UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

PRIORITIES USA, RISE, INC., DETROIT/DOWNRIVER CHAPTER OF THE A. PHILIP RANDOLPH INSTITUTE,

Plaintiffs,

v

DANA NESSEL, in her official capacity as the ATTORNEY GENERAL OF THE STATE OF MICHIGAN,

Defendant,

MICHIGAN SENATE, MICHIGAN HOUSE OF REPRESENTATIVES, MICHIGAN REPUBLICAN PARTY and REPUBLICAN NATIONAL COMMITTEE,

Intervening-Defendants.
_______________________________/

No. 19-13341

HON. STEPHANIE DAWKINS DAVIS

MAG. KIMBERLY G. ALTMAN

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DEFENDANT ATTORNEY GENERAL DANA NESSEL'S MOTION FOR SUMMARY JUDGMENT

Defendant Michigan Attorney General Dana Nessel moves for summary judgment pursuant to Fed. R. Civ. Proc. 56, for the following reasons:

1. Plaintiffs have challenged the constitutionality of sections of the Michigan Election Law that concern hiring persons to transport voters to polling places

(Mich. Comp. Laws § 168.931) and soliciting the return of absent voter ballot applications (Mich. Comp. Laws § 168.759).

2. The remaining claims in this case are that these two statutes unconstitutionally burden Plaintiffs' constitutional rights, that the Absent Voter law (Mich. Comp. Laws § 168.759) is preempted by federal law, and that the Voter Transportation law (Mich. Comp. Laws § 168.931) is unconstitutionally vague.

3. Discovery has been completed and there are no genuine issues of material fact.

4. The Court should apply the rational basis standard under the *Anderson-Burdick* balancing test and determine that both statutes are constitutional.

5. But, even applying the exacting scrutiny standard to the Absent Voter law (Mich. Comp. Laws § 168.759), the statute is still constitutional because it has a substantial relationship to the state's important interest in protecting the integrity of its elections.

6. The Absent Voter law has not been pre-empted by § 208 of the Voting Rights Act, 52 U.S.C. § 10508.

7. The Voter Transportation law is not unconstitutionally vague because it can readily be understood by a person of ordinary intelligence.

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8. The Voter Transportation law does not unconstitutionally burden Plaintiffs' speech or associational rights.

9. All the Intervening Defendants concurred in this motion, and the Plaintiffs oppose the motion.

For these reasons, and the reasons stated more fully in the accompanying brief in support, Defendant Attorney General Nessel respectfully requests that this Honorable Court enter an order granting summary judgment and dismissing Plaintiff's complaint in its entirety and with prejudice, pursuant to Fed. R. Civ. Proc. 56.

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Respectfully submitted,

s/Erik A. Grill

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Dated: March 21, 2022

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DEFENDANT ATTORNEY GENERAL DANA NESSEL'S BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

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CONCISE STATEMENT OF ISSUE PRESENTED

1. Whether Defendant is entitled to summary judgment because Mich. Comp. Laws § 168.759 and Mich. Comp. Laws § 168.931 are constitutional where neither statute violates First or Fourteenth Amendment rights of voters, and are not preempted by federal law?

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STATEMENT OF MATERIAL FACTS

Priorities USA (Priorities) is a 501(c)(4) nonprofit corporation and a "voter-centric progressive advocacy and service organization." (ECF 17, Am. Compl., PageID.92, ¶7.) Its "mission is to build a permanent infrastructure to engage Americans by persuading and mobilizing citizens around issues and elections that affect their lives." (*Id.*) It alleges that it engages in activity to "educate, mobilize, and turn out voters" in Michigan, and states that it "expects to" make expenditures and contributions towards those objectives in upcoming Michigan state and federal elections. (*Id.*)

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Plaintiff Rise Inc. (Rise) is also a 501(c)(4) nonprofit organization that "runs statewide advocacy and voter mobilization programs in Michigan and California, as well on a number of campuses nationwide." (ECF 17, PageID.93, ¶8.) Rise alleges that "efforts to empower and mobilize students as participants in the political process…are critical to Rise's mission because building political power within the student population is a necessary condition to achieving its policy goals." (*Id.)* Rise alleges that it launched its second state-specific campaign in Michigan in 2019, that it has eleven student organizers who are paid to organize their campuses including voter education and turnout activities, and that it plans to continue this program through the 2020 elections. (*Id.* at ¶9.*)*

Plaintiff Downriver/Detroit Chapter of the A. Philip Randolph Institute (DAPRI) is a local chapter of a national 501(c)(3) nonprofit organization. It alleges that it is a membership organization "with a mission to continue to fight for Human Equality and Economic Justice and to seek structural changes through the American democratic process." (ECF 17, PageID.95, ¶14.) It alleges that it has members who are "involved in voter registration, get-out-the-vote activities, political and community education, lobbying, legislative action, and labor support activities in Michigan. (*Id.*) DAPRI does not identify any particular members who are affected by the challenged statutes. It does allege that its members have "provided rides" to and from the polls for the community on election day. (*Id.* at ¶16). However, there is no allegation that such rides are provided for a fee, or that the drivers are compensated in any way. DAPRI acknowledges that Proposal 3 makes absentee voting available to all, and that it would like to educate voters about the opportunity to vote absentee. (ECF 17, PageID.96, ¶17.)

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Plaintiffs challenge two Michigan Election Law statutes.

A. The challenged statutes

1. Absentee Ballot law - Mich. Comp. Laws § 168.759

As amended by Proposal 3 in 2018, the Michigan Constitution now provides that qualified electors shall have "[t]he right, once registered, to vote an absent voter ballot without giving a reason, during the forty (40) days before an election,

and the right to choose whether the absent voter ballot is applied for, received and submitted in person or by mail." Mich. Const. 1963, art. 2, § 4(1)(g). Section 4 continues to provide, as it has since 1963, that:

> [T]he legislature shall enact laws to regulate the time, place and manner of all . . . elections, to preserve the purity of elections, to preserve the secrecy of the ballot, to guard against abuses of the elective franchise, and *to provide for a system of voter registration and absentee voting.* [*Id.*, art. 2, § 4(2)(emphasis added).]

Section 759 of the Michigan Election Law prescribes the process for applying for an absent voter (AV) ballot. In order to receive an AV ballot, a voter must request an application for an AV ballot and submit that application to his or her local clerk. With respect to both primaries and regular elections, an elector may apply for an AV ballot at any time during the 75 days before the primary or election. Mich. Comp. Laws § 168.759(1)-(2). In both cases, "the elector shall apply in person or by mail with the clerk" of the township or city in which the elector is registered. *Id.* Subsection 759(3) provides that:

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> (3) An application for an absent voter ballot under this section may be made in any of the following ways:
>
> (a) By a written request signed by the voter.
>
> (b) On an absent voter ballot application form provided for that purpose by the clerk of the city or township.[1]
>
> (c) On a federal postcard application.

