

STATE OF MICHIGAN  
IN THE SUPREME COURT

*In re* Independent Citizens Redistricting  
Commission for State Legislative and  
Congressional District's duty to redraw  
districts by November 1, 2021,

Supreme Court No. \_\_\_\_\_

**Expedited consideration  
requested under MCR 7.311(E).  
Relief requested as soon as  
practicable but not later than  
August 1, 2021.**

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**PETITION FOR RELIEF**

Petitioners Michigan Independent Citizens Redistricting Commission for  
State Legislative and Congressional Districts, and Jocelyn Benson, in her official  
capacity as Michigan Secretary of State, for their Petition state as follows:

**INTRODUCTION**

1. Every ten years following the decennial United States Census, Michigan  
adjusts its state legislative and congressional district boundaries based on the

population changes reflected in the census. This process is fundamental to democracy in Michigan.

2. In November 2018, the people amended the state Constitution to create the Michigan Independent Citizens Redistricting Commission and shift redistricting duties from the Legislature to the Commission. The 2020 census presents the Commission with its first opportunity to perform its new constitutional duties—and its first constitutional dilemma.

3. With respect to timing, the Constitution mandates that the Commission adopt a redistricting plan by November 1, 2021. But before the Commission can adopt a plan, each plan must be made available for public comment for 45 days. This means that the Commission must have proposed plans available to the public by September 17, 2021. But to draw plans, the Commission must have the 2020 census data from the federal government.

4. Ordinarily this data would have been available to the Commission in March of this year. However, due to the pandemic, the U.S. Census Bureau will not be releasing data to the states until September 30, 2021. This is after the date by which the Commission is required to publish proposed plans. The Commission cannot propose plans that satisfy federal and state law until it receives the 2020 census data. Because receipt of the data will be delayed, the Commission will not be able to comply with the constitutionally imposed timeline.

5. Given this conflict, the Commission and Secretary of State Jocelyn Benson seek direction from this Court. Being out of compliance with the Constitution

places the Commission in an untenable situation. The Commission is seeking to honor its duties under Michigan's Constitution given the delays in the release of the census information. A decision from this Court here would protect the Commission's ability to draw fair and lawful plans pursuant to the orderly and transparent process chosen by the People of Michigan.

6. To remedy this extraordinary circumstance, Petitioners seek an order from this Court directing the Commission in the performance of their duties.

Specifically, the Commission should be directed to propose plans within 72 days of receiving the census data, and to approve plans within 45 days thereafter. If the census data is received as scheduled on September 30, 2020, the proposed plans would be due no later than December 11, 2021, and plans would be approved on or before January 25, 2022.

### **PARTIES**

7. The Commission is established as a permanent commission in the legislative branch of government. Const 1963, art 4, § 6(1). The powers granted to the Commission are legislative functions not subject to the control or approval of the legislature and are exclusively reserved to the Commission. Const 1963, art 4, § 6(22). The Constitution clearly states that "[i]n no event shall any body, except the independent citizens redistricting commission acting pursuant to this section, promulgate and adopt a redistricting plan or plans for this state." Const 1963, art 4, § 6(19). This is the inaugural Commission convened under the 2018 constitutional amendment.

8. Jocelyn Benson is the Michigan Secretary of State. As Secretary of State, she is the “chief election officer of the state” and is responsible for overseeing the conduct of elections. MCL 168.21, MCL 168.31. Secretary Benson is also responsible for overseeing the application and selection process for the members of the Commission and serving as a non-voting secretary to the Commission after it has been convened. Const 1963, art 4, § 6 (2), (3), (4), (7), (17).

### JURISDICTION

9. This Court has jurisdiction over this action under article 6, § 4 (conferring authority on this Court to issue prerogative and remedial writs and also “appellate jurisdiction as provided by the rules of the supreme court”) and article 4, § 6(19) of the Constitution, as amended. Subsection 6(19) expressly provides that this Court, “in the exercise of original jurisdiction, shall direct the secretary of state or the commission to perform their respective duties[.]” Const 1963, art 4, § 6(19). The Michigan Court Rules further provide that this Court may “exercise other jurisdiction as provided by the Constitution or by law.” MCR 7.303(B)(6).

