No. 20-1931

IN THE

United States Court of Appeals

FOR THE SIXTH CIRCUIT

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

Plaintiffs—Appellees,

v.

DANA NESSEL,

Defendant—Appellant,

and

THE MICHIGAN SENATE, THE MICHIGAN HOUSE OF REPRESENTATIVES, THE MICHIGAN REPUBLICAN PARTY, AND THE REPUBLICAN NATIONAL COMMITTEE,

Intervenor-Defendants—Appellants,

Appeal from the United States District Court
for the Eastern District of Michigan in
Case No. 4:19-cv-13341 (Dawkins Davis, J.)

OPENING BRIEF FOR THE MICHIGAN SENATE AND MICHIGAN HOUSE OF REPRESENTATIVES

Oral Argument Requested

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STATEMENT REGARDING ORAL ARGUMENT

Intervenor-Defendants-Appellants the Michigan Senate and Michigan House of Representatives (the "Legislature") request oral argument. *See* 6th Cir. R. 34(a). This Court would benefit from oral argument because of the novel legal questions presented and complicated procedural history.

STATEMENT OF JURISDICTION

The district court had subject-matter jurisdiction under 28 U.S.C. § 1331 because the Complaint raises several federal questions. The district court issued a preliminary injunction on September 17, 2020. RE 79, PageID# 1571–1624. The Legislature timely filed its notice of appeal on September 24, 2020. RE 80, PageID# 1625–1627. The Court has jurisdiction over this appeal because it is from an interlocutory order granting an injunction. *See* 28 U.S.C. § 1292(a)(1); Fed. R. App. P. 4(a).

STATEMENT OF THE ISSUES

I. The Federal Election Campaign Act ("FECA") preempts state laws governing campaign contributions or expenditures but not laws targeting "voting fraud" or "similar offenses." For 125 years, Michigan's paid-transportation law has prohibited paying third parties from transporting voters to the polls. The law is not a campaign-finance law, as the Legislature intended it to prevent persons from hauling votes or unduly influencing or intimidating voters. Did the district court err in holding that the FECA likely preempts Michigan's paid-transportation law?

The Legislature answers: Yes.

Appellees answer: No.

This Court should answer: Yes.

II. The district court held that enforcing Michigan's paid-transportation ban would irreparably harm Appellees' federal rights during the 2020 election. But the 2020 elections are over. Appellees have no FECA right to pay third parties to transport voters. Appellees unreasonably delayed in seeking an injunction. And their analysis inappropriately relies on voters' rights instead of their own. Did the district court therefore err in holding that Appellees would be irreparably harmed by enforcement of Michigan's paid-transportation ban?

The Legislature answers: Yes.

Appellees answer: No.

This Court should answer: Yes.

III. The State is irreparably harmed any time it is prevented from enforcing validly passed laws. The district court's injunction stopped Michigan from enforcing its paid-transportation ban. Did the district court err in ignoring this substantial and ongoing harm?

The Legislature answers: Yes.

Appellees answer: No.

This Court should answer: Yes.

IV. The public has a strong interest in protecting election integrity and enforcing valid laws. Did the district court err in holding that the public interest would be served by enjoining the paid-transportation ban?

The Legislature answers: Yes.

Appellees answer: No.

This Court should answer: Yes.

STATEMENT OF THE CASE

I. Relevant Law: Mich. Comp. Laws § 168.931(1)(f)

The Michigan Constitution grants the Legislature the "legislative power of the State." Mich. Const. art. 4, § 1. The Legislature therefore has the exclusive power to "to regulate the time, place and manner of all nominations and 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." Mich. Const. art. 2, § 4.

Under this authority, the Legislature passed Section 931 of the Michigan Election Law, which creates protections against undue influence and corruption in elections. Mich. Comp. Laws § 168.931. For example, Section 931(1)(a) makes it a misdemeanor to promise or lend something of valuable consideration in exchange for a vote. Section 931(1)(d) makes it a misdemeanor to threaten someone's employment unless they vote for a particular candidate. And Section 931(1)(e) prohibits religious leaders from threatening religious penalties to influence votes. Priorities[1] challenges Section 931(1)(f), which criminalizes paying for a voter's transportation to an election unless that voter is unable to walk. *See* Mich. Comp.

[1] Throughout, the Legislature collectively refers to Appellees Priorities USA, Rise, Inc., and the Detroit/Downriver Chapter of the A. Philip Randolph Institute as simply "Priorities."

Laws § 168.931(1)(f) (throughout, "Section 931(1)(f)") (providing that a person is guilty of a misdemeanor if he "hire[s] a motor vehicle or other conveyance or cause[s] the same to be done, for conveying voters, other than voters physically unable to walk, to an election"). As the district court recognized, RE 79, p. 11, PageID# 1581, this prohibition has existed in functionally the same form since 1895, when it forbade paid transportation by carriage. *See* 1895 P.A. 135. Until now, no one had challenged Section 931(1)(f) for 125 years.

II. Procedural Background

Priorities USA filed this case in November 2019. RE 1, Compl., PageID# 1–18. Defendant Nessel moved to dismiss, RE 10, PageID# 34–78, so Priorities USA filed an Amended Complaint in January 2020, adding Rise, Inc., and the Detroit/Downriver Chapter of the A. Philip Randolph Institute as plaintiffs, RE 17, PageID# 88–128. The Amended Complaint asserts eight counts: Counts I–IV allege that the ballot-application harvesting ban, Mich. Comp. Laws §§ 168.759(4), (5), (8), which limits who may gather absentee-ballot applications, was unconstitutional or preempted. Counts V–VIII alleged that the paid-transportation ban, Mich. Comp. Laws § 168.931(1)(f), was unconstitutional or preempted. RE 17, PageID# 112–27. Count VIII in particular argues that the Federal Election Campaign Act preempts Section 931(1)(f) . *Id.*

In late January 2020, Priorities moved for a preliminary injunction, seeking to enjoin Section 931(1)(f). RE 22, PageID# 139–201. In early February 2020, Nessel moved to dismiss the amended complaint, RE 27, PageID# 381–434. And in mid-February 2020, the Michigan Republican Party and the Republican National Committee and the Legislature moved to intervene. RE 33, PageID# 498–566; RE 39, PageID# 697–732.

