

**STATE OF MICHIGAN
IN THE SUPREME COURT**

ROBERT DAVIS,
Plaintiff,

Supreme Court Case No. 163486

v

**MICHIGAN INDEPENDENT CITIZENS
REDISTRICTING COMMISSION,**
Defendant.

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**PLAINTIFF'S BRIEF IN SUPPORT OF COMPLAINT FOR
MANDAMUS**

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STATE CONSTITUTION

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STATEMENT OF QUESTIONS PRESENTED

- I. Is it mandatory that the Defendant Redistricting meet the deadlines for the proposed and final redistricting plan(s) set forth under Mich.Const. 1963, art. 4, §§ 6(7) and 6(14)(b)?

Plaintiff Answers: YES

Defendant Answers: NO

- II. Are the deadlines for the proposed and final redistricting plan(s) set forth under Mich.Const. 1963, art. 4, §§6(7) and 6(14)(b) discretionary or directory?

Plaintiff Answers: YES

Defendant Answers: NO

STATEMENT OF APPELLATE JURISDICTION

This Court has jurisdiction over this action under article 4, § 6(19) of the Michigan Constitution of 1963, as amended. Subsection 6(19) expressly provides that this Court, **“in the exercise of original jurisdiction, shall direct the secretary of state or the commission to perform their respective duties[.]”** Const 1963, art 4, § 6(19). (emphasis supplied). Plaintiff’s instant action seeks this Court to direct the Defendant Redistricting Commission to perform their respective duties and comply with and meet the mandatory deadlines for the proposed and final redistricting plan(s) set forth under Mich.Const. 1963, art. 4, §§ 6(7) and 6(14)(b). Additionally, the Michigan Court Rules (“MCR”) further provide that this Court may “exercise other jurisdiction as provided by the Constitution or by law.” MCR 7.303(B)(6).

STATEMENT OF FACTS/PROCEDURAL POSTURE OF CASE

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 Secretary of State, et al*, 324 Mich App 561 (2018). The proposal principally sought to amend the apportionment provisions in the Michigan Const. 1963, article 4, § 6. Identified as Proposal 18-2 on the November 6, 2018 general election ballot, the proposal passed overwhelmingly. The amendments became effective December 22, 2018. See Mich.Const. 1963, art 12, § 2. 12.

The amendments established the Defendant Redistricting Commission, which was charged with redrawing Michigan's state senate, state house, and congressional districts according to specific criteria. Mich.Const. 1963, art 4, § 6(1), (13). Under the Michigan Constitution, as amended by Proposal 18-2, the Michigan Secretary of State, Jocelyn Benson, was required to convene the Defendant Redistricting Commission by October 15, 2020, which she did.

Since that time, the Defendant Redistricting Commission has met several times in accordance with Mich.Const. 1963, art 4, § 6(7). In

accordance with the Mich.Const. 1963, art. 4, as amended by Proposal 18-2, before voting to adopt a plan, the Defendant Redistricting 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.” Mich.Const. 1963, art. 4, § 6(14)(b). And more importantly, *“[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.”* Mich.Const. 1963, art. 4, § 6(7).

Thus, under the clear and unambiguous language of Mich.Const. 1963, art. 4, §6(7), as amended by Proposal 18-2, the Defendant Redistricting Commission is 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 Defendant Redistricting 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.” Mich.Const. 1963, art. 4, § 6(15).

The Defendant Redistricting 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.” Mich.Const. 1963, art. 4, § 6(16). An adopted plan “become[s] law 60 days after its publication.” *Id.*, § 6(17). Under subsection § 6(19), this Court “may review a challenge to any plan adopted by the commission, and shall remand a plan to the commission for further action if the plan fails to comply with the requirements” of state or federal Constitution or superseding federal law. Mich.Const. 1963, art. 4, § 6(19).

However, at their meeting held on August 19, 2021, the Defendant Redistricting Commission approved a timeline that directly conflicts with and violates Mich.Const. 1963, art. 4, §6(7). Specifically, at their August 19, 2021 meeting, the Defendant Redistricting Commission, by

a 10-2 vote, **approved a timeline to allow the 45-day public comment period to commence November 14, 2021**, with the Defendant Redistricting Commission adopting a final redistricting plan **as early as December 30, 2021.**¹ **The Defendant's December 30th target deadline is two months after the November 1, 2021 deadline set forth in Mich.Const. 1963, art. 4, §6(7).**

Despite having the required 2020 Census data, the Defendant has chosen to deliberately ignore the clear mandate set forth under Mich.Const. 1963, art. 4, §6(7). Defendant's refusal to comply with the deadline set forth under Mich.Const. 1963, art. 4, §6(7) requires this Court to exercise its original jurisdiction **to direct the Defendant Redistricting Commission to perform their respective duties as required under Mich.Const.1963, art. 4, §6(7). See Mich.Const 1963, art 4, § 6(19).**

¹ See Associated Press' August 20, 2021 article: <https://apnews.com/article/michigan-redistricting-d9c9545f385e8937dfc898f8c5791eb0>

ARGUMENT

WRIT OF MANDAMUS COMPELLING THE DEFENDANT TO MEET AND COMPLY WITH DEADLINES SET FORTH IN CONSTITUTION IS NECESSARY.

