NO. _____

IN THE

Supreme Court of the United States

MIKE KOWALL, ET AL.,

Petitioners,

v.

JOCELYN BENSON, IN HER OFFICIAL CAPACITY AS SECRETARY OF STATE,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Michigan's state legislative term limits—the shortest and harshest in the nation—impose an absolute ban on the participation of a certain category of candidates: experienced legislators. And while Michigan's sovereign interest in structuring its government may be entitled to some deference, that does not mean the State gets a free pass under the First Amendment. To the contrary, the First Amendment guarantees the "rights of expression and association" including the "important interest in the continued availability of political opportunity." *Lubin* v. *Panish*, 415 U.S. 709, 710, 715 (1974). And courts should be skeptical of restrictions that bar candidacy for political office "without reference to the candidates' support in the electoral process," *U.S. Term Limits, Inc.* v. *Thornton*, 514 U.S. 779, 835 (1995).

The two questions presented are:

1. Whether candidate qualifications should be subjected merely to rational-basis review, as the Sixth Circuit concluded below, or some heightened level of scrutiny, as five other circuits and four state courts of last resort have held.

2. Whether Michigan's lifetime term limits—the shortest and harshest in the nation—violate candidates' and voters' First and Fourteenth Amendment rights.

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

Petitioners are Mike Kowall, Roger Kahn, Paul Opsommer, Joseph Haveman, David E. Nathan, Scott Dianda, Clark Harder, Mary Valentine, Douglas Spade, and Mark Meadows.

Respondent is Jocelyn Benson, in her official capacity as Secretary of State.

Because Petitioners are not a corporation, Supreme Court Rule 29.6 does not require a corporate-disclosure statement.

LIST OF ALL PROCEEDINGS

U.S. Court of Appeals for the Sixth Circuit, No. 21-1129, *Kowall, et al.* v. *Benson*, judgment entered November 17, 2021.

U.S. District Court for the Western District of Michigan, No. 1:19-cv-00985-JTN-PJG, *Kowall, et al.* v. *Benson*, final judgment entered January 20, 2021.

TABLE OF CONTENTS

APPENDIX TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

DECISIONS BELOW

The district court's opinion and order granting Respondent's motion to dismiss is not reported and is reprinted in the Appendix ("App.") at 12a–31a, and the district court's judgment is reprinted at App.32a. The Sixth Circuit's opinion affirming the district court is reported at 18 F.4th 542 and reprinted at App.1a–11a.

STATEMENT OF JURISDICTION

On November 17, 2021, the Sixth Circuit issued its published opinion affirming dismissal of Petitioners' complaint. The district court had jurisdiction under 28 U.S.C. 1331 and 1343 and 42 U.S.C. 1983. The court of appeals had jurisdiction under 28 U.S.C. 1291. This Court has jurisdiction under 28 U.S.C. 1254(1).

PERTINENT CONSTITUTIONAL PROVISIONS AND STATUTES

The First Amendment to the United States Constitution provides, in relevant part: "Congress shall make no law … abridging the freedom of speech … or the right of the people peaceably to assemble." U.S. Const. amend I.

The Fourteenth Amendment to the United States Constitution provides, in relevant part: "[N]or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend XIV.

Article 4, § 54 of Michigan's Constitution of 1963 provides, in relevant part: "No person shall be elected to the office of state representative more than three times. No person shall be elected to the office of state senate more than two times. Any person appointed or elected to fill a vacancy in the house of representatives or the state senate for a period greater than one half of a term of such office, shall be considered to have been elected to serve one time in that office for purposes of this section." Mich. Const. art IV, § 54.

INTRODUCTION

Petitioners are 10 former members of the Michigan Legislature, Democrat and Republican, who, with one exception, are now barred from running for their prior offices due to the term limits in Michigan's Constitution and prohibited from voting for candidates with more than a modicum of legislative experience. Those term limits—the shortest in the nation and paired with a lifetime ban—violate Petitioners' federal constitutional rights both as candidates and as voters.

Petitioners filed this lawsuit seeking declaratory relief and a permanent injunction prohibiting Respondent, the Michigan Secretary of State, from enforcing the State's legislative term limits. Such an injunction would allow Petitioners to again appear on the ballot for the Michigan House of Representatives and Michigan Senate, and to vote for candidates who have legislative experience.

The Sixth Circuit affirmed the district court's dismissal of Petitioners' complaint, holding that so long as rational-basis review is satisfied, a state can impose any candidate requirements, no matter how restrictive, provided the state does not implement candidate qualifications that transgress a protected class. Under that holding, which is now the status quo, Michigan could prohibit legislative candidates older than 30 years because the future belongs to the young. It could prohibit legislative candidates with a net worth that exceeds $25,000 because the poor lack adequate political representation. Michigan could even prohibit attorneys and doctors from serving because the State believes these professionals are historically overrepresented in the Legislature.

Five circuits and four state courts of last resort disagree. Because the right to run for public office and to vote for favored candidates is one of the definitive forms of political expression in our country—implicating free expression and association—these courts recognize that some type of heightened scrutiny is warranted for candidate qualifications. This Court should resolve that mature conflict and apply heightened scrutiny here.

Recognizing constitutional limits on a state's ability to impose candidate qualifications does not necessarily mean that all term-limit restrictions are invalid. This Court's analysis in the campaign-finance arena is instructive. The Court has long said that contribution limits implicate the First Amendment, though it has never declared that *all* such limits are unconstitutional. *E.g., Buckley* v. *Valeo*, 424 U.S. 1 (1976) (per curiam); *Randall* v. *Sorrell*, 548 U.S. 230 (2006); *Thompson* v. *Hebdon*, 140 S. Ct. 348 (2019) (per curiam). Instead, the Court asks whether particular contribution limits "are too low and too strict to survive First Amendment scrutiny." *Randall*, 548 U.S. at 248. "At some point the constitutional risks to the democratic electoral process become too great." *Id.*

That is an appropriate standard to apply here. Michigan has the harshest, strictest term limits in the nation: once a candidate serves six years in the state house of representatives, she is barred from ever serving in that chamber again. Michigan's purposes in imposing term limits can be adequately served by more reasonable restrictions, as shown in every single other state that has adopted a term-limits scheme. Certiorari is warranted.

STATEMENT OF THE CASE

I. Petitioners

Petitioners Mike Kowall, Roger Kahn, Scott Dianda, Clark Harder, Joseph Haveman, David E. Nathan, Paul Opsommer, Douglas Spade, and Mark Meadows are all former Michigan legislators who are banned for life from running for their former seats by Michigan's term limits and who would run for those seats again if they could. They, along with Petitioner Mary Valentine, appreciate the value of legislative experience and would, if they could, use their votes as citizens in favor of experienced candidates to minimize the power of lobbyists and bureaucrats

II. Michigan's harshest-in-the-nation term-limits regime

In the 1992 general election, Proposal B, titled "A Proposal To Restrict/Limit The Number Of Times A Person Can Be Elected To Congressional, State Executive And State Legislative Office," was approved by Michigan voters.[1] As a result, the Michigan Constitution was amended to impose term limits on Michigan congressional seats and to implement a lifetime ban on those holding state legislative office—limiting state representatives to three, two-year terms (six years total) and state senators to two, four-year terms (eight years), and on several state executive offices. These restrictions became Article IV, § 54 of Michigan's Constitution.

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[1] The full text of Proposal B as it appeared on the 1992 ballot is set forth in *Citizens for Legislative Choice* v. *Miller*, 993 F. Supp. 1041, 1042–43 (E.D. Mich. 1998).

Three years after Proposal B was passed, this Court, in *U.S. Term Limits, Inc.* v. *Thornton*, 514 U.S. 779 (1995), held that states cannot impose restrictions on those seeking or holding Congressional office that are greater than those provided for in the United States Constitution. This resulted in the invalidation of Michigan's provisions restricting the number of terms an individual could serve as a U.S. Senator or Representative. After *Thornton*, only lifetime term limits on state legislative and executive offices remained in effect in Michigan.

Of the 15 states that impose term limits on state legislators, Michigan's scheme is easily the harshest and most restrictive. For example, nine of the 15 states impose only consecutive term limits on legislators rather than lifetime limits, like Michigan.[2] As for the six states that impose lifetime limits, Michigan allows the fewest number of years for which an elected representative may serve.[3]

And while Plaintiffs have differing opinions as to what the best term-limit regime might be—some think that the lifetime ban should be eliminated, others think term limits should be abolished altogether—all agree that Michigan's limitations have not worked as intended and have resulted in numerous deleterious effects, as described in detail below.

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[2] *The Term-Limited States*, http://www.ncsl.org/research/about-state-legislatures/chart-of-term-limits-states.aspx.

[3] *Id.*

III. The deleterious effects of term limits on state legislatures

Because Michigan's lifetime ban and shortest-in-the-nation term limits are so out of step with the rest of the country, this Court need not decide whether Michigan's current term-limit system represents good policy. But it is helpful background to understand why term limits have not delivered on their promises and impacted legislative institutions.

The most comprehensive survey of term limits' effects was a 50-state survey published in 2006. Carey, Niemi, Powell, and Moncrief, *The Effects of Term Limits on State Legislatures: A New Survey of the 50 States*, Legislative Studies Quarterly, XXXI, 1, February 2006 [hereinafter "*Survey of the 50 States*"]. The study authors "conducted the only survey of legislators in all 50 states aimed at assessing the impact of term limits." *Id.* at 105.

On a 50-state basis, term limits have not delivered their promised benefits. Term limits did not produce any significant difference in elected-legislator demographics. There has been no statistically significant increase in racial and ethnic minority representation. *Survey of the 50 States*, p. 114. There are no significant differences in political ideology. *Id.* While there are more women serving as state legislators today, that is a function of more women running for office and winning; researchers "are unable to attribute any part of this change to the extraordinary opening up of legislative seats" from term limits. *Id.* at 115. And, contrary to expectations of a "new breed" of amateur politician, term limits *increase* professional politicians. *Id.* at 116–17.

Term limits did change some legislator behaviors, but not in ways that term-limit proponents promised. Non-lame-duck legislators are campaigning and fund-raising *more* than their non-term-limited counterparts. *Id.* at 118. Legislators in term-limit states "report spending less time keeping touch with constituents than do those in" non-term-limited states. *Id.* "Legislators in term-limited chambers engage in less constituent service than do those who do not face limits." *Id.* at 119.

Term limits "have also been shown to decrease lawmakers' efforts to develop and advance policies, reduce their willingness to show up for roll-call votes, and discourage creation of the bipartisan coalitions and relationships within the chamber that are often desired by term limit supporters." Casey Burgat, *The Case Against Congressional Term Limits*, R Street Shorts No. 72 (July 2019), p. 2.[4] And term-limited lawmakers "tend to increase spending and borrowing levels since they cannot be punished electorally." *Id.*[5]

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[4] Citing Gerald C. Wright, *Do term limits affect legislative roll call voting? Representation, polarization, and participation*, State Politics and Policy Quarterly 7:3 (2006), pp. 256–80; Marjorie Sarbaugh-Thompson et al., *Democracy among strangers: Term limits' effects on relationships between state legislators in Michigan*, State Politics and Policy Quarterly 6:4 (2006), pp. 384–409; and Karl T. Kurtz et al., eds., *Institutional Change in American Politics: The case of term limits* (University of Michigan Press, 2009).

[5] Citing Abbie H. Erier, *Legislative term limits and state spending*, Public Choice 133:3–4 (2001), pp. 474–94.

Institutionally, the results should not be surprising. After term limits are instituted, "the surge in gubernatorial influence is substantial." *Survey of the 50 States*, p. 124. What's more, "[t]erm limits clearly increase the power of the executive branch [i.e., "bureaucrats/civil servants"] relative to the legislature," a "product of the removal of long-term incumbents rather than of changing incentives that arise of putting term limits on the books." *Id.* at 125. This shift in power is not offset by legislative staff; survey data indicated "no shift toward greater staff influence in term-limited chambers." *Id.* at 124. And while legislators themselves may not see an increase in lobbyist influence, the lobbyists themselves certainly do. Lobbyists voice a "strong consensus . . . that term limits have caused the state political influence structure to shift away from the legislature and toward the governor, administrative agencies, and interest groups." Burgat, *The Case Against Congressional Term Limits*, p. 2.[6]

Simply put, "[t]erm limits weaken the legislative branch relative to the executive. . . .[,] where the two institutional actors generally regarded as best able to coordinate collective action among legislators—majority party leaders and committee chairs—are debilitated by term limits." *Survey of the 50 States*, pp. 129–30. And term limits' "long-term effects on legislative policy innovation and bargaining strength relative to other actors . . . are negative." *Id.* at 130.

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[6] Citing Gary Moncrief and Joel A. Thompson, *On the outside looking in: lobbyists' perspectives on the effects of state legislative term limits*, State Politics & Policy Quarterly 1:4 (2001), p. 394.

IV. The deleterious effects of term limits on Michigan's Legislature, specifically

As for Michigan, it cannot be disputed that lifetime term limits have sucked legislative experience out of the Legislature. In 2014, Michigan's term limits forced 34 lawmakers from office with a combined 248 years of experience, including the Senator Majority Leader, Senate Minority leader, and House Speaker. *Term limit turnover: Michigan losing 248 years of legislative experience this year*, MLive (Dec. 31, 2014).[7] Similarly, in 2019, term limits forced out nearly 70% of state senators and more than 20% of state representatives. *Mass turnover fuels push for Mich. term limit reform*, The Detroit News (Oct. 3, 2017).[8] Where do they go? Nearly one-quarter end up either registering as lobbyists or working as consultants or paid advocates. Kusnetz, *Revolving Door Swings Freely in America's Statehouses*, The Center for Public Integrity (May 19, 2014) (summarizing a Detroit Free Press investigation that tracked the careers of 291 Michigan officials elected from 1992-2004).

This environment has consequences. First, term limits incentivize politically ambitious legislators to use their short legislative experience as a kind of springboard to another office—which intensifies, not diminishes, their focus on reelection-centric efforts. Marjorie Sarbaugh-Thompson & Lyke Thompson, *Implementing Term Limits: The Case of the Michigan*

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[7] http://www.mlive.com/lansing-news/index/ssf/2014/12/term-limit_turnover_michigan_1.html.

[8] https://www.detroitnews.com/ story/news/politics/2017/10/03/ michigan-chamber-term-limits-reform/106253436.

Legislature (2017), pp. 277–78 [hereinafter, "*Thompson*"]. Indeed, after the imposition of term limits, politically ambitious legislators spent more time on reelection-centric efforts—like procuring pork for their districts—and less time actually legislating, like studying legislation, developing new legislation, and building coalitions across party lines. *Id.* at 277. Actual legislation was found to be most commonly within the purview of experienced or veteran legislators. *Id.* at 314.

Likewise, freshmen legislators not only spend less time post-term limits building bipartisan coalitions, but less time building coalitions within their own parties. *Id.* at 283. That lack of institutional knowledge and coalition building among inexperienced legislators means that legislators turn to external, rather than internal, sources for information when voting on policy: lobbyists and special interest groups. *Id.* at 447. As one authority explains:

> The big change in the [Michigan] Senate is the rising importance (a 24% increase) of organized groups and lobbyists as trusted sources during floor votes. Nearly twice the proportion of post-term-limits senators turns to organized groups and lobbyists as their most important source compared to the proportion rating colleagues most important. Organized groups and lobbyists displace local sources as the most important ones for post-term-limits senators . . . .
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> Lost access for local sources is noteworthy because term limits proponents claimed that with limits on their tenure elected officials would be more closely tied to their constituents and their districts. We find no evidence of this—indeed, the changes we find are often in the opposite direction. The consulting patterns that evolve in the Senate after term limits often attenuate the ties that term limits advocates wanted to cultivate (local sources) and strengthen the ones they wanted to sever (organized groups and lobbyists). That this occurs at the expense of local sources and of colleagues demonstrates a shift in access and influence for key actors in Michigan's policy-making process. [*Id.* at pp. 478–79, 492–93].

Nor do term limits promote diversity or fresh ideas. Instead, term limits have increased a kind of dynastic representation—where term-limited incumbents' relatives seek to capitalize on name recognition—and recruitment of particular candidates. For example, in 2016 alone, 13 races involved a spouse, sibling, or other relative of a current-but-term-limited incumbent—and that was in addition to the 16 other seats already held by a former incumbent's family member. Jack Lessenberry, *Our system of term limits in Michigan is an utter failure*, Michigan Radio (May 10, 2016).[9]

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[9] http://michiganradio.org/post/our-system-term-limits-michigan-utter-failure.

Likewise, recruiting particular candidates—including family and staff members of incumbents—significantly increased after the imposition of term limits. *Thompson*, p. 134. And the kind of candidates recruited by party incumbents is significant. For example, after the imposition of term limits, the Michigan Democratic Party increased its candidate recruiting efforts, and those efforts targeted white men significantly more than women and people of color, when compared to recruiting efforts pre-term-limits. *Id.* at 138–40.