The court partially granted Nessel's motion to dismiss, dismissing Counts III and VII, RE 59, PageID# 961–1015. Meanwhile, it granted the motions to intervene. RE 60, PageID# 1016–27.

The court then held a hearing on the motion for a preliminary injunction in mid-July. RE 78, PageID# 1516–70. And on September 17, less than two months before election day, the court granted in part Priorities's motion for a preliminary injunction, prohibiting Michigan from enforcing crucial election protections.

A. The September 17 Preliminary Injunction

The district court enjoined Section 931(1)(f), holding that FECA preempted it. RE 79, September 17 Order, p. 51, PageID# 1621. Under 52 U.S.C. § 30143 (formerly 2 U.S.C. § 453), FECA will "supersede and preempt any provisions of state law with respect to election to Federal office." *Id.* at 43, PageID# 1613 (quoting § 30143). The procedure to decide preemption, the court said, is to "juxtapose the state and federal laws, demonstrate their respective scopes, and evaluate the extent

to which they are in tension." *Id.* at 41, PageID# 1611 (quoting *Teper v. Miller*, 82 F.3d 989 (11th Cir. 1996)).

The court first established what the laws at issue say. Section 931(1)(f), it said, is straightforward: "In a nutshell, no person (including a corporation) may pay wages or make any other payment to another to transport voters to the polls, unless the person so transported cannot walk." *Id.* at 42, PageID# 1612.

FECA is more complicated. FECA-related regulations say federal law supersedes state law governing, among other things, "[l]imitation on contributions and expenditures regarding Federal candidates." *Id.* at 44, PageID# 1614 (quoting 11 C.F.R. § 108.7(b)(3)). But these same rules exempt laws governing "false registration, voting fraud, theft of ballots, and similar offenses" from preemption. *Id.* (quoting 11 C.F.R. § 108.7(c)(4)). In two cases, corporate payments for voter-registration and get-out-the-vote drives are *not* considered contributions or expenditures under FECA. *Id.* First, if corporate get-out-the-vote and voter-registration communications do not advocate for or against a candidate or political party, then they are exempt. *Id.* at 44–45, PageID# 1614–15 (citing 11 C.F.R. § 114.4(c)(2)). Second, if an organization provides direct assistance in voter-registration or get-out-the-vote drives—including assistance "providing transportation to the polls," 11 C.F.R. § 114.4(d)(1)—then such efforts are also

exempt as long as they are offered regardless of the assisted voter's political preference. *Id.* at 45, PageID# 1615.

In short, a corporation can either (1) offer the kinds of get-out-the-vote and voter-registration drives just discussed, in which case its disbursed funds are not contributions or expenditures, or (2) politically advocate, thereby triggering a host of other federal regulations. *Id.* at 46, PageID# 1616. Either way, the court said, "FECA regulations expressly permit corporations like plaintiffs to spend money on providing transportation to the polls as part of their get-out-the-vote efforts." *Id.* The court said this permission "conflicts" with Section 931(1)(f), "which bars" nearly all spending on transportation to the polls. *Id.*

But the Court also had to consider whether Section 931(1)(f) fit under FECA's exception for laws about "false registration, voting fraud, theft of ballots, and similar offenses." *Id.* at 47, PageID# 1617. The court held that nothing in Section 931(1)(f)'s "plain language . . . suggests that its purpose is to prevent voter fraud or similar offenses." *Id.* at 48, PageID# 1618. It contrasted Section 931(1)(f) with other subsections that prohibit direct payments for votes. *Id.* According to the court, paying for voters' transportation does not influence their votes more than "offering to transport them" in the corporation's own vehicle. *Id.* at 49, PageID# 1619.

Finally, the court disagreed that FECA's preemption scope should be narrowly construed—especially with state criminal statutes. *Id.* It held that such a

construction should apply only to criminal statutes of general applicability. *Id.* When, on the other hand, the criminal statute at issue "regulated elections or campaign finance," the court believed the default was preemption. *Id.* at 50, PageID# 1620. In the court's view, Section 931(1)(f) "falls in the latter category of cases where preemption by FECA is generally found." *Id.* at 51, PageID# 1621. The court therefore held that Section 931(1)(f) is unlikely to be excepted from FECA's preemption rule. *Id.*

The Legislature filed a Notice of Appeal on September 24. RE 80, PageID# 1625–27. The Republican Party intervenors followed suit. RE 81, PageID# 1628–30.

B. The October 21 Stay of the Preliminary Injunction.

The Legislature filed an emergency motion before this Court to stay the district court's preliminary injunction. This Court stayed the district court's injunction in a published opinion on October 21.

In staying the preliminary injunction, this Court made three key holdings: the Legislature has standing, Priorities is likely going to lose on the merits, and the injunctive-relief test's three equitable factors weigh against Priorities. *See Priorities USA v. Nessel*, 978 F.3d 976 (6th Cir. 2020).

Relying on *United States v. Windsor*, 570 U.S. 744 (2013), the Court observed that Congress should not always be barred from defending a law in lieu of the

executive. *Priorities USA*, 978 F.3d at 980. Michigan has the "same basic division of legislative, executive, and judicial power as the federal government," so the same separation-of-powers concern applies here, too. *Id.* at 981. As in *Windsor*, "the State of Michigan was injured in its sovereign capacity by its inability to enforce its duly enacted statute." *Id.* at 980.

The Court also relied on Michigan-specific authorities, including the Michigan Constitution and the Michigan Court of Appeals, in finding that the Legislature had standing. The Michigan Court of Appeals had recently recognized that the Legislature "certainly has an interest in defending its own work." *Id.* at 981 (quoting *Mich. Alliance for Retired Ams. v. Sec'y of State*, ___ N.W.2d ___, 2020 WL 6122745, at *3 (Mich. Ct. App. Oct. 16, 2020)). This includes defending "the constitutionality of" statutes and litigating about how future Michigan elections will be conducted. *Id.* These Michigan authorities show that the Legislature, "both houses acting in concert," may "defend a state election law in court when the attorney general will not." *Id.* at 981–82. Finally, even if the Legislature couldn't defend Section 931(1)(f) on the State's behalf instead of the attorney general, it could sue to protect its own institutional rights. *Id.* at 982. The Court reasoned that the injunction prohibited the Legislature from enacting "any enforceable laws that even *regulate* hired voter transportation for federal elections." *Id.* Because the injunction

disrupted the Legislature's power to regulate elections, it "suffered a sufficient injury for standing." *Id.*