### FACTUAL BACKGROUND

#### A. Redistricting in Michigan after Proposal 2

10. In 2017, Voters Not Politicians, a ballot proposal committee, filed an initiative petition to amend the Michigan Constitution. See *Citizens Protecting Michigan’s Constitution v Secretary of State, et al*, 324 Mich App 561 (2018). The proposal principally sought to amend the apportionment provisions in article 4, § 6 of the Constitution.

11. Identified as Proposal 18-2 on the November 6, 2018 general election ballot, the proposal passed overwhelmingly.<sup>1</sup> The amendments became effective December 22, 2018. See Const 1963, art 12, § 2.

12. The amendments established a commission—the Independent Citizens Redistricting Commission—charged with redrawing Michigan’s state senate, state house, and congressional districts according to specific criteria. Const 1963, art 4, § 6(1), (13).

13. The amendments prescribe eligibility criteria and a complex selection process for membership on the Commission, which includes those who affiliate with the Democratic Party, the Republican Party, and persons not affiliated with either major party. *Id.*, § 6(1)-(2). The commissioners for this redistricting cycle were initially selected by a random draw on August 17, 2020.<sup>2</sup>

14. The Commission is granted authority to provide for its own rules and processes, and the Legislature must appropriate money to compensate the commissioners and to enable the Commission to perform its functions. *Id.*, § 6(4)-(5). The Secretary of State acts as a non-voting secretary to the Commission, and “in that capacity shall furnish, under the direction of the commission, all technical services that the commission deems necessary.” *Id.*, § 6(4).

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<sup>1</sup> 2018 Michigan Election Results, available at [https://mielections.us/election/results/2018GEN\\_CENR.html](https://mielections.us/election/results/2018GEN_CENR.html), (accessed April \_\_).

<sup>2</sup> See *History made with selection of 13 commissioners to redraw election districts statewide*, 8/17/20, available at [https://www.michigan.gov/sos/0,4670,7-127-1640\\_9150-536996--,00.html](https://www.michigan.gov/sos/0,4670,7-127-1640_9150-536996--,00.html). One commissioner was randomly selected on October 21, 2020, to fill a vacancy. Const 1963, art 4, § 6(3).

15. Each commissioner is charged with “perform[ing] his or her duties in a manner that is impartial and reinforces public confidence in the integrity of the redistricting process.” *Id.*, § 6(10). And the Commission must conduct its business at open meetings and “conduct its hearings in a manner that invites wide public participation throughout the state.” *Id.*

16. Under the Constitution, Secretary Benson was required to convene the Commission by October 15, 2020, which she did. The first meeting was held September 17, 2020. Const 1963, art 4, § 6(7). Thereafter, the Commission is required “to hold at least ten public hearings throughout the state for the purpose of informing the public about the redistricting process . . . and soliciting information from the public about potential plans,” before the Commission may draft plans. *Id.*, § 6(8). At this time, the Commission has scheduled 16 public hearings to be held across the state between May 11 and July 1, 2021 to meet this requirement.<sup>3</sup>

**B. The Commission must draft and approve redistricting plans.**

17. After developing at least one plan for each type of district, the Commission must publish the plans, provide the supporting materials, and “hold at least five public hearings throughout the state for the purpose of soliciting comment from the public about the proposed plans.” *Id.*, § 6(9). At this time, the Commission has scheduled eight public hearings.<sup>4</sup>

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<sup>3</sup> See Independent Citizens Redistricting Commission, meeting schedule, available at [MICRC - ICRC Meeting Schedule \(michigan.gov\)](https://michigan.gov/micrc) (accessed April 20, 2021.)

<sup>4</sup> *Id.*

18. Before voting to adopt a plan, the Commission must “provide public notice of each plan that will be voted on and provide at least 45 days for public comment on the proposed plan or plans. Each plan that will be voted on shall include such census data as is necessary to accurately describe the plan and verify the population of each district, and shall include the map and legal description required in part (9) of this section.” *Id.*, § 6(14)(b). And “[n]ot later than November 1 in the year immediately following the federal decennial census, the commission shall adopt a redistricting plan under this section for each of the following types of districts: state senate districts, state house of representative districts, and congressional districts.” *Id.*, § 6(7).

