

**UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MICHIGAN**

<p>PUBLIC INTEREST LEGAL FOUNDATION,</p> <p style="text-align: center;"><i>Plaintiff,</i></p> <p>v.</p> <p>JOCELYN BENSON, in her official capacity as Michigan Secretary of State,</p> <p style="text-align: center;"><i>Defendant.</i></p>	<p>Civ. No. 1:21-cv-929</p>
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JOINT STATUS REPORT

A Rule 16 Scheduling Conference is scheduled for February 24, 2022, at 3:00 pm.

Appearing for the parties as counsel will be:

Kaylan Phillips for the Plaintiff, Public Interest Legal Foundation;

Erik A. Grill for the Defendant, Michigan Secretary of State Jocelyn Benson.

The parties are willing and able to attend the scheduling conference in person or virtually, based on the Court's preference.

1. Jurisdiction: This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331, as the action arises under the laws of the United States. This Court also has jurisdiction under 52 U.S.C. § 20510(b), as the action seeks injunctive and declaratory relief under the NVRA.
2. Jury or Non-Jury: This case is to be tried before the court as trier of law and fact.
3. Judicial Availability: The parties **do not agree** to have a United States Magistrate Judge conduct any and all further proceedings in this case, including trial, and to order the entry of final judgment.

4. Statement of the Case:

Plaintiff: The Public Interest Legal Foundation (“Foundation”) is a non-partisan, non-profit, public interest organization that seeks to promote the integrity of elections nationwide. The Foundation has dedicated significant time and resources to ensure that voter rolls in the state of Michigan do not contain ineligible registrants. Beginning in early 2020, the Foundation worked to identify whether there were deceased registrants on Michigan’s rolls. As is explained in the Complaint, the Foundation employed careful measures to ensure its findings were accurate. The Foundation filed this action alleging that Defendant is violating Section 8 of the National Voter Registration Act because her list maintenance programs and activities have demonstrably failed to remove many thousands of long-deceased registrants from the state’s list of eligible registrants and also because Defendant has failed to allow inspection of records as permitted by federal law.

Defendant: Jocelyn Benson is the Michigan Secretary of State, and has a pending motion to dismiss arguing that PILF lacks standing, has failed to comply with the notice requirements under the National Voter Registration Act of 1993 (NVRA), and has failed to state a claim because it has not sufficiently alleged that Michigan’s program for removing deceased voters is unreasonable. PILF has refused to identify the criteria it used to conduct its “analysis” and it is impossible for the Secretary of State to verify PILF’s conclusions, but PILF’s allegations notably concede that it does not have the actual dates of birth of voters in Michigan’s QVF, rendering their list of “possibly deceased” voters speculative and unreliable. More pointedly, the NVRA does not require states to comply with any particular program or to immediately remove every voter who may have become ineligible. Rather, a state must “conduct a general program that makes a *reasonable effort*” to remove the names of deceased voters from the official lists of eligible voters. 52 U.S.C. § 20507(a)(4)(A)-(B). Michigan’s program for removing deceased voters uses the

Social Security Death Index (SSDI) to identify deceased voters for removal. The Eleventh Circuit determined that a similar SSDI-based program in Florida satisfied NVRA requirements. *Bellitto v. Snipes*, 935 F.3d 1192, 1205-07 (11th Cir. 2019). Furthermore, local clerks are instructed that they are authorized to cancel a voter's registration if the "clerk receives or obtains information that the voter has died" through "QVF inbox notification," from the "county clerk," from "death notices published in [a] newspaper" or from "personal firsthand knowledge." Michigan's program is reasonable and complies with NVRA, and so Plaintiff's claims fail as a matter of law.

5. Joinder of Parties and Amendment of Pleadings: The parties expect to file all motions for joinder of parties to this action and file all motions to amend the pleadings by April 15, 2022.

6. Disclosures and Exchanges:

- i. Fed.R.Civ.P. 26(a)(1) disclosures: the earlier of one week following this Court's order on the pending motion to dismiss or April 15, 2022.
- ii. Fed.R.Civ.P. 26(a)(2) disclosures: Six months following the deadline for 26(a)(1) disclosures.
- iii. Fed.R.Civ.P. 26(a)(3) disclosures: 30 days before date set for trial.
- iv. The parties have agreed to make available the following documents without the need of a formal request for production: The parties are unable to agree on voluntary production at this time.
- v. Initial Disclosure of potential lay witnesses: Three months after the deadline for 26(a)(1) disclosures.

7. Discovery: The parties believe that all discovery proceedings can be completed by the earlier of nine months following this Court's order on the pending motion to dismiss or January 15, 2023.

The parties recommend that there be no additional limitations to discovery beyond the Federal Rules of Civil Procedure limitations on number of interrogatories (25) and depositions (10 per party, no more than 7 hours per witness).

8. Motions: The parties anticipate that all dispositive motions will be filed within 45 days of the conclusion of discovery. The parties acknowledge that it is the policy of this Court to prohibit the consideration of non-dispositive discovery motions unless accompanied by a certification that the moving party has made a reasonable and good faith effort to reach agreement with opposing counsel on the matters set forth in the motion.

9. Alternative Dispute Resolution: The parties recommend that this case be submitted to the following methods of alternative dispute resolution:

Plaintiff: The Foundation supports early efforts at alternative dispute resolution, including by Voluntary Facilitative Mediation or Early Neutral Evaluation pursuant to this Court's local rules.

Defendant: Because this case involves purely legal questions concerning whether Michigan's program for removing deceased voters from official lists complies with federal law, the Secretary of State does not believe that ADR is likely to be productive, but would be willing to participate in a settlement conference with the magistrate.

10. Length of Trial: Counsel estimate that the trial will last approximately 4 days total, including 2 days for Plaintiff's case and 2 days for Defendant's case.

11. Prospects of Settlement

Plaintiff: The Foundation believes this matter could be resolved via settlement as it has similar cases elsewhere with minimal burdens to the defendant. This is particularly true as to Count Two which is not at issue in Defendant's pending motion to dismiss.

Defendant: The Secretary of State is optimistic that a resolution may be reached regarding the inspection of documents, but does not presently see any basis for settling Count I.

12. **Electronic Document Filing System:** Counsel are reminded that Local Civil Rule 5.7(a) now requires that attorneys file and serve all documents electronically, by means of the Court's CM/ECF system, unless the attorney has been specifically exempted by the Court for cause or a particular document is not eligible for electronic filing under the rule. The Court expects all counsel to abide by the requirements of this rule. Pro se parties (litigants representing themselves without the assistance of a lawyer) must submit their documents to the Clerk on paper, in a form complying with the requirements of the local rules. Counsel opposing a pro se party must file documents electronically but serve pro se parties with paper documents in the traditional manner.

13. **Other:** None.

Dated: February 16, 2022

Respectfully submitted,

For the Plaintiff:

/s/ Kaylan Phillips

Kaylan Phillips

Noel Johnson

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Dated: February 16, 2022

For the Defendant:

s/Erik A. Grill

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system which will send notification of such filing to each ECF participant.

Dated: February 16, 2022

/s/ Kaylan Phillips
Kaylan Phillips
Counsel for Plaintiff

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