The Court then moved to the substantive issue—whether to stay the district court's injunction. It first held that Priorities is not likely to succeed on the merits. FECA's "broad preemption language" says FECA's provisions *and* the rules promulgated under them preempt conflicting state law. *Id.* at 983. The rule at issue, 11 C.F.R. § 108.7, restates FECA's preemption language (subsection (a)), lists three types of state laws that *are* preempted (subsection (b)), and lists six types of state laws that *are not* preempted (subsection (c)). *Id.* That § 108.7 specifies the types of laws that are preempted shows that subsection (a) is not "as sweeping" as it first appears. *Id.* And subsection (b)'s three types of preempted laws all regard campaign finance—specifically "the sources of funding and reporting on its collection and distribution." *Id.* Under *ejusdem generis*, then, § 108.7 likely doesn't apply to laws about voter transportation. *Id.*

The Court's decision ultimately hinged on subsection (c)(4). Subsection (c)(4) allows state laws and regulations that prohibit "false registration, voting fraud, theft of ballots, and similar offenses." § 108.7(c)(4). Michigan's paid-transportation ban "is assuredly aimed at preventing a kind of voter fraud known as 'vote-hauling'"—a tactic where someone pays "a voter to 'haul' himself or herself (and maybe immediate or extended family) to the polls." *Priorities USA*, 978 F.3d at 983

(citing several authorities in support). Indeed, many states prohibit analogous expenditures on election day. *Id.* at 983–84. The Court said that not "all vote-hauling payments are fraudulent." *Id.* at 984. But states may enact "a prophylactic rule" that prevents even "the potential for fraud where enforcement is otherwise difficult." *Id.* Section 931(1)(f) is just such a rule because it is "intended to prevent fraud and undue influence." *Id.* Finally, the Court rejected the district court's contrary reading of Section 931(1)(f) because it relied on a flawed statutory construction of Section 931(1)(f)'s text. *Id.* at 984–85. For all these reasons, the Court held that the Legislature's "likelihood of success on appeal is high." *Id.* at 985.

Given this, and because the balance of equities favored the Legislature, the Court stayed the district court's injunction. *Id.*

SUMMARY OF THE ARGUMENT

The Court should reverse the district court's opinion and overturn its injunction. None of the four traditional injunctive-relief factors favors Priorities.

First, Priorities is not likely to succeed on the merits. Federal courts have a strong presumption against preempting state law—it is a high bar to clear. Further, FECA's preemption rule, though at first blush broad, is construed narrowly. It does not apply here because Section 931(1)(f) is not a campaign-finance law regulating campaign expenditures or contributions. Nor does Section 931(1)(f) contradict regulations allowing corporations and unions to provide transportation to the polls. But even if FECA and Section 931(1)(f) did conflict, FECA's enacting rules explicitly exempt from preemption state laws that target voter fraud or similar offenses. Section 931(1)(f) does just that: the Legislature intended the law to prevent vote-hauling and the undue influence and intimidation of voters. It therefore fits within the exemption to FECA preemption. The district court's ruling to the contrary relied on Section 931(1)(f)'s predecessor but misunderstood that statute's language.

Second, the equitable factors weigh against Priorities, too. Priorities cannot show that it will suffer irreparable harm absent the injunction. Priorities sought the preliminary injunction to keep Section 931(1)(f) from interfering with Priorities's 2020 election work. But 2020 is over, and no imminent threat exists that authorities will prosecute Priorities for violating Section 931(1)(f). Priorities fails to show that

it has a constitutional or statutory right to transport voters to the polls. It delayed for years before suing. And it inappropriately focuses on putative injury to voters, who, as third parties, do not matter for the irreparable-harm analysis. On the other hand, the injunction harms the Legislature. The Supreme Court has repeatedly said that a state is seriously and irreparably harmed whenever a court enjoins it from enforcing a statute. That is what the district court did here. Finally, the public has an interest in properly applying Michigan law and fairly administering elections. Section 931(1)(f) has been on the books (in some form) for 125 years. The public interest heavily favors the status quo and not preventing the law's enforcement during this litigation.

For these reasons, the Court should reverse the district court and overturn its preliminary injunction.

ARGUMENT

"A preliminary injunction is an extraordinary and drastic remedy; it is never awarded as of right." *Munaf v. Geren*, 553 U.S. 674, 689 (2008) (cleaned up). The court considers four factors when deciding a motion for a preliminary injunction: "(1) whether the movant has a strong likelihood of success on the merits; (2) whether the movant would suffer irreparable injury without the injunction; (3) whether issuance of the injunction would cause substantial harm to others; and (4) whether the" injunction would serve "the public interest." *Speech First, Inc. v. Schlissel*, 939

F.3d 756, 763 (6th Cir. 2019) (cleaned up). The Court reviews the first factor de novo, but the "ultimate determination as to whether the four preliminary injunction factors weigh in favor of" issuing the injunction "is reviewed for abuse of discretion." *Id.* Here, all four factors weigh against the preliminary injunction.

I. The Legislature is likely to succeed on the merits because FECA does not preempt Section 931.

The Legislature is likely to succeed on the merits for three reasons. *First*, federal preemption is a high bar to clear. *Second*, Section 931(1)(f) is harmonious with FECA's regulations because it is neither a "contribution" nor an "expenditure" under FECA. Instead, it limits spending on a particular activity to promote the integrity of Michigan's elections. *Third*, even if Section 931(1)(f) were an "expenditure" limit on federal elections, it falls into FECA's carve-out for fraud-prevention statutes.

A. Preemption is a heavy burden.

"[E]very preemption case starts with the presumption that Congress did not intend to displace state law." *N.Y. Pet Welfare Ass'n, Inc. v. City of N.Y.*, 850 F.3d 79, 86 (2d Cir. 2017); *accord Maryland v. Louisiana*, 451 U.S. 725, 746 (1981). This presumption rests on the "respect for the States as independent sovereigns in our federal system." *Wyeth v. Levine*, 555 U.S. 555, 565 n.3 (2009) (cleaned up). It is thus especially strong when the state wields state-specific powers. *See Hillman v. Maretta*, 569 U.S. 483, 490–91 (2013); *see also Weber v. Heaney*, 793 F. Supp.

