orderly administration of the August 2024 primary election.

OPINION BELOW

The three-judge district court's opinion and order holding 13 districts in Michigan's state house and senate plans unconstitutional and enjoining their use in future elections is unreported. It is available at *Agee v. Benson*, No. 1:22-cv-00272, 2023 WL 8826692 (W.D. Mich. Dec. 21, 2023). The court's subsequent order denying Plaintiffs' request for special senate elections is unreported. It is available at *Agee v. Benson*, No. 1:22-cv-00272, 2024 WL 136368 (W.D. Mich. Jan. 12, 2024). This order is not at issue in this appeal.

JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 1253, which provides that "any party may appeal to the Supreme Court from an order granting or denying, after notice and hearing, an interlocutory or permanent injunction in any civil action, suit or proceeding required by any Act of Congress to be heard and determined by a district court of three judges." The three-judge district court issued its injunction on December 21, 2023, and the Applicants filed a notice of appeal on January 4, 2024.

STATEMENT OF THE CASE

Every ten years following the decennial United States Census, Michigan adjusts its state legislative and congressional district boundaries based on the population changes reflected in the census. Under the Michigan Constitution, as

amended in 2018, the Independent Citizens Redistricting Commission (Commission) is charged with redrawing state legislative and congressional district maps. See Mich. Const. art. IV, § 6.

A. Overview of the redistricting process in Michigan

1. The establishment of the Independent Citizens Redistricting Commission.

In 2017, a ballot proposal committee filed an initiative petition to amend the Michigan Constitution. See *Citizens Protecting Michigan’s Constitution v. Secretary of State*, 921 N.W.2d 247 (Mich. 2018); *Citizens Protecting Michigan’s Constitution v. Secretary of State*, 922 N.W.2d 404 (Mich. Ct. App. 2018). The proposal principally sought to amend the apportionment provisions in article IV, § 6 of the Michigan Constitution. Identified as Proposal 18-2 on the November 6, 2018 general election ballot, the proposal passed overwhelmingly. The amendments became effective on December 22, 2018. See Mich. Const. art. XII, § 2.

The amendments establish a commission—the Independent Citizens Redistricting Commission—charged with redrawing Michigan’s state senate, state house, and congressional districts according to specific criteria. Mich. Const. art. IV, § 6(1), (13). And the Constitution makes clear that “no body, except the . . . commission . . . [shall] promulgate and adopt a redistricting plan or plans for this state.” *Id.*, § 6(19).

The amendments prescribe eligibility criteria and a complex selection process for membership on the Commission. *Id.*, § 6(1)–(2).¹ The Commission is granted authority to provide for its own rules and processes. *Id.*, § 6(4)–(5). The Secretary of State acts as a non-voting secretary to the Commission, and “in that capacity shall furnish, under the direction of the commission, all technical services that the commission deems necessary.” *Id.*, § 6(4). Each commissioner is charged with “perform[ing] his or her duties in a manner that is impartial and reinforces public confidence in the integrity of the redistricting process.” *Id.*, § 6(10).

Under the Constitution, Secretary Benson was required to convene the Commission by October 15, 2020, which she did. *Id.*, § 6(7).

2. The Commission must draft and approve redistricting plans.

The Michigan Constitution requires that the Commission “abide by” certain “criteria in proposing and adopting each plan.” Mich. Const. art. IV, § 6(13). See also *Banerian v. Benson*, 589 F. Supp. 3d 735, 736–37 (W.D. Mich. 2022) (three-judge court) (discussing criteria).

After developing at least one plan for each type of district, the Commission must publish the plans, provide the supporting materials, and “hold at least five public hearings throughout the state for the purpose of soliciting comment from the public about the proposed plans.” Mich. Const. art. IV, § 6(9).

¹ The eligibility criteria were challenged, and upheld, in a prior case. See *Daunt v. Benson*, No. 1:19-cv-614, 2020 WL 8184334 (W.D. Mich. July 6, 2020), *aff’d* 999 F.3d 299 (6th Cir. 2021).

