

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

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

Plaintiffs,

v.

DANA NESSEL,

Defendant,

and

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

Intervenors–Defendants.

Civil No. 2:19-cv-13341-SJM-KGA

United States District Judge  
Stephen J. Murphy, III

**JOINT STATUS REPORT AND  
PLAINTIFFS' REQUEST FOR  
STATUS CONFERENCE**

Pursuant to correspondence with the case manager of this Court on June 23, 2022, the parties to this case, by and through their respective counsel, jointly submit this Joint Status Report.

**I. Related Cases**

This case is not related to any other cases.

## **II. Jurisdiction and Venue**

This action arises under the U.S. Constitution and laws of the United States. This Court has original subject-matter jurisdiction of the federal questions presented in this case pursuant to 28 U.S.C. §§ 1331 and 1343.

Venue is proper pursuant to 28 U.S.C. §§ 1391(b) and 1391(c) because Defendant resides and/or conducts business in the Eastern District of Michigan.

## **III. Joint Statement of Relevant Procedural History**

Plaintiffs are three non-profit organizations. On November 12, 2019, Plaintiff Priorities USA filed suit against Defendant Dana Nessel, seeking to enjoin enforcement of Michigan Compiled Laws §§ 168.759(4), (5), (8) (collectively, the “Absentee Application Provisions”) and Michigan Compiled Laws § 168.931(1)(f) (the “Voter Transportation Law”). Compl., ECF No. 1, at PageID.12–17.

In relevant part, the Absentee Application Provisions criminalize “solicit[ing] or request[ing] to return” an absentee ballot application and limit who can return said applications. The Voter Transportation Law criminalizes “hir[ing] a motor vehicle” to transport voters to an election unless those voters are “physically unable to walk.”

On December 12, 2019, Defendant Nessel moved to dismiss the initial complaint. Motion to Dismiss, ECF No. 10, PageID.34–37. The Court invited an amended complaint in light of Defendant Nessel’s motion. Order Regarding Motion to Dismiss, ECF No. 13, PageID.81–82. Plaintiffs then amended their complaint on January 27, 2020, adding Rise, Inc. and the Detroit/Downriver Chapter of the A.

Philip Randolph Institute (“DAPRI”) as Plaintiffs. In their Amended Complaint, Plaintiffs allege that the Absentee Application Provisions—specifically the ban on soliciting to return absentee ballot applications—is unconstitutionally vague and overbroad (“Count I”); the Absentee Application Provisions violate the Plaintiffs’ speech and associational rights protected by the First and Fourteenth Amendments to the United States Constitution (“Count II”); the Absentee Application Provisions impose an undue burden on the right to vote (“Count III”); Section 208 of the Voting Rights Act of 1965 preempts the portion of the Absentee Application Provisions limiting who may return absentee ballot applications (“Count IV”); the Voter Transportation Law is unconstitutionally vague and overbroad (“Count V”); the Voter Transportation Law violates the Plaintiffs’ speech and associational rights protected by the First and Fourteenth Amendments (“Count VI”); the Voter Transportation Law imposes an undue burden on the right to vote (“Count VII”); and the Federal Election Campaign Act of 1971 (“FECA”) preempts the Voter Transportation Law (“Count VIII”). Am. Compl., ECF No. 17, PageID.112–26.

On January 28, 2020, Plaintiffs moved for a preliminary injunction and to consolidate the hearing on their motion with the trial on the merits and moved for expedited consideration in light of the then-impending 2020 election. ECF No. 22, ECF No. 23. On February 10, 2020, Defendant Nessel moved to dismiss. ECF No. 27. On February 19, 2020, the Michigan Republican Party and the Republican

National Committee (the “Republican Committees”) moved to intervene. ECF No. 33. On February 27, 2020, the Michigan House of Representatives and the Michigan Senate (the “Legislature”) moved to intervene. ECF No. 39. On May 22, 2020, the Court granted both motions to intervene. ECF No. 60.

On May 22, 2020, the Court dismissed Plaintiffs’ “burden on the right to vote” claims (Counts III and VII) but found that Plaintiffs had stated a claim as to all other counts. *See* ECF No. 59 at PageID.962. On September 17, 2020, the Court denied Plaintiffs’ motion for preliminary injunction as to the Absentee Application Provisions but granted it as to the Voter Transportation Law, based on Plaintiffs’ claim that the Law was preempted by FECA (Count VIII). *See* ECF No. 79 at PageID.1623–24. The Court did not address Counts V and VI. *Id.* at PageID.1624 n.5. On October 21, 2020, the Sixth Circuit stayed the preliminary injunction decision. *See Priorities USA v. Nessel*, 978 F.3d 976, 985 (6th Cir. 2020). On July 20, 2021, it reversed as to the preliminary injunction and remanded for further proceedings. *See Priorities USA v. Nessel*, 860 F. App’x 419, 423 (6th Cir. 2021).