1438, 1443 (D. Minn. 1992) (noting in the FECA context the " specific presumption against a finding of federal preemption in areas traditionally regulated by the states" (citing *California v. ARC Am. Corp.*, 490 U.S. 93 (1989)); *Self-Ins. Inst. of Am., Inc. v. Snyder*, 827 F.3d 549, 555 (6th Cir. 2016) (noting the "presumption that Congress generally does not intend to preempt state laws in areas of traditional state concern"). And especially when the Constitution itself specifies a role for the states—as it does with election regulation, *see* U.S. Const. art. I, § 4—the burden to show preemption "is onerous," *Weber*, 793 F. Supp. at 1443 (citing *Wis. Pub. Intervenor v. Mortier*, 501 U.S. 597, 605 (1991), and *Roudebush v. Hartke*, 405 U.S. 15, 24–25 (1972)). "The heavy burden of overcoming this presumption falls on the party alleging preemption." *N.Y. Pet Welfare Ass'n*, 850 F.3d at 86; *King v. Collagen Corp.*, 983 F.2d 1130, 1137 (1st Cir. 1993) (agreeing that overcoming the presumption against preemption is a "heavy burden"); *Weber*, 793 F. Supp. at 1443 (same in the FECA context).

Priorities bears this onerous burden here. In *Dewald v. Wriggelsworth*, this Court held that "the presumption against preemption applie[d]" to a Michigan criminal law. 748 F.3d 295, 303 (6th Cir. 2014). Section 931(1)(f) is also a Michigan criminal law. The presumption against preemption therefore applies. *See Karl Rove & Co. v. Thornburgh*, 39 F.3d 1273, 1280 (5th Cir. 1994) (holding in a FECA-preemption case that a "strong presumption exists against preemption, and

courts have given [FECA's preemption provision] a narrow preemptive effect in light of its legislative history" (cleaned up)); *accord Stern v. General Elec. Co.*, 924 F.2d 472, 475 n.3 (2d Cir. 1991).

B. Section 931(1)(f) and FECA are harmonious because Section 931(1)(f) governs neither expenditures nor contributions.

FECA's preemption provision says: "[T]he provisions of this Act, and of [sic] rules prescribed under this Act, supersede and preempt any provision of State law with respect to election to Federal office." 52 U.S.C. § 30143. "While at first blush, [this provision] appears to have an exceedingly broad scope, courts have not interpreted in that manner" for two reasons: U.S. const. art 1, § 4, and legislative history. *Krikorian v. Ohio Elections Comm'n*, No. 1:10-cv-103, 2010 WL 4117556, at *10 (S.D. Ohio Oct. 19, 2010) (cleaned up).

First, the Court must construe FECA preemption narrowly because of states' unique constitutional role in regulating elections of federal officers. States have no inherent right to regulate the elections of federal officers. *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 804, 833–34 (1995). This power is therefore "delegated to, rather than reserved by, the States" under U.S. const. art. I, § 4. *Id.* Crucially, art. I, § 4, gives states "'broad power' to prescribe the procedural mechanisms for holding congressional elections." *Cook v. Gralike*, 531 U.S. 510, 523 (2001). This power includes "matters like notices, registration, supervision of voting, protection of voters, prevention of fraud and corrupt practices, counting of votes, duties of

inspectors and canvassers, and making and publication of election returns." *Id.* at 523–24 (cleaned up). The states' unique constitutional role in regulating elections has two major implications for FECA preemption: first, FECA preemption is not nearly so broad as one might expect from the naked statutory text; second, 11 C.F.R § 108.7(c)'s exemption of certain statutory categories from preemption is merely an "acknowledge[ment of] a long-standing constitutional dichotomy concerning which aspects of federal elections the states may regulate." *Dewald*, 748 F.3d at 308 (Cole, J., dissenting).

Second, courts have recognized that FECA "is ambiguous and," thus, "have given [it] a narrow preemptive effect in light of its legislative history." *Krikorian*, 2010 WL 4117556, at *10 (cleaned up); *see also Janvey v. Democratic Senatorial Campaign Comm.*, 793 F. Supp. 2d 825, 845 (N.D. Tex. 2011) (adopting a "restricted conception of FECA's preemptive reach").

A few cases from this circuit show how these principles work in practice. A typical non-preemption case is *Krikorian*. There, an Ohio law was not preempted because it was "aimed at regulating false statements made during the course of an election" and thus didn't target campaign expenditures or contributions. *Krikorian*, 2010 WL 4117556, at *10. On the preemption side is *Bunning v. Kentucky*, 42 F.3d 1008 (6th Cir. 1994). There, this Court held that FECA preempted a Kentucky

campaign financing law imposing expenditure and disclosure requirements on federal candidates' political committees. *Id.* at 1012.

Krikorian and *Bunning* are emblematic of federal courts' reading of FECA: FECA-preempted laws are, by their nature, campaign-finance laws, *see Teper*, 82 F.3d at 995 (holding that FECA preempted a Georgia law forbidding legislators from accepting "campaign contributions during the period of time when they are actually legislating"); *Weber v. Heaney*, 995 F.2d 872, 873 (8th Cir. 1993) (Minnesota law provided state public financing to federal candidates who agreed to abide by state law campaign expenditure caps); *Republican Party of N.M. v. King*, 850 F. Supp. 2d 1206, 1215 (D.N.M. 2012) (FECA preempted New Mexico's contribution limits for federal candidates); but courts don't generally preempt non-campaign-finance laws, *see Krikorian*, 2010 WL 4117556, at *10; *Friends of Phil Gramm v. Ams. for Phil Gramm in '84*, 587 F. Supp. 769, 776 (E.D. Va. 1984).[2]

Restricting FECA preemption to campaign-finance type laws makes sense when one considers FECA's statutory structure and intent. As *Teper*, 82 F.3d at 994,

[2] Sometimes, preemption may be limited even in campaign-finance cases. *See Morton v. Crist*, No. 10-cv-450, 2010 WL 11507871, at *3 (M.D. Fla. Aug. 17, 2010) ("However, [*Teper* and *Weber*] stand for the limited propositions that FECA preempts state law as it pertains to the timing of campaign contributions and to limitations concerning the permissible amount of such contributions, respectively."). This confirms the strict presumption against preemption.

explains, FECA is "an intricate federal statutory scheme governing campaign contributions and expenditures related to federal elections." And its "primary purpose . . . is to regulate campaign contributions and expenditures in order to eliminate pernicious influence—actual or perceived—over candidates by those who contribute large sums" of money. *Thornburgh*, 39 F.3d at 1281. FECA therefore "imposes limits and restrictions on contributions; provides for the formation and registration of political committees; and mandates reporting and disclosure of receipts and disbursements made by such committees." *Bunning*, 42 F.3d at 1011. Given this structure and history, it's no surprise that courts find preemption only when the law at issue can be categorized as a campaign-finance law.