---

[1] AV ballot applications are available online at https://www.michigan.gov/documents/sos/ AVApp_535884_7.pdf.

> (4) An applicant for an absent voter ballot shall sign the application. A clerk or assistant clerk shall not deliver an absent voter ballot to an applicant who does not sign the application. *A person shall not be in possession of a signed absent voter ballot application except for the applicant; a member of the applicant's immediate family; a person residing in the applicant's household; a person whose job normally includes the handling of mail, but only during the course of his or her employment; a registered elector requested by the applicant to return the application; or a clerk, assistant of the clerk, or other authorized election official*. A registered elector who is requested by the applicant to return his or her absent voter ballot application shall sign the certificate on the absent voter ballot application.
>
> (5) The clerk of a city or township shall have absent voter ballot application forms available in the clerk's office at all times and shall furnish an absent voter ballot application form to anyone upon a verbal or written request. [Mich. Comp. Laws §§ 168.759(3)-(5) (emphasis added).]

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Where a form application is used, under § 759(5), the "application shall be in substantially the following form," which then provides the body of the form and includes a general "warning" and a "certificate" portion for "a registered elector" delivering a completed application for a voter. Mich. Comp. Laws § 168.759(5). The warning must state that:

> It is a violation of Michigan election law for a person other than those listed in the instructions to return, offer to return, agree to return, or solicit to return your absent voter ballot application to the clerk. An assistant authorized by the clerk who receives absent voter ballot applications at a location other than the clerk's office must have credentials signed by the clerk. Ask to see his or her credentials before entrusting your application with a person claiming to have the clerk's authorization to return your application. [*Id.*]

Similarly, the certificate for a registered elector returning an AV ballot application must state that:

> I am delivering the absent voter ballot application of [the named voter] at his or her request; that I did not solicit or request to return the application; that I have not made any markings on the application; that I have not altered the application in any way; that I have not influenced the applicant; and that I am aware that a false statement in this certificate is a violation of Michigan election law. [*Id.*]

Under § 759(6), the application form must include the following instructions for an applicant:

> Step 1. After completely filling out the application, sign and date the application in the place designated. Your signature must appear on the application or you will not receive an absent voter ballot.
>
> Step 2. Deliver the application by 1 of the following methods:
>
> (a) Place the application in an envelope addressed to the appropriate clerk and place the necessary postage upon the return envelope and deposit it in the United States mail or with another public postal service, express mail service, parcel post service, or common carrier.
>
> (b) Deliver the application personally to the clerk's office, to the clerk, or to an authorized assistant of the clerk.
>
> (c) In either (a) or (b), a member of the immediate family of the voter including a father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, grandparent, or grandchild or a person residing in the voter's household may mail or deliver the application to the clerk for the applicant.
>
> (d) If an applicant cannot return the application in any of the above methods, the applicant may select any registered elector to return the application. The person returning the application must sign and return the certificate at the bottom of the application. [Mich. Comp. Laws. § 168.759(6).]

Consistent with these statutes, § 759(8) provides that "[a] person who is not authorized in this act and who *both distributes* absent voter ballot applications to absent voters and *returns* those absent voter ballot applications to a clerk or

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assistant of the clerk is guilty of a misdemeanor." Mich. Comp Laws § 168.759(8) (emphasis added). Section 931 also provides for penalties associated with distributing and returning AV ballot applications. *See* Mich. Comp. Laws §§ 168.931(1)(b)(iv) and (1)(n).

Based on these provisions, there are two ways to apply for an AV ballot; (1) a written request signed by the voter, and (2) on an AV ballot application form provided for that purpose. In both cases, the voter applies by returning their written request or form application to their local clerk in person or by mail. Mich. Comp. Laws §§ 168.759(1), (2), (6). Clerks have also been instructed by the Department of State for years to accept applications sent by facsimile and email. If a voter cannot appear in person to deliver their application or cannot mail their application or return it by email or facsimile, they may have an immediate family member deliver his or her application, or the person may request another registered voter to return the application. Mich. Comp. Laws §§ 168.759(4), (5), (6).

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Thus, only persons authorized by law, i.e., those described in § 759(4), may return a signed application for an AV ballot to a local clerk. Mich. Comp. Laws §§ 168.759(4)-(5).

Plaintiffs refer to these statutes as an "Absentee Ballot Organizing Ban," and allege that they are "expending and diverting additional funds and resources" in get-out-the-vote ('GOTV'), voter education efforts, mobilization, and turn out

activities "at the expense of" other efforts in Michigan and in other states. (ECF 17, Am. Compl., PageID.98, ¶25). Plaintiffs further allege that they are required to expend "additional resources" to educate their employees, volunteers, and partners about the statutes on how to comport their activities with the law. (*Id.*)

2. Voter Transportation law - Mich. Comp. Laws § 168.931

Mich. Comp. Laws § 168.931 provides, in part:

> (1) A person who violates 1 or more of the following subdivisions is guilty of a misdemeanor:
>
> * * *
>
> (f) A person shall not hire a motor vehicle or other conveyance or cause the same to be done, for conveying voters, other than voters physically unable to walk, to an election. [Mich. Comp. Laws § 168.931(1)(f).]

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Under this provision, a person cannot pay for the transportation of a voter to the polls unless the voter is physically unable to walk to the election. This language has existed in some form since 1895, *see* 1895 P.A. 35, and has been a part of Michigan's modern election law since it was reenacted in 1954 P.A. 116.

Plaintiffs refer to § 931(1)(f) as a "Voter Transportation Ban," and allege that they are "expending and diverting additional funds and resources" in get-out-the-vote ('GOTV'), voter education efforts, mobilization, and turn out activities "at the expense of" other efforts in Michigan and in other states. (ECF 17, Am. Compl., PageID.98, ¶25). Plaintiffs further allege that they are required to expend

"additional resources" to educate their employees, volunteers, and partners about the statutes on how to comport their activities with the law. (*Id.*)

B. Pertinent discovery

The parties engaged in discovery, which revealed the following:

1. Attempts at Voter fraud—while rare—do occur.

In the Attorney General's answers to Plaintiffs' interrogatories, she identified the following incidents of voter fraud activities. (Ex. A, AG's Answers to Pl's Int's, p 4-5, #4.)