A. LAW AND LEGAL ANALYSIS

Mandamus is an extraordinary remedy used to enforce duties required of governmental actors by law. *Stand Up for Democracy v Secretary of State*, 492 Mich 588, 618; 822 NW2d 159 (2012); *Mercer v Lansing*, 274 Mich App 329, 333; 733 NW2d 89 (2007). Plaintiff's complaint properly invokes article 6, § 4 of the Michigan Constitution of 1963, as it effectively seeks the prerogative writ of mandamus. *Tawas & BCR Co v Iosco Circuit Judge*, 44 Mich 479, 483 (1880) ("Mandamus is a prerogative writ designed to afford a summary and specific remedy in those cases when without it the party will be subjected to serious injustice."). Mandamus is available in the face of a public official's "clear legal duty." *State Bd of Ed v Houghton Lake Cmty Sch*, 430 Mich 658, 666 (1988). "The primary purpose of the writ of mandamus is to enforce duties created by law." *Waterman-Waterbury Co v Sch Dist No 4 of Cato Twp*, 183 Mich 168, 174 (1914). In short, the writ of mandamus is a "discretionary writ which does not issue unless there is a plain, positive

duty to perform the asserted duty, and a clear legal right of the petitioner to the performance of that duty.” *Pillon v Attorney Gen*, 345 Mich 536, 539 (1956).

A plaintiff has the burden of establishing entitlement to the extraordinary remedy of a writ of mandamus. *Lansing Sch. Ed. Ass'n v. Lansing Bd. of Ed.* (On Remand), 293 Mich.App. 506, 519-520, 810 N.W.2d 95 (2011). The plaintiff must show that (1) the plaintiff has a clear legal right to the performance of the duty sought to be compelled, (2) the defendant has a clear legal duty to perform such act, (3) the act is ministerial in nature such that it involves no discretion or judgment, and (4) the plaintiff has no other adequate legal or equitable remedy. *Vorva v. Plymouth-Canton Community Sch. Dist.*, 230 Mich.App. 651, 655-656, 584 N.W.2d 743 (1998).

As a result of the Defendant’s actions taken at its August 19, 2021, the Defendant will not meet the deadlines for the proposed and final redistricting plan(s) set forth under Mich.Const. 1963, art. 4, §§6(7) and 6(14)(b). **Therefore, the question becomes: are the deadlines set forth under Mich.Const. 1963, art. 4, §§6(7) and 6(14)(b) mandatory or directory?**

In interpreting constitutional provisions, this Court applies two rules of interpretation. *Makowski v Governor*, 495 Mich 465, 472, 473; 852 NW2d 61 (2014). “First, the interpretation should be the sense most obvious to the common understanding; the one which reasonable minds, the great mass of people themselves, would give it.” *Id.* (quotation marks and citation omitted). “Words should be given their common and most obvious meaning, and consideration of dictionary definitions used at the time of passage for undefined terms can be appropriate.” *In re Burnett Estate*, 300 Mich App 489, 497-498; 834 NW2d 93 (2013). Every constitutional provision “must be interpreted in the light of the document as a whole, and no provision should be construed to nullify or impair another.” *Lapeer Co Clerk v Lapeer Circuit Court*, 469 Mich 146, 156; 665 NW2d 452 (2003). Second, the interpretation should consider “the circumstances surrounding the adoption of the constitutional provision and the purpose sought to be accomplished.” *Id.*

“[T]he primary objective of constitutional interpretation is to realize the intent of the people by whom and for whom the constitution was ratified.” *Studier v. Mich. Pub. Sch. Employees' Retirement Bd.*, 472 Mich. 642, 652, 698 N.W.2d 350 (2005) (quotation marks and citation

omitted). Accordingly, “we seek the common understanding of the people at the time the constitution was ratified. This involves applying the plain meaning of each term used at the time of ratification, unless technical, legal terms are used.” *Goldstone v. Bloomfield Twp. Pub. Library*, 479 Mich. 554, 558-559, 737 N.W.2d 476 (2007) (quotation marks and citations omitted).