FECA does not preempt Section 931(1)(f) for three reasons. First, Section 931(1)(f) is not a campaign-finance law. Michigan codifies its extensive campaign-finance laws in Mich. Comp. Laws Chapter 169, titled "Campaign Finance and Advertising." But Section 931(1)(f) appears in Chapter 168, "Michigan Election Law," in the division titled, "Offenses and Penalties." In prohibiting payments to another in exchange for taking able-bodied persons to the polls, Section 931(f) targets voting integrity, not campaign finance. Section 931(f) is not the sort of law to which FECA applies. The Court should therefore hold that FECA does not preempt Section 931(1)(f).

Second, contrary to the district court's holding, 11 C.F.R. § 108.7(b)(3) does not preempt Section 931(1)(f) because Section 931(1)(f) has nothing to do with the "contributions" or "expenditures." Section 108.7(b)(3) says FECA preempts "State law concerning the . . . [l]imitation on contributions and expenditures regarding Federal candidates and political committees." "Contributions" and "expenditures":

> include any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value [except certain loans] to any candidate, political party or committee, organization, or any other person in connection with any election to any of the offices referred to in 11 CFR 114.2 (a) or (b) as applicable.

11 C.F.R. § 114.1(a)(1). But it is a strained reading of the phrase "contributions and expenditures" to hold that it encompasses money that a party pays to a *third* party to drive voters to the polls. And, indeed, any money paid by a candidate or political committee for transportation to buy a person's vote would be swept up in anti-fraud prohibitions (which FECA excludes).

This Court has already expressed its skepticism that § 108.7(b)(3) preempts Section 931(1)(f). In granting the Legislature's motion to stay, the Court noted that "[i]t is a bit strange, of course, that in the nearly 50 years since FECA was enacted, no one has tried to use it to challenge [Section 931(1)(f)] or many other state statutes related to nonmonetary election expenditures." *Priorities USA*, 978 F.3d at 983. Quite right. No one has ever challenged Section 931(1)(f) under FECA. That constitutes powerful evidence that FECA does not apply.

Third, contrary to the district court's holding, Section 931(1)(f) does not conflict with the regulations allowing corporations and unions to "[p]rovide transportation to the polls." 11 C.F.R. § 114.4(d)(1). Under Section 931(1)(f)'s plain language, a corporation or union may, for example, provide such transportation through their own employees or volunteers. Section 931(1)(f) prohibits only paying *someone else* to transport voters. The district court wrongly held that Section 931(1)(f)'s "hire" includes wages. RE 79, September 17 Order, p. 42, PageID# 1612. That is an unnatural reading of *hire*. Section 931(1)(f) uses *hire* in the context of elections—once-off events that come around once or twice a year. The much more natural definition of *hire* is therefore "[t]o procure the temporary use of property . . . at a set price." *Hire*, Black's Law Dictionary (11th ed. 2019). And while it may be possible to read Section 931(1)(f) to conflict with § 114.4(d)(1), the Court must choose a harmonious reading if it can. *See Weber*, 793 F. Supp. at 1443 ("[T]here is a general presumption that Congress did not intend to displace state law.").

C. Section 931(1)(f) falls under FECA's carve-outs for laws intended to protect election integrity.

Even if Section 931(1)(f) is a "contribution" or "expenditure" limit, it is excepted from the preemption provision by the carve-outs in 11 C.F.R. § 108.7. Specifically, § 108.7(c)(4) says FECA does not preempt, "[s]tate laws which provide for the prohibition of false registration, voting fraud, theft of ballots, and similar

offenses." Section 931(1)(f) falls under § 108.7(c)(4) because Section 931(1)(f) prevents "voting fraud" and "similar offenses"—in particular, vote-hauling and undue influence/intimidation.

What do "voting fraud" and "similar offenses" mean in this context? Neither dictionaries nor cases provide a generally accepted definition of *voting fraud*. But colloquially, we understand *voting fraud* to encompass misbehavior relating to the act of voting itself—such as voting via fake IDs, paying for votes, or voting in multiple precincts—whether perpetrated by a campaign, a third party, or the voter themselves. *Cf.* Brooke Lierman, *Election Day Registration: Giving All Americans a Fair Chance to Vote*, 2 Harv. L. & Pol'y Rev. 173, 185 n.39 (2008) ("Voter fraud is defined as 'the intentional corruption of the electoral process by the voter,' which includes giving false information to establish voter eligibility and illegally conspiring to encourage illegal voting.").

The term *similar offenses* is broader. Under the canon of *ejusdem generis*, the Court discerns its meaning by finding the common denominator in (c)(4)'s other words. *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 114–15 (2001) ("[Under] the maxim *ejusdem generis* . . . [w]here general words follow specific words in a statutory enumeration, the general words are construed to embrace only objects similar in nature to those objects enumerated by the preceding specific words.") (cleaned up); *Dewald*, 748 F.3d 295, 303 (6th Cir. 2014) (using *ejusdem generis* to

determine that common-law fraud ancillary to an election was not preempted by FECA). The common theme of (c)(4)'s specific words and phrases is election fraud generally (another phrase often used but largely undefined in caselaw and dictionaries). A good definition of *election fraud*, offered by the International Foundation of Election Systems, is "any purposeful action taken to tamper with electoral activities and election-related materials in order to affect the results of an election, which may interfere with or thwart the will of the voters." Rafael López-Pintor, *Assessing Electoral Fraud in New Democracies: A Basic Conceptual Framework*, INT'L FOUND. FOR ELECTORAL SYS., 9 (2010). That definition captures well the gist of subsection (c)(4).

