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,

(and)

COUNT MI VOTE, doing business as Voters Not Politicians,

Intervenor-Appellee.

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

CORRECTED REPLY BRIEF OF APPELLANTS MICHIGAN REPUBLICAN PARTY, LAURA COX, TERRI LYNN LAND, SAVINA ALEXANDRA ZOE MUCCI, DORIAN THOMPSON, AND HANK VAUPEL

ORAL ARGUMENT REQUESTED

DYKEMA GOSSETT PLLC • Capitol View, 201 Townsend Street, Suite 900, Lansing, Michigan 48933

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1(a), counsel for Appellants certifies that no parent corporation or publicly held corporation owns 10% or more of the stock of any party to this appeal.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Rules

Constitutional Provisions

Other Authorities

STATEMENT REGARDING ORAL ARGUMENT

This matter involves the venerable constitutional rights of free speech, association, and equal protection under the First and Fourteenth Amendments and therefore is of the utmost importance. Due to the importance and complexity of these issues, Appellants believe that oral argument will assist the Court in its review, and therefore, Appellants respectfully request oral argument. *See* Fed. R. App. P. 34(a).

ARGUMENT ON REPLY

Appellants are not necessarily opposed to the concept of a commission drawing legislative district maps, but the Amendment creating this Commission simply goes too far in burdening the constitutional rights of citizens and political parties—and the highly partisan proponents of the proposal tacitly recognized this fact by including a "severability" clause, which acknowledges that the Amendment is unlikely to withstand a constitutional challenge. Defendants-Appellees Jocelyn Benson (the "Secretary") and Count MI Vote d/b/a Voters Not Politicians ("VNP," and collectively with the Secretary, "Defendants") fail to refute the constitutional infirmities delineated by Appellants.

To place VNP's arguments in proper perspective, it is important to identify the partisan proponents hiding behind the veil of its innocuous name. VNP portrays itself as a nonpartisan advocacy organization and grassroots coalition of citizens with the mission of reforming Michigan's redistricting system and claims it works to strengthen democracy by engaging people across Michigan. *See* VNP's Brief in Support of Motion to Intervene, R. 13, Page ID ## 119-121. But this is simply not so. VNP is a Democratic front-group whose redistricting amendment is apparently designed to suppress Republican political participation, and the redistricting commission scheme that VNP created does exactly that: infringe upon Michigan Republicans' associational rights. The severe burden this scheme imposes on the

First Amendment associational rights of MRP and its members and affiliates is plainly unconstitutional.[1]

VNP's nonpartisan veneer began to crack just days before the 2018 general election when campaign finance filings revealed that VNP, in stark contrast to its self-portrayal as a local grassroots organization, had in fact received an astonishing $14 million in contributions from out-of-state Democratic Party affiliates in just the few months immediately prior to the election. *See* https://www.bridgemi.com/, "*Michigan Proposal 2 redistricting group defends dark money*," (November 1, 2018).

Nearly two-thirds of the $14 million infused into VNP came from two out-of-state organizations. *See id*. One organization, known as the "Sixteen Thirty Fund," is a Washington D.C.-based dark money group directed by a former staffer of Democratic President Bill Clinton. *See* https://www.opensecrets.org/, "*State redistricting a target for 'dark money' after Supreme Court ruling*," (June 28, 2019)

[1] To say nothing of the severe burden on the rights of the parents, stepparents, children, stepchildren, and spouses of disqualified individuals who have nothing to do with the disqualifying partisan activity of their relatives and who had no prior notice of their retroactive disqualification from the initial Commission. In spite of the purported "conflict of interest" claimed by Defendants and Amicus Curiae, it is not beyond the realm of possibility that these provisions would exclude a self-identified Democrat from serving on the Commission because of the disqualifying activities of a Republican relative. The disqualifying criteria, especially as applied to family members, go much too far and cannot survive appropriate scrutiny. *See also* Appellants Br., p. 14 (further discussing the unconstitutional burdens).

(hereinafter, "OpenSecrets.org"). More telling is that VNP also received $250,000 from the National Democratic Redistricting Committee—a recently launched "527" group directed by several former staffers of Democratic President Barack Obama, including former U.S. Attorney General and now-activist Eric Holder. *See id*. George Soros—the prolific supporter of Democratic causes was National Democratic Redistricting Committee's largest donor. *See id*.

