Nos. 20-1931/1940

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, IN HER OFFICIAL CAPACITY AS ATTORNEY GENERAL OF MICHIGAN,

Defendant,

and

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

Intervenors-Defendants-Appellants,

On Appeal from the United States District Court
for the Eastern District of Michigan
District Court Case No. 19-13341

BRIEF OF PLAINTIFFS-APPELLEES

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CORPORATE DISCLOSURE STATEMENT

Pursuant to the Federal Rules of Appellate Procedure and Sixth Circuit Rule 26.1, counsel for Plaintiffs-Appellees certifies that no party to this appeal is a subsidiary or affiliate of a publicly owned corporation and no publicly owned corporation that is not a party to this appeal has a financial interest in its outcome.

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STATEMENT IN SUPPORT OF ORAL ARGUMENT

Priorities USA, Rise, Inc. and the Detroit/Downriver Chapter of the A. Philip Randolph Institute respectfully request oral argument pursuant to the Federal Rules of Appellate Procedure and Sixth Circuit Rule 34(a). This appeal raises important and novel issues related to intervenor standing and the Federal Election Campaign Act's preemptive scope.

STATEMENT OF JURISDICTION

This Court lacks subject-matter jurisdiction because neither set of Intervenors—the only parties that appealed the district court's preliminary injunction order—have standing. *Coal Operators & Assocs., Inc. v. Babbitt*, 291 F.3d 912, 915 (6th Cir. 2002). Neither has standing in their own right, and Legislative Intervenors cannot bring the appeal on behalf of the State. *Va. House of Delegates v. Bethune-Hill*, 139 S. Ct. 1945, 1951 (2019). Appellees agree with Intervenors' statements on the district court's jurisdiction and timeliness of the appeals.

STATEMENT OF ISSUES

1. Do Intervenors have standing to maintain this interlocutory appeal, where the Attorney General continues to defend the State law at issue in the ongoing proceedings below and no Intervenor can meet Article III's requirements independently?

2. Is this appeal moot because the 2020 election has passed?

3. Are Appellees likely to succeed on their claim that regulations promulgated pursuant to the Federal Election Campaign Act ("FECA"), which expressly permit the spending of money to provide transportation to the polls, preempt Michigan's Voter Transportation Law, which prohibits the same elections-related spending in Michigan?

4. Did the district court abuse its discretion in evaluating the remaining preliminary injunction factors?

STATEMENT OF THE CASE

I. Background

At issue is Mich. Comp. Law § 168.931(1)(f) (the "Voter Transportation Law" or "Law"), which makes it a misdemeanor to "hire a motor vehicle" to transport voters to the polls unless those voters are "physically unable to walk." By criminalizing the act of spending money to hire a vehicle to transport a voter to the polls, the Law effectively imposes a $0 spending limitation on otherwise lawful election-related activity.

The Federal Election Campaign Act ("FECA"), a federal law that regulates election-related spending, includes an express preemption provision that applies not only to FECA's statutory provisions but also rules promulgated pursuant to its authority. 52 U.S.C. § 30143; 11 C.F.R. § 108.7. Consistent with its authority under FECA, the Federal Election Commission ("FEC") has enacted rules that define FECA's preemptive reach to include laws related to expenditures and contributions in federal elections. 11 C.F.R. § 108.7(b)(3). The FEC has also enacted rules that expressly permit the spending of money to transport voters to the polls. 11 C.F.R. § 114.3(c)(4)(i); *id.* § 114.4(d)(1).

II. Procedural History Below

On November 12, 2019, Appellee Priorities USA sued Michigan Attorney General Dana Nessel, in her official capacity as the State's chief law enforcement

officer, challenging the Voter Transportation Law as preempted by FECA and unconstitutional under the First and Fourteenth Amendments. Complaint, RE 1, PageID# 12–16.[1] The Attorney General moved to dismiss, Motion to Dismiss, RE 10, PageID# 54, and on January 27, 2020, Priorities USA, joined by the Detroit/Downriver Chapter of the A. Philip Randolph Institute and Rise, Inc. (collectively, "Appellees"), filed an amended complaint, which remains the operative complaint. Amended Complaint, RE 17, PageID# 88–128. One day later, Appellees filed a motion to preliminarily enjoin the Voter Transportation Law. Motion for PI, RE 22, PageID# 139–142.

The Republican National Committee and Michigan Republican Party (the "Republican Committee Intervenors") filed a motion to intervene. RE 30, PageID# 498–500. Twelve days later, the Michigan Legislature (the "Legislative Intervenors") moved to intervene. RE 39, PageID# 697–698. Appellees opposed both motions. RE 43, PageID# 817–838; RE 48, PageID# 882–901. On May 22 the district court issued an order granting permissive intervention to both sets of Intervenors. Intervention Order, RE 60, PageID# 1018. The Attorney General and both sets of Intervenors all filed oppositions to the preliminary injunction motion.

[1] The complaint also challenged the constitutionality of the "Absentee Organizing Ban," Mich. Comp. Law § 168.759(4), (5), (8), which is not at issue in this appeal. *Id*. at PageID# 13–16.

Attorney General Opposition, RE 30, PageID# 440–492; Legislative Opposition, RE 68, PageID# 1155–1198; Republican Opposition, RE 70, PageID# 1202–1258. The Attorney General also filed a motion to dismiss the amended complaint. Motion to Dismiss, RE 27, PageID# 381–434.

The district court heard argument on the preliminary injunction motion on July 14, 2020, Hearing Transcript, RE 78, PageID# 1516–1570, and on September 17, issued an order denying in part and granting it in part. PI Order, RE 79, PageID# 1571–1624. It denied the motion with respect to the Absentee Organizing Ban claims, *id.* at PageID# 1592–1608, but granted a preliminary injunction on the claim that FECA preempted the Voter Transportation Law's prohibition on spending money to hire voter transportation, *id.* at PageID# 1610–1621.

In so holding, the district court carefully reviewed FECA's text, relevant regulations, and history, and concluded that: (1) the Voter Transportation Law is an expenditure limitation within the meaning of FECA and its regulations; (2) FECA's express preemption provision was intended to reach limitations on election spending set by state law that impact federal elections; (3) "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"; (4) the Voter Transportation Law does not "suggest that its purpose is to prevent voter fraud or similar offenses," and it is not exempted from FECA preemption by a provision that exempts state laws that

prohibit voter fraud or similar offenses. *Id.* The district court did not reach the constitutional claims Appellees raised in the motion because it found a likelihood of success on the preemption claim. *Id.*

The Attorney General chose not to seek an interlocutory appeal of the preliminary injunction order. At no time, however, has the Attorney General indicated that she intends to do anything other than continue to vigorously defend the Law before the district court. Nevertheless, both sets of Intervenors chose to independently pursue this interlocutory appeal, filing notices on September 24 and 25, 2020. Legislative Intervenors' Notice of Appeal, RE 80, PageID# 1625–1627; Republican Committee Intervenors' Notice of Appeal, RE 81, PageID# 1628–1630. On September 25, the Legislative Intervenors also filed an emergency motion to stay, RE 84, PageID# 1633–1665, which was denied on October 6. Stay Order, RE 92, PageID# 1765–1766.

III. Procedural History on Appeal

On October 9, the Legislative Intervenors turned to this Court for an emergency stay. *See* Legislative Emergency Mot. for Stay Pending Appeal, *Priorities USA v. Nessel*, No. 20-1931 (6th Cir. Oct. 9, 2021), ECF No. 16. In opposition, Appellees argued that the they lacked standing, that the district court was right on the merits, and that the Court could uphold the injunction on the alternative ground that the Voter Transportation Law violated the First Amendment. *See*

Plaintiffs' Response to Emergency Mot. for Stay Pending Appeal, *Priorities USA v. Nessel*, No. 20-1931 (6th Cir. Oct. 15, 2021), ECF No. 23.

A divided panel of this Court granted the motion to stay on October 21. *Priorities USA v. Nessel*, 978 F.3d 976, 979 (6th Cir. 2020). The majority held that: (1) Legislative Intervenors had standing to appeal, (2) "the state statute is likely not preempted by federal law," and (3) the balance of the equities weighed in favor of a stay. *Id.* at 979. On the first point, the majority held that the Legislative Intervenors had the authority to bring this interlocutory appeal in the Attorney General's stead, and, additionally, that they suffered an independent injury arising from their inability to enforce the Law (or, the majority theorized, any laws that "even *regulate* hired voter transportation for federal elections"). *Id.* at 981–82. On the second, it found that the Law was "likely" not preempted by FECA, opining that the Law "is assuredly aimed at preventing a kind of voter fraud known as 'vote-hauling,'" and as such constituted an anti-voting fraud statute exempt from preemption and not a true expenditure-limitation. *Id.* at 983. In support of this conclusion, it cited (1) two criminal cases from Kentucky involving vote buying, (2) a book discussing Kentucky vote buying in the 1980s, (3) laws forbidding election day alcohol sales, and (4) the Law's *current* placement in a statute that contains provisions "intended to prevent fraud and undue influence." *Id.* at 983–84. The majority did not address Appellees' First Amendment arguments.