There are many ways to commit election fraud—including impersonating others at the polls, falsely registering voters, voter intimidation, and sending fraudulent mail-in ballots, among others. *See In re Request for Advisory Opinion Regarding Constitutionality of 2005 PA 71*, 740 N.W.2d 444 (Mich. 2007) (Kelly, j., dissenting) (recognizing many kinds of election fraud). Rather than combat the quid-pro-quo variety of election fraud, Section 931(1)(f) aims to prevent two types of misbehavior that fall under *voter fraud* or *similar offenses*: (1) vote-hauling and (2) undue influence and intimidation.

Vote-hauling. Vote-hauling is "a classic form of bribery—paying a voter to 'haul' himself or herself (and maybe immediate or extended family) to the polls to

vote." *Priorities USA*, 978 F.3d at 983. While vote-hauling is "cast as a way to get voters to the polls," it normally is "little more than an efficient vote-buying operation" that gives "'walking-around money' to those willing to sell their votes." Tracy Campbell, *Deliver the Vote* 276 (2005). In short, vote-hauling is quintessential voter and election fraud: it allows people to alter elections by tampering with the voting process itself—i.e., indirectly buying votes.

Although vote-hauling operations were most brazen in the 19th and 20th centuries, they still sometimes crop up today. In just the last 15 years, for example, the Sixth Circuit handled multiple illegal vote-hauling cases. *See, e.g.*, *United States v. Young*, 516 F. App'x 599, 601 (6th Cir. 2013); *United States v. Turner*, 465 F.3d 667, 670 (6th Cir. 2006). Two years ago, the AP investigated an illegal vote-hauling operation in North Carolina. Tyler Dukes, *Was it 'vote hauling' or buying votes?*, AP NEWS (April 16, 2019), https://bit.ly/3r0IRrj. And in the early 2000s, Kentucky had a massive illegal vote-hauling investigation involving hundreds of people. *See Turner*, 465 F.3d at 670. Scholars have chronicled the long history and use of vote-hauling. *See* Campbell, *Deliver the Vote* 276 (2005); Dr. Mary Berry, *Five Dollars and a Pork Chop Sandwich: Vote Buying and the Corruption of Democracy* 54, 66, 108, 180 (2017) (author is the former Chairwoman of the U.S. Commission on Civil Rights and a University of Pennsylvania history professor). It is no surprise, then, that several state laws besides Section 931(1)(f) prohibit vote-hauling and similar

activities. *See, e.g.*, La. Rev. Stat. § 18:1531(A); Ala. Rev. Stat. § 11-44E-161; *Priorities USA*, 978 F.3d at 984 (listing laws from Georgia, Iowa, and Kentucky).

The Legislature designed Section 931(1)(f) combat vote-hauling. It prohibits anyone from hiring a third party to take voters to the polls. This subsection bars *precisely* the conduct that traditionally marks vote-hauling. *See Priorities USA*, 978 F.3d at 983 (holding that Section 931(1)(f) "is assuredly aimed at preventing a kind of voter fraud known as 'vote-hauling'"). Section 931(1)(f) is therefore a "prophylactic rule intended to prevent the potential for fraud where enforcement is otherwise difficult." *Id.* at 984.

Undue influence and intimidation. There is "a long history of problems with voter intimidation and election fraud in this country." *United Food & Commercial Workers Local 1099 v. City of Sidney*, 364 F.3d 738, 747 (6th Cir. 2004) (summarizing *Burson v. Freeman*, 504 U.S. 191 (1992)); *see also Anderson v. Spear*, 356 F.3d 651, 657 (6th Cir. 2004) (noting the States' compelling interest in preventing "voter intimidation"); *accord Summit County Democratic Cent. and Executive Comm. v. Blackwell*, 388 F.3d 547, 554 (6th Cir. 2004). States must also protect "voters from confusion and undue influence." *Hindel v. Husted*, 875 F.3d 344, 348 (6th Cir. 2017) (cleaned up); *accord Susan B. Anthony List v. Driehaus*, 814 F.3d 466, 473 (6th Cir. 2016).

Allowing corporations or other parties to pay third parties to transport voters to the polls opens the door to the undue influence and intimidation of voters. It gives potential bad actors and bullies the opportunity to spend significant alone time with a vulnerable, captive audience in a private, enclosed space. These are just the elements nefarious or unscrupulous actors need to intimidate and unduly influence voters. It is not difficult to imagine the pressure a hireling could assert over, say, a van full of senior citizens that a political party had paid the hireling to drive from a nursing home to the polls. And while such transportation services might not per se involve undue influence or intimidation, the Legislature—exercising its U.S. Const. art. I, § 4, discretion—has chosen to prophylactically prevent even the possibility or appearance of such impropriety. Section 931(1)(f) ensures that, at least in one forum, such intimidation masquerading as "assistance" can never happen. Section 931(1)(f) is "intended to prevent . . . undue influence," *Priorities USA*, 978 F.3d at 984, and thus is exempted from FECA preemption under § 108.7(c)(4).

The district court's contrary interpretation is wrong. The district court disagreed with this analysis, holding that Section 931(1)(f) is not exempted under § 108.7(c)(4). Section 931(1)(f) would address "voter fraud" or "similar offenses," the court said, only if it read extra language into Section 931(1)(f). RE 79, p. 47, PageID# 1617. The court relied heavily on Section 931(1)(f)'s predecessor—1895 P.A. 135. It reasoned that because 1895 P.A. 135 explicitly forbade quid-pro-quo

exchanges for votes, but Section 931(1)(f) does not, Section 931(1)(f) is no longer meant to prevent voter or election fraud. *Id.* at 48, PageID# 1618.

But the district court's first premise is wrong: 1895 P.A. 135's quid-pro-quo prohibition has nothing to do with its separate voter-transportation prohibition—they are independent, standalone prohibitions, united only by their common purpose of combatting election fraud. *See In re Application to Obtain Discovery for Use in Foreign Proceedings*, 939 F.3d 710, 718 (6th Cir. 2019) (explaining that courts must consider statutory structure in interpreting statutes). Consistent with nineteenth century statutory-drafting style, 1895 P.A. 135 is just one solid block of text containing several complex prohibitions, making grammatical analysis difficult. To better understand its standalone prohibitions, here is the identical text broken into numbered subsections:

> Any person
>
> (1) 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,
>
> (2) or who shall solicit any person to cast an unlawful vote at any primary,
>
> (3) 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.