19. Thus, under the Constitution the Commission is to publish proposed plan(s), with supporting data, no later than September 17, 2021 and adopt a final plan by November 1, 2021 for this cycle.

20. After adopting a final plan, the Commission must “publish the plan and the material reports, reference materials, and data used in drawing it, including any programming information used to produce and test the plan.” *Id.* § 6(15). The Commission must also issue a report for each adopted plan “explain[ing] the basis on which the commission made its decisions in achieving compliance with plan requirements and shall include the map and legal description required in part (9) of this section.” *Id.* § 6(16).

21. An adopted plan “become[s] law 60 days after its publication.” *Id.*, § 6(17). Under subsection § 6(19), this Court “may review a challenge to any plan adopted

by the commission, and shall remand a plan to the commission for further action if the plan fails to comply with the requirements” of state or federal Constitution or superseding federal law. *Id.*, § 6(19).

**C. The federal government is delaying release of the 2020 census data.**

**1. Use of census data in reapportionment and redistricting**

22. The U.S. Secretary of Commerce oversees the U.S. Census Bureau and the decennial census activities. 15 USC 1511(5), 13 USC 2. The decennial census data, specifically the population count, is important because it determines the number of representatives representing each state in Congress for the following decade. The more detailed dataset known as redistricting counts, or the Census PL 94-171 data, is critical for redistricting because it provides geographic and spatial detail on where people live and their key demographic characteristics.

23. The U.S. Constitution requires that districts are redrawn every decade to ensure equal populations between districts. See U.S. Const, Art I, § 2, US Const, Am 14, *Wesberry v Sanders*, 376 US 1, 7-8 (1964). The total number of seats in the U.S. House of Representatives is fixed by law at 435 and the seats are apportioned to the states in proportion to their populations. Similarly, the total number of seats in the Michigan House of Representatives is fixed by law at 110, see Const 1963, art 4, § 3, the Michigan Senate is fixed by law at 38, see Const 1963, art 4, § 2, and both the House and Senate are apportioned on the basis of population. See *Reynolds v Sims*, 377 US 533, 562-564 (1964).



24. Overlaying these requirements is the Voting Rights Act of 1965, 52 USC 10301 *et seq.*, “which, among other things, prohibits state election practices or procedures that result in ‘a denial of abridgement of the right of any citizen of the United States to vote on account of race or color . . . .’” *LeRoux v Secretary of State*, 465 Mich 594, 597–598 (2002) (citations omitted).

25. While the use of census data is the general practice of the states, no federal rule or statute requires states to use decennial census data in redistricting, so long as the redistricting complies with the U.S. Constitution and the federal Voting Right Act. *Burns v Richardson*, 384 US 73, 91 (1966) (“[T]he Equal Protection Clause does not require the States to use total population figures derived from the federal census as the standard by which this substantial population equivalency is to be measured.”); see also e.g., *Burns*, 384 U.S. at 92–97 (State may draw districts based on voter-registration data).

26. Although the Michigan Constitution does not expressly require that decennial census data be used to redistrict, that appears to be the intent of the amendment. Numerous provisions in article 4, § 6 refer to the decennial census as the starting point of the redistricting process. See Const 1963, art 4, § 6(2)(a)(i), (c)–(f), (5), and (7). And subsections 6(9) and (14)(b) both require that plans be distributed to the public with “such census data as is necessary to accurately describe the plan and verify the population of each district.” Const 1963, art 4, § 6(9), (14)(b).

## 2. Federal statutory deadlines

27. The following provisions are codified in the Census Act, 13 USC 1 *et seq.*, which governs U.S. Census Bureau activities:

- Decennial census of population shall occur on April 1. 13 USC 141(a).<sup>5</sup>
- Tabulation of total population required for apportionment of representatives “shall be completed within 9 months after the census date and reported by the Secretary [of the U.S. Census Bureau] to the President of the United States.” 13 USC 141(b).
- States shall have the opportunity to identify the small area geography for which they need data to conduct legislative redistricting and deliver this data (PL 94-171 data) no later than one year from census day. 13 USC 141(c).

