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

MAGISTRATE JUDGE R. STEVEN WHALEN

REPLY IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY AND PERMANENT INJUNCTION

INTRODUCTION

The Absentee Ballot Organizing Ban and the Voter Transportation Ban criminalize core political activity and conflict with federal law. Intervenors' briefs, addressed together in this reply, do not give cause for the Court to reconsider its opinions expressed in the order denying (in part) the Secretary's motion to dismiss, or to withhold equitable relief in advance of a critically important election. On this record, Plaintiffs submit that their request for an injunction should be granted.

ARGUMENT

I. Plaintiffs are likely to succeed on the merits of their claims.

A. Absentee Ballot Organizing Ban

1. *Void-for-Vagueness*

First, Plaintiffs are likely to succeed on their claim that the Absentee Ballot Organizing Ban is unconstitutionally vague. Intervenors argue that the challenged statute must be unconstitutionally vague "in *all* of its applications" for Plaintiffs to succeed on their facial challenge to the law. ECF No. 68 at 22; ECF No. 70 at 34. Not so. "The degree of vagueness that the Constitution tolerates—as well as the relative importance of fair notice and fair enforcement—depends in part on the nature of the enactment." *Springfield Armory, Inc. v. City of Columbus*, 29 F.3d 250, 251–52 (6th Cir. 1994) (quoting *Vill. of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 495 (1982)). The Absentee Ballot Organizing Ban

regulates expression protected by the First Amendment and carries criminal penalties; accordingly, the "standards of permissible statutory vagueness are strict." *NAACP v. Button*, 371 U.S. 415, 432 (1963); *see also Springfield Armory, Inc.*, 29 F.3d at 252 (explaining when a law has criminal penalties, "a relatively strict test is warranted" (citing *Hoffman*, 455 U.S. at 499)); *League of Women Voters v. Hargett*, 400 F. Supp. 3d 706, 727 (M.D. Tenn. 2019) (citing *Hoffman*, 455 U.S. at 499).

Nor are Plaintiffs' void-for-vagueness claims speculative. *See* ECF No. 68 at 24; ECF No. 70 at 36. On this score, Intervenors do nothing more than rehash same arguments previously made by Defendant, *Compare* ECF No. 68 at 10, ECF No. 70 at 36 *with* ECF No. 27 at 36, and previously rejected by the Court, ECF No. 59 at 35. Intervenors attempt to define "solicit" to mean "request," *see id.*, but the statute's use of *both* terms suggest that solicit means something different. *See In re Davis*, – F.3d –, No. 19-3117, 2020 WL 2831172, at *6 (6th Cir. June 1, 2020). As this Court has already recognized, the statute does not resolve what conduct is and is not captured by the law. ECF No. 59 at 35 (citing *Hynes v. Mayor & Council of Borough of Oradell*, 425 U.S. 610, 621 (1976)). The argument is no more persuasive the second time around.

2. *First Amendment*

Second, Plaintiffs are similarly likely to succeed on their First Amendment challenge to the Absentee Ballot Organizing Ban. The Court has already held that

the law burdens First Amendment activity and that it is subject to, at a minimum, exacting scrutiny. ECF No. 59 at 29-32, 37-38. In urging the Court to reconsider this ruling, Intervenors rely on out-of-circuit precedent addressing voter registration largely raised by the Defendant in briefing the motion to dismiss. *Compare* ECF No. 68 at 14-17; ECF No. 70 at 20-21 *with* ECF No. 27 at 25. But, as this Court already explained, the reasoning of *Hargett* is more persuasive, and the expressive activity at issue in organizing absentee ballot applications "is difficult to distinguish" from that at issue in *Meyer v. Grant*, 486 U.S. 414 (1988) and *Buckley v. American Constitutional Law Foundation, Inc.*, 525 U.S. 182 (1999). ECF No. 59 at 37.