Chief Judge Cole dissented, writing separately that he would have found that: (1) the Legislative Intervenors lacked standing to appeal; and (2) in any event, Appellees were likely to prevail on their preemption claim. *Id.* at 985–90 (Cole, C.J., dissenting). On the first point, the Chief Judge found that the Intervenors had "no cognizable interest in the law's enforcement," *id.* at 986, and characterized the grant of standing when Michigan law did not clearly authorize the Legislative Intervenors to stand in Attorney General's shoes on appeal as "a sweeping invitation to Legislatures to call upon the powers of the courts without suffering an injury." *Id.* at 987. With respect to Appellees' likelihood of success, Chief Judge Cole found that the Voter Transportation Law "effectively sets a spending limit of $0 on transporting voters to the polls" in direct contravention of the FECA and its regulations. *Id.* at 989. He noted that, "[a]part from the majority's speculation that [t]he Michigan statute 'is assuredly aimed at preventing a kind of voter fraud,' *there is no actual evidence* that the law has any fraud-prevention purpose." *Id.* at 990 (emphasis added). Chief Judge Cole further concluded that, "[w]ithout any evidence of an anti-fraud purpose, [the Court] would need to conclude that voter-transportation *fundamentally promotes voter fraud*," a proposition he found unbelievable in light of the practice's widespread lawfulness and the fact that FECA regulations expressly permit spending money to do it. *Id.* (emphasis added). The dissent concluded by stating, "I think it important to note that the majority does not mention plaintiffs'

constitutional argument," and opining that, "[h]ad they reached the issue, they may well have decided that the stay be denied." *Id.*

SUMMARY OF THE ARGUMENT

This Court should dismiss this case for lack of jurisdiction or affirm the district court's order preliminarily enjoining Michigan's Voter Transportation Law.

First, neither set of Intervenors have standing to appeal. "[T]o appeal a decision that the primary party does not challenge, an intervenor must independently demonstrate standing." *Bethune-Hill*, 139 S. Ct. at 1951. Michigan law empowers the Attorney General alone to litigate the lawfulness of the state's legislative enactments. The Attorney General has not abandoned enforcement or defense of the Law, nor have her actions nullified the legislature's will such that the Legislative Intervenors now have "authority to defend the law on behalf of Michigan in lieu of the attorney general." *Priorities USA*, 978 F.3d at 982. The Attorney General's choice to not expend state resources to seek an emergency interlocutory appeal weeks before a major election does not amount to abandonment of that defense (which she has pursued stridently), and she continues to defend the Law in proceedings below. In addition, since the motions panel majority concluded that the Legislative Intervenors had authority under Michigan law to maintain this appeal, the Michigan Supreme Court has issued an opinion casting serious doubt on that construction of State law. *See generally League of Women Voters of Mich. v. Sec'y of State*, No. 160907, 2020 WL 7765755 (Mich. Dec. 29, 2020).

Moreover, neither set of Intervenors can independently satisfy Article III's injury-in-fact requirements. As Chief Judge Cole emphasized, where legislative bodies have been found to have Article III standing, they have shown particularized injury to their specific powers *as an institution*; as the Supreme Court and this Court have noted, mere legislative interest in the enforcement of a law is insufficient. *See Priorities USA*, 978 F.3d at 986–87 (Cole, C.J., dissenting); *Bethune-Hill*, 139 S. Ct. at 1953 ("This Court has never held that a judicial decision invalidating a state law as unconstitutional inflicts a discrete, cognizable injury on each organ of government that participated in the law's passage."); *Tennessee ex rel. Tenn. Gen. Assembly v. U.S. Dep't of State*, 931 F.3d 499, 511–12 (6th Cir. 2019) (distinguishing between "a concrete institutional injury" and "an 'abstract dilution of legislative power'" (quoting *Raines v. Byrd*, 521 U.S. 811, 826 (1997))). In finding legislative standing here, the motions panel majority embraced an unprecedented and overbroad theory that would confer upon a legislative body a cognizable injury-in-fact whenever it is unable "to enforce its duly enacted statute," running contrary to the Supreme Court's rulings in *Bethune-Hill*, *Raines*, and other cases. Republican Intervenors also lack standing in their own right because they do not have an independent injury; absent another entity with standing to bring this appeal, they also lack "piggyback" standing.

Second, if this Court finds that the preliminary injunction was time-limited to the 2020 election (as Intervenors argue), there is no ongoing case and controversy, the appeal is moot, and the case should be remanded to the district court to proceed to a trial on the merits. *See, e.g.*, *Ramsek v. Beshear*, 989 F.3d 494, 501 (6th Cir. 2021) (rejecting appellant's request to vacate preliminary injunction where appeal was moot and remanding to district court).

Third, the district court correctly held that Appellees are likely to succeed on their claim that FECA preempts the Voter Transportation Law. The two statutes are at irreconcilable odds. On the one hand, the Voter Transportation Law *prohibits* spending on voter transportation. On the other, FECA and its implementing regulations expressly allow it. 11 C.F.R. §§ 114.3(c)(4)(i), 114.4(d)(1). The determinative question is whether the Voter Transportation Law falls within 11 C.F.R. § 108.7(c)(4), which excludes from FECA preemption laws that prohibit "voting fraud" and "similar offenses." It does not: neither the Voter Transportation Law's plain language nor its likely legislative intent support this exclusion.

Finally, the district court did not abuse its discretion when it found the remaining factors favored a preliminary injunction. Although Intervenors identify disagreements with the district court's reasoning, they do not identify either a clearly erroneous fact or an improper application of the law in the district court's order that

would constitute an abuse of discretion. *See Christian Schmidt Brewing Co. v. G. Heileman Brewing Co.*, 753 F.2d 1354, 1356 (6th Cir. 1985).

ARGUMENT

I. Standards of Review

This Court reviews *de novo* the questions of Intervenors' standing, *United Steelworkers of Am. v. Cooper Tire & Rubber Co.*, 474 F.3d 271, 277 (6th Cir. 2007); and whether the appeal is moot, *Coal. for Gov't Procurement v. Fed. Prison Indus., Inc.*, 365 F.3d 435, 458 (6th Cir. 2004).

The ultimate decision to grant a motion for preliminary injunction is reviewed for abuse of discretion. *Christian Schmidt Brewing Co.*, 753 F.2d at 1356. The district court's legal conclusions (including plaintiffs' likelihood of success on the merits and the question of preemption), are reviewed *de novo*; findings of fact are reviewed for clear error. *See S. Glazer's Distribs. of Ohio, LLC v. Great Lakes Brewing Co.*, 860 F.3d 844, 849 (6th Cir. 2017); *Wis. Cent., Ltd. v. Shannon*, 539 F.3d 751, 759 (7th Cir. 2008); *Performance Unlimited, Inc. v. Questar Publishers, Inc.*, 52 F.3d 1373, 1381 (6th Cir. 1995).

II. The motions panel's opinion does not bind this Court and should be given little weight.

This Court can and should come to a different conclusion on the jurisdictional and merits questions than that reached by the emergency stay motions panel. Although entitled to some deference, motions panel decisions are "not strictly

binding upon subsequent panels." *Wallace v. FedEx Corp.*, 764 F.3d 571, 583 (6th Cir. 2014); *see also Amen v. Dearborn*, 718 F.2d 789, 794 (6th Cir. 1983) (holding Court can reconsider motions panel ruling on subject-matter jurisdiction); *R.E. Dailey & Co. v. John Madden Co.*, 983 F.2d 1068, 1992 WL 405282, at *1 n. 1 (6th Cir. 1992) (table decision) ("Unlike the reported decisions of this circuit, the decisions of motions panels are merely interlocutory and are subject to revision."); *see also Northshore Dev., Inc. v. Lee*, 835 F.2d 580, 583 (5th Cir. 1988) ("[A] motions panel decision is not binding precedent.").

In weighing the motions panel's decision, this Court should give it little deference given the legal and practical realities of its review. Legally, the panel's consideration was made on a different standard of review—one significantly less deferential to the district court—than a full merits consideration of a preliminary injunction. The standard for granting a request for emergency relief under Federal Rule of Appellate Procedure 8 does not require the same deference to the lower court's decision as a full merits appeal because it is not, strictly speaking, an appeal of the district court's decision. *Id.* The key question before a panel considering a stay motion is whether the defendant has raised "at least serious *questions* going to the merits." *Baker v. Adams Cnty./Ohio Valley Sch. Bd.*, 310 F.3d 927, 928 (6th Cir. 2002) (emphasis added). At the current stage, by contrast, this Court reviews the district court's decision for an abuse of discretion. *Id.* (*citing U.S. Student Ass'n*

Found. v. Land, 546 F.3d 373, 380 (6th Cir. 2008)). Each panel looks at the case through a decidedly different lens, and this Court is free to, and in this case, should, reach a different conclusion on the questions before it.

The practical realities of emergency motions also support this conclusion. A panel considering an emergency stay generally must issue a decision in extremely short order, without the benefit of oral argument and based on shorter, expedited briefing. *Compare* Fed. R. App. P. 27(d)(2)(A) (limiting motions to 5,200 words), *with* Fed. R. App. P. 32(a)(7)(B) (limiting principle briefs to 13,000 words). This case is no exception. The motions panel had to move with considerable dispatch given the rapidly approaching election, issuing an opinion only five days after receiving Intervenors' reply brief. While this was necessary given the circumstances, this rush—coupled with the different standard of review and the motion's panels errors—further supports giving its decision little, if any, deference here.

III. All Intervenors lack standing to appeal.

Status as intervenors below does not automatically grant standing to appeal. *Diamond v. Charles*, 476 U.S. 54, 68 (1986). "[T]o appeal a decision that the primary party does not challenge, an intervenor must independently demonstrate standing." *Bethune-Hill*, 139 S. Ct. at 1951; *see also Diamond*, 476 U.S. at 68. In deciding the stay motion, the entire panel recognized that Legislative Intervenors had to successfully clear this hurdle, and the majority mistakenly concluded that they did.

