

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

PRIORITIES USA, RISE, INC.,
DETROIT/DOWNRIVER CHAPTER No. 19-13341
OF THE A. PHILIP RANDOLPH
INSTITUTE,

HON. STEPHANIE DAWKINS
DAVIS

Plaintiffs,

v

MAG. R. STEVEN WHALEN

DANA NESSEL, in her official
capacity as the ATTORNEY
GENERAL OF THE STATE OF
MICHIGAN,

Defendant,

and

THE MICHIGAN SENATE, THE
MICHIGAN HOUSE OF
REPRESENTATIVES, THE
MICHIGAN REPUBLICAN PARTY
and THE REPUBLICAN
NATIONAL COMMITTEE,

Intervening-Defendants.

**DEFENDANT ATTORNEY GENERAL DANA NESSEL'S
ANSWER TO PLAINTIFFS' AMENDED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE RELIEF AND
AFFIRMATIVE DEFENSES**

NOW COMES Defendant Attorney General Dana Nessel, by counsel, and answers Plaintiffs' amended complaint (R. 17, Page ID # 88), by like-numbered paragraphs, as follows:

INTRODUCTION

1. The allegations include quotations to decisions, which decisions speak for themselves, as well as legal conclusions, to which no response is thus required. To the extent a response is required, Defendant denies the allegations for the reason they are untrue.
2. Defendant admits the people passed Proposal 3 in November 2018 but denies the remaining allegations as legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations for the reason they are untrue.
3. These allegations represent legal conclusions to which no response is necessary. To the extent a response is required, Defendant denies the allegations for the reason they are untrue.
4. These allegations represent legal conclusions to which no response is necessary. To the extent a response is required, Defendant denies the allegations for the reason they are untrue.

5. These allegations represent legal conclusions to which no response is necessary. To the extent a response is required, Defendant denies the allegations for the reason they are untrue.

6. Defendant admits the calculation as to days but denies the remaining allegations as they represent legal conclusions to which no response is necessary. To the extent a response is required, Defendant denies the allegations for the reason they are untrue.

PARTIES

7. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies.

8. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies.

9. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies.

10. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies.

11. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies.

12. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies.

13. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies.

14. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies.

15. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies.

16. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies.

17. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies.

18. Defendant admits that she is the Attorney General of the State of Michigan and that she is allegedly sued in her official capacity.

Defendant admits that she is authorized to enforce various civil and criminal laws enacted by the Legislature, including the challenged statutes. Defendant denies that she or any of the county prosecutors has a duty to prosecute violations of the Michigan Election Law,

including the challenged statutes, in that all prosecutors have discretion as to whether or not to bring charges in any particular case.

JURISDICTION AND VENUE

19. These allegations represent legal conclusions to which no response is necessary. To the extent a response is required, Defendant denies the allegations for the reason they are untrue.

20. These allegations represent legal conclusions to which no response is necessary. To the extent a response is required, Defendant denies the allegations for the reason they are untrue.

21. These allegations represent legal conclusions to which no response is necessary. To the extent a response is required, Defendant denies the allegations for the reason they are untrue.

22. These allegations represent legal conclusions to which no response is necessary. To the extent a response is required, Defendant denies the allegations for the reason they are untrue.

23. These allegations represent legal conclusions to which no response is necessary. To the extent a response is required, Defendant denies the allegations for the reason they are untrue.

24. These allegations represent legal conclusions to which no response is necessary. To the extent a response is required, Defendant denies the allegations for the reason they are untrue.

25. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies.

26. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies.

27. These allegations represent legal conclusions to which no response is necessary. To the extent a response is required, Defendant denies the allegations for the reason they are untrue.

28. Defendant admits that a letter dated October 8, 2019, on which she is carbon copied exists, but Defendant lacks knowledge or information sufficient to form a belief as to truth of whether Defendant received the carbon copy of the letter, and on that basis denies.

Defendant admits that she did not respond to the letter. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegation that the Secretary of State did not respond to the letter, and on that basis denies.

29. Admitted.

30. Defendant admits that she received the January 11, 2020, letter through her undersigned counsel. Defendant admits that she did not respond to the letter due to the fact that Plaintiffs had sued Defendant and were raising the same issues in the context of their litigation.

31. Defendant admits that she is generally aware that at least some county prosecutors received the January 13, 2020, letter to which Plaintiffs refer. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegation as to how many prosecutors did or did not respond the letter, and on that basis denies.

32. Defendant admits that she has not “disavow[ed] prosecution” of Plaintiffs under the challenged statutes because to do so would be inconsistent with her discretion to charge in any case based on the facts and circumstances. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegation as to what county prosecutors continue to do, and on that basis denies.

GENERAL ALLEGATIONS

The Voter Transportation Ban

33. These allegations cite and/or quote from Mich. Comp. Laws § 168.931(1)(f) and 750.504, which statutes speak for themselves, and no

response is thus required. To the extent a response is required, Defendant denies the allegations for the reason they are untrue.