Intervenors' arguments otherwise take a myopic view of the speech and conduct implicated by the Absentee Ballot Organizing Ban. They urge the Court to focus only on the ban of the actual possession and submission of absentee ballot applications. ECF No. 68 at 15; ECF No. 70 at 19. This argument, of course, ignores that the law directly prohibits speech because it bans requests to assist voters, and possibly even bans other speech aimed at eliciting a request for assistance. Moreover, the law's practical effect inhibits conversations about voting by absentee ballot and ultimately larger political conversations. Intervenors' argument is also contrary to the approach taken by the Supreme Court in other First Amendment cases. For example, in *Buckley* and *Meyer*, the Court did not evaluate the narrowest characterization of the conduct regulated by the law—the collection of signatures on

a petition—but rather considered the interactions that were impacted by banning that conduct. *Meyer*, 486 U.S. at 421-22; *Buckley*, 525 U.S. at 192. Similarly, in an abortion clinic buffer zone case, the Supreme Court looked beyond the law's regulation of standing on a sidewalk in and of itself to consider the expressive activity that was burdened when individuals lost access to that forum. *McCullen v. Coakley*, 573 U.S. 464, 496-97 (2014) (striking down law that made it a crime to stand within 35 feet of the entrance to an abortion clinic as an infringement on right to speech). Likewise, the Absentee Ballot Organizing Ban burdens Plaintiffs' ability to engage in one-on-one communications about the importance of voting in making by prohibiting circumstances under which that communication would take place. ECF No. 22-4 ¶ 12 (Decl. of Guy Cecil); ECF No. 22-5 ¶¶ 16-22 (Decl. of A. Hunter); ECF No. 22-6 ¶¶ 18, 26 (Decl. of M. Lubin).

The Absentee Ballot Organizing Ban does not survive strict, exacting, or indeed *any* level of scrutiny.[1] Intervenors repeatedly state that preserving the integrity of elections is a compelling interest. Plaintiffs do not disagree. But Intervenors never actually address Plaintiffs' arguments that the Absentee Ballot Organizing Ban is not related to (much less narrowly tailored to) achieving that goal

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[1] Plaintiffs maintain that the Court should apply strict scrutiny because the law requires prosecuting attorneys to "examine the content of the message that is conveyed to determine whether" the law—and, in particular, the solicitation ban—has been violated. *McCullen*, 573 U.S. at 479.

because, among other things, it regulates the application process (not ballot collection), there are alternative systems in place to preserve the integrity of absentee voting, and there are criminal laws that more directly involve tampering with a voter's efforts to vote absentee. ECF No. 59 at 37-40; *see also* Decl. of Courtney Elgart dated June 11, 2020, Exs. H, I.

Similarly, Intervenors, in arguing that the law is justifiable as a residency requirement (that is, a limit on application collection to Michigan residents), ignore that the law sweeps much more broadly than that; it prohibits the roughly 750,000 *Michiganders* who are eligible to register to vote but are not registered from assisting with absentee ballots, ECF No. 22-7 ¶ 6. In addition, the few highly isolated incidents of voter fraud cited by Intervenors in purported justification of the restrictions notably do not involve conduct occurring *in Michigan* or conduct that would be *actually covered* by the challenged law. ECF No. 70 at 22-25.[2]

Finally, a facial challenge is appropriate in this case because the Absentee Ballot Organizing Ban is unconstitutional in nearly all of its applications. *United States v. Stevens*, 559 U.S. 460, 472-73 (2010). While the law may capture some

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[2] For example, ballot collection itself is not at issue in this case. And the two incidents cited by Intervenors were related to ballot applications and would not have been captured by the Absentee Ballot Organizing Ban because one involved doctored applications and the other the conduct of a mail carrier, a category of persons exempted under Michigan's Law, Mich. Comp. Laws § 168.759(4). ECF No. 70 at 25.

quantum of coercive or fraudulent activity, that activity is already criminalized by other Michigan laws. *See, e.g.*, Mich. Comp. Laws § 168.932(a), and neither Intervenors nor Defendants have identified any other valid application of the law. Otherwise, the law merely functions as a burden on expressive conduct, i.e. absentee ballot application organizing.