See Priorities USA, 978 F.3d at 979–82. This was incorrect: neither set of Intervenors have standing to maintain this appeal.

A. Legislative Intervenors lack standing.

While there is some authority for permitting legislative bodies to independently litigate on the State's behalf, it is only when they have been given clear legal authority to pursue that litigation in the circumstances at issue. Absent clear authority, a legislative body may pursue litigation only when it has standing "in its own right." *Bethune-Hill*, 139 S. Ct. at 1951. Legislative Intervenors have neither.

1. Legislative Intervenors are not authorized to pursue this appeal on behalf of the State.

Michigan law does not broadly authorize the Legislature to defend State laws. Instead, it is the Attorney General's duty "to prosecute and defend all suits relating to" state matters. Mich. Comp. Laws § 14.29; *see also id.* § 14.28 ("The attorney general shall prosecute and defend all actions in the supreme court, in which the state shall be interested, or a party . . . ."); *id.* § 14.101 (empowering Attorney General "to intervene in any action . . . to protect any right or interest of the state"); *cf.* Mich. Comp. Regs. § 2.209(D) (requiring notice to Attorney General, not Legislature "[w]hen the validity of a Michigan statute . . . is in question.").

In *Bethune-Hill*, the Supreme Court concluded—under nearly identical circumstances—that a state legislature lacked standing to independently pursue an

appeal. There, the intervening Virginia House of Delegates argued it had "standing to represent the State's interests" on appeal as an agent of the state, given a state's ability "to designate agents to represent it in federal court." *Bethune-Hill*, 139 S. Ct. at 1951 (quoting *Hollingsworth v. Perry*, 570 U.S. 693, 710 (2013)). The Court rejected this argument, finding the intervenor lacked the authority to represent Virginia's interests because no law authorized it do so. As here, that authority was vested with the state's attorney general. *See id.* at 1951–52 (citing Va. Code §2.2-507(A)). Similarly, in *Tennessee General Assembly*, this Court held that Tennessee's legislature lacked standing to assert the state's interests in litigation. 931 F.3d at 515–18.

Michigan—like Virginia and Tennessee—places the "[a]uthority and responsibility for representing the State's interests in civil litigation . . . exclusively with the State's Attorney General," choosing to "speak as a sovereign entity with a single voice," *Bethune-Hill*, 139 S. Ct. at 1951–52: the Attorney General's voice, *not* the Legislature's. In 2018, when the Legislature tried to enact a law that would have given itself a role in litigating certain *state* court cases, then-Governor Snyder vetoed it. *See 2018 Journal of the House Addenda: Messages from the Governor*, Mich. Legislature 3028–29 (Dec. 28, 2018), https://www.legislature.mi.gov/documents/2017-2018/Journal/House/pdf/2018-HJ-12-31-086.pdf. He concluded that it was not "prudent to sign this legislation,"

articulating considerations similar to those highlighted by the Supreme Court in *Bethune-Hill*, namely, the need for the state to speak with one voice. *Id.* at 3029.[2]

Ultimately, Legislative Intervenors "ha[ve] not identified any legal basis for [their] claimed authority to litigate on the State's behalf." *Bethune-Hill*, 139 S. Ct. at 1951. Michigan, "had it so chosen, could have authorized the [Legislature] to litigate on the State's behalf, either generally or in a defined class of cases." *Id.* at 1952. But it has not. Instead, the interest in enforcing the Voter Transportation Law "belongs to the Attorney General, whom the State of Michigan tasks with enforcing the laws." *Priorities USA*, 978 F.3d at 986 (Cole, C.J., dissenting). Legislative Intervenors are not authorized to serve as the state's agents in federal court, depriving them of Article III standing.

2. The Attorney General has not abandoned defense of the Voter Transportation Law.

The motions panel majority's conclusion to that Legislative Intervenors *do* possess Article III standing to pursue this appeal is premised on the inaccurate assumption that the Attorney General has abdicated her role of enforcing and defending the Voter Transportation Law.

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[2] Specifically, Governor Snyder noted that "[t]he governor, as chief executive officer of the state, is responsible for managing the litigation position of the State as an entity," and that the legislation "would serve only to complicate the management of that litigation." *Id.* at 3029.

The majority expressed concern about "the ability of a state legislature to defend a law when no one else will," particularly those "instances where a single state executive official . . . could nullify the people's will, as expressed through its democratically elected legislature, without the possibility of a means of review." *Priorities USA*, 978 F.3d at 979–80. But this concern is not applicable here. The Attorney General *is* ably defending the Voter Transportation Law. Her decision not to appeal the preliminary injunction ruling hardly constitutes an abandonment of the defense in this action; it far more likely reflects a reasonable strategic decision that state resources were better spent preparing for the election rather than engaging in emergency litigation about temporary relief that *would not conclusively resolve this matter*. Neither the majority nor Legislative Intervenors cite any authority conferring legislative standing where a legislature merely disagrees with an executive's litigation strategy, particularly where the executive continues to defend the state law in ongoing litigation. The majority's conclusion that "the State of Michigan is injured in its sovereign capacity by its inability to enforce its duly enacted statute" is therefore misplaced. *Id.* at 980. Its ability to enforce the Law continues to be exercised by the Attorney General.

The conclusion that the Legislature is *not* empowered to pursue litigation independently where the Attorney General continues to defend the state law in ongoing litigation is further supported by an opinion the Michigan Supreme Court

issued *after* the motions panel's decision. In *League of Women Voters*, the Court held that "when the Attorney General *does not defend a statute against a constitutional challenge* by private parties in court, the Legislature is aggrieved and, upon intervening, has standing to appeal." 2020 WL 7765755, at *8 (emphasis added). That case involved an appeal of a *final* judgment that no original party below decided to appeal. *Id.* at *6. The Court thus determined that depriving the Legislature of standing would "would enable the executive branch to nullify the Legislature's work by declining to contest a lower-court ruling that a challenged statute is unconstitutional, thereby precluding any *ultimate* judicial determination of the issue." *Id.* at *8 (emphasis added). But, in so ruling, the it limited its holding to situations where "the Attorney General *abandons* her role in defending a statute against constitutional attack in court." *Id.* at *5 (emphasis added). Again, that is not the case here. The Attorney General has not "abandon[ed] her role" and continues to defend this case ably. The preliminary injunction is not the "ultimate judicial determination of the issue"; the Voter Transportation Law's validity remains live in the proceedings below. There is thus no concern that Legislative Intervenors' lack of appellate standing will "preclude[] any ultimate judicial determination of the issue." *Id.* at *8.

For the same reason, the majority's reliance on *United States v. Windsor*, 570 U.S. 744 (2013), is misplaced. As the majority noted, the Court's decision to allow

congressional intervenors to "defend the interests of United States *when the Executive refused to*" was an unusual and highly fact-specific result: "the Court underscored that, although allowing Congress to defend a law in lieu of the Executive should not be a 'routine exercise,' to disallow it altogether would present 'grave challenges to the separation of powers'—an Executive, acting alone, could nullify a legislative enactment without any judicial determination." *Priorities USA*, 978 F.3d at 980 (emphasis added) (quoting *Windsor*, 570 U.S. at 762–63). Here, the Attorney General has *not* refused to defend the Voter Transportation Law, so *Windsor* is inapposite.[3] Moreover, as Chief Judge Cole noted, "the Supreme Court expressly declined to decide in that case 'whether [the Legislative representatives] would have standing to challenge the district court's ruling' on its own authority" because "the initial parties . . . still had an active stake to meet Article III's standing requirements," and thus "the Court did not require the Congressional representatives . . . to establish standing on their own behalf and allowed them to

[3] This same consideration limits the persuasive value of article II, section 4(2) of the Michigan Constitution and *Michigan Alliance for Retired Americans v. Secretary of State*, No. 354993, 2020 WL 6122745 (Mich. Ct. App. Oct. 16, 2020), both of which the majority cited. The majority read these authorities as "authoriz[ing Michigan's] legislature, both houses acting in concert, to defend a state election law in court when the attorney general will not." *Priorities USA*, 978 F.3d at 981–82. But even if this interpretation were correct, the Attorney General has *not* refused to defend the Voter Transportation Law in court.

continue as intervenors." *Priorities USA*, 978 F.3d at 987 (Cole, C.J., dissenting) (alteration in original) (quoting *Windsor*, 570 U.S. at 761–62). Given that Legislative Intervenors must *themselves* establish Article III standing to pursue this appeal, Chief Judge Cole correctly concluded that *Windsor* "offers no guidance" here. *Id.*

3. Legislative Intervenors lack standing in their own right.

Legislative Intervenors do not have Article III standing in their own right to pursue this appeal. The preliminary injunction does not implicate any of the Legislature's institutional interests, and, even if it did, the record does not establish that *these* Intervenors represent the institutional interests of the Legislature.

Legislative Intervenors have suffered no injury to their institutional interests or powers. A legislative body is not harmed simply when a law it enacted is enjoined; to establish Article III standing in its own right, a legislature must "show that invalidating a single law affects legislative *power*, not just legislative *interests*." *Priorities USA*, 978 F.3d at 987 (Cole, C.J., dissenting) (emphases added); *see also, e.g.*, *Tenn. Gen. Assembly*, 931 F.3d at 511–12 (collecting cases and noting that "[o]ther cases finding that a legislative body alleged a concrete institutional injury, and so had standing, similarly centered on a disruption to that body's specific powers"). Such a disruption "must be concrete and particularized," and not merely an "abstract dilution of legislative power." *Tenn. Gen. Assembly*, 931 F.3d at 512 (quoting *Raines*, 521 U.S. at 826).