On August 26, 2021, the parties jointly filed a Rule 26(f) Report, in which Plaintiffs stated their intention to pursue only Counts II, IV, V, and VI. ECF No. 109 at PageID.1852–53. On September 3, 2021, the District Court issued a case management order granting Plaintiffs’ request for limited discovery. ECF No. 110. On September 24, 2021, the Legislature and the Republican Committees both filed

Rule 12(c) Motions for Judgment on the Pleadings. ECF No. 113, ECF No. 115. Defendant Nessel concurred in the Legislature's 12(c) Motion. ECF No. 114. Briefing on those motions concluded on October 29, 2021. *See* ECF No. 123, ECF No. 124. Those motions are currently pending.

Consistent with the case management order, the parties filed initial witness lists on October 4, 2021, ECF Nos. 117–120, and final witness lists on November 4, 2021, ECF 126–129. The parties completed fact discovery on December 3, 2021.

On December 17, 2021, Plaintiffs served two expert reports—by Dr. Michael Herron and Dr. Thomas J. Sugrue. On January 14, 2022, the Republican Committees served an expert report by Kimberly Westbrook Strach. Expert depositions concluded on February 9, 2022. *See* ECF No. 139.

On February 18, 2022, the Legislature moved to extend the dispositive and *Daubert* motion deadlines by two weeks, to March 21, 2022. ECF No. 140. The Republican Committees concurred. ECF No. 142. Plaintiffs opposed that motion, citing the impending August primary election and the need for expeditious resolution of this matter. ECF No. 141, at PageID.2147–2148. The Court granted the motion, stating that “[w]hile the court recognizes the tight timeframe imposed by the August 2, 2022 primary, it also believes that a two-week delay will not substantially impede a decision on the merits of the parties’ dispositive motions.” ECF No. 145, at PageID.2165.

On March 21, 2022, Plaintiffs moved to exclude the testimony of Ms. Strach. ECF No. 153. The same day, the Republican Committees moved to exclude the testimony of Dr. Herron, ECF No. 155, and the Legislature moved to exclude the testimony of Dr. Sugrue, ECF No. 148. Briefing on those motions concluded on April 11, 2022. *See* ECF Nos. 167, 171, 176. Those motions are currently pending.

On March 21, 2022, the parties also filed cross-motions for summary judgment. ECF Nos. 149, 150, 152, 154. Briefing on those motions concluded on April 25, 2022. ECF Nos. 180–183. Those motions are currently pending.

On March 29, 2022, Uber Technologies, Inc. filed a motion for leave to file an amicus brief, along with the proposed brief itself, in support of Plaintiffs' Motion for Summary Judgment. ECF No. 157. The Legislature opposed that motion. ECF No. 165. Briefing on Uber's motion concluded on April 18, 2022. ECF No. 179. Uber's motion is currently pending.

On June 16, 2022, this case was reassigned to Judge Terrence G. Berg. Administrative Order 22-AO-036. On June 17, 2022, the case was reassigned to Judge Judith E. Levy. ECF No. 186. On June 21, 2022, this case was reassigned to Judge Murphy. ECF No. 187.

As of the date of this filing, no final pretrial or trial dates have been set. The following motions are fully briefed and remain outstanding:

***Motions for Judgment on the Pleadings***

(1) The Legislature's Rule 12(c) motion for judgment on the pleadings. Motion, ECF No. 113; Concurrence, ECF No. 114; Plaintiffs' Response, ECF No. 121; Reply, ECF No. 123.

(2) The Republican Committees' Rule 12(c) motion for judgment on the pleadings. Motion, ECF No. 115; Plaintiffs' Response, ECF No. 121; Reply, ECF No. 124.

***Rule 702/Daubert Expert Motions***

(3) Plaintiffs' motion challenging Kimberly Westbrook Strach. Motion, ECF No. 153; Republican Committees' Response, ECF No. 159; Reply, ECF No. 171.

(4) The Legislature's motion challenging Dr. Thomas Sugrue. Motion, ECF No. 148; Plaintiffs' Response, ECF No. 161; Reply, ECF No. 167.

(5) The Republican Committees' motion challenging Dr. Michael Herron. Motion, ECF No. 155; Plaintiffs' Response, ECF No. 160; Reply, ECF No. 176.

***Summary Judgment Motions***

(6) Plaintiffs' motion for summary judgment. Motion, ECF No. 152; AG's Response, ECF No. 166; Legislature's Response, ECF No. 170; Republican Committees' Response, ECF No. 177; Reply, ECF No. 182.

(7) The Attorney General's motion for summary judgment. Motion, ECF No. 149; Plaintiffs' Response, ECF No. 175; Reply, ECF No. 180.

(8) The Legislature's motion for summary judgment. Motion, ECF No. 150; AG's Concurrence, ECF No. 169; Plaintiffs' Response, ECF No. 175; Reply, ECF No. 181.

(9) The Republican Committees' motion for summary judgment. Motion, ECF No. 154; AG's Concurrence, ECF No. 168; Plaintiffs' Response, ECF No. 175; Reply, ECF No. 183.