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• In August 2020, the Department of Attorney General (DAG) charged Karen Rotondo of Plymouth Township with forging her daughter's name on an AV ballot application in relation to the August 2020 primary election. She pleaded guilty to impersonating a voter in violation of Mich. Comp. Laws §§ 168.932a(a) and 750.92. No absentee ballots were sent, and no illegal voting occurred. (Ex. A, AG's Answers to Pl's Int's, p 4-5, #4; Ex. B, Clark Tr., p 87 ln 21-22, p 88-89.)

• In September 2020, the DAG investigated a possible forged signature on an application for an AV ballot in relation to the November 2020 general election. The signature affixed to the application was purportedly that of Helen Pappas, a voter who had died before that particular form of application had been mailed out. The daughter of the deceased voter—

Catherine Mintzias—and other residents of the property were questioned. But insufficient evidence could be obtained as to who may have forged the signature, and the investigation was closed. (Ex. A, AG's Answers to Pl's Int's, p 4-5, #4; Ex. B, Clark Tr., p 94 ln 3-7.)

• The DAG has investigated and initiated prosecutions of two additional incidents relating to forged or falsified applications for AV ballots in relation to the November 2020 general election. Those investigations concerned Trenae Myesha Rainey and Nancy Juanita Williams. (Ex. A, AG's Answers to Pl's Int's, p 4-5, #4; Ex. B, Clark Tr., p 99 ln 9-23; Ex. B, Exhibit 12, Clark Dep.)[2]

• In October 2020, the DAG received a citizen email complaining that a city councilman for the City of Hamtramck was offering to drive people to the polls on Election Day, November 3, 2020. The DAG served on the city councilman a cease-and-desist letter. No additional investigation was undertaken. (Ex. B, Clark Dep., Exhibit 7; Ex. B, Clark Tr. P 72 ln 4-23, p 73 ln 23-p 74 ln 13, p 75 ln 15-22.)

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[2] On February 24, 2022, Rainey pleaded guilty to three misdemeanor counts of making a false statement in an absent voter ballot application. *See* DAG Press Release, available at https://www.michigan.gov/ag/0,4534,7-359-92297_47203-577859--,00.html. Williams faces trial in Wayne County in four cases, and a final conference is scheduled for May 9, 2022. *Id*.

Danielle Hagaman-Clark—the Division Chief for the DAG's Criminal Trials and Appeals Division—testified in her deposition that the Attorney General's approach to complaints leading up to the November 2020 election was to provide information about the law, allow an opportunity to correct behavior, and then only criminally charge people if the illegal behavior continued. (Ex. B, Clark Tr., p 74 ln 2-5.) Clark also explained that county prosecutors may interpret statutes differently for many reasons—including their prosecutorial discretion, their priorities as elected officials, and limited prosecutorial resources. (Ex. B, Clark Tr., p 145 ln 7-146 ln 11.) Ms. Clark testified that is true for *any* statute, not just the Absent Voter law or Voter Transportation law at issue in this case. (Ex. B, Clark Tr., p 146 ln 12-21.)

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2. Plaintiffs' experts acknowledge the limitations of their opinions.

a. Dr. Michael C. Herron

Dr. Herron is a scholar in the field of applied statistics with a focus on election administration. (Ex. C, Herron Tr., p 31 ln 8-12.) He concludes that there is no evidence of "systemic" voter fraud affecting elections in the United States. (Ex. D, Herron Report, p 2, ¶1.) During his deposition, Dr. Herron distinguished between "systemic" fraud and "idiosyncratic" fraud as whether the fraudulent acts are performed by large numbers of persons or by individuals and is not controlled by what specific act of fraud is being committed. (Ex. C, Herron Tr., p 51-52.)

While Dr. Herron asserts that voter fraud does not threaten election integrity in the United States, he acknowledges that scholars in his field do not assert that the rate of voter fraud is zero. (Ex. D, Herron Report, p 2, ¶1.) Instead, Dr. Herron concludes only that voter fraud in Michigan is "rare." (Ex. D, Herron Report, p 10, ¶30.) Dr. Herron admitted in his deposition that "rare" does not mean "nonexistent." (Ex. C, Herron Tr., p 56 ln 5-10.) Dr. Herron states that when voter fraud occurs in Michigan it is "usually idiosyncratic," and identified 22 instances of voter fraud occurring between 2012 and 2021. (Ex. D, Herron Report, p 15-16, ¶46; Ex. C, Herron Tr. p 75 ln 11-p 76.)

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Dr. Herron was unable to opine on whether there had ever been a period of time in the history of the United States when voter fraud was *not* rare, and that his expertise as a scholar is on the contemporary United States. (Ex. C, Herron Tr., p 63 ln 24-p 64 ln 7.) Dr. Herron also acknowledged that he has no legal training and does not have an understanding of the role county prosecutors play in prosecuting alleged voter fraud. (*Id.*, p 66 ln 11-17.) Dr. Herron relied on the documents produced by the Attorney General and did not directly review court documents or data from Michigan counties. (*Id.*, p 66 ln 18-p 67 ln 6.)

Dr. Herron admits he cannot draw any conclusions about *why* the rate of voter fraud is low. (Ex. C, Herron Tr., p 81-82.) He stated that he is not taking a position on why an individual might choose not to engage in voter fraud, and that

he is not qualified to opine whether fear of prosecution is a factor. (*Id.,* p 83 ln 1-10.) Dr. Herron also does not take a position on whether any particular statute was necessary or unnecessary to the prevention of fraud. (*Id.* p 83 ln 11, p 86 ln 2.)

b. Dr. Thomas J. Sugrue

Dr. Sugrue is a professor of history whose research has focused on the political, social, and urban history of the United States, with a focus on the period following the Civil War. (Ex. E, Sugrue Report, p 3-4, ¶6, 8.) He has offered a report on the history of the Voter Transportation law, in which he concludes that the law was never widely discussed or debated, and that it appears to have been based upon a similar British law aimed at limiting campaign expenditures. (Ex. E, Sugrue Report, p 2, ¶ 3.) Dr. Sugrue found that the Voter Transportation law has been enacted, amended, and repealed various times over the past 130 years, but he was unable to find evidence that the law was a response to electoral fraud. (Ex. E, Sugrue Report, p 2-3, ¶ 4.)