Before voting to adopt a plan, the Commission must “provide public notice of each plan that will be voted on and provide at least 45 days for public comment on the proposed plan or plans. Each plan that will be voted on shall include such census data as is necessary to accurately describe the plan and verify the population of each district, and shall include the map and legal description required in part (9) of this section.” *Id.*, § 6(14)(b). And “[n]ot later than November 1 in the year immediately following the federal decennial census, the commission shall adopt a redistricting plan under this section for each of the following types of districts: state senate districts, state house of representative districts, and congressional districts.” *Id.*, § 6(7). Thus, under the Constitution, the Commission was to publish proposed plan(s), with supporting data, no later than September 17, 2021, and adopt a final plan by November 1, 2021, for this cycle.

After adopting a final plan, the Commission must “publish the plan and the material reports, reference materials, and data used in drawing it, including any programming information used to produce and test the plan.” *Id.*, § 6(15). The Commission must also issue a report for each adopted plan, “explain[ing] the basis on which the commission made its decisions in achieving compliance with plan requirements and shall include the map and legal description required in part (9) of this section.” *Id.*, § 6(16). An adopted plan “become[s] law 60 days after its publication.” *Id.*, § 6(17).

3. The Commission adopted plans on December 28, 2021.

After significant delays in obtaining census data from the federal government, see *In re Independent Citizens Redistricting Comm’n for State Legislative & Cong. Dist.’s Duty to Redraw Districts by Nov. 1, 2021*, 961 N.W.2d 211, 212 (Mich. 2021), the Commission proposed state and congressional district plans on November 12, 2021, and subsequently adopted state and congressional district plans on December 28, 2021, including the “Hickory” and “Linden” plans at issue in the instant litigation. (See R. 69, Commission Mot. Summ. J. Br., PageID.642–45) (discussing timeframe for proposing and adopting plans, dates and number of hearings, etc.).

4. The Secretary of State’s duty to implement the new maps.

The Michigan Bureau of Elections, housed within the Department of State, maintains the state’s qualified voter file (QVF), which is an electronic list of all registered voters in the state—currently over eight million people. Mich. Comp. Laws § 168.509o. For each voter, the QVF contains the list of all districts in which the voter lives, i.e., federal and state house and senate districts, as well as county, city, and school board districts, etc., which is used, among other things, to determine which ballot a voter receives. Mich. Comp. Laws § 168.509q. The QVF also includes a “street index” of addresses for all registered voters in the State. Mich. Comp. Laws § 168.509p(d). After new maps are adopted by the Commission, the Bureau must update the QVF.

The update generally takes place in three phases. In phase one, the new district lines are added to the QVF. In phase two, the “street index” is reviewed to

identify street address ranges for which districts have changed, and an update to registrations is made where voters' districts have changed. In the third and final phase, the Bureau of Elections, in collaboration with the local clerks, manually reviews and modifies voting precincts as necessary. See Mich. Comp. Laws §§ 168.654a, 168.661. The updates to the QVF generally need to be completed by the filing deadline to accommodate candidates seeking to run in the relevant primary election cycle.

Shortly after the Commission adopted the plans in December 2021, the Bureau began working to update the QVF. Following the phases outlined above, the Bureau updated the QVF with the new districts in time to meet the April 19, 2022, filing deadline for congressional and state candidates seeking to access the ballot for the August 2022 primary election. Mich. Comp. Laws § 168.133, Mich. Comp. Laws § 168.163.

5. The November 8, 2022 general election is held using the new maps.

The State conducted the November 8, 2022 general election utilizing the Commission's plans, including the Hickory and Linden Plans for the Michigan House of Representatives and Senate, respectively. The elected members of the House and Senate commenced their terms of office on January 1, 2023. Mich. Comp. Laws § 168.173. Senators are serving a term of four years, while representatives are serving two-year terms. Mich. Const. art. IV, §§ 2–3. This means that all state house seats are up for election in 2024.

B. Procedural history

1. Pre-judgment proceedings

Plaintiffs filed their complaint on March 23, 2022, alleging that certain districts for the Michigan House, as adopted in the Commission's Hickory Plan, and certain districts for the Michigan Senate, as adopted by the Commission in the Linden Plan, violated the Voting Rights Act, 52 U.S.C. § 10301, and the Fourteenth Amendment's Equal Protection Clause. (R. 1, Compl.) Plaintiffs filed a first amended complaint on April 13, 2022. (R. 8, Am. Compl; R. 16, errata.)