In sum, at every level, term limits have proved a "failed social experiment." *Michigan Term limits a "failed social experiment,"* The Detroit News (April 18, 2017).[10]

V. Petitioners' personal experience with term limits' harms

Petitioners have witnessed term limits' adverse effects and more firsthand. Lifetime term limits have led to decreased social interaction, coalition-building, and collegiality among legislators. Harder Decl. ¶¶ 15–17; Kowall Decl. ¶¶ 19–21. They have also resulted in legislators with less real-world experience. Haveman Decl. ¶ 11. The general absence of subject-matter knowledge and the niceties of legislative procedural rules have resulted in poor legislation, the failure to pass needed legislation, and the loss of millions of federal dollars. Valentine Decl. ¶¶ 9–10; Harder Decl. ¶¶ 18–19; Kahn Decl. ¶ 17; Opsommer Decl. ¶¶ 21–22; Haveman Decl. ¶¶ 6–8; Meadows

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[10] http://www.detroitnews.com/story/news/politics/2017/04/18/meekhof-mich-term-limits-failed-social-experiment/100599820/.

Decl. ¶ 13; Kowall Decl. ¶¶ 15, 18; Spade Decl. ¶¶ 9–10. Term limits have lowered the quality of representation for the "little things" on which constituents often depend. Kahn Decl. ¶¶ 8–13; Spade Decl. ¶¶ 6–7.

Term limits have also made it very difficult to address thorny, complex issues, given that it takes eight to ten years to study and build consensus around meaningful change in a system that prohibits officeholders from serving more than six years in the House. Opsommer Decl. ¶¶ 14–15; Kowall Decl. ¶¶ 16–18; Meadows Decl. ¶¶ 14–15. Perhaps this is why, after decades of trying, the Legislature has been unable to create a permanent fix for funding Michigan's transportation infrastructure, which ranks last in the nation and may require a multi-billion-dollar loan that will burden future Michiganders. Opsommer Decl. ¶¶ 17–20.

The lack of institutional memory is particularly costly in times of crisis. It would certainly have been beneficial to have some of the legislators who worked through budget shortfalls during the Great Recession in the chambers to deal with the estimated $1–3 billion shortfall caused by the COVID-19 pandemic. Kahn Decl. ¶¶ 18-20. And the loss of legislator knowledge has contributed to the State's failures in dealing with applications for unemployment and other public benefits during the COVID-19 crisis. Dianda Decl. ¶¶ 10(a)–(b).

Lacking experience, legislators turn to lobbyists, career bureaucrats, and staff on policy issues. Kahn Decl. ¶ 21; Dianda Decl. ¶ 11; Opsommer Decl. ¶ 24; Haveman Decl. ¶ 9; Kowall Decl. ¶¶ 11–14; Nathan Decl. ¶¶ 9–10; Meadows Decl. ¶¶ 10–11. As it stands,

career bureaucrats can just "wait out" legislators with whom they disagree on policy issues. Opsommer Decl. ¶ 23; Meadows Decl. ¶ 12. Following policy recommendations from unelected, career policy staff does not always result in the best policy choices for constituents. Haveman Decl. ¶ 9. And a symbiotic relationship between legislators and lobbyists fits the lobbyists' interests rather than the interests of Michiganders and is inconsistent with a republican form of government. Harder Decl. ¶¶ 20–21; Kahn Decl. ¶ 21; Kowall Decl. ¶ 14. In one instance, legislators doing the lobbyists' bidding cost taxpayers more than $100 million. Dianda Decl. ¶ 12.

The impact of such fleeting *lifetime* term limits has been to shift legislator thinking to short-term consequences of their policy decisions rather than the long-term ramifications, many of which may not manifest themselves until years after a legislator has been termed-out. Haveman Decl. ¶ 12. Lifetime term limits have also forced legislators to settle for less satisfactory public policy because there simply isn't time to craft and pass a better bill. *Id.* ¶¶ 13–14.

Overall, lifetime term limits have been destructive to the functioning of the Michigan Legislature. Valentine Decl. ¶ 11. As the most recent expert analysis concludes, (1) "[l]egislative term limits in Michigan have failed to achieve the stated goals proponents espoused of ridding government of career politicians, increasing diversity among elected officials, and making elections more competitive," (2) "officials spend more time on activities that can be viewed as electioneering," and term limits "have weakened the legislature vis-à-vis the executive branch," and (3) the "chief problem" is "the fact that among the 15 states with term limits, Michigan has

the shortest and strictest limits." Drs. Marjorie Sarbaugh-Thompson and Lyke Thompson, *Evaluating the Effects of Term Limits on the Michigan Legislature*, Citizens Research Council of Michigan Report 401, p. iii (May 2018).

VI. Proceedings

Petitioners filed their Complaint on November 20, 2019, and their First Amendment Complaint on December 11th, seeking to permanently enjoin Respondent from enforcing Michigan's unconstitutional term-limits regime. The parties filed cross-motions for summary judgment, and on January 20, 2021, the district court entered its opinion and order denying Petitioners' motion and granting Respondent's motion.

Regarding Counts I and II, Petitioners' First and Fourteenth Amendment claims, the district court began and ended with the Sixth Circuit's decision upholding Michigan's term limits in *Citizens for Legislative Choice* v. *Miller*, 144 F.3d 916, 921–22 (6th Cir. 1998). Pet.16a–22a. Decided more than 20 years ago, *Miller* involved a claim by voters and non-profit corporations asserting the right to vote for the candidate of their choice. (At the time, those claims had not even ripened yet, as Michigan's term limits were implemented just a few years before the *Miller* suit was commenced, such that no legislators had yet been termed-out.) Nonetheless, the district court concluded that the voter-candidate distinction made no legal difference. *Id.* at 9. The district court also ruled against Petitioners on their Guarantee Clause claim in Count III and their state-law claims in Counts IV and V, Pet.22a–31a, claims that Petitioners do not press here.

The Sixth Circuit affirmed. It began by analyzing whether it had jurisdiction to resolve Petitioners' federal claims and concluded that it did. Pet.3a–5a.

Turning to the merits of Petitioners' First and Fourteenth Amendment claims, the court concluded that Petitioners' claims as voters were barred by *Miller*, and that "as candidates, they hold no greater protection than the voters they wish to represent. Thus," the court "affirm[ed] on both claims." Pet.5a.

The panel first addressed Petitioners' claims as candidates. Beginning with the undisputed proposition that "candidates do not have a fundamental right to run for office," Pet.7a (citing *Clements* v. *Fashing*, 457 U.S. 957, 963 (1982), and *Zielasko* v. *Ohio*, 873 F.2d 957, 959 (6th Cir. 1989)), the court "revert[ed] to the baseline: rational basis," *id.* The court justified that test by pointing to this Court's decisions in *Gregory* v. *Ashcroft*, 501 U.S. 452, 470–71 (1991) (age limit for state judges), and *Clements*, 457 U.S. at 968–71 (candidacy restrictions for existing office-holders), its own decision in *Zielasko*, 873 F.2d at 959 (age limit for state judges), and the proposition that states apparently hold unlimited power to decide "who may hold elective office" provided they do not discriminate against protected classes. Pet.7a. The court then held that Michigan's term limits were "rationally related to a legitimate government interest." Pet.8a.

Turning to the rights of citizens to vote for the candidates of their choice, the court of appeals held that Petitioners' claims failed for the same reasons. Because citizens lack any fundamental right to "vote for a specific candidate or even a particular class of candidates," rational-basis review again applied. Pet.8a (quoting *Miller*, 144 F.3d at 921).

REASONS FOR GRANTING THE WRIT

The right to run for public office is one of the definitive forms of political expression in our country, and it implicates two, fundamental, First Amendment freedoms: individual expression and freedom of association. When an individual seeks to become a candidate, her expressive activity has at least two dimensions: (1) urging that her views be the views of the elected public official, and (2) that of spokeswoman for a political party or independent voters.

Candidacy opens a plethora of communicative possibilities unavailable to those who write letters to the editor, protest, or post political thoughts on social media. A candidate is likely to be asked to discuss her views on television and radio, or for newspaper or online publication. She will be invited to speak to groups or participate in public debates from which other speakers are excluded. And she can raise money to communicate her ideas in broadcast, print, and online media. Ballot access restricts these types of political speech. *Illinois State Bd. of Elections* v. *Socialist Workers Party*, 440 U.S. 173, 186 (1979) ("[A]n election campaign is a means of disseminating ideas as well as attaining political office . . . . Overbroad restrictions on ballot access jeopardize this form of political expression.").

Recognizing these principles, this Court has struck down numerous ballot-access restrictions in response to First and Fourteenth Amendment challenges. *E.g., Williams* v. *Rhodes*, 393 U.S. 23 (1968) (invalidating Ohio rule that required minor political parties to obtain a certain number of signatures to access the ballot); *Bullock* v. *Carter*, 405 U.S. 134 (1972) (invalidating a Texas ballot access fee); *Lubin*

v. *Panish*, 415 U.S. 709 (1974) (invalidating California ballot access fee); *Illinois State Bd.*, 440 U.S. 173 (invalidating Illinois law requiring third parties to obtain 25,000 signatures before appearing on the ballot); *Anderson* v. *Celebrezze*, 460 U.S. 780 (1983) (invalidating Ohio early-filing deadline for independent candidates).

The question presented here is how to address constitutional concerns about freedom of expression and association in the specific context of candidacy qualifications. By applying rational-basis review, the Sixth Circuit below essentially held that *any* restriction a state imposes on who may hold state elective office is fair game. If a state desires extremely young legislators because of their vitality, the state can cap candidate eligibility at age 29. If a state values life experience, it can impose a minimum age of 60. If a state questions the candidacies of those who support gun safety, or who work as bankers or accountants, it can exclude them. And so on.

But five federal circuits and four state courts of last resort take a less deferential approach. In the first camp are courts that apply some form of heightened scrutiny to candidacy restrictions because those restrictions always implicate First Amendment rights. In the second are courts that apply a sliding scrutiny scale depending on the restriction's severity. Under either approach, Petitioners should have prevailed because Michigan's term limits significantly impair First Amendment rights.

This Court should grant the petition, resolve the mature split in authority, hold that heightened scrutiny applies to candidate restrictions, and declare Michigan's term limits unconstitutional.

I. The Sixth Circuit's rule conflicts with five circuits and four state courts of last resort that apply some form of heightened scrutiny to candidate qualifications.

1. The First and Fifth Circuits, as well as the supreme courts of Minnesota, Oregon, Pennsylvania, and West Virginia, have held that candidacy is a right protected by the First Amendment's guarantees of expression and association or, at minimum, by First Amendment freedoms included in the Equal Protection Clause of the Fourteenth Amendment.

Start with the First Circuit. In *Mancuso* v. *Taft*, 476 F.2d 187 (1st Cir. 1973), a city police officer who desired to run for the Rhode Island General Assembly filed suit to challenge a local provision prohibiting city workers from becoming candidates for public office. The court began by inquiring "whether the interest of the individual in running for public office is an interest protected by First Amendment," since "any law which significantly infringes that interest must be given strict review." *Id.* at 195. Noting that this Court had "never directly decided this point," the First Circuit observed that *Williams* v. *Rhodes* "strongly suggest[ed] that the activity of seeking public office is among those protected by the First Amendment," and that "two state supreme courts have found, in facially invalidating flat bans on public employee candidacies challenged by deputy sheriffs, that the right to run for office is a First Amendment right." *Id.* (citing *Minielly* v. *State*, 411 P.2d 69 (Or. 1966) (en banc), and *Kinnear* v. *City & Cty. of San Francisco*, 392 P.2d 385 (Cal. 1964) (en banc)). The First Circuit "c[a]me to the same conclusion." *Id.*

Like Petitioners' argument here, the First Circuit reasoned that the "right to run for public office touches on two fundamental freedoms: freedom of individual expression and freedom of association." 476 F.2d at 195. Free expression includes activities like "writ[ing] a letter to the local newspaper, speak[ing] out in a public park, distribut[ing] handbills advocating radical reform, or picket[ing] an official building to seek redress of grievances." *Id.* But at some point, a concerned citizen "may decide that the most effective way to give expression to his views and to get the attention of an appropriate audience is to become a candidate for public office—means generally considered among the most appropriate for those desiring to effect change in our governmental systems." *Id.*

Such a citizen "may seek to become a candidate by filing in a general election as an independent or," like Petitioners here, "by seeking the nomination of a political party." 476 F.2d at 195. And "in the latter instance, the individual's expressive activity has two dimensions: besides urging that his views be the views of the elected public official, he is also attempting to become a spokesman for a political party whose substantive program extends beyond the particular office in question." *Id.* at 195–96. By prohibiting the plaintiff officer from doing so, the local Rhode Island law "stifled what may be the most important expression an individual can summon, namely that which he would be willing to effectuate, by means of concrete public action, were he to be selected by the voters." *Id.* at 196.

But impingement on candidate expression was not the only First Amendment problem. "It is impossible to ignore," continued the First Circuit, "that the right to run for office also affects the freedom to associate." 476 F.2d at 196. Analogizing the situation to that in *Bullock*, where this Court concluded that the First Amendment is infringed when government effectively denies a party "access to its electoral machinery," the First Circuit concluded that the local Rhode Island law "also affects associational rights, albeit in a slightly different way." *Id.* After an individual joins a political party or forms his own, "at some juncture[,] his supporters and fellow party members may decide that he is the ideal person to carry the group's standard into the electoral fray." *Id.* What the Rhode Island law did was "to limit the effectiveness of association; and the freedom to associate is intimately related with the concept of making expression effective." *Id.* (citing *Rhodes*, 393 U.S. at 41–42 (Harlan, J., concurring), and *NAACP* v. *Button*, 371 U.S. 415, 429–31 (1963)). "Party access to the ballot becomes less meaningful if some of those selected by party machinery to carry the party's programs to the people are precluded from doing so because those nominees are civil servants." *Id.*

In addition, explained the First Circuit, the "fact of candidacy opens up a variety of communicative possibilities that are not available to even the most diligent of picketers or the most loyal of party followers." 476 F.2 at 196. "Consequently[,] we hold that candidacy is both a protected First Amendment right *and* a fundamental interest. Hence any legislative classification that significantly burdens that interest must be subjected to strict equal protection review." *Id.* (emphasis added).

The court struck down the Rhode Island local law under the Equal Protection Clause, *id.* at 201, though "[a]s [its] discussion of the First Amendment indicates, [it] would reach the same result were [it] to use direct First Amendment analysis." *Id.* at 189 n.2.

The Fifth Circuit reached the same conclusion in a different context in *Phillips* v. *City of Dallas*, 781 F.3d 772 (5th Cir. 2015). Mr. Phillips was a former nonsupervisory city employee who filed a First Amendment claim after he was terminated for violating laws that prohibited a city employee from seeking political office. Because Phillips' claim—unlike Petitioners—involved a government employer's right to control its public employees' words and actions, this Court's balancing test in *Pickering* v. *Board of Education*, 391 U.S. 565, 568 (1968), applied. 781 F.3d at 776. That required the Fifth Circuit to first consider whether Phillips had a "First Amendment interest in his candidacy" and then to weigh that interest against the City's. *Id.* at 778.

The district court had concluded that "becoming a candidate for political office is within the First Amendment's ambit" and therefore constitutes speech on a matter of public concern, and the Fifth Circuit agreed: "This court has been unequivocal in its recognition of a First Amendment interest in candidacy," 781 F.3d at 778 (citing *United States* v. *Tonry*, 605 F.2d 144, 150 (5th Cir. 1979), *abrogated on other grounds by Steel Co.* v. *Citizens for a Better Env't*, 523 U.S. 83 (1998); *Click* v. *Copeland*, 970 F.2d 106, 112 (5th Cir. 1992); *McCormick* v. *Edwards*, 646 F.2d 173, 175 (5th Cir. Unit A 1981), and *Morial* v. *Judiciary Comm'n*, 565 F.2d 295, 301 (5th Cir. 1977) (en banc)), though *Pickering* balancing ultimately favored the government, *id.* at 782.

The Supreme Court of Oregon reached a similar conclusion in *Minielly* v. *State of Oregon*, 411 P.2d 69 (Or. 1966), where a deputy sheriff filed suit to challenge a statute prohibiting civil-service employees from becoming candidates for public office. The court recognized that "the government has the authority, without violating the constitution, to make and enforce regulations for public employment which bear a reasonable relation to the promotion of efficiency, integrity, and discipline of the public service and which are not arbitrary or discriminatory." *Id.* at 73. At the same time, "running for public office is one of the means of political expression which is protected by the First Amendment." *Id.*

"The right to engage in political activity," the court continued, "is implicit in the rights of association and free speech guaranteed by the [first] amendment." 411 P.2d at 73. Given the First Amendment rights inherent in candidacy, "[t]he state must show that it has a compelling governmental interest warranting a restriction of a First Amendment right." *Id.* at 76 (citations omitted). "It is not enough that the state show a rational relationship of the statutes in question to a colorable state interest." *Id.* (citations omitted).

The Oregon Supreme Court ultimately invalidated the candidacy-prohibiting statute because the law "encompasse[d] too broad a scope and would prevent the plaintiff from becoming a candidate for state, federal or nonpartisan office. It can not be demonstrated that the good of the public service requires *all* of the prohibitions of the present statute." 411 P.2d at 77–78.

To the same effect is the Supreme Court of Appeals of West Virginia's decision in *State ex rel. Piccirillo* v. *City of Follansbee*, 233 S.E.2d 419 (W. Va. 1977). Invalidating a municipal restriction that required city-council candidates to have been assessed with and paid tax on at least $100 of real or personal property to be eligible for the ballot. The court held "that the right to become a candidate for office is a fundamental right, entitled to constitutional protection under the Equal Protection Clause and federal First Amendment concepts of freedom of association and expression." *Id.* at 423.