3. *Preemption under Section 208 of the Voting Rights Act*

Finally, Plaintiffs are likely to succeed on their claim that the Absentee Ballot Organizing Ban is preempted by Section 208 of the Voting Rights Act ("VRA"). As an initial matter, Intervenors' assertion that Plaintiffs lack standing to bring the VRA preemption claim is incorrect. "[T]he Supreme Court has permitted organizations to bring suit in VRA claims." *Ne. Ohio Coal. for the Homeless v. Husted*, 837 F.3d 612, 624 (6th Cir. 2016) (citing *Ala. Legislative Black Caucus v. Alabama*, 575 U.S. 254, 268-71 (2015)). And in *OCA-Greater Houston v. Texas*, 867 F.3d 604 (5th Cir. 2017), the Fifth Circuit found that an organization with a mission that is meaningfully indistinguishable from that of Plaintiff APRI had standing to seek declaratory and injunctive relief based on allegations that a state voting law was preempted by the VRA. *Compare id.* at 610-14 (finding standing for organization with mission of turning out vote in a community with limited English proficiency), *with* Decl. of A. Hunter dated June 12, 2020 ¶ 5 (describing APRI as organization with mission of turning out vote in communities with limited English proficiency

and assisting individuals with disabilities). Indeed, the VRA was *intended* to confer standing to organizations like Plaintiffs. The legislative history clearly states that an aggrieved person "may be an individual *or an organization* representing the interests of injured persons." S. Rep. No. 295, 94th Cong., 1st Sess. 1, 40 (1975), reprinted in 1975 U.S. Code Cong. & Admin. News 774, 806–07 (emphasis added). *Newman v. Voinovich*, 789 F. Supp. 1410, 1416 (S.D. Ohio 1992), *aff'd*, 986 F.2d 159 (6th Cir. 1993).[3]

On the merits, Plaintiffs are likely to succeed on their preemption claim because Section 208 guarantees that covered voters can choose who assists them in

[3] If this Court holds that associational or prudential standing is necessary to assert a VRA claim, it should allow Plaintiffs to amend their complaint to reflect the facts in the attached affidavit, Hunter Decl., *supra*, which establish that APRI has both. *See Warth v. Seldin*, 422 U.S. 490, 511 (1975) (explaining that organization has associational standing if "its members, or any one of them, are suffering immediate or threatened injury as a result of the challenged action of the sort that would make out a justiciable case had the members themselves brought suit"); *Eisenstadt v. Baird*, 405 U.S. 438, 445 (1972) (finding sufficient relationship for prudential standing where litigant was an "advocate" for the rights of those on whose behalf he was litigating); *Ne. Ohio Coal. for the Homeless v. Husted*, No. 2:06-CV-896, 2016 WL 3166251, at *34 (S.D. Ohio June 7, 2016), *aff'd in part, rev'd in part*, 837 F.3d 612 (6th Cir. 2016) (finding a "close relationship" sufficient for prudential standing where organizations "regularly work with homeless individuals, advocate for their needs, connect them to necessary social services, and encourage their participation in civic life"); *id.* at *35 (finding "hindrance" where individual right holders "often have difficulty navigating the court system, obtaining counsel, maintaining a consistent address and phone number, and obtaining ID that would allow them access to courtrooms, because they "suffer disproportionately from mental health problems, substance abuse, limited financial resources, and low levels of literacy and education").

voting, and the Absentee Ballot Organizing Ban restricts that choice. ECF No. 59 at 42. In an effort to avoid this unavoidable contradiction, Intervenors graft new language on to the statute and conjure up farcical hypotheticals. But, as Intervenors concede, the purpose of Section 208 was to provide covered voters with assistance from persons whom the voters trust. Congress made the decision, as reflected in the plain language of Section 208, that this is best accomplished by allowing the *voters*, not the state, to choose who assists them with voting.