Secretary Benson filed a motion to dismiss the claims against her, arguing that Plaintiffs lacked standing and had failed to state a viable § 1983 action. (R. 17 & 18, Benson Mot. to Dismiss.) Plaintiffs responded in opposition to Benson's motion, (R. 22), and Benson filed a reply in support of her motion (R. 25). On June 17, 2022, the Commission answered the amended complaint. (R. 21.) On September 21, 2022, the district court denied the Secretary's motion to dismiss, (R. 29), and she then answered the amended complaint (R. 32).

The district court issued a case management order, (R. 38), and thereafter Plaintiffs and the Commission engaged in discovery and the filing of various expert reports. No discovery was directed at the Secretary, and she engaged in no discovery. Plaintiffs and the Commission filed cross-motions for summary judgment on May 9, 2023. (See R. 67, 68, & 69, respectively.) Because the Secretary took no position on the merits of Plaintiffs' claims, she did not file a motion for summary judgment, but she responded to Plaintiffs' motion for summary judgment. (R. 73, PageID.1546.)

On August 29, 2023, the district court issued an opinion and order denying Plaintiffs' motion for summary judgment and granting in part and denying in part the Commission's motion for summary judgment. (R. 81, Summ. Judg. Op. & Order, PageID.2029.) The court dismissed claims as to several house and senate districts but allowed the claims to proceed as to others. (*Id.*, PageID.2044.)

The court then conducted a six-day bench trial from November 1 to November 8, 2023. The parties filed post-trial briefs on December 4, 2023, including the Secretary. (See R. 113, PageID.3813.) On December 21, 2023, the court issued a lengthy opinion and order finding equal-protection liability as to all remaining challenged districts and enjoining the use of those districts in future elections. (R. 131, Opin. & Order, PageID.4704, 4705, 4817.)

2. Post-judgment proceedings.

The district court thereafter ordered supplemental briefing "on the remedy issue considering the looming election season," and whether appointing a special master would be beneficial. (R. 132, Scheduling Order, PageID.4820–21.)

Plaintiffs and the Commission filed supplemental briefs on January 2, 2024, respectively. (See R. 136 & 135.) Because the Secretary had no opinion on what process the parties should use to redraw the districts or the use of a special master, she did not file a supplemental brief. The court then scheduled a remedy hearing for January 5, 2024. (R. 133, Scheduling Order, PageID.4822.)

On January 3, 2024, the court issued an order directing the parties to meet and confer "regarding potential special masters and a timeline" and to file names and

timelines with the court. (R. 139, Meet & Confer Order, PageID.4946–47.) Because the court was now requesting information as to timing, Secretary Benson filed a supplemental brief, (R. 146), as did Plaintiffs, (R. 144), and the Commission Defendants (R. 145).

On January 4, 2024, the Commission moved for a stay pending appeal, (R. 141, Stay Mot., PageID.4950), and on January 5, 2024, the court held the remedy hearing.

On January 8, 2024, the district court issued an order (1) denying the Commission’s motion for stay, (2) ordering that the Commission produce redrawn maps for public comments by February 2, 2024, and (3) denying the Plaintiffs’ request that the court order special Senate elections. (R. 152, Stay Order, PageID.5065, 5069.) The court advised that it would be issuing a more detailed scheduling order. (*Id.*, PageID.5069.)

On January 11, 2024, after the Commission had filed in this Court, the district court issued its detailed scheduling order and appointed two special masters. (R. 156, Detailed Scheduling Order, PageID.5149, 5153–55.) Under the order, “the court will approve a remedial house districting plan no later than March 29, 2024.” (*Id.*, PageID.5154.)

ARGUMENT

The Secretary greatly respects the efforts of the commissioners in drawing inaugural redistricting plans, but the will of the people can be realized only if the plans comport with the Constitution. The Secretary is thus mindful of the district court’s determination that certain districts violate equal protection. As the Secretary

consistently stated below, she will abide by any order resolving the legality of the Commission's plans, whatever that decision may be and entail. Her concern instead is timing. The Secretary's paramount duty to ensure an orderly election process impels her to support the Commission's request for a stay.

To obtain a stay pending appeal, the Commission must show (1) a reasonable probability that the Court will consider the case on the merits; (2) a fair prospect that a majority of the Court will vote to reverse the decision below; and (3) a likelihood that irreparable harm will result from the denial of a stay. *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010).