Similarly, the Minnesota Supreme Court recognized that the First Amendment protects the right to run for public office in *Bolin* v. *State of Minnesota, Department of Public Safety*, 313 N.W.2d 381 (Minn. 1981). *Bolin* involved a challenge to a state patrol regulation requiring state patrolmen to resign if they chose to run for the office of county sheriff. The court framed the issue presented as "whether the 'resign to run' rule violates [the plaintiff's] first or fourteenth amendment rights." *Id.* at 382.

The Minnesota Supreme Court acknowledged that "[w]hile the right to run for public office has not been characterized as fundamental, it is an important right protected by the first amendment." *Id.* at 382–83 (citing *Bullock*, 405 U.S. at 142–43, and *Hickman* v. *City of Dallas*, 475 F. Supp. 137, 140 (N.D. Tex. 1979)). Nonetheless, the right "is not absolute and may be subject to restriction, especially when government employees are the subject of the restriction." *Id.* at 383 (citing *Broadrick* v. *Oklahoma*, 413 U.S. 601 (1973), and *U.S. Civil Serv. Comm'n* v. *Nat'l Ass'n of Letter Carriers*, 413 U.S. 548 (1973)).

The court invalidated the patrolman-candidate policy because it was "not the least restrictive means available to accomplish the state's goal" of promoting "harmony and cooperation between the state highway patrol and the office of sheriff." 313 N.W.2d at 383–84. An "unpaid leave of absence" could have achieved that goal, too. *Id.* at 384. And because the policy violated the plaintiff's "fourteenth amendment rights," the court did not need to "address his first amendment challenge, other than as it relates to his equal protection challenge." *Id.*

Finally, in *Commonwealth ex rel. Toole* v. *Yanoshak*, 346 A.2d 304 (Pa. 1975), the Supreme Court of Pennsylvania considered the validity of a statute that barred holding the office of county controller for two years after leaving the position of chief deputy record of deeds. Observing that "the First Amendment protects freedom of political expression and activity," and that "running for and holding political office are forms of political expression," the court held that "there must be a compelling state interest to uphold the validity of a restriction on holding political office." *Id.* at 306. The court found such a compelling interest—to protect the government from official misconduct resulting from certain officers "from being in the position of auditing their own books," *id.*, and upheld the statute.

2. In the second camp are the Seventh, Eighth, and Ninth Circuits, which have adopted this Court's sliding-scale *Anderson-Burdick* framework to assess the constitutionality of candidacy restrictions. See *Anderson* v. *Celebrezze*, 460 U.S. 780, 787–88 (1983); *Burdick* v. *Takushi*, 504 U.S. 428, 433 (1992). Under the *Anderson-Burdick* test, "a court must: (1) evaluate whether an election restriction imposes a severe

or incidental burden; (2) assess the state's interests in the restriction; and (3) ask if the state's interests make the burden necessary." App.5a. The court then "moves on to apply either a rational-basis or a strict-scrutiny standard of review" depending on its assessment of those three factors. *Id.* (citing *Timmons* v. *Twin Cities Area New Party*, 520 U.S. 351, 358 (1997)).

The Seventh Circuit applied such a test in *Claussen* v. *Pence*, 826 F.3d 381 (7th Cir. 2016), which involved a challenge to an Indiana law prohibiting individuals from simultaneously holding elected office and being employed as civil servants in the same unit of Indiana government. The court rejected the plaintiffs' argument that the law deserved heightened scrutiny because it implicated fundamental rights. *Id.* at 384–85. "But [that] did not mean that a rational basis analysis governs the outcome. Rather, whether 'a policy violates the First Amendment has been traditionally dependent upon a balancing test between the individual's First Amendment rights and the interests of the public body." *Id.* at 386 (quoting *Brazil-Breashears* v. *Bilandic*, 53 F.3d 789, 792 (7th Cir. 1995)).

Accordingly, the court considered whether Indiana imposed restrictions "'that serve legitimate state goals,' and whether the state's interest outweighs the burden on plaintiffs' First Amendment rights." 826 F.3d at 386 (quoting *Anderson*, 460 U.S. at 788 n.9). It concluded that the law survived because it imposed only "a small burden on plaintiffs' first Amendment rights." *Id.* at 387. That was because under the law, "plaintiffs are not forbidden from holding public office; if they decide not to run or retain their elected positions, that is their choice." *Id.*

The Eighth Circuit took a similar path in *Peeper v. Callaway County Ambulance District*, 122 F.3d 619 (8th Cir. 1997), in which a member of a county ambulance-district board challenged a board rule limiting her participation because she was married to an employee of the ambulance district. The court began by explaining that an "individual's right to be a candidate for public office under the First and Fourteenth Amendments is nearly identical to one's right to hold that office. Because of the analogous rights involved," the court used "the same constitutional test for restrictions on an officeholder as we do for restrictions on candidacy." *Id.* at 622.

That test was not strict scrutiny. 122 F.3d at 622. Instead, following *Anderson*, the court chose to "'consider the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments' caused by the challenged restriction." *Id.* at 623 (quoting *Anderson*, 460 U.S. at 789). This approach required the court to "identify and evaluate the precise interests put forward by the [s]tate as justifications for the burden imposed by the rule. In passing judgment, the Court must not only determine the legitimacy and the strength of those interests; it also must consider the extent to which those interests make it necessary to burden the plaintiff's rights." *Id.* (quoting *Anderson*, 460 U.S. at 789). The court invalidated the restriction. *Id.* at 623–25.

Most relevant to the Sixth Circuit's ruling here, the en banc Ninth Circuit in *Bates* v. *Jones*, 131 F.3d 843 (9th Cir. 1997), considered the validity of California's state legislative term limits after the district court struck them down, concluding that the scheme imposed "a severe burden on Plaintiffs' First and Fourteenth Amendment rights of voting and

association," and that California had "not established that lifetime term limits are narrowly tailored to serve a compelling State interest." *Bates* v. *Jones*, 958 F. Supp. 1446, 1471 (N.D. Cal. 1997).

The Ninth Circuit determined the type of scrutiny to provide by using the *Anderson-Burdick* sliding-scale test. 131 F.3d at 846. "If the measure in question severely burdens the plaintiffs' rights," said the court, "we apply strict scrutiny review." *Id.* (citation omitted). "If, however, the law imposes only reasonable nondiscriminatory restrictions upon the First and Fourteenth Amendment rights of voters, the State's important regulatory interests are generally sufficient to justify the restrictions." *Id.* (cleaned up).

The court erroneously concluded that California's lifetime term-limits ban had only a "minimal impact on the plaintiffs' rights" and reversed the district court's judgment enjoining enforcement of California's term limits. 131 F.3d at 847. But the partial dissent read this Court's precedents differently—particularly *Thornton*—noting that it "is necessary … to articulate some limitations on the ability of States to alter their structure of government," opining that the question of a lifetime term-limits ban's validity is "a close one" that "the Supreme Court must address," since "[w]here along the fulcrum the balance lies is not easy of resolution." *Id.* at 868–73 (Fletcher, J., concurring in part and dissenting in part).

II. The Sixth Circuit's rule is in tension with this Court's precedents regarding candidacy restrictions that impinge First Amendment expression and association.

Rather than applying any heightened scrutiny, the Sixth Circuit's analysis began and ended with the proposition that "candidates do not have a fundamental right to run for office," so rational-basis review applies. App.7a–8a. The court may be correct about a fundamental right, but as numerous other jurisdictions have concluded, that does not mean that candidacy requirements need only satisfy rational-basis review to survive a First Amendment challenge.

In support of its approach, the Sixth Circuit panel cited only three cases. App.7a–8a. In the first, *Gregory* v. *Ashcroft*, 501 U.S. 452 (1991), this Court upheld a 70-year mandatory retirement age for state judges. But such a qualification was not particularly onerous; it allowed a state judge to serve for most of her adult life. And more important, the case did not require this Court to analyze the plaintiff's First Amendment expression and associational rights. The Court resolved the case based solely on the Equal Protection Clause. 501 U.S. at 470–73.

In the second cited case, *Clements* v. *Fashing*, 457 U.S. 957 (1982), the plaintiffs challenged two Texas candidacy restrictions, one prohibiting existing office-holders from running for the state legislature, the other a resign-to-run requirement. The bulk of the opinion again addressed an equal-protection challenge. The Court summarily disposed of the plaintiffs' "First Amendment interests in candidacy" because the two restrictions were "so insignificant" as to be "de minimis." *Id.* at 971–72.

The final case on which the panel relied was one of its own precedents, *Zielasko* v. *Ohio*, 873 F.2d 957, 959 (6th Cir. 1989), which also involved a 70-year mandatory retirement age for state judges. But even *Zielasko* did not apply a simple rational-basis test. Contra App.7a–8a. In evaluating whether a candidacy restriction violates a candidate and voters' "equal protection and first amendment rights," the Sixth Circuit applied the "complex balancing test announced in *Anderson*." 873 F.3d at 960. It was only after concluding that the age restriction did not injure the candidate or curtail a voter's association rights that the court applied rational-basis review and upheld the law. *Id.* at 961–62.

Zielasko is obviously not binding on this Court. To the extent the decision is relevant, it is to show the lower-court confusion over how to analyze the First Amendment rights of a candidate when she is banished from the ballot. As for *Ashcroft* and *Clements*, neither grappled with the free expression and association concepts that pervade the multiple circuit and state-supreme-court rulings holding that some level of heightened scrutiny—or at a bare minimum *Anderson-Burdick* sliding-scale scrutiny—is appropriate when assessing candidacy restrictions.

Conversely, two of this Court's other precedents shed additional light on the questions presented without providing definitive answers. In *Lubin* v. *Parish*, 415 U.S. 709 (1974), the Court struck down as excessive a $700 California filing fee. It did so because the fee violated an individual candidate's "rights of expression and association guaranteed by the First Amendment," *id.* at 710, to wit, the candidate's "important interest in the continued availability of political opportunity," *id.* at 716.

Later, in *U.S. Term Limits, Inc.* v. *Thornton*, 514 U.S. 779 (1995), this Court invalidated Arkansas's term limits on Congressional candidates. *Thornton* raised issues under the Qualifications Clause of the U.S. Constitution, and the Court appropriately rested its holding primarily on an analysis of that Clause. But in so doing, the Court shed considerable light on its ballot-access line of cases, concluding that there was nothing in that line that could save the Arkansas term limits. *Id.* at 834–35.

Specifically, the Court rejected Arkansas's argument that term limits were a proper time, place, and manner restriction under this Court's precedents. That was because those precedents "did not involve *measures that exclude candidates from the ballot without reference to the candidates' support in the electoral process*." *Thornton*, 514 U.S. at 835 (emphasis added). The Court's cases "upholding state regulations of elections procedures thus provide little support for the contention that a state-imposed ballot access is constitutional when it is undertaken for the twin goals of disadvantaging a particular class of candidates and evading the dictates of the Qualifications Clauses." *Id.*

Taken together, *Lubin* and *Thornton* support Petitioners' position here. Because Michigan's lifetime term limits exclude candidates without reference to the candidates' electoral support, and because the limits significantly impinge on candidate and voter expressive and association rights protected by the First Amendment, the strong implication is that some form of heightened scrutiny is warranted. This Court should grant the petition and decide what level of scrutiny applies.

III. This case is an ideal vehicle for the Court to resolve the splits underlying the questions presented.

This case is an excellent vehicle to decide what level of scrutiny a court should apply to candidate qualifications that impinge First Amendment rights. Five factors highlight this.

First, the record cleanly frames the question presented. The facts are not disputed because the district court ruled on a motion to dismiss. All the facts in the complaint must be accepted as true, and those facts state a claim for constitutional violations.

Second, if this dispute had arisen in the First, Fifth, Seventh, or Eighth Circuits, or in the supreme courts of Minnesota, Oregon, Pennsylvania, or West Virginia, the lifetime term limits at issue would almost certainly not have been subjected to mere rational-basis review. Two circuits and the four state courts would have applied strict or heightened scrutiny. And the Seventh and Eighth Circuits would have examined the burden on Petitioners' rights of expression and association and then decided the appropriate scrutiny to apply. (The Ninth Circuit would have done the same but, under *Bates*, would have likely upheld Michigan's ban.) For example, Michigan bars a six-year member of the Michigan House of Representatives from ever running for her office again. No other state imposes such a short or harsh restriction. That is a far greater impingement of free expression and association rights than a 70-year mandatory retirement age for state-court judges. And it warrants a higher level of scrutiny than the deferential rational-basis test.

Third, because this Court's precedents do not clearly dictate a certain level of scrutiny for candidacy qualifications, the Court has flexibility to determine how best to protect candidates' and voters' First Amendment freedoms. The Court could apply strict scrutiny. It could apply the *Anderson-Burdick* sliding-scale test. Or it could apply a test like the one the Court uses to evaluate the constitutionality of contribution limits, asking whether particular term limits "are too low and too strict to survive First Amendment scrutiny." *Randall* v. *Sorrell*, 548 U.S. 230, 248 (2006). Such a test would invalidate Michigan's term limits, which are lower and stricter than any other state's. Even if Michigan could establish that nothing less than a ban on incumbents could support its interests, it cannot establish that such a ban need be permanent.

Fourth, the issue presented is not one where the Court will benefit from further percolation. The Sixth Circuit emphatically rejected the *Anderson-Burdick* sliding-scale approach, App.5a–6a—the standard that the court had previously applied to candidate restrictions in *Zielasko*—in favor of a rational-basis test that numerous other courts have declined to adopt in candidate-qualification contexts. This ensures that the Sixth Circuit will stand permanently apart from other federal and state jurisdictions.

And finally, this Court should act to prevent the Sixth Circuit's approach from spreading. If state and local governments are constrained in enacting candidacy qualifications only by rational-basis review, there is no end to how a candidate's free expression and association rights might be imagined. Immediate review is warranted.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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APRIL 2022

PETITION APPENDIX TABLE OF CONTENTS

RECOMMENDED FOR PUBLICATION
Pursuant to Sixth Circuit I.O.P. 32.1(b)

File Name: 21a0263p.06

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

MIKE KOWALL; ROGER KAHN; PAUL OPSOMMER; JOSEPH HAVEMAN; DAVID E. NATHAN; SCOTT DIANDA; CLARK HARDER; MARY VALENTINE; DOUGLAS SPADE; MARK S. MEADOWS, *Plaintiffs-Appellants*, *v.* JOCELYN BENSON, in her official capacity as Secretary of State, *Defendant-Appellee*.	No. 21-1129

Appeal from the United States District Court for the Western District of Michigan at Grand Rapids.
No. 1:19-cv-00985—Janet T. Neff, District Judge.

Argued: October 20, 2021

Decided and Filed: November 17, 2021

Before: GILMAN, THAPAR, and NALBANDIAN, Circuit Judges.

COUNSEL

ARGUED: John J. Bursch, BURSCH LAW PLLC, Caledonia, Michigan, for Appellants. Erik A. Grill, OFFICE OF THE MICHIGAN ATTORNEY GENERAL, Lansing, Michigan, for Appellee. **ON BRIEF:** John J. Bursch, BURSCH LAW PLLC, Caledonia, Michigan, Christopher M. Trebilcock, CLARK HILL PLC, Detroit, Michigan, Charles R. Spies, Robert L. Avers, DICKINSON WRIGHT PLC, Ann Arbor, Michigan, for Appellants. Erik A. Grill, Heather S. Meingast, OFFICE OF THE MICHIGAN ATTORNEY GENERAL, Lansing, Michigan, for Appellee. Timothy A. La Sota, TIMOTHY A. LA SOTA, PLC, Phoenix, Arizona, for Amicus Curiae.

OPINION

THAPAR, Circuit Judge. At the Constitutional Convention, Benjamin Franklin made the case for term limits. He argued that "in free governments, the rulers are the servants, and the people their superiors and sovereigns. For the former therefore to return among the latter was not to *degrade*, but to *promote* them." 2 *The Records of the Federal Convention of 1787*, at 120 (Max Farrand ed., 1911) (cleaned up). The people of Michigan had the same idea. They enacted term limits for their state legislators. Yet some veteran legislators didn't take their "promotion" well. They sued, claiming term limits violate their constitutional rights. But it's not our place to second-guess how Michiganders choose to design their state legislature.

I.

In 1992, a group of Michigan voters decided they wanted term limits for state legislators, state executives, and members of Congress. But to do so, they needed to amend Michigan's Constitution. So they drafted a petition, got the petition on the ballot, and won—58.8% of voters approved the measure. Term limits then became part of the Michigan Constitution (six years in Michigan's House of Representatives and eight years in the Michigan Senate).

When the amendment took effect, some voters sued, arguing that the term limits violated their rights under the First and Fourteenth Amendments to the United States Constitution. *See Citizens for Legis. Choice v. Miller*, 144 F.3d 916, 918 (6th Cir. 1998). But our court disagreed and upheld Michigan's term limits for state legislators.[1] *Id.* at 925.

Now, a bipartisan group of veteran legislators challenges the term-limit provision again. They essentially rehash the same claims that voters brought more than twenty years ago: that the term limits violate their ballot-access and freedom-of-association rights under the First and Fourteenth Amendments. They also challenge the term limits under two procedural provisions of the Michigan Constitution. The district court granted Michigan's motion for summary judgment, and the legislators appealed.

II.

Before reaching the merits, we must decide whether we have jurisdiction to hear this case. In

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[1] As for the federal term limits, an intervening Supreme Court case had deemed them unconstitutional. *See U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779 (1995).