Finally, Intervenors argue, with tongue firmly in cheek, that fidelity to this policy choice by Congress is not possible lest the state be required to release an inmate from prison if a covered individual chooses to have that inmate assist them with voting. ECF No. 68 at 27. Without the State's ability to impose "reasonabl[e] restricti[ons]" on the individuals who can provide assistance, a parade of horribles will ensue. ECF. No. 68 at 27. Hardly. Plaintiffs do not argue that the State has an affirmative obligation to secure assistance from the person of a voter's choosing; instead, they argue merely that the State must get out of the way.[4]

B. Voter Transportation Ban

1. *Void-for-Vagueness*

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[4] The cases cited by Intervenors were in any event wrongly decided, and because they are nonbinding, should not influence this Court's decision regarding § 208's scope.

Plaintiffs are also likely to succeed on their claim that the Voter Transportation Ban is unconstitutionally vague. The point is perhaps best illustrated by Intervenors' own, very different opinions as to what is covered by the law, especially when contrasted with the state's own assertions. Indeed, even the Intervenors cannot agree among themselves as to what the law covers.

The Attorney General argued, among other things, that the Voter Transportation Ban covers only quid pro quo arrangements. ECF No. 30 at 45. The Legislature disputes the Attorney General's interpretation, instead taking the broadest possible position that the law "prohibits paying for others transportation to the polls." ECF No. 68 at 33. The Republican Organizations end up somewhere in the middle, arguing that the law only applies to providing hired transportation "for the purpose of" securing a voter's vote. ECF No. 70 at 43-44. When the body that wrote the law, the officer who enforces the law, and major political parties regulated by the law all come to a different conclusion about what it does and does not permit, this is the very definition of "vague."

2. *First Amendment*

Similarly, Plaintiffs are likely to succeed on their claim that the Voter Transportation Ban violates the First Amendment. Not only does the law burden rides-to-the-polls efforts, ECF No. 59 at 43; ECF No. 22-5 ¶ 13; ECF No. 22-6 ¶¶ 18, 20, 25; ECF No. 22-8 ¶¶ 5, 9, 10; ECF No. 22-1 at 31 n. 8; *see also* Elgart Decl..

supra, Ex. G at 3., it directly restricts political spending by setting a spending limit of $0 on rides-to-the-polls efforts. Courts have long held that political spending is constitutionally protected activity subject to exacting scrutiny. ECF No. 59 at 43; *see Buckley v. Valeo*, 424 U.S. 1, 20-21 (1976); *Emily's List v. FEC*, 581 F.3d 1, 17-18 (D.C. Cir. 2009). Intervenors do not cite even a *single* political spending cases to the contrary. Not one.

And the Voter Transportation Ban cannot survive exacting scrutiny. The law is not tailored, much less narrowly tailored, to serve an anticorruption interest. *See Emily's List*, 581 F.3d at 18. While other laws in Michigan target corruption, Mich. Comp. Laws § 168.932(a), *id.* § 168.931(a), the Voter Transportation Ban does not. And neither Attorney General Nessel nor Intervenors have cited any incidents of undue influence related to the provision of hired transportation.[5]

Intervenors compare using arson laws to regulate fireworks with using the Voter Transportation Ban to target undue influence. ECF No. 68 at 34-35. While the

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[5] Intervenors argue they should not be faulted for being unable to point to instances of voter fraud related to hired transportation because of how long the statute has been in effect, ECF No. 68 at 34, but also fail to cite examples of this type of fraud from outside of Michigan. Yet, as Plaintiffs have noted, Michigan is the *only* state that criminalizes hired transportation for voters. Intervenors also criticize Plaintiffs for not citing case law that specifically states that paying for transportation is protected speech. ECF No. 70 at 40-41. But paying for transportation to assist voters in getting to the polls is *legal* under federal law and the law of the 49 other states; so it is not clear where or when the issue would have been litigated.

regulation of fireworks may prevent their use in burning down structures, fireworks are regulated in their own right because they are dangerous, unstable, and can injure their users. No such independent basis for regulation exists with regard to the Voter Transportation Ban. Simply put, the law serves no purpose outside decreasing the risk of undue influence that is fully captured by Michigan's other laws while sweeping in significant constitutionally protected expression within its prohibitions.