1895 P.A. 135. This reading properly situates the voter-transportation prohibition as *separate* from the quid-pro-quo prohibition.

This reading is more persuasive than the district court's interpretation for two reasons. First, this division respects the text's natural cadence: the three subsections each begin with the 1895 P.A. 135's three "who shall" phrases. Statutory interpretation should respect intentional parallelism like this. Second, this division avoids making the phrase "cause the same to be done," which appears in both subsections (1) and (3), redundant. Under the district court's reading, subsection (3)'s "purpose of securing" clause modifies all three subsections—the transportation, unlawful-voter, and voter-payment prohibitions, respectively. But subsection (3)'s "purpose of securing" clause ends with expanding language, "or shall cause the same to be done"—the identical language *already included* in subsection (1), the voter-transportation prohibition. Only by isolating each "cause the same to be done" clause within separate prohibitions (i.e., subsections) is redundancy avoided. *Allan v. Penn. Higher Educ. Assistance Agency*, 968 F.3d 567, 573 (6th Cir. 2020) (holding that because it's the Court's "duty 'to give effect, if possible, to every clause and word of a statute," it's "'reluctan[t] to treat statutory terms as surplusage'") (quoting *Duncan v. Walker*, 533 U.S. 167, 174 (2001)). The Court has already adopted the Legislature's reading of 1895 P.A. 135 once. *Priorities USA*, 978 F.3d at 984–85. It must do so again here.

***

Priorities's failure to show likelihood of success on the merits is, by itself, enough for the Court to overturn the district court. *Cooper v. Honeywell Int'l, Inc.*, 884 F.3d 612, 615–16 (6th Cir. 2018) (holding that a "preliminary injunction issued where there is simply no likelihood of success on the merits must be reversed" (cleaned up)). Because Priorities's "argument falters on this first factor, [the Court's] inquiry goes no further." *Id.*

II. Priorities wouldn't suffer irreparable injury absent the injunction.

"Irreparable harm is an indispensable requirement for a preliminary injunction, and even the strongest showing on the other factors cannot justify a preliminary injunction if there is no imminent and irreparable injury." *Memphis A. Philip Randolph Inst. v. Hargett*, 978 F.3d 378, 391 (6th Cir. 2020) (cleaned up). An injury must be "both certain and immediate," not "speculative or theoretical." *D.T. v. Sumner County Schs.*, 942 F.3d 324, 327 (6th Cir. 2019) (cleaned up).

Priorities's putative irreparable harm is the lost "opportunity to spend money on get-out-the-vote activities in violation of federal law and the First Amendment activity." Priorities Resp. to the Mot. to Stay, p. 19. But for four reasons, Priorities will suffer no irreparable harm in the absence of an injunction.

First, now that the 2020 election season is over, Priorities has no real argument that it will be harmed by enforcing Section 931(1)(f) in other elections. Priorities's

arguments below focused on "the upcoming elections" (the 2020 primary and general elections). *See, e.g.*, RE 22, Priorities's Motion for a Preliminary Injunction, PageID# 191; *see also id.* at Ex. 4, Guy Decl. ¶ 13, PageID# 206; Ex. 5, Hunter Decl. ¶ 6, PageID# 213; Ex. 6, Lubin Decl. ¶ 14, PageID# 221 (stating Priorities wanted to influence "the 2020"/"upcoming" primary and general elections). Priorities's appellate filings focused on the same. *See* Priorities's Resp. to the Mot. to Stay, pp. 19–20. But those elections are over. All of Priorities's work and effort, all of its get-out-the-vote planning for 2020, are now irrelevant. Put simply, Section 931(1)(f) can't interfere with Priorities's 2020 election work because the election already happened. Because the key dates have passed, Priorities has no irreparable harm. Any attempt to rehabilitate this factor now (and improperly supplement the record on appeal) would result only in speculative and theoretical harms—not imminent and clear harms as required.

Courts have recognized in the union context that if a party requests a preliminary injunction based on an upcoming union election, once that election takes place, the requests should be denied for failure to show irreparable harm. In *Rueckert v. Sheet Metal Workers' Int'l Ass'n*, 439 F. Supp. 479, 482 (S.D.N.Y. 1977), for example, the plaintiff sued to enjoin the dissemination of certain criminal charges against him while "there was an election pending." But because, at the time of the court's decision, "[t]he election has long since passed and with it the exigent

circumstances which required interim relief," the court refused to issue an injunction. *See also Raske v. Amalgamated Transit Union Local 1637*, No. 2:13-cv-748, 2013 WL 3155340, at *5 (D. Nev. June 19, 2013) ("Additionally, the date for the scheduled [union] election, May 29, 2013, has passed, precluding any finding of irreparable injury in the absence of extraordinary injunctive relief."). At least one other court has held the same for traditional political elections. *See Med. Dispensing Sys., Inc. v. Family Council Action Comm.*, No. 4:12-cv-688, 2013 WL 12123210, at *2 (E.D. Ark. Jan. 11, 2013) (refusing to find irreparable harm when the plaintiff sued just before election day for certain statements made on the campaign trail: "The Court finds that there is no threat of irreparable harm now that the election is over"); *see also, e.g., N.C. A. Philip Randolph Inst. v. N.C. State Bd. of Elections*, No. 1:20-cv-876, 2020 WL 6488704, at *8 (M.D.N.C. Nov. 4, 2020) ("Considering both the delay in Plaintiffs' filing of this action and the fact that the election has now passed, the circumstances simply do not support the kind of irreparable harm required to support a preliminary injunction.").

The same principles apply here. Priorities's preliminary-injunction request asked the court to enjoin Section 931(1)(f) because it would interfere with Priorities's 2020 election efforts. Priorities chose to cast its injunctive-relief request as specific to the 2020 election. The predictable result of that, however, is that now that the 2020 election is over, so is Priorities's argument for irreparable harm.

Second, although Priorities invokes their putative constitutional rights, Priorities Resp. to the Mot. to Stay, p. 19, no court has held that they have any such rights. The district court rejected Priorities's constitutional claims on a related Michigan law and explicitly refused to reach the constitutional questions on the paid-transportation ban. RE 79, September 17 Order, p. 54 n.5, PageID# 1624. The district court held that Section 931(1)(f) irreparably harms Priorities's right under federal law to pay third parties to transport voters, but as explained above, this argument fails. Without showing constitutional or statutory harm, Priorities's irreparable harm argument fails.

