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No. 19-2377

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UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

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ANTHONY DAUNT; TOM BARRETT; AARON BEAUCHINE; KATHY BERDEN;  
STEPHEN DAUNT; GERRY HILDENBRAND; GARY KOUTSOUBOS; LINDA  
LEE TARVER; PATRICK MEYERS; MARIAN SHERIDAN; MARY S INKLE;  
NORM SHINKLE; PAUL SHERIDAN; BRIDGET BEARD; CLINT TARVER

1:19-cv-00614

*Plaintiffs-Appellants*

and

MICHIGAN REPUBLICAN PARTY 1:19-cv-00669

*Plaintiff*

v.

JOCELYN BENSON, in her official Capacity as Michigan Secretary of State; COUNT  
MI VOTE, doing business as Voters Not Politicians

*Defendants-Appellees,*

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On Appeal from the United States District Court  
for the Western District of Michigan

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**PLAINTIFFS-APPELLANTS' UNOPPOSED MOTION TO EXPEDITE**

Pursuant to Fed. R. App. P. 2 and 27, 6 Cir. R. 27(f), and 28 U.S.C. § 1657,  
Appellants, Anthony Daunt, Tom Barrett, Aaron Beauchine, Kathy Berden, Stephen  
Daunt, Gerry Hildenbrand, Gary Koutsoubos, Linda Lee Tarver, Patrick Meyers, Marian  
Sheridan, Mary Shinkle, Norm Shinkle, Paul Sheridan, Bridget Beard, and Clint Tarver

(“Plaintiffs-Appellants”), hereby file this Motion to Expedite.

Plaintiffs-Appellants request the following expedited briefing schedule:

- **Plaintiffs-Appellants Opening Brief: December 20, 2019;**
- **Appellees Opposition Briefs: January 27, 2020;**
- **Plaintiffs-Appellants Reply Brief: February 6, 2020;**
- **Plaintiffs-Appellants request oral argument before the end of March, 2020.**

Plaintiffs-Appellants respectfully request that this Court issue a decision by the end of April, 2020, to allow for: (1) expedited review by an *en banc* panel of this Court, if necessary; and (2) to permit sufficient time for Plaintiffs-Appellants and those similarly situated to qualify and be selected to serve on the Commission.

Plaintiffs-Appellants have consulted with counsel for Appellees. Appellees have stated that they consent to the expedited briefing schedule set forth in this Motion.

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**MEMORANDUM OF LAW IN SUPPORT OF  
PLAINTIFFS-APPELLANTS' UNOPPOSED MOTION TO EXPEDITE  
BACKGROUND**

On November 25, 2019 the District Court issued its opinion and order denying Plaintiffs-Appellants' Motion for Preliminary Injunction, which sought to enjoin Michigan's Secretary of State from implementing all provisions of the Michigan Constitution relating to the Michigan Citizens Redistricting Commission ("Commission"), including any preparations for the selection of commissioners. Opinion Denying Mot. For Prelim. Inj. (ECF 67, Nov. 25, 2019); Mot. Prelim. Inj. (ECF 4, July 30, 2019) (Page ID # 60, 67-68, 90).

Plaintiffs-Appellants, Lead Plaintiffs below, asserted that through the establishment of the Commission, Plaintiffs-Appellants have been targeted because of their political affiliations. ECF 4 (Page ID # 60). Specifically, Plaintiffs-Appellants take issue with the fact that they are excluded from eligibility to serve on the Commission due to their previous exercise of First Amendment freedoms—including political activity, employment by the state or legislature, and registering as lobbyists—or even being related to someone who has exercised their First Amendment freedoms. Compl. ¶¶ 7-21, 57-71 (ECF 1, July 30, 2019) (Page ID # 5-8, 26-31); ECF 4 (Page ID # 71-74); ECF 67 (Page ID # 936-939). Plaintiffs-Appellants argued that such a scheme infringes upon their constitutional rights of free speech and association, which constitutes irreparable injury. *Id.*; ECF 4 (Page ID # 86-88). Accordingly, Plaintiffs-Appellants reasoned that they have a strong likelihood of success on the merits, will suffer irreparable injury without an injunction, and an injunction will not

substantially injure others while furthering the public interest. ECF 4 (Page ID # 70-90).