The Secretary leaves argument on the first two factors to the Commission, addressing only the issue of irreparable harm. As an initial matter, the Secretary's position is not that implementing new plans for August is impossible. Rather, she is concerned about the uncertainty as to the scope of the changes that will be required and how well those changes can be implemented in the time allotted.

After the initial redistricting in this cycle, the Secretary's Bureau of Elections received the new state and congressional districts in late December 2021, and began updating the QVF almost immediately. Although the scope of district changes will be substantially smaller than the 2022 redistricting, remedying the districts held to be unconstitutional may require neighboring districts to be adjusted as well. So, it is unclear exactly how many state house districts will be affected by the district court's order, and thus it is unclear how many voter registrations, distinct political areas, and precincts will need to be adjusted.

To complicate matters further, the State will be conducting its presidential primary election on February 27, 2024. The primary poses problems regarding the timing of inputting new districts into the QVF. In 2022, the Bureau prioritized working around the May 2022 local elections to put new districts in place. But the statewide primary creates a bigger problem: even if new districts could be finalized before February 27, election geography in the QVF could not be altered in this timeframe without risking significant disruption to the presidential primary. This is true especially before the primary election, but also immediately after, when QVF data may be needed to complete canvasses in the two weeks following the election. It is thus the Bureau's position that it cannot begin updating the QVF to incorporate new districts until after February 27, 2024. Even then, the Bureau might need to suspend work in some areas until March 12, 2024, the date county canvasses will be completed.

This means there would be very little time to put in place new election geography before the April 23, 2024 filing deadline for August primary candidates. However, inputting the new districts into the QVF is not necessarily required by the filing deadline, as long as there are final districts so that candidates can determine whether they reside² in the district in which they wish to run and can exercise the

² One complicating factor is that to be eligible for the office of state representative, a person must be a registered and qualified elector of the district by the filing deadline, Mich. Comp. Laws § 168.161, which means the person must have already been a resident of the district for at least 30 days by April 23, 2024, Mich. Comp. Laws, § 168.10(1).

option to pay a filing fee rather than circulate nominating petitions to qualify. See Mich. Comp. Laws § 168.163(1)–(2).³

As far as a timing, the Bureau estimates that adding new district information to the QVF will take anywhere from 4 to 12 weeks depending on the scope of the changes. The biggest determining factor will be whether precincts must be changed in addition to districts. However, the total number of districts changed, along with the number of precinct changes, if applicable, will also affect the timeline.

A. Estimated timeline for implementing new districts with no precinct changes.

It is estimated that adding new district information to the QVF will take 4 to 6 weeks. This will consist of the following steps:

- (1) *Geocoding QVF Information.* The Bureau will geocode address points in the QVF to allow for the district shape files to be used to update QVF. QVF is a tabular system (that is, addresses are represented as tables with address range and district information) rather than a geospatial system. However, the addresses can be geocoded to allow shape files to be used to update address tables more efficiently. This step will *likely* take **2–5 days**.
- (2) *Inputting and converting shapefiles into QVF district information.* The Bureau will compare the shapefiles and geocoded address data, then convert the data into tables that can be used to update the QVF street range. This will essentially import the new districts into the QVF. This step will *likely* take **2–3 weeks**.
- (3) *Quality control and quality assurance.* The Bureau will manually review updated district information in the QVF to ensure that voter records reflect the correct updated address data and the update has not caused regression of other data or functions in the QVF. This step will *likely* take **2–3 weeks**.

If all goes well, this process *should* take between 4 to 6 weeks.

³ Because nominating petitions must be signed by voters residing in the candidate's district, Mich. Comp. Laws § 168.163, it would be difficult to determine whether a signer resides in the candidate's district without an updated QVF.

B. Estimated timeline for implementing new districts with precinct changes.

Michigan Election Law provides that a precinct, as far as is practical, must not be split between districts. Mich. Comp. Laws § 168.661(2). There are numerous reasons why split precincts pose problems for both local election officials and voters. A precinct split occurs where voters in one precinct are divided into two or more districts. Precinct splits can create voter confusion and additional work for county and local clerks, along with election inspectors. First, split precincts require more ballot styles to be printed to accommodate the different districts within a precinct. Second, multiple ballot styles per precinct create the risk that voters will be given the wrong ballot style in absentee, early, or in-person voting, which will lead to ballots being cast in the wrong races and to precincts being out of balance.