Despite the majority's conclusion to the contrary, *see Priorities USA*, 978 F.3d at 982, Legislative Intervenors have suffered no such disruption. As Chief Judge Cole noted,

> the Michigan Legislature alleges only an "interest in the enforcement and constitutionality of the paid-transportation ban." That is the definition of an "abstract dilution of legislative power." At issue here is not the Legislature's power to legislate, but rather the enforcement of one of its laws. No legislative authority has been usurped, either temporarily or permanently.

Id. at 986 (Cole, C.J., dissenting) (citations omitted) (quoting *Raines*, 521 U.S. at 826). Even if the majority were correct that "Michigan is injured in its sovereign capacity by its inability to enforce its duly enacted statute," *id.* at 980, its *Legislature* would not be injured by temporary enjoinment of the Voter Transportation Law. Courts have "never held that a judicial decision invalidating a state law as unconstitutional inflicts a discrete, cognizable injury on each organ of government that participated in the law's passage," *Bethune-Hill*, 139 S. Ct. at 1953, and this Court should not be the first. *See Priorities USA*, 978 F.3d at 986 (Cole, C.J., dissenting) ("To say that a brief pause in enforcement strikes at the core of the Legislature's constitutionally vested power strains credulity. Perhaps that is why the Michigan Legislature and the majority fail to cite a single case where the mere act of enjoining the enforcement of the law causes the Legislature such injury that it may invoke the judicial power of the United States."). And at any rate, the inability to enact or enforce laws that are illegal because they are preempted by federal statute

is not a legally cognizable injury. *See Stotts v. Memphis Fire Dep't*, 679 F.2d 579, 582 (6th Cir. 1982).

As Chief Judge Cole noted, "the Legislature is not being ordered to 'do or refrain from doing anything'" as a result of the preliminary injunction. *Priorities USA*, 978 F.3d at 986 (Cole, C.J., dissenting) (quoting *Hollingsworth*, 570 U.S. at 705). Yet to have standing to appeal, they "must possess a 'direct stake in the outcome' of the case." *Hollingsworth*, 570 U.S. at 705 (quoting *Arizonans for Official Eng. v. Arizona*, 520 U.S. 43, 64 (1997)). Legislative Intervenors have no such "direct stake." Their only interest "[i]s to vindicate the [] validity of a generally applicable [Michigan] law." *Id.* at 705–06. Such a "'generalized grievance,' no matter how sincere, is insufficient to confer standing." *Id.* at 706 (collecting cases); *accord Associated Builders & Contractors v. Perry*, 16 F.3d 688, 691 (6th Cir. 1994).

Puzzlingly, the majority concluded that the temporary enjoinment of the Voter Transportation Law *does* impose a concrete restriction on the Legislature's powers, explaining that "[w]hile the injunction is in effect, Michigan's legislature cannot enact any enforceable laws that even *regulate* hired voter transportation for federal elections." *Priorities USA*, 978 F.3d at 982. The source of this conclusion is unclear; the effect of the injunction is merely to restrict enforcement of *this particular law*, not to preclude enactment of *any* regulation of voter transportation. If the majority

were correct, then legislative standing would arise any time a law is found to be preempted or unconstitutional. This result—coupled with the majority's conclusion that simply enjoining a law constitutes a cognizable injury to the legislative body that enacted it—would represent an unprecedented expansion of Article III standing, conferring upon legislatures the right to pursue litigation in federal court whenever a state law is invalidated or even briefly suspended. This Court should reject such a limitless principle, which runs contrary to the Supreme Court's repeated admonition that legislative standing be circumscribed only to limited contexts. *See Priorities USA*, 978 F.3d at 986 (Cole, C.J., dissenting) ("[F]inding the Legislature is injured any time a law is not fully enforced, simply by merit of having passed the law, would represent a sea change in legislative standing jurisprudence.").

Even if the Legislature *could* represent the interests of the State or assert its own institutional injuries, there is no evidence in the record that *Legislative Intervenors* actually represent the Legislature in this case—a necessary prerequisite. *See, e.g.*, *Raines*, 521 U.S. at 829 (finding no legislative standing in part because parties had "not been authorized to represent their respective Houses of Congress in this action"); *Kerr v. Hickenlooper*, 824 F.3d 1207, 1215–16 (10th Cir. 2016) ("In determining whether a party may rely on an institutional injury to demonstrate standing, the Court has considered whether the plaintiffs represent their legislative body as an institution."). Although Legislative Intervenors *purport* to represent the

Legislature, it is unclear what authority they rely on to do so; in the recent past, both chambers have passed resolutions to authorize litigation, *see Senate Resolution No. 6*, Mich. Legislature (Jan. 23, 2019), https://www.legislature.mi.gov/documents/2019-2020/resolutionadopted/Senate/pdf/2019-SAR-0006.pdf; *Substitute for House Resolution No. 17*, Mich. Legislature, https://www.legislature.mi.gov/documents/2019-2020/resolutionadopted/House/pdf/2019-HAR-0017.pdf, and no such resolution exists here. Nor have Legislative Intervenors identified any other source for their ability to represent the Legislature or provided evidence that they followed proper procedures in joining this litigation.

B. The Republican Committee Intervenors do not have standing.

The Republican Committee Intervenors assert two sources of standing to bring this appeal: (1) "piggyback standing" and (2) "competitive standing." Neither applies here.

Piggyback standing refers to the concept that a private intervenor has standing to bring an appeal of an order regarding a challenged state law so long as the State also appeals the order. *Diamond*, 476 U.S. at 64. "But this ability to ride 'piggyback' on the State's undoubted standing exists only if the State is in fact an appellant before the Court." *Id.* As discussed above, Legislative Intervenors lack standing to appeal. *Supra* I.A. As a result, the Republican Committee Intervenors cannot assert piggyback standing. *Diamond*, 476 U.S. at 64.

Absent piggyback standing, Intervenors must demonstrate an actual injury sufficient to provide them with Article III standing in their own right. *Id.* at 62. The Republican Committee Intervenors claim, broadly, that changes to laws that govern any aspect of the election process confer "competitive standing" upon "[p]olitical parties and candidates." Republican Br. at 24. However, the competitive-standing injuries that they identify—facing "a broader range of competitive tactics" and spending resources to research or educate voters about the new rules—are too speculative and attenuated to confer standing. *Id*. The crux of their argument is that a change to the Voter Transportation Law will harm their electoral chances and force them to spend more money to remain competitive. But they fail to articulate any scenario that makes this more than pure speculation. Further, and perhaps more fundamentally, they fail to explain why lifting the ban on paying for voter transportation would hurt their candidates' prospects. Such a nebulous and entirely speculative competitive injury is insufficient to confer standing on appeal to an intervenor.

The U.S. Supreme Court's decision in *Diamond v. Charles*, 476 U.S. 54 (1986), is informative. There, a pediatrician-intervenor sought to defend the constitutionality of a restrictive abortion law when the state defendants chose not to appeal an order holding it unconstitutional. He contended that the law injured his competitive interests because it restricted his pool of potential fee-paying patients.

Id. at 66. The Court first noted that as a private citizen, he lacked the ability to either compel the state to enforce a constitutional law or "enact a code in accord with [his] interests." *Id.* at 64–65. The Court then held that his alleged competitive injury was too speculative to confer appellate standing. *Id.* There was no certainty that enforcement or nonenforcement would impact his business in any appreciable manner. *See id.* Without a concrete and reasonably imminent injury to support the intervenor's claim, the Court found that, although his asserted interest was "cloaked in the nomenclature of a special professional interest," it was "simply the expression of a desire that the [law] as written be obeyed." *Id.* at 66. In other words, he had an interest, but the speculative nature of his alleged injuries failed to establish a sufficient direct stake in the matter to confer standing. *Id.*

The Republican Committee Intervenors similarly assert a competitive injury that is too speculative to support standing. They fail to identify any information that suggests that their electoral chances (which ostensibly give rise to the competitive injury on which they rely) will be hindered if the Voter Transportation Law is enjoined. Nor is it appropriate to assume that Republican candidates would suffer if there was no ban on expenditures to pay for voter transportation. Boiled down, the Republican Committee Intervenors are merely asserting a "professional interest" in seeing the Law enforced. This is insufficient to support standing.

IV. The appeal is moot if the preliminary injunction is limited to the 2020 election.

At the district court, Appellees presented evidence of harm related to the then-upcoming 2020 general election, as well as ongoing constitutional harms that reach beyond it. Br. in Support of PI, RE 22-1, PageID# 191–192. In its order issuing the preliminary injunction, the district court did not specify a duration or end date. PI Order, RE 79, PageID# 1624. Nevertheless, Legislative Intervenors now argue that, because the 2020 election is over, there is no need for a preliminary injunction. Legislative Br. at 32 ("Because the key dates have passed, Priorities has no irreparable harm."). This argument is wrong for several reasons. But if the Court were to agree, the proper course would be to dismiss the appeal as moot, not issue an order opining on the propriety of the issuance of the preliminary injunction.

