

STATE OF MICHIGAN
IN THE SUPREME COURT

DETROIT CAUCUS; ROMULUS
CITY COUNCIL; DR. CAROL
WEAVER, as 14th Congressional
District Executive Board Member;
WENDELL BYRD, Former State
Representative; DARRYL WOODS,
Resident of Wayne County;

MSC No. 163926

Original Jurisdiction
Const 1963, art. 4, § 6(19).

Plaintiffs,

v.

INDEPENDENT CITIZENS
REDISTRICTING COMMISSION,

Defendant.

**DEFENDANT INDEPENDENT CITIZENS REDISTRICTING COMMISSION'S
MOTION FOR CLARIFICATION OF TIME TO ANSWER OR OTHERWISE
RESPOND TO PLAINTIFFS' COMPLAINT**

AYAD LAW, PLLC
Nabih H. Ayad (P59518)
William D. Savage (P82146)
645 Griswold St., Ste 2202
Detroit, MI 48226
(313) 983-4600
nabihayad@ayadlawpllc.com
williamsavage@ayadlawpllc.com
Counsel for Plaintiffs

YANCEY LAW, PLLC
Tenisha Yancey (P78319)
18640 Mack Ave, Unit 36522
Grosse Pointe, MI 48236
(313) 915-0289
tenisha.yancey@gmail.com
Counsel for Plaintiffs

INDEPENDENT CITIZENS REDISTRICTING
COMMISSION
Julianne V. Pastula (P74739)
P.O. Box 511183

FINK BRESSACK
David H. Fink (P28235)
Nathan J. Fink (P75185)
Philip D.W. Miller (P85277)
Morgan D. Schut (P81009)
David A. Bergh (P83696)
38500 Woodward Ave., Suite 350
Bloomfield Hills, Michigan 48304
(248) 971-2500
dfink@finkbressack.com
nfink@finkbressack.com
pmiller@finkbressack.com
mschut@finkbressack.com
dbergh@finkbressack.com
Counsel for Defendant

BAKER & HOSTETLER LLP
Katherine L. McKnight (*PHV Motion to be
filed*)
1050 Connecticut Ave., NW, Suite 1100
Washington, D.C. 20036

RECEIVED by MSC 1/13/2022 8:50:40 AM

Livonia, Michigan 48151
(517) 331-6318
pastulaj1@michigan.gov
General Counsel to the Commission

(202) 861-1500
kmcknight@bakerlaw.com
Counsel for Defendant

BAKER & HOSTETLER LLP
Patrick T. Lewis (*PHV Motion to be filed*)
127 Public Square, Suite 2000
Cleveland, Ohio 44114
(216) 621-0200
plewis@bakerlaw.com
Counsel for Defendant

RECEIVED by MSC 1/13/2022 8:50:40 AM

Defendant Independent Citizens Redistricting Commission (“Commission”), by and through counsel, respectfully moves this Court for a ten-day extension of time to respond to Plaintiffs’ Complaint, with such extension running from the date this Court adjudicates their *Motion for Leave to File First Amended Verified Complaint*. In support of this motion, the Commission respectfully represents as follows:

1. Plaintiffs attempted to initiate an original proceeding in this Court by filing their original Complaint on January 5, 2022. However, Plaintiffs never completed the process required to do so pursuant to MCR 7.306(C) because they never filed a brief supporting that complaint.
2. To initiate an original proceeding against the Commission in this Court, in addition to filing a complaint, a plaintiff must file with the Supreme Court clerk a “brief conforming as nearly as possible to MCR 7.212(B) and (C)” and “proof that the complaint and brief were served on the defendant...” MCR 7.306(C)(2) and (3).
3. Instead of serving a brief supporting their original Complaint, on January 11, 2022 Plaintiffs served the Commission chairperson with the original Complaint (again, without a supporting brief), a Motion for Leave to File an Amended Complaint, a proposed amended complaint (the “proposed Amended Complaint”) with a proposed brief, and related exhibits.

4. Plaintiffs did not file, have never filed, and have never served a brief in support of their original Complaint.

5. MCR 7.306(D)(1) requires that—*after* an original proceeding is initiated under MCR 7.306(C) by, among other things, filing and serving a complaint and supporting brief—the Commission file its answer and supporting brief within 7 days of service of the complaint, unless directed otherwise by the Court.

6. In this case, it is not clear that an original proceeding has been initiated in this Court because Plaintiffs failed to comply with MCR 7.306(C) as to the original Complaint (by never filing and serving a brief supporting that complaint), and Plaintiffs’ motion to amend their Complaint remains pending.