28. Based on these statutes, under federal law, the relevant dates for the 2020 census cycle are: census date of April 1, 2020, apportionment data due to the President by December 31, 2020, and redistricting data released to the states by April 1, 2021.

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<sup>5</sup> “Census of population” is defined in 13 USC 141(g) as “census of population, housing and matters related to population and housing.”

### 3. Anticipated dates for release of data

29. Representatives from the U.S. Census Bureau have announced a four month delay for apportionment data<sup>6</sup> and a 6-month delay<sup>7</sup> for redistricting data<sup>8</sup> critical to the Commission's work. The U.S. Census Bureau has cited the COVID-19 pandemic, wildfires in the western states, and the active hurricane season, among others, as causes of the delay in their 2020 census operations. See *Ohio v Raimondo*, 2021 WL 1118049 at \*1-2 (March 24, 2021, SD Ohio).

30. A chart demonstrating the progression of the delays in census data follows:

| Action/Sent to | Deadline Under Title 13 "Statutory Plan" | Deadline under the Executive Summary <sup>9</sup> "Original Plan" | Updated Deadlines per 2020 Census Update <sup>10</sup> "COVID Plan" | Updated Deadlines per Press Releases <sup>11</sup> "Current Plan" |
|----------------|--|---|---|---|
|                |  |   |   |   |

<sup>6</sup> See *Census Bureau Statement on Apportionment Counts*, Release Number CB21-RTQ.06, 1/28/21, available at [Census Bureau Statement on Apportionment Counts](#).

<sup>7</sup> See *Census Bureau Statement on Redistricting Data Timeline*, Release Number CB21-CN.14, 2/12/21, available at [Census Bureau Statement on Redistricting Data Timeline](#).

<sup>8</sup> The redistricting data includes counts of population by race, ethnicity (Hispanic or Latino origin), voting age, housing occupancy status, and group quarters population at the smallest geographic level, which is a census block.

<sup>9</sup> See *2020 Census Operational Plan, Executive Summary, Prepared by the Decennial Census Management Division, U.S. Census Bureau Version 1.0, December 2015*. The document notes Final Version 1.0 was adopted November 6, 2015.

<sup>10</sup> On January 27, 2021, Kathleen Styles, an official at the U.S. Census Bureau, announced during a 2020 Census Update Meeting hosted by the National Conference of State Legislatures that the bureau intended to deliver redistricting data to the states by July 31, 2020.

<sup>11</sup> On January 27, 2021, Styles announced the bureau intended to deliver its final apportionment report. On February 12, 2021, the census bureau announced that it would delay transmission of redistricting data to the states.

|  |                         |                         |                      |                          |
|--|-------------------------|-------------------------|----------------------|--------------------------|
| President<br>(population<br>counts for<br>apportionment) | by December<br>31, 2020 | by December<br>31, 2020 | by April 30,<br>2021 | by April 30,<br>2021     |
| States<br>(redistricting<br>counts for<br>redistricting) | by April 1,<br>2021     | by March 31,<br>2021    | by July 30,<br>2021  | by September<br>30, 2021 |

31. Another notable change in the 2020 census cycle is a shift from the release of redistricting data, PL 94-171, on a rolling basis to delivery of the redistricting data for all states at once.<sup>12</sup> As noted above, the Bureau announced that it will now deliver the redistricting data to all states by September 30, 2021. In contrast, the 2010 census data was received by the Michigan Legislature on March 22, 2011.

**D. The delayed release of data will negatively impact Michigan's redistricting process.**

**1. The Commission will not be able to meet its constitutional deadlines.**

32. The delay in receipt of the PL 94-171 redistricting data from the U.S. Census Bureau will have a direct, negative impact on the timing of the critical work of the Commission. The delayed receipt will place the Commission in conflict with several provisions in article 4, § 6 of the Michigan Constitution.