First, Intervenors' narrow focus on the 2020 election is not well founded. To be sure, Appellees faced harm from (and were harmed by) the Voter Transportation Law during the 2020 election cycle. But their assertions of harm were never limited to that election. PI Motion, RE 22-1, PageID# 178–186; Opposition to Emergency Motion to Stay, RE 88, PageID# 1708; *Priorities USA v. Nessel*, No. 20-1931 (6th Cir. Oct. 15, 2021), ECF No. 23, 16–24. Nor does the threat of harm fade with passing of one election. The perennial nature of governmental elections makes the one-and-done union cases Legislative Intervenors cite inapposite. Legislative Br. at 32–33.

Second, if the preliminary injunction was, indeed, time limited to the 2020 election (or if the Court were to find that Appellees no longer are under threat of harm), the proper treatment of this appeal would be to dismiss it as moot for lack of jurisdiction and remand to the district court. *See Ramsek*, 989 F.3d at 501 (rejecting request to vacate preliminary injunction where appeal was moot and remanding); *Radiant Glob. Logistics, Inc. v. Furstenau*, 951 F.3d 393, 397 (6th Cir. 2020) (rejecting request to vacate preliminary injunction where appeal was moot because preliminary injunction has no preclusive effect). To do otherwise would be to issue an unconstitutional advisory opinion. *Ramsek*, 989 F.3d at 501 (noting that Court "cannot reach a claim's merits" where an appeal is moot and there is no case or controversy). The cases the Legislature cites are inapposite. Legislative Br. at 32–33 (citing cases involving requests for preliminary injunctions in the first instance). This appeal is a review of a district court's grant of a preliminary injunction, not a new request for an injunction. If the preliminary injunction is no longer effective because of the passage of time, the appeal is moot and Intervenors' other arguments are no longer within this Court's jurisdiction.

V. FECA preempts the Voter Transportation Law.

A. FECA has broad preemptive effect over limitations on federal election spending, with very limited exceptions.

FECA expressly supersedes state laws regarding limitations on contributions and expenditures in federal elections. 52 U.S.C. § 30143; 11 C.F.R. § 108.7(b)(3). This is clear from the text of the statute, as well as its implementing rules.

The Act itself includes an express preemption provision that states, in relevant part, that "the provisions of this Act, and of 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. The FEC has exercised its rulemaking authority to further define FECA's preemptive scope in 11 C.F.R. § 108.7, which expressly preempts state laws that act as a "[l]imitation on contributions and expenditures regarding Federal candidates and political committees." 11 C.F.R. § 108.7(b)(3). "[B]ecause [§ 108.7] was tacitly approved by Congress, [it] represents a valid interpretation of congressional intent" regarding FECA's preemptive scope. *Weber v. Heaney*, 793 F. Supp. 1438, 1452 (D. Minn. 1992), *aff'd*, 995 F.2d 872 (8th Cir. 1993). *see also id.* at 1452.

Exceptions to preemption are limited to state laws that "provide for the (1) Manner of qualifying as a candidate or political party organization; (2) Dates and places of elections; (3) Voter registration; (4) Prohibition of false registration, voting fraud, theft of ballots, and similar offenses; (5) Candidate's personal financial

disclosure; or (6) Application of State law to the funds used for the purchase or construction of a State or local party office building." 11 C.F.R. § 108.7(c).

Courts have consistently held that FECA preempts state laws that directly regulate or are intended to influence election-related spending. *See, e.g.*, *Teper v. Miller*, 82 F.3d 989 (11th Cir. 1996); *Bunning v. Kentucky*, 42 F.3d 1008 (6th Cir. 1994); *Weber v. Heaney*, 995 F.2d 872, 873 (8th Cir. 1993). When courts have found that a state law is *not* preempted by FECA, the laws at issue have clearly targeted fraudulent activity, not merely elections-related activity that, while generally not fraudulent, could potentially conceivably be utilized as part of a fraudulent scheme. *See, e.g.*, *Krikorian v. Ohio Elections Comm'n*, No. 110CV103, 2010 WL 4117556 (S.D. Ohio Oct. 19, 2010) (declining to hold FECA preempted law regulating *false* campaign advertising); *Morton v. Crist*, No. 210CV450FTM36DNF, 2010 WL 11507871, at *3 (M.D. Fla. Aug. 17, 2010) (holding FECA did not preempt contract-based state law claim regarding allegedly *unlawful acceptance* of campaign funds); *State v. Jude*, 554 N.W.2d 750, 752 (Minn. Ct. App. 1996) (holding FECA did not preempt law regulating *false* campaign advertising).

B. Plaintiffs are likely to succeed on their preemption claim.

The Voter Transportation Law is a prohibition on expenditures that is preempted by FECA for at least three reasons. *First*, FECA's express preemption provision applies not only to what is prescribed by the Act itself, but also to "*rules*

prescribed under this Act." 52 U.S.C. § 30143. Rules passed pursuant to FECA expressly *permit* the activity that the Voter Transportation Law prohibits. *Second*, the Law regulates election-related expenditures. *Finally*, the Law cannot be shoehorned into any of the exclusions that would exempt it from preemption. For each of these reasons, the district court's conclusion that Appellees were likely to succeed on FECA preemption claim should be affirmed.

C. Rules promulgated pursuant to FECA permit the very activity that the Voter Transportation Law forbids.

On its face, the Voter Transportation Law broadly criminalizes spending money to hire a motor vehicle to transport voters to the polls. Mich. Comp. Law § 168.931(1)(f). But two federal rules promulgated pursuant to FECA *expressly permit* disbursements—that is, the spending of money—to do exactly that. 11 C.F.R. § 114.3(c)(4)(i) (permitting corporations to make disbursements to provide transportation to the polls for certain employees and establishing scope of permissible express advocacy); *id*. § 114.4(d)(1) (permitting corporations to make disbursements to provide transportation to the polls for the general public and employees outside the restricted class covered by 11 C.F.R. § 114.3). Appellees seek to do what FECA expressly permits—spend money to transport voters to the polls—but the Voter Transportation Law universally bans that activity. This is a clear example of express preemption. *Teper*, 82 F.3d at 995 ("[I]t is the effect of the state law that matters in determining preemption, not its intent or purpose.").

1. The Voter Transportation Law is properly understood as a campaign finance regulation.

When the Michigan Legislature enacted the Voter Transportation Law, it did not include a statement of legislative intent. The statute's plain language supports the conclusion that its purpose is simply to limit election-related spending. Contemporary legislative debates and comparisons to other states' laws support this conclusion.

To give effect to the Legislature's intent, Michigan courts begin with the statutory language. *McCormick v. Carrier*, 795 N.W.2d 517, 524 (Mich. 2010). "[I]f the language is clear and unambiguous, it is presumed that the Legislature intended the meaning expressed in the statute. Judicial construction of an unambiguous statute is neither required nor permitted." *Id.* (citation omitted). There is no ambiguity in the Voter Transportation Law's statutory language—it specifically bans the act of spending money to hire a motor vehicle to transport voters to the polls. There is no additional textual evidence of a different anti-fraud purpose, and the plain text is where the inquiry should begin and end; "vague notions of a statute's 'basic purpose' are nonetheless inadequate to overcome the words of its text regarding the specific issue under consideration." *Mertens v. Hewitt Assocs.*, 508 U.S. 248, 261 (1993).

Plainly, the mere act of spending money to transport voters to the polls does not always, or even usually, implicate fraud. Given that spending money for this purpose "is expressly permitted under FECA regulations and [not universally

prohibited] in 49 other states," the idea that it is inherently related to fraud "beggars belief." 978 F.3d at 990 (Cole, C.J., dissenting). It is also notable that Michigan permits providing transportation for voters to the polls; it is only if money is spent to procure that transportation that the Law is triggered. But the benefit to the voter is the same: transportation to the polls. If transportation is hired, the money involved in would ordinarily be transferred to the one providing transportation, not to the voter. While there may conceivably be a situation in which a person may utilize hired transportation in a fraudulent scheme or exert some undue, in any such case it would be *other* activity that renders the scheme fraudulent, not the hiring of transportation to help voters to the polls. Michigan can and does outlaw voter fraud with multiple statutes, each of which are facially anti-voter fraud statutes. *E.g.*, Mich. Comp. Laws § 168.932(a) (prohibiting "bribery" in relation to influencing a voter); *id.* § 168.931(a) ("A person shall not, either directly or indirectly, give, lend, or promise valuable consideration, to or for any person, as an inducement to influence the manner of voting by a person relative to a candidate or ballot question, or as a reward for refraining from voting."). The plain language of the Voter Transportation Law confirms that it is not one of them.

To the extent the Court finds the statute's plain text insufficient to illustrate its purpose, there is ample historical support that restrictions on hiring voter transportation—in Michigan and elsewhere—were enacted as a campaign finance

regulation intended to reduce the cost for candidates to participate in elections, *not* as anti-voter-fraud measures. The Michigan Legislature passed the first version of the Voter Transportation Law in 1895. *Priorities USA v. Nessel*, 487 F. Supp. 3d 599, 607–08 (E.D. Mich. 2020). Neither the Journal of the Senate nor of the House of Representatives provide any context for the intent behind the Law's 1895 passage, and no party has proffered any direct evidence of the Legislature's rationale for enacting the law. But there is a rich contemporaneous record of legislative debates regarding laws akin to the Voter Transportation Law in Great Britain in the mid- to late-1800s. In those debates, proponents primarily justified such laws as providing important limits on campaign expenditures, not to combat any actual concern that paying for voter transportation imposed a serious risk of voter fraud.