7. Although Plaintiffs failed to comply with MCR 7.306(C), this Court’s docket indicates that the Commission is required to file its answer and brief on or before January 18, 2022.

8. The Commission seeks clarity on the due date for their response to Plaintiffs’ complaint, whichever version the Court deems filed, and asks that its response be due 10 days (or the next business day if the due date falls on a weekend or holiday) after the Court rules on Plaintiffs’ motion to amend their complaint. In support of setting this due date, the Commission states as follows:

9. First, Plaintiffs’ noncompliance with MCR 7.306(C) with regard to their original Complaint, coupled with their motion for leave to file a proposed Amended Complaint, has made it unclear what pleading Commission must respond to. Because Plaintiffs never filed a “supporting brief” with their Complaint, the original Complaint failed to invoke the Court’s original jurisdiction—and has given Commission nothing for its own “supporting brief” to respond to. Further, until this Court adjudicates Plaintiffs’ motion for leave to file their proposed Amended

Complaint, it would be premature for Commission to file an answer and “supporting brief” directed to that proposed pleading under MCR 7.306(D)(1).

10. Second, the Commission seeks this set due date to allow it to discuss this lawsuit with its counsel during one of its regularly scheduled meetings.

11. Third, given the importance of this litigation, which seeks to alter congressional and state legislative maps that will govern Michigan’s elections for the next decade, the public interest weighs in favor of allowing the Commission a full and fair opportunity to respond to Plaintiffs’ lawsuit.

12. Finally, this brief extension will not prejudice any party in interest. The State’s primary election is scheduled for August 2, 2022, with a deadline of April 19, 2022, at 4:00 p.m. for partisan and nonpartisan candidates to file nominating petitions and Affidavits of Identity for that primary election. *See Michigan Secretary of State, 2022 Michigan Election Dates*, at https://www.michigan.gov/documents/sos/2022_Election_Dates_Booklet_738675_7.pdf (visited Jan. 12, 2022).

WHEREFORE, the Commission respectfully requests that this Court set the time for filing its answer and brief or to otherwise respond to Plaintiffs’ Complaint for ten days after this Court grants or denies Plaintiffs’ Motion for Leave to File an Amended Complaint. If the Court grants Plaintiffs’ Motion, the Commission asks to be allowed ten days from that date to answer or otherwise respond to the Amended Complaint. If the Court denies Plaintiffs’ Motion, the Commission asks to be allowed ten days after Plaintiffs file and serve the brief in support of the original Complaint to answer or otherwise respond. If any of these due dates fall on a date on which the court is closed, the date shall extend to the next business day.

January 13, 2022

Respectfully submitted,

FINK BRESSACK

By: /s/ David H. Fink
David H. Fink (P28235)
Nathan J. Fink (P75185)
Philip D.W. Miller (P85277)
Morgan D. Schut (P81009)
David A. Bergh (P83696)
38500 Woodward Ave., Suite 350
Bloomfield Hills, Michigan 48304
(248) 971-2500
dfink@finkbressack.com
nfink@finkbressack.com
pmiller@finkbressack.com
mschut@finkbressack.com
dbergh@finkbressack.com
Counsel for Defendant

BAKER & HOSTETLER LLP
Katherine L. McKnight (*PHV* motion to be
filed)
1050 Connecticut Ave., NW, Suite 1100
Washington, D.C. 20036
(202) 861-1500
kmcknight@bakerlaw.com
Counsel for Defendant

BAKER & HOSTETLER LLP
Patrick T. Lewis (*PHV* motion to be filed)
127 Public Square, Suite 2000
Cleveland, Ohio 44114
(216) 621-0200
plewis@bakerlaw.com
Counsel for Defendant

INDEPENDENT CITIZENS
REDISTRICTING COMMISSION
Julianne V. Pastula (P74739)
P.O. Box 511183
Livonia, Michigan 48151
(517) 331-6318
pastulaj1@michigan.gov
General Counsel to the Commission

RECEIVED by MSC 1/13/2022 8:50:40 AM

CERTIFICATE OF SERVICE

I hereby certify that on January 13, 2022, I electronically filed the foregoing paper with the Clerk of the court using the MiFILE system and I used the MiFILE system to serve a copy on counsel for Plaintiffs.

FINK BRESSACK

By: /s/ Nathan J. Fink
Nathan J. Fink (P75185)
38500 Woodward Ave., Suite 350
Bloomfield Hills, MI 48304
Tel: (248) 971-2500
nfink@finkbressack.com

RECEIVED by MSC 1/13/2022 8:50:40 AM