

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHAEL BANERIAN, MICHON
BOMMARITO; PETER COLOVOS, WILLIAM
GORDON, JOSEPH GRAVES, BEAU
LaFAVE, CAMERON PICKFORD, HARRY
SAWICKI and MICHELLE SMITH,

No. 1:22-cv-00054

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.
ROTHHORN, 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.

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
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
ssheehy@holtzmanvogel.com
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

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
eolsonsharkey@elias.law
mjohnson@elias.law
amukerjee@elias.law
rcramer@elias.law

meingasth@michigan.gov
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
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
ahansen@honigman.com

Paul M. Smith
Mark P. Gaber
Jonathan M. Diaz
Attorneys for Intervenor-
Defendant Count MI Vote
1101 14th Street, NW, Ste 400
Washington, DC 20005
202.736.2200
psmith@campaignlegalcenter.org
mgaber@campaignlegalcenter.org
jdiaz@campaignlegalcenter.org

**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, Intervenors VNP and the individual Voter Intervenors 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.)¹ 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.*

¹ 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
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