34. Defendant admits that § 931(1)(f) does not include an express definition of what it means to “hire a motor vehicle or other conveyance.”

35. Defendant denies that § 931(1)(f) burdens get-out-the-vote efforts. As to the remaining allegations, Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies.

36. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies.

37. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies.

38. Denied.

39. Denied.

40. Denied.

41. Defendant denies that § 931(1)(f) “chills organizational civic engagement.” As to the remaining allegations, Defendant lacks

knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies.

42. Denied.

43. Denied.

44. Denied.

45. Denied for the reason that § 931(1)(f) does not function as a “spending limitation.”

46. This allegation cites and quotes from 11 C.F.R. § 108.7(b)(3), which regulation speaks for itself, and no response is thus required. To the extent a response is required, Defendant denies the allegations for the reason they are untrue.

47. Denied.

The Absentee Ballot Organizing Ban

48. Defendant admits that absentee voting is voting that takes place at somewhere other than a polling location, and that it is a convenient form of voting. As to the remaining allegations, Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies.

49. Defendant admits the people passed Proposal 3 in November 2018. As to the remaining allegations, Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies.

50. These allegations represent legal conclusions to which no response is necessary. To the extent a response is required, Defendant denies the allegations for the reason they are untrue.

51. These allegations cite and/or quote from Mich. Comp. Laws § 168.759, which statute speaks for itself, and no response is thus required. To the extent a response is required, Defendant denies the allegations for the reason they are untrue.

52. Defendant lacks knowledge or information sufficient to form a belief as to the truth of these allegations, and on that basis denies.

53. These allegations represent legal conclusions to which no response is necessary. To the extent a response is required, Defendant denies the allegations for the reason they are untrue.

54. These allegations represent legal conclusions to which no response is necessary. To the extent a response is required, Defendant denies the allegations for the reason they are untrue.

55. These allegations represent legal conclusions to which no response is necessary. To the extent a response is required, Defendant denies the allegations for the reason they are untrue.

CAUSES OF ACTION

COUNT I

U.S. Const. Amend. I and XIV, 42 U.S.C. § 1983

28 U.S.C. § 2201, 28 U.S.C. § 2202

(The Absentee Ballot Organizing Ban is Unconstitutionally Vague and Overbroad)

56. These allegations represent legal conclusions to which no response is necessary. To the extent a response is required, Defendant denies the allegations for the reason they are untrue.

57. These allegations represent legal conclusions to which no response is necessary. To the extent a response is required, Defendant denies the allegations for the reason they are untrue.

58. These allegations represent legal conclusions to which no response is necessary. To the extent a response is required, Defendant denies the allegations for the reason they are untrue.

59. These allegations represent legal conclusions to which no response is necessary. To the extent a response is required, Defendant denies the allegations for the reason they are untrue.

60. These allegations represent legal conclusions to which no response is necessary. To the extent a response is required, Defendant denies the allegations for the reason they are untrue.

COUNT II
U.S. Const. Amend. I and XIV, 42 U.S.C. § 1983
28 U.S.C. § 2201, 28 U.S.C. § 2202
(The Absentee Ballot Organizing Ban Violates Speech and
Associational Rights Protected by the First and Fourteenth
Amendments)

61. Defendant hereby incorporates all other answers as if fully set forth herein.

62. These allegations represent legal conclusions to which no response is necessary. To the extent a response is required, Defendant denies the allegations for the reason they are untrue.

63. These allegations represent legal conclusions to which no response is necessary. To the extent a response is required, Defendant denies the allegations for the reason they are untrue.

64. These allegations represent legal conclusions to which no response is necessary. To the extent a response is required, Defendant denies the allegations for the reason they are untrue.

COUNT III

**U.S. Const. Amend. XIV, 42 U.S.C. § 1983
28 U.S.C. § 2201, 28 U.S.C. § 2202
(The Absentee Ballot Organizing Ban Imposes and Undue
Burden on the Fundamental Right to Vote)**

65. The Court dismissed Count III. Thus, no response is required.
66. The Court dismissed Count III. Thus, no response is required.
67. The Court dismissed Count III. Thus, no response is required.
68. The Court dismissed Count III. Thus, no response is required.
69. The Court dismissed Count III. Thus, no response is required.
70. The Court dismissed Count III. Thus, no response is required.

COUNT IV

**Violation of Section 208 of the Voting Rights Act of 1965, 52
U.S.C. § 10508
(Federal Law Supersedes and Preempts the Absentee Ballot
Organizing Ban)**

71. Defendant incorporates by reference the above paragraphs as if fully set forth herein.
72. These allegations represent legal conclusions to which no response is necessary. To the extent a response is required, Defendant denies the allegations for the reason they are untrue.

73. These allegations represent legal conclusions to which no response is necessary. To the extent a response is required, Defendant denies the allegations for the reason they are untrue.

74. These allegations represent legal conclusions to which no response is necessary. To the extent a response is required, Defendant denies the allegations for the reason they are untrue.