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Dr. Sugrue acknowledges that his report, like "all historical scholarship," is limited by the documents that were available to him. (Ex. F, Sugrue Tr., p 34 ln 7-9.) Dr. Sugrue admits that there are no direct sources stating that Michigan's law was copied from the British law. (Ex. F, Sugrue Tr., p 37 ln 22-p 38 ln 10.) In concluding that the Voter Transportation law was an effort to restrict campaign expenditures, Dr. Sugrue states that there was concern at the time that wealthy

people or corporations would exert an undue influence over the voting process. (Ex. F, Sugrue Tr., p 36 ln 20-p 37 ln 4.)

Dr. Sugrue admits that there is not a correlation between the absence of contemporary newspaper articles about a particular election practice and whether that practice is corrupt. (Ex. F, Sugrue Tr., p 48 ln 10-15.) Dr. Sugrue also concedes that a state legislature could—in the process of addressing major concerns—also address smaller concerns. (Ex. F, Sugrue Tr., p 47 ln 16-19.)

Dr. Sugrue noted that—after the adoption of the secret ballot—the practice of vote buying no longer made any sense, since the buyer could not be sure they were getting what they paid for. (Ex. F, Sugrue Tr., p 49 ln 14-p 50 ln 8.) In his report, Dr. Sugrue discussed a practice from Detroit's 1894 primaries, during which workers for one candidate rounded up people and drove them to polls in hay carts, and gang members were handed folded ballots to deposit and paid afterwards. (Ex. E, Sugrue Report, p 23-24, ¶37.) Dr. Sugrue concedes that someone could do something similar today and hire a bus to drive around and bribe voters, but that the secret ballot means that there is no way to verify that voters cast their ballots as promised. (Ex. F, Sugrue Tr., p 57.) However, Dr. Sugrue admitted that he had never heard of so-called "ballot selfies," where people take pictures of their ballots and post them on social media. (Ex. F, Sugrue Tr., p 58.) While he has done no research on the topic, Dr. Sugrue conceded that it was

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possible that the 2022 equivalents of the 1894 mine bosses could use their power to coerce voters using something like ballot selfies to ensure the voters cast their votes in certain way. (Ex. F, Sugrue Tr., p 58 ln 24-p 59 ln 10.)

PROCEDURAL HISTORY

This case was originally filed by Plaintiff Priorities U.S.A. on November 12, 2019. (ECF 1, Cmplt, PageID.1-18.) Priorities USA filed an amended complaint on January 27, 2020, which added Plaintiffs Rise, Inc. and DAPRI, and four new legal claims. (ECF 17, Am. Cmplt, PageID.88-128.) On January 28, 2020, Plaintiffs filed motions for preliminary injunction and expedited consideration of the injunction. (ECF 22, Mot. for PI, PageID.139-312; ECF 23, Mot. to Expedite, PageID.313-331.) The Court denied Plaintiffs' motion to expedite and set a briefing schedule regarding the Attorney General's previously filed motion to dismiss, (*see* ECF 10, AG MTD, PageID.34-78.) (ECF 29, Order 2/11/20, PageID.438-439.)

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Subsequently, the Michigan Republican Party and the Republican National Committee (MRP/RNC) moved to intervene as defendants. (*See* ECF 33, PageID.498-566.) Plaintiffs responded to the Attorney General's motion to dismiss on February 24, 2020. (ECF 36, Pl Resp. to MTD, PageID.613-691; ECF 40, Corrected Resp, PageID.733-787.) On February 27, 2020, the Michigan House

of Representatives and Michigan Senate (the Legislature) moved to intervene as defendants (*see* ECF 39).

On March 9, the Attorney General filed a reply in support of her motion to dismiss. (ECF 44, AG MTD Reply, PageID.840-858.) The Court granted the motion to dismiss in part on May 22, 2020 and dismissed Counts III and VII. (ECF 59, 5/22/20 Order, PageID.961-1015.) The same day, the Court granted the motions to intervene (*see* ECF 60). The Attorney General answered the amended complaint. (ECF 65, AG Answer, PageID.1068-1087.) The intervenors also answered the amended complaint and filed briefs opposing the motion for preliminary injunction. (*See* ECF 61, MRP Answer, PageID.1028-1050; ECF 62, Legislature Answer, PageID.1051-1065; ECF 68, Legislature Resp. to PI, PageID.1155-1198; ECF 70, MRP/RNC Resp. to PI, PageID.1202-1314.) Plaintiffs filed their reply in support of the injunction on June 12, 2020. (ECF 72, Pl's PI Reply, PageID.1319-1414.)

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On September 17, 2020, the Court partly granted the preliminary injunction, enjoining only the Voter Transportation law after concluding that the Plaintiffs were likely to prevail on their claim that the law was pre-empted by federal law. (ECF 79, 9/17/20 Order, PageID.625.) Significantly, the Court concluded the Absentee Ballot law was constitutional, even under the exacting scrutiny standard advocated by the Plaintiffs. (ECF 79, PageID.1591, 1597-98.) The Court also

concluded that the vagueness challenge to the prohibition on soliciting the return of AV ballot applications was unlikely to succeed because the statute was "readily understood by a person of ordinary intelligence." (ECF 79, PageID.1601-02.)

The Intervenors appealed the preliminary injunction. (ECF 80 & 81, NOAs, PageID.1625-1627; 1628-1630.)

On October 21, 2020, the Sixth Circuit issued an order staying the preliminary injunction. *Priorities USA v. Nessel (Priorities I)*, 978 F.3d 976 (6th Cir. 2020). As part of the Court's conclusion that the Voter Transportation law was not pre-empted by the Federal Election Campaign Act, the Sixth Circuit observed that, "a statute can be a prophylactic rule intended to prevent the potential for fraud where enforcement is otherwise difficult." *Id.* at 984. The Court also noted that the law did not require a *quid pro quo* in order for the paid transportation of voters to be illegal. *Id.* Months later, and consistent with the stay opinion, the Sixth Circuit issued an opinion reversing the preliminary injunction and remanding the case for further proceedings. *Priorities USA v. Nessel (Priorities II)*, 860 Fed. Appx. 419 (6th Cir. 2021).

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On September 24, 2021, the Legislature filed a motion for judgment on the pleadings, which the Attorney General joined. (ECF 113, Mot. Jdgmt., PageID.1883-1912; ECF 114, Concurrence, PageID.1913-1915). MRP/RNC also filed a motion for judgment on the pleadings. (ECF 115, Mot. Jdgmt.,

PageID.1916-1947.) Plaintiffs responded to the motions on October 15, 2021. (ECF 121, Pl's Resp., PageID.1961-1994.) In their response, Plaintiffs confirmed they are no longer pursuing Counts I and VIII of their amended complaint. (*Id.*, PageID.1971 n 2.) These motions remain pending.