1976, the Supreme Court dismissed a challenge to West Virginia's state term limits "for want of a substantial federal question." *Moore v. McCartney*, 425 U.S. 946, 946 (1976). Does this mean we lack jurisdiction? We have asked the question in the past, but have never answered it. *See Miller*, 144 F.3d at 919–20; *see also Bates v. Jones*, 131 F.3d 843, 847–50 (9th Cir. 1997) (en banc) (O'Scannlain, J., concurring). So we answer it now: We have jurisdiction.

History reveals that *Moore's* language is a relic of the Court's once-dominant appeal-by-right process. Until the modern certiorari process took root in 1988, state-court rulings involving federal questions—like *Moore*—could be appealed to the Supreme Court as a matter of right. *See* Act of June 27, 1988, Pub. L. No. 100-352, 102 Stat. 662 (amending 28 U.S.C. § 1257). The Court, faced with a much larger docket than it has today, needed to resolve these cases efficiently. And summary dismissals seemed to be the Court's favored workhorse. *See generally* Jonathan L. Entin, *Insubstantial Questions and Federal Jurisdiction: A Footnote to the Term-Limits Debate*, 2 Nev. L.J. 608 (2002) (suggesting that summary dismissals were used to dispose of frivolous appeals-by-right, much as the Court uses denials of certiorari today).

This understanding comports with how our circuit has treated summary dismissals. In *DeBoer v. Snyder*, we found that the Supreme Court's summary dismissal in an earlier case controlled the merits analysis. 772 F.3d 388, 400–01 (6th Cir. 2014) (examining *Baker v. Nelson*, 409 U.S. 810 (1972)). We did not question whether the dismissal "for want of a substantial federal question" deprived us of jurisdiction. *Id.* And we see no reason to reach a different conclusion here.

Because the legislators raise claims under the Federal Constitution, we have jurisdiction to hear their case. *See* 28 U.S.C. § 1331.

III.

With our jurisdiction secure, we turn to the merits. The legislators here sue in their capacities as both candidates and voters, arguing that Michigan's term limits violate their constitutional rights to freedom of association and ballot access. But precedent bars their claims as voters. *See Miller*, 144 F.3d at 925. And as candidates, they hold no greater protection than the voters they wish to represent. Thus, we affirm on both claims.

A.

We first consider the legislators' claims as candidates. They claim that Michigan's Constitution violates their federal First and Fourteenth Amendment rights by barring experienced candidates from running for state legislative office. And they maintain that these claims must be analyzed, at the very least, under the *Anderson-Burdick* framework that we ordinarily use for election regulations. We disagree.

Courts use *Anderson-Burdick*'s sliding-scale framework to assess election-related ballot-access and freedom-of-association claims. Under that test, a court must: (1) evaluate whether an election restriction imposes a severe or incidental burden; (2) assess the state's interests in the restriction; and (3) ask if the state's interests make the burden necessary. *See Miller*, 144 F.3d at 920–21. And then it moves on to apply either a rational-basis or a strict-scrutiny standard of review. *See Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358 (1997). Yet *Anderson-Burdick* is inapposite in this context.

In *Miller,* we explained why. There, we noted that the election procedures we review under *Anderson-Burdick* "implicate rights and interests . . . fundamentally different from" those involved in term-limit challenges. 144 F.3d at 924 (citing *Bates*, 131 F.3d at 855, 858–59 (Rymer, J., concurring)). *Anderson* and *Burdick* considered rights of voters to cast their ballots effectively and to associate for political ends. *Anderson v. Celebrezze*, 460 U.S. 780, 787–88 (1983); *Burdick v. Takushi*, 504 U.S. 428, 433 (1992). Indeed, in articulating the *Anderson-Burdick* framework, the Supreme Court held that it should be used by courts "considering a challenge to a state election law." *Burdick*, 504 U.S. at 434. But term limits are not state election laws.

So what are they? Term limits are the state's attempt to set qualifications for its officeholders. Indeed, when a state enacts term limits, it chooses a "citizen legislature over a professional legislature." *Miller*, 144 F.3d at 924. In other words, term limits let Michigan define its own "republican form of government" based on the type of representative its citizens can elect. *See* U.S. Const. art. IV, § 4; *Miller*, 144 F.3d at 924. Rather than keeping eligible candidates off the ballot—like the prototypical ballot-access or freedom-of-association case—term limits restrict eligibility for office. *See Bates*, 131 F.3d at 859 (Rymer, J., concurring). So term limits operate independently from ballot-access restrictions. Like any other qualification, they limit which individuals are eligible to hold office.

The legislators argue that the Supreme Court's decision in *U.S. Term Limits, Inc. v. Thornton* requires us to analyze term limits as ballot-access restrictions. That case involved a provision of the

Arkansas Constitution that set term limits for its federal representatives in Congress. 514 U.S. 779 (1995). Yet *Thornton* turned not on ballot-access analysis, but on the Federal Constitution's Qualifications Clauses, which, as the Court held, created an exclusive list of qualifications for federal legislators. *Id.* at 783. To the extent the Court discussed ballot access, it was because Arkansas framed its term-limit law as a ballot-access provision—unlike Michigan. *See id.* at 829. But even so, the Court came to the same conclusion: Term limits are a qualification for office. *See id.* at 837 ("Term limits, like any other qualification for office, unquestionably restrict the ability of voters to vote for whom they wish.").[2]

This qualification gives us no reason to apply heightened scrutiny, because candidates do not have a fundamental right to run for office. *Clements v. Fashing*, 457 U.S. 957, 963 (1982) ("Far from recognizing candidacy as a fundamental right, we have held that the existence of barriers to a candidate's access to the ballot does not of itself compel close scrutiny." (cleaned up)); *Zielasko v. Ohio*, 873 F.2d 957, 959 (6th Cir. 1989) ("Running for office is not a fundamental right." (cleaned up)). Without such a fundamental right at issue, we revert to the baseline: rational basis.

Courts routinely apply rational basis when officeholders' qualifications are at stake. *See Gregory v.*

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[2] Because qualifications for office don't restrict ballot access, *Anderson-Burdick* is unworkable when it comes to term-limit challenges. How are courts to determine whether a qualification for office is a severe or incidental burden? Must it burden voters, or only a would-be candidate? And how does it square with our precedent that candidates have no right to run for office? *See Zielasko v. Ohio*, 873 F.2d 957, 959 (6th Cir. 1989). The answers are far from clear.

Ashcroft, 501 U.S. 452, 470–71 (1991) (reviewing age limit for state judges); *Clements,* 457 U.S. at 968–71 (reviewing candidacy restrictions for existing office-holders); *Zielasko*, 873 F.2d at 959 (reviewing age limit for state judges). And that makes sense—none of these qualifications for office implicate a fundamental right. Indeed, as explained above, the last time the Supreme Court was faced with a challenge like this one to state-office term limits, it summarily dismissed the case. *Moore*, 425 U.S. at 946 (dismissing an appeal from *State ex rel. Maloney v. McCartney*, 223 S.E.2d 607 (W. Va. 1976)).

One final reason counsels for rational basis here. Restrictions on who may hold state elective office "lie at the heart of representative government." *Gregory*, 501 U.S. at 462–63 (cleaned up). A state "defines itself as a sovereign" by structuring its government and choosing qualifications for its officeholders. *Id.* at 460; *see Sugarman v. Dougall*, 413 U.S. 634, 647–48 (1973); *Boyd v. Nebraska ex rel. Thayer*, 143 U.S. 135, 161 (1892). Indeed, the Guarantee Clause and the Tenth Amendment explicitly protect these rights under the Constitution. *Gregory*, 501 U.S. at 463. To respect states' sovereign authority, federal review must not "be so demanding where we deal with matters resting firmly within a State's constitutional prerogatives." *Sugarman*, 413 U.S. at 648. As qualifications for office fall squarely in that camp, rational basis is appropriate.

Thus, we ask whether the limits are rationally related to a legitimate government interest. They are. Indeed, Michigan has several legitimate government interests in enacting term limits. First among them? Its sovereign interest in structuring its government as it sees fit. *See Miller*, 144 F.3d at 923 (citing *Gregory*,

501 U.S. at 460). According to Michigan, term limits can also reduce political careerism and check special interests.

The legislators counter that although these are legitimate government interests, there are less restrictive means of achieving turnover in the state legislature to serve those interests. But Michigan's term limits don't need to be the least restrictive means possible. They only need to be rationally related to their purported goal: electing a citizen legislature. And a lifetime ban on legislators who have served two or three terms in the state Senate or House is indeed rationally related to that interest—it stops career legislators from keeping state office. So term limits pass rational-basis review.

* * *

The legislators also argue that because candidates have greater access to media reporting than others do, restricting their eligibility for office creates a First Amendment speech claim. To be sure, candidates—like everyone else—have a right to speech. But they do not have a right to the specific platforms for speech that they identify, like media coverage and candidate debates. And any right to appear on the particular platforms afforded only to candidates is null—again, because would-be candidates, like the legislators here, have no fundamental right to run for office. *See Zielasko*, 873 F.2d at 959. Thus, their claims as candidates fail.

B.

The legislators also challenge the term limits as voters, once again arguing that their First and Fourteenth Amendment rights are abridged because they can't vote for experienced candidates. So we now

decide a question we left open in *Miller*: which standard should apply to term-limit challenges like these. 144 F.3d at 925. Because the voters' claims failed under any standard, the *Miller* court considered both *Anderson-Burdick* and a more deferential approach. *Id.* at 921–24. But for the same reasons set forth above, we adopt rational-basis review for most voter challenges to candidate qualifications.

Just as candidates have no fundamental right to run for office, voters have no fundamental right to "vote for a specific candidate or even a particular class of candidates." *Id.* at 921 (citation omitted). This is why the *Miller* court upheld these same term limits more than twenty years ago. And it is why the above analysis applies equally to voter claims. Term limits are still qualifications for office. They still go to the heart of state sovereignty. And they still implicate no fundamental right for *Anderson-Burdick* to balance.

In other words, the legislators' two claims—based on their status as voters and as candidates—rise and fall together. Here they fall. Just like their candidate claims, their voter claims fail on rational-basis review for the same reasons.

IV.

With the federal claims resolved, we are left with two state-law claims: whether the term-limit amendment is procedurally defective and whether it violates the Michigan Constitution's Title-Object Clause. But when a federal court dismisses all pending federal claims before trial, as the district court did here, it is usually best to allow the state courts to decide state issues. *Musson Theatrical, Inc. v. Fed. Exp. Corp.*, 89 F.3d 1244, 1254–55 (6th Cir. 1996); *see also* 28 U.S.C. § 1367(c). And this case is no exception. Indeed,

declining supplemental jurisdiction is particularly important here, because the parties raise novel questions of state constitutional law. Those questions are best left for state courts to answer in the first instance—federal judges must not "needlessly decid[e]" such issues. *Brown v. Cassens Transp. Co.*, 546 F.3d 347, 363 (6th Cir. 2008). There was no need for the district court to consider the plaintiffs' state-law claims. So we vacate its decision and remand for the district court to dismiss those claims without prejudice. *See Musson Theatrical*, 89 F.3d at 1257.

* * *

More than twenty years ago, the people of Michigan chose a citizen legislature, not a professional one. Now, legislators with years of experience seek to use the federal courts to get around their state's sovereign choice. But it's not our place to intervene on their behalf. If they want to change the law, they'll have to do that at the ballot box.

For the reasons stated above, we affirm in part, vacate in part, and remand.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MIKE KOWALL, et al.,
Plaintiffs,
v.
JOSELYN BENSON,
Defendant.
_____/

Case No. 1:19-cv-985

HON. JANET T. NEFF

OPINION AND ORDER

Plaintiffs, ten former state legislators, filed this lawsuit against Defendant Benson, in her official capacity as Michigan's Secretary of State, to challenge the Michigan Constitution's term limits provision, which voters adopted nearly thirty years ago. Pending before the Court are the parties' cross-motions for summary judgment (ECF Nos. 25 & 27). For the reasons that follow, the Court denies Plaintiffs' motion and grants Secretary Benson's motion.

I. BACKGROUND

In 1992, Michigan voters amended the Michigan Constitution to impose lifetime term limits on state legislators (Jt. Stat.[1] ¶ 1). State representatives are limited to three two-year terms (a total of six years), and state senators are limited to two four-year terms

[1] The parties filed a "Joint Statement of Material Facts" (Jt. Stat.) (ECF No. 33), upon which this Court relies for resolution of these motions unless otherwise indicated.

(a total of eight years) (*id.*). Specifically, the amendment added the following language to MICH. CONST. Art. IV, § 54:

> No person shall be elected to the office of state representative more than three times. No person shall be elected to the office of state senate more than two times. . . .
>
> This limitation on the number of times a person shall be elected to office shall apply to terms of office beginning on or after January 1, 1993.
>
> This section shall be self-executing. Legislation may be enacted to facilitate operation of this section, but no law shall limit or restrict the application of this section. If any part of this section is held to be invalid or unconstitutional, the remaining parts of this section shall not be affected but will remain in full force and effect.

(*id.*). The proposal was approved by 58.8 percent of voters (*id.* ¶ 2).

In 2014, Michigan's term limits resulted in thirty-four lawmakers leaving office (*id.* ¶ 18). These term-limited legislators had a combined 248 years of experience and included the Senate Majority Leader, Senate Minority Leader, and House Speaker (*id.*). In 2019, term limits resulted in nearly seventy percent of state senators and more than twenty percent of state representatives being prohibited from running for their legislative seats (*id.* ¶ 19). Nearly one-quarter of term-limited legislators end up either registering as lobbyists or working as consultants or paid advocates (*id.* ¶ 20).

On November 20, 2019, Plaintiffs Mike Kowall, Roger Kahn, Scott Dianda, Clark Harder, Joseph Haveman, David E. Nathan, Paul Opsommer, Douglas Spade, Mark Meadows and Mary Valentine—Democrat and Republican former members of the Michigan Legislature—filed this lawsuit against Secretary Benson. Plaintiffs state that but for Michigan's lifetime term limits, they would seek reelection and/or vote for other experienced candidates based on their belief that reduced legislator experience and the corresponding increase in power among lobbyists has been harmful to Michigan government (*id.* ¶¶ 29-38). In addition to their own statements, Plaintiffs allege that certain research also demonstrates that the term limits provision Michigan voters passed was a "failed social experiment" (Am. Compl. ¶¶ 29-45).

In their Amended Complaint filed on December 11, 2019, Plaintiffs allege the following five claims:

I. Violation of the First and Fourteenth Amendments (Ballot Access)

II. Violation of the First and Fourteenth Amendments (Freedom of Association)

III. Violation of the Guarantee Clause

IV. Violation of Mich. Const. 1963, Art. IV, § 24

V. Violation of Mich. Const. 1963, Art. XII, § 2

(ECF No. 5). Plaintiffs seek "(1) a declaratory judgment that Mich. Const. 1963 art. IV, § 54 violates the First and Fourteenth Amendments of the United States Constitution and the Guarantee Clause, Article IV, section 4 of the United States Constitution; (2) a declaratory judgment that Mich. Const. 1963,

art. IV, § 54 violates Mich. Const., art. IV, § 24 and art. XII, § 2; (3) a permanent injunction prohibiting the Michigan Secretary of State from enforcing Mich. Const. 1963 art. IV, § 54; (4) Plaintiffs' reasonable costs and expenses, including attorneys' fees; and (5) any other relief the Court deems just and proper" (*id.* at PageID.64-65). Secretary Benson answered the Amended Complaint in March 2020 (ECF No. 18).

In July 2020, without conducting discovery, Plaintiffs filed their Motion for Summary Judgment (ECF No. 25). Secretary Benson filed a response in opposition to their motion and moves for summary judgment in her favor (ECF No. 29). Plaintiffs filed a reply (ECF No. 29), and Secretary Benson filed a Sur-Reply (ECF No. 31). Having considered the parties' submissions, the Court concludes that oral argument is unnecessary to resolve the issues presented. *See* W.D. Mich. LCivR 7.2(d).

II. ANALYSIS

A. MOTION STANDARD

When there is no dispute as to any material fact and the movant is entitled to judgment as a matter of law, summary judgment is appropriate. FED. R. CIV. P. 56(a). In conducting this inquiry, the court views all evidence in the light most favorable to, and draw all inferences in favor of, the non-moving party. *Mays v. LaRose*, 951 F.3d 775, 782-83 (6th Cir. 2020) (citing *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986)). Constitutional questions, such as the issues presented herein by the parties' cross-motions, are questions of law. *See Hamby v. Neel*, 368 F.3d 549, 556 (6th Cir. 2004); *Johnson v. Econ. Dev. Corp. of Cty. of Oakland*, 241 F.3d 501, 509 (6th Cir. 2001).

B. DISCUSSION

1. Counts I & II

In Counts I and II, Plaintiffs allege that Michigan's lifetime term limits violate their First and Fourteenth Amendment rights. Specifically, in Count I (Ballot Access), Plaintiffs allege that § 54 violates the First and Fourteenth Amendments by "interfer[ing] with the ability of both individuals and political parties to select the candidate of their choice" (Am. Compl. ¶ 123). In Count II (Freedom of Association), Plaintiffs allege that § 54 violates the First and Fourteenth Amendments because the provision "denies voters the opportunity to participate on an equal basis with other voters in the election of their choice of representative, and denies such voters the ability to support an entire class of candidates—experienced legislators" (*id.* ¶ 135).