3. *Preemption under the Federal Election Campaign Act*

Plaintiffs are also likely to succeed on the merits of their claim that the Voter Transportation Ban is preempted by the Federal Election Campaign Act ("FECA"). FECA preempts the Transportation Ban—through both express and conflict preemption—because it "functions as a limitation on expenditures by criminalizing disbursements for providing transportation to the polls for all elections including federal elections." ECF No. 59 at 50–51.[6]

Intervenors raise two threshold arguments—that this Court is an improper venue and that Plaintiffs lack a cause of action. They are wrong on both counts. First, this Court is a proper venue for Plaintiffs' preemption claim. While FECA does establish jurisdiction for challenges to Federal Election Commission agency actions

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[6] As the Court correctly noted in its order on Defendant's motion to dismiss, the relevant regulations that permit corporations to "provide" transportation arise "in the context of making 'disbursements' that is, spending money, to provide these services." ECF No. 59 at 52.

in the District Court for the District of Columbia, 52 U.S.C. § 50109(a)(1), it has no such limitation for actions in equity bringing FECA preemption claims. Indeed, numerous courts across the country (including the Sixth Circuit) have decided FECA preemption claims over the years.[7] In *Bunning v. Kentucky*, 42 F.3d 1008 (6th Cir. 1994), for example, the sole cause of action was a FECA preemption claim brought in federal court in Kentucky to enjoin the enforcement of a Kentucky law. The Sixth Circuit held both that the district court had subject matter jurisdiction to hear the single-claim case *and* that FECA preempted state law. *Id.* at 1011–13.

Second, Plaintiffs properly brought an action in equity to enforce FECA. Federal courts regularly hear preemption claims in equity, and their equitable power "to enjoin unlawful executive action is subject to express and implied statutory limitations." *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 327 (2015). As the Supreme Court has "long recognized, if an individual claims federal law immunizes him from state regulation, the court may issue an injunction upon finding the state regulatory actions preempted." *Id.* at 326 (*citing Ex parte Young*, 209 U.S. 123, 155–156 (1908)).

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[7] *E.g.*, *Stern v. Gen. Elec. Co.*, 924 F.2d 472, 475 (2d Cir. 1991) (exercising jurisdiction over a FECA preemption claim); *Teper v. Miller*, 82 F.3d 989, 993 (11th Cir. 1996) (same); *Reeder v. Kansas City Bd. of Police Comm'rs*, 733 F.2d 543, 545 (8th Cir. 1984) (same); *Weber v. Heaney*, 793 F. Supp. 1438, 1442 (D. Minn. 1992), aff'd, 995 F.2d 872 (8th Cir. 1993) (same).

Intervenors' reliance on *Armstrong* is simply misplaced. ECF No. 70 at 46. In *Armstrong*, the Supreme Court held that although the *Supremacy Clause* does not create a cause of action, 575 U.S. at 325, federal courts have equitable power to "enforce federal law" unless Congress has "displaced" that power. *Id.* at 329. The Court held that such a displacement of equitable power had taken place in *Armstrong*, but no such displacement has taken place here. To the contrary, Congress has sanctioned federal courts' equitable power to enjoin conflicting state law by including an express preemption provision in the statute. 52 U.S.C. § 453.

Intervenors also argue that FECA does not preempt the Voter Transportation Ban, relying on the "voting fraud" carveout in 11 C.F.R. § 108.7(c)(4) which provides that FECA "does not supersede State laws" that provide for "[p]rohibition of false registration, voting fraud, theft of ballots, and similar offenses." ECF No. 68 at 39; ECF No. 70 at 50. But of course the Voter Transportation Ban is, in no way, tied to the prevention of voting fraud. It does not even criminalize the transportation of voters to the polls; it criminalizes *spending money to transport voters to polls*, which is expressly permitted by FECA regulations.