To comply with Michigan law and avoid these concerns, it may be necessary (or at least desirable) to re-draw precinct boundaries to correspond to new districts if any new districts split precincts—and it is likely that there will be at least some splits. Technically, Michigan law provides that precincts must be drawn not later than 210 days before the primary next preceding the general election—this year by January 9, 2024. Mich. Comp. Laws § 168.661(1). This date, of course, has now passed. But if precinct changes are included, regardless of the lapsed statutory deadline, an additional 4 to 6 weeks will need to be added to the above 4- to 6-week timeline. This additional work will consist of the following:

- (1) *Local election commission redrawing of precincts.* Local election commissions must convene and hold a public meeting or meetings, then pass a resolution to update precincts. Mich. Comp. Laws § 168.657. This process will *likely* take **2–3 weeks**. And note that this process is largely beyond the Secretary’s and the Bureau’s control.
- (2) *Inputting new precincts into the QVF.* Clerks will need to submit new precinct information to the Bureau to update information into the QVF. Some clerks may be able to send precincts in shapefiles that will allow the Bureau to replicate the process used for districts in Step (2) above. If clerks cannot send shape files, clerks will instead send a manual, “marked up” street index showing which ranges of addresses have new precinct assignments. The Bureau would then manually update this information in the QVF. This process will *likely* add **1–2 weeks** to Step (2) above, depending on the volume of precinct changes and the extent to which precinct changes are manual.
- (3) *Quality control and quality assurance.* Adding precincts to the quality control and quality assurance process will *likely* add **1 week** to this process.

If precinct changes are to be made, it will *likely* extend the 4- to 6-week process to an 8- to 12-week process.

C. Considerations that apply to either process.

Regardless of which method is used, local clerks must have time to send updated voter information cards to affected voters advising them of any new house district information. Mich. Comp. Laws § 168.499(3). In this case, potentially thousands of voters will need to receive updated information, as the estimated voting-age population in house districts 1, 7, 8, 10, 11, 12, and 14 is 500,945.⁴

⁴ See Michigan Independent Citizens Redistricting Commission Report on 2021 Redistricting, August 18, 2022, p 41, available at <https://www.michigan.gov/micrc/-/media/Project/Websites/MiCRC/MISC8/Commission-Report.pdf?rev=b81719cd008241af8c4ce2b8691365ce&hash=FF6205E81C19EF40CD8285A72EDE42D4> (accessed January 17, 2024.)

Further, the Secretary would prefer to avoid precinct splits, as they are disfavored under Michigan law and—more importantly—create substantial administrative problems for local clerks and significant potential for error and voter confusion. However, although precinct splits are undesirable, if it is not possible to provide sufficient time to complete precinct changes to the QVF, the Secretary believes that it would be better to avoid changing precincts than to attempt to rush that process.

Ideally, all information would be added to the QVF by the candidate filing deadline on April 23, 2024. This would also help ensure there are minimal disruptions to local elections in May.⁵ But, in the Bureau's estimate, the last date by which information could be added to the QVF without substantial harm to the administration of the August 6 primary is May 23, 2024 (75 days before the primary election). Clerks send absent voter ballot applications with pre-printed voter information to voters on the permanent absent voter ballot application list to allow voters to begin delivering absent voter ballot applications to drop boxes within 75 days of an election. See Mich. Comp. Laws § 168.761d.

Additionally, the Bureau, local clerks, and vendors will require time to prepare and program ballot information with the correct districts in advance of the 60-day deadline for finalizing ballot contents, June 7, 2024, for this cycle. See Mich. Comp.

⁵ See May 2024 election calendar, available at <https://www.michigan.gov/sos/-/media/Project/Websites/sos/Election-Administrators/May-2024-Calendar.pdf?rev=da3f56459fe64647b1d012ab7181187e&hash=C86B59B1917E1779AFD6ECEBE13725D0> (accessed January 17, 2024). It is unclear at this time how many jurisdictions within impacted districts will be holding May 2024 elections.