While the truth about national Democratic funding of VNP was strategically revealed too late to impact the proposal's passage in 2018, it is now clearly relevant to the Amendment's motivation and implementation by the highly partisan Secretary, who is aligned with many of the groups that funded VNP. As a matter of partisan political strategy, it was brilliant for national Democrats to mask their assault on the constitutional rights of Michigan Republicans through the wholesome and innocuous sounding "Voters Not Politicians," and now through legal arguments about "conflicts of interest," when in fact the conflicted interests are those of Defendants.

On Election Day, and with the help of an influx of millions of dollars from out-of-state Democratic and Progressive interests, the Amendment passed, thereby adding four new pages of substance to the Michigan Constitution. Yet voters were only presented with a 100-word summary of the 3,200 word Amendment on the

ballot.[2] Meanwhile, although several other states passed ballot measures in 2018 creating various redistricting commissions, *see* OpenSecrets.org, Michigan was the only state that adopted a system in which political parties and partisan elected officials would play no role in selecting the standard bearers who would represent them on the redistricting commission, except for those states in which party registration predated the proposal (thereby providing those respective parties with an apparatus to affirm with whom they associate).

This appeal represents a genuine effort to protect and restore Appellants' legitimate constitutional rights. With that in mind, and for the reasons stated further below and in their opening brief, Appellants respectfully request that this Court reverse the decision of the district court.

I. The District Court Applied the Wrong Legal Standard

The district court's principal error is its application of the deferential *Anderson-Burdick* standard to Appellants' claims.[3] Unlike cases involving the

[2] Given the addition of 3,200 words to the Michigan Constitution based on a ballot summary of 100 words, it is unsurprising that the constitutional shortcomings challenged by Appellants were not raised prior to the election. Of course, had the Amendment been proposed through more traditional constitutional amendment procedures, such as through the state Legislature, these challenged constitutional infirmities might have been addressed long before a barrel of new ink was applied to Michigan's most prized document.

[3] VNP contends in its brief that MRP's position regarding the appropriate legal standard is "irreconcilable" with the position of the Republican National Committee ("RNC") in its amicus brief in the Supreme Court. *See* VNP Br., p. 19 n. 4. As an initial matter, MRP is an independent entity and is not controlled or directed by RNC

administration and conduct of elections, the *Anderson-Burdick* framework does not apply here because Appellants' claims do not arise from matters of election administration. *See, e.g.*, *Mich. State A. Philip Randolph Inst. v. Johnson*, 833 F.3d 656 (6th Cir. 2016) (applying framework to evaluate Equal Protection Clause challenges to voting restrictions). Nor do the claims arise from term limits, which limit the duration for which an individual may hold a particular public office. *E.g.*, *Citizens for Legislative Choice v. Miller*, 144 F.3d 916 (6th Cir. 1998) (involving constitutionality of Michigan's lifetime term limits); *Bates v. Jones*, 131 F.3d 843 (9th Cir. 1997) (involving constitutionality of California's lifetime term limits).

Rather, this case involves a challenge to the constitutionality of various provisions of the Amendment that plainly burden the exercise of fundamental rights of speech and association by requiring the cessation of broad categories of political activity—for a minimum of six years—as a precondition to eligibility for office. Worse yet, those same disqualifying criteria are imputed to family members regardless of whether a particular would-be applicant has engaged in any political activity whatsoever.

as a state affiliate. Regardless, the facts of the subject case referenced by VNP are distinguishable from the present action, which involves regulations that substantially burden MRP's freedom of association with overly broad disqualifying criteria that punish MRP's members and affiliates for past political expression and, with respect to the initial Commission, without any prior notice.

Likewise, the deferential approach discussed—but not adopted—in *Citizens for Legislative Choice*, 144 F.3d at 924-925, does not save the Amendment from scrutiny under traditional constitutional standards. That deference applies only where the regulations are not plainly prohibited by the Constitution. *See id.* (discussing standard). The Amendment implicates fundamental First Amendment freedoms plainly provided under the Constitution and must survive traditional standards of constitutional review. *See McDaniel v. Paty*, 435 U.S. 618, 626 (1978) (holding a state qualification provision unconstitutional because it conditioned the plaintiff's right to the free exercise of his religion on the surrender of his right to seek office).