33. Subsection 6(7) expressly states that the Commission must adopt redistricting plans “[n]ot later than November 1 in the year immediately following the federal decennial census.” Const 1963, art 4, § 6(7). While this date appears to grant the Commission one month to perform its map drawing duties with the

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<sup>12</sup> The data is provided at the census block level, which is the smallest geographic unit used by the U.S. Census Bureau.

delayed 2020 census data, other related constitutional deadlines make it clear that the Commission cannot meet the November 1 deadline if it receives census data on September 30.

34. For example, subsection 6(14) requires that, prior to a vote to adopt any plan, the Commission is required to provide public notice of each plan that will be voted on and provide a minimum of 45 days for public comment on the proposed plan(s). Const 1963, art 4, § 6(14). This would require the proposed plan(s) be published, with supporting data, and available for public comment on or before Friday, September 17, 2021 (45 days before November 1).<sup>13</sup>

35. This creates an inherent conflict between the latest possible date for publication/public comment period to begin, which is on or before September 17, 2021 and anticipated receipt of census data by September 30, 2021. Additionally, subsection 6(9) requires the Commission to publish proposed redistricting plans and hold at least 5 public hearings to solicit public comment on those plans *before* a vote on or before November 1. Const 1963, art 4, § 6(9).

36. Thus, the Commission will not be able to meet its constitutional timeline based on a data release date of September 30, 2021.

37. However, the Commission believes it will be able to perform some work using data in a “legacy” format from the U.S. Census Bureau. Legacy format data is a non-tabulated version of census data that must be processed before use. The data

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<sup>13</sup> Again, subsection 6(14)(b) requires, in part, that the census data “necessary to accurately describe the plan and verify the population of each district” is published in advance of the 45-day public comment window. Const 1963, art 4, § 6(14)(b).

in the legacy format files is identical to the PL 94-171 redistricting data files expected to be delivered by September 30 and subject to the same exacting quality assurance processes. The sole difference is in the format the census data is presented.

38. The U.S. Census Bureau has stated that this data could be provided to all states by mid-to-late August 2021. The Commission has formally expressed its intention to utilize such data to begin its work as soon as practicable.<sup>14</sup>

39. The potential release of legacy format data although helpful will not have a meaningful impact on the Commission's ability to perform its duties under the current constitutionally imposed deadline. Assuming the legacy format data is released in mid- to late-August, the additional time gained by the Commission remains insufficient to meet the November 1 deadline and needs to be weighed against any risk of utilizing non-tabulated data.

40. While the underlying data is identical, to eliminate any risk, the non-tabulated legacy format data would be reconciled with the tabulated PL 94-171 redistricting data set for release by September 30, 2021. This reconciliation process is expected to take between 7-to-10 days.

41. Based on the current November 1, 2021 deadline, use of legacy format data would likely provide the Commission between two and four weeks to conduct its work prior to the September 17, 2021, publication deadline that begins the 45-day

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<sup>14</sup> See Resolution 2021.04.11, adopted April 15, 2021, available at [\(MICRC Res 2021 04 11 Add Language to Request for Relief from MI Supreme Court 722291 7.pdf \(michigan.gov\)\)](#)

public comment period. This is still insufficient time for the Commission to perform its work in mapping district lines for congressional and state legislative districts, meet the 45-day publication requirements, and hold the second round of constitutionally required public hearings in advance of a final vote to adopt district plans.

**2. The Secretary of State will face difficulty in updating the qualified voter file before the August 2022 primary election.**

42. The delay in receipt of the redistricting data and resulting delay of the redistricting work of the Commission also has a direct, negative impact on the critical work of the Secretary's Bureau of Elections, which begins after the redistricting plans are proposed. Const 1963, art 4, § 6(17).

43. The Bureau of Elections maintains Michigan's qualified voter file (QVF), which is an electronic list of all registered voters in the state—almost 8 million people. For each voter, the QVF contains the list of all districts in which a voter lives, i.e., federal and state house and senate districts, etc, which is used to determine what ballot a voter receives. The QVF also includes a "street index" of addresses for all registered voters in the state. After the new maps are drawn by the Commission, the Bureau must update the QVF.