In support of summary judgment in their favor, Plaintiffs argue that lifetime term limits on state legislators are similar to ballot-access fees inasmuch as such limits "disadvantag[e] a particular class of candidates" by excluding them from the ballot "without reference to the candidates' support in the electoral process" (ECF No. 25 at PageID.174-177, quoting *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 835 (1995)). Plaintiffs argue that "[w]hen paired with the substantial impingement on candidate expression and association rights that term limits entail, the Supreme Court's precedents counsel strongly in favor of applying strict scrutiny here" (*id.* at PageID.177). According to Plaintiffs, Michigan's term-limit provision fails strict scrutiny because "a lifetime ban paired with a six-year limit in the Michigan House and an eight-year limit in the Michigan Senate is not the 'least restrictive' means

necessary to advance [Michigan's] goals" (*id.* at PageID.179-181).

Alternatively, Plaintiffs argue that "[a]t a bare minimum, the highest end of *Anderson-Burdick's* sliding scale is applicable to candidate restrictions that forever bar a term-limited candidate from again running for her Michigan legislative seat" (ECF No. 25 at PageID.177, referencing *Anderson v. Celebrezze*, 460 U.S. 780 (1983), and *Burdick v. Takushi*, 504 U.S. 428 (1992)). Plaintiffs argue that Michigan's term limits, which are the shortest and harshest in the nation, are not narrowly tailored to prevent political careerism or the advantages of incumbency or to increase diverse representation (*id.* at PageID.181-182).

In response, Secretary Benson argues that the Michigan Constitution's term limits provision does not violate Plaintiffs' rights under the federal constitution. Secretary Benson argues that the Sixth Circuit rejected the same First and Fourteenth Amendment arguments more than twenty years ago in *Citizens for Legislative Choice v. Miller*, 144 F.3d 916, 921-22 (6th Cir. 1998), where the Sixth Circuit concluded that § 54 does not impose a severe burden because voters do not have a right to "vote for a specific candidate or even a particular class of candidates," the provision does not impose "a content-based burden," and voters "have many other avenues to express their preferences" (ECF No. 27 at PageID.272). Secretary Benson points out that the Sixth Circuit in *Miller* additionally determined that the "State of Michigan has a compelling interest in enacting § 54," to wit: "'maintaining the integrity of the democratic system,'" "foster[ing] electoral competition," "enhanc[ing] the lawmaking process," "curbing special interest groups," and

"decreasing political careerism" (*id.* at PageID.272-273, quoting *Miller*, 144 F.3d at 923). Last, Secretary Benson points out that the Sixth Circuit in *Miller* determined that "Michigan narrowly tailored § 54 to satisfy its compelling interests" (*id.* at PageID.274, quoting *Miller*, 144 F.3d at 924).

In reply, Plaintiffs assert that the Sixth Circuit made its ruling in *Miller* on the lowest end of the *Anderson-Burdick* sliding scale because the ban "barely burdened voters at all" (ECF No. 29 at PageID.290). Plaintiffs opine that "[t]he fact that this is a candidate challenge rather than a voter challenge makes all the difference when considering the constitutionality of Michigan's term-limits scheme" (*id.*). According to Plaintiffs, "[t]his is the type of ban the Supreme Court warned against in *Thornton"* (*id.*).

In sur-reply, Secretary Benson argues that "grounding their claims in the rights of candidates does nothing to make Plaintiffs' claims any more meritorious" (ECF No. 31 at PageID.305). Secretary Benson opines that "[i]t would be a curious outcome if this Court were to hold that elected officials were entitled to more protection from the First and Fourteenth Amendments than the *voters* who brought the virtually identical challenge in *Miller*" (ECF No. 27 at PageID.275 [emphasis in original]).

Plaintiffs' First and Fourteenth Amendment claims are without merit, and Secretary Benson is entitled to judgment as a matter of law on both Counts I and II.

"[T]he *Anderson-Burdick* framework is used for evaluating 'state election law[s.]'" *Daunt v. Benson*, 956 F.3d 396, 407 (6th Cir. 2020) (quoting *Burdick*, 504 U.S. at 434). Under the *Anderson-Burdick*

framework, courts weigh the character and magnitude of the burden a State's rule imposes on a plaintiff's rights against the interests the State contends justify that burden, and consider the extent to which the State's concerns make the burden necessary. *Schmitt v. LaRose*, 933 F.3d 628, 639 (6th Cir. 2019) (examining statutes governing Ohio's municipal ballot-initiative process). "[T]he touchstone of *Anderson-Burdick* is its flexibility in weighing competing interests…" *Ohio Democratic Party v. Husted*, 834 F.3d 620, 627 (6th Cir. 2016) (quoting *Burdick*, 504 U.S. at 434). *Cf. Anderson*, 460 U.S. at 787 (examining "the right of individuals to associate for the advancement of political beliefs, and the right of qualified voters ... to cast their votes effectively") (citation omitted).

The first, most critical step is to consider the severity of the restriction. *Schmitt*, 933 F.3d at 639. Laws imposing "severe burdens on plaintiffs' rights" are subject to strict scrutiny, but "lesser burdens ... trigger less exacting review, and a State's important regulatory interests will usually be enough to justify reasonable, nondiscriminatory restrictions." *Id.* (citations and internal quotation marks omitted). Regulations that fall in the middle "warrant a flexible analysis that weighs the state's interests and chosen means of pursuing them against the burden of the restriction." *Id.* (quoting *Libertarian Party of Ky. v. Grimes*, 835 F.3d 570, 574 (6th Cir. 2016) (citation and internal quotation marks omitted)). At the second step, courts identify and evaluate the state's interests in and justifications for the regulation. *Id.* The third step requires that courts "assess the legitimacy and strength of those interests" and determine whether the restrictions are constitutional. *Id.*

In *Miller*, 144 F.3d at 918-19, four individual voters and two non-profit corporations (the Citizens for Legislative Choice and the Michigan Handicapped Voters' Rights Association) filed a lawsuit contending that § 54 violated their First and Fourteenth Amendment rights to vote for their preferred legislative candidates. The Sixth Circuit concluded that § 54 was properly upheld under either the *Anderson-Burdick* balancing approach or a deferential approach to analyzing term limit provisions. The *Anderson-Burdick* balancing approach was the focus of the Sixth Circuit's opinion. The Sixth Circuit began its analysis by reiterating that a state may permanently bar voters from voting for particular classes of candidates because "[a] voter has no right to vote for a specific candidate or even a particular class of candidates." *Id.* at 921 (citing *Miyazawa v. City of Cincinnati*, 45 F.3d 126, 128 (6th Cir. 1995); *Zielasko v. Ohio*, 873 F.2d 957, 961 (6th Cir. 1989)). The Sixth Circuit observed that of the twenty-four courts to have addressed the precise issue before it—"whether lifetime term limits for state legislators violate the First and Fourteenth Amendments"—twenty-three courts upheld the term limits. *Id.* The Sixth Circuit noted that "[o]nly one lone district court judge has found these term limits unconstitutional—and he was reversed." *Id.* at 922.

The Sixth Circuit held that "importantly for the *Anderson-Burdick* analysis, lifetime term limits impose a neutral burden, not a content-based burden." *Miller*, 144 F.3d at 922-23. The Sixth Circuit explained that the lifetime-term-limit provision did not impose a severe burden because it "burdens no voters based on 'the content of protected expression, party affiliation, or inherently arbitrary factors such as race, religion, or gender.' It burdens no voters based on their views on any of the substantive 'issues of the

day,' such as taxes or abortion." *Id.* at 922 (citations omitted).

Conversely, the Sixth Circuit held that in enacting § 54, Michigan had identified, among other interests, that "lifetime term limits will foster electoral competition by reducing the advantages of incumbency and encouraging new candidates" and will also "enhance the lawmaking process by dislodging entrenched leaders, curbing special interest groups, and decreasing political careerism." *Id.* at 923. The Sixth Circuit observed that these sovereign interests are "well-known" and need not be justified with "elaborate, empirical verification." *Id.* at 924. Indeed, the Sixth Circuit observed that "[e]very court to address the issue has found that a State has a compelling interest in imposing lifetime term limits on state legislators." *Id.* at 923.

Last, the Sixth Circuit held that Michigan narrowly tailored § 54 to satisfy its compelling interests, expressly rejecting the plaintiffs' assurance that consecutive term limits were a viable alternative. *Id.* Indeed, given the compelling nature of the interests at stake, the Sixth Circuit held that "even if we found that lifetime term limits burdened voters severely, we would still uphold § 54 under the compelling interest standard." *Id.* As a result, the Sixth Circuit concluded that "§ 54 passes the *Anderson-Burdick* balancing test regardless of whether we apply rational basis or strict scrutiny." *Id.*

As Secretary Benson points out, the term limits provision at issue has not changed since the Sixth Circuit reviewed it in *Miller* in 1998 and found that it did not violate either the First or Fourteenth Amendments. Plaintiffs assert that "[a]nalyzing Michigan's

purported compelling interests in the candidate context requires a fresh look and a different result" (ECF No. 29 at PageID.291). However, Plaintiffs offer no justification for such a "fresh look." The Court agrees with Secretary Benson that the fact that Plaintiffs seek to be candidates "does nothing to change the *Anderson-Burdick* review of any alleged burden on the right to associate that is implicated by candidate qualifications" (ECF No. 31 at PageID.306). As Secretary Benson points out, by suggesting that their claims should succeed where the plaintiffs' claims in *Miller* failed, "Plaintiffs' argument necessarily requires that there be a higher degree of First Amendment protection for elected officials than is provided for voters," yet Plaintiffs offer no explanation or justification for such a disparity (*id.*).

Plaintiffs' reliance on the Supreme Court's decision in *Thornton*, 514 U.S. 779, which addressed the state-imposed qualifications for service in the United States Congress, does not compel a different result in this case. Indeed, the decision in *Thornton* was issued three years before the Sixth Circuit decided *Miller*, and the *Miller* Court noted that the Supreme Court in *Thornton* had expressly "not address[ed] the validity of term limits for state legislators." *Miller*, 144 F.3d at 922 n.2.

In short, Plaintiffs offer no basis on which this Court may properly disregard the clear and binding precedent in *Miller*.

2. <u>Count III</u>

In Count III, Plaintiffs allege that § 54 violates the Guarantee Clause of the federal Constitution, which provides the following: "The United States shall guarantee to every State in this Union a Republican Form

of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence." U.S. Const. Art. 4, § 4. Plaintiffs allege that § 54 has "created a less professional, less organized, and less competent legislature," thereby "destabilizing and deinstitutionalizing Michigan's Legislature" and "violat[ing] the right to a republican form of government" (Am. Compl. ¶¶ 152-153).

In support of summary judgment in their favor, Plaintiffs argue that their Guarantee Clause claim is justiciable inasmuch as (1) the Clause's enforcement is committed to the federal government generally, not to a non-judicial branch specifically; (2) the law infringes on the right of the people to choose their own officers for governmental administration; and (3) the matter turns on an interpretation of the Constitution (ECF No. 25 at PageID.184-185). On the merits of their claim, Plaintiffs argue that Michigan's lifetime term limits violate the Guarantee Clause because "term limits have resulted in more legislator time spent on re-election-centric efforts and less time on actually legislating," which in turn results in a governmental power structure that "increases the power of the Governor, the executive branch, and lobbyists while decreasing the Legislature's power" (*id.* at PageID.186).

In response, Secretary Benson argues that Plaintiffs have failed to offer legal authority showing that this claim is justiciable (ECF No. 27 at PageID.276). Secretary Benson argues that even if Plaintiffs' Guarantee Clause claim was justiciable, the claim is without merit where "the people of Michigan continue to choose their state legislators subject to a

constitutional limitation enacted by the people themselves" (*id.* at PageID.277).

Plaintiffs' Guarantee Clause claim is without merit, and Secretary Benson is entitled to judgment as a matter of law on Count III.

The Guarantee Clause ensures a republican form of government, the "distinguishing feature" of which "is the right of the people to choose their own officers for governmental administration, and pass their own laws." *In re Duncan*, 139 U.S. 449, 461 (1891). While the Supreme Court has delineated certain circumstances under which a case may present a justiciable political question, *see Baker v. Carr*, 369 U.S. 186, 217 (1962), the Supreme Court has "several times concluded … that the Guarantee Clause does not provide the basis for a justiciable claim," *Rucho v. Common Cause*, ___ U.S. ___; 139 S. Ct. 2484, 2506; 204 L. Ed. 2d 931 (2019). *See also Phillips v. Snyder*, 836 F.3d 707, 716-17 (6th Cir. 2016) ("Traditionally, the Supreme Court 'has held that claims brought under the Guarantee Clause are nonjusticiable political questions.'") (citation omitted). The Sixth Circuit has similarly held that "it is up to the political branches of the federal government to determine whether a state has met its federal constitutional obligation to maintain a republican form of government." *Phillips*, 836 F.3d at 717.

Plaintiffs' argument that its Guarantee Clause claim is justiciable is unavailing. As Secretary Benson observed in sur-reply, "Plaintiffs' brief groans under the weight of various policy determinations about whether term limits are good, desirable, or accomplish their objectives" (ECF No. 31 at PageID.309). Even assuming arguendo that Plaintiffs' Guarantee Clause claim is justiciable, there is simply no Guarantee

Clause violation here where § 54 was approved by a large majority of Michigan voters and Michigan voters continue to choose their own state officers. Indeed, the Sixth Circuit in *Miller* observed that "nothing prevents [voters] from overturning § 54 through Michigan's constitutional processes, and thereby convincing others that experience counts." *Miller*, 144 F.3d at 922. In short, Plaintiffs have not demonstrated that the federal Constitution's guarantee of a republican form of government in Article IV provides them with a basis for invalidating § 54.

3. Count IV

Next, in Count IV, Plaintiffs allege that "Proposal B," the 1992 ballot measure that led to the enactment of § 54, violates the Title-Object clause of the Michigan Constitution, Article IV, § 24, which provides that "[n]o law shall embrace more than one object, which shall be expressed in its title" (Am. Compl. ¶ 158).

In support of summary judgment in their favor, Plaintiffs argue that Proposal B violates Michigan's Title-Object clause because, while the proposal was carefully promoted as a single-object proposal to only limit the number of years a Michigan resident could serve in certain elected offices, the "actual changes to the 1963 Constitution were multiple and diverse, in violation of Article 24, Section 2 [sic]" (ECF No. 25 at PageID.188-189).

In response, Secretary Benson points out that no Michigan court has ever held that the Title-Object clause applies to amendments to the Michigan Constitution, whether proposed by the Legislature or by the people through petition, as here (ECF No. 27 at PageID.277-278; ECF No. 31 at PageID.310).

Plaintiffs' Title-Object clause claim is without merit, and Secretary Benson is entitled to judgment as a matter of law on Count IV.

The Title-Object clause appears in Article IV of Michigan's Constitution ("Legislative Branch"), the article that governs the Legislative Branch's law-making power, whereas constitutional amendments, such as § 54, are governed by Article XII of Michigan's Constitution ("Amendment and Revision"). The text of Article IV, § 24 itself provides that "[n]o *law* shall embrace more than one object, which shall be expressed in its title" (emphasis added). The Michigan Supreme Court has held that the Title-Object clause ensures that legislators and the public receive proper notice of legislative content. *Pohutski v. City of Allen Park*, 641 N.W.2d 219, 230 (Mich. 2002); *City of Livonia v. Dep't of Soc. Svcs.*, 378 N.W.2d 402, 417 (Mich. 1985). The Michigan Court of Appeals has elaborated to explain that the Title-Object clause serves four purposes: "(1) to prevent the Legislature from passing laws not fully understood; (2) to fairly notify the Legislature of a proposed statute's design and purpose; (3) to aid the Legislature and the public in understanding that only subjects germane to the title are included in the legislation; and (4) to curtail 'logrolling' by preventing bringing into one bill diverse subjects not expressed in its title." *Boulton v. Fenton Twp.*, 726 N.W.2d 733, 739 (Mich. Ct. App. 2006). Plaintiffs identify no basis upon which this Court could properly conclude that the framers intended the Michigan Constitution's Title-Object clause from Article IV to apply to proposals to amend the Constitution under Article XII. Plaintiffs have not demonstrated that the Title-Object clause provides a basis for invalidating § 54.

4. Count V

Conversely, Plaintiffs last allege in Count V that Proposal B also violates § 2 of Article XII of Michigan's Constitution ("Amendment and Revision") because the ballot language did not "consist of a true and impartial statement of the purpose of the amendment in such language as shall create no prejudice for or against the proposed amendment" (Am. Compl. ¶ 164). According to Plaintiffs, "[w]hen Proposal B was placed on the ballot, it contained the following savings clause: 'If any part of this section is held to be invalid or unconstitutional, the remaining parts of this section shall not be affected but will remain in full force and effect'" (*id.* ¶ 165). Plaintiffs allege that "[t]he effect of including a savings clause renders Proposal B unconstitutional because including this language creates a prejudice for passing the amendment as voters will likely vote 'yes' even if concerns about whether the proposed amendments are unconstitutional exist" (*id.* ¶ 166).

In support of summary judgment in their favor, Plaintiffs argue that Michigan voters were "effectively misled" into voting for a different constitutional amendment, one that they believed would place term limits on both federal and state offices (ECF No. 25 at PageID.191-192).

