UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

Priorities USA, Rise, Inc., and the Detroit/Downriver Chapter of the A. Philip Randolph Institute,

Plaintiffs,

v.

Dana Nessel, in her official capacity as Attorney General of the State of Michigan,

Defendant,

and

Republican National Committee, Michigan Republican Party, Michigan House of Representatives, and Michigan Senate,

Intervenor- Defendants.

NO. 19-13341

JUDGE STEPHANIE DAWKINS DAVIS

RESPONSE IN OPPOSITION TO THE MICHIGAN SENATE AND THE MICHIGAN HOUSE OF REPRESENTATIVES' EMERGENCY MOTION FOR A STAY PENDING APPEAL

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STATEMENT OF ISSUES PRESENTED

After the Court entered a preliminary injunction enjoining the enforcement of Mich. Comp. Laws § 168.931(1)(f) (the "Voter Transportation Ban," or "Ban") for the coming election, the only Defendant in this action who has any responsibilities related to enforcing the Ban, Michigan Attorney General Dana Nessel, chose not to appeal. The same cannot be said of Intervenor-Defendants the Michigan House of Representatives and Senate ("Legislative Intervenors"), or the Republican National Committee and Michigan Republican Party ("Republican Intervenors"), all of whom filed notices of appeal. Legislative Intervenors now move for an emergency stay of the Court's order, and Republican Intervenors have joined in the motion. That motion should be denied.

First, and foremost, both sets of Intervenors lack standing to pursue this appeal. The Court's order does not require any of the Intervenors to do anything, nor does it forbid them from doing anything. Legislative Intervenors have no interest in the appeal beyond a generalized interest in defending the constitutionality of the law, an interest that federal courts have repeatedly found insufficient to maintain an appeal on its own. Republican Intervenors will not suffer any injury, either, as a result of the injunction, which simply permits organizations like Plaintiffs, which would donate transportation to help get voters to the polls but for the Ban, to do so in the November election without fears of criminal penalty.

For similar reasons, neither set of Intervenors can establish that they will suffer irreparable harm absent a stay. On the other side of the scale is the certain harm that will come to Plaintiffs and Michigan voters if a stay were issued, as well as the public interest, all weighing heavily against a stay. Plaintiffs have already begun implementing plans to transport voters to the polls to engage in constitutionally protected expression and participate in—and assist others in fully participating in—the democratic process. A stay will silence that protected activity (or force Plaintiffs and others to risk criminal penalty for engaging in it), reduce voter access to the polls, and consequently reduce participation of lawful Michigan voters in the democratic process simply because they lack access to transportation. The injunction neither creates additional confusion nor burdens the state in any way. All it does is facilitate the exercise of core constitutional rights—those of Plaintiffs and Michigan voters alike.

On the merits, as well, the appeal is unlikely to succeed. Reversal of the order would require the Sixth Circuit to both (1) ignore plain statutory language that permits corporations to spend money to transport voters to the polls, and (2) read language into the Voter Transportation Ban that does not exist. For all of these reasons, this Court should decline to issue a stay.

CONTROLLING OR MOST APPROPRIATE AUTHORITY

Democratic National Committee v. Bostelmann, Nos. 20-2835, 20-2844 (7th Cir. Sep. 29, 2020)

Dewald v. Wriggelsworth, 748 F.3d 295, 302 (6th Cir. 2014)

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Mich. Comp. Laws § 168.931(1)(f)

52 U.S.C.A. § 30143

11 C.F.R. § 108.7(b)(3)

LEGAL STANDARD

Under the test applied in the Sixth Circuit, "a party seeking a stay must ordinarily demonstrate to a reviewing court that there is a likelihood of reversal." *Michigan Coal. of Radioactive Material Users, Inc. v. Griepentrog*, 945 F.2d 150, 153 (6th Cir. 1991). In addition, the court considers three other factors in determining whether to grant a motion to stay a preliminary injunction: "[1] the likelihood that the moving party will be irreparably harmed absent a stay; [2] the prospect that others will be harmed if the court grants the stay; and [3] the public interest in granting the stay." *Id.* Each of these factors weigh strongly against granting the Legislative Intervenors' motion to stay.