44. The update generally takes place in two stages. In stage one, the new district lines will be added to the QVF. In stage two, the "street index" will be reviewed to identify where districts have changed, and an update to registrations will be made where voters' districts have changed. To accomplish these updates, the Bureau

anticipates that it will be able to electronically move large groups of voters at one time.

45. However, manual, address-by-address changes will still be required for thousands and thousands of voters where district boundaries limit the use of large or global moves. After stages one and two are accomplished, voting precincts must be reviewed and modified as necessary. And after that local clerks are charged with reviewing changes in their jurisdictions. In sum, this is an extensive and time-intensive process.

46. With respect to the last redistricting cycle in 2010-2011, the update to the QVF took approximately six months. The Commission's constitutional deadline of November 1 to adopt plans would ordinarily accommodate the Bureau of Elections' multi-month process of updating the QVF. The updates to the QVF must be completed in time to accommodate candidates seeking to run in the August 2, 2022 primary election.

47. For this election cycle, the deadline to collect signatures and file nominating petitions for accessing the primary ballot is on or before April 19, 2022 (the 15th Tuesday before the primary). This includes nominating petitions for senator, MCL 168.93, congressional representatives, MCL 168.133, and state senators and representatives, MCL 168.163. As a result, the QVF updates must be completed by the April 19 filing deadline.

48. The delay in receiving the redistricting data and the likely resulting delay in the Commission's adoption of final plans will make it very difficult for the Bureau of



Elections to perform its QVF update in time for the April 19, 2022, filing deadline. The Bureau of Elections is currently exploring ways to accomplish the updates more efficiently, but it is unknown at this time whether any significant time-savings may be had.

49. In addition, because the filing deadline is set by statute, the Legislature could relieve the Bureau of Elections to some extent by extending the deadline through legislation, which has been introduced. See House Bills 4642 and 4643, introduced on April 15, 2021. But Petitioners cannot confirm to this Court whether such efforts will be successful.

**3. Petitioners will be ready to proceed as quickly as possible once the final census data is received from the U.S. Census Bureau.**

50. The Secretary and the Commission have complied with their constitutional duties to date and will be prepared to proceed as quickly as possible once the data is received.

51. The Commission has met regularly and made good-faith efforts to meet its constitutional responsibilities through its activities, which include: hiring staff, adopting Rules of Procedure as well as policy documents, engaging in the procurement process to secure necessary consultants, scheduling the first round of constitutionally mandated public hearings, identifying the locations for the second round of public hearings, and bolstering the public engagement requirements. See Const 1963, art 4, § 6(4), (7)-(8).

52. The Commission intends to fulfill its constitutional duties and has formally stated its intent to engage in preliminary line drawing utilizing the legacy format

data to be prepared to receive and reconcile the tabulated PL 94-171 census data and move forward swiftly. But again, the Commission cannot meet the current deadline of November 1, 2021 and the mandated 45-day public comment window deadline to begin on or before September 17, 2021 because the tabulated PL 94-171 census data will not be released until September 30, 2021.

### **COUNT I – REQUEST FOR DIRECTED RELIEF**

53. Paragraphs 1 through 52 are incorporated as if set forth fully herein.

54. “Although apportionment is primarily a legislative task, this Court’s involvement in the process is of long standing.” *In re Apportionment of State Legislature – 1992*, 439 Mich 715, 716 (1992).

55. Petitioners request that this Court exercise its original jurisdiction under article 6, § 4 and article 4, § 6(19) of the Michigan Constitution and direct the Commission to adopt redistricting plans for congressional and state legislative districts within 72 days of the Commission’s receipt of the tabulated redistricting data from the U.S. Census Bureau. Doing so will ensure that fair maps are drawn and will protect the adopted plans from challenges based on the Commission’s inability to adhere to the constitutional timeline.

56. Article 4, § 6 vests sole authority in the Commission to promulgate and adopt redistricting plans for state senate districts, state house of representative districts, and congressional districts. This exclusive delegation of power to the Commission is clearly stated in article 4, § 6 (1), (19), and (22) of the Constitution. No other entity in Michigan holds this power or responsibility.