ARGUMENT

I. The challenged statutes do not violate Plaintiffs' constitutional rights.

A. The Absentee Ballot law is constitutional.

Plaintiffs allege that the AV ballot application statutes violate the First and Fourteenth Amendments because they impermissibly infringe on Plaintiffs' speech and associational rights. (ECF 17, Am. Comp., PageID.114-116, ¶61-64.)

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Plaintiffs label this statute an "Absent Ballot Organizing Ban," but the label is a misrepresentation of the law. Michigan does not ban absent ballot organizing or prohibit speech about whether to vote absentee. Organizations, such as Plaintiffs, are free to distribute AV ballot applications, to promote and encourage absentee voting, to educate people about how to vote absentee, and even to return AV applications *at the request of the voter*. But Michigan law *does* regulate how applications may be returned and prohibits individuals from *soliciting* to return someone else's application. In other words, Michigan law readily allows absent voter organization.

Regardless of how Plaintiffs' allegations are phrased, their claims are without merit because the statutes only minimally burden the right to speak and

associate, and are supported by important regulatory interests. In ruling on the preliminary injunction, this Court previously applied exacting scrutiny to Mich. Comp. Laws § 168.759 (the Absentee Ballot law), as interpreted by the Plaintiffs and set forth in their amended complaint. *Priorities U.S.A. v. Nessel,* 487 F. Supp 3d 599, 610 (E.D. Mich, 2020). But findings of fact and conclusions of law on a preliminary injunction are not binding at trial on the merits. *Univ. of Texas v. Camensich*, 451 U.S. 390, 395 (1981). Because § 759 does not prohibit Plaintiffs from speaking about *whether* to vote absentee (*see Priorities U.S.A,* 487 F. Supp. 3d at 612)—as Plaintiffs inaccurately alleged—and instead prohibits only soliciting the return of AV applications in certain circumstances, there is no core political speech at issue and exacting scrutiny should not apply. Instead, this Court should apply the rational basis standard pursuant to the *Anderson-Burdick* balancing test.

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1. The Absentee Ballot law is constitutional under *Anderson-Burdick* analysis.

The Constitution recognizes the states' clear prerogative to prescribe time, place, and manner restrictions for holding elections. U.S. Const. art. I, § 4, cl. 1; *accord: Burdick v. Takushi*, 504 U.S. 428, 433 (1992). Indeed, the Supreme Court has recognized that there "must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes." *Burdick*, 504 U.S. at 433 (quoting *Storer v. Brown*, 415 U.S. 724, 730 (1974)). Federal law thus generally defers to the states' authority to

regulate the right to vote. *See Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 203-04 (2008) (Stevens, J., op.) (recognizing that neutral, nondiscriminatory regulation will not be lightly struck down, despite partisan motivations in some lawmakers, so as to avoid frustrating the intent of the people's elected representatives).

When a constitutional challenge to an election regulation requires courts to resolve a dispute concerning the competing interests of speech and election regulation, courts generally apply the *Anderson-Burdick* analysis from *Anderson v. Celebrezze*, 460 U.S. 780 (1983), and *Burdick*, *supra*. *See, e.g.*, *Daunt v. Benson*, 999 F.3d 299, 314 (6th Cir. 2021); *Priorities II*, 860 Fed. Appx. at 422 n. 3. "Though the touchstone of *Anderson-Burdick* is its flexibility in weighing competing interests, the 'rigorousness of [the court's] inquiry into the propriety of a state election law depends upon the extent to which a challenged regulation burdens First and Fourteenth Amendment rights.' " *Ohio Democratic Party v. Husted*, 834 F.3d 620, 627 (6th Cir. 2016) (quoting *Burdick*, 504 U.S. at 434).

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If a state imposes "severe restrictions" on a plaintiff's constitutional right to vote, its regulations survive only if "narrowly drawn to advance a state interest of compelling importance." *Burdick*, 504 U.S. at 434. But "minimally burdensome and nondiscriminatory" regulations are subject to a "less-searching examination closer to rational basis" and "'the State's important regulatory interests are

generally sufficient to justify the restrictions.'" *Ohio Council 8 Am. Fed'n of State v. Husted*, 814 F.3d 329, 335 (6th Cir. 2016) (citing *Green Party of Tenn. v. Hargett (Hargett I)*, 767 F.3d 533, 546 (6th Cir. 2014), and quoting *Burdick*, 504 U.S. at 434).

Here, Plaintiffs bring a facial challenge to the statute. A facial challenge requires Plaintiffs to "establish that no set of circumstances exists under which [the statute] would be valid, i.e., that the law is unconstitutional in all of its applications." *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 449 (2008) (internal citation omitted). A facial challenge "must fail where the statute has a 'plainly legitimate sweep' and imposes '"only a limited burden on voters' rights."'" *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 202 (2008).

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Plaintiffs allege that the AV ballot application statutes severely burden their speech and associational rights by prohibiting them from engaging in speech that would assist the collection and return of completed AV ballot applications. Plaintiffs argue that they engage in political expression when they interact with Michigan voters to encourage them to participate in the political process through voting, including absentee voting. (ECF 17, Am. Comp., PageID.114-116, ¶61-64.) But the burden imposed by the AV ballot application statutes on Plaintiffs is minimal and outweighed by the State's compelling interest in preserving the

integrity of the AV ballot application process. As explained in more detail in the section below, the statutes do not prohibit Plaintiffs from engaging in other meaningful speech and Plaintiffs may assist voters by delivering their AV ballot applications, so long as the voters *request* Plaintiffs' assistance rather than Plaintiffs soliciting to perform the act. Thus, the Absentee Ballot law withstands review under *Anderson-Burdick* and is constitutional.

2. Even if exacting scrutiny is applied the Absentee Ballot law still passes constitutional muster.

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Even if this Court applies exacting scrutiny, Plaintiffs' claims will still fail because as this Court previously held, "whether the court applies exacting scrutiny or a rational basis standard of review, on the record before the court and as discussed in detail [ ], the Absentee Ballot Law is constitutional." *Priorities U.S.A.*, 487 F. Supp. 3d at 612. To withstand exacting scrutiny, the challenged provisions of the Absentee Ballot law must have a substantial relationship to a "sufficiently important" governmental interest. *Citizens United v. FEC*, 558 U.S. 310, 340 (2010). And "the strength of the governmental interest must reflect the seriousness of the actual burden on First Amendment rights." *John Doe #1 v. Reed*, 561 U.S. 186, 196 (2010).