ARGUMENT

I. Intervenors are unlikely to succeed on appeal.

A. Intervenors lack standing to appeal.

It is axiomatic that "to appeal a decision that the primary party does not challenge, an intervenor must independently demonstrate standing." *Virginia House of Delegates v. Bethune-Hill*, 139 S. Ct. 1945, 1951 (2019). Here, neither set of Intervenors can meet this requirement.

To defend a state statute on appeal, a legislative intervenor must either (1) have been given the legal authority "to represent the State's interests" (a status which automatically confers standing to defend the constitutionality of a state statute), or (2) possess standing in "its own right" to press the appeal. 139 S. Ct. at 1951. In this case, Legislative Intervenors have neither. While it is true that they purport to represent the Michigan Legislature, it is unclear what authority they rely on in doing so. Plaintiffs are unaware of any Senate or House rules permitting legal action on behalf of each chamber without formal authorization. Notably, the House and Senate have previously passed resolutions authorizing representative legislators to intervene in specific lawsuits on behalf of the entire Legislature. *See* S Res 6, January 23, 2019 (Michigan Senate authorizing intervention in federal redistricting case), *available at* http://www.legislature.mi.gov/documents/2019-2020/resolutionadopted/Senate/pdf/2019-SAR-0006.pdf, and H.R. Com. Res. 17,

February 5, 2019 (Michigan House concurrently authorizing action in federal redistricting case), *available at* http://www.legislature.mi.gov/documents/2019-2020/resolutionadopted/House/pdf/2019-HAR-0017.pdf. Plaintiffs have not been able to locate any similar resolution here.

Moreover, Michigan's Constitution makes it clear that the legislature is *not* permitted to act in an *executive* function. Mich. Const. Art. 3 § 2; *accord* Veto Message from Governor, 2018 Journal of the House Addenda 3028-29 (Mich. Dec. 28, 2018) (vetoing law that would have granted Legislature automatic right to intervene as an inappropriate infringement on executive authority, violating separation of powers). Thus, just as the Virginia House of Delegates lacked the authority to represent the interests of the State on appeal in *Bethune-Hill*, the Michigan Legislature lacks the authority to represent the interests of the State on appeal in this litigation—particularly where the state actor who *does* have that authority, the Attorney General, has chosen not to exercise it. *Bethune-Hill*, 139 S. Ct. at 1951; Ex.1, *Democratic National Committee v. Bostelmann*, Nos. 20-2835, 20-2844 (7th Cir. Sep. 29, 2020) (holding neither state legislature nor political committee intervenors had standing to appeal absent participation of state defendant); *see also Raines v Baird*, 521 US 811, 829 (1997) (holding that legislators lacked standing when not authorized to represent body); *Tennessee ex rel. Tenn. Gen. Assembly v U.S. Dep't of State*, 931 F3d 499, 511 (6th Cir. 2019) ("What *Raines*

demonstrates is that individual legislator plaintiffs cannot bring suit for an alleged institutional injury."); *Kerr v. Hickenlooper*, 824 F3d 1207, 1214-15 (10th Cir. 2016) ("[I]ndividual legislators may not support standing by alleging only an institutional injury"); *Newdow v. US Cong.*, 313 F3d 495, 499 (9th Cir. 2002) ("[A]t least as to individual legislators, there is no standing unless their own institutional position, as opposed to their position as a member of the body politic, is affected.").

Moreover, neither set of Intervenors has sufficient legal interest in this litigation to provide standing to appeal. The only cognizable interest that Legislative Intervenors have in this litigation is their generalized interest in upholding state laws. PageID.1026. But as the United States Supreme Court has explained, "[t]his Court has never held that a judicial decision invalidating a state law as unconstitutional inflicts a discrete, cognizable injury on each organ of government that participated in the law's passage." *Bethune Hill*, 139 S. Ct. at 1953; *see also Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). In other words, the Legislative Intervenors do not have standing in their own right to press an appeal.