Regardless which legal standard this Court applies to Appellants' claims, the proper test here is strict scrutiny because the Amendment severely and substantially burdens Appellants' exercise of their fundamental freedoms of speech and association. *See Burdick v. Takushi*, 504 U.S. 428, 434 (1992) (recognizing that when constitutional rights are subjected to severe restrictions, the regulation must be narrowly drawn to advance a compelling governmental interest); *Citizens for Legislative Choice*, 144 F.3d at 925 (providing that deference is appropriate *except* where the qualification is plainly prohibited by another provision of the constitution). The Amendment severely and substantially burdens Appellants'

exercise of their fundamental rights, so the Court should apply strict scrutiny and determine that Appellants are likely to prevail on the merits of their claims.

II. MRP Has Standing To Challenge the Speech Restrictions

As a major political party whose associational members and affiliates will serve on the Commission, MRP has associational standing to challenge the constitutionality of the Amendment's speech restriction. Appellees cannot dispute that the Amendment specifically provides that four members of the Commission will be affiliates of MRP—or at least self-identify as "Republican."[4] *See* Mich. Const. Art. IV, § 6(2) (providing for the selection of four commissioners each from the pools of applicants who affiliate with a major political party). Accordingly, MRP has associational standing to raise the claim on behalf of its affiliates.

Associational standing applies if the organization's "members would otherwise have standing to sue in their own right, the interests at stake are germane to the organization's purpose, and neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Speech First, Inc. v. Schlissel*, 939 F.3d 756 (6th Cir. 2019) (holding that an organization had standing to challenge governmental polices prohibiting certain speech). Standing doctrine does not require that MRP wait for its affiliates' speech to be restricted to raise such

[4] This is indisputable, at least for the initial Commission, and for so long as MRP continues to be "one of the two political parties with the largest representation in the legislature." Mich. Const. Art. IV, § 6(2)(a)(iii).

constitutional claims. *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 128-129 (2007) ("Our analysis must begin with the recognition that, where threatened action by government is concerned, we do not require a plaintiff to expose himself to liability before bringing suit to challenge the basis for the threat—for example, the constitutionality of a law threatened to be enforced.").

Because MRP's members and affiliates eventually will serve on the Commission, including on the initial Commission, MRP has standing to challenge the constitutionality of the speech restriction, which implicates the speech of its affiliates regarding the subject of redistricting, political speech germane to the purpose of MRP.

III. The Challenged Provisions Are Not Severable

The district court did not address the effect of the severability provision because it erroneously concluded that Appellants are not likely to succeed on the merits of their claims. (Opinion, R. 61 Page ID ## 854, n. 4; 866, n. 5.) Because Appellants have demonstrated that they are likely to prevail on the merits of their constitutional claims and the remaining preliminary injunction factors weigh in favor of Appellants, this Court should consider the effect of the severability clause, determine that the challenged provisions are not severable from the Amendment, and direct the district court to grant Appellants' motion for preliminary injunction enjoining implementation of the entire Amendment.

Although the Amendment includes a severability clause, the existence of a severability clause is not determinative because a law cannot be saved where unconstitutional provisions are inextricably intertwined with other provisions of the law. *See Hill v. Wallace*, 259 U.S. 44, 70 (1922) ("[The severability clause] did not intend the court to dissect an unconstitutional measure and reframe a valid one out of it by inserting limitations it does not contain. This is legislative work beyond the power and function of the court."); *see also Averett v. United States HHS*, 306 F. Supp. 3d 1005, 1022 (M.D. Tenn. 2018) (holding an invalid provision of a rule not severable because its provisions were intertwined); *King Enters. v. Thomas Twp.*, 215 F. Supp. 2d 891, 918 (E.D. Mich. 2002) (holding provisions of an ordinance invalid because its provisions were "inextricabl[y] intertwined"); *In re Apportionment of State Legislature-1982*, 413 Mich. 96, 138, 321 N.W.2d 565 (1982) (holding that "inextricably related" provisions were non-severable).

The invalid provisions concern the foundation upon which the Commission is structured, and without those provisions, the dominant purpose of the Amendment would be negated. The unconstitutional provisions in this case extend beyond the disqualifying criteria and include the very process by which applicants are first sorted into pools and then selected to serve on the Commission. If the process for qualifying and selecting commissioners fails as constitutionally infirm, so must the entire Amendment. It is not the role of a court to rewrite a law to conform it to

constitutional requirements. *Eubanks v. Wilkinson*, 937 F.2d 1118, 1122-1123, 1124 (6th Cir. 1991) (citing cases); *see also id.* at 1124 (expressing "caution even about eliminating unconstitutional conditions when a federal court reviews state statutes"); *Mich. State Chamber of Commerce v. Austin*, 642 F. Supp. 1078, 1079 (E.D. Mich. 1986) (stating that the court could not "authoritatively narrow" a challenged state law and that "[j]udicial construction cannot save Michigan's statute because the statute needs substantial revision").

