

**IN THE
SUPREME COURT OF THE UNITED STATES**

No. ____

MICHIGAN INDEPENDENT CITIZENS REDISTRICTING COMMISSION, et al.,
Defendants-Applicants,

v.

DONALD AGEE, JR., et al.,
Plaintiffs-Respondents,

&

JOCELYN BENSON, in her official capacity as Michigan Secretary of State,
Defendant-Respondent.

**Application to the Hon. Brett M. Kavanaugh for an Extension of Time
Within Which to File a Jurisdictional Statement**

Pursuant to Supreme Court Rule 18.3, applicants the Michigan Independent Citizens Redistricting Commission and its members in their official capacities respectfully apply for an extension of time of 60 days, to and including May 4, 2024, for the filing of a jurisdictional statement. Unless an extension is granted, the deadline for filing the jurisdictional statement will be March 4, 2024. In support of this request, applicants state as follows:

1. This appeal is from the order of a three-judge panel of the U.S. District Court for the Western District of Michigan, dated December 21, 2023 (Exhibit 1), finding 13 legislative voting districts in metropolitan Detroit unconstitutional and enjoining their use in future elections. Applicants filed a notice of appeal (Exhibit 2) on January 4, 2024, weeks in advance of the appeal deadline, and applied for an emergency stay in this Court, which the Court denied on January 22, 2024, *see Michigan Independent Citizens Redistricting Comm'n v. Agee*, 23A641 (Jan. 22, 2024). This

Court has jurisdiction over applicants' appeal of right under 28 U.S.C. § 1253. Given the January 4 notice-of-appeal filing, applicants currently must file a jurisdictional statement in this Court by March 4, 2024, to perfect their appeal. *See* Sup. Ct. R. 18.3.

2. The order from which the appeal is taken is an interlocutory order, not a final judgment. *See Abbott v. Perez*, 138 S. Ct. 2305, 2319–24 (2018). Litigation is ongoing in the court below. As a result of the injunction, the Commission is currently engaged in a second redistricting process, which the district court ordered to occur on an expedited time frame, given the “very little time” to adopt a new plan to govern the 2024 Michigan house primary elections in August. *See* Exhibit 3 (Scheduling Order) at 2. The district court shortened certain state-law redistricting periods, required the Commission to adopt a plan by March 1, 2024, and set deadlines for a remedial litigation process throughout the month of March—including adversarial briefing over the adopted plan; review by a special master, who will issue a report; responses to the report; potential litigation over another remedial plan drafted by a *second* special master; and the ultimate court approval of a remedial house plan by March 29, 2024. *See id.* at 5–7. Subsequently, a remedial process governing senate districts will occur on a time frame yet to be determined. *Id.* at 6 (¶ 8).

3. Under these circumstances, there is good cause for a 60-day extension. Between now and the beginning of April, applicants and their counsel have substantial obligations under the remedial order. Redistricting is “the most difficult task a legislative body ever undertakes.” *Covington v. North Carolina*, 316 F.R.D. 117, 125 (M.D.N.C. 2016), *aff'd*, 581 U.S. 1015 (2017) (citation omitted). It is especially difficult on an expedited basis, and in a remedial setting, as part of an ongoing lawsuit. Further, the remedial work involved in this case is intensive and will require the

Commission’s counsel to evaluate proposals before the Commission, consider and respond to arguments by the plaintiffs and other interested persons, address the opinions of a special master, and potentially litigate the merits of a competing plan prepared by a second special master. Briefing deadlines are tight. Under the default deadline of this Court’s rules, applicants must file a jurisdictional statement in the midst of those deadlines to secure their right of appeal, and a 30-day extension would make the jurisdictional statement due just after the expedited house remedial process concludes (and thus require its preparation during that process).

4. In addition to the demands posed by this litigation, the Commission’s counsel is engaged in active litigation for other clients around the nation, including in expedited matters and those with due dates overlapping those in this matter. *See, e.g., Pierce v. N.C. State Bd. of Elections*, 24-1095 (4th Cir.) (appeal filed Jan. 26, 2024; argument set Feb. 15, 2024); *Kellner v. AIM Immunitech Inc.*, C.A. No. 23-0879 (Del.) (reply/cross-appellee brief due March 9, 2024; argument set April 10, 2024); *Oskeske v. Silver Cinemas Acquisition Co.*, 23-3882 (9th Cir.) (merits brief due March 13, 2024); *Nairne v. Ardoin*, 3:22-cv-178 (M.D. La.) (injunction issued Feb. 8, 2024; remedial process and potential appellate litigation forthcoming). These obligations further establish good cause for an extension.

5. A briefing extension may also provide case-management benefits in this Court, given the interlocutory nature of applicants’ appeal. Remedial redistricting rulings issued after interlocutory injunctions can give rise to multiple appeals in the same action, and remedial appeals can be as complex as liability appeals. *See, e.g., North Carolina v. Covington*, 138 S. Ct. 2548 (2018) (per curiam); *Abrams v. Johnson*, 521 U.S. 74 (1997); *cf. Moore v. Harper*, 600 U.S. 1, 12–19 (2023). The requested

briefing extension would make applicants' jurisdictional statement due around the time a remedial appeal may arise, which in turn may enable the Court to consolidate or coordinate consideration of multiple appeals from the same case. Further, some courts of appeals have treated the appellate records from liability and remedial phases of the same redistricting case as interrelated, such that remedial evidence or rulings may speak to liability issues. *See Wright v. Sumter Cnty. Bd. of Elections & Registration*, 979 F.3d 1282, 1302 (11th Cir. 2020) (Marcus, J., for the court). While this Court has not considered that doctrine, and it remains unclear whether and how it might apply in this case, a delay in the liability appeal has at least the potential to streamline or better inform case proceedings.

6. The requested extension will cause no harm. Because of the stay denial, the 2024 Michigan state house elections will not occur in districts the district court enjoined. Elections are not scheduled for the Michigan senate until 2026, and the injunction will in all events apply unless and until disturbed by this Court. Accordingly, the relief plaintiffs-respondents sought and obtained in the district court will not be undermined by an extension. And, with or without an extension, it seems unlikely that this Court will process the jurisdictional statement and subsequent briefing, *see* Sup. Ct. R. 18.3, 18.6, and 18.8, in time to conduct argument in this appeal on the merits this Term.

For these reasons, applicants respectfully request that an extension of time within which applicants may file a jurisdictional statement to and including May 4, 2024, be granted.

February 12, 2024

NATHAN J. FINK
DAVID H. FINK
FINK BRESSACK
38500 Woodward Ave.,
Suite 350
Bloomfield Hills, MI 48304
(248) 971-2500
nfink@finkbressack.com
dfink@finkbressack.com

Respectfully Submitted,

/s/ Richard B. Raile

RICHARD B. RAILE
Counsel of Record
KATHERINE L. MCKNIGHT
DIMA J. ATIYA
BAKER & HOSTETLER LLP
1050 Connecticut Ave., N.W.
Suite 1100
Washington, D.C. 20036
(202) 861-1500
rraile@bakerlaw.com
kmcknight@bakerlaw.com
datiya@bakerlaw.com

PATRICK T. LEWIS
BAKER & HOSTETLER LLP
127 Public Square
Suite 2000
Cleveland, OH 44114
(216) 621-0200
plewis@bakerlaw.com