Republican Intervenors lack even this general interest. Instead, upon intervention, they asserted a "competitive interest" in maintaining the status quo, which the Court described as "not as salient" as Legislative Intervenors' interest in upholding state laws. PageID.1026. Republican Intervenors do not identify a different interest here, and this tenuous interest in maintaining the status quo and

reducing access to the franchise for Michigan voters is insufficient to support standing on appeal. Like Legislative Intervenors, Republican Intervenors lack standing to appeal. "[A] party may not wear on appeal a hat different from the one it wore at trial." *Bethune-Hill*, 139 S. Ct. at 1945.

The party that *does* have a personal, particularized stake in the outcome of this litigation is the Attorney General, who is vested with the authority to enforce the Voter Transportation Ban and to defend challenges to Michigan's laws. Mich. Comp. Laws §§ 14.28, 14.29. But the Attorney General has chosen not to appeal, and in her absence, the Intervenors lack standing to pursue this appeal.

B. Intervenors are unlikely to succeed on the merits of their appeal.

Even if the Intervenors have standing to pursue an appeal, they are not likely to succeed on the merits. It is undisputed that the Voter Transportation Ban "limits spending on a particular activity." PageID.1652. Specifically, it prohibits "*all* spending on transportation to the polls, except for that made on behalf of those unable to walk to the polls." PageID.1616. It is also undisputed that FECA contains an express preemption provision that supersedes state election law concerning limitations on contributions and expenditures regarding federal candidates or committees. 52 U.S.C.A. § 30143; 11 C.F.R. § 108.7(b)(3). This express preemption provision is sufficient to overcome the presumption against preemption. *See Weber*

v. Heaney, 793 F. Supp. 1438, 1452 (D. Minn. 1992), *aff'd*, 995 F.2d 872 (8th Cir. 1993) (discussing congressional intent regarding FECA preemption).

To argue against preemption, Intervenors ignore the plain language of FECA regulations and urge the Court to read language into the Voter Transportation Ban that does not exist. But the Ban cannot coexist with FECA, and the act of transporting voters to the polls is not a similar offense to false registration, voter fraud, or ballot theft. Accordingly, Plaintiffs are likely to succeed on the merits and Legislative Intervenors are unlikely to succeed on appeal.

1. *The Voter Transportation Ban cannot coexist with FECA regulations that permit spending money to transport voters to the polls.*

Legislative Intervenors argue that the Voter Transportation Ban can coexist with FECA because the Ban does not limit "contributions and expenditures with respect to Federal Elections." PageID.1653 (quotation mark omitted). This argument ignores the plain language of applicable FECA regulations and the law's preemptive scope.

The Voter Transportation Ban "bars *all* spending on transportation to the polls, except for that made on behalf of those unable to walk to the polls." PageID.1616. But, as the Court noted, FECA regulations expressly permit "disbursements" to provide transportation to the polls for voters. PageID.1614–1615

(referencing 11 C.F.R. §§ 114.3(c)(4)(i), 114.4(d)(1)) A disbursement is, simply put, the spending of money—the very thing prohibited by the Voter Transportation Ban.[1]

The applicable FECA regulations limit the type of disbursements an organization may make to transport voters to the polls. These disbursements cannot be contributions or coordinated expenditures, within the meaning of the relevant statutes. 11 C.F.R. § 114.4(a); *id* 114.3(c)(4)(iii). But disbursements for the transportation of voters to the polls *are* considered expenditures, within the meaning of FECA, unless the organization meets several specific criteria while carrying out its voter transportation or other covered get-out-the-vote effort. *See, e.g.*, 11 C.F.R. § 114.4(d)(2)(i)-(v) (outlining the steps necessary to prevent a disbursement from being an expenditure). In other words, FECA regulations permit organizations to make expenditures to transport voters to the polls, and FECA's preemption regulation provides that federal law supersedes state law regarding such expenditures related to federal elections, 11. C.F.R. § 108.7(b)(3).

