

STATE OF MICHIGAN
IN THE SUPREME COURT

DETROIT CAUCUS; ROMULUS CITY COUNCIL;
INKSTER CITY COUNCIL; TENISHA YANCEY,
as a State Representative and individually;
SHERRY GAY-DAGNOGO, as a Former State Rep-
resentative and individually; TYRONE CARTER,
as a State Representative and individually; BETTY
JEAN ALEXANDER, as a State Senator and
individually, Hon. STEPHEN CHISHOLM, as
member of Inkster City Council and individually,
TEOLA P. HUNTER, as a Former State
Representative and individually; Hon. KEITH
WILLIAMS, as Chair MDP Black Caucus and
individually; DR. CAROL WEAVER, as 14th
Congressional District Executive Board Member
and individually; WENDELL BYRD, as a Former
State Representative and individually; SHANELLE
JACKSON, as a Former State Representative and
individually; LAMAR LEMMONS, as a Former
State Representative and individually; IRMA
CLARK COLEMAN, as a Former Senator & Wayne
County Commissioner and individually; LAVONIA
PERRYMAN, as representative of the Shirley
Chisholm Metro Congress of Black Women and
individually; ALISHA BELL, as Chair of the
Wayne County Commission and individually;
NATALIE BIENAIME, as a Citizen of the 13th
District; OLIVER COLE, as a resident of Wayne
County; ANDREA THOMPSON, as a resident of
Detroit; DARRYL WOODS, as a resident of Wayne
County, NORMA D. MCDANIEL, as a resident of
Inkster; MELISSA D. MCDANIEL, as a resident of
Canton, CHITARA WARREN, as a resident of
Romulus; JAMES RICHARDSON, as a resident of
Inkster, ELENA HERRADA, as a resident of
Detroit, *Plaintiffs*,

v

INDEPENDENT CITIZENS REDISTRICTING
COMMISSION, *Defendant*.

John J. Bursch (P57679)
BURSCH LAW PLLC
9339 Cherry Valley Ave SE
No. #78
Caledonia, Michigan 49316
616.450.4235

Supreme Court Case No. 163926

Jurisdiction: Original, pursuant to 1963
Mich Const Art 4, § 6(19)

**Expedited relief requested
under MCR 7.311(E). Relief
requested by 5:00 p.m.
Wednesday, February 16, 2022**

**This case involves a claim that state
governmental action is invalid**

**PLAINTIFFS' MOTION UNDER RULE
7.311(E) FOR IMMEDIATE
CONSIDERATION OF THEIR
EMERGENCY MOTION FOR
REHEARING**

David H. Fink (P28235)
Nathan J. Fink (P75185)
Philip D.W. Miller (P85277)
FINK BRESSACK
38500 Woodward Ave., Suite 350
Bloomfield Hills, MI 48304

RECEIVED by MSC 2/11/2022 3:50:51 PM

jbursch@burschlaw.com
Michael J. Pattwell (P72419)
CLARK HILL PLC
212 E. Cesar E. Chavez Ave.
Lansing, MI 48906-4328
517.318.3043

*Co-counsel for Plaintiffs Tenisha Yancey, Sherry
Gay-Dagnogo, Betty Jean Alexander, Dr. Carol
Weaver, Andrea Thompson, Darryl Woods, Natalie
Bien-Aime, Romulus City council, Irma Clark
Coleman, Tyrone Carter, Detroit Caucus, and
Inkster City Council*

Nabih H. Ayad (P59518)
William D. Savage (P82146)
AYAD LAW, PLLC
645 Griswold St., Suite 2202
Detroit, MI 48226
313.983.4600
nabihayad@ayadlawpllc.com
williamsavage@ayadlawpllc.com

Tenisha Yancey (P78319)
YANCEY LAW, PLLC
18640 Mack Ave.
Gross Poine, MI 482336
Tenisha.yancey@gmail.com

Attorneys for Plaintiffs

dfink@finkbressack.com
nfink@finkbressack.com
pmiller@finkbressack.com
248.971.2500

Katherine L. McKnight
Richard B. Raile
BAKER & HOSTETLER LLP
1050 Connecticut Ave., NW, Suite 1100
Washington, D.C. 20036
kmcknight@akerlaw.com
rraile@bakerlaw.com
202.861.1500

Patrick T. Lewis
BAKER & HOSTETLER LLP
127 Public Square, Suite 2000
Cleveland, OH 44114
plewis@bakerlaw.com
216.621.0200

Attorneys for Defendant

RECEIVED by MSC 2/11/2022 3:50:51 PM

**PLAINTIFFS'¹ MOTION UNDER RULE 7.311(E) FOR
IMMEDIATE CONSIDERATION OF THEIR EMERGENCY
MOTION FOR REHEARING**

¹ Except Wendell Byrd

Plaintiffs (except Wendell Byrd), by and through counsel, move this Court pursuant to Michigan Court Rule 7.311(E) for immediate consideration of their Emergency Motion For Rehearing, and states as follows:

1. On February 3, 2022, this Court issued an Order dismissing, with prejudice, Plaintiffs' First Amended Verified Complaint despite it having properly identified that the Michigan Independent Citizens Redistricting Commission's novel redistricting plans illegally shatter Michigan's longstanding "majority-minority districts," recklessly diluting the voting strength of Black voters.

2. This Order was a terrible mistake that will greatly diminish the size and influence of the Black Caucus in the Michigan Legislature.

3. Plaintiffs now possess substantial expert analysis to prove their allegations and have filed an Emergency Motion for Rehearing contemporaneously with this Motion.

