



## **MEMORANDUM**

**TO:** Michigan Independent Citizens Redistricting Commission (MICRC)

**CC:** MICRC & MDOS Staff

**FROM:** Julianne V. Pastula, Esq. *JVP*  
General Counsel, MICRC

**DATE:** March 23, 2021

**RE:** **MICRC Authorization of Proposed Date(s) for Inclusion in the Petition to the Michigan Supreme Court**

During its March 5<sup>th</sup> meeting, the Michigan Independent Citizens Redistricting Commission (MICRC) elected to take a proactive course of action to address the impact of the delayed release of apportionment and redistricting data from the U.S. Census Bureau. This data is critical for the completion of the MICRC's work, in particular its ability to meet the constitutional deadline for completion of maps.<sup>1</sup> The MICRC authorized its General Counsel to petition the Michigan Supreme Court for relief in the form of a modified final deadline and to pursue such relief in tandem with the Secretary of State (as the non-voting secretary to the MICRC and as the state's chief elections officer). Since March 5<sup>th</sup>, your General Counsel has been working to effectuate the MICRC's directive and collaborating with attorneys from the Department of the Attorney General, Civil Litigation, Employment & Elections Division as well as the MDOS Chief Legal Director.

This Memorandum sets forth proposed amended deadline dates for consideration and action by the MICRC prior to inclusion in the court documents or for use as part of any negotiated settlement.<sup>2</sup> It is important to note that under the original statutory deadlines both the MICRC and MDOS would have had between 5-6 months to complete their respective work. Even if relief is granted by the Michigan Supreme Court, it will not restore the original timeframes for either MICRC or MDOS. The proposed dates reflect a balanced compromise to allow the maximum time for each entity to conduct its work. It is also important to note that the vote on final maps by

<sup>1</sup> Section 6(7) of Article 4 of Michigan's 1963 Constitution explicitly states that the MICRC must adopt redistricting plans "[n]ot later than November 1 in the year immediately following the federal decennial census."

<sup>2</sup> Any settlement proposal must be adopted by the MICRC via resolution to be final. The proposed extension dates initially approved by the MICRC would be used as a guide for settlement discussions, if any, that are undertaken.

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the MICRC may occur in advance of the adjusted final deadline<sup>3</sup> so long as the 45-day publication and public comment period<sup>4</sup> is respected. This would allocate additional time to MDOS.

A resolution has been prepared for consideration that would authorize the inclusion in the court documents or for use as part of any negotiated settlement one of the two options set forth below:

	<b>Option 1: 61 days</b>	<b>Option 2: 72 days</b>
MICRC initial public hearings and initial <u>drafting of plans</u>	May – September 2021	May – September 2021
Redistricting data to states	Sept. 30, 2021	Sept. 30, 2021
MICRC deadline to <u>propose</u> plan	<b>Nov. 30, 2021</b> (61 days after receiving data)	<b>Dec. 11, 2021</b> (72 days after receiving data)
MICRC deadline to <u>adopt final</u> plan after 45 days of public comment	<b>Jan. 14, 2022</b>	<b>Jan. 25, 2022</b>
Bureau of Elections Update to Qualified Voter File (QVF)	Four months: <b>Jan. 14–May 14, 2022</b>	Three months, 20 days: <b>Jan. 25–May 14, 2022</b>
Filing deadline for August primary	<del>April 19, 2022</del> <b>May 14, 2022</b>  (add 25 days)	<del>April 19, 2022</del> <b>May 14, 2022</b>  (add 25 days)
August primary	August 2, 2022	August 2, 2022
November general election	November 8, 2022	November 8, 2022

<sup>3</sup> See footnote 1. Adoption of redistricting plans must occur “[n]ot later than” the final deadline.

<sup>4</sup> Section 6(14) of Article 4 of Michigan’s 1963 Constitution provides that prior to a vote to adopt any plan, the MICRC is required to publish and provide public notice of each plan that will be voted on and provide a minimum of 45 days for public comment on those proposed plan(s).



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Please note that while both options require the extension of the statutory candidate filing deadline for the August primary, Option 2 provides additional time to the MICRC to propose plans by shifting days from the time allocated to the Bureau of Elections.

Another development has occurred relative to the release of census data that could allocate additional time to the MICRC's drafting of plans<sup>5</sup> but it does not affect the present need of the MICRC to request relief from the November 1 deadline. On March 12<sup>th</sup>, the U.S. Dept. of Justice ("DOJ") filed a response on behalf of the U.S. Census Bureau ("Bureau") in the State of Ohio's federal lawsuit<sup>6</sup> seeking to compel the Bureau to release census data by the statutory deadline.<sup>7</sup> Among other arguments, its response reiterated that it is "impossible" for the Bureau to meet the statutory deadlines<sup>8</sup> and raised parity concerns in releasing data for one state when all states are in need of the data.<sup>9</sup> It also argued against a preliminary injunction that would, in effect, halt the Bureau's work on the census data. However, in a declaration attached to the DOJ response, James Whitehorne, Chief of the Redistricting and Voting Rights Data Office of the U.S. Census Bureau,<sup>10</sup> attested that the Bureau could have data that could be released early as "legacy format summary redistricting data files" and that such data could be provided to all states by mid-to-late August.<sup>11</sup>

This legacy format data must be processed prior to use; MICRC and MDOS staff are currently engaged in discussions with Center for Shared Solutions (CSS) and the State Demographer regarding whether the State of Michigan has the capacity or resources to tabulate the data from these summary files. Staff will also be reaching out to Election Data Services for their impressions on the legacy format. An analysis of the benefits and risks of utilizing the legacy format data files is underway and will be presented to the MICRC. Again, this information should not impact the MICRC's decision at this time regarding the proposed dates to utilize in its request for relief of the constitutional deadline, as any additional time gained by use of legacy data will need to be weighed against any risk.

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<sup>5</sup> Again, if the MICRC completed its work in advance of any extended deadline, the Michigan Bureau of Elections could recoup that time after the plans have been adopted.

<sup>6</sup> *Ohio v. Raimondo*, Case: 3:21-cv-00064-TMR, 02/25/21, ECF No. 6.

<sup>7</sup> Defendant's Opposition to Plaintiff's Motion for Preliminary Injunction and Writ of Mandamus, Case: 3:21-cv-00064-TMR, 3/12/21, ECF No. 11.

<sup>8</sup> *Id.* at page 8 and Whitehorne Decl. ¶ 12.

<sup>9</sup> *Id.* at page 26.

<sup>10</sup> The U.S. Census Bureau also released a statement on March 15<sup>th</sup> which aligned with the contents of Director Whitehorne's declaration filed in the Ohio litigation.

<sup>11</sup> The tabulated, "user-friendly" redistricting data is still on track for release by September 30.