Intervenors do not dispute the fact that the Voter Transportation Ban prohibits all disbursements related to transporting voters to the polls. They instead argue that FECA's allowance of contributions or expenditures regarding federal candidates and

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[1] To the extent FECA occupies the field of federal election spending regulation, the inquiry could end here because the Voter Transportation Ban prohibits spending allowed by FECA regulations.

political committees does not include paying a third party to drive voters to the polls. PageID.1654. As explained above, that is simply not the case.

Indeed, the Court provided an example of an overtly partisan get-out-the-vote drive to illustrate expenses that would be classified as "independent expenditures" under FECA. PageID.1616. The same is true of a voter transportation drive conducted by an organization that advocates for the election or defeat of a particular candidate. *See* 11 C.F.R. § 114.4(d)(2)(i). Even expenses related to some nonpartisan get-out-the-vote drives would arguably also be classified as independent expenditures. For example, an organization that focuses its voter transportation efforts primarily on one geographic area because of its membership or institutional focus is likely to direct its focus toward individuals registered with one party. To the extent that party is favored by the organization, expenses associated with such voter transportation would be an FECA individual expenditure. *See* 11 C.F.R. § 114.4(d)(2)(ii).

Intervenors essentially invite the Court to interpret the term "regarding" in the FECA preemption regulation to mean "to," but these words have different meanings. 11 C.F.R. § 108.7(b)(3) (stating that FECA supersedes state law concerning the "[l]imitation on contributions and expenditures regarding Federal candidates and political committees"). To the extent that FECA's preemptive scope was meant to cover only contributions and expenditures *to* candidates and political committees,

the FEC would have used that exact language, as it has elsewhere in the regulations. *See, e.g.*, 11 C.F.R. § 114.2(f)(1) (discussing the "making of contributions *to* candidates or political committees"); *id.* § 110.14 (discussing "limitations on contributions *to* candidates and political committees"); *id.* § 110.1 (discussing "[c]ontributions *to* candidates"). Moreover, the term "expenditure" is expansively defined, in relevant part, as "any direct or indirect payment . . . to any candidate, political party or committee, organization, *or any other person in connection with any election*." 11 C.F.R. § 114.1(a)(1).

Republican Intervenors argue that even if FECA preempts the Voter Transportation Ban, the Courts' injunction "should be limited to federal elections." PageID.1678. In other words, the Court should allow paid transportation for voters casting their ballots in federal races but enforce the Voter Transportation Ban against voters casting their ballots in state races. PageID.1678. To accept Republican Intervenors' argument, the Court would need to construe the term "election" to mean "an individual contest on the ballot." *United States v. Slone*, 411 F.3d 643, 647 (6th Cir. 2005). But, as the Sixth Circuit has held, that construction would "distort the term." *Id.* "Elections are events at which multiple office holders and ballot proposals are or may be chosen," and federal elections include "all elections in which a federal candidate is on the ballot." *Id.*; *accord United States v. Salisbury*, 983 F.2d 1369, 1377 (6th Cir. 1993) (holding that "a candidate for federal office must be on the

ballot" for the court to exercise jurisdiction in a federal election criminal action). There is no dispute regarding whether the upcoming election is a federal election and FECA applies.

In sum, FECA expressly preempts the Voter Transportation Ban.

2. *The Voter Transportation Ban does not fall within the false registration, voting fraud, theft of ballots, or other similar offense exception.*

Legislative Intervenors argue that even if the Voter Transportation Ban cannot coexist with FECA, it is excepted from preemption by 11 C.F.R. § 108.7(c)(4), which carves out state laws that provide for the prohibition of false registration, voting fraud, theft of ballots, and similar offenses. But this exception plainly does not reach the Voter Transportation Ban.