Here, the State has an important governmental interest in protecting the integrity and security of the AV ballot process. Michigan's Constitution expressly provides that the Legislature "shall enact laws . . . to preserve the purity of

elections," and to "guard against abuses of the elective franchise[.]" Mich. Const. 1963, art. 2, § 4(2). The Supreme Court has "upheld generally applicable and evenhanded restrictions that protect the integrity and reliability of the electoral process itself." *Anderson* 460 U.S. at 788, n. 9 (1983). In other words, it has recognized that a State has a compelling interest in ensuring that an individual's right to vote is not undermined by fraud in the election process. *See, e.g.*, *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006) (per curiam) ("Confidence in the integrity of our electoral processes is essential to the functioning of our participatory democracy."). And the Court has held that legislatures are permitted to respond to potential deficiencies in the electoral process with "foresight" rather than "reactively." *Munro v. Socialist Workers Party*, 479 U.S. 189, 195 (1986).

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As this Court previously recognized, the Absentee Ballot law is "designed with fraud prevention as its aim and it utilizes well-recognized means in doing so." *Priorities U.S.A.*, 487 F. Supp. 3d at 614. There has been nothing produced through discovery that would or should change that conclusion. To the contrary, as demonstrated by the investigation and prosecutions of Karen Rotondo, Trenae Myesha Rainey, and Nancy Juanita Williams, absent voter applications are an avenue for potential fraud and the State's current statutory framework is imperative for protecting the integrity of the vote. Ms. Rontondo was charged with forging her mother's signature on an AV ballot application. (Ex. A, AG's Answers to Pl's

Int's, p 4-5, #4; Ex. B, Clark Tr., 87 ln 21-22, p 88-89.) The Rainey and Williams cases also involved allegations of forged or falsified AV ballot applications. (Ex. A, AG's Answers to Pl's Int's, p 4-5, #4, p 99 ln 9-23; Ex. B, Clark Dep. Exhibit 12). These cases show that the state's interest in seeking to prevent fraud is well-founded.

Conversely, Plaintiffs can still educate the public about registering to vote absentee, answer questions about this process, or provide a pool of electors that can return the applications when requested by voters. The law still provides a number of ways for voters to return their requests for an application or their applications to their local clerk. *See* Mich. Comp. Laws § 168.759(4)-(6). So, just as this Court previously held, the "State's interests in preventing fraud and abuse in the absentee ballot application process and maintaining public confidence in the absentee voting process are sufficiently important interests and are substantially related to the limitations and burdens set forth in Mich. Comp. Laws § 168.759." *Priorities U.S.A.*, 487 F. Supp. 3d at 615. Nothing has changed that warrants a different outcome at the merits stage of the case.

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B. The Absentee Ballot law is not preempted.

Plaintiffs also allege that the Absentee Ballot statutes, Mich. Comp. Laws § 168.759, are preempted by § 208 of the Voting Rights Act, 52 U.S.C. § 10508. (ECF 17, Am. Comp., PageID.118-121, ¶ 71-78.)

Section 208 provides:

> Any voter who requires *assistance to vote* by reason of blindness, disability, or inability to read or write may be given assistance *by a person of the voter's choice*, other than the voter's employer or agent of that employer or officer or agent of the voter's union.

52 U.S.C. § 10508 (emphasis added). The VRA defines the terms "vote" and "voting" to include:

> [A]ll action necessary to make a vote effective in any primary, special, or general election, including, but not limited to, registration, listing pursuant to this chapter, or other action required by law prerequisite to voting, casting a ballot, and having such ballot counted properly and included in the appropriate totals of votes cast with respect to candidates for public or party office and propositions for which votes are received in an election.

52 U.S.C. § 10310. Plaintiffs argue that Mich. Comp. Laws §§ 168.759(3) and (8) conflict with § 208 to the extent that the statutes prohibit a blind, disabled, or illiterate voter from requesting third parties, like Plaintiffs' volunteers, from asking such voters if the volunteers may return their AV ballot applications.

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Conflict preemption occurs where compliance with both a federal and state regulation is physically impossible, or "where state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Gade v Nat'l Solid Wastes Mgmt Ass'n*, 505 U.S. 88, 98 (1992). Here, the statutes do neither. They do not prohibit a blind, disabled, or illiterate voter from being given assistance by a person of the voter's choice. Section 208 clearly contemplates that it is the voter who is seeking the assistance. Section 759

likewise contemplates that it is the voter who will request someone else to return their AV ballot application. The prohibition against a person actively soliciting to return a voter's application without a request by the voter to do so does not conflict with the voter's rights under § 208 to affirmatively seek assistance.

As this Court previously observed:

> In passing § 208, Congress explained that it would preempt state election laws "only to the extent that they unduly burden the right recognized in [Section 208], with that determination being a practical one dependent upon the facts." S. REP. NO. 97-417, at 63 (1982); see also *Ray v. Texas*, 2008 U.S. Dist. LEXIS 59852, 2008 WL 3457021 (E.D. Tex. Aug. 7, 2008) ("The legislative history [of § 208] evidences an intent to allow the voter to choose a person whom the voter trusts to provide assistance. It does not preclude all efforts by the State to regulate elections by limiting the available choices to certain individuals.")

Priorities U.S.A., 487 F. Supp. 3d at 619. Plaintiffs have still not produced evidence that any voters have been denied the person of their choice to assist them in the absentee ballot application process, let alone voters belonging to the class of individuals identified in § 208 (i.e., those requiring assistance due to blindness, disability, or inability to read or write). Again, Mich. Comp. Laws § 168.759 does not prohibit Plaintiffs from assisting voters with filling out or returning applications—they just cannot solicit those voters to return the applications for them. That is nothing like the kind of "undue burden" that would be pre-empted by § 208. Plaintiffs' claim of pre-emption thus fares no better than it did when this Court denied Plaintiffs' request for preliminary injunction based upon pre-emption.

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C. The Voter Transportation law is constitutional.

1. The law is not unconstitutionally vague.

Plaintiffs argue that Mich. Comp. Laws § 168.931(1)(f) (the Voter Transportation Law), is unconstitutional under the First and Fourteenth Amendments because it is vague and overbroad. (ECF 17, Am. Comp., PageID.121-122, ¶79-82.)

