

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DONALD AGEE, JR., an individual;
JEROME BENNETT, an individual;
DENNIS LEORY BLACK, JR., an individual;
JAMEE BURBRIDGE, an individual;
BEVERLY ANN BURRELL, an individual;
JEMELL COTTON, an individual; TERESA
DUBOSE, an individual; KAREN
FERGUSON, an individual; MICHELLE
KEEBLE, an individual; NORMA
McDANIEL, an individual; GLENDA
McDONALD, an individual; JANET MARIE
OVERALL, an individual; SHIRLEY L.
RADDEN, an individual; DAVONTE
SHERARD, an individual; MICHELLE T.
SMITH, an individual; KENYETTA SNAPP,
an individual; DONYALE STEPHEN-
ATARA, an individual; and TANESHA
WILSON, an individual,

Plaintiffs,

v

JOCELYN BENSON, in her official capacity
as Secretary of State of Michigan;
MICHIGAN INDEPENDENT
REDISTRICTING COMMISSION;
DOUGLAS CLARK, JUANITA CURRY,
ANTHONY EID, RHONDA LANGE,
STEVEN TERRY LETT, BRITNI
KELLOM, CYNTHIA ORTON, M.C.
ROTHORN, REBECCA SZETELA,
JANICE VALLETTE, ERIN WAGNER,
RICHARD WEISS and DUSTIN WITJES, in
their official capacities as Commissioners of
the Michigan Independent Citizens
Redistricting Commission,

Defendants.

No. 1:22-cv-00272

THREE-JUDGE PANEL
APPOINTED PURSUANT TO 28
U.S.C. § 2284(a)

**DEFENDANT MICHIGAN
SECRETARY OF STATE
JOCELYN BENSON'S
SUPPLEMENTAL BRIEF
REGARDING REMEDY
TIMELINE**

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**DEFENDANT MICHIGAN SECRETARY OF STATE JOCELYN BENSON'S
SUPPLEMENTAL BRIEF REGARDING REMEDY TIMELINE**

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Dated: January 5, 2023

This Court ordered the parties to file supplemental briefs regarding remedy and whether appointment of a special master would be beneficial. (ECF No. 132, PageID.4820.) Because Defendant Secretary of State does not have a position with respect to the specific process to be used to draw and adopt remedial plans, or the appointment of a special master, she declined to file a supplemental brief. After receiving Plaintiffs', (ECF No. 136), and the Commission Defendants', (ECF No. 135), remedy briefs the Court further ordered that the parties "file a timeline for the map drawing process[.]" (ECF No. 139, PageID.4946, 4947.) Secretary Benson has a substantial interest in the remedy timeline and submits the instant brief consistent with the Court's order.

A. Plaintiffs' request to hold special elections for the affected Michigan Senate districts should be rejected.

In their remedy brief, Plaintiffs proposed that the Court "mandate a special election for the State Senate—which would ordinarily not occur until 2026—alongside the House election set to take place in the fall of 2024." (ECF No. 136, PageID.4843, 4845, 4855-58.) This Court should reject that request.

Notably, the Court did not even mention the prospect of holding special elections in its Opinion and Order. (ECF No. 131, PageID.4817.) Further, holding special elections was not a topic the Court requested the parties to address in supplemental briefing. (ECF No. 132.) Regardless, Plaintiffs' request for special elections for the Senate districts does not appropriately address the necessary weighing of equitable factors, especially in light of the timing issues discussed

below. Plaintiffs rely heavily on cases that provide—at most—persuasive authority and are not binding on this Court.