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76. These allegations represent legal conclusions to which no response is necessary. To the extent a response is required, Defendant denies the allegations for the reason they are untrue.

77. These allegations represent legal conclusions to which no response is necessary. To the extent a response is required, Defendant denies the allegations for the reason they are untrue.

78. These allegations represent legal conclusions to which no response is necessary. To the extent a response is required, Defendant denies the allegations for the reason they are untrue.

COUNT V

**U.S. Const. Amend. I and XIV, 42 U.S.C. § 1983
28 U.S.C. § 2201, 28 U.S.C. § 2202
(The Voter Transportation Ban is Unconstitutionally Vague and
Overbroad)**

79. Defendant incorporates by reference the above paragraphs as if fully set forth herein.

80. These allegations represent legal conclusions to which no response is necessary. To the extent a response is required, Defendant denies the allegations for the reason they are untrue.

81. These allegations represent legal conclusions to which no response is necessary. To the extent a response is required, Defendant denies the allegations for the reason they are untrue.

82. These allegations represent legal conclusions to which no response is necessary. To the extent a response is required, Defendant denies the allegations for the reason they are untrue.

COUNT VI

**U.S. Const. Amend. I and XIV, 42 U.S.C. § 1983
28 U.S.C. § 2201, 28 U.S.C. § 2202
(The Voter Transportation Ban is Violates Speech and
Associational Rights Protected by the First and Fourteenth
Amendments)**

83. Defendant incorporates by reference the above paragraphs as if fully set forth herein.

84. These allegations represent legal conclusions to which no response is necessary. To the extent a response is required, Defendant denies the allegations for the reason they are untrue.

85. These allegations represent legal conclusions to which no response is necessary. To the extent a response is required, Defendant denies the allegations for the reason they are untrue.

86. These allegations represent legal conclusions to which no response is necessary. To the extent a response is required, Defendant denies the allegations for the reason they are untrue.

87. These allegations represent legal conclusions to which no response is necessary. To the extent a response is required, Defendant denies the allegations for the reason they are untrue.

88. These allegations represent legal conclusions to which no response is necessary. To the extent a response is required, Defendant denies the allegations for the reason they are untrue.

COUNT VII

**U.S. Const. Amend. XIV, 42 U.S.C. § 1983
28 U.S.C. § 2201, 28 U.S.C. § 2202
(The Voter Transportation Ban Creates an Undue Burden on
the Fundamental Right to Vote)**

89. The Court dismissed Count VII. Thus, no response is required.

90. The Court dismissed Count VII. Thus, no response is required.

91. The Court dismissed Count VII. Thus, no response is required.

92. The Court dismissed Count VII. Thus, no response is required.

COUNT VIII

**Declaratory Judgment Act 28 U.S.C. § 2201, 28 U.S.C. § 2202
(Federal Law Supersedes and Preempts the Voter
Transportation Ban)**

93. Defendant incorporates by reference the above paragraphs as if fully set forth herein.

94. These allegations represent legal conclusions to which no response is necessary. To the extent a response is required, Defendant denies the allegations for the reason they are untrue.

95. These allegations represent legal conclusions to which no response is necessary. To the extent a response is required, Defendant denies the allegations for the reason they are untrue.

96. These allegations represent legal conclusions to which no response is necessary. To the extent a response is required, Defendant denies the allegations for the reason they are untrue.

97. These allegations represent legal conclusions to which no response is necessary. To the extent a response is required, Defendant denies the allegations for the reason they are untrue.

AFFIRMATIVE DEFENSES

Defendant, by counsel, pursuant to Fed. R. Civ. P. 8(c), asserts the following affirmative defenses, upon which she may rely:

1. Plaintiffs' complaint fails to state a claim.
2. Plaintiffs' claims may be barred due to estoppel, res judicata, waiver, and/or laches.
3. Some or all of Plaintiffs' claims may be moot or not ripe for adjudication.
4. Plaintiffs may lack standing to bring this action.
5. Some of Plaintiffs' claims, including the preemption claims, may

be barred due to this Court's lack of jurisdiction to hear this matter.

6. Plaintiffs' claims may be barred by federal abstention doctrine.

7. Plaintiffs are barred from raising others' rights and generalized grievances under the doctrine of prudential standing.

8. Plaintiffs claims may be barred by the Eleventh Amendment to US Constitution.

Defendant reserves the right to raise any additional affirmative defenses that Defendant may have following the completion of discovery herein.

Respectfully submitted,

DANA NESSEL
Attorney General

s/Heather S. Meingast
Heather S. Meingast (P55439)
Erik A. Grill (P64713)
Assistant Attorney General
Attorney for Defendant
P.O. Box 30736
Lansing, Michigan 48909
517.335.7659
Email: meingasth@michigan.gov
P55439

Dated: June 3, 2020

CERTIFICATE OF SERVICE

I hereby certify that on June 3, 2020, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing of the foregoing document as well as via US Mail to all non-ECF participants.

s/Heather S. Meingast _____
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