57. But if the census data is not received until September 30, 2021, the Commission cannot publish proposed plans and receive public comment on September 17, 2021. This represents the latest date the publication and public comment period can begin given the November 1, 2021 constitutional deadline for adoption of maps. Even the use of legacy format data will not have a meaningful impact on the Commission's ability to perform its duties under the current constitutionally imposed deadline.

58. Unless this Court provides relief with respect to the November 1, 2021 deadline, the Commission cannot timely perform its constitutional function to redistrict the state in advance of the 2022 elections.

59. Because the Commission's deadlines are constitutional, the Commission cannot set new deadlines or seek relief from the Legislature. Nor is it possible, even if it were prudent, to amend the Constitution since an amendment could only be voted upon at the next November general election, which is November 8, 2022. Const 1963, art 12, § 2; MCL 168.2(j). And while the Commission could simply set internal deadlines and work to adopt plans on the same schedule proposed here, Petitioners have significant concerns with this approach.

60. By failing to publish proposed plans by September 17, 2021, and failing to adopt plans by November 1, 2021, the Commission will have acted contrary to the Constitution, albeit for reasons beyond the Commission's control. This places the Commission at risk of being sued either to compel its compliance with the

deadlines, or to attack the validity of any approved plans as untimely. Such lawsuits would plainly disrupt the Commission's work.

61. Given the importance of the redistricting process to democracy in Michigan, waiting and hoping that the Commission is not sued seems an imprudent choice. Rather, Commission and the Secretary invoke this Court's jurisdiction as provided by the Constitution to ensure that they are carrying out their constitutional duties under article 4 as envisioned by the People for the redistricting of Michigan's congressional and state legislative seats.

62. The will of the voters in amending the Constitution was to have an independent citizen-led commission draw district lines in a transparent process that engages the public throughout. And that interest in transparency is better served by the Commission coming before this Court, in a public filing, to explain the circumstances, support its proposed timeline, and request direction from this Court.

63. Petitioners therefore seek a limited, one-time adjustment to Michigan's deadlines so that the Commission may perform its duties as close as possible to what the people intended. This Court has provided similar relief in an analogous context. See *Ferency v Secretary of State*, 409 Mich 569, 598–602 (1980) (suspending constitutional deadline for placing proposal on the ballot). And courts in other states have extended the timeline for redistricting in response to the delayed release of the census data. See *State ex rel Kotek v Fagan*, \_\_\_ P3d \_\_\_, 367 Or 803 (2021); *Legislature of the State of California v Padilla*, 469 P3d 405 (Cal 2020).

64. If this Court does not provide relief, the Commission will be unable to timely update the existing congressional and state legislative district plans. This also opens the possibility for an argument that the current maps should be used. But using the “old” maps would be contrary to the law and the will of the people.

65. New district maps based on updated census data will reflect the population shifts over the past decade and allow for current maps to be redrawn to reflect updated data and comport with federal and state law. Reapportionment by the federal government will inform the Commission of the number of congressional districts that will need to be drawn. Michigan’s delegation has been reduced by one seat in the U.S. House of Representatives in each of the last four census cycles due to a loss of population. It is expected that Michigan will lose at least one seat this cycle due to continued population loss, which will be confirmed by April 30, 2021.

66. The existing maps will not reflect any lost congressional House seat or the population shifts over the last decade. And regardless, using the current maps would be contrary to the will of the people. The Constitution was amended, and the Commission established, to place the redistricting process with the people, a reform specifically recognized by the U.S. Supreme Court in *Rucho v Common Cause*, 139 S Ct 2484, 2507 (2019). Therefore, it is imperative that this Court exercise jurisdiction and direct Petitioners in the performance of their duties.