Plaintiffs first cite to *League of Women Voters of Michigan v. Benson*, 373 F. Supp. 3d 867, 961 (E.D. Mich. 2019), but that case was vacated and remanded by the Supreme Court for further consideration in light of its decision in *Rucho v. Common Cause*, 139 S. Ct. 2484 (2019). *Chatfield v. League of Women Voters*, 140 S. Ct. 429 (2019). As a result, it is unclear how the Court would have viewed the appropriateness of a special election in that case. Plaintiffs then cite to a series of cases from other circuits, but authority from other circuits is not binding upon another circuit. *See Generali v. D'Amico*, 766 F.2d 435, 489 (11th Cir. 1985). Plaintiffs cite to no cases from the Sixth Circuit on this issue, and while they cite to the Supreme Court's decision in *North Carolina v. Covington*, 581 U.S. 486, 488 (2017), they do so only for reference to the factors considered and they fail to contend with the Court's cautions about the balance to be made:

A district court therefore must undertake an “equitable weighing process” to select a fitting remedy for the legal violations it has identified, taking account of “what is necessary, what is fair, and what is workable.” And in the context of deciding whether to truncate existing legislators’ terms and order a special election, there is much for a court to weigh. Although this Court has never addressed whether or when a special election may be a proper remedy for a racial gerrymander, obvious considerations include the severity and nature of the particular constitutional violation, the extent of the likely disruption to the ordinary processes of governance if early elections are imposed, and the need to act with proper judicial restraint when intruding on state sovereignty. We do not suggest anything about the relative weight of these factors (or others), but they are among the matters a court would generally be expected to consider in its “balancing of the individual and collective interests” at stake.

Id. (citations omitted). While special elections may be a *possible* remedy in some circumstances, nothing in the Supreme Court’s opinion suggests that it would be mandated—or even appropriate—in all cases.

Here, special elections for the affected Senate districts are not supported by the balancing of interests. Although—consistent with her position throughout this case—the Secretary does not take a position on the severity or nature of any violations, the Secretary does assert that attempting to conduct special elections for the 2024 election cycle would pose considerable risks of disruption to the ordinary election processes, and almost certainly would foreclose implementing *any* new maps for the 2024 Election Cycle. As explained below, it will be difficult to implement just new House maps in time for an orderly August primary election. Thus, the Secretary has not factored new Senate districts into her implementation timeline.

B. The conducting of the presidential primary and condensed timeline affects the Bureau’s ability to update districts.

At this time, the Secretary’s Bureau of Elections (Bureau) is uncertain whether it can put in place district changes without risk of error or disruption to the 2024 elections. The Bureau’s ability to do so will be affected in part by what specific remedy the Court orders and the timeline by which new districts are finalized. In the last cycle, the Bureau received the new districts in late December 2021, and began updating the qualified voter file (QVF) shortly thereafter. Although the scope of district changes should be substantially smaller than the 2022 redistricting, it is

unclear exactly how many state House districts will be affected by the redistricting, so it is unclear how many voter registrations, distinct political areas, and precincts will need to be adjusted.

To complicate matters further, the state will be conducting its presidential primary election on February 27, 2024. The primary poses problems regarding the timing of inputting new districts into the QVF. In 2022, the Bureau prioritized working around the May 2022 local elections to put new districts in place. The statewide primary creates a bigger problem: even if new districts are finalized before February 27, election geography in QVF cannot be altered without risking significant disruption to the presidential primary. This is true especially before the primary election, but also immediately after, when QVF data may be needed to complete canvasses in the two weeks following the election. It is thus the Bureau's position that it cannot begin updating the QVF to incorporate new districts until after February 27, 2024, and it may need to suspend work in some areas until March 12, 2024, the date county canvasses will be completed.

This means there will be very little time to put in place new election geography to meet the April 23, 2024, filing deadline for August primary candidates. However, inputting the new districts into the QVF is not necessarily required by the filing deadline so long as there are final districts so that candidates can determine whether they reside in the district in which they wish to run, and

exercise the option to pay a filing fee rather than circulate nominating petitions.

See Mich. Comp. Laws § 168.163(1)-(2).¹

Taking the above into consideration, the Bureau offers the following as to the timing of implementing new House districts.

C. The proposed timeframe for implementing new House districts is an estimate, and the actual time may take longer, and further depends on whether precinct splits will be corrected.

The Bureau estimates that adding new district information to the QVF will take anywhere from 4 to 12 weeks depending on the scope of the changes. The biggest determining factor will be whether or not precincts are changed; however, the total number of districts changed, along with the amount of precinct changes, if applicable, will also affect the timeline.

