

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

MICHAEL BANERIAN, MICHON  
BOMMARITO; PETER COLOVOS, WILLIAM No. 1:22-cv-00054  
GORDON, JOSEPH GRAVES, BEAU  
LaFAVE, CAMERON PICKFORD, HARRY  
SAWICKI and MICHELLE SMITH,

Three-Judge Court

Plaintiffs,

v

JOCELYN BENSON, in her official capacity as  
Secretary of State of Michigan, DOUGLAS  
CLARK, JUANITA CURRY, ANTHONY EID,  
RHONDA LANGE, STEVEN TERRY LETT,  
BRITTON KELLOM, CYNTHIA ORTON, M.C.  
ROTHORN, REBECCA SZETELA, JANICE  
VALLETTE, ERIN WAGNER, RICHARD  
WEISS and DUSTIN WITJES, in their official  
capacities as Commissioners of the Michigan  
Independent Citizens Redistricting  
Commission,

**DEFENDANT SECRETARY  
OF STATE JOCELYN  
BENSON'S PARTIAL  
CONCURRENCE IN MOTION  
TO DISMISS (ECF NO. 41)**

Defendants,

and

JOAN SWARTZ MCKAY, et al,

Intervenor-Defendants,

and

VOTERS NOT POLITICIANS,

Intervenor-Defendant.

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Charles Spies (P83260)  
Max A. Aidenbaum (P78793)  
Attorneys for Plaintiffs  
123 Allegan Street  
Lansing, Michigan 48933  
517.371.1730 (phone)  
844.670.6009 (fax)

Heather S. Meingast (P55439)  
Erik A. Grill (P64713)  
Assistant Attorneys General  
Attorneys for Defendant Benson  
P.O. Box 30736  
Lansing, Michigan 48909  
517.335.7659

[cspies@dickinsonwright.com](mailto:cspies@dickinsonwright.com)  
[maidenbaum@dickinsonwright.com](mailto:maidenbaum@dickinsonwright.com)

Jason B. Torchinsky  
Shawn Toomey Sheehy  
Edward M. Wenger  
15405 John Marshall Highway  
Haymarket, Virginia 20169  
540.341.8808 (phone)  
540.341.8809 (fax)  
[jtorchinsky@holtzmanvogel.com](mailto:jtorchinsky@holtzmanvogel.com)  
[ssheehy@holtzmanvogel.com](mailto:ssheehy@holtzmanvogel.com)  
[emwenger@holtzmanvogel.com](mailto:emwenger@holtzmanvogel.com)

Richard Bryan Raile  
Attorney for Clark, Curry, Eid, Kellom, Lange,  
Lett, Orton, Rothhorn, Szetela, Vallette,  
Wagner, Weiss & Witjes

Sarah S. Prescott (P70510)  
Attorney for Proposed Intervenor-Defendants  
105 East Main Street  
Northville, Michigan 48168  
248.679.8711  
[sprescott@spplawyers.com](mailto:sprescott@spplawyers.com)

Marc E. Elias  
Emma Olson Shakey  
Melinda K. Johnson  
Aaron M. Mukerjee  
Raisa Cramer  
10 G St NE, Ste 600  
Washington, DC 20002  
202.968.4490  
[melias@elias.law](mailto:melias@elias.law)  
[eolsonsharkey@elias.law](mailto:eolsonsharkey@elias.law)  
[mjohnson@elias.law](mailto:mjohnson@elias.law)  
[amukerjee@elias.law](mailto:amukerjee@elias.law)  
[rcramer@elias.law](mailto:rcramer@elias.law)

[meingasth@michigan.gov](mailto:meingasth@michigan.gov)  
[grille@michigan.gov](mailto:grille@michigan.gov)

David Fink (P28235)  
Nathan Fink (P75185)  
Attorneys for Clark, Curry, Eid,  
Kellom, Lange, Lett, Orton,  
Rothhorn, Szetela, Vallette,  
Wagner, Weiss & Witjes  
38500 Woodward Ave, Ste 350  
Bloomfield Hills, Michigan 48304  
248.971.2500  
[nfink@finkbressack.com](mailto:nfink@finkbressack.com)  
[dfink@finkbressack.com](mailto:dfink@finkbressack.com)