The Voter Transportation Ban provides that

> (1) A person who violates 1 or more of the following subdivisions is guilty of a misdemeanor:
>
> * * *
>
> (f) A person shall not hire a motor vehicle or other conveyance or cause the same to be done, for conveying voters, other than voters physically unable to walk, to an election.

The act criminalized by the Ban is paying to transport voters to the polls, full stop. That's it. That's the law. As this Court has already recognized, "[n]othing in the

plain language of the Transportation Law, as it is now written, suggests that its purpose is to prevent voter fraud or similar offenses." PageID.1618.

Legislative Intervenors urge the court to hold the very act of paying to transport a voter to the polls is similar to engaging in false registration, voter fraud, and ballot theft. But the act of facilitating a lawful voter's access to the polls so that said lawful voter can cast her ballot increases participation in the democratic process and, indeed, is common in many states and a central part of advocacy organizing efforts. PageID.239–241 (Nse Ufot Decl.). False registration, voter fraud, and ballot theft all subvert the democratic system.

The sole case Legislative Intervenors cite does not support their position. *Dewald v. Wrigglesworth* involved the question of whether common law fraud (recognized as an offense in all 50 states) was a similar offense to false registration, voting fraud, or ballot theft. A divided panel of the Sixth Circuit held that it was, because "the fraudulent acquisition of money by an individual purporting to represent a federally registered PAC" was a "similar offense" to "voting fraud." *Dewald v. Wriggelsworth*, 748 F.3d 295, 302 (6th Cir. 2014). Here, the question is whether an act that is legal in 49 states—paying to transport individuals to the polls—is a "similar offense" to false registration, voting fraud, or ballot theft. The answer is no.

Legislative Intervenors attempt to muddy the waters by asserting that the Voter Transportation Ban is designed to "combat voter intimidation and undue influence." PageID.1658. But to reach this conclusion, the Court must "read an anti-fraud purpose into [the Voter Transportation Ban's] ban on hiring or paying for transportation." PageID.1619. The act of paying for voter transportation does not, in and of itself, constitute voter fraud or raise the specter of voter intimidation and undue influence. The act of hiring transportation to bring qualified voters to the polls is an offense only because the Ban makes it one. But it is *not* a similar offense to false registration, voting fraud, or ballot theft.

Finally, the Legislative Intervenors claim that the Court erred when it read a 1895 P.A. 135 to "contain a quid pro quo relationship arising from transportation." PageID.1656. According to Legislative Intervenors, 1895 P.A. 135 simply criminalized the act of hiring transportation to take voters to the polls. PageID.1657. Regardless of which interpretation of the predecessor statute is correct, it is undisputed that the Voter Transportation Ban does *not* contain this quid pro quo language.

Because Legislative Intervenors have failed to identify the minimum required "serious questions going to the merits," the Court should deny the motion to stay the order granting the preliminary injunction. *Michigan Coal. of Radioactive Material*

Users, Inc. v. Griepentrog, 945 F.2d 150, 154 (6th Cir. 1991) (quoting *In re DeLorean Motor Co.*, 755 F.2d 1223, 1229 (6th Cir. 1985)).

II. Intervenors will not be harmed absent a stay.

When, as here, movants seeking to stay an injunction have a low likelihood of success of prevailing on the merits, their burden of demonstrating harm absent a stay increases. *See Michigan Coal. of Radioactive Material Users, Inc. v. Griepentrog*, 945 F.2d 150, 153 (6th Cir. 1991) (noting the inverse relationship between likelihood of success and harm). However, even if there was some likelihood of success (which there is not), the Intervenors fail to meet this factor.

Although Legislative Intervenors' motion concedes that they must show they will be harmed absent a stay, PageID.1651, it is otherwise devoid of *any* discussion regarding the harm Legislative Intervenors will suffer absent a stay. This is because Legislative Intervenors will not be harmed absent a stay. The injunction does not require Legislative Intervenors to act or refrain from acting in any way. *See* Ex. 1, *Democratic National Committee v. Bostlemann*, Nos. 20-2835, 20-2844 at 3 (7th Cir. Sep. 29, 2020) (denying stay where order did not order legislative movant "to do something or forbid them from doing anything.").