In order to analyze these claims, it is helpful to first consider the statute's historical context. As originally enacted by 1895 P.A. 135, the law provided:

> *Any person who shall hire any carriage or other conveyance, or cause the same to be done, for conveying voters, other than voters physically unable to walk thereto, to any primary conducted hereunder*, or who shall solicit any person to cast an unlawful vote at any primary, or who shall offer to any voter any money or reward of any kind, or shall treat any voter or furnish any entertainment for the purpose of securing such voter's vote, support, or attendance at such primary or convention, or shall cause the same to be done, shall be deemed guilty of a misdemeanor. [Emphasis added.]

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By 1929, portions of the language in the provision had been divided along with the other described illegal acts and placed elsewhere in the law. *See* C.L. 1929, § 3298. And finally, it was amended[3] to its current version:

> A *person* shall not *hire* a motor vehicle or other conveyance or cause the same to be done, for conveying voters, other than voters physically unable to walk, to an *election*.

[3] *See* 1982 P.A. 201 and 1995 P.A. 261.

Mich. Comp. Laws § 168.931(1)(f) (emphasis added). As the Sixth Circuit earlier observed, this statute was "assuredly aimed at preventing a kind of voter fraud known as 'vote-hauling.'" *Priorities I,* 978 F.3d at 983. Vote-hauling is a form of bribery—paying a voter to "'haul' himself or herself (and maybe immediate or extended family) to the polls to vote." *Id.* It is "also a usual sink for election-day 'street money' or 'walking-around money,'" as reflected in several Kentucky federal vote-buying cases. *See, e.g., United States v. Adams*, 722 F.3d 788 (6th Cir. 2013); *United States v. Turner*, No. CRIM. 05-02, 2005 U.S. Dist. LEXIS 35818, 2005 WL 4001132 (E.D. Ky. Dec. 16, 2005). The Sixth Circuit also pointedly observed the work of Tracy Campbell, a professor of history at the University of Kentucky, who wrote about vote-hauling in his book about the history of American election fraud. *See* Tracy Campbell, Deliver the Vote 276 (2005) ("While cast as a way to get voters to the polls, it was often little more than an efficient vote-buying operation that provided 'walking-around money' to those willing to sell their votes."); *see also id*. at 279, 337. This is what Michigan's law seeks to control.

The Sixth Circuit has held that a statute should not be struck as facially vague unless the plaintiff has "demonstrated that the law is impermissibly vague in all of its applications." *Green Party v. Hargett*, 700 F.3d 816, 825 (6th Cir. 2012) (quoting *Vill. Of Hoffman Estates v. Flipside, Hoffman Estates Inc.,*455 U.S. 489, 497 (1982)). The purpose of this doctrine is "to ensure that both those who enforce

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a statute and those who must comply with it know what is prohibited," and not "to convert into a constitutional dilemma the practical difficulties of crafting a law that is general enough to take into account a variety of human conduct yet specific enough to provide fair warning." *Id.* (quoting *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972) and *Colten v. Kentucky*, 407 U.S. 104, 110 (1972) (internal quotation marks omitted)). Federal courts must construe challenged state statutes, whenever possible, so as "to avoid constitutional difficulty." *Id.* (quoting *Davet v. City of Cleveland*, 456 F.3d 549, 554 (6th Cir. 2006)). Every reasonable construction must be resorted to, in order to save a statute from unconstitutionality. *Id.* (quoting *Chapman v. United States*, 500 U.S. 453, 464 (1991)).

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Courts apply a two-part test to determine whether a law is unconstitutionally vague: first, the law must give a person of "ordinary intelligence a reasonable opportunity to know what is prohibited, so that [they] may act accordingly[;]" and second, the standards of enforcement must be precise enough to avoid "involving so many factors of varying effect that neither the person to decide in advance nor the jury after the fact can safely and certainly judge the result." *Grayned*, 408 U.S. at 108 (internal citation omitted); *Cline v. Frink Dairy Co.*, 274 U.S. 445, 465 (1927), *Columbia Natural Resources v. Tatum*, 58 F.3d 1101, 1105 (6th Cir. 1995) (quoting *Cline v. Frink Dairy Co.*, 274 U.S. 445, 465 (1927)). In *United States v. Lanier*, the Supreme Court also observed that, "the canon of strict construction of

criminal statutes, or rule of lenity, ensures fair warning by so resolving ambiguity in a criminal statute as to apply it only to conduct clearly covered[.]" 520 U.S. 259, 266 (1997). Also, any words not expressly defined in the statute will be interpreted according to their ordinary, contemporary, and common meaning. *Deutsche Bank National Trust Co. v. Tucker*, 621 F.3d 460, 463 (6th Cir. 2010).

Here, Plaintiffs essentially contend that the statute is vague because it is not clear what it means to "hire a motor vehicle." (ECF 17, PageID.121-122, ¶79-82.) But this argument fails when examined against the language of the law they seek to challenge.

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The Michigan Election Law does not define "person." But Mich. Comp. Laws § 8.3l provides that "[t]he word 'person' may extend and be applied to bodies politic and corporate, as well as to individuals." *See also*, Mich. Comp. Laws § 8.3a ("All words and phrases shall be construed and understood according to the common and approved usage of the language[.]"). Similarly, the act does not define the term "hire." But the Michigan Court of Appeals has interpreted the term in another context to mean " 'to engage the services of for wages or other payment,' or 'to engage the temporary use of at a set price.' " *Tech & Crystal, Inc v. Volkswagen of Am, Inc.*, 2008 WL 2357643, at *3 (Mich. Ct. App., June 10, 2008) (quoting *Random House Webster's College Dictionary* (1997)). However, the Act does define "[e]lection" to mean "an election or primary election at which

the electors of this state or of a subdivision of this state choose or nominate by ballot an individual for public office or decide a ballot question lawfully submitted to them." Mich. Comp. Laws § 168.2(g).

Thus, under the current version of § 931(1)(f), an individual or a corporate body cannot "hire" or engage the temporary service of a vehicle for a fee to transport voters to an election or primary election unless the voters are physically unable to walk to the election.

The words of the statute are readily understandable by a person of ordinary intelligence according to the common meaning of the words. As noted above, "hire" is defined in the dictionary as meaning "to engage the services of for wages or other payment," or alternatively, "to engage the temporary use of at a set price." *Tech & Crystal, Inc.*, 2008 WL 2357643, at *3 (quoting *Random House Webster's College Dictionary* (1997)). In either sense, the critical factor is the provision of services or use for a fee. Also, the statute prohibits hiring vehicles or conveyances "for voters," which necessarily contemplates acting on behalf of others, not oneself. Lastly, as discussed above, the original purpose and objective of the statute was to prohibit "vote-hauling," a form of bribery.