Plaintiffs argue that "[t]he Savings effect on Proposal B led to voters not being adequately informed that the effect of their vote was only to place term limits on *state* legislative offices" (*id.* at PageID.191 [emphasis in original]). According to Plaintiffs, "[t]his serves as an independent basis to overturn Proposal B's passage," just as the Nebraska Supreme Court struck down Nebraska's term limit provision, in its

entirety, in *Duggan v. Beermann*, 544 N.W.2d 68 (Neb. 1996) (*id.* at PageID.191-192).

In response, Secretary Benson argues that Plaintiffs' claim in Count V is without merit, if not frivolous, inasmuch as the ballot language does not refer to the savings clause (ECF No. 27 at PageID.279). Secretary Benson also opines that the "best demonstration of the voters' intent was the language of the amendment they adopted" (*id.* at PageID.280).

Plaintiffs' claim is without merit, and Secretary Benson is entitled to judgment as a matter of law on Count V.

Article XII, § 2 of Michigan's Constitution governs the amendment of the Constitution via initiative petition, setting forth the following requirements:

> Amendments may be proposed to this constitution by petition of the registered electors of this state. Every petition shall include the full text of the proposed amendment, and be signed by registered electors of the state equal in number to at least 10 percent of the total vote cast for all candidates for governor at the last preceding general election at which a governor was elected. Such petitions shall be filed with the person authorized by law to receive the same at least 120 days before the election at which the proposed amendment is to be voted upon. Any such petition shall be in the form, and shall be signed and circulated in such manner, as prescribed by law. The person authorized by law to receive such petition shall upon its receipt determine, as provided by law, the validity and sufficiency of the signatures on the petition, and make an official

announcement thereof at least 60 days prior to the election at which the proposed amendment is to be voted upon.

Any amendment proposed by such petition shall be submitted, not less than 120 days after it was filed, to the electors at the next general election. Such proposed amendment, existing provisions of the constitution which would be altered or abrogated thereby, and the question as it shall appear on the ballot shall be published in full as provided by law. Copies of such publication shall be posted in each polling place and furnished to news media as provided by law.

The ballot to be used in such election shall contain a statement of the purpose of the proposed amendment, expressed in not more than 100 words, exclusive of caption. Such statement of purpose and caption shall be prepared by the person authorized by law, and shall consist of a true and impartial statement of the purpose of the amendment in such language as shall create no prejudice for or against the proposed amendment.

If the proposed amendment is approved by a majority of the electors voting on the question, it shall become part of the constitution, and shall abrogate or amend existing provisions of the constitution at the end of 45 days after the date of the election at which it was approved. If two or more amendments approved by the electors at the same election conflict, that amendment receiving the highest affirmative vote shall prevail.

Proposal B, as quoted in *Citizens for Legislative Choice v. Miller*, 993 F. Supp. 1041, 1042-43 (E.D. Mich. 1998), provided the following:

> A PROPOSAL TO RESTRICT/LIMIT THE NUMBER OF TIMES A PERSON CAN BE ELECTED TO CONGRESSIONAL, STATE EXECUTIVE AND STATE LEGISLATIVE OFFICE
>
> The proposed constitutional amendment would:
>
> Restrict the number of times a person could be elected to certain offices as described below:
>
> 1) U.S. Senator: two times in any 24-year period.
>
> 2) U.S. Representative: three times in any 12-year period.
>
> 3) Governor, Lieutenant Governor, Secretary of State or Attorney General: two times per office.
>
> 4) State Senator: two times.
>
> 5) State Representative: three times.
>
> Office terms beginning on or after January 1, 1993 would count toward the term restrictions. A person appointed to an office vacancy for more than one-half of a term would be considered elected once in that office.
>
> Should this proposal be adopted?

Contrary to Plaintiffs' allegations, the ballot language did not refer to the savings clause; therefore, such language could not have "misled" voters about the proposal on which they were voting. The Court concludes that Plaintiffs' argument to the contrary is

merely speculative. The Nebraska Supreme Court's decision in *Duggan* does not compel a different conclusion. That the Nebraska Supreme Court decided to overturn the term-limits initiative petition before it does not help Plaintiffs demonstrate that § 54 should be invalidated based on an alleged violation of Article XII, § 2 of Michigan's Constitution. *See, e.g.*, *Ray v. Mortham*, 742 So. 2d 1276, 1282 (Fla. 1999) (rejecting *Duggan* as distinguishable, both factually and legally, and noting that in *Duggan*, "there were numerous proposed amendments, poorly and confusingly drafted"), holding modified by *Cook v. City of Jacksonville*, 823 So. 2d 86 (Fla. 2002).

III. CONCLUSION

For the foregoing reasons, Plaintiffs have not established, as a matter of law, that the Michigan Constitution's term limits provision violates either the federal or state Constitutions. Accordingly:

IT IS HEREBY ORDERED that Plaintiffs' Motion for Summary Judgment (ECF No. 25) is DENIED, and Defendant's Motion for Summary Judgment (ECF No. 27) is GRANTED.

Because this Opinion and Order resolves all pending claims in this case, a corresponding Judgment will enter. *See* FED. R. CIV. P. 58.

Dated: January 20, 2021 /s/ Janet T. Neff
JANET T. NEFF
United States District Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MIKE KOWALL, et al.

Plaintiffs,

v.

JOSELYN BENSON,

Defendant.
_____/

Case No. 1:19-cv-985

HON. JANET T. NEFF

JUDGMENT

In accordance with the Opinion and Order entered this date:

IT IS HEREBY ORDERED that Judgment is entered in favor of Defendant and against Plaintiffs.

Dated: January 20, 2021 /s/ Janet T. Neff
JANET T. NEFF
United States District Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MIKE KOWALL, ROGER KAHN, PAUL OPSOMMER, JOSEPH HAVEMAN, DAVID E. NATHAN; SCOTT DIANDA, CLARK HARDER, MARY VALENTINE, DOUGLAS SPADE; and MARK S. MEADOWS,	Case No. 1:19-cv-00985-JTN-PJG Hon. Janet T. Neff **FIRST AMENDED COMPLAINT FOR DECLARATORY RELIEF AND A PERMANENT INJUNCTION**
Plaintiffs, vs. JOCELYN BENSON, in her official capacity as Secretary of State, Defendant.	

Plaintiffs Mike Kowall, Roger Kahn, Scott Dianda, Clark Harder, Joseph Haveman, David E. Nathan, Paul Opsommer, Douglas Spade, Mark Meadows, and Mary Valentine are Democrat and Republican former members of the Michigan Legislature who, with one exception, are now barred from running for their prior offices due to the term limits in Michigan's Constitution. Those term limits—the shortest in the nation and paired with a lifetime ban—violate Plaintiffs' federal constitutional rights and ensure a legislative body lacking experience, the

quality that James Madison singled out in *The Federalist Papers* as essential to a competent and well-functioning legislature:

> No man can be a competent legislator who does not add to an upright intention and a sound judgment a certain degree of knowledge of the subjects on which he is to legislate. A part of this knowledge may be acquired by means of information which lie within the compass of men in private as well as public stations. Another part can only be attained, or at least thoroughly attained, *by actual experience in the station which requires the use of it. . . . The greater the proportion of new members, and the less the information of the bulk of the members the more apt will they be to fall into the snares that may be laid for them.* [James Madison, *Federalist No. 53* (1788) (emphasis added)].

Plaintiffs bring their Complaint for declaratory and injunctive relief against Defendant Jocelyn Benson, in her official capacity as Secretary of State, and allege as follows:

INTRODUCTION

1. This civil rights action is brought pursuant to 42 U.S.C. § 1983 to vindicate rights secured by the First and Fourteenth Amendments to, and the Guarantee Clause of, the United States Constitution.

2. In 1992, voters amended the Michigan Constitution to impose the most severe term limits for state legislative office in the nation. In so doing, the State of Michigan created a system that wrongfully excludes qualified candidates like Plaintiffs from appearing on

the state legislative ballot while denying an undetermined number of voters the opportunity to vote for the candidates of their choice.

3. Restrictions on access to the ballot burden two distinct and fundamental rights: "the right of individuals to associate for the advancement of political beliefs, and the right of qualified voters, regardless of their political persuasion, to cast their votes effectively." *Illinois State Bd. of Elections v Socialist Workers Party*, 440 U.S. 173, 184 (1979) (quoting *Williams v. Rhodes*, 393 U.S. 23, 30 (1968)).

4. Michigan's system "creates barriers to candidate access to the . . . ballot, thereby tending to limit the field of candidates from which voters might choose." *Bullock v. Carter*, 405 U.S. 134, 143 (1972). When a state electoral regime denies "some voters the opportunity to vote for a candidate of their choosing," it "has a real and appreciable impact on the exercise of the franchise." *Id.* at 144. "Many potential office seekers . . . are in every practical sense precluded from seeking the nomination of their chosen party, no matter how qualified they might be, and no matter how broad or enthusiastic their popular support." *Id.* at 143. "Not only are voters substantially limited in their choice of candidates," *id.* at 144, but that disparity falls disproportionately on those voters who desire to elect experienced candidates. Accordingly, the law must be "closely scrutinized" and "found reasonably necessary to the accomplishment of legitimate state objectives in order to pass constitutional muster." *Id.*

5. In this way, ballot access restrictions like Michigan's implicate the right to vote—a right "of the most fundamental significance"—because "limiting

the choices available to voters . . . impairs the voter's ability to express their political preferences." *Illinois State Bd. of Elections*, 440 U.S. at 184.

6. The rights of individual voters to associate with, and vote for, the candidate of their choice "rank among our most precious freedoms." *Williams*, 393 U.S. at 30-31. "Other rights, even the most basic, are illusory if the right to vote is undermined." *Id.* at 31.

7. Indeed, when "potential office seekers . . . [are] precluded from seeking the nomination of their chosen party, no matter how qualified they might be, and no matter how broad or enthusiastic their popular support, . . . [t]he effect of this exclusionary mechanism on voters is neither incidental nor remote." *Bullock*, 405 U.S. at 143–44 (1972).

8. Michigan's term limits can survive *no* level of scrutiny. Instead, the amendment has proven a failed social experiment: it has decreased the experience and competency of the legislature, decreased bipartisanship and coalition building, increased dynastic and recruitment-based representation, and increased the influence of lobbyists and special interest groups.

9. Accordingly, Plaintiffs bring this action to remedy the constitutional violations created by Michigan's draconian term limits and to permanently enjoin those limits. They do so to vindicate their own rights to appear on the ballot, as well as their right to themselves vote for experienced candidates.

PARTIES

Plaintiffs

10. Plaintiff Mike Kowall was elected to and served as a Republican member of the Michigan

House of Representatives from January 1, 1999 through December 31, 2002. He was elected to and served as a Republican member of the Michigan Senate, District 15, from January 1, 2011, through December 31, 2018. Senator Kowall is unable to again appear on the ballot as a candidate for Michigan Senate as a result of term limits. But for term limits, Senator Kowall would run for another term in the Senate. During his time in the Senate, Senator Kowall was a member of numerous committees—including serving as the chair or vice chair of seven committees—and sponsored more than 800 bills. Senator Kowall was well-regarded, and served as the Majority Floor Leader of the Michigan Senate from January 15, 2015 through December 31, 2018. Senator Kowall is also a registered Michigan voter.

11. Plaintiff Roger Newman Kahn was elected to and served as a Republican member of the Michigan House of Representatives, District 94, from January 1, 2004, through December 31, 2005. He was elected to and served as a Republican member of the Michigan Senate, District 32, from January 1, 2007, through January 1, 2015, when term limits prevented him from again appearing on the ballot as a candidate for the Michigan Senate. But for term limits, Senator Kahn would run for another term in the Senate. Senator Kahn was a well-regarded and effective Senator. Among many other things, Senator Kahn helped create Michigan's Government Efficiency Commission, sponsored Michigan's organ donation bill, prohibited the use of lead in children's toys, and banned texting while driving. He also received numerous awards for his public service, including legislator of the year honors from multiple organizations. Senator Kahn is also a registered Michigan voter.

12. Plaintiff Scott James Dianda was elected to and served as a Democrat member of the Michigan House of Representatives, 110th District, where he served from January 1, 2013, through January 1, 2019, when term limits prevented him from again appearing on the ballot as a candidate for the Michigan House. But for term limits, he would again run for the Michigan House of Representatives. Representative Dianda was an effective advocate for his constituents, dealing with unemployment benefits, liquor licenses for small businesses, veteran affairs, Medicaid assistance, and tax assistance. His tenure was marked by nearly 500,000 miles on the road, traveling back and from to Lansing from the Upper Peninsula, and traversing six and a half counties in the western Upper Peninsula. Representative Dianda is also a registered Michigan voter.

13. Plaintiff Clark Andrew Harder was elected to and served as a Democrat member of the Michigan House of Representatives, the 87th and 85th Districts, from January 1, 1991, through January 1, 1999, when terms limits prevented him from again appearing on the ballot as a candidate for the Michigan House. If not for being in the first group of term-limited legislators, Representative Harder would have run for reelection again. He had just become Chairman of the House Appropriations Subcommittee on Transportation in his final term, a key legislative position to directly influence policy decisions relating to transportation investments. Representative Harder sponsored the original legislation to impose double penalties for traffic moving violations in construction zones, school zones, and areas where emergency services workers are present; he was instrumental in what eventually became the Proposal A school

funding reform proposal; and he played a key role in guaranteeing state funding to Greenfield Village, among other legislative accomplishments. Representative Harder is also a registered Michigan voter.

14. Plaintiff Joseph H. Haveman was elected to and served as a Republican member of the Michigan House of Representatives, the 90th District, from January 1, 2009, through January 1, 2015, when term limits prevented him from again appearing on the ballot as a candidate for the Michigan House. After six years in office, Representative Haveman felt he had just hit his stride and had the experience and knowledge to know how to get things done. He certainly would run for office again but for term limits and believes that his constituents would have benefitted from more experience and continuity. During Representative Haveman's tenure, he secured funding for a new airport terminal in his community and started the first Agriculture Business Incubator in Michigan. He also helped initiate a new jail pre-release education program. Most important, he led a paradigm shift in the Legislature toward criminal-justice reform. Representative Haveman is also a registered Michigan voter.

15. Plaintiff David E. Nathan was elected to and served as a Democrat member of the Michigan House of Representatives, 8th District, from January 1, 2009, to January 1, 2015, when term limits prevented him from again appearing on the ballot as a candidate for the Michigan House. But for Michigan's term limits, he would again run for that office. Representative Nathan was instrumental in introducing H.R. 4844, which required insurers to deal with injured persons in good faith, and permitted recourse against

insurers for a breach of that duty. Representative Nathan is also a registered Michigan voter.

16. Plaintiff Paul Edward Opsommer was elected to and served as a Republican member of the Michigan House of Representatives, 93rd District, from January 1, 2007, to January 1, 2013, when term limits prevented him from again appearing on the ballot as a candidate for the Michigan House. But for Michigan's term limits, he would again run for that office. Representative Opsommer helped enact Michigan's Right to Work legislation, its Energy Efficiency Law, and a reform to the Urban Cooperation Act, as well as a repeal of the former motorcycle-helmet law. Notwithstanding those accomplishments, he felt that he left behind much work that still needs to be finished, including improving incentives for local governments to eliminate duplicative services and to assist adoptive families working with the Michigan Department of Health & Human Services. Representative Opsommer is also a registered Michigan voter.

17. Plaintiff Douglas J. Spade was elected to and served as a Democrat member of the Michigan House of Representatives, 57th District, from January 1, 1999, through January 1, 2005, when term limits prevented him from again appearing on the ballot for the Michigan House. But for Michigan's term limits, he would again run for that office. Representative Spade had a strong focus on constituent service, cutting through bureaucratic red tape to resolve problems for the people and businesses he represented. Among other things, he persuaded Treasury that a local orchard was being improperly taxed, expedited an elderly man's desperately needed refund, and removed roadblocks placed unnecessarily on a local

school-gym construction project. Mr. Spade is also a registered Michigan voter.

18. Plaintiff Mary Hostetler Valentine was elected to and served as a Democrat member of the Michigan House of Representatives, 91st District, from January 1, 2007, through January 1, 2011. Ms. Valentine is still eligible to run for the Michigan House for one additional two-year term but thinks that term limits are unfair to legislators and destructive to the functioning of the Legislature. Ms. Valentine worked to ban smoking in Michigan's restaurants, introduced and helped enact a law providing more stability in foster care by allowing them to continue attending school in their home district if their foster parents would provide transportation, and helped many constituents facing foreclosure and the denial of unemployment-insurance benefits. Ms. Valentine is also a registered Michigan voter.

19. Plaintiff Mark Meadows was elected to and served as a Democrat member of the Michigan House of Representative, 69th District, from November 16, 2006 through December 31, 2012, when term limits prevented him from again appearing on the ballot for the Michigan House. But for Michigan's term limits, he would again run for that office. Representative Meadows was a well-respected member of the House, serving as the Chair of the Employee Health Care Reform Committee and Vice Chair of the Labor Committee in the 2007-2008 session, the Assistant Speaker and Chair of the Judiciary Committee during the 2009-2010 session, and the Assistant Minority Leader, Vice Chair of the Judiciary Committee, and Chair of the House Democratic Campaign Committee

during the 2011-2012 session. Representative Meadows is also a registered Michigan voter.

Defendant

20. Defendant Jocelyn Benson is the Secretary of State of Michigan ("Secretary Benson") and is named in her official capacity. Secretary Benson is the public official primarily responsible for implementing and administering the state constitutional law that is the subject of this action.