In the mid- to late-1800s, proposals to change the law regarding the lawfulness of hiring a vehicle to convey voters to the polls were discussed in Parliament. *See, e.g.*, United Kingdom, *Parliamentary Debates*, House of Commons, 10 July 1883, 1005 (hereinafter "*Parliamentary Debates*") (discussing proposed legislation that would prohibit hiring "any public stage or hackney" or "any carriage" "for the purpose of the conveyance of electors to or from the poll). Between 1868 and 1883, hiring carriages or other transportation to convey voters to the polls ranged from being completely lawful, *id.*, 9 July 1883, 846, to being completely prohibited, *see* John Corrie Carter, *The Corrupt and Illegal Practices Prevention Act, 1883*, 10–11

(London 1883), to being either unlawful or lawful, depending on the voter's geography, *Parliamentary Debates*, 20 March 1879, 1372 ("The law, as it now stood, legalized the payment for vehicles to convey voters to the poll in counties and some few agricultural boroughs; but it prohibited such a payment in all other boroughs in the country under a penalty of [40£].").

Each proposal regarding paying for voter transportation generated substantial debate. *See id.*, 20 March 1879, 1385 (Stafford Northcote, Chancellor of the Exchequer). But supporters of restrictions consistently identified one concern in justification: the increased cost of campaigns. *See, e.g.*, *id.*, 20 March 1879, 1376 (Mr. Morgan Lloyd) ("There was a growing tendency to increase the expense of elections; and every effort should be made by legislation to counteract such tendency. The prohibition of the payment of conveying voters to the poll in boroughs was a step in that direction; . . ."); *id.* 1384 (Sir Henry James) ("[T]he expenses of elections were increasing. . . . Anything they could do, he thought, they ought to do, to diminish those expenses, and the prohibition to convey voters would diminish them."); *id.*, 26 June 1883, 1557–58 (Mr. Stanton) ("[T]he principal reason why Members objected to the payment for the conveyance of voters to the poll was on the score of excessive expenditure. This Bill was notoriously intended to operate for the reduction of the expenditure at elections. . . ."); *id.*, 25 June 1883, 1519 (Viscount Folkestone) (noting that the "object of the Bill . . . was the lessening of the expense

of elections"). Supporters also expressed concern that increased campaign cost associated with hiring vehicles for this purpose would make it so that only the wealthy could serve in Parliament. *E.g.*, *id.*, 20 March 1879, 1373 (Sir Charles W. Dilke) ("[T]here was nothing which tended more to limit candidatures to the rich at the present time than this payment for the conveyance.").[4]

The opponents of restrictions on paying for voter transportation cited the likely disenfranchisement of working-class voters and those who lived and worked far from the polls. *E.g.*, *id.*, 9 July 1883, 869 (Dr. Farquharson) (noting "total dis[en]franchisment [would] result in many parts of Scotland which were remotely situated from the polling place"); *id.* 872 (A.F. Egerton) ("[U]nless the use of carriages were allowed a great number of people would be dis[en]franchised."); *id.*, 10 July 1883, 1005–006 (Mr. Whitley) ("[T]his clause would operate very hardly on many voters, by practically precluding them from voting at all. . . ."); *id.* 25 June 1883, 1492–93 (Lord George Hamilton) ("[T]he prohibition of the conveyance of voters to the poll would be equivalent to the dis[en]franchisement of a large number

[4] Although the literature at times refers to the payment for transportation of voters as a "corrupt election practice," that terminology understood in context only further underscores that these restrictions were campaign finance measures. Repeatedly, these restrictions are referred to in this way together with restrictions regarding payment for advertising and restrictions against other excess expenditures that would today be considered campaign finance restrictions. *Parliamentary Debates*, 22 June 1883, 1281–82 (Mr. H.H. Fowler).

of electors, who must necessarily belong to the very poorest class."). Opponents also argued that disenfranchisement was the very reason that proponents of transportation restrictions supported the bills. *Id.* 9 July 1883, 846 (Mr. Cavendish Bentinck) (suggesting certain legislators "wished to see a large class of these electors dis[en]franchised solely upon the ground that such electors did not agree with [the legislators] in political questions"). At least one legislator noted the incongruency between allowing certain practices in the counties but deeming them illegal in the boroughs; he advocated for allowing all to hire carriages to transport voters to the polls while treating the expenditures as reportable campaign expenses. *Id.*, 20 March 1879, 1376 (Mr. Colman) (encouraging publication of all expenditures, including paid transportation, "to check corruption").

To be sure, some did, on occasion, express concern that voters could be improperly influenced if they received free transportation to the polls from the candidates themselves, but such concerns were generally expressed secondary to worries regarding the increase in campaign expenditures and, even then, they did not explain how paying for transportation in and of itself raised a real threat of voter fraud. *E.g.*, *id.*, 25 June 1883, 1497 (Mr. Horace Davey) (expressing opinion that "allow[ing] the candidate to incur expense for the conveyance of voters to the poll would lead to corruption"); *id.*, 20 March 1879, 1377 (Mr. Morgan Lloyd) (decrying increased cost of elections then identifying a potential for paid transportation to

indirectly influence voters). In addition, opponents of paid transportation often expressed as a desire to prohibit *all* transportation of voters to the polls in recognition of the inequitable impact that a ban on only *paid* transportation would have on less wealthy candidates. *E.g.*, *id.*, 9 July 1883, 1007 (Mr. Gorst).

Echoes of these historical debates can be seen in modern-day statutes from Louisiana and Alabama that impose some restrictions (but not a complete ban) on paying for voter transportation. Louisiana's detailed statute, La. Stat. Ann. § 18:1531, is a campaign finance regulation that expressly permits *anyone* to hire a "bona fide bus, taxi, or transportation service" to transport voters to the polls and obligates candidates, political committees, and individuals required to file state campaign finance reports to report such expenditures. *Id.* § 18:1531(D)(2). It only prohibits those who must file state campaign finance reports from paying persons *other* than a "bona fide bus, taxi, or transportation service" to do so. *Id.* § 18:1531(A). Persons who are not required to file campaign finance reports are permitted to hire any transportation for voters. *Id.* § 18:1531(B). The fact that the Louisiana statute expressly permits so many people to hire voter transportation underscores the fact that the regulation of spending money for this purpose is more closely tied to campaign finance than fraud.

The Alabama voter transportation statute also is not a total prohibition on paying for transportation to help voters get to the polls. Instead, it makes it unlawful

"for any *candidate* to provide or use any [vehicle] for the purpose of transporting voters to the polls on election day." Ala. Code § 11-44E-161 (emphasis added). The fact that Alabama's restriction applies only to candidates (Appellees and rideshare services would be able to hire voter transportation in that state) strongly suggests that the restriction relates to making a campaign finance regulation equitable, not because there is anything inherently fraudulent about spending money to hire a vehicle to transport voters to the polls.

In sum, the Voter Transportation Law's plain language, contemporary arguments for restrictions on hiring carriages to transport voters to the polls, and present-day restrictions all support the conclusion that the legislative intent behind the Law was more likely focused on limiting campaign expenses than preventing fraud. There is no evidence that the Michigan law constituted an exception to this rule. "Nothing in the plain language of the Transportation Law, as it is now written, suggests that its purpose is to prevent voter fraud or similar offenses." *Priorities USA*, 487 F. Supp. 3d at 623–24. "Apart from the majority's speculation that the Michigan statute is assuredly aimed at preventing a kind of voter fraud, there is no actual evidence that the law has any fraud-prevention purpose." *Priorities USA*, 978 F.3d at 990 (Cole, C.J., dissenting).

2. Section 108.7(c)(4)'s preemption exemption does not apply.

Intervenors' argument that the Voter Transportation Law has an anti-voting fraud purpose and is therefore is excluded from preemption by 11 C.F.R. § 108.7(c)(4) is unavailing. Legislative Br. at 24; Republican Br. at 29. Section 108.7(c)(4) exempts "[s]tate laws *which provide for the [p]rohibition* of false registration, voting fraud, theft of ballots, and similar offenses." *Id.* (emphasis added). In other words, the law *itself* must prohibit voting fraud or a similar offense. The Voter Transportation Law prohibits only spending money to hire vehicles to transport voters to the polls, but such spending does not inherently go hand-in-hand with fraud. Perhaps there is a way to write a statute that would prohibit fraud in connection with hiring voter transportation that would be precluded from exemption by 108.7(c)(4). Michigan's broad prohibition of *any* expenditures for this purpose is not it.

a. The plain language of Section 108.7(c)(4) requires the exempted statute to forbid—not just potentially relate—to fraud.

Section 108.7(c)(4) does not provide a blanket exemption for all laws that can be characterized as bearing some connection to fraud in some hypothetical circumstance. It exempts from preemption only those "State laws which *provide for* the *[p]rohibition* of false registration, voting fraud, theft of ballots, and similar offenses." 11 C.F.R. § 108.7(c)(4) (emphasis added). To decide whether the Voter Transportation Law is exempted by § 108.7(c)(4), the Court need only consider two

straightforward questions. First, does § 108.7(c)(4) exclude from preemption any statute that prohibits any activity, no matter how broadly, that could conceivably be used as part of a fraudulent scheme? And, second, is the "*offense*" of spending money to hire transportation to take voters to the polls a similar offense to false registration, voting fraud, or theft of ballots? The clear answer to both is no.