### *Amicus Motions*

(10) Uber Technologies' motion for leave to file an amicus brief. Motion, ECF No. 157; Legislature's Response, ECF No. 165; Reply, ECF No. 179.

## **IV. Plaintiffs' Request for Status Conference**

Given that this is an election case, and given the exigencies presented by Michigan's upcoming August 2, 2022, primary election and November 8, 2022, general election,<sup>1</sup> Plaintiffs request a status conference to address the outstanding motions and whether scheduling argument would be helpful to the Court to resolve those motions. In addition, Plaintiffs would request an expedited trial date in the event the case is not resolved by summary judgment. Plaintiffs—non-profit organizations that wish to engage in election-related activities that are prohibited by

---

<sup>1</sup> See Michigan Department of State, 2022 Michigan Election Dates, [https://www.michigan.gov/sos/-/media/Project/Websites/sos/01mcalpine/2022\\_Election\\_Dates\\_Booklet\\_738675\\_7-\(2\).pdf?rev=dbace5d1524c4156863185a1e9fe2410&hash=AE6210C960392A93D403BAA88B8442D1](https://www.michigan.gov/sos/-/media/Project/Websites/sos/01mcalpine/2022_Election_Dates_Booklet_738675_7-(2).pdf?rev=dbace5d1524c4156863185a1e9fe2410&hash=AE6210C960392A93D403BAA88B8442D1) (last visited June 25, 2022).

the Challenged Laws—are particularly concerned that yet another election will come and go without any resolution in this matter.

Notably, enjoining the enforcement of the Challenged Laws—both of which are criminal statutes—does not raise the type of concerns regarding election administration or voter confusion that courts may consider when evaluating whether to order a change in election laws prior to an election. *See Feldman v. Ariz. Sec’y of State’s Off.*, 843 F.3d 366, 368 (9th Cir. 2016) (“The only effect [of the injunction] is on third party ballot collectors, whose efforts to collect legitimate ballots will not be criminalized.”); *Longoria v. Paxton*, No. SA:21-CV-1223-XR, 2022 WL 447573, at \*20 (W.D. Tex. Feb. 11, 2022), *vacated and remanded on other grounds*, No. 22-50110, 2022 WL 2208519 (5th Cir. June 21, 2022) (“[U]nlike an order requiring affirmative changes to the election process before it occurs, an injunction against enforcement proceedings is removed in space and time from the mechanics and procedures of voting.”); *Lichtenstein v. Hargett*, 489 F. Supp. 3d 742, 756 n.16 (M.D. Tenn. 2020) (“[E]njoining enforcement of the Law would merely put a stop to particular criminal prosecutions . . . it would not strain administration of election procedures or risk voter confusion.”).

## V. Defendants’ Position

This case has been pending for well over two years and involves complex legal arguments concerning statutes with over 100 years of history. There are ten

pending motions, comprised of roughly 460 pages of briefing and almost 4,000 pages of exhibits. In light of these factors and that early voting in the upcoming primary elections has already begun, *see Purcell v. Gonzalez*, 549 U.S. 1, 4–6 (2006) (per curiam), Defendants respectfully request the Court act in whatever fashion it deems necessary to review the record and thereafter proceed consistent with the interests of justice. That said, Defendants do not oppose Plaintiffs’ request for a status conference at the Court’s discretion.

Respectfully submitted,

Dated: July 6, 2022

/s/ Marc E. Elias

Marc E. Elias  
ELIAS LAW GROUP LLP  
10 G St NE, Suite 600  
Washington, DC 20002  
Telephone: (202) 968-4490  
melias@elias.law  
*Counsel for Plaintiffs*

Dated: July 6, 2022

/s/ Erik A. Grill

Erik A. Grill (P64713)  
Assistant Attorney General  
P.O. Box 30736  
Lansing, Michigan 48909  
517.335.7659  
Email: grille@michigan.gov  
*Counsel for the Attorney General of the  
State of Michigan*

Dated: July 6, 2022

/s/ Roger P. Meyers

Roger P. Meyers (P73255)  
100 W. Big Beaver Rd., Ste. 400  
Troy, MI 48084  
(248) 822-7800

meyers@bsplaw.com  
*Counsel for the House of Representatives  
and the Senate of the State of Michigan*

Dated: July 6, 2022

/s/ Kurtis T. Wilder

Kurtis T. Wilder (P37017)  
150 West Jefferson Avenue, Suite 150  
Detroit, Michigan 48226  
(313) 225-7000  
wilder@butzel.com  
*Counsel for the Michigan Republican Party  
and the Republican National Committee*

RETRIEVED FROM DEMOCRACYDOCKET.COM

**CERTIFICATE OF SERVICE**

I hereby certify that on July 6, 2022, I filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification to all counsel of record in this case.

*/s/ Marc. E Elias* \_\_\_\_\_

Marc E. Elias

ELIAS LAW GROUP LLP

10 G St NE, Suite 600

Washington, DC 20002

melias@elias.law

RETRIEVED FROM DEMOCRACYDOCKET.COM