Andrew Michael Pauwels  
(P79167)  
Andrea Hansen (P47358)  
Attorneys for Intervenor-  
Defendant Count MI Vote  
222 North Washington Square,  
Ste 400  
Lansing, Michigan 48933  
517.484.8282  
[apauwels@honigman.com](mailto:apauwels@honigman.com)  
[ahansen@honigman.com](mailto:ahansen@honigman.com)

Paul M. Smith  
Mark P. Gaber  
Jonathan M. Diaz  
Attorneys for Intervenor-  
Defendant Count MI Vote  
1101 14<sup>th</sup> Street, NW, Ste 400  
Washington, DC 20005  
202.736.2200  
[psmith@campaignlegalcenter.org](mailto:psmith@campaignlegalcenter.org)  
[mgaber@campaignlegalcenter.org](mailto:mgaber@campaignlegalcenter.org)  
[jdiaz@campaignlegalcenter.org](mailto:jdiaz@campaignlegalcenter.org)

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**DEFENDANT SECRETARY OF STATE JOCELYN BENSON'S PARTIAL  
CONCURRENCE IN PARTIAL MOTION TO DISMISS (ECF NO. 41)**

On January 27, 2022, Plaintiffs filed an amended complaint (ECF No. 7) and a motion for a preliminary injunction. (ECF No. 9.) Plaintiffs served Secretary Benson with these pleadings on January 31, 2022. (ECF No. 14.) The parties concurred in a motion to expedite consideration of the injunction motion filed by Plaintiffs on February 4, 2022. (ECF No. 20.) On February 8, 2022, the Court entered an order setting an expedited briefing schedule in this case. (ECF No. 24.)

Under the order, Defendant Benson's response to Plaintiffs' motion for a preliminary injunction and her first responsive pleading to Plaintiffs' amended complaint are both due February 18, 2022. (ECF No. 24.) The same is true for Defendant Independent Citizens Redistricting Commission (Commission). (*Id.*) Defendant Benson is aware that the Commission will be filing a motion to dismiss in response to Plaintiffs' amended complaint. Also, Intervenor VNP and the individual Voter Intervenor have filed partial motions to dismiss in response to Plaintiffs' amended complaint. (*See* ECF No. 16-2; ECF No. 22-2.)

Given the expedited briefing schedule, and the fact that there will be several motions to dismiss pending, Defendant Benson files the instant partial concurrence in the partial motion to dismiss filed by Defendant Commission, rather than filing a separate motion. (ECF No. 41.)<sup>1</sup> Specifically, and without waiving her opportunity to file more substantive responsive pleadings, if necessary, Defendant Benson concurs in the Commission's argument that Count II of the amended complaint is barred by the Eleventh Amendment under *Pennhurst State Sch. & Hosp. v.*

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<sup>1</sup> Defendant Benson is also filing an answer to the amended complaint.

*Halderman*, 465 U.S. 89 (1984). (ECF No. 41, PageID.712-714.) Because Defendant Benson is not taking a position on the constitutionality of the congressional plan, as explained in her response to the motion for a preliminary injunction, she does not join or concur in the other arguments raised in the Commission's motion at this time.

WHEREFORE, Defendant Secretary of State Jocelyn Benson respectfully requests that this Court dismiss Count II of Plaintiffs' amended complaint because it is barred by the Eleventh Amendment, as articulated in the Commission's partial motion to dismiss, ECF No. 41, which pleading Secretary Benson partially adopts and incorporates herein. *See* Fed. R. Civ. P. 10(c).

Respectfully submitted,

*s/Heather S. Meingast*  
Heather S. Meingast (P55439)  
Erik A. Grill (P64713)  
Assistant Attorneys General  
Attorneys for Defendant Benson  
P.O. Box 30736  
Lansing, Michigan 48909  
517.335.7659  
Email: [meingasth@michigan.gov](mailto:meingasth@michigan.gov)  
P55439

Dated: February 18, 2022

#### **CERTIFICATE OF SERVICE**

I hereby certify that on February 18, 2022, I electronically filed the above document(s) with the Clerk of the Court using the ECF System, which will provide electronic copies to counsel of record.

*s/Heather S. Meingast*  
Heather S. Meingast (P55439)  
Assistant Attorney General  
P.O. Box 30736  
Lansing, Michigan 48909