1. Timeline for implementing new House districts with no precinct changes.

If only House districts are redrawn, adding new district information will take 4 to 6 weeks. This will consist of the following steps:

- (1) Geocoding QVF Address Information. The Bureau will geocode address points in the QVF to allow for the district shape files to be used to update QVF. QVF is a tabular system (that is, addresses are represented as tables with address range and district information) rather than a geospatial system. However, the addresses can be geocoded to allow shape files to be used to update address tables more efficiently. This step will *likely* take **2-5 days**.
- (2) Inputting and converting shapefiles into QVF district information. The Bureau will compare the shapefiles and geocoded address data, then convert the data into tables that can be used to update the QVF street range. This

¹ Because nominating petitions must be signed by voters residing in the candidate's district, Mich. Comp. Laws § 168.163, it would be difficult to determine whether a signer resides in the candidate's district without an updated QVF.

will essentially import the new districts into QVF. This step will *likely* take **2-3 weeks**.

- (3) **Quality Control and Quality Assurance.** The Bureau will manually review updated district information in QVF to ensure that voter records reflect the correct updated address data and the update has not caused regression of other data or functions in QVF. This step will *likely* take **2-3 weeks**.

If all goes well, this process should take between 4 to 6 weeks.

2. Timeline for implementing new House districts with precinct changes.

Michigan Election Law provides that a precinct, as far as is practical, must not be split between districts. Mich. Comp. Laws § 168.661(2). There are numerous reasons why split precincts pose problems for both local elections officials and voters. A precinct split occurs where voters in one precinct are divided into 2 or more districts. Precinct splits can create voter confusion and additional work for county and local clerks, along with election inspectors. First, split precincts require more ballot styles to be printed to accommodate the different districts within a precinct. Second, multiple ballot styles per precinct create the risk that voters will be given the wrong ballot style in absentee, early, or in-person voting, which will lead to ballots being cast in the wrong races and will lead to precincts being out of balance.

To comply with Michigan law and avoid these concerns, it may be necessary—or at least desirable—to re-draw precinct boundaries to correspond to new districts if any new districts split precincts, and it is likely that there will be at least some splits. But Michigan law provides that precincts must be drawn not later than 210 days before the primary next preceding the general election (this

year, January 9, 2024). Mich. Comp. Laws § 168.661(1). This date will have passed well before new districts and precincts are drawn. In the second year after the census only, later divisions can be authorized by the Secretary of State under Mich. Comp. Laws § 168.661(2), but this must occur 90 days before the primary, which is May 8, 2024, for this cycle. State and local election jurisdictions could comply with some but may need to set aside other of these provisions to comply with any court ordered remedy.

If precinct changes are included, an additional 4 to 6 weeks will need to be added to the above 4- to 6-week timeline. This additional work will consist of the following:

- (1) Local election commission redrawing of Precincts. Local election commissions must convene and hold a public meeting or meetings, then pass a resolution to update precincts. Mich. Comp. Laws § 168.657. This process will *likely* take **2-3 weeks**. And note that this process is largely beyond the Secretary's and the Bureau's control.
- (2) Inputting new precincts in to QVF. Clerks will need to submit new precinct information to the Bureau to update information into QVF. Some clerks may be able to send precincts in shapefiles that will allow the Bureau to replicate the process used in Step (2) above. If clerks cannot send shape files, clerks will instead send a manual, "marked up" street index showing which ranges of addresses have new precinct assignments. The Bureau would then manually update this information in the QVF. This process will *likely* add **1-2 weeks** to Step (2) above, depending on the volume of precinct changes and the extent to which precinct changes are manual.
- (3) Quality Control and Quality Assurance. Adding precincts to the QC and QA process will *likely* add **1 week** to this process.

If precinct changes are to be made, it will likely extend the 4- to 6-week process to an 8- to 12-week process.

3. Considerations that apply to either timeline.

Regardless of which method is used, clerks must send updated voter information cards to affected voters advising them of their new House district information. Mich. Comp. Laws § 168.499(3). As noted above, under the Michigan Election Law precincts may not be adjusted after January 9, Mich. Comp. Laws § 168.661(1), and it is unclear whether the later date provided in subsection 661(2) (90 days before primary or May 8) could apply in a non post-census year.