Likewise, the preliminary injunction does not require Republican Intervenors to do something or forbid them from doing anything. Republican Intervenors argue that they will be harmed due to a change in the "competitive environment" that will

expose them to "a broader range of competitive tactics." PageID.1681. But they do not explain how an injunction that makes voting more accessible for Michigan voters harms them. For this reason, *Shays v. FEC*, 414 F.3d 76 (D.C. Cir. 2005), in which the plaintiffs faced risk of harm depending on the outcome, is distinguishable.

Because (1) Intervenors are highly unlikely to prevail on the merits, (2) Legislative Intervenors have failed to identify a single way in which they would be harmed absent a stay, and (3) the only harm identified by Republican Intervenors is legally insufficient, the Court should deny the motion for a stay.

III. Plaintiffs and voters *will* suffer harm if the injunction is stayed.

On the other hand, if the Court were to stay its injunction, Plaintiffs and voters will suffer irreparable harm. Since the Court entered its preliminary injunction, Rise has begun making specific preparations to transport Michigan voters to the polls. *See* Ex. 2, Declaration of Maxwell Lubin in Support of Response at ¶¶ 10–11 ("Lubin Bus Decl."). If the injunction is stayed, Rise would need to divert monetary and staff resources to work with voters one-on-one to figure out those voters' individual transit needs and assist them with getting to the polls in a way that does not involve paid transportation. Lubin Bus Decl. at ¶¶ 12–15. In other words, a stay would result in a significant diminution of Plaintiffs' ability to engage in constitutionally protected expression and participate in—and assist others in fully participating in—the democratic process. Additional fundraising and volunteer

recruitment efforts take time, coordination, and money, and each day lost negatively impacts these efforts. PageID. 225 (Maxwell Lubin Decl.). In addition, organizations cannot get the time back that they have spent making plans to transport voters to the polls to make new ones. Because each election is a unique, non-repeatable occurrence, no amount of monetary damages can make Plaintiffs whole if these voting restrictions are in place for the upcoming primary and general elections. As this Court noted, "[t]he November election is nearly upon us and any particular election only occurs once." PageID.1623.

Michigan voters will also be harmed if the injunction is stayed because the Voter Transportation Ban increases their barriers to the ballot box. The Ban kept Uber from providing Michigan voters with free and discounted rides to the polls in 2018, which meant that voters who would have otherwise used those rides to the polls either did not vote or expended some resources that they otherwise would not have needed to expend to be able to cast their ballots. If the Court were to grant the motion to stay and the Ban were to remain in place, Uber would again be prevented from providing Michigan voters with free and discounted rides, and those voters who would have otherwise had the opportunity to receive free transportation to the polls provided by Plaintiff Rise will now need to find a different way to make it to the polls. Lubin Bus Decl. ¶ 12. Those voters may not even vote at all due to the increased barrier to the polls.

IV. The public interest weighs against granting a stay.

It cannot be disputed that "[t]here is a strong public interest in allowing every registered voter to vote freely." *Summit Cty. Democratic Cent. & Exec. Comm. v. Blackwell*, 388 F.3d 547, 551 (6th Cir. 2004). *See* PageID.1624. As discussed above, a stay would make it more difficult for Michigan voters to participate in the democratic process.

Legislative Intervenors argue that voter transportation to the polls "undercut[s] the faith of Michigan's voters in their state's electoral integrity." PageID.1659. This is an empty statement, devoid of support, and deliberately fails to recognize that 49 other states allow paid transportation to the polls. For those Michigan voters who value increased participation in the democratic process and those voters who, but for such transportation, would experience difficulties making it to the polls, the act of paying to transport voters to the polls could actually *increase* their faith in their state's electoral integrity.