Third, Priorities slept on its rights until 2019—supporting the Legislature's laches defense—and, even then, delayed several more months before finally moving for injunctive relief. The law is clear "that a party's failure to act with speed or urgency in moving for a preliminary injunction necessarily undermines a finding of irreparable harm." *Wreal, LLC v. Amazon.com, Inc.*, 840 F.3d 1244, 1248 (11th Cir. 2016); *see also Allied Erecting & Dismantling Co. v. Genesis Equip. & Mfg., Inc.*, 511 F. App'x 398, 405 (6th Cir. 2013) (holding that "an unreasonable delay in filing for injunctive relief will weigh against a finding of irreparable harm"). Priorities has never explained its delay in moving for injunctive relief.

Finally, Priorities has multiple times tried to shoehorn alleged voter injuries into the irreparable injury analysis. *See, e.g.*, RE 22, Priorities Motion for a

Preliminary Injunction, pp. 43–44, PageID# 191–92. But the Court's irreparable-harm analysis must focus on "the group for whom the law is a restriction, not the group for whom the law is irrelevant." *Planned Parenthood of S.E. Penn. v. Casey*, 505 U.S. 833, 894 (1992). Here, that means the Court weighs only the alleged injuries of Priorities—*not* the alleged injuries of unnamed voters.

Ultimately, "[p]laintiffs will not 'suffer irreparable harm in the absence of preliminary relief'; they will simply be required to adhere to the regulatory regime that has governed" Michigan elections "for decades." *McCutcheon v. Fed. Election Comm'n*, ___ F. Supp. 3d. ___ , 2020 WL 6134926, at *14 (D.D.C. Oct. 19, 2020). Because Priorities has not shown that the alleged irreparable harm is "clear and imminent," the Court should vacate the district court's grant of a preliminary injunction. *Jones v. City of Norwalk*, 284 F.2d 522, 523 (6th Cir. 1960).

III. This injunction harms the Legislature.

Just a few months ago, this Court explained:

> Any time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury. So unless the statute is unconstitutional, enjoining a State from conducting its elections pursuant to a statute enacted by the Legislature would seriously and irreparably harm the State.

Thompson v. DeWine, 976 F.3d 610, 619 (6th Cir. 2020) (cleaned up); *see also Husted*, 907 F.3d at 921 (6th Cir. 2018) (implicitly recognizing that the state can be harmed both by an injunction preventing it from enforcing the law and by fraudulent

election results). Even the district court recognized this. RE 79, p. 53, PageID# 1623 (quoting *King*, 567 U.S. 1301).

Other circuit courts have repeated that wisdom many times in recent years. *See, e.g.*, *Pavek v. Donald J. Trump for President, Inc.*, 967 F.3d 905, 909 (8th Cir. 2020); *Hand v. Scott*, 888 F.3d 1206, 1214 (11th Cir. 2018); *Patino v. City of Pasadena*, 677 F. App'x 950, 952 (5th Cir. 2017). Indeed, a "federal court order preventing the State from enforcing its law against thousands of potential violators is a significant encroachment on its police powers." *Rodgers v. Bryant*, 942 F.3d 451, 466 (8th Cir. 2019); *see also Aid for Women v. Foulston*, 441 F.3d 1101, 1119 (10th Cir. 2006) (holding that the state "has a strong interest generally in the enforcement of its criminal laws").

Michigan's legislators passed the first version of Section 931 in 1895 and amended it about 40 years ago. For over a century, Michigan has enforced this criminal, anti-voter-fraud statute. Its interest in carrying out validly passed laws—especially through a criminal statute against potential violators—is "severely hampered by the injunction." *Tex. Alliance for Retired Ams. v. Hughs*, 976 F.3d 564, 569 (5th Cir. 2020).

IV. This injunction harms the public.

The public has an interest in the proper application of Michigan law and in "the will of the people of Michigan being effected in accordance with Michigan

law." *Coalition to Defend Affirmative Action v. Granholm*, 473 F.3d 237, 252 (6th Cir. 2006); *Russell v. Lundergan-Grimes*, 769 F.3d 919, 921 (6th Cir. 2014) ("The public has an interest in the orderly administration of elections to ensure that they are fair . . . ."); *see also Buckley v. Am. Constitutional Law Found., Inc.*, 525 U.S. 182, 187 (1999) (acknowledging 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"). No harm will come to anyone from the continued enforcement of a law that has been on the books for 125 years without incident. The public interest favors maintaining a century's worth of status quo. And ultimately, the Legislature has a strong interest in seeing that elections in Michigan are fairly conducted by implementing laws like these. *See Org. for Black Struggle v. Ashcroft*, 978 F.3d 603, 609 (8th Cir. 2020) ("The State's interests in conducting an efficient election, maintaining order, quickly certifying election results, and preventing voter fraud, further serve the public's interest, as confidence in the integrity of our electoral processes is essential to the functioning of our participatory democracy." (cleaned up)).

What's more, this injunction cuts against the goal of equitable relief. "The purpose of a preliminary injunction is merely to preserve the relative positions of the parties until a trial on the merits can be held." *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981). Here, the relative positions of the parties—that is, the status quo—

existed when Section 931(1)(f) was enforced. Enjoining Section 931(1)(f) does not preserve the status quo but upends it. And while such an enjoinder may be appropriate at times, it is not appropriate if a plaintiff fails to show even one of the four factors.

CONCLUSION

For these reasons, the Court should reverse the district court's preliminary injunction.

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Under Rules 32(a)(7)(B), (g) of the Federal Rules of Appellate Procedure, the undersigned certifies, relying on the word-processing system used to prepare the document, that this brief contains 8,188 words, including headings, footnotes, and quotations, but excluding the statement regarding oral argument, table of contents, table of authorities, signature block, designation of relevant district court documents, certificate of service, and this certificate.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Under Rule 25 of the Federal Rules of Appellate Procedure, I hereby certify that on March 17, 2021, I caused the foregoing to be electronically filed with the Clerk of the Court for the United States Court of Appeals for the Sixth Circuit by using the appellate CM/ECF system.

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DESIGNATION OF RELEVANT DISTRICT COURT DOCUMENTS

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