When the statutory terms "provide for" and "prohibition of" are given their plain and ordinary meaning, it becomes clear that the Voter Transportation Law does not fall within the scope of § 108(c)(4). The term "'provides for' is most naturally read and is commonly understood to mean 'make a provision for.'" *John Hancock Mut. Life Ins. Co. v. Harris Tr. & Sav. Bank*, 510 U.S. 86, 112 (1993) (Thomas, J., dissenting) (cleaned up) (citing Black's Law Dictionary 1224 (6th ed. 1990)). This Court's previous use of "provides for" recognizes the phrase's commonly understood meaning; this Court has consistently used the phrase to describe—with precision (and often by quoting statutory language)—what the statute makes a provision for. *See, e.g.*, *Am. Textile Mfrs. Inst., Inc. v. The Ltd., Inc.*, 190 F.3d 729, 738 n.3 (6th Cir. 1999) ("31 U.S.C. § 3730(d)(2) also *provides for* reimbursement of reasonable attorneys' fees and costs."). *Provides for* describes what a statute *does*, not its general subject matter or what it relates to. Accordingly, § 108.7(c)(4)'s plain text exempts from preemption only laws that *make provision for* the prohibition of false registration, voting fraud, or theft of ballots, or similar offenses. The term

"prohibition" means the act of forbidding by law. *See* Prohibit, Black's Law Dictionary (11th ed. 2019) (defining prohibit as "[t]o forbid by law" or "[t]o prevent, preclude, or severely hinder"). When the word *prohibition* is given its plain and ordinary meaning in § 108.7(c)(4), it means that the regulation exempts from preemption only those laws that make provision for *forbidding* false registration, voting fraud, theft of ballots, or similar offenses.

By its plain language and sweep, the Voter Transportation Law broadly forbids *not* false registration, voting fraud, or theft of ballots, but the act of *spending money to hire a motor vehicle to transport voters to the polls*. The only way, then, that the Law falls within § 108.7(c)(4)'s scope is if spending money to hire a motor voter transportation is a similar offense to false registration, voting fraud, or theft of ballots. It is not. False registration, voting fraud, and the theft of ballots are all universally understood to be unlawful acts that inherently corrupt the voting process. The same cannot be said for the mere act of spending money for voter transportation. The act is generally lawful, not inherently corrupt, and, as discussed above, a long-recognized legitimate campaign expenditure. *See supra* V.B.2.

This Court has previously addressed the question of § 108.7(c)(4)'s scope with respect to "similar offenses." In *Dewald v. Wriggelsworth*, a habeas petitioner argued that FECA preempted his state-law convictions for "obtaining money under false pretenses, common-law fraud, and larceny by conversion" related to improper

acquisition and use of political action committee funds. 748 F.3d 295, 297 (6th Cir. 2014). The Court noted that § 108.7(c)(4) exempted voting fraud and similar offenses and analyzed whether the *crimes* that the habeas petitioner was convicted of—obtaining money under false pretenses, common-law fraud, and larceny by conversion—were similar offenses to "voting fraud". *Id.* at 302–03. It noted that "the case" was not about "'voting fraud' in the traditional sense," but about "the fraudulent acquisition of money by an individual purporting to represent a federally registered PAC." *Id.* at 302. The Court ultimately held that FECA's preemption of state fraud laws was not clearly established law and that "reasonable jurists could certainly disagree about whether voting fraud and general fraud are sufficiently similar in nature so that [the petitioner's fraudulent] conduct could fall under § 108.7(c)(4)." 748 F.3d 295, 303 (6th Cir. 2014).

Dewald provides a roadmap for this Court to determine whether a prohibited activity is a "similar offense" to voting fraud such that § 108.7(c)(4) excludes it from preemption: Compare the activity to "'voting fraud' in the traditional sense of someone casting a ballot under false pretenses." *Dewald*, 748 F.3d at 302. When that comparison is made, it becomes evident that a violation of the Voter Transportation Law is in no way similar to voting fraud. In contrast, common-law fraud and traditional voting fraud have a *mens rea* element requiring some sort of intentional deception or misrepresentation, but the Voter Transportation Law is a strict-liability

crime. Moreover, what it criminalizes is the mere act of spending money to hire transportation to carry voters to the polls, regardless of context. To paraphrase this court's opinion in *Dewald*, no reasonable jurists should disagree about whether voting fraud and the act of spending money to hire voter transportation are similar in nature. *Priorities USA*, 978 F.3d at 990 (Cole, C.J., dissenting) ("[P]aying for rides to the polls is not in any sense similar to theft of ballots or voter fraud unless the similarity is defined at such a level of generality as to allow the exception to swallow the rule.").

If the Court were to decide that the Voter Transportation Law comes within § 108.7(c)(4)'s exception, then the exception *would* swallow the rule. Virtually any law related to activity surrounding or relating to elections could be said to have at least some hypothetical potential to be connected to risk of fraud. But the plain language of § 108.7(c)(4) does not require or even permit the Court to attempt to figure out where the proper line might be drawn, because it exempts only those laws that themselves prohibit such offenses. Because the Voter Transportation Law, by its plain language, does not prohibit false registration, voting fraud, theft of ballots, or a similar offense, it is not exempted by § 108.7(c)(4).

b. The Voter Transportation Law is not an anti-fraud measure.

Even if § 108.7(c)(4) could be read to apply to state laws that merely relate to, not prohibit, false registration, voting fraud, theft of ballots, or similar offenses, it

would still be incorrect to characterize the Voter Transportation Law as an anti-voting fraud measure.

Intervenors' assertion that the Law 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," Legislative Br. at 22 (quotation marks omitted), is not well founded. Intervenors' argument rests largely on the judiciary's and literature's inconsistent usage of the term "vote -hauling" to signify two very different things and ignores the historical context in which the Law was enacted. None of the scant authority they present supports anything more than speculation as to the Legislature's intent.

Spending money to hire a vehicle to transport voters to the polls and paying voters to vote a certain way are two highly distinct acts. Despite the clear distinction between the two, some opinions have used the same term—vote hauling—to describe both. This dual usage has led to an inaccurate characterization of the Voter Transportation Law; the act of providing voters with transportation has been unfairly tainted by its shared name with *fraudulent* vote hauling (which is just another term for vote buying, an offense that, not incidentally, is separately prohibited by Michigan law. Mich. Comp. Laws § 168.932(a), *id.* § 168.931(1)(b)(i)).

Articulating the dual usage quickly dispels any notion that the Voter Transportation Law, which prohibits the generally entirely non-fraudulent act of

hiring transportation to help voters travel to the polls, is inherently an anti-fraud measure designed to prevent *fraudulent* vote hauling. In fact, once the distinction is presented, a review of the cases and literature cited by Intervenors makes it clear that they have completely failed to connect the activity subject to the Voter Transportation Law to the entirely distinct act of *fraudulent* vote hauling.

This Court's own precedents bear this out. In 2006, this Court stated that "[v]ote hauling involves transporting voters who otherwise lack transportation to the polls on election day," and noted that "[p]aying workers to provide transportation to voters in need is legal in Kentucky." *United States v. Turner*, 465 F.3d 667, 669 n.1 (6th Cir. 2006). In *Turner*, the defendants claimed and reported *as campaign expenses* "that 680 people had been paid fifty dollars for vote hauling, *when in fact the money had been used to influence voters*." 465 F.3d at 670 (emphasis added). No one was accused of spending money to transport voters to the polls; *these defendants were simply buying votes*.

Seven years later, the Court reiterated that "individuals can be paid to drive voters to their polling place" in Kentucky, and then specified that it was using the term "vote hauling" to "refer[] to the *illegal* practice of bringing voters to polls *to be paid to vote*." *United States v. Adams*, 722 F.3d 788, 799 n.1 (6th Cir. 2013) (emphases added). The distinction was especially important in *Adams* because the Court exclusively used the term to describe people who were paid "to deliver voters

whose votes could be bought." *Id.* 798. As in *Turner*, no one was accused of spending money to transport voters to the polls; *these defendants were buying votes*.

When the majority of the motions panel used the term "vote hauling" in its order staying the injunction, the country was in the waning weeks of a cycle that had been characterized by highly politicized allegations of rampant voter fraud (no credible evidence of which was ever unearthed). Against this backdrop, the term "vote hauling" was described principally as "a kind of voter fraud." *Priorities USA*, 978 F.3d at 983. Even then, the majority observed that "[n]ot all vote-hauling payments are fraudulent." *Id.* at 984. But this characterization blurred the very bright line between the two types of vote-hauling that this Court had previously observed carefully.

With this perspective, it becomes even more clear that the purpose of the Voter Transportation Law cannot possibly be to prohibit *fraudulent* vote hauling. Vote buying is already unlawful in Michigan, by means of at least two statutes. Mich. Comp. Laws § 168.932(a) ("A person shall not attempt, by means of bribery . . . to influence an elector in giving his or her vote . . . at any election held in this state."); Mich. Comp. Laws § 168.931(1)(b)(i) ("A person shall not . . . receive, agree, or contract for valuable consideration for . . . [v]oting or agreeing to vote, or inducing or attempting to induce another to vote, at an election."). And of the two cases cited by Intervenors and the majority to contend that the Voter Transportation Law's

supposed purpose was a prophylactic measure to prevent *fraudulent* vote hauling, the requirement to report lawful voter transportation expenses as campaign expenditures led to vote buying indictments in one, *Turner*, 465 F.3d at 670, and the second expressly used the term as a euphemism to describe the clearly fraudulent act of vote buying, *Adams*, 722 F.3d at 799 n.1.