Nor is it appropriate to sever unconstitutional provisions where, as here, the invalid provisions induced voters to approve the remaining portions of the Amendment. *Eubanks*, 937 F.2d at 1128 ("The test for whether a court should sever one portion, leaving the balance of the statute has been stated variously. Generally a court may sever an invalid provision of a statute, leaving the rest to operate, if the 'invalid portion can be shown not to have been the inducement for the passage of the act,' and if there is no evidence that 'the valid and invalid parts of the act' were 'conditions, considerations, or compensations for each other.'"). Here, the Amendment's disqualifying criteria was a point of emphasis to induce passage, and proponents highlighted the exclusion of certain classes of individuals from the Commission as purportedly fulfilling a promise that the Amendment would create a "nonpartisan" entity devoid of political experience.

This Court should not find the mere existence of a severability clause determinative. The severability clause was not printed on the ballots, *see* VNP Br., p. 5, and, consequently, was not directly before the voters who approved the Amendment. In other words, voters were not induced by the presence of the severability clause on the ballot; to the contrary, the form of the ballot question specifically outlined the unconstitutional provisions, indicating that these *invalid provisions were an inducement* to the Amendment's approval. Unless a voter had read the full text of the proposal, that voter was likely unaware of the severability clause. This Court should find the unconstitutional provisions not severable and enjoin implementation of the entire Amendment.

IV. MRP Is Likely To Succeed on Its Association Claim

The district court erred in concluding that MRP is unlikely to succeed on the merits of its freedom of association claim.[5] Specifically, the district court committed at least two reversible errors when it (A) concluded that the Amendment does not violate MRP's freedom of association, and (B) applied the wrong legal standard to

[5] While the district court committed reversible error when it concluded that Appellants were unlikely to prevail on the merits of ***any*** of their claims—including the Amendment's egregious infringement on the constitutional rights of parents, stepparents, children, stepchildren, and spouses of disqualified individuals—Appellants rely on the arguments in their opening brief rather than reiterating those arguments here.

that claim. This Court should reverse the district court's decision regarding MRP's freedom of association claim for the reasons outlined below.

A. The Procedure for Selecting Affiliated Commissioners Violates MRP's Freedom of Association

Among the First Amendment rights possessed by political parties such as MRP is the right to associate with people whom they choose, and to refrain from associating with people whom they reject. *See Cal. Democratic Party v. Jones*, 530 U.S. 567, 574 (2000). Further among political parties' freedoms to associate with others for the common advancement of political beliefs and ideas, it is well settled that parties have the constitutional right to select their standard bearers. *See Eu v. San Francisco Cty. Democratic Cent. Comm.*, 489 U.S. 214, 229 (1989). The Amendment violates MRP's freedom of association by allowing Commission-applicants to self-designate as affiliated with MRP under a procedure that does not afford MRP any opportunity whatsoever to verify or repudiate that affiliation, despite the fact that those applicants will become standard bearers of MRP when selected as "Republican" commissioners (even though MRP has had nothing to do with that selection).

While the district court concluded there was "no basis" to conclude that partisan-affiliated commissioners will be standard bearers of the corresponding political party under the Amendment, *see* Opinion, R. 61, Page ID # 858, MRP provided in its opening brief several concrete examples through which partisan-

affiliated commissioners will serve as standard bearers of their respective political parties under the Amendment. *See* Appellants Br., pp. 7-10. For their part, however, Defendants failed to provide any meaningful response to MRP's standard bearer argument.[6] Indeed, rather than respond to MRP's argument, Defendants simply reiterated the second part of the district court's decision regarding MRP's freedom of association claim—arguing instead that Republican-affiliated commissioners cannot be considered standard bearers because the Amendment does not define what it means to be Republican or Democrat. *See* Secretary's Br., p. 72; Opinion, R. 61, Page ID # 858. This statement is as conclusory[7] as it is inconsistent with the express language of the Amendment.

A definition of "Democrat" or "Republican" is completely unnecessary because the Amendment sufficiently defines the necessary connection between each major political party and the corresponding commissioners; it requires would-be commissioners to self-designate whether they "affiliate" with a major party—those parties being—and having been for more than 150 years—the Michigan Democratic

[6] The fact there are indeed bases to conclude that partisan-affiliated commissioners will be standard bearers of their political party under the Amendment, and that Defendants failed to respond to that argument, constitutes a reversible set of circumstances in and of itself.