67. The Commission, the Secretary of State, and the Bureau of Elections engaged in significant discussion to determine a workable timeline for proposing and adopting plans based on receiving census data by September 30, 2021. The

following timetable, assuming tabulated PL 94-171 data is received on September 30, 2021, is proposed:

| Actions  | Original Timeline                          | Proposed Timeline   |
|--|--|---|
| Commission holds initial public hearings and initial drafting of plans commences (art 4, § 6(8)) | May 2021—September 2021                    | May 2021—September 2021   |
| U.S. Census Bureau sends redistricting data to states (13 USC 141(c))                            | April 1, 2021                              | September 30, 2021  |
| Commission deadline to propose plans (art 4, § 6(14)(b))   | September 17, 2021                         | <b>December 11, 2021<br/>(72 days after receiving data)</b>               |
| Commission deadline to adopt final plan after 45 days of public comment (art 4, § 6(7), 14(b))   | November 1, 2021                           | <b>January 25, 2022</b>   |
| Commission publishes adopted plan and materials within 30 days (art 4, § 6(15))                  | December 1, 2021                           | February 24, 2022   |
| Adopted plans become law 60 days after publication (art 4, § 6(17))                              | January 30, 2022                           | April 25, 2022  |
| Bureau of Elections updates qualified voter file   | November 1, 2021 to April, 2022 (5 months) | January 25, 2022 to April, 2022 (3 months)                                |
| Filing deadline for nominating petitions for August primary                                      | April 19, 2022                             | April 19, 2022<br>(unless extended by the Legislature; see HB 4642, 4643) |
| August primary   | August 2, 2022                             | August 2, 2022  |
| November general election  | November 8, 2022                           | November 8, 2022  |

68. As proposed, the Commission would have at least 72 days after receiving the data to draft a proposed plan for release to the public and would be required to adopt a plan on or before January 25, 2022. While this is a significantly shortened period, the Commission has carefully considered the matter and believes it can perform its constitutional function within this time period. This timetable also preserves the 45-day public comment period required under article 4, § 6(14)(b).

69. Petitioners have proposed the above timetable based on the receipt of data by September 30, 2021. Although it is unlikely that the U.S. Census Bureau will delay issuing data beyond September 30, 2021, it is a possibility. Accordingly, Petitioners would request that the 72-day period apply to any subsequent release date.

70. In an even more unlikely scenario, should the PL 94-171 redistricting data be released *before* September 30, 2021, the Commission, and to the extent required, the Secretary, will make best efforts to expedite the process and release the preliminary and final plans a corresponding number of days in advance of the 72-day time period.

### CONCLUSION AND RELIEF REQUESTED

For the reasons set forth above, Petitioners Michigan Independent Citizens Redistricting Commission and Secretary of State Jocelyn Benson respectfully request that this Court grant their petition and enter an order **directing** that:

- (1) The Commission shall propose preliminary plans for state senate districts, state house of representative districts, and congressional districts, within 72 days of receipt of the redistricting data from the U.S. Census Bureau on September 30, 2021, making preliminary plans due on or before December 11, 2021, notwithstanding the requirements of article 4, § 6(7), 14(b) of the Constitution;

- (2) The Commission shall adopt final redistricting plans for state senate districts, state house of representative districts, and congressional districts by the 45<sup>th</sup> day following the Commission's issuance of proposed plans on December 11, 2021, making adoption of final plans due on or before January 25, 2022, notwithstanding the requirements of article 4, § 6(7), 14(b) of the Constitution;
- (3) If the U.S. Census Bureau transmits the census data to the State of Michigan later than September 30, 2021, (a) the 72 days within which the Commission must propose preliminary plans for state senate districts, state house of representative districts, and congressional districts, will commence on the new date the state receives the data, and (b) the 45 days within which the Commission must adopt a final plan, will commence running from the date the Commission issued the proposed plans under subsection (3)(a), notwithstanding the requirements of article 4, § 6(7), 14(b) of the Constitution;
- (4) If the U.S. Census Bureau transmits the PL 94-171 census data to the State of Michigan earlier than September 30, 2021, the Commission will make every effort to expedite the process and adopt a final plan by a corresponding number of days in advance of the January 25, 2022, deadline set forth in paragraph (2) above; and

Petitioners ask that this Court grant any further or additional relief as this Court deems just and proper.



Respectfully submitted,

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Dated: April 20, 2021

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