Intervenors' invocation of *Dewald v. Wriggelsworth*, 748 F.3d 295 (6th Cir. 2014), is similarly misguided. The Sixth Circuit did not squarely address the question of FECA preemption in *Dewald*; instead it addressed whether the stringent standards of AEDPA were met. *See id*. at 301. Accordingly, the habeas petitioner in

that case was required to prove that it was clearly established law that FECA preempted Michigan's common-law fraud and theft statutes as applied to his case at the time he was convicted. Here, by contrast, the court must determine whether FECA preempts the Transportation Ban now, not whether it clearly did so at some point in the past.

C. Abstention is not warranted.

Intervenors' last-ditch arguments that Plaintiffs' vagueness challenges to the Absentee Ballot Organizing Ban and Voter Transportation Ban should cause the Court to abstain under the *Pullman* doctrine simply cannot be supported. Abstention is the rare exception, not the rule. *Colo. River Water Conservation Dist. v. United States,* 424 U.S. 800, 813 (1976). This is particularly true in cases involving facial challenges based on the First Amendment, such as Plaintiffs' challenges to the Absentee Ballot Organizing Ban and Voter Transportation Ban. *See, e.g.*, *City of Houston v. Hill*, 482 U.S. 451, 467 (1987); *Dombrowski v. Pfister*, 380 U.S. 479, 489-90 (1965) ("[A]bstention . . . is inappropriate for cases [where] . . . statutes are justifiably attacked on their face as abridging free expression."). "In such case[s] to force the plaintiff who has commenced a federal action to suffer the delay of state-court proceedings might itself effect the impermissible chilling of the very constitutional right he seeks to protect." *Hill*, 482 U.S. at 467-68 (alteration in

original) (quoting *Zwickler v. Koota,* 389 U.S. 241, 252 (1967)). Intervenors cite no basis for taking this extraordinary action here.

Further, neither Ban is "'fairly subject to an interpretation which will render unnecessary or substantially modify the federal constitutional question,'" the question that the Supreme Court has described as "pivotal . . . in determining whether abstention is appropriate." *Id.* at 468 (quoting *Harman v. Forssenius*, 380 U.S. 528, 534-35 (1965)). In other words, unless there is a limiting construction that would affect a state statute's constitutionality, there is no reason for a federal court to abstain from exercising jurisdiction—even if the state statute has not yet been interpreted by state courts. *Id.* (internal citations omitted). Here, however, the Attorney General proposes one construction of the Voter Transportation Ban that is at odds with the statute's plain text, ECF No. 30 at 37-39, *Hill*, 482 U.S. at 468 n. 18, and Intervenors do not offer their own construction or adopt the Attorney General's. None of the Defendants offer a limiting construction of the Absentee Ballot Organizing Ban.

Intervenors' argument for abstention here is effectively to say that *every* vagueness challenge to a state law in federal court is subject to abstention because, by nature of the challenge itself, the statute at issue has ambiguities that could be clarified in the first instance by state courts. Such a broad reading of the abstention doctrine is contrary to the very purpose of the vagueness doctrine. After all, "to

abstain is to subject those affected to the uncertainties and vagaries of criminal prosecution, whereas the reasons for the vagueness doctrine in the area of expression demand no less than freedom from prosecution prior to a construction adequate to save the statute." *Dombrowski*, 380 U.S. at 492.

II. The equitable considerations favor granting an injunction.

Intervenors deploy a number of creative, but unsupported, arguments that boil down to an assertion that Plaintiffs should be required to go through this election cycle deprived of their constitutionally guaranteed rights to fully participate in and exercise their speech related to that election. Intervenors are wrong. "[T]he public interest is served by preventing the violation of constitutional rights." *Chabad of S. Ohio & Congregation Lubavitch v. City of Cincinnati*, 363 F.3d 427, 436 (6th Cir. 2004).