[7] Neither the district court nor any Defendant cite authority for the proposition that either Democrat or Republican must be defined by the Amendment in order for the corresponding commissioners to be considered a standard bearer.

Party and the Michigan Republican Party. *See generally* Mich. Const. Art. IV, § 6(2)(a)(iii) (utilizing the verb "affiliate" to describe the requisite connection—or lack thereof—between commissioners and major parties). To that end, "affiliate" means "to bring or receive into close connection as a member or branch," or "to associate as a member." "Affiliate," Merriam-Webster.com Dictionary, Merriam-Webster, available at https://www.merriam-webster.com/dictionary/affiliate (last accessed February 10, 2020). Both the Michigan Democratic Party and Michigan Republican Party are perfectly capable of determining which applicants constitute an "affiliate" under the above definition and their internal rules—a conclusion supported by well-settled Supreme Court case law. *See Jones*, 530 U.S. at 574.

Meanwhile, because the commissioner selection process results in Republican-affiliated, Democrat-affiliated, and non-affiliated commissioners—titles which the commissioners will keep through the entire redistricting process—those commissioners will be perceived by the public as Republican, Democrat, or non-affiliated commissioners. Any contention otherwise is unrealistic where these "high-level policymakers"—the term used by the very party responsible for the Amendment in the first place, VNP Br., p. 28—will be responsible for the entire redistricting process, and all in the public eye.[8] *See* MICH. CONST. Art. IV, § 6(10).

[8] Indeed, the partisan references have already begun by the very party that claims that such perception is "misplaced." *Compare* VNP Br., p. 37 (downplaying MRP's claim that the public will perceive self-affiliated commissioners as partisan standard

Where, as here, the public perceives an individual and an organization to be associated, that public perception "is relevant to the constitutional inquiry." *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 459 (2008) (Roberts, C.J., concurring) (discussing line of forced-association Supreme Court cases). It is especially important where, as here, the positions taken by a self-designated partisan-affiliate on the highly public, "high-level policymaking" role regarding the inherently political process of redistricting will surely be viewed by the public as connected to the affiliated party. Accordingly, commissioners are standard bearers of their corresponding political parties, the Amendment violates MRP's freedom of association, and the district court committed reversible error when it concluded otherwise.

B. The Procedure for Selecting Affiliated Commissioners Does Not Satisfy Strict Scrutiny

MRP's freedom of association claim is determined under the strict scrutiny legal standard because the Amendment subjects MRP's associational rights to the severe restrictions outlined above.[9] *See Burdick*, 504 U.S. at 434. Therefore, the question is whether the challenged provisions of the Amendment are narrowly

bearers), *with* VNP Br., p. 43 n. 14 (referencing "unaffiliated commissioners" and "Republican commissioners" in a factual hypothetical).

[9] Likewise, strict scrutiny applies to the individual Appellants' associational claims, and the Amendment similarly fails under such scrutiny.

tailored to achieve a compelling state interest. *See Democratic Party v. Reed*, 343 F.3d 1198, 1204 (9th Cir. 2003). While the district court erred by applying the wrong legal standard, this Court should hold that the Amendment fails to satisfy strict scrutiny because (1) the interest claimed by Defendants is not compelling under the facts where the severe burdens on MRP do not further the state's interest, and (2) the limitations thrust upon MRP by the Amendment are not narrowly tailored.

1. The Burdens Imposed on Freedom of Association Fail To Further a Compelling Interest

MRP is further likely to succeed on the merits because the burden on MRP's freedom of association does not further the state's interest in limiting partisan gerrymandering for at least two reasons. First, the state's claimed interest in avoiding partisan gerrymandering and having districts drawn by commissioners independent of political influence is inconsistent with the plain language of the Amendment, which expressly requires that more than half the Commission consist of affiliated partisans. *See* Mich. Const. Art. IV, § 6(2) (requiring that the Commission consist of four commissioner affiliated with each of the two "major" political parties—meaning that eight of the total 13 commissioners *must* affiliate with one of the two major political parties). As a result, the Defendants' contention that the purpose of the Amendment was to remove partisanship from the redistricting process is unpersuasive and inconsistent with the Amendment itself.