The Court may need to provide some relief in its order to allow precincts to be changed with the redrawn districts. The Secretary of State would prefer to avoid precinct splits, as they are disfavored under Michigan law and—more importantly—create substantial administrative problems for local clerks and significant potential for error and voter confusion. However, although precinct splits are undesirable, if it is not possible to provide sufficient time to complete precinct changes to the QVF, the Secretary believes that it would be better to avoid changing precincts than to attempt to rush that process.

Lastly, while it is difficult to arrive at a precise date by which QVF changes absolutely must be completed, the Secretary is mindful that the Court and parties likely desire to know the Bureau's best calculation of that time. Ideally, all information would be added to QVF by the candidate filing deadline on April 23, 2024. This would also help ensure there are minimal disruptions to May local

elections.² But, the last date by which information could be added to the QVF without substantial harm to the administration of the August 6 primary would be May 23, 2024 (75 days before the primary). Clerks send absent voter ballot applications with pre-printed voter information to voters on the permanent absent voter ballot application list to allow voters to begin delivering absent voter ballot applications to drop boxes within 75 days of an election. *See* Mich. Comp. Laws § 168.761d. Additionally, the Bureau, local clerks, and vendors will require time to prepare, print, and program ballot information with the correct districts in advance of the 60-day deadline for finalizing ballot contents. *See* Mich. Comp. Laws § 168.552(14). Counties must be prepared to immediately begin programming election equipment and printing ballots when candidates are finalized to ensure ballots are delivered to all municipalities 45 days before the election. *See* Mich. Comp. Laws § 168.690. The closer to May 23 that district information is updated in the QVF, the greater the risk of error in making changes and the greater the risk of disruption to the election process.

To conclude, the parties and the Court should be mindful of these election-related deadlines that may be impacted by the redrawing of the impacted districts:

- April 23, 2024, candidate filing deadline for primary, Mich. Comp. Laws § 168.163, (currently House Districts 7, 8, 10, 11, 12 and 14 file with Secretary of State, as they encompass more than one county);
- April 30, 2024, deadline for filing challenges to nominating petitions (if filed), Mich. Comp. Laws § 168.552;

² See May 2024 election calendar, available at [Election Calendar of Dates \(michigan.gov\)](https://www.michigan.gov/election) (accessed January 4, 2024).

- June 7, 2024, deadline for Board of State Canvassers to complete canvass of nominating petitions (if filed), Mich. Comp. Laws § 168.552;
- June 7, 2024, deadline for Secretary to certify to county election commissions candidates for primary election, Mich. Comp. Laws § 168.552(14);
- June 22, 2024, UOCAVA/MOVE deadline for clerks to transmit absent voter ballots to military and overseas voters, Mich. Const. 1963, Art. II, § 4, Mich. Comp. Laws §§ 168.714, 168.759a, 52 U.S.C. § 20302(a)(8);
- June 27, 2024, deadline for local clerks to distribute absent voter ballots to absent voters, Mich. Const. 1963, Art. II, § 4;
- July 7, 2024, early voting in the primary election may begin, Mich. Comp. Laws § 168.720e;
- July 22, 2024, deadline to register by mail or online to vote in primary, Mich. Comp. Laws § 168.497;
- July 27, 2024, deadline to begin mandatory early voting, Mich. Const. 1963, Art. II, § 4;
- July 29, 2024, jurisdictions over 5,000 may begin processing and tabulating AV ballots, Mich. Comp. Laws § 168.765a;
- August 5, 2024, all jurisdictions may begin processing and tabulating AV ballots, Mich. Comp. Laws § 168.765a;
- August 6, 2024, primary election.³

³ See August-November Election dates, available at [Election Calendar of Dates \(michigan.gov\)](https://www.michigan.gov/electioncalendar) (accessed January 4, 2024).

Respectfully submitted,

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Dated: January 5, 2024

CERTIFICATE OF SERVICE

I hereby certify that on January 5, 2024, 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.

s/Erik A. Grill

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