The deadline set forth under Mich.Const. art 4, §6(7) is clear: our Constitution’s directs that the Defendant adopts a plan no later than November 1, 2021. See Mich.Const 1963, art 4, § 6(7); see also *In re Independent Citizens Redistricting Commission*, ___Mich.___; ___NW2d ___ (2021) (Supreme Ct. No. 162891). Again, art. 4, §(6)(7) provides: “***[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.***” Mich.Const. 1963, art. 4, § 6(7). This section uses the mandatory word “shall”. It is well-settled that the word “shall” denotes ***mandatory*** action. *Costa v*

Community Emergency Med.Servs., Inc., 475 Mich.403, 409; 716 NW2d 236 (2006).

Although this Court refused to grant the Secretary of State relief in the form of delaying and extending the deadlines set forth in the Constitution, this Court recognized and cited cases that both support the notion that the deadlines are directory rather than mandatory and that the deadlines are mandatory. See *In re Independent Citizens Redistricting Commission*, ___Mich.___; ___NW2d ___ (2021) (Supreme Ct. No. 162891). It is Plaintiff's position that the plain language of the constitutional amendments that were ratified by the People, including the Plaintiff, clearly required that the deadlines set forth under the Constitution be met by the Defendant.

The Defendant received the 2020 census in enough time to meet the November 1, 2021 deadline. As noted by the Court in its July 9, 2021 Order, “[a]t oral argument, the commission’s counsel implied that the commission intends to follow its delayed schedule with or without our advance imprimatur, a path it believes is most consistent with its competing obligation of ensuring a fair and transparent redistricting process that allows for meaningful public participation.” *In re*

Independent Citizens Redistricting Commission, ___ Mich. at___; slip op at p 2. It is evident that the Defendant had no intention to comply with the Constitutional deadlines. Such deliberate and unlawful conduct should not be tolerated by this Court. Defendant received the 2020 census data in enough time to timely comply with the deadlines set forth under Mich.Const. 1963, art. 4, §§6(7) and 6(14)(b).

Accordingly, Defendant shall be compelled to meet and comply with the deadlines set forth under Mich.Const. 1963, art. 4, §§6(7) and 6(14)(b). This Court should adopt previous holdings of this Court that required strict compliance with the plain language of the constitutional provision. See, e.g., *People v Dettenthaler*, 118 Mich 595, 600-601 (1898) (“If directions are given respecting the times or modes of proceeding in which a power should be exercised, there is at least a strong presumption that the people designed it should be exercised in that time and mode only[.]”). Although the words in the constitutional text are important to determining intent, the “primary and fundamental rule” of interpretation is that “it is not the meaning of the particular words only in the abstract or their strictly grammatical construction alone that governs.” *White v Ann Arbor*, 406 Mich 554, 562 (1979).

Rather, “[t]he words are to be applied to the subject matter and to the general scope of the provision, and they are to be considered in light of the general purpose sought to be accomplished or the evil sought to be remedied by the constitution” *Id.*

The People, including the Plaintiff, adopted the constitutional amendments with the understanding that the amendments contained mandatory deadlines for the Defendant to meet. These mandatory deadlines are necessary in order to ensure that interested parties have time to challenge the plans adopted by the Defendant and they also ensure that potential candidates have adequate time to obtain the requisite number of signatures in the respective new districts. Simply, the Defendant has no excuse for not meeting the deadlines in light of the fact that the Defendant received the 2020 census data (albeit late) in enough time to comply with the November 1st deadline.

CONCLUSION

WHEREFORE, Plaintiff requests this Honorable Court enters judgment and grants the following relief against the Defendant Redistricting Commission, as follows:

- a. Enter a writ of mandamus compelling the Defendant Redistricting Commission to publish proposed plan(s), with supporting data, **no later than September 17, 2021, and to adopt a final plan by November 1, 2021 as required by Mich.Const. 1963, art. 4, §§ 6(7) and 6(14)(b).**
- b. Award Plaintiff court costs.
- c. An order awarding whatever other equitable relief the Court deems appropriate and necessary at the time of final judgment.

Dated: September 7, 2021 Respectfully submitted,

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PROOF OF SERVICE

Robert Davis certifies that on September 7, 2021, he served the foregoing document(s) via the Court's MiFile Electronic Case Filing System, which will electronically serve the registered attorneys of record. Additionally, Robert Davis certified that on September 7, 2021, he served the foregoing document(s) via certified mail on the Chair of the Defendant Michigan Independent Citizens Redistricting Commission at P.O. Box 30318, Lansing, MI 48909

Dated: September 7, 2021 Respectfully submitted,

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