

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

MICHAEL BANERIAN, *et al.*,

Plaintiffs

v.

JOCELYN BENSON, in her official capacity as
the Secretary of State of Michigan, *et al.*,

Defendants.

Case No. 1:22-cv-00054

Three-Judge Court

Expedited Consideration Requested

MOTION FOR EXPEDITED ORAL ARGUMENT

In light of the decision of the United States Supreme Court on February 7, 2022, Plaintiffs respectfully request that this Court advance the scheduled oral argument on the pending motions. Plaintiffs request no change in the ordered briefing schedule. Reasons for the requested relief are included on the attached Brief in Support of Expedited Oral Argument. Defendant Secretary of State does not oppose the requested relief. Defendant Commissioners take no position on the requested relief. Both Sets of Proposed Intervenor-Defendants do not take a position on the requested relief.

Dated: February 9, 2022

Respectfully submitted,

/s/ Charles R. Spies

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BRIEF IN SUPPORT OF EXPEDITED ORAL ARGUMENT

On February 8, 2022, this Court scheduled briefing on the pending preliminary injunction, pending motions for intervention, proposed intervenors' partial motions to dismiss, and the anticipated motions to dismiss from the named defendants. Briefing will be concluded under this schedule by February 23, 2022.

Candidate qualifying for the 2022 elections closes on April 19, 2022. Mich. Comp. Laws § 168.133; The Court has scheduled oral argument for March 16, 2022 – just 33 days out from the candidate qualifying deadline.

On February 7, 2022, the United States Supreme Court granted stays in *Merrill v. Milligan* and *Merrill v. Caster*, Nos. 21A375 and 21A376 slip op. (U.S. Feb. 7, 2022). (included herein as Attachment A). In a concurring opinion, Justice Kavanaugh (joined by Justice Alito) explained that the principles laid out in *Purcell v. Gonzales*, 549 U.S. 1 (2006) warranted a stay because early voting began less than 7 weeks from the lower court orders and because lower court orders close

in time to primaries can be problematic. *See id.*, slip op. at 3-4. The 21 days between the conclusion of briefing and the Court's scheduled oral argument could have a large impact on the ability of this Court to grant relief in light of *Purcell*.

As noted in Plaintiffs' filing on February 4, 2022, all of the named Defendants and the initial set of proposed intervenors (who were included in the consultation before Voters Not Politicians filed their proposed intervention) agreed that this Court should expedite its proceedings including a suggested hearing date of March 1, 2022.

Plaintiffs anticipate that the Defendants in this case will seize upon Justice Kavanaugh's position in *Caster* and *Milligan* and argue that the preliminary injunction should be denied because of the closeness in time to the filing deadlines that the hearing, remedy phase, and implementation would occur under the current schedule. One of the factual issues present in this case that will impact the potential application of *Purcell* is captured in footnote 1 of Justice Kavanaugh's opinion: "How close to an election is too close may depend in part on the nature of the election law at issue, and how easily the State could make the change without undue collateral effects. Changes that require complex or disruptive implementation must be ordered earlier than changes that are easy to implement." *See Merrill*, slip op. at 4-5 n.1 .

Plaintiffs of course acknowledge that some of the relief sought in the preliminary injunction may be easier to remedy than others in a short time frame, but Plaintiffs express concerns through the filing of this Motion that the current 21 days between the completion of briefing and a hearing before this Court could impact the scope of the relief that this Court may be able to provide in the time frames under current state election deadlines in advance of the 2022 elections.

Should this Court find that relief is warranted on either Count, the Court would be required to remand this matter back to the Michigan Independent Citizens Redistricting Commission

(“MICRC”) for changes consistent with any opinion. *See, e.g., Growe v. Emison*, 507 U.S. 25 (1993). And, if the MICRC is unable to comply with the Court’s order or unable to comply in a timely fashion, this Court would have the “unwelcome obligation” of imposing a map. *See Perry v. Perez*, 565 U.S. 388, 392 (2012). This is usually either through the work of a special master or by choosing between alternate plans submitted to this Court by the parties. In any event, this post-judgment process can be expedited, but must still allow for reasonable time and consideration. *See e.g. Bethune-Hill v. Virginia State Board of Elections*, 368 F.Supp.3d 872 (E.D. Va. 2019) (three-judge court) (adopting map produced by special master after Legislature failed to adopt a new plan).

For these reasons, Plaintiffs respectfully request modification of the February 8, 2022 Scheduling Order to advance the hearing on the pending motions in light of the Supreme Court’s ruling on February 7, 2022.

Dated: February 9, 2022

Respectfully submitted,

/s/ Charles R. Spies

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY, in reliance on the word processing software used to create this Brief, that:

1. This Brief complies with the word-count limitation of W.D. Mich. LCivR 7.3(b)(i) because this Brief in support of a non-dispositive motion contains 673 words (including headings, footnotes, citations, and quotations but not the case caption, cover sheets, table of contents, table of authorities, signature block, attachments, exhibits, or affidavits).

2. The word processing software used to create this Brief and generate the above word count is Microsoft Word 2016.

Dated: February 9, 2022

/s/ Charles R. Spies

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 9, 2022, I caused to be filed with the Court, via submission to the Court's ECF system, PLAINTIFFS' MOTION FOR EXPEDITED ORAL ARGUMENT.

Dated: February 9, 2022

/s/ Charles R. Spies
Charles R. Spies (P83260)

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