

STATE OF MICHIGAN
IN THE SUPREME COURT

In re Independent Citizens Redistricting
Commission for State Legislative and
Congressional District's duty to redraw
districts by November 1, 2021,

Supreme Court No. _____

**Expedited consideration
requested under MCR 7.311(E).
Relief requested as soon as
practicable but not later than
August 1, 2021.**

**PETITIONERS MICHIGAN INDEPENDENT CITIZENS REDISTRICTING
COMMISSION AND SECRETARY OF STATE JOCELYN BENSON'S
MOTION TO EXPEDITE CONSIDERATION OF THEIR PETITION ASKING
FOR A RESOLUTION BY NO LATER THAN AUGUST 1, 2021**

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NOW COME Petitioners Michigan Independent Citizens Redistricting Commission for State Legislative and Congressional Districts and Secretary of State Jocelyn Benson, by counsel, pursuant to MCR 7.311(E), and move this Court to expedite consideration of their original action filed simultaneously with this motion:

1. Pursuant to MCR 7.311(E), Petitioners respectfully request that this Court expedite its consideration of Petitioners' original action filed with this motion. Good cause exists to expedite consideration of the action for the following reasons:

2. Every ten years following the decennial United States Census, Michigan adjusts its state legislative and congressional district boundaries based on the population changes reflected in the census. This process is fundamental to democracy in Michigan. See *In re Apportionment of State Legislature – 1982*, 413 Mich 96, 136 (1982).

3. In November 2018, the people amended the state Constitution to create the Michigan Independent Citizens Redistricting Commission and shift redistricting duties from the Legislature to the Commission. The 2020 census presents the Commission with its first opportunity to perform its new constitutional duties—and its first constitutional dilemma.

4. With respect to timing, the Constitution mandates that the Commission adopt a redistricting plan by November 1, 2021. Const 1963, art 4, §6(7). But before the Commission can adopt a plan, each plan must be made available for public comment for 45 days. Const 1963, art 4, § 6(14)(b). This means

that the Commission must have proposed plans available to the public by September 17, 2021. But to draw plans, the Commission must have the 2020 census data from the federal government.

5. Ordinarily this data, specifically the PL 94-171 redistricting data, would have been available to the Commission in March of this year. However, due to the pandemic, the U.S. Census Bureau will not be releasing data to the states until September 30, 2021. This is after the date by which the Commission is required to publish proposed plans. The Commission cannot propose plans that satisfy federal and state law until it receives the 2020 census data. Because receipt of the data will be delayed, the Commission will not be able to comply with the constitutionally imposed timeline.

6. The Commission, however, believes it will be able to perform some work using data in a “legacy” format from the U.S. Census Bureau. Legacy format data is a non-tabulated version of census data that must be processed before use. The data in the legacy format files is identical to the PL 94-171 redistricting data files expected to be delivered by September 30 and subject to the same exacting quality assurance processes. The sole difference is in the format the census data is presented. The U.S. Census Bureau has stated that this data could be provided to all states by mid-to-late August 2021.

7. The potential release of legacy format data although helpful will not have a meaningful impact on the Commission’s ability to perform its duties under the current constitutionally imposed deadline. Assuming the legacy format data is

released in mid- to late-August, the additional time gained by the Commission remains insufficient to meet the November 1, 2021 deadline and needs to be weighed against any risk of utilizing non-tabulated data.

8. Given this conflict, the Commission and Secretary of State Jocelyn Benson seek direction from this Court. Being out of compliance with the Constitution places the Commission in an untenable situation. The Commission seeks to honor its duties under Michigan's constitution given the delays in the release of the census information. A decision from this Court here would protect the Commission's ability to draw fair and lawful plans pursuant to the orderly and transparent process chosen by the People of Michigan.

9. To remedy this extraordinary circumstance, Petitioners request that this Court exercise original jurisdiction under article 6, § 4 and article 4, § 6(19) of the Constitution and direct the Commission in the performance of its duties. See, e.g., *In re Apportionment of State Legislature – 1992*, 439 Mich 715, 716 (1992) (“Although apportionment is primarily a legislative task, this Court's involvement in the process is of long standing.”)

10. Specifically, the Commission should be directed to propose plans within 72 days of receiving the census data, and to approve plans 45 days thereafter. If the census data is received as scheduled on September 30, 2020, the proposed plans would be due no later than December 11, 2021, and plans would be approved on or before January 25, 2022.

11. This matter is worthy of expedited review as redistricting is of fundamental importance to democracy in Michigan as demonstrated by the People’s creation of the Commission. Years ago, this Court recognized that it retained the “responsibility to provide for the continuity of government by assuring that the people will be provided the opportunity to elect a lawfully apportioned Legislature.” *In re Apportionment of State Legislature – 1982*, 413 Mich at 116. The cloud of uncertainty cast over this process by the federal government’s delay in releasing the census data threatens to undermine public confidence in the process.

12. Clearing this shadow by acting upon the petition and ordering compliance with the proposed timeline for publishing and adopting plans will restore confidence. The Court’s decision will be available to all voters in Michigan and resolve for all purposes the date by which the Commission must adopt state and congressional district plans. This decision, whatever it may be, will provide certainty, at least with respect to timing. And the Commission, other stakeholders, and the public could then proceed with and participate in the redistricting process.

13. Indeed, the Commission has weekly meetings scheduled to date through May, which the public may attend, and sixteen public hearings scheduled starting on May 11, 2021, also open to the public.¹ These meetings and hearings present the Commission with the opportunity to inform voters about the timeline

¹ See ICRC Meeting Schedule, available at [MICRC - ICRC Meeting Schedule \(michigan.gov\)](https://www.michigan.gov/micrc) (accessed April 19, 2021).

for publishing and adopting plans. In this way, Petitioners and the public will benefit from a decision by this Court rendered as soon as is practicable.

14. But at the very latest, this Court should decide this matter by **August 1, 2021**. If the Court denies the complaint and requested relief, the Commission will be forced to propose and publish plans based on use of the legacy format data to meet the September 17, 2021 deadline to publish plans. As noted above, the legacy format data may be released during the third or fourth week of August. If the Commission is going to be compelled to use this data to draw plans without first having the opportunity to reconcile the data with the PL 94-171 data, the Commission would like to know and be prepared for that reality before the legacy format data is released. Petitioners therefore request that this Court decide this matter before or by **August 1, 2021**.

CONCLUSION AND RELIEF REQUESTED

For the reasons set forth above, Petitioners Michigan Independent Citizens Redistricting Commission and Secretary of State Jocelyn Benson respectfully request that this Court grant their motion to expedite consideration of their original action and resolve this matter as soon as is practicable for the benefit of Michigan's voters. But at the latest, this Court should render a decision in this proceeding by August 1, 2021.

Respectfully submitted,

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