

CASE NO. 19-2420

**IN THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

MICHIGAN REPUBLICAN PARTY, LAURA COX, TERRI LYNN LAND,
SAVINA ALEXANDRA ZOE MUCCI, DORIAN THOMPSON, and
HANK VAUPEL,

Plaintiffs-Appellants,

v.

JOCELYN BENSON, in her official capacity as Secretary of State,

Defendant-Appellee.

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

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, Michigan Republican Party, Laura Cox, Terri Lynn Land, Savina Alexandra Zoe Mucci, Dorian Thompson, and Hank Vaupel (“Plaintiffs-

Appellants”), hereby file this Motion to Expedite. Plaintiffs-Appellants request the following expedited briefing schedule:¹

- **Plaintiffs-Appellants Opening Brief: December 27, 2019;**
- **Appellees Opposition Briefs: February 3, 2020;**
- **Plaintiffs-Appellants Reply Brief: February 13, 2020;**
- **Plaintiffs-Appellants request oral argument before the end of March, 2020.**

¹ The Plaintiffs-Appellants’ case in the District Court (the “Member Case”) was consolidated with *Daunt, et al v Benson* (USDC No. 1:19-cv-00614; the “Lead Case”) because the Defendants-Appellees are the same in both cases, the issues are similar, as is the requested relief. The District Court also issued a consolidated opinion (ECF 67; Page ID # 926) which is being appealed by both the Lead Case Plaintiffs-Appellants (No. 19-2377) and the Member Case Plaintiffs-Appellants. The Lead Case Plaintiffs-Appellants filed an unopposed Motion to Expedite with requested dates as follows:

- **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.**

Case:19-2377; Document 3, filed November 27, 2019.

In response to the Defendants-Appellants’ request for concurrence to the instant Motion to Expedite, counsel for Defendant-Appellant Benson and counsel for Intervening Defendant-Appellant Voters Not Politicians agreed if the expedited dates were one week later than those sought by the Lead Case Plaintiffs-Appellants. This is reflected in this Motion, with the exception of the date for oral argument. All parties agree argument should be held on the same date before the end of March 2020 since the Defendants-Appellees are the same and the issues are similar.

Plaintiffs-Appellants join the Lead Case Plaintiffs-Appellants to 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 the individual Plaintiffs-Appellants and those similarly situated to qualify and be selected to serve on the Commission and to protect the freedom of association rights claimed by the Plaintiff-Appellant Michigan Republican Party.

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

Dated: December 13, 2019

/s/ Gary P. Gordon

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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 and also denying the *Daunt* Plaintiffs-Appellants' Motion for Preliminary Injunction, both of 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"). Opinion Denying Mot. For Prelim. Inj. (ECF 67, Nov. 25, 2019) Mot. Prelim. Inj. (ECF 2, August 22, 2019) (Page ID # 35); Brief in Supp. Of Mot. For Prelim. Inj. (ECF 3, August 22, 2019) (Page ID # 38, 75).

The individually named Plaintiffs-Appellants 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. ¶¶ 77-87, ¶¶ 57-71 (ECF 1, August 22, 2019) (Page ID # 1, 18-20, 14-16); Brief in Supp. Of Mot. For Prelim. Inj. (ECF 3, August 22, 2019) (Page ID # 62, 67, 71-74); Opinion Denying Mot. For Prelim. Inj. (ECF 67, Nov. 25, 2019) (Page ID # 936-939). This impairment of Plaintiffs-Appellants' constitutional rights of free speech and association constitutes irreparable injury. Brief (ECF 3) (Page ID # 73). Accordingly, the individually

named Plaintiffs-Appellants 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. Brief (ECF 3) (Page ID # 55-75).

Additionally, the Michigan Republican Party (“MRP”) will be similarly harmed by its exclusion from the selection of those individuals who will claim to be Republicans and therefore eligible for membership on the Commission. Compl. (ECF 1) (Page ID # 1, 15-20); Brief (ECF 3) (Page ID # 38, 55-61).

The District Court correctly determined that Plaintiffs-Appellants had standing to bring their claims, (Opinion (ECF 67) (Page ID # 943-946)), and that Plaintiffs-Appellants’ claims were not barred by laches. *Id.* (Page ID # 946-948). But 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 # 967-969). Based largely on this finding, the District Court also held that the other preliminary injunction factors weighed in favor of Defendants-Appellees. *Id.* (Page ID # 969-971).

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 and expedited appeals are permitted by the Federal Rules of Appellate Procedure and this Court when constitutional rights are implicated. Plaintiffs-Appellants must act as soon as possible to protect their rights.

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. The disqualification of the Individual Plaintiffs-Appellees from the Commission violates the First and Fourteenth Amendments. Accordingly, Plaintiffs-Appellees constitutional rights are implicated by this challenge and an expedited appeal is warranted.

Additionally, the Michigan Republican Party (“MRP”) will be similarly harmed by its exclusion from the selection of those individuals who will claim to be Republicans and therefore eligible for membership on the Commission—also in violation of the First and Fourteenth Amendments. Compl. (ECF 1) (Page ID #1, 15-20); Brief (ECF 3) (Page ID # 38, 56-61).

Plaintiffs-Appellants must, as soon as possible, enjoin the provisions of Michigan’s Constitution which disqualify the individuals from eligibility to serve on the Commission and exclude the MRP’s participation in the selection process of those who will represent its interests. The Plaintiffs-Appellants also seek to enjoin, assuming the challenged provisions are 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. 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. 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 may be too late.

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 Defendants-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 irreparable injury.

Dated: December 13, 2019

/s/ Gary P. Gordon

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