JURISDICTION AND VENUE

21. This civil rights action arises under the First and Fourteenth Amendments to the United States Constitution and under federal law, 42 U.S.C. § 1983.

22. This Court is vested with original jurisdiction of this action pursuant to 28 U.S.C. § 1331 and 1343.

23. This Court further has subject matter jurisdiction over any supplemental state law claims pursuant to 28 U.S.C. § 1367 because they are so related to the federal claims that they form part of the same case or controversy and derive from a common nucleus of operative facts.

24. Venue in this Court is proper under 28 U.S.C. § 1391, because all or substantial part of the events or omissions giving rise to the claims herein occurred within this district and because Defendant has an office located in Ingham County, which is in the United States District Court, Western District for the State of Michigan.

25. Plaintiffs' claims for declaratory relief are authorized by 28 U.S.C. §§ 2201 and 2202, by Rule 57 of the Federal Rules of Civil Procedure, and by the general legal and equitable powers of this Court.

FACTUAL ALLEGATIONS

A. Article IV, Section 54 of the Michigan Constitution

26. In 1992, Michigan voters amended the Michigan Constitution to impose lifetime term limits on state legislators – limiting state representatives to three, two-year terms (a total of six years) and state senators to two, four-year terms (a total of eight years). Mich. Const. art. IV, § 54. These terms limits are the most restrictive in the country, combining the nation's shortest legislative terms with a lifetime ban.

27. As part of that initiative, voters also unconstitutionally attempted to impose term limits on United States congressional seats. The U.S. Supreme Court has already invalidated those federal limits. *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779 (1995).

28. Of the 15 states that impose term limits on state legislators, Michigan's limits are the most restrictive.[1] For example, nine of the 15 states impose only consecutive—rather than lifetime—limits on legislators.[2] And for the six states that impose lifetime limits, Michigan imposes the fewest number of years for which an elected representative may serve.[3]

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[1] Other states have passed laws regarding term limits, but those laws have either been repealed or struck down. *See The Term-Limited States,* http://www.ncsl.org/research/about-state-legislatures/chart-of-term-limits-states.aspx.

[2] *Id.*

[3] *Id.*

B. Michigan's Term Limits Do Not Achieve Their Intended Purposes

29. While supporters of the amendment decried so-called "career politicians", the reality is that Michigan's term limits proved not only ineffective to address that concern, but also harmful to Michigan governance.

30. In 2014, Michigan's term limits forced 34 lawmakers from office with a combined 248 years of experience, including the Senate Majority Leader, Senate Minority Leader, and House Speakers.[4]

31. Likewise, in 2019, Michigan's term limits forced out of office nearly 70% of state senators and more than 20% of state representatives.[5]

32. Proponents of term limits posited that such sweeping change would be a positive development—promoting less emphasis on reelection efforts, reducing the influence of lobbyists and special interest groups, and promoting diversity and new ideas.

33. But research demonstrates that the proponents' hypotheses failed.

34. First, term limits incentivize politically-ambitious legislators to use their short legislative experience as a kind of springboard to another office—

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[4] *Term limit turnover: Michigan losing 248 years of legislative experience this year*, MLive (Dec. 31, 2014), available at http://www.mlive.com/lansing-news/index.ssf/2014/12/term_limit_turnover_michigan_l.html.

[5] *Mass turnover fuels push for Mich. term limit reform*, The Detroit News (Oct. 3, 2017), available at https://www.detroitnews.com/story/news/politics/2017/10/03/michigan-chamber-term-limits-reform/106253436/

which intensifies, not diminishes, their focus on reelection-centric efforts.[6]

35. Indeed, after the imposition of term limits, politically-ambitious legislators spent more time on reelection-centric efforts—like procuring pork for their districts—and less time on actually legislating—like studying legislation, developing new legislation, and building coalitions across party lines.[7] Actual legislation was found to be most commonly within the purview of experienced or veteran legislators.[8]

36. Likewise, freshmen legislators not only spend less time post-term-limits building bipartisan coalitions, but less time building coalitions within their own parties.[9]

37. That lack of institutional knowledge and coalition building among inexperienced legislators means that legislators often turn to external, rather than internal, sources for information when voting on policy: lobbyists and special interest groups.[10]

38. As one authority explains:

> The big change in the [Michigan] Senate is the rising importance (a 24% increase) of organized groups and lobbyists as trusted sources during floor votes. Nearly twice the proportion

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[6] Marjorie Sarbaugh-Thompson & Lyke Thompson, *Implementing Term Limits: The Case of the Michigan Legislature* (2017), pp. 277-278 (hereinafter, "Thompson").

[7] *Id.* at p. 277.

[8] *Id.* at p. 314.

[9] *Id.* at 283.

[10] *Id.* at p. 447.

> of post-term-limits senators turns to organized groups and lobbyists as their most important source compared to the proportion rating colleagues most important. Organized groups and lobbyists displace local sources as the most important ones for post-term-limits senators . . . .
>
> ***
>
> Lost access for local sources is noteworthy because term limits proponents claimed that with limits on their tenure elected officials would be more closely tied to their constituents and their districts. We find no evidence of this—indeed, the changes we find are often in the opposite direction. The consulting patterns that evolve in the Senate after term limits often attenuate the ties that term limits advocates wanted to cultivate (local sources) and strengthen the ones they wanted to sever (organized groups and lobbyists). That this occurs at the expense of local sources and of colleagues demonstrates a shift in access and influence for key actors in Michigan's policy-making process. [*Id.* at pp. 478-479, 492-493].

39. Nor do term limits promote diversity or fresh ideas.

40. Instead, term limits have increased a kind of dynastic representation—where relatives of term-limited incumbents seek to capitalize on name recognition—and recruitment of particular candidates.

41. For example, in 2016 alone, *13* races involved a spouse, sibling, or other relative of a current

candidate—and that was in addition to the *16* other seats already held by a former incumbent's family member.[11]

42. Likewise, recruiting particular candidates—including family and staff members of incumbents—significantly *increased* after the imposition of term limits.[12]

43. And the kind of candidates recruited by party incumbents is significant. For example, after the imposition of term limits, the Democratic Party significantly increased its candidate recruiting efforts, and those efforts targeted white men significantly more than women and people of color, when compared to recruiting efforts pre-term-limits.[13]

44. Thus, "merely increasing the number of open seats does not diversify state legislatures."[14]

45. In short, term limits have proved a "failed social experiment."[15]

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[11] Jack Lessenberry, *Our system of term limits in Michigan is an utter failure*, Michigan Radio (May 10, 2016), available at http://michiganradio.org/post/ our-system-term-limits-michigan-utter-failure

[12] *Supra* n. 6, Thompson, p. 134.

[13] *Id.* at pp. 138-140.

[14] *Id.* at 142.

[15] *Michigan Term limits a "failed social experiment,"* The Detroit News (April 18, 2017), available at http://www.detroitnews.com/story/news/politics/ 2017/04/18/meekhof-mich-term-limits-failed-social-experiment/100599820/.

C. The Particularized Harm of Term Limits on Plaintiffs

1. Mike Kowall

46. Senator Kowall has served the State of Michigan in several capacities. First, in 1998, Mr. Kowall was elected as a Republican member of the Michigan House of Representatives, where he served from January 1, 1999 through December 31, 2002.

47. Senator Kowall was then elected to and served as a Republican member of the Michigan Senate, District 15, from January 1, 2011, through December 31, 2018.

48. During his time in the Senate, Senator Kowall was a member of numerous committees, including in various leadership roles. During the 2011-2012 and 2013-2014 sessions, Senator Kowall served as the Chair of the Economic Development Committee and Vice Chair of the Transportation Committee. During the 2015-2016 session, Senator Kowall served as the Vice Chair of the Commerce Committee. During the 2017-2018 session, Senator Kowall served as the Vice Chair of the Commerce Committee and the Oversight Committee.

49. From January 15, 2015 through December 31, 2018, Senator Kowall also served as the Majority Floor Leader of the Michigan Senate.

50. During his time in office, Senator Kowall focused his efforts on legislating, sponsoring more than 800 bills.

51. But for Michigan's term limits, Senator Kowall would have run for a third term in the state Senate and believes his constituents would have

benefitted from his experience and continuity. If allowed to run again, he would emphasize that the diminishment of legislator experience and increase of power among lobbyists and bureaucrats has been harmful to Michigan's government.

52. Senator Kowall has also lost the ability to vote for term-limited candidates in the districts where he lives. If Michigan's term limits are invalidated, he would favor candidates with significant legislative experience because their election would minimize the power of lobbyists and bureaucrats.

2. Roger Kahn

53. Mr. Kahn has served the State of Michigan in several capacities. First, in 2002, voters elected Mr. Kahn to serve as the Saginaw County Commissioner, in which position he served until 2004.

54. Mr. Kahn was then elected to the state House in November 2003, and he served as a representative from January 1, 2004 through December 31, 2005.

55. Mr. Kahn was then elected to the state Senate in November 2005, where he served from January 1, 2007 until he was term-limited out of office on January 1, 2015.

56. During his time in the Senate, Mr. Kahn served in numerous leadership roles, including as the Chairman of the Department of Community Health, Vice Chairman of the Department of Human services, and Vice Chairman of the Corrections Appropriations budgets.

57. In those roles, Mr. Kahn successfully legislated for his constituents and the State of Michigan.

58. For example, Mr. Kahn helped secure the passage of Public Act 123 of 2007, which added Saginaw County to Healthy Kids Dental. As part of that Act, the children of Saginaw County received an estimated $3.2 million in dental services.

59. Mr. Kahn also ensured the restoration of funding to the Special Needs Vision Clinic, which provides eye care services to the underprivileged and physically and mentally disadvantaged.

60. Mr. Kahn was also instrumental in securing funding for numerous projects and programs, including replacing the Shiawassee River Dam, construction of the Saginaw Valley Health Science Complex, improving access to care for pregnant women, children, and seniors, completion of the Frank N. Anderson Recreational Complex in Liberty Park, which houses a handicapped accessible playing surface, securing funding for traumatic brain injury care and restoring adult dental and podiatric services to Medicaid, improving portions of M57, M47, and M81.

61. Notably, Mr. Kahn spearheaded an increase in Early Childhood Funding of $65 million per year for the 2014 and 2015 General Fund budget, which was the largest investment increase in early childhood education in the nation in both of the next two years. This included funding for a kindergarten entry assessment tool and the Quality Rating Improvement System in daycare, ensuring that vulnerable and dependent children receive higher quality care and education.

62. Mr. Kahn was also instrumental in the passage of numerous bills that made Michigan residents safer, including Public Act 159 of 2007, which

prohibits a person or company from using or applying lead-based substances on any toy or child care article, Public Act 59 of 2010, which made it a primary offense for reading, writing, or sending a text message while driving, Public Act 23 of 2010, which requires hospitals to establish a seasonal influenza immunization policy, including procedures for identifying and offering the vaccine to at-risk individuals, Public Act 153 of 2011, which created a statewide firefighter training program for high school students, and Public Act 107 of 2013, which provided access to health care for over 400,000 previously uninsured Michigan residents.

63. And Mr. Kahn's efficacy as a Senator only increased as his experience increased. During his second term, and as Chairman of the Senate Appropriations Committee, Michigan's budgets were passed and signed into law for four consecutive years by June, the first time that the state budget was timely passed for four consecutive years since approximately 1990.

64. Even in his short time in office, Mr. Kahn's service earned him statewide recognition, including receiving the Michigan Non Profit Champion Award in 2014, Heroes of Breast Cancer Leadership Award—Karmanos Cancer Institute 2013, Senator of the Year by MIRS News 2012, Michigan Association of Community Mental Health 2011, Michigan Association of Local Public Health 2011, Action Award from Elder Law of Michigan 2011, Heroes for Michigan's Children Seasoned Advocate Award 2009, Legislator of the Year—Michigan Council for Maternal and Child Health, Legislator of the Year—Fraternal Order of Police 2008, and being named the Best Committee Chairman in 2014.

65. But for Michigan's term limits, Mr. Kahn would have run for a third term in the state Senate and believes his constituents would have benefitted from his experience and continuity. If allowed to run again, he would emphasize that the diminishment of legislator experience and increase of power among lobbyists and bureaucrats has been harmful to Michigan's government.

66. Mr. Kahn has also lost the ability to vote for term-limited candidates in the districts where he lives. If Michigan's term limits are invalidated, he would favor candidates with significant legislative experience because their election would minimize the power of lobbyists and bureaucrats.

3. Scott Dianda

67. Mr. Scott Dianda was elected to the state House as representative for the 110th District in November 2012, where he served until he was term-limited out of office on January 1, 2019.

68. While most Michigan citizens may believe that being a legislator entails drafting and passing legislation, the duties of being a state legislator requires so much more. Mr. Dianda's proudest moments as state representative came from his ability to help his constituents navigate their government and to provide assistance during times of crisis.

69. During Mr. Dianda's tenure, the bulk of his constituent case load dealt with unemployment benefits, liquor licenses for small businesses, veteran affairs, Medicaid assistance, and tax assistance. Constituents would often correspond with his office whether in Lansing or in-district seeking help on their issues that seemed to be going nowhere with various

departments and in most instances, his office could provide assistance and resolve most cases successfully.

70. Mr. Dianda also helped his constituents through times of crisis. This includes everything from natural disasters, economic travesties, and other dangerous situations. In particular, he helped lead on a propane shortage crisis and a natural gas line break during the winter and major flooding in Houghton County. His experiences and contacts with local, state, and national leaders came together during these times of crisis to help his constituents were invaluable.

71. Mr. Dianda's time serving in the Michigan Legislature was marked by nearly 500,000 miles on the road, traveling back and forth to Lansing from the Upper Peninsula, and traversing six and a half counties in the western UP.

72. But for Michigan's term limits, Mr. Dianda would have run for an additional term in the state House and believes his constituents would have benefitted from his experience and continuity. If allowed to run again, he would emphasize that the diminishment of legislator experience and increase of power among lobbyists and bureaucrats has been harmful to Michigan's government.

73. Mr. Dianda has also lost the ability to vote for term-limited candidates in the districts where he lives. If Michigan's term limits are invalidated, he would favor candidates with significant legislative experience because their election would minimize the power of lobbyists and bureaucrats.

4. Clark Harder

74. Mr. Clark Harder was elected to the state House as representative for the 87th district in November 1990, where he served from January 1, 1991, through January 1, 1993. Mr. harder was elected to the state House as representative of the 85th district in November 1992, where he served from January 1, 1993, through January 1, 1999, until term-limited out of office.

75. If not for being in the first group of term-limited legislators, Mr. Harder would have run for reelection in 1998. He had just become Chairman of the House Appropriations Subcommittee on Transportation in his final term of 1997-98, and this was a key legislative position that appealed to his personal interests and afforded him an excellent oversight opportunity to benefit his constituents who had placed their trust in him in four elections. He was in a position to directly influence policy decisions relating to transportation investments that had, and would have continued, to benefit his district as well as the entire state of Michigan.

76. Mr. Harder was the sponsor of the legislation to increase the state gasoline tax by 4 cents in 1997, the only tax increase during the Engler Administration years, which lead to expanded investment in Michigan's transportation infrastructure.

77. Mr. Harder sponsored the original legislation that became law to impose double penalties for traffic moving violations in construction zones, school zones and areas where emergency services workers are present.

78. Mr. Harder was the sponsor, in 1990, of the original legislation which later became the cornerstone of Proposal A for school funding reform.

79. As Co-Chair of the Public Retirement Committee, during the two years of dual-party House control, Mr. Harder lad the House effort to oppose the discontinuation of the "Defined Benefit" retirement plan for state employees, and reductions to public employee pension funds.

80. As Chairman of the Appropriations Subcommittee on Transportation, Mr. Harder opposed privatization of Michigan's state's highway maintenance and called on MDOT to provide detailed reports on the road maintenance schedules for all state and interstate highways. He was also instrumental in guaranteeing state funding to Greenfield Village for the restoration of the Marshall Roundhouse as an operating historic building as part of the Village's railroad; while also working to identify and fund the current Amtrak station at Greenfield Village and the Henry Ford where thousands of tourists and school children every year learn more about Michigan's transportation history.

81. As ranking Democrat of the House Higher Education Committee, Mr. Harder led the effort at negotiating more stringent rules for university presidential searches, including allowing for certain aspects of searches to be done in closed sessions, thus helping to guarantee that our institutions of higher education have the opportunity to draw upon the best qualified candidates

82. And, though not passed into law, Mr. Harder was also proud to sponsor legislation to require that

Michigan History be included in the state's high school curriculum requirements, and he sponsored the first legislation to require that concert promoters be required to acknowledge when an event billing for a popular artist was not the original performer.

83. But for Michigan's term limits, Mr. Harder would have run for an additional term in the state House and believes his constituents would have benefitted from his experience and continuity. If allowed to run again, he would emphasize that the diminishment of legislator experience and increase of power among lobbyists and bureaucrats has been harmful to Michigan's government.

84. Mr. Harder has also lost the ability to vote for term-limited candidates in the districts where he lives. If Michigan's term limits are invalidated, he would favor candidates with significant legislative experience because their election would minimize the power of lobbyists and bureaucrats.

5. Joseph Haveman

85. Mr. Haveman was elected to the state House as representative for the 90th District from January 2, 2009 until December 31, 2014, when he was term-limited out of office.