Legislative Intervenors' attempt to use books on voter fraud to connect the Voter Transportation Law to *fraudulent* vote hauling is similarly flawed. Those authors, too, use the term vote hauling interchangeably with vote buying. *See, e.g.*, Tracy Campbell, *Deliver the Vote* 276 (2005) (describing vote-hauling as vote buying); Mary Frances Berry, *Five Dollars and a Pork Chop Sandwich* 54 (2016) (describing vote buying). The books discuss vote-buying schemes in Kentucky in the late 1900s and Louisiana in the late 1900s/early 2000s and use the term vote hauling while doing so. But neither actually connects *lawful* vote hauling (paid transportation of voters to polls) with *fraudulent* vote hauling (vote buying).

At bottom, Intervenors are asking the Court to ascribe an anti-fraud purpose to the Voter Transportation Law even as Intervenors themselves fail to identify any connection between the Law and fraud. Any attempt to equate or connect the mere act of paying for transportation to help voters get to the polls with vote buying requires more than saying (and misapplying) the words "vote hauling." Not only is hiring voter transportation generally legal everywhere except Michigan, regulations

that relate to its use have a long tradition as a regulated campaign expenditure. Accordingly, a ban on *lawful* vote hauling is more likely a campaign finance regulation than an anti-fraud measure.

Finally, historical context provides a different perspective on the Voter Transportation Law's likely purpose. Republicans regained control of the Michigan Legislature in 1892 after a brief loss of power following the 1890 election. Peter H. Argersinger, *Electoral Reform and Partisan Jugglery*, 119 Pol. Sci. Q. 499, 515 (2004). "[P]artisanship defined the construction and reconstruction of electoral laws in the 1890s," *id.* at 519, and this held especially true in Michigan. In those years of nearly absolute control, the majority "moved to restrict voting rights." *Id.* at 518. They were very forthright in articulating that the disenfranchisement of those they characterized as "the irresponsible, the ignorant, and the corrupt" animated their legislation. *Id.* at 518. At the very least, the timing of the Voter Transportation Law's passage suggests that it shared the same partisan, vote-suppressive purpose as other election-related measures that the single-party Michigan Legislature passed in 1895. *See id.* at 518–19.

In sum, there is simply no support for the conclusion that the Voter Transportation Law was an anti-voting fraud measure, and § 108.7(c)(4) does not exclude it from FECA preemption.

VI. The Court may affirm based on Plaintiffs' constitutional claims.

This Court "may affirm the [district] court's order on any ground that is supported by the record." *Williamson v. Recovery Ltd. P'ship*, 826 F.3d 297, 302 (6th Cir. 2016). If the Court were to find the preemption argument unpersuasive, it could still affirm on the grounds that Appellees are likely to succeed on their constitutional challenge to the Voter Transportation Law, which could also serve as grounds for the injunction. As this Court has previously noted, "even minimal infringement upon First Amendment values constitutes irreparable injury sufficient to justify injunctive relief." *Newsom v. Norris*, 888 F.2d 371, 378 (6th Cir. 1989).

The Voter Transportation Law regulates protected political expression in two ways. *First*, it regulates political expression because its broad, untailored, and unconstitutional $0 spending limit on a certain kind of political spending does not in and of itself threaten quid-pro-quo corruption. *See, e.g.*, *Buckley v. Valeo*, 424 U.S. 1, 23 (1976) (noting that "expenditure ceilings impose . . . severe restrictions on protected freedoms of political expression and association"); *id.* at 18 (noting that "expenditure limitations impose direct quantity restrictions on political communication and association"). *Second*, the Law limits political expression and organizing efforts. The act of transporting voters to the polls is a recognized element of voter registration and get-out-the-vote drives. *E.g.*, 11 C.F.R. § 114.4(d)(1) ("Voter registration and get-out-the-vote drives include providing transportation to

the polls or to the place of registration."); Ufot Declaration, RE 22-8, PageID# 238–241. Often these efforts are part of a core strategy to convince individuals to exercise their fundamental right to vote and build political power. *Id*. As now-Justice Kavanaugh noted in *Emily's List v. Federal Election Commission*, people "are entitled to spend and raise unlimited money for those activities." 581 F.3d 1, 16 (D.C. Cir. 2009) (referring to "advertisements, get-out-the-vote efforts, and voter registration drives"); *see also League of Women Voters v. Hargett*, 400 F. Supp. 3d 706, 720 (M.D. Tenn. 2019) (voter registration organizing is protected First Amendment conduct); *Hernandez v. Woodard*, 714 F. Supp. 963, 973 & n.11 (N.D. Ill. 1989) ("The First Amendment rights of free speech, press, assembly and petition incorporate 'a right to band together for the advancement of political beliefs.'" (quoting *Hadnott v. Amos*, 394 U.S. 358, 364 (1969))); *see also Valeo*, 424 U.S. at 15 (Supreme Court precedent has "made clear that the First and Fourteenth Amendments guarantee freedom to associate with others for the common advancement of political beliefs and ideas." (quotation marks omitted)); *NAACP v. Button*, 371 U.S. 415, 437 (1963) ("Free trade in ideas means free trade in the opportunity to persuade to action.").

VII. The district court did not abuse its discretion in weighing the remaining factors.

After fulsome briefing and argument, the district court held that the remaining preliminary injunction factors weighed in favor of granting the preliminary

injunction. PI Order, RE 79, PageID# 1621–1624; Stay Order, RE 92, PageID# 1761–1764. To disturb the district court's order, Intervenors must identify either a clearly erroneous fact or improper application of the law in its treatment of these factors. *Christian Schmidt Brewing Co.*, 753 F.2d at 1356. They do neither.

A. The district court correctly found that irreparable harm would follow if the injunction was not issued.

Noting that "any particular election only occurs once," the district court found that without an injunction, Appellees' ability to "organize and spend money on transporting voters to the polls" would be irreparably impaired. *Priorities USA*, 487 F. Supp. 3d at 599. The stay proved the district court correct; Appellees were unable to engage in planned get out the vote activities. *E.g.*, Lubin Bus Declaration, RE 88-2, PageID# 1722–1730 (describing plan to spend money to hire transportation to bring voters to the polls). Those restrictions remain in place without an injunction. Intervenors have failed to meet their burden to identify a clear error that the district court made when it identified the harm.

B. The balance of equities and public interest tip sharply in Appellees' favor.

The district court correctly found that any harm to the state was outweighed by harm to Appellees and the public, acknowledging this Court's recognition that "[t]here is a strong public interest in allowing every registered voter to vote freely." PI Order, RE 79, PageID# 1624 (quoting *Summit Cnty. Democratic Cent. & Exec. Comm. v. Blackwell*, 388 F.3d 547, 551 (6th Cir. 2004)). "[T]he public interest is

served by preventing the violation of constitutional rights." *Chabad of S. Ohio & Congregation Lubavitch v. City of Cincinnati*, 363 F.3d 427, 436 (6th Cir. 2004).

Furthermore, when Intervenors moved for an emergency stay of the preliminary injunction, the district court made additional relevant findings. The district court not only articulated the irreparable harm to Appellees, Stay Order, RE 92, PageID# 1763, it found that increasing the ability of nonparties such as Uber to transport voters to the polls without fear of prosecution supported finding that the injunction was in the public interest, *id.* at PageID# 1764. Finally, the district court considered the alleged harm to the Republican Committee Intervenors and concluded that whatever "competitive harm" they may suffer due to the injunction did not outweigh the other factors. *Id.* at PageID# 1762.

Intervenors say nothing to suggest otherwise, besides asserting a general interest in maintaining the status quo and enforcing the law. But none of those arguments constitute an abuse of discretion.

C. The doctrine of laches is inapplicable.

To the extent Legislative Intervenors invoke the doctrine of laches, Legislative Br. at 34, it does not apply. Appellees seek only *prospective* injunctive relief to protect their rights in *future* elections; laches ordinarily does not bar such an action. *See, e.g.*, *Peter Letterese & Assocs., Inc. v. World Inst. Of Scientology Enters., Int'l*, 533 F.3d 1287, 1321 (11th Cir. 2008); *Env't. Def. Fund v. Marsh*, 651

F.2d 983, 1005, n.32 (5th Cir. 1981); *Lyons P'Ship, L.P. v. Morris Costumes, Inc.*, 243 F.3d 789 (4th Cir. 2001). This is particularly true where plaintiffs seek prospective relief to address "ongoing" injury to voting rights, rather than to undo or overturn a prior election's result. *Garza v. Cnty. of L.A.*, 918 F.2d 763, 772 (9th Cir. 1990); *see also Smith v. Clinton*, 687 F. Supp. 1310, 1312-13 (E.D. Ark. 1988) (action not barred because "the injury alleged by the plaintiffs is continuing, suffered anew each time a[n] . . . election is held"). Finally, Appellees brought this suit at the earliest plausible time. Appellees Rise and Priorities USA did not establish operations in Michigan until 2019, the year they sued. Lubin Declaration, RE 22-6, PageID# 218–219; Priorities USA Press Release, RE 72-8, PageID# 1385–1386.

CONCLUSION

For these reasons, Plaintiffs-Appellees respectfully request that the Court affirm the district court's preliminary injunction.

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(f) and 6th Cir. R. 32(b) because it contains 13,000 words, as determined by the word-count function of Microsoft Word, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font.

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CERTIFICATE OF SERVICE

I hereby certify that on April 16, 2021, 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.

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DESIGNATION OF DISTRICT COURT RECORD

Under Sixth Circuit Rule 30(g), Plaintiffs-Appellees designate the following district court records as relevant, including the exhibits attached to each document.

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30	Opposition to PI (Nessel)	440–492
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33	Republican Committees' Motion to Intervene	498–566
39	Legislature's Motion to Intervene	697–732
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