Second, despite Defendants' contention otherwise, the exercise of MRP's freedom of association could never result in MRP controlling the redistricting process because those rights would only apply to four of the 13 commissioners. Indeed, it is impossible for either of the "major" parties to control the redistricting process because the Amendment limits each "major" party to four affiliated commissioners. This would be true *even if* MRP were permitted to exercise its First Amendment rights by, for example, selecting the Republican-affiliated commissioners in any manner it chooses under its rules, and by repudiating those applicants who falsely claim an affiliation with MRP. In other words, prohibiting MRP from actively engaging in the Republican-affiliated commissioner selection process not only violates the First Amendment, but also fails to further the stated interest of avoiding a partisan gerrymander. Therefore, the Amendment fails to survive strict scrutiny, MRP is likely to succeed on the merits of its freedom of association claim, and this Court should reverse the district court's decision to the contrary. *See Jones*, 530 U.S. at 586 (restriction on similar rights failed to survive strict scrutiny where state's interests and claimant's rights were compatible).

2. The Limitations on Freedom of Association Are Not Narrowly Tailored

The limitations on MRP's freedom of association are not narrowly tailored. *Even if* MRP had full control over the selection of the four Republican-affiliated commissioners, it could never control the redistricting process because MRP plays

no role in the selection process for the remaining nine commissioners. And, even then, the four Republican-affiliated commissioners would be neutralized by the corresponding four Democrat-affiliated commissioners, thereby limiting MRP's control over the redistricting process. The limitations on MRP's freedom of association wilt under the lightest scrutiny, bear no relation whatsoever to the interests proffered by the state, and are unnecessary. This Court should reverse.[10]

CONCLUSION

Wherefore, Appellants respectfully request that this Court reverse the decision of the district court and enter an Order directing the district court to grant Appellants' motion for preliminary injunction.

Dated: February 18, 2020

/s/ Gary P. Gordon

Gary P. Gordon (P26290)
Jason T. Hanselman (P61813)
Scott A. Hughes (P75486)
Dykema Gossett PLLC
201 Townsend Street, Suite 900
Lansing, MI 48933
(517) 374-9133

Charles R. Spies (P83260)
Robert L. Avers (P75396)
Dickinson Wright PLLC
215 South Washington Square, Ste 200
Lansing, MI 48933
(517) 371-1730

Counsel for Plaintiffs-Appellants

[10] Defendants' contention that limitations on MRP's rights are permissible because MRP may participate in redistricting through other means is unsupportable. *See Jones*, 530 U.S. at 581 (rejecting same argument).

CERTIFICATION OF COMPLIANCE WITH TYPE-VOLUME LIMITATION, TYPEFACE, AND TYPE STYLE REQUIREMENTS

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because:

   X This brief contains fewer than 6,500 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because:

   X This brief has been prepared in a proportionally spaced typeface using Microsoft Word with 14 Times New Roman.

Dated: February 18, 2020

/s/ Gary P. Gordon

Gary P. Gordon (P26290)
Jason T. Hanselman (P61813)
Scott A. Hughes (P75486)
Dykema Gossett PLLC
201 Townsend Street, Suite 900
Lansing, MI 48933
(517) 374-9133

Charles R. Spies (P83260)
Robert L. Avers (P75396)
Dickinson Wright PLLC
215 South Washington Square, Ste 200
Lansing, MI 48933
(517) 371-1730

Counsel for Plaintiffs-Appellants

CERTIFICATE OF SERVICE

I hereby certify that on February 18, 2020, I electronically filed the foregoing document with the Clerk of the Court using the ECF system which will send notification of such filing to counsel of record. I hereby certify that I have mailed by United States Postal Service the same to any non-ECF participants.

/s/ Gary P. Gordon

Gary P. Gordon (P26290)
Jason T. Hanselman (P61813)
Scott A. Hughes (P75486)
Dykema Gossett PLLC
201 Townsend Street, Suite 900
Lansing, MI 48933
(517) 374-9133

Charles R. Spies (P83260)
Robert L. Avers (P75396)
Dickinson Wright PLLC
215 South Washington Square, Ste 200
Lansing, MI 48933
(517) 371-1730

Counsel for Plaintiffs-Appellants

SUPPLEMENT TO DESIGNATION OF RELEVANT DISTRICT COURT DOCUMENTS

The following documents from the District Court's record are relevant to this appeal:

Record Entry No.	Docket Text	Page ID Nos.
13	VNP's Brief in Support of Motion to Intervene	119-121

4832-5081-4389.1