This Court previously observed that the law is "relatively straightforward and unambiguous." *See Priorities U.S.A.*, 487 F. Supp. 3d at 621. "In a nutshell, no person (including a corporation) may pay wages or make any other payment to

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another to transport voters to the polls, unless the person so transported cannot walk. Thus, ... a corporation is limited to providing transportation for voters who can walk through means that do not involve payment to the person doing the transporting." *Id*. Likewise, the Sixth Circuit did not appear to find the law ambiguous, observing that the law "assuredly" "prohibit[s] hiring carriages to take ambulatory voters to the polls" while "[v]olunteers can drive voters for free[.]" *Priorities U.S.A.*, 978 F.3d at 983, 985. Plaintiffs' alleged concerns—i.e., volunteers, gas money, or a voter paying for a taxi for themselves—are unfounded and not rooted in a reasonable reading of the statute. Accordingly, the Voter Transportation law is not unconstitutionally vague, and Defendant is entitled to judgment as a matter of law.

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2. The law does not unconstitutionally burden Plaintiffs' speech and associational rights.

Plaintiffs also argue that § 931(1)(f) impermissibly infringes on their speech and associational rights by (1) limiting political spending on transporting voters to the polls, and (2) regulating efforts to promote rides to the polls. (ECF 17, Am. Comp., PageID.122-124, ¶83-88.) Again, this is a facial challenge, subject to the rigors discussed above. Further, although the Court previously ruled that the exacting scrutiny standard applied to this challenge, (ECF No. 59, PageID.1003), the Sixth Circuit applied the *Anderson-Burdick* standard to Plaintiffs' argument on appeal, *Priorities II*, 860 Fed. Appx. at 422 n 3, which appears to be the law of the

case, *U.S. v. Campbell*, 168 F.3d 263, 265 (6th Cir. 1999); *Keith v. Bobby*, 618 F.3d 594, 600 (6th Cir. 2010).

Here, any burden imposed by § 931(1)(f) on Plaintiffs' rights is not severe and is outweighed by the State's important regulatory interest in preventing voter fraud, which helps preserve the integrity of Michigan's elections.

As explained above, under § 931(1)(f) Plaintiffs can spend any amount of money to transport voters to elections—they simply cannot use money to "hire" transportation for voters who are able to walk. And notably, Plaintiffs never alleged that any enforcement has been threatened against them for any of their volunteer activities. Further, there is no evidence that anyone has ever been prosecuted for a violation of this statute. The only record coming close to an enforcement of the act was the cease-and-desist letter to a Hamtramck city council candidate (who is not a party here), and the complaints received suggested that the candidate was paying workers $15 an hour to drive people to the polls. (Ex. A, AG's Answers to Pl's Int's, p 4-5, #4; Ex. B, Clark Tr., p 72 ln 6-15.) So, this incident was much closer to "vote-hauling" than to a volunteer GOTV effort. (Ex. B, Clark Dep. Exhibit 7; Ex. B, Clark Tr., p 72 ln 4-23, p 73 ln 23-p 74 ln 13, p 75 ln 15-22.)

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Plaintiffs may rely on the opinion of Dr. Sugrue to argue that there is no evidence that vote-hauling was discussed or debated in Michigan when the

Legislature first enacted this law in 1895. But this argument misses the point. The issue is not whether vote-hauling was endemic in Michigan elections, but whether the state has an interest in prohibiting certain corrupt expenditures or practices. While Plaintiffs may well be interested only in getting voters to polling places, other individuals or organizations with less altruistic motives could use the same practice to do just what Professor Campbell described—a vote-buying operation, perhaps aided by cell phones and "ballot selfies" to ensure that the buyers receive the benefit of their bargain. States certainly have a compelling interest in preventing or prohibiting such a practice:

> Confidence in the integrity of our electoral processes is essential to the functioning of our participatory democracy. Voter fraud drives honest citizens out of the democratic process and breeds distrust of our government. Voters who fear their legitimate votes will be outweighed by fraudulent ones will feel disenfranchised.

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Purcell v. Gonzalez, 549 U.S. 1, 4 (2006) (per curiam). *See also Eu v. San Francisco County Democratic Central Comm.*, 489 U.S. 214, 231 (1989); *Reynolds v. Sims*, 377 U.S. 533, 555 (1964).

It is also worth noting the narrowness of the prohibition being challenged here. Under the current version of § 931(1)(f), an individual or a corporate body cannot "hire" or engage the temporary service of a vehicle *for a fee* to transport voters to an election or primary election unless the voters are physically unable to walk to the election. But otherwise, the statute does not prohibit an individual or

corporate body from paying for expenses incurred in transporting a voter by vehicle. And it does not prohibit an individual or corporate body from providing voters with free transportation to an election. Simply put, volunteer efforts are not prohibited by the statute—only the "hiring" of transport. This cannot be considered a "severe burden" on Plaintiffs' rights, and it is counterbalanced by the state's compelling interests in protecting the integrity of its elections.

Indeed, the Sixth Circuit already opined that the statute "is likely not a severe burden on [Plaintiffs'] rights because it does not appear to result in 'exclusion or virtual exclusion' from the ballot." *Priorities II*, 860 Fed. Appx. at 422 n. 3 (quoting *Libertarian Party of Ky. v. Grimes*, 835 F.3d 570, 574 (6th Cir. 2016)). The Court further found that "[t]he state's interest in preventing potential voter fraud is an important regulatory interest," and "prohibiting paid vote-hauling is likely a reasonable, nondiscriminatory restriction justified by that interest." *Id.* The Sixth Circuit concluded that the Voter Transportation law "does not appear to pose an unconstitutional burden." *Id*. Furthermore, "'even assuming that the burden may not be justified as to a few voters, that conclusion is by no means sufficient to' warrant invalidating the paid driver ban altogether." *Id*. (quoting *Crawford*, 553 U.S. at 199-200).

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Accordingly, the Voter Transportation law does not impermissibly burden Plaintiffs' First and Fourteenth Amendment rights and is constitutional.

CONCLUSION AND RELIEF REQUESTED

For the reasons discussed above, Plaintiffs' claims are without merit, and Defendant Secretary of State Jocelyn Benson is entitled to judgment as a matter of law. Plaintiffs' amended complaint should be dismissed in its entirety with prejudice.

Respectfully submitted,

s/Erik A. Grill
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Dated: March 21, 2022

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CERTIFICATE OF SERVICE

I hereby certify that on March 21, 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/Erik A. Grill
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