4. Without rehearing, Plaintiffs will have been deprived of an adequate opportunity to prove their case. And, given the need to finalize district lines so that candidates may submit signatures or other appropriate paperwork for the primary election, time is of the essence, and this Court's immediate consideration of Plaintiffs' Emergency Motion for Rehearing is appropriate and necessary.

5. Plaintiffs' First Amended Complaint adequately alleged that the Commission violated the Voting Rights Act of 1965—and thus also violated Article 4, § 6(13)(a) of the Michigan Constitution—by eliminating nearly all the "majority-

minority districts” that have safeguarded the voting rights of African Americans in southeast Michigan for the last half century.

6. Plaintiffs’ First Amended Complaint also adequately alleged facts satisfying each of the prerequisites for establishing a Voting Rights Act § 2 vote-dilution claim.²

7. In response to Plaintiffs’ First Amended Complaint, the Commission filed its Answer and a “Brief in Support of Its Answer.” The Commission did not file a motion to dismiss or a motion for summary disposition under MCR 2.116; in fact, the Commission filed no motion at all. In a highly unusual order, this Court then directed that oral argument be scheduled “on the proper disposition of the plaintiffs’ complaint, including whether the plaintiffs have sustained their claims on the merits or whether there are disputed questions of fact.” 1/21/2022 Order.

8. In the February 3, 2022 Order, the majority opinion did not quibble with the Plaintiffs’ use of the so-called *Gingles* factors as setting forth each of the prerequisites for establishing a Voting Rights Act § 2 vote-dilution claim, nor did the majority contest that Plaintiffs adequately alleged facts satisfying each of the *Gingles* factors.

9. Instead, the majority accepted the Commission’s radical assertion that, despite decades of history to the contrary, “the evidentiary basis supporting a need for majority-minority districts was entirely lacking in the public record” at the time the Commission drew its redistricting maps. 2/3/22 Order, p 4. Accord, e.g., *id.*

² For the specific facts, see Page 2 of Plaintiffs’ Emergency Motion for Rehearing.

(concluding that the Commission’s “decision was the correct one precisely because there was no ‘strong basis in evidence’ providing ‘good reason’ for the Commission to believe that the three threshold *Gingles* preconditions were satisfied so as to potentially require race-based district lines”).

10. In addition, at what was in practice a motion-to-dismiss phase, it was inappropriate for the Court majority to require Plaintiffs to come forward with evidence proving their allegations at all, pursuant to the Michigan Court Rules.

11. As more thoroughly explained in Plaintiffs’ Emergency Motion, the Commission had a strong basis in public-record evidence to believe that race-based district lines were required to avoid disenfranchising black voters.

12. Dismissal on the pleadings was palpable error by which the Court has been misled into believing that Plaintiffs are unwilling or unable to substantiate their well-pled claims. And correction of that error must result in a different disposition—a case-management order.

13. By its premature dismissal, the majority opinion inadvertently denied Plaintiffs due process. As the dissenting opinion notes, this Court’s rule governing the procedure of this case “has neither a defined process through which facts are to be developed nor heightened pleading requirements. The court rule does not [even] require the parties to specify their factual allegations with particularity, much less present evidence, at this stage.” 2/3/22 Order, p 10 (Zahra, Viviano, and Bernstein, JJ, dissenting).

14. This Court's hasty dismissal denied Michigan Black voters their right under the Voting Rights Act to have a meaningful voice in the political process. The Court has been misled into believing that Plaintiffs are unable to substantiate their well-pled claims. Correction of that error will not only ensure a different disposition—due process—it is very likely to result in a different outcome: a judgment for Plaintiffs on the merits of their Voting Rights Act claim.

15. Given the opportunity, Plaintiffs will present data and expert analysis showing that no conditions justify such low BVAP districts in southeast Michigan

16. As such, rehearing is warranted so Plaintiffs have an opportunity to produce evidence that will support the merits of their claims.

17. Plaintiffs have served the Defendant with this Motion via the MiFILE system on the same date as filed.

For these reasons and for those stated in their Emergency Motion for Rehearing, Plaintiffs³ respectfully request this Court immediately consider said Emergency Motion for Rehearing for the purposes of granting the same, issuing a case-management order with an expedited timeline, as proposed in the Emergency Motion, and allowing Plaintiffs an adequate opportunity to prove their case.

³ Except Wendell Byrd

Dated: February 11, 2022

Respectfully submitted,

BURSCH LAW PLLC

By /s/ John J. Bursch

John J. Bursch (P57679)
9339 Cherry Valley Ave SE, #78
Caledonia, Michigan 49316
616.450.4235
jlbursch@burschlaw.com

Michael J. Pattwell (P72419)
CLARK HILL PLC
212 E. Cesar E. Chavez Ave.
Lansing, MI 48906-4328
517.318.3043

Co-counsel for Plaintiffs Tenisha Yancey, Sherry Gay-Dagnogo, Betty Jean Alexander, Dr. Carol Weaver, Andrea Thompson, Darryl Woods, Natalie Bien-Aime, Romulus City council, Irma Clark Coleman, Tyrone Carter, Detroit Caucus, and Inkster City Council

Nabih H. Ayad (P59518)
William D. Savage (P82146)
AYAD LAW, PLLC
645 Griswold St., Suite 2202
Detroit, MI 48226
313.983.4600
nabihayad@ayadlawpllc.com
williamsavage@ayadlawpllc.com

Tenisha Yancey (P78319)
YANCEY LAW, PLLC
18640 Mack Ave.
Gross Poine, MI 482336
Tenisha.yancey@gmail.com

Attorneys for Plaintiffs