Denying Legislative Intervenors' motion to stay and decreasing barriers to the ballot box are in the public interest.

V. *Purcell* is inapplicable here.

Republican Intervenors' reliance on *Purcell v. Gonzalez*, 549 U.S. 1, 4-5 (2006), is also misplaced. There, the Supreme Court cautioned that "[c]ourt orders affecting elections, . . . can themselves result in voter confusion and consequent

incentive to remain away from the polls," a risk that increases "[a]s an election draws closer." The underlying purpose of this so-called "*Purcell* principle" is to avoid causing "voter confusion and electoral chaos." Richard L. Hasen, *Reining in the Purcell Principle,* 43 Fla. St. U. L. Rev. 427, 428 (2016). The Court in *Purcell* was concerned that that last-minute changes to elections procedures may create a "consequent incentive to remain away from the polls." 549 U.S. at 5.

For urgent election-related matters, courts have issued injunctive relief closer to a pending election than Plaintiffs ask for here. *See, e.g.*, *Priorities USA v. State of Missouri*, No. 18AC-CC00226, 2018 WL 6030959 (Mo. Cir.) (enjoining portions of Missouri's voter ID law four weeks before general election); *Thomas v. Andino*, No. 3:20-cv-01552, Doc. 65 (D.S.C. May 25, 2020) (enjoining witness requirement for absentee ballots two weeks before primary election); *Ga. State Conf. NAACP v. Georgia*, No. 1:17-cv-1397-TCB, 2017 WL 9435558 (N.D. Ga. May 4, 2017) (enjoining voter registration requirements and extending the voter registration deadline approximately six weeks before the election); *Sanchez v. Cegavske*, 214 F. Supp. 3d 961 (D. Nev. 2016) (granting preliminary relief and ordering counties to open additional in-person voter registration and early voting locations approximately four weeks before the 2016 general election); *Fla. Democratic Party v. Detzner*, No. 16-CV-607, 2016 WL 6090943 (N.D. Fla. Oct. 16, 2016) (requiring a cure period for ballots with signature mismatches approximately three weeks before the 2016

General Election); *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224 (4th Cir. 2014) (enjoining in part an omnibus election law approximately five weeks before the 2014 General Election); *Bryanton v. Johnson*, 902 F. Supp. 2d 983 (E.D. Mich. 2012) (preliminarily enjoining the inclusion of a citizenship verification question on absentee ballot and voter registration applications approximately four weeks before the 2012 General Election); *Common Cause/Ga. v. Billups*, 406 F. Supp. 2d 1326 (N.D. Ga. 2005) (preliminarily enjoining the state's voter ID requirement approximately three weeks before the election).

Here, granting the stay would cause make it more difficult for voters to make it to the polls; it would not facilitate voter access to the franchise. Although Republican Intervenors assert that the injunction "will cause serious voter confusion regarding paid transportation to the polls," PageID.1683, this assertion is baseless. From a voter's perspective, there is no difference between receiving a free Uber ride to the polls or being transported "by way of a volunteer driver in a non-profit corporation's minivan." PageID.1619. For these reasons, the Court should reject Republican Intervenors' arguments that *Purcell* justifies a stay.

CONCLUSION

For the above-mentioned reasons, as well as those contained in the Court's order, the Court should deny Legislative Intervenors' motion to stay.

Dated: September 30, 2020

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CERTIFICATE OF SERVICE

I hereby certify that on September 30, 2020, I electronically filed the above document(s) with the Clerk of the Court using the ECF System, which will provide electronic copies to counsel of record.

LOCAL RULE CERTIFICATION

I, Marc Elias, certify that this document and complies with Local Rule 5.1(a), including: double-spaced (except for quoted materials and footnotes); at least one-inch margins on the top, sides, and bottom; consecutive page numbering; and type size of all text and footnotes that is no smaller than 10-1/2 characters per inch (for non-proportional fonts) or 14 point (for proportional fonts). I also certify that this response complies with the page limit contained in Local Rule 7.1(d)(3).

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