86. After six years, Mr. Haveman felt he had just hit his stride in the legislature, accompanied with the knowledge, experience, and relationships to successfully perform his role.

87. During his terms, Mr. Haveman served several important roles, from serving as the Chairman of the House Appropriations Committee for two years and acting as a member of the leadership team for four years.

88. Mr. Haveman also succeeded for his constituents. During his last term, he helped secure funding for a new airport terminal in his community, as well as started the first Agriculture Business Incubator.

89. Mr. Haveman was also instrumental in beginning to lead the paradigm shift in the Republican Party with respect to justice reform. He assisted in beginning a new jail pre-release education program, called Exit in Muskegon, and began to observe how policies of past decades resulted in an expensive and unsustainable justice system. Mr. Haveman was not able to accomplish justice reform in his short time in office, but believes that, with additional terms, he could have aided in positive policy changes.

90. But for Michigan's term limits, Mr. Haveman would have run for state House again, and believes his constituents would have benefitted from his experience and continuity. If allowed to run again, he would emphasize that the diminishment of legislator experience and increase of power among lobbyists and bureaucrats has been harmful to Michigan's government.

91. Mr. Haveman has also lost the ability to vote for term-limited candidates in the districts where he lives. If Michigan's term limits are invalidated, he would favor candidates with significant legislative experience because their election would minimize the power of lobbyists and bureaucrats.

6. David E. Nathan

92. Mr. Nathan was elected to the state House as representative for the 8th District in November 2008, where he served until he was term-limited out of office on January 1, 2016.

93. During his terms, Mr. Nathan was instrumental in seeking to protect Michigan's injured insured from unscrupulous practices.

94. Specifically, Mr. Nathan introduced and aided in securing the passage in the House of Representatives of H.R. 4844.

95. H.R. 4844 imposed a duty on insurers to deal with injured persons in good faith, and permitted injured persons to sue insurers who violated that duty for compensatory, consequential, and punitive damages.

96. But for Michigan's term limits, Mr. Nathan would have run for state House again, and believes his constituents would have benefitted from his experience and continuity. If allowed to run again, he would emphasize that the diminishment of legislator experience and increase of power among lobbyists and bureaucrats has been harmful to Michigan's government.

97. Mr. Nathan has also lost the ability to vote for term-limited candidates in the districts where he lives. If Michigan's term limits are invalidated, he would favor candidates with significant legislative experience because their election would minimize the power of lobbyists and bureaucrats.

7. Paul Opsommer

98. Mr. Opsommer was elected to the state House as representative for the 93rd District in November 2006, where he served until he was term-limited out of office on January 1, 2013.

99. During his time as a Representative, Mr. Opsommer was instrumental in several key pieces of legislation, including PA 349 of 2012, which

established Michigan as a right-to-work state and prohibited mandatory participation in a collective bargaining agreement as a condition of employment

100. Mr. Opsommer also played a key role in the enactment of PA 242 of 2009, which provided funding to public and private entities for efficiency and renewable energy projects.

101. Upon being term-limited out of office, Mr. Opsommer still believed there was much work to be finished, including improving incentives for cities and townships to combine services, assisting the city of St. Johns as it worked toward establishing a Fire Authority with surrounding townships, improving transit agency services, and assisting numerous adoptive families who were unhappy with the services provided by DHHS.

102. But for Michigan's term limits, Mr. Opsommer would have run for state House again, and believes his constituents would have benefitted from his experience and continuity. If allowed to run again, he would emphasize that the diminishment of legislator experience and increase of power among lobbyists and bureaucrats has been harmful to Michigan's government.

103. Mr. Opsommer has also lost the ability to vote for term-limited candidates in the districts where he lives. If Michigan's term limits are invalidated, he would favor candidates with significant legislative experience because their election would minimize the power of lobbyists and bureaucrats.

8. Douglas Spade

104. Douglas Spade was elected to the state House as representative for the 57th District from

January 1, 1999, until January 1, 2005, when he was term-limited out of office.

105. During his time as an elected representative, Mr. Spade placed particular emphasis on constituent needs.

106. For example, Mr. Spade ensured that the state Treasury acknowledge that a local orchard was improperly taxed, expedited an elderly constituent's much-needed refund, and removed unnecessary roadblocks to the construction of a new school gym.

107. But for Michigan's term limits, Mr. Spade would have run for state House again, and believes his constituents would have benefitted from his experience and continuity. If allowed to run again, he would emphasize that the diminishment of legislator experience and increase of power among lobbyists and bureaucrats has been harmful to Michigan's government.

108. Mr. Spade has also lost the ability to vote for term-limited candidates in the districts where he lives. If Michigan's term limits are invalidated, he would favor candidates with significant legislative experience because their election would minimize the power of lobbyists and bureaucrats.

9. Mark Meadows

109. Mr. Meadows was elected to and served as a Democrat member of the Michigan House of Representative, 69th District, from November 16, 2006 through December 31, 2012, when term limits prevented him from again appearing on the ballot for the Michigan House.

110. Representative Meadows was a well-respected member of the House, and served in numerous leadership roles during his tenure.

111. Specifically, Representative Meadows served as the Chair of the Employee Health Care Reform Committee and Vice Chair of the Labor Committee in the 2007-2008 session, the Assistant Speaker and Chair of the Judiciary Committee during the 2009-2010 session, and the Assistant Minority Leader, Vice Chair of the Judiciary Committee, and Chair of the House Democratic Campaign Committee during the 2011-2012 session.

112. But for Michigan's term limits, Representative Meadows would have run for a third term in the state House and believes his constituents would have benefitted from his experience and continuity. If allowed to run again, he would emphasize that the diminishment of legislator experience and increase of power among lobbyists and bureaucrats has been harmful to Michigan's government.

113. Representative Meadows has also lost the ability to vote for term-limited candidates in the districts where he lives. If Michigan's term limits are invalidated, he would favor candidates with significant legislative experience because their election would minimize the power of lobbyists and bureaucrats.

10. Mary Valentine

114. Ms. Valentine was elected to the state House as representative for the 91st District in November 2006, where she served until January 1, 2011. Although Ms. Valentine was not term limited, she believes that Michigan's term limits are unfair to

legislators and destructive to good government in Michigan.

115. Ms. Valentine voted and worked for the legislation that banned smoking in restaurants, which has saved many lives and will save many lives in the years to come. She was part of a group that worked with her caucus to assure that legislation was brought up for a vote.

116. Ms. Valentine was proud of her work as chair of Family and Children services. One bill she introduced and passed into law provided more stability to children in foster care by allowing them to continue in their home school district if their foster parents would provide transportation.

117. Regarding constituent services, Ms. Valentine worked to keep citizens in their homes when they faced foreclosure. Additionally, she helped several people receive unemployment insurance when they were denied it unfairly and unlawfully. When the prison did not re-evaluate an inmate, Ms. Valentine worked to assure that person received an updated evaluation, according to their legal rights. Ms. Valentine helped a constituent work with their insurance company to assure they received a ramp to which they were entitled to for their severely injured child.

118. Ms. Valentine was very proud of her staff for working diligently and successfully with constituents in our district, including putting a woman whose home was a shamble in touch with a realty company to do a complete remake of her home. Her staff also resolved many thorny issues by listening carefully to and working with constituents.

119. Ms. Valentine also helped a group of students come to Lansing to advocate for the Michigan Promise; they were able to talk to all of the leaders at that time, helping them gain confidence to work with legislators in the future.

120. Ms. Valentine has lost the ability to vote for term-limited candidates in the districts where she lives. If Michigan's term limits are invalidated, she would favor candidates with significant legislative experience because their election would minimize the power of lobbyists and bureaucrats.

COUNT I
VIOLATION OF THE FIRST AND FOURTEENTH AMENDMENTS
(BALLOT ACCESS)

121. Plaintiffs incorporate by reference the above paragraphs as if fully set forth herein.

122. The First and Fourteenth Amendments to the United States Constitution guarantee the freedom to join together in furtherance of common political beliefs, commonly referred to as the freedom of association, and also protect the expression of that association—including the selection of a candidate of one's choice.

123. Where, as here, a law interferes with the ability of both individuals and political parties to select the candidate of their choice, it imposes a severe restriction on ballot access such that the law must survive strict scrutiny review. *Ill. State Bd. of Elections*, 440 U.S. at 184.

124. Accordingly, the law must be narrowly drawn to advance a state interest of compelling importance. *Burdick v. Takushi*, 504 U.S. 428, 434 (1982).

125. But even if a law imposes a lesser burden, the Court must assess whether alternative methods would advance the proffered governmental interests.

126. Mich. Const. 1963, art. IV, § 54 cannot satisfy any level of scrutiny.

127. Michigan's term limits do no serve a compelling state interest and are not narrowly tailored to achieve that interest, nor do they satisfy any lower level of scrutiny—as evidenced by the numerous states that have imposed less-restrictive limitations.

128. In fact, Michigan's term limits have proven not to serve the proffered interests at all—and actually result in exacerbation of the concerns that term limits were purportedly supposed to redress.

129. Nor can the savings clause contained in Mich. Const. 1963, art. IV, § 54 save the amendment.

130. The savings clause applies only to § 54: "If any part of *this section* is held to be invalid or unconstitutional, the remaining parts of this section shall not be affected but will remain in full force and effect." *Id.* (emphasis added).

131. A savings clause cannot resuscitate an unconstitutional amendment, particularly where, as here, there would be nothing left. The entire purpose of § 54 is to impose term limits on State representatives and senators and, if those limits are struck down, as they should be, there are no "remaining parts of [§ 54]."

COUNT II
VIOLATION OF THE FIRST AND FOURTEENTH AMENDMENTS
(FREEDOM OF ASSOCIATION)

132. Plaintiffs incorporate by reference the above paragraphs as if fully set forth herein.

133. The rights of individual voters to associate with, and vote for, the candidate of their choice "rank among our most precious freedoms." *Williams*, 393 U.S. at 30-31. "Other rights, even the most basic, are illusory if the right to vote is undermined." *Id.* at 31.

134. Indeed, when "potential office seekers . . . [are] precluded from seeking the nomination of their chosen party, no matter how qualified they might be, and no matter how broad or enthusiastic their popular support, . . . [t]he effect of this exclusionary mechanism on voters is neither incidental nor remote." *Bullock*, 405 U.S. at 143-144.

135. Mich. Const. 1963, art. IV, § 54 denies voters the opportunity to participate on an equal basis with other voters in the election of their choice of representative, and denies such voters the ability support an entire class of candidates—experienced legislators.

136. Mich. Const. 1963, art. IV, § 54 further imposes a content-based restriction on which candidates voters may support. A majority determined that a single trait—legislative experience—is so undesirable that all candidates who share that trait should be barred, and all voters wishing to support such candidates prohibited from doing so.

137. The premises on which Mich. Const. 1963, art. IV, § 54 are based have proven hollow. Michigan's

term limits have decreased the experience and competency of the legislature, decreased bipartisanship and coalition building, increased dynastic and recruitment-based representation, and increased the influence of lobbyists and special interest groups.

138. That Michigan voters crave experienced legislators is no more evident than voters' tendency to elect family members of term-limited incumbents.

139. As set forth herein, the First and Fourteenth Amendments to the United States Constitution guarantee the freedom to joint together in furtherance of common political beliefs, commonly referred to as the freedom of association, and also protect the expression of that association—including the selection of a candidate of one's choice.

140. Where, as here, a law interferes with the ability of both individuals and political parties to select the candidate of their choice, it imposes a severe restriction on ballot access such that the law must survive strict scrutiny review. *Ill. State Bd. of Elections*, 440 U.S. at 184.

141. Accordingly, the law must be narrowly drawn to advance a state interest of compelling importance. *Burdick*, 504 U.S. at 434.

142. But even if a law imposes a lesser burden, the Court must assess whether alternative methods would advance the proffered governmental interests.

143. Mich. Const. 1963, art. IV, § 54 cannot satisfy any level of scrutiny.

144. Michigan's term limits do no serve a compelling state interest and are not narrowly tailored to achieve that interest, nor do they satisfy any lower

level of scrutiny—as evidenced by the numerous states that have imposed less-restrictive limitations.

145. In fact, Michigan's term limits have proven not to serve the proffered interests at all—and actually result in exacerbation of the stated concerns.

146. Nor can the savings clause contained in Mich. Const. 1963, art. IV, § 54 save the amendment.

147. The savings clause applies only to § 54: "If any part of *this section* is held to be invalid or unconstitutional, the remaining parts of this section shall not be affected but will remain in full force and effect." *Id.* (emphasis added).

148. A savings clause cannot resuscitate an unconstitutional amendment, particularly where, as here, there would be nothing left. The entire purpose of § 54 is to impose term limits on State representatives and senators and, if those limits are struck down, as they should be, there are no "remaining parts of [§ 54]."

COUNT III
VIOLATION OF THE GUARANTEE CLAUSE

149. Plaintiffs incorporate by reference the above paragraphs as if fully set forth herein.

150. Article IV, section 4 of the United States Constitution provides that "The United States shall guarantee to every State in this Union a Republican form of government."

151. The United States Supreme Court has recognized that some claims under the Guarantee Clause present nonjusticiable questions. *New York v. United States*, 505 U.S. 144, 185 (1992). But "the Court has suggested that perhaps not all claims under

the Guarantee Clause present nonjusticiable political questions," and "[c]ontemporary commentators have . . . suggested that courts should address the merits of such claims, at least in such circumstances." *Id.* at 185 (citing L. Tribe, *American Constitutional Law* 398 (2d ed. 1988), J. Ely, *Democracy and Distrust: A Theory of Judicial Review* 118 & nn. 122–23 (1980), and W. Wiecek, *The Guarantee Clause of the U.S. Constitution* 287–89, 300 (1972), among others).

152. Here, Michigan's term limits have created a less professional, less organized, and less competent Legislature. As authorities recognize, "term limits strip legislatures of experience and expertise, partially deinstitutionalizing them."[16] And in states with less professional legislatures, lobbyists are a more prominent source of information—as research has demonstrated is the case since Michigan imposed term limits.[17]

153. Accordingly, by destabilizing and deinstutionalizing Michigan's Legislature, Mich. Const. 1963 art. IV, § 54 violates the right to a republican form of government, as guaranteed by the United States Constitution.

154. Nor can the savings clause contained in Mich. Const. 1963, art. IV, § 54 save the amendment.

155. The savings clause applies only to § 54: "If any part of *this section* is held to be invalid or unconstitutional, the remaining parts of this section shall

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16 *Supra* n.6, Thompson, p. 444.

17 *Id.*

not be affected but will remain in full force and effect." *Id.* (emphasis added).

156. A savings clause cannot resuscitate an unconstitutional amendment, particularly where, as here, there would be nothing left. The entire purpose of § 54 is to impose term limits on State representatives and senators and, if those limits are struck down, as they should be, there are no "remaining parts of [§ 54]."

COUNT IV
VIOLATION OF MICH. CONST. 1963, ART. IV, § 24

157. Plaintiffs incorporate by reference the above paragraphs as if fully set forth herein.

158. Mich. Const. 196, art. IV, § 24 provides that "[n]o law shall embrace more than one object, which shall be expressed in its title."

159. When Proposal B was placed on the ballot, it was entitled the "Michigan State Office Amendment."

160. Notwithstanding, Proposal B expanded beyond State offices to include federal congressional offices.

161. Moreover, it is well-settled that State constitutional amendments with respect to state and federal offices are subject to different analyses. *See, e.g. Thornton*, 514 U.S. 779.

162. Thus, Proposal B both (1) embraced more than a single object—i.e., ***state*** congressional term limits and ***federal*** congressional term limits, and (2) failed to express the object of the amendment in its title—i.e., described the amendment as only relating

to "Michigan State Office," when it, in fact, applied to federal congressional offices.

COUNT V
VIOLATION OF MICH. CONST. 1963, ART. XII, § 2

163. Plaintiffs incorporate by reference the above paragraphs as if fully set forth herein.

164. Mich. Const. 1963, art. XII, § 2 provides that ballot language for an amendment to the Constitution "shall consist of a true and impartial statement of the purpose of the amendment in such language as shall create no prejudice for or against the proposed amendment."

165. When Proposal B was placed on the ballot, it contained the following savings clause: "If any part of this section is held to be invalid or unconstitutional, the remaining parts of this section shall not be affected but will remain in full force and effect."

166. The effect of including a savings clause renders Proposal B unconstitutional because including this language creates a prejudice for passing the amendment as voters will likely vote "yes" even if concerns about whether the proposed amendments are unconstitutional exist.

167. Moreover, such language encourages the inclusion of publicly popular amendments, even knowing such amendment is unconstitutional, with other less popular amendments so that the proposal received a majority of votes, and the inclusion of the savings clause will allow the remainder of the less popular amendments to remain in effect.

WHEREFORE, Plaintiffs ask this Court to enter judgment in their favor and award (1) a declaratory judgment that Mich. Const. 1963 art. IV, § 54 violates the First and Fourteenth Amendments of the United States Constitution and the Guarantee Clause, Article IV, section 4 of the United States Constitution, (2) a declaratory judgment that Mich. Const. 1963, art. IV, § 54 violates Mich. Const., art. IV, § 24 and art. XII, §2, (3) a permanent injunction prohibiting the Michigan Secretary of State from enforcing Mich. Const. 1963 art. IV, § 54; (4) Plaintiffs' reasonable costs and expenses, including attorneys' fees; and (5) any other relief the Court deems just and proper.

Dated: December 11, 2019 Respectfully submitted,

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