Although the District Court correctly determined that Plaintiffs-Appellants had standing to bring their claims, ECF 67 (Page ID # 18-21), and that Plaintiffs-Appellants' claims were not barred by laches, *Id.* (Page ID # 21-23), the District Court ultimately and incorrectly held that Plaintiffs-Appellants did not show that they had a likelihood of success on the merits of their claims. *Id.* (Page ID # 23-32). The District Court held that the Plaintiffs-Appellants' supposed lack of likelihood of success on the merits of their claims essentially dictated the other preliminary injunction factors against their favor. *Id.* (Page ID # 32-34).

There is good cause for expedited review of this erroneous opinion and order pursuant to Rule 27(f) of the Sixth Circuit Rules.

### **ARGUMENT**

Pursuant to 28 U.S.C. § 1657, courts shall expedite the consideration of “any action for temporary or preliminary injunctive relief, or any other action if good cause therefor is shown.” 28 U.S.C. § 1657. Also pursuant to this Court’s rules, to expedite an appeal, a movant must show good cause. *See* 6 Cir. R. 27(f). Good cause is shown “if a right under the Constitution of the United States or a Federal Statute . . . would be maintained in a factual context that indicates that a request for expedited consideration has merit.” 28 U.S.C. § 1657.

I. **EXPEDITED APPEAL IS WARRANTED BECAUSE OF THE CONSTITUTIONAL ISSUES AT STAKE**

This Court should grant the Motion to Expedite because it pertains to a motion for preliminary injunction, expedited appeals are permitted by the Federal Rules of Appellate Procedure and this Court when constitutional rights are implicated, and Plaintiffs-Appellants must act as soon as possible to protect their rights.

First, the Federal Rules of Appellate Procedure and this Court permit expediting appeals. Fed. R. App. P. 2; 6 Cir. R. 27(f). Challenges that involve constitutional rights constitute good cause for expediting appeals. 28 U.S.C. § 1657. Plaintiffs-Appellees claim that the scheme set forth in Michigan's constitution for disqualifying certain persons from serving on the Commission violates the First and Fourteenth Amendments. Compl. ¶¶ 1-2 (Page ID # 3-4). Plaintiffs-Appellees are just such people and are therefore excluded from Commission eligibility. *Id.* at ¶¶ 7-21, 40, 46. Accordingly, Plaintiffs-Appellees constitutional rights are implicated by this challenge and an expedited appeal is therefore warranted.

Second, Plaintiffs-Appellants must, as soon as possible, enjoin the provisions of Michigan's Constitution which disqualify them from eligibility to serve on the Commission, and—if held to be non-severable—all provisions of Michigan's Constitution created or amended by Michigan Ballot Proposal 18-2, in order to protect their First and Fourteenth Amendment rights. Each passing day harms Plaintiffs-Appellants who's constitutional rights demand them to be eligible to serve on the Commission. Applications to serve on the Commission must be made available from January 1, 2020 through June 1, 2020, Mich.

Const. art 4, § 6 (2)(A), (C) and Commissioners will be selected through a complicated process before September 1, 2020. *Id.* at § 6 (2)(F). *See also* ECF 4 (Page ID # 11-12). As the Commissioner selection process progresses, Plaintiffs-Appellants' constitutional harms only increase. Accordingly, the longer this litigation is delayed, the greater the risk to Plaintiffs-Appellees' constitutional rights. Once Commissioners are selected, it will be too late.

To that end, Plaintiffs-Appellants respectfully request that the Court grant this Motion to expedite the review of the District Court's denial of its Motion for Preliminary Injunction and order briefing and argument subject to the dates agreed upon by the parties or otherwise order briefing at such time as this Court deems proper.

### **CONCLUSION**

The Court should grant Plaintiffs-Appellants' Motion to Expedite. The Appellees consent to the expedited briefing schedule. The underlying litigation involves a constitutional challenge to the Michigan Constitution and Commission, a challenge that impacts Plaintiffs-Appellants' interests. Finally, the expedition of the appeal is the only way Plaintiffs-Appellants can prevent their irrevocable injury.

Respectfully submitted this 27th day of November, 2019

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/s/ Jason Torchinsky

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**CERTIFICATE OF SERVICE**

I do hereby certify that I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will automatically send email notification to all counsel of record.

This the 27th day of November, 2019.

/s/ Jason Torchinsky