Laws § 168.552. Counties must be prepared to immediately begin the ballot printing process after candidates are finalized to ensure absent voter ballots can be delivered to military and overseas voters 40 days before the election, June 22, 2024, for this cycle. See Mich. Const. art. II, § 4; Mich. Comp. Laws §§ 168.714, 168.759a; 52 U.S.C. § 20302(a)(8).⁶ The closer to May 23 that district information is updated in the QVF, the greater the risk of error in making changes and the greater the risk of disruption to the election process.

D. The district court's timeline.

The district court was receptive to the Secretary's timing concerns during the January 5 hearing. The court recognized the problems associated with holding the presidential primary and accepted the Bureau's proposed date of May 23, 2024, as the date by which all changes to the QVF must be made. The court asked the Secretary's counsel the date by which the Secretary believed the court must approve final plans, to which counsel replied March 12, 2024. Ultimately, under the district court's detailed scheduling order, the court intends to approve final plans by March 29, 2024, assuming all goes well. (R. 156, PageID.5154, ¶ 7.) That date gives the Bureau only 55 days, or 40 business days, to accomplish the tasks described above.

Whether that timeframe works will, again, depend on the scope of the changes. And those will not be known with finality until March 29, 2024, when the court will

⁶ A comprehensive list of deadlines associated with the August 6, 2024 primary is available at <https://www.michigan.gov/sos/-/media/Project/Websites/sos/Election-Administrators/August-November-2024-Calendar-2023-10-18.pdf?rev=296839d84d864f3aa1f9230d4ba3859a&hash=824710E73325053A6AAC09FD5C8DC7BD> (accessed January 17, 2024).

either approve the Commission's plan or the mapping special master's plan. There are seven house districts that must be redrawn. (*Id.*, PageID.5153, ¶ 1.) But each district obviously borders other districts such that the lines of those districts will be impacted. The court's order recognizes that the Commission may have to re-draw "any other districts as reasonably necessary to cure" the unconstitutional districts. (*Id.*) Also, given the timeframe, unless there are very few precinct splits, it seems unlikely that election authorities will be able to re-precinct without splits, which leads to the concerns discussed previously.

Again, it is not that it is impossible for the Secretary and the Bureau to implement new plans into the QVF in time for the August election. Rather, the concern is how well the changes can be made in the condensed timeframe. It is the unknown potential for error and voter confusion in the impacted districts that compels the Secretary's conclusion that a stay of the injunction is the wiser course of action—that, and the possibility that this Court may reverse the district court, thereby negating any need to redraw the districts in the first place.

As the Commission's application points out, there is precedent for granting a stay preserving the status quo in a case such as this. See, e.g., *North Carolina v. Covington*, 138 S. Ct. 974 (2018); *Abbott v. Perez*, 138 S. Ct. 49 (2017); *North Carolina v. Covington*, 137 S. Ct. 808 (2017); *Perry v. Perez*, 565 U.S. 1090 (2011); *Miller v. Johnson*, 512 U.S. 1283 (1994); *Karcher v. Daggett*, 455 U.S. 1303 (1982) (Brennan, J., in chambers).

Further, this Court has been sensitive to “considerations specific to election cases.” *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006) (per curiam opinion). And it has warned against attempts to impose late changes to the administration of elections. See, e.g., *Republican Nat’l Comm. v. Democratic Nat’l Comm.*, 140 S. Ct. 1205, 1207 (2020) (“This Court has repeatedly emphasized that lower federal courts should ordinarily not alter the election rules on the eve of an election.”). Notably here, this Court has issued such a warning in a redistricting case. See *Benisek v. Lamone*, 138 S. Ct. 1942, 1944–45 (2018) (affirming denial of preliminary injunction seeking to enjoin election). In *Benisek*, the Court observed that “due regard for the public interest in orderly elections supported” the denial of injunctive relief in that case. 138 S. Ct. at 1944–45 (citing *Purcell*, 549 U.S. at 4–5). Those same concerns warrant a stay of the district court’s injunction in this case. See *Merrill v. Milligan*, 142 S. Ct. 879, 879 (2022) (Kavanaugh, J., concurring) (“[F]ederal district courts ordinarily should not enjoin state election laws in the period close to an election, and . . . federal appellate courts should stay injunctions when . . . lower federal courts contravene that principle.”).

CONCLUSION

For these reasons, this Court should grant a stay of the district court's injunction to the extent it restrains the Secretary of State from conducting elections in the existing house districts for the 2024 election cycle.

Respectfully submitted,

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