This lawsuit—which was filed a full year before the coming November election—is timely; Intervenors' arguments to the contrary are without merit. *First*, Intervenors argue that Plaintiffs waited too long to bring the lawsuit because the challenged laws are not newly enacted laws. ECF No. 68 at 41; ECF No. 70 at 55. But, as the Court already found, the laws have taken on a new impact given recent changes to technology and Michigan's election regime. ECF No. 59 at 22. Even beyond that, Plaintiffs have not sat on *their rights*. Priorities and Rise both expanded their presence in Michigan in 2019, and, as Intervenors acknowledged, filed this

lawsuit the very same year. *See* ECF No. 22-6 ¶ 4; Elgart Decl.. *supra*, Ex. F. *Second*, Intervenors argue that it is too close to the November election to issue the requested relief. But the challenged laws do not require *any* structural changes to the way the state prints or distributes ballots. Furthermore, the motion for injunction is fully briefed and it remains well before the period of time where courts have abstained from injunctions based on timeliness concerns. *See, e.g.*, *Bryanton v. Johnson*, 902 F. Supp. 2d 983 (E.D. Mich. 2012) (enjoining inclusion of a citizenship verification question on absentee ballot and voter registration applications four weeks before election); *U.S. Student Ass'n Found. v. Land*, 585 F. Supp. 2d 925 (E.D. Mich. Oct. 13, 2008) (prohibiting cancellation/rejection of voter registrations three weeks before election); *Bay Cty. Democratic Party v. Land*, 347 F. Supp. 2d 404 (E.D. Mich. 2004) (enjoining rejection of out-of-precinct provisional ballots cast in federal elections two weeks before election); *see also League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224 (4th Cir. 2014) (affirming injunction five weeks before election).

Intervenors also argue that Plaintiffs will not suffer irreparable injury because the Secretary sent absentee ballot applications to voters. While this decision is laudable in that it alleviates the burden on voters to obtain absentee ballot applications, it does not alleviate the burden on Plaintiffs' expressive activities.

Plaintiffs are still prohibited from distributing and returning applications, requesting to do so, and from paying for hired transportation.[8]

In short, this Court has already held that the Absentee Ballot Organizing Ban and the Voter Transportation Ban are subject to scrutiny under the First Amendment, and conflict with federal law. Intervenors offer no persuasive reasons this Court should reverse course. And the robust evidentiary record filed with the request for injunction supports a final resolution in Plaintiffs' favor. Accordingly, Plaintiffs respectfully urge the Court to enter the requested injunction, ensuring that Plaintiffs' rights—and the rights of all Michiganders—are protected in advance of the November Election.

Dated: June 12, 2020

Respectfully submitted,

By: /s/ Marc E. Elias
Marc E. Elias
Christopher J. Bryant
Courtney A. Elgart
PERKINS COIE LLP
700 Thirteenth Street, N.W., Suite 800
Washington, D.C. 20005-3960
Telephone: (202) 654-6200
Facsimile: (202) 654-6211

Kevin J. Hamilton
Amanda Beane
PERKINS COIE LLP
1201 3rd Ave.
Seattle, WA 98101
Telephone: (206) 359-8000
Facsimile: (206) 359-9741
khamilton@perkinscoie.com

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[8] Michigan law criminalizes every violation of the Election Code, Mich. Comp. Laws § 168.931(2), including, obviously, hiring transportation for a voter, *id.* § 168.931(f), and including a false statement on the certification a third party must fill out to return an absentee ballot application, *id.* § 168.759(8); *see also id.* § 168.759(5) ("It is a violation of Michigan election law for a person other than those listed in the instructions to return, offer to return, agree to return, or solicit to return your absent voter ballot application to the clerk.").

Sarah S. Prescott, Bar No. 70510
SALVATORE PRESCOTT &
PORTER, PLLC
105 E. Main Street
Northville, MI 48168

Attorneys for Plaintiffs

melias@perkinscoie.com
cbryant@perkinscoie.com
celgart@perkinscoie.com

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on June 12, 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 I have filed a motion seeking an extension on the word limit contained in Local Rule 7.1 for good cause.

Respectfully submitted,

By: /s/ Marc E. Elias
Marc E. Elias
PERKINS COIE LLP
700 Thirteenth Street, N.W., Suite 800
Washington, D.C. 20005-3960
Telephone: (202) 654-6200
Facsimile: (